



THE REPUBLIC OF KOREA

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Mr. Chairman,

My delegation would like to express its deep appreciation for the work undertaken by the International Law Commission. I would also like to thank the Special Rapporteurs, Mr. Maurice Kamto and Mr. Eduardo Valencia-Ospina for their comprehensive and remarkable work on the topics “Expulsion of aliens” and “Protection of persons in the event of disasters”. Today, my comments will be confined to the topics “Expulsion of aliens”, “Protection of persons in the event of disasters” and “Other decisions and conclusions” in accordance with the suggested clusters.

1. Expulsion of aliens

Mr. Chairman,

The Republic of Korea welcomes the adoption of the second reading draft articles on the “Expulsion of aliens”. My Government has participated actively in this topic through submitting government comments and observations with regard to the draft articles on the first reading. We also provided the government comments at the previous sessions of the 6th Committee.

My delegation considers that the draft articles adopted on the second reading are generally well-balanced between two conflicting interests compared to the First reading draft articles, namely State’s sovereignty and protection of human rights. For example, we highly assess the deletion of the first reading draft article 8 (Other rules specific to the expulsion of refugees and stateless persons), and appreciate the adoption of clearer definition of ‘aliens’.

However, my delegation still has reservations about the proclamation of the progressive development of international law included in the second reading draft articles. For example, my Government is concerned about the drafting article 23 that proclaims the obligation not to expel an alien to a State where his or her life would be threatened. As provided in paragraph 2 of this Article, a State that does not apply the death penalty shall not expel an alien to a State where there is a real risk that he or she will be sentenced to death. According to the Commentary of this paragraph, a State that does not apply the death penalty includes not only States that have abolished the death penalty, but also States which are considered to be "abolitionist in practice" which have not executed death penalty although they retain the institution. Extended concept like this may cause States' concerns over that exercising their rights of expulsion would be restricted unnecessarily because many of States fall into the category of abolitionist or "abolitionist in practice".

In the same vein, as for the draft article 27 proclaiming the suspensive effect of an appeal against an expulsion decision, my delegation takes a view that this article should be deleted because it would unduly limit State sovereignty.

Likewise, we consider that the draft article 29 (readmission to the expelling State) should be deleted in that allowing readmission to the expelling State is part of national sovereignty even if it is established by competent authorities that the expulsion was unlawful.

Finally, the Korean Government is of the view that it would be appropriate to adopt the format of 'draft guidelines' rather than 'convention' for the final outcome of the draft articles adopted on second reading as the draft appears closer to the progressive development of international law rather than its proper sense of codification in terms of character.

2. Protection of persons in the event of disasters

Mr. Chairman,

The Republic of Korea welcomes the adoption of the first reading draft articles on "the Protection of persons in the event of disasters" during this session. The earth is suffering from various climatic anomalies deriving from global warming. The States and human-beings are falling victim to the natural disasters such as earthquakes, floods, droughts and serious epidemic diseases. Considering such severe phenomena at both regional and global levels, we hope that the works of the ILC will provide illuminating guidelines to encourage States' cooperation and humanitarian relief activities in our shared endeavor.

We note the alacrity with which the outcome in question has been reviewed, given that that the deliberation of the ILC began in 2008. The Korean Government will carefully examine the first reading draft articles comprised of 21 articles and present our comments next year.

During this 66th session of the ILC, Special Rapporteur Eduardo Valencia-Ospina presented the seventh report and its addendum on the "Protection of persons in the event of disasters." The seventh report particularly deals with the item of the protection of relief personnel and supplies (draft article 14 bis); on three general provisions, namely relationship with special rules of

international law(draft article 17), relationship with other rules of international law (draft article 18) and relationship to the Charter of the United Nations (draft article 19).

In the Addendum of the 7th report, eight new definitions in draft article 3 bis were presented by the Special Rapporteur: namely 'affected state', 'assisting state', 'other assisting actor', 'external assistance', 'equipment and goods', 'relevant non-governmental organizations', 'relief personnel' and 'risk of disasters'.

Here my delegation would like to make a point that the ILC should provide the States with more exact and detailed information concerning the process of deliberation on the topic. For example, the draft articles 17, 18 and 19 proposed by the Special Rapporteur were deleted or changed substantially after the discussion in the Drafting Committee. Also among the eight definitions in the draft article 3 bis proposed by the Special Rapporteur, 'relevant non-governmental organizations' and 'risk of disasters' were deleted. But the 2014 ILC Report does not provide sufficient information concerning these modifications. We hope the ILC will provide more detailed and exact information concerning the deliberation of the works in the future.

Thank you again for having adopted the first reading draft articles in a timely manner. The Republic of Korea will cooperate until the second reading draft articles are adopted.

3. Crimes against humanity

Mr. Chairman,

The Korean Government welcomes the ILC's adoption of the topic "Crimes against Humanity" in its program of work at the 66th Session in 2014, and the appointment of Professor Sean Murphy as the Special Rapporteur.

As commonly acknowledged, the international community has universal international treaties for regulating war crimes and genocide, but there is no international treaty on crimes against humanity. Under the Rome Statute of the International Criminal Court, crimes against humanity are stipulated to be within the Court's subject matter jurisdiction, but this will have to be regarded as a separate issue, namely one material element of Court's jurisdiction.

The international community needs to send a clear message that perpetrators of crimes against humanity will be punished unequivocally, irrespective of one's domestic legal status. Therefore, my delegation hope the ILC will take into account the following issues in dealing with this agenda.

First, the concept of crimes against humanity should be based on the Rome Statute as much as possible, and common elements established in international jurisprudence such as under the ICTY and the ICTR should also be considered.

Second, regarding the issue of crimes against humanity, substantial contents must be included that all members or non-members of the Rome Statute can accept. In addition, since certain States have already enacted domestic laws on crimes against humanity, these aspects should be taken

into account to the utmost degree because a conflict between international and domestic law may arise.

Third, we expect the ILC will also consider procedural legal aspects of this topic which are crucially important: for example questions on which States can prosecute? ; How a State will prosecute an individual for crimes against humanity? These are directly linked with issues on 'universal jurisdiction' and the 'obligation to extradite or prosecute'. I hope these issues will be examined adequately.

The Korean Government again welcomes the adoption of the new ILC agenda, and we will do our best to actively cooperate with the ILC.

4. Jus cogens

Mr. Chairman,

The Korean government understands that the topic of '*Jus cogens*' was adopted as one of the new long-term program of works at the 66th Session of the ILC this year in 2014. On one hand, the Korean Government welcomes the topic, but on the other hand, we would like to let it be known that we are taking a cautious stance.

After the Korean Government reviewed the proposal mentioned in the Annex of the ILC's 2014 Report, the core aspects of this topic include four items as specified under paragraph 13, page 280 of the ILC Report: (a) the nature of *Jus cogens*, (b) requirements for the identification of a norm as *Jus cogens*, (c) an illustrative list of norms which have achieved *Jus cogens* status, and (d) the consequences or effects of *Jus cogens*.

The Korean Government would like to call attention to the last element (d) out of the four elements above. Mechanisms for regulating violations of *Jus cogens* such as Article 53 under the 1969 Vienna Convention on the Law of Treaties do exist, but it is rather questionable how violations of *Jus cogens* can be sanctioned in international relations outside the sphere of the law of treaties. There have been instances in which the International Court of Justice ruled on the existence of *Jus cogens* violation for specific cases, but in most cases, it is left as a political conflict.

In other words, even if clear legal effects of *Jus cogens* violation by a State are regulated, it remains questionable if any entity is capable of enforcement and how effectively enforcement may be put in place on realistic terms. Recently, certain States have fallen victim to armed attacks in violation of Article 2 (4) of the UN Charter, or in other words, a violation of *Jus cogens* norm. Yet these cases serve as a reminder that appropriate sanctions are unavailable, which inevitably raises such a question above.

My delegation would like to ask that the ILC will take a cautious step in deliberating this topic.

Thank you, Mr. Chairman.