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STATEMENT  
BY THE REPRESENTATIVE OF THE RUSSIAN FEDERATION  
MRS. M.V.ZABOLOTSKAYA  
IN THE SIXTH COMMITTEE OF THE 69<sup>th</sup> SESSION  
OF THE UN GENERAL ASSEMBLY ON THE AGENDA ITEM:  
“REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS 66<sup>th</sup> SESSION”

(Topics: **Expulsion of aliens and Protection of persons in the event of disasters**)

Mr. Chairman,

Let me thank the Chairman of the international law Commission for having presented the report of the Commission and congratulate the Commission and its members with the completion of quite productive session during which the draft Articles on the topic of “**Expulsion of aliens**” in the second reading and the draft Articles on the topic of “**Protection of persons in the event of disasters**” in the first reading were adopted, and substantial progress in examining other items of Commission’s agenda was achieved.

The Russian Federation traditionally attaches a great importance to the work of the ILC as a central expert body of the UN dealing with codification and progressive development of the international law. The Commission has made a substantial contribution to the establishment of the contemporary international law, and it is a particular honor for Russia that the 66<sup>th</sup> session was chaired by the Russian member of the Commission, Mr. K.G.Gevorgyan.

Mr. Chairman,

Now I would like to make some comments on the draft Articles, adopted by the Commission during the previous session on the topics of “Expulsion of aliens” and “Protection of persons in the event of disasters”. These two topics are related to important issues of protection of citizens who found themselves in a particularly vulnerable situation: facing the expulsion from the country of stay or in a situation of natural disasters, and ensuing rights and obligations of states. We are convinced that these two topics deserve the closest attention by the VI Committee.

Let me thank the Special Rapporteur on the topic of “Expulsion of aliens” Mr. **Maurice Camto** for having developed this complex topic of practical importance. The Russian Federation is reviewing with interest the set of 31 draft Articles with comments thereto endorsed by the Commission.

First of all, we would like to note that the Commission has managed to drastically improve the draft Articles in light of the comments by states as compared to the draft adopted in the first reading in 2012.

This relates in particular to draft Article 1 “**Scope of application**”. Thus, the Russian Federation has several times pointed out at the need to distinguish between the rules applicable to foreigners who are legally or illegally staying on the territory of a state. We welcome in this connection that it is noted in the commentary to Article 1 that all the rules formulated in the draft are not equally applicable to different categories of foreigners and in particular that a number of rules is not applicable to foreigners illegally staying in the territory of a state or to foreigners whose status is regulated by special regimes.

We find that the definition of “expulsion” in Article 2 “Use of terms” is suitable. We believe it is appropriate that this language does not prejudge the issue of the legitimacy of expulsion depending on the body of government that makes a relevant decision.

We welcome the language of **Articles 3 and 4** which, on the one hand, clearly indicate to the right of a state to expel a foreigner and, on the other hand, limit this

right by the need to implement it in accordance with the applicable rules of international and domestic law both regarding the grounds for expulsion and its procedural aspects. Moreover, we deem as extremely important the reference in paragraph 4 of the Commentaries to Article 4 that relevant provisions of law can be different with respect to foreigners who are legally or illegally staying in the territory of the country of residence. It seems that the same comment is fully related to Article 3 which deals with applicable rules of international law.

We also see as useful the reference in paragraph 7 to this article that the interpretation of domestic law with regards to expulsion relates in principle to domestic competence of a state and the competence of relevant international mechanisms is limited in this regard. We believe that such a competence should be related to the issue of compatibility of the applicable domestic legislation with the international obligations of that state. This approach follows from a known decision by the UN International Court of Justice on Sadio Diallo case (Guinea vs. Congo) of 30 November 2010, and a number of decisions by the **European Court of human rights** (ECHR).

We welcome the new wording of **section II “Cases of prohibited expulsion”** which in our due makes a clearer distinction regarding the rules applicable to different categories of foreigners. We would like, however, to draw your attention to two Articles of this section.

We believe that **Article 10 “Prohibition of concealed expulsion”** should be interpreted in light of the rules applicable to the appropriation of the state’s conduct formulated in the Articles on the “Responsibility of states for international wrongful acts”. In this regard we consider as important the reference in paragraph 4 of the Commentaries to this Article to the decision of the **Iran – U.S. claim tribunal**.

With regard to **Article 11 “Prohibition of expulsion with the view of confiscation of property”** the reference in paragraph 3 of the Commentary is important for its proper interpretation stating that this Article doesn’t apply to the

situations when the assets of a foreigner are being confiscating in accordance with the law as a measure of prosecution for committed offense. As it seems this provision would need to be included in the text of that Article.

We welcome the modified language of **draft Article 21: “The expelling state shall take necessary measures to assist to the voluntary departure of a foreigner subject to expulsion”**. A separate mention in the Commentary that this provision should not be interpreted as allowing the expelling state to put unjustified pressure on the foreigner seems to be helpful.

We still have questions regarding the language of Article 26 which extends similar procedural guarantees on the persons legally or illegally staying in the country of residence. This was done regardless of the fact that the Commentary to the Article makes a reference to Article 13 of the International Pact on Civil and Political Rights or Article 1 of Protocol 7 to the European Convention on Human Rights and Fundamental Freedoms as sources of the provisions of Article 26, while these instruments refer to the revision of a decision on expulsion precisely with respect to foreigners who are legally staying on the territory of the state.

In conclusion, we would like to congratulate the Commission once again with the completion of this important project. We agree with the Commission’s recommendations that **these draft articles should be taken into consideration by the General Assembly that can later serve as a basis for elaboration of a relevant international legal instrument.**

Mr. President,

I would like now to comment on the draft Articles on the topic of **“Protection of persons in the event of natural disasters”**.

Let me thank the Special Rapporteur **Mr. Valencia Ospin** and the Commission on the whole for productive completion of work on this topic. We all are witnessing the growing number and scale of natural disasters that are threatening hundreds of thousands of lives and bringing enormous material losses to states, which highlights a

great practical importance of drafting the international rules to protect persons affected by the disaster.

Before I turn to comments on the substance of the draft, I would like to note as in the previous years that the final output of the Commission on this topic, as we see it, should be the guideline principles rather than the draft Articles. The draft Articles have been elaborated by the Commission on the topics which in view of the existing advanced practice of states bring a hope that a legally binding document could be formulated. We do not see, however, such a possibility in this particular case.

These rules formulated by the Commission represent in our view the guidelines that could provide directions for cooperation between states with a view to prevention and mitigation of natural disaster impact.

We believe that the format of Guidelines is more appropriate also because the rules elaborated by the Commission should help the disaster affected states and their population as well instead of putting on them strict legal obligations that can only aggravate the situation of that state in difficult circumstances.

We propose in this connection that the Commission should turn back to the format of the final output on this topic during the second reading.

Turning now to the content of draft Articles we believe it important to note that the rules formulated there cannot be regarded as the norms of customary international law and represent an example of progressive development of law and on many issues have a character of political targeting.

By and large, we have no questions regarding the **first four draft Articles** which formulate the general goals and scope and defines the terms used in this draft.

Generally we support the idea of **Article 5** which refers to the need to respect the human dignity. However, it is not quite clear to us what is the list of persons who should act in accordance with this obligation. In our view all persons who take part in disaster relief operations must act in accordance with this principle, and not only the “state, competent international organizations and relevant NGOs”.

The purpose of **Article 6** is not quite clear to us where a general definition is given of the right of persons affected by the disaster, and respect of their human rights. Neither the Article nor the comments to it do mention the issues that are essential to this topic: can any rights be limited due to an emergency situation and if yes then what are these rights and under what circumstances. It would be interesting to learn in this context the practice of the Committee on Human Rights, international judicial institutions and national courts. It is obvious that in the situation of large scale calamities certain human rights cannot be implemented fully for objective reasons and the focal issue is the balance between the protection of these rights and a real impact of the disaster. As it seems, more attention should be given to this issue during the second reading of the draft and its relevant provision should be specified.

At the same time we assume that the draft Articles would gain from adding to them, along with the principles of protection of dignity and the rights of affected individuals, also the principle that in that or another form points at the need to protect the interests of the affected community as a whole, its values, the way of life, etc. This is particularly important in view of the damage that can be brought as a result of disaster to publicly important facilities whose reconstruction can hardly be associated with the rights of any individual but which in the final analysis are required for normal implementation of the rights and interests of all inhabitants in that area.

We support the provisions of **Article 7** which points at the need to comply with humanitarian principles during the response to a disaster such as humanity, neutrality and impartiality. We regard these 3 principles as fundamental for providing humanitarian assistance. We believe, however, that this Article could be supplemented by the provision on the observance of the fundamental principle of non-interference in the domestic affairs of a state by other states and international organizations that participate in the provision of assistance to the victims of disasters since such assistance by definition should be of non-political nature.

We think that during the second reading we need to make substantial changes to the central provision of the draft – **Article 8 “Obligation to cooperate”**. On the whole, as it was rightly mentioned in the Commentary, the obligation to cooperate is one of the fundamental principles of the international law. However, this principle applies to cooperation among states and is of general nature.

It is not quite clear on which basis the states are imposed an obligation to cooperate with the international organizations, NGOs and ICRC in the same measure as they are supposed to cooperate among themselves. Moreover, the Article does not define the purpose of that cooperation. It would be appropriate in our view to mention here the disaster relief cooperation. And, more importantly, the Article must reflect the idea that the affected state has a right of choice from whom it can accept the assistance and with whom it decides to cooperate in reducing the risk of disasters and their aftermath. This notion is based on the principle of sovereign equality of states.

Regarding **Article 10** on cooperation in reducing the risk of disasters we believe that it should be included in **Article 8** related to a general obligation to cooperate, and all the comments made by us in relation to this Article also fully cover this provision.

On our part, we would like to suggest the following wording of the right to cooperate:

“The states shall be obligated to cooperate within their possibilities and where appropriate with international organizations with a view to provide assistance to the affected state and also to assist each other in reducing the risk of disasters.”

As we have noted earlier, **Article 9 on the “Forms of cooperation”** is rather dealing with the forms of assistance that the international community can provide to the affected state. We think that the list provided in this Article should be all-inclusive and illustrative in nature. This Article can hardly be regarded as a legally binding provision since it seems to be more descriptive. Therefore, it is important to clearly

indicate that it is not related to the above-mentioned Article on the obligation to cooperate.

In our view, it would be important to note in this Article that the forms of assistance offered to the affected state should be based on its request. Who ever than the affected state knows better what forms of assistance it needs.

**Article 11** on the obligation to reduce the risk of disasters is yet another example of the progressive development of law in this draft. We believe that this rule should be formulated as a recommendation and incorporate the qualifier “within their ability”.

**Article 12** “The role of affected state” also raises a number of serious questions. We believe that the formula stating that “**The affected state in its sovereignty must ensure the protection of persons and provision of assistance in the event of disaster**” does not clearly explain the meaning of the words “to ensure protection”. The state cannot be demanded to ensure protection from disasters and it would be more appropriate to require “the adoption of all necessary measures to provide assistance”.

The obligation to reduce the risk of disaster has been already reflected in **Article 11**.

We are not clear either about the purpose of the phrase on the “**main role of the affected state in directing, controlling and coordinating this assistance**”, which may imply that this responsibility may be transferred to any other party without the consent of the state in question. It would be more appropriate to use in this Article the formula of “responsibility of the affected state” for performing the above-mentioned actions.

We still do not see any grounds for stipulating the obligation of the affected state to ask for assistance in draft **Article 13**. Such an approach raises a number of legal issues. It is not clear who will be authorized to determine whether the disaster has happened and whether the affected state complies with the obligation to ask for



assistance and whether the disaster has gone beyond the national capabilities of the affected state. Moreover, the imposition of a strict legal obligation implies that in case of non-compliance the state will bear an international legal responsibility which intern generates additional questions and problems.

We believe that this could not be such a problem if we redrafted the format of these Articles and formulated a relevant provision as a recommendation.

In our view, the draft **Article 14 “The consent of the affected state”** follows a not quite clear logic of the Articles that implies that the entire process of providing assistance is launched not by the request of the affected state but the right of other actors to offer such assistance. This Article, therefore, deals with the consent, rather than a request of a state, which, in our view, is hardly appropriate.

We believe that **Article 15** on the termination of external assistance should include the key phrase contained in paragraph 2 of the Commentary to this Article:

**“When the affected state accepts the offer of assistance, it shall maintain control over the duration of its provision.”**

In conclusion, let me once again thank the Commission and Special Rapporteurs on the topics under consideration for their work and the achieved results.

Thank you, Mr. Chairman.