

STATEMENT BY MR. BANSA GOPAL CHOWDHURY, MEMBER OF PARLIAMENT AND MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITEM 79 - "REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FOURTH SESSION- Part-1" AT THE SIXTH COMMITTEE OF THE 67<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON NOVEMBER 02 2012

**Mr. Chairman,**

At the outset I would thank Mr. Lucius Caflisch, Chairman of the sixty-fourth session of the International Law Commission, for his detailed and informative introduction to the work of the Commission at its sixty-fourth session on the first cluster of topics, and for guiding the work of the Commission at this session.

I also commend all members of the Commission on a successful and productive session, in which the Commission adopted on first reading a set of 32 draft articles and commentaries thereto on the topic of 'expulsion of aliens'. The Commission also heard reports by the Special Rapporteurs and had debate on the methodological and substantive issues on the topics of: Immunity of State officials from foreign criminal jurisdiction; Provisional application of treaties and; Formation and evidence of customary international law. I also thank the Secretariat for their contribution to the work of the Commission.

**Mr. Chairman,**

We commend the Special Rapporteur Mr. Maurice Kamto on the presentation of the eighth report on the topic of "Expulsion of aliens", consideration of which by the Commission resulted in the adoption of a set of thirty-two draft articles and commentaries thereto on this topic.

The approach adopted by the Special Rapporteur in dealing with the right of a State to expel an alien and the rights and remedies available to the person subject of expulsion, including the legal consequences of unlawful expulsion is in general acceptable to us.

We recognize, in principle, the right of a State to expel an alien from its territory as provided under draft article 3 as exercised in accordance with the applicable rules of international law, particularly the human rights law. We would like to emphasize that the State concerned must also take into account the minimum standards of the treatment of aliens.

**Mr. Chairman,**

We found the provision under draft article 13, prohibiting expulsion in order to circumvent an extradition procedure, a convincing one. Although the expulsion and extradition both have the effect of a person leaving the territory of one

state for another, however, the legal basis and the laws governing the process and the procedure are altogether different and one cannot be used as an alternate for the other.

**Mr. Chairman,**

We consider that the issues relating to the suspensive effect of an appeal against an expulsion decision under the draft article 27, recourse to a competent international body and the re-admission of aliens in the expelling State under draft article 29 require further discussion as there is no sufficient State practice in this regard. Recourse to an international body might raise issues relating to competence of such bodies where the expelling State is not a party to the relevant international instrument.

**Mr. Chairman,**

On the topic ‘Protection of persons in the event of disasters’, we congratulate the Special Rapporteur Mr. Eduardo Valencia-Ospina for submitting the fifth report. The report elaborates upon: the duty to cooperate in the event of disaster under draft article A; the conditions for the provision of assistance under draft article 13 and; the conditions for the termination of assistance under draft article 14.

We appreciate the work of the Drafting Committee and the Commission which resulted in the provisional adoption of draft article 5-bis (Forms of cooperation); draft article 12 (Offers of assistance); draft article 13 (Conditions on the provision of external assistance and; draft article 14 (Facilitation of external assistance).

**Mr. Chairman,**

India is fully in agreement with the observation of Special Rapporteur that States should observe fundamental humanitarian principles in responding to disasters. The principle of humanity, neutrality, impartiality and non-discrimination as envisaged in draft article 6 should be central to any disaster response.

We would like to emphasize that disaster relief and assistance must start on the premise “respect for the principle of sovereignty, territorial integrity and political independence” of the affected State. We stress for the need to ensure that the humanitarian assistance is not forcibly imposed on the affected State and that the concepts of international humanitarian law are not automatically applied, as the duty of protection in the event of armed conflicts differs from that of disaster situations.

**Mr. Chairman,**

The draft article 12 on ‘Offers of assistance’ confers the right on states and competent international organizations to offer assistance to the affected State. While, we do recognize the importance of assistance in disaster situations, we are of the view that offers and acceptance of assistance should be viewed as part of international cooperation as opposed to the assertion of any right or imposition of any duty. We do not think that any such obligatory mandate exists in the field of international cooperation and are of the view that the crucial factor in this regard is the consent of the affected State.

**Mr. Chairman,**

The draft article 11 prohibits the ‘arbitrary withholding’ of consent by the affected State. It is however not clear as to what may constitute the ‘arbitrary withholding’ of consent and that what could be the criteria to determine the inability and unwillingness of an affected State to consent to external assistance.

Regarding draft articles 13 and 14, we appreciate the Commission’s observations that the affected State should be entitled to impose conditions on the provision of assistance and that the termination of relief operations should be ultimately a matter for decision by the affected State.

In conclusion, **Mr. Chairman**, I once again congratulate the International Law Commission and, in particular, the Special Rapporteurs, for a successful session.

**I thank you Mr. Chairman.**

[BACK TO TABLE OF CONTENTS](#)