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STATEMENT OF THE CHAIRMAN OF THE INTERNATIONAL

LAW COMMISSION, MR. KIRILL GEVORGIAN

Part One
Chapters I-III, XIV. IV and V: Introductory Chapters; Other decisions and conclusions of the Commission; Expulsion of aliens and Protection of persons in the event of disasters.

Mr. Chairman,

Let me begin my statement by conveying to you all the best

"Expulsion of aliens". As intimated last year, it also completed on first reading a set of draft articles, together with commentaries, on the "Protection of persons in the event of disasters". Moreover, it adopted its final report on the topic on "The obligation to extradite or prosecute (aut dedere autjudicare)", bringing to a close its consideration.

The Commission also continued its substantive consideration of the "Immunity
of State officials from foreign criminal jurisdiction"; "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", and the "Identification of customary international law". In the process, it provisionally adopedt some draft articles, together with commentaries, on the first mentioned topic and some draft conclusions, together with commentaries, on the two other topics.

The Commission, through its Study Group, also continued to make further advance on topic, "The

prepare a list of potential topics ("survey"), accompanied by brief explanatory notes, by the end of the present quinquennium.

In Chapter III of the report, the attention of governments is drawn to information
on practice whose provision would be particularly useful to the Commission as it continues its consideration of the various topics. As I later address each relevant substantive chapter, I will draw attention to the specific question addressed by the Commission for the particular attention of governments. As mentioned at the beginning of my statement, information on State practice that Governments submit on the various topics under consideration is an essential part of the working methods of the Commission. It is important that the Commission receives information from as many States, representing all regions of the world, as possible.

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Mr. Chairman,

The Commission has continued its traditional exchanges with the International Court of Justice, as well as its cooperation with other bodies engaged in the progressive development of international law and its codification. The visit of the President of the Court this year coincided with the convening of a commemorative meeting of the fiftieth anniversary of the International Law Seminar. The theme of the meeting, was "International law as a profession". All speakers, among them President Tomka, who was once a participant of Seminar, bore living testimony to the value of the seminar in the growth of international law as a profession that is vibrant, and in helping to connect young professionals across cultures and civilizations in the service of humanity.

As the seminar soon begins the first year towards the century mark, it is worth reminding ourselves that its continued sustainability depends on the generosity of States. The Commission expresses its gratitude to all States that many contributed towards the

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Draft article 1 pertains to the scope of the draft articles. Paragraph 1 defines the scope in general terms. For the sake of clarity and in order to address concerns expressed by some governments, this paragraph does not refer explicitly to aliens present "lawfully or unlawfully" on the territory of a State. This amendment does not imply any modification as to the scope ratione personae of the draft articles. Rather, it was done to avoid giving the misleading impression that each provision of the draft articles applies generally to both categories of aliens, when some provisions distinguish between these two categories. Paragraph 2 excludes certain categories of individuals who would otherwise be covered by virtue of paragraph 1.

Draft article 2 constitutes the traditional provision on "Use of terms". It provides
the definitions, for the purpose of the draft articles, of the two central concepts of the topic, namely "expulsion" and "alien".

Draft article 3, entitled "Right of expulsion", is the core provision of the draft articles that balance the uncontested right of the State to expel an alien from its territory with the limitations to this right under international law. It recognizes the right of the State to expel an alien from its territory, while reminding that the exercise of this right is regulated by the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights.

Draft article 4 confirms that the exercise of the right to expel by the State is conditioned by the adoption of a decision reached in accordance with law.

Draft article 5 deals with the different aspects of the question of the "grounds
for expulsion". Paragraph 1 indicates that any expulsion decision shall state the ground on which it is based. Paragraph 2 recalls the obligation of the State to expel an alien only on a ground that is provided for by law. The explicit mention of the grounds of national security and public order was deleted, since these grounds refer to exceptional circumstances and are referred to in the commentary. Paragraph 3 was amended for similar reasons. Paragraph 4 sets out that a State shall not expel an alien on a ground that is contrary to "its obligations under international law".

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Part Two of the draft articles deals with vanous

Draft article 10 relates to the prohibition of disguised expulsion. It is intended
to indicate that a State does not have the right to utilize disguised or indirect means or techniques in order to bring about the same result that it could obtain through the adoption of a formal expulsion decision. This article involves cases where the disguised expulsion is done by the State itself, as well as cases where it tolerates acts by national or other persons with the same objective. Paragraph 1 sets out the principle of the prohibition. The definition of disguised expulsion contained in paragraph 2 has been refined with a view to presenting more clearly the two elements characterizing it, namely that the alien is compelled to leave the territory as the intentional result of an action or omission attributable to the State.

Draft article 11 recalls the prohibition of confiscatory expulsion, that 1s, expulsion with the aim of unlawfully depriving an alien of his or her assets.

Draft article 12 sets out in general terms the prohibition against resorting to expulsion in order to circumvent an ongoing extradition procedure.

Part Three addresses the question of protection of the rights of aliens subject
to expulsion, first from a general standpoint (chapter I), then by dealing more specifically with the protection required in the expelling State (chapter II), the protection in relation to the State of destination (chapter III) and the protection in the transit State (chapter IV).

Chapter I contains the "General Provisions". It is composed of three draft articles. Draft article 13 relates to the obligation of States to respect the human dignity and human rights of aliens subject to expulsion. Paragraph 1 sets out the obligation of the expelling State to treat all aliens subject to expulsion with humanity and respect for the inherent dignity of the human person at all stages of the expulsion process. Paragraph 2 simply recalls that all aliens subject to expulsion are entitled to respect for their j 0.0223 Tc 11.5 0lr 0 1lfTm (for) T human rights.

expressed by some Governments regarding the very general prohibition that was set out in the text adopted on first reading. The new formulation refers more directly to the rule that the expelling State is not prohibited to make certain distinctions, but that it has the obligation to respect the rights of the alien subject to expulsion without discrimination of any kind on grounds impermissible under international law.

Draft article 15 sets out the particular requirements concerning the expulsion of vulnerable persons, such as children, older persons, persons with disabilities and pregnant women. The first paragraph states the principle and provides a non-exhaustive list of vulnerable persons. Paragraph 2 deals with the specific case of children.

Chapter II deals with the "Protection required in the expelling State". It is composed of five draft articles.

Draft article 16 recalls the obligation of the expelling State to protect the right
to life of an alien subject to expulsion, while draft article 17 sets out the general prohibition, in the context of expulsion, of torture or cruel, inhuman or degrading treatment or punishment.

Draft article 18 establishes the obligation of the expelling State to respect the
right to family life of an alien subject to expulsion. The Commission redrafted the text adopted in 2012 by using the terms of the International Covenant on Civil and Political Rights, which are also used in the other regional instruments on protection of human rights. Draft article 18 therefore indicates that the expelling State shall not interfere arbitrarily or unlawfully with the exercise of the right to family life.

Draft article 19 sets out the specific rules relating to the detention of an alien
for the purpose of expulsion. It was amended in order to establish clearly that its scope was limited to detention for the purpose of expulsion and did not cover detention for any other reason. In addition, subparagraph (a) has been refined in order to clarify that the principle of the non-punitive nature of the detention shall not be arbitrary. Subparagraph (b) provides that, save in exceptional circumstances, an alien who is detained in the

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course of an expulsion procedure must be held separately from persons sentenced to penalties involving deprivation of liberty.

Draft article 19, paragraph 2 (a) is general in scope and sets out the principle that
the detention of an alien with a view to his or her expulsion is subject to time limits. Sub-paragraph (b) has been amended with a view to focusing on the principle, explained in the commentary, that the decision to extend the duration of the detention of an alien for the purpose of expulsion can be taken only by a court, or by another authority subject to judicial review. Paragraph 3 (a) sets out the requirement of regular review of the detention of an alien for the purpose of expulsion on the basis of specific criteria established by law. Sub-paragraph (b) relates to the principle that detention for the purpose of expulsion shall end when the expulsion cannot be carried out, except where the reasons are attributable to the alien concerned.

Draft article 20 concerns the protection of the property of an alien subject to expulsion and establishes two obligations for the expelling State. The first relates to the adoption of measures to protect the property of the alien in question, while the second concerns the free disposal by an alien of his or her property.

Chapter III addresses the question of the protection in relation to the State of destination. It is composed of four draft articles.

Draft article 21 concerns the general protection that an expelling State must accord to an alien subject to expulsion in relation to his or her departure to a State of destination. This draft article covers the possibility of both voluntary departure and forcible implementation of the expulsion decision. Paragraph 1 provides that the expelling State shall take appropriate measures to facilitate the voluntary departure of an alien subject to expulsion. Paragraph 2 concerns cases of forcible implementation of an expulsion decision. Paragraph 3 requires the expelling State to give the alien a reasonable period of time to prepare for his or her departure.

Draft article 22 concerns the determination of the State of destination of aliens subject to expulsion. Paragraph 1 identifies the State of destination as the State of

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nationality of the alien subject to expulsion or any other State that has the obligation to receive the alien under international law, or any other State willing to receive the alien at the request of the expelling State or of the alien expelled. Paragraph 2 addresses the situation where it has not been possible to identify the State of nationality or another State where the alien could be expelled under paragraph 1.

Draft article 23 deals with the question of the protection of the life of an alien subject to expulsion in relation to the situation in the State of destination. The Commission has considered more appropriate to delete from paragraph 1, and from the title of draft article 23, the prior reference to "freedom", which was interpreted by Governments aspreted

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obligation of the States through which an alien expelled might transit to protect the human rights of this alien in conformity with their obligations under international law.

Part Four addresses the specific procedural rules applicable in the context of
the expulsion of an alien. It is composed of three draft articles.

Draft article 26 sets out the procedural rights of aliens subject to expulsion. Paragraph 1 draws a list of procedural rights from which any alien subject to expulsion must benefit, irrespective of whether that person is lawfully or unlawfully present in the territory of the expelling State. Paragraph 2 specifies that the procedural rights listed in paragraph 1 are without prejudice to other procedural rights or guarantees provided by law. Paragraph 3 refers to the alien's right to seek consular assistance, which is not synonymous with a right to obtain that assistance. In paragraph 4, the Commission has considered appropriate to replace the six-month threshold, in view of the Governments' comments, by the more flexible indication of "a brief duration".

Draft article 27 recognizes the suspensive effect of an appeal lodged against
an expulsion decision by an alien lawp4flcision

to re-enter the territory of the expelling State. This provision concerns solely the case of an alien lawfully present in the territory of the State in question who has been expelled unlawfully and applies only when certain conditions are met.

Draft article 30 sets out the principle that an expulsion in violation of a rule of international law entails the international responsibility of the expelling State for an internationally wrongful act, while draft article 31 refers to the institution of diplomatic protection, for which the legal regime is well established in international law.

Mr. Chairman,

This concludes my overview of the draft articles, as adopted on second reading. Upon adopting the draft articles and commentaries thereto, the Commission decided, in accordance with its Statute, to recommend to the General Assembly that it take note of the draft articles in a resolution, annex them to the resolution, and encourage their widest possible dissemination and that the General Assembly consider, at a later stage, the elaboration of a convention on the basis of the draft articles. Allow me also to draw attention to the tribute of the Commission to the Special Rapporteur, under whose able guidance the work was brought to a successful conclusion.

Chapter V: Protection of persons in the event of disasters

Mr. Chairman,

I turn now to the second substantive topic to be considered in the first cluster, namely the "Protection of persons in the event of disasters". The Commission considered this topic on the basis of the seventh report of the Special Rapporteur, Mr. Eduardo Valencia Ospina, which dealt with the protection of relief personnel and their equipment and

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assistance; and its duty to facilitate external assistance, respectively. Draft article 16 [12] concerns offers of external assistance. Draft article 18 deals with the protection of relief personnel equipment and goods. Draft article 19 [15] concerns the issue of termination of external assistance. Draft articles 20 and 21 [4] address the relationship of the draft articles to other rules, including international humanitarian law.

Mr. Chairman,

Other than minor technical adjustments, the Commission did not introduce any substantive changes to the draft articles previously adopted. Accordingly, the rest of my statement on this chapter will focus on the three new draft articles adopted by the Commission at this year's session. These are draft articles 4, 18 and 20.

Draft article 4 provides terms used for the purposes of the draft articles. Subparagraph (a), which defines "affected State", reflectse

to other organizations and entities is intended to be without prejudice to their different legal status under international law. The phrase "external to the affected State" was included to clarify that the draft articles do not regulate the activities of actors internal to the affected State, such as domestic non-governmental organizations.

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Mr. Chairman,

Draft article 18 establishes the obligation for the affected State to take the measures which would be appropriate in the circumstances to ensure the protection of relief personnel, equipment and goods involved in the provision of external assistance. The draft article complements draft article 1 7 [14] in establishing a coherent set of obligations whereby the affected State is expected to perform a series of activities which

Having introduced these three draft articles, I wish to conclude by drawing the attention of the Sixth Committee to the recommendation of the Commission, made in accordance with articles 16 to 21 of its Statute, that the draft articles be transmitted, through the Secretary-General, to Governments, as well as competent international organizations, the International Committee of the Red Cross and the International
Federation of Red Cross and Red Crescent Societies, for comments and observations,
with the request that such comments and observations be submitted to the Secretary-
General by 1 January 2016. The Commission also indicated that it would welcome
comments and observations on the draft articles from the United Nations, including the
Office for the Coordination of Humanitarian Affairs and the United Nations Office for
Disaster Risk Reduction, by the same date. Allow me also to recall the expression 9.12 Tm H265 Tm