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Report of the International Law Commission
Part 1

PART 1

Chapters I – V and XII

Mr. Chairman,

1. Let me first of all congratulate the members of the ILC on their election to the Commission last year, especially those members who are new to the Commission. We wish them wisdom in their work on the codification and progressive development of international law.

Chapter IV (Expulsion of Aliens)

Mr. Chairman,

2. I would like to turn to the topic of Expulsion of Aliens, which has been on the agenda of the ILC since 2004. The Netherlands notes the work of the Commission and the Special Rapporteur, Mr. Maurice Kamto, who presented his eighth report on this topic. We would like to commend the drafting committee for the draft articles and commentaries to those articles. The Netherlands will submit comments and observations to the draft articles in greater detail by the end of next year. Today I would like to take the opportunity to make some general remarks.
3. The Commission has examined state practice in this field very carefully, including international and national jurisprudence. Notwithstanding the

fact that the Commission in some instances concluded on the absence of state practice, a choice seems to have been made to formulate draft articles. The Special Rapporteur has even stated that *'no other topic on the Commission's agenda for the past three quinquenniums has had a richer and more solid foundation for codification'*. Those draft articles must be considered progressive development of law instead of codifying state practice. This becomes apparent in draft articles 23 and 29 for example. We would seriously suggest the reconsideration of this approach.

4. Looking at the second paragraph of draft article 11 concerning disguised expulsion, we consider that it should be more clearly defined which acts can be attributed to a state and which acts cannot. Regard could be paid to, for instance, the case law of the European Court of Human Rights regarding the effective control doctrine. The fourth explanatory paragraph to draft article 24 already alludes to this case law.
5. Furthermore, draft article 14, first paragraph mentions the protection of human dignity as a separate human right. Since there is no clear definition of the substance of this right retaining only the second paragraph of this article, which calls for respect for human rights in

general, would afford adequate protection. In our perspective, the first paragraph would then become redundant.

6. We would like to underscore the EU's statement concerning draft article 15, paragraph 1 that the inclusion of 'sexual orientation' as a separate non-discrimination ground should be considered. Alternatively, the explanatory text of this paragraph should emphasize that this aspect is covered by the ground 'sex' as it is interpreted by the UN Human Rights Committee.
7. My delegation would like to reiterate its concern that the ILC should not design a new human rights instrument, as these draft articles should reflect accepted principles of international law and the detail and nuance of these principles. We support the reformulation of these articles into 'best practices' or 'policy guidelines', and do not consider a set of draft articles to be appropriate.

Chapter V (Protection of Persons)

Mr. Chairman,

8. Turning now to the Protection of Persons in disasters, I would like to commend the Commission with the result of their work so far, and the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his outstanding

contribution. The report usefully elaborates of the duty to cooperate as well as on the conditions for the provision of assistance and its duration.

9. The Special Rapporteur put forward a new draft article A concerning the Elaboration on the duty to cooperate. Even though there might be merit in more precise language on the duty to cooperate in relation to non-State actors as was suggested during the ILC debate, my delegation can agree with the current formulation of the draft article.
10. Concerning draft article 13 which contains conditions for the provision of assistance, I would like to note there is indeed a need to strike a balance between assistance offered in response to acute needs of victims and the responsibilities of the affected State. Such a balanced provision would allow for the refusal of aid that is not in conformity with accepted principles of humanitarian assistance, while avoiding arbitrary refusal of urgently needed aid by the affected State.
11. Also, in our view this article could place more emphasis on the need for the affected State to remove obstacles in national law that would hamper a speedy provision of assistance in disasters which exceeds the national capacity.
12. Finally, with regard to the next steps that the Rapporteur proposes, my delegation would like to express some caution. In our view, an expansion

of these draft articles to the notion of disaster risk reduction - although a very important topic in and of itself - may not be suitable for the purpose of the present study. As stated before, we prefer a set of articles that is narrow in scope, not addressing prevention or preparedness but rather focusing on the acute needs and protection of persons in the event of disasters. At the same time, we welcome the intention of the Rapporteur to elaborate on the protection of humanitarian assistance personnel, as this is an important concern during disasters. We look forward to his next report.

Chapter XII - Decisions of the International Law Commission

Mr. Chairman,

13. To conclude, some words concerning the other decisions and conclusions of the Commission as mentioned in Chapter XII of the rapport. My delegation is pleased with the detailed insight the Commission provided regarding its programme of work. While the transparency of the plan of work is admirable, we note that discussion of the long term plan goes largely unreported. Important as the selection of topics may be for the ILC, it is certainly no less important for States. We hope that the ILC will

be able to share the gist of its discussions in future so that States will be able to comment in the early stages of work.

14. We appreciate that the Commission has decided not to include the topic of *Protection of the atmosphere* on its 'to do' list. We are not at all convinced of the need to address this topic, it is very wide and more suited for discussion amongst specialists, if at all. Thus, we very much agree with the decision taken.
15. On *the Protection of the environment in relation to armed conflicts* we understand that further research is planned. I refer to the hesitations about this theme I have expressed in earlier sessions. We remain unconvinced of the need to address this issue, and even if there would be reason to revisit this issue, we doubt whether the International Law Commission - with all due respect - would be best placed to consider this specialist matter.
16. At the same time, I would like to reiterate our view that *Fair and equitable treatment standard in international investment law* is a topic with great relevance for international legal practice, and thus worthy of inclusion in the work programme of the Commission.

Thank you, Mr. Chairman
