Statement by

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Before the Sixth Committee of the Seventy- Second Session
of the United Nations General Assembly

On agenda item 82:

"Expulsion of aliens"

New York, 12 October 2017

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In the name of God, the Most Compassionate, the Most Merciful

Mr. Chairman,

"Expulsion of aliens" is a significant area of international relations and law, which deals simultaneously with both the sovereign prerogative of states and the protection of individuals other than their nationals. We appreciate the hard work done by Mr. Kamto and his preparation of 9 reports on this topic which clearly reflect the challenging nature of the issue.

On the final outcome of the work presented to the Sixth Committee, my delegation would like to express some observations which demonstrate why the idea of convening a diplomatic conference on elaboration of a convention, based on the draft articles, is still premature.

First, on the sources of law;

It is our understanding that the Special Rapporteur recognized that not all the provisions of the draft articles have a foundation in customary international law or

treaty law and that in certain respects state practice is still limited. For that reason, the Commission went beyond customary and treaty law and the draft articles tangled both the codification and the progressive development of international law. In fact, there appears to be some confusion about the origin of some draft articles; whether they are efforts for codifying the existing laws or attempts for progressive development of law. However, international realities and the sensitivity and significance of the matter under consideration require that the provisions should be based on *lex lata* rather than *lex ferenda*. To that end, the predominant state practice in the field, to be crystallized into customary international law, should have been considered, and it is not the case for some of the draft articles.

Second, on the definition of the notion of refugee;

We appreciate the careful consideration of refugee matters in the draft articles, but the approach set out in the commentary particularly to draft article 6, is not underpinned by sufficient State practice. According to the commentary, the term "refugee" should be understood not only in the light of the general definition set out in article 1 of the 1951 Convention relating to the Status of Refugees but also in accordance with subsequent developments in the matter, including the practice of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the definition adopted by a regional organization (the Organization of African Unity in its Convention Governing the Specific Aspects of Refugee Problems in Africa). Nonetheless, the practice of UNHCR does not necessarily reflect state practice, and even within the Executive Committee of the High Commissioner's Program, many States are of the view that refugee status should be determined strictly in accordance with the parameters outlined in the 1951 Convention. Moreover, the Commission should be cautious in generalizing rules that are set out in regional or sub-regional treaties or mechanisms, which could not necessarily be taken to be representative of State practice or *opinio juris*. The Commission also tend to overvalue the practice of treaty bodies, such as the Human Rights Committee, in identifying rules, sometimes at the price of overriding the very rule that the treaty in question has meant to establish. Likewise, making a distinction between asylum seekers and refugees statues is necessary while the rights of the latter have been approved by actual practice of States.

Third, on the right to expel;

Legally speaking, a state has not only the right to expel aliens on its territory who pose a threat to its national security or public order but also the right to determine the components of those two concepts on the basis of its national laws and the prevailing circumstances. It is therefore unnecessary to draw up an exhaustive list of grounds that might be invoked to justify the expulsion of aliens, nor do states have an obligation in all cases to specify the grounds for expulsion. This is certainly without prejudice to the established legal fact that expulsion must be conducted with due respect for the fundamental human rights of the person being expelled, who must be protected against any inhuman and degrading treatment, including during pre-expulsion detention. The property rights of all person subject to expulsion must also be respected and guaranteed by the authorities of the expelling State.

Furthermore, the advisability of placing refugees presents lawfully, and those present unlawfully, in a State's territory on an equal footing, produced in draft article 6, is also under question. Likewise, the ILC work as completed does not appear to show a well struck balance between rights of individuals and those of the State which concerns mostly rights emanating from national security.

Fourth, on the collective expulsion;

While we do not challenge the general prohibition of collective expulsion, we disagree with the Commission's methodology, which has also been used in identifying other rules such as those set out in draft article 26 on "procedural rights of aliens subject to expulsion". It should instead base its codification exercise on State practice as manifested, *inter alia*, in international treaties, for which subsequent developments cannot substitute.

Fifth, on appeals against an expulsion:

Many national laws make no provision for such appeals, and there is serious doubt about the existence of customary rules in that area. The right of return to the

expelling State cannot be recognized in the case of aliens who had been on its territory unlawfully prior to the expulsion. Granting such a right would imply recognition of an acquired right of residence in the territory of a foreign State, something unknown in State practice. The Commission have also gone beyond existing treaty and customary law in (paragraph 4) of draft article 26 (Procedural rights of aliens subject to expulsion) by granting unlawful aliens the right to challenge an expulsion decision. According equal treatment to aliens who are lawfully, and those who are unlawfully, present in a State's territory could create an incentive for illegal immigration. Draft article 27 (Suspensive effect of an appeal against an expulsion decision) is also unacceptable because it constituted progressive development without a minimum basis in uniform or convergent State practice.

Mr. Chairman,

In the light of the aforementioned observations, we believe that the final product of the commission could serve as guidelines in inter-state cooperation and national legislative measures regarding expulsion of aliens and it does not seem to be ripe enough for the General Assembly to engage in a codification exercise over the matter, since the national and regional jurisprudence regarding expulsion of aliens is still evolving.

I thank you.

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