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Summary record of the 34th meeting
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Chair: Mr. Milano (Vice-Chair). . . . . (Italy)

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23-21358 (E)

In the absence of Mr. Chindawongse (Thailand), Mr. Milano (Italy), Vice-Chair, took the Chair.

The meeting was called to order at 3.20 p.m.

Agenda item 82: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/78/33, A/78/114 and A/78/296)

1. **Mr. Attelb** (Egypt) said that his delegation participated actively in the work of the Special Committee, in particular the discussions on all means to promote the role of the United Nations in maintaining international peace and security. It looked forward to discussing the proposals submitted by Member States at the 2024 session, in particular those related to the peaceful settlement of disputes, especially at such a critical time for the Middle East. The international community was calling for the United Nations to play a greater role in ensuring stability in the region and protecting civilians from the deliberate genocide and crimes committed by Israel against the Palestinians in the Gaza Strip, in full view of the entire world.

2. **Ms. Llano** (Nicaragua) said that the Special Committee played an important role in the reorganization and democratization of the United Nations, which should benefit the people rather than hegemonic Powers. It also carried out the important work of developing concrete recommendations to prevent the abuse of functions and mandates, as in the case of the Security Council, which had appropriated topics that fell within the purview of the General Assembly. Her delegation supported all efforts to promote the peaceful settlement of disputes. Continued discussion of that topic by the Special Committee could contribute to the more efficient and effective use of peaceful means while promoting a culture of peace among Member States. The meeting time currently assigned to the Special Committee to carry out its work was adequate, and the Special Committee should step up its efforts to examine the proposals before it.

3. True multilateralism, with respect for international law and the Charter, was the only way to counter the efforts of some Powers to undermine peace, international security, the independence and sovereignty of States and the self-determination of peoples. Nicaragua would continue to call for the elimination of unilateral coercive measures, which were illegal and incompatible with the Charter and the 2030 Agenda for Sustainable Development.

4. Nicaragua had demonstrated its commitment to the peaceful settlement of disputes in all the cases before the International Court of Justice to which it had been a party. It faithfully complied with its international obligations and called for reciprocity in that regard. It demanded that the United States of America comply with the Court's judgment of 27 June 1986 in favour of Nicaragua and fulfil its legal obligation to make reparation, as ordered by the Court.

5. The hegemonic Powers must come to understand that the world was changing; they must respect the principles of sovereign equality, respect and non-interference in the internal affairs of States enshrined in the Charter. Nicaragua was committed to striving for peace on behalf of the peoples of the Global South, who yearned for a multipolar world. At a time when humanity faced multiple challenges, the international community must rebuild trust and reignite global solidarity.

6. **Mr. Fallah-Assadi** (Islamic Republic of Iran) said that, in the face of ever-increasing, serious and complex global challenges, States should adhere to multilateralism, which necessitated respect for the principles of the Charter, in particular the resolution of international disputes based on international law. Member States were not above the law (*legibus solutus*), nor were they entitled to undermine the centrality of the rule of law within the United Nations multilateral system. In that context, the Special Committee was the only remaining United Nations mechanism in which Member States could discuss issues related to the Charter and the strengthening of the role of the Organization, as well as the current challenges that paralysed United Nations organs and impeded the maintenance of international peace and security. The attempts to politicize the Special Committee during its recent sessions were alarming and could prejudice the legal nature of the work of the Sixth Committee and the practice of consensus decision-making.

7. His delegation supported any proposal that contributed to strengthening and promoting the role of the Special Committee. The Secretariat should take the necessary measures to update the *Handbook on the Peaceful Settlement of Disputes between States*. The Islamic Republic of Iran had hosted the first meeting of the national coordinators of the Group of Friends in Defence of the Charter of the United Nations, held in Tehran on 5 November 2022.

8. Rather than being driven by a small number of Member States, the imposition of sanctions by the Security Council should be based on pre-established criteria for identifying the existence of conditions under which they were permitted by the Charter, taking into account the sovereign equality of States and

international human rights law. With regard to the question of the peaceful settlement of disputes, his delegation attached particular importance to the Special Committee's annual thematic debate, which contributed to the more efficient and effective use of peaceful means while promoting a culture of peace among Member States. His Government had often reiterated its support for legal and judicial diplomacy as a means of strengthening the rule of law, preserving the international order and addressing unilateral actions. The Islamic Republic of Iran was strongly committed to the principles of international law and, in accordance with Article 33 of the Charter, had pursued different means of dispute settlement with several States.

9. Unilateral coercive measures constituted a flagrant violation of the fundamental principles of international law. In view of their detrimental impacts, his delegation had proposed the consideration of a new subject entitled "Obligations of Member States in relation to unilateral coercive measures: guidelines on ways and means to prevent, remove, minimize and redress the adverse impacts of unilateral coercive measures". It was high time for the Special Committee to give serious consideration to the substance of the proposal. His delegation also supported the working paper submitted by the Syrian Arab Republic, entitled "Privileges and immunities enjoyed by representatives of the Members of the United Nations and officials of the Organization that are necessary for the independent exercise of their functions in connection with the Organization". His delegation urged the Special Committee to give priority consideration to ways and means of improving its working methods and enhancing its efficiency and utilization of resources, in accordance with General Assembly resolution 75/140.

10. **Ms. Dakwak** (Nigeria) said that international peace and security could be attained only in an environment where the rights and responsibilities of all States were promoted under an equitable and just international system. Her delegation was encouraged by the work of the Special Committee and hoped that it would live up to its full potential. As requested by the General Assembly in its resolutions 50/52 and 71/146, the Special Committee should consider all proposals concerning the question of the maintenance of international peace and security in all its aspects; consider the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions; and consider proposals relating to the peaceful settlement of disputes between States. Her delegation stressed the importance of settling disputes peacefully, in accordance with Article 33 of the Charter and the Manila Declaration on the Peaceful Settlement of Disputes.

11. The imposition of unilateral sanctions ran counter to the principle of the sovereign equality of States and international law. The imposition of sanctions on any State should always be in conformity with the provisions of the Charter. Sanctions should be used only as a last resort, after all other peaceful means of dispute settlement had been exhausted, and their purpose should be not to punish the population of a country but to ensure the country's compliance with its international obligations. The frequency of resorting to unilateral sanctions must be reduced, the scope narrowed and the duration shortened to avoid prolonged damage to the interests of targeted States and their populations. Member States should make effective use of existing procedures and methods for the prevention and peaceful settlement of disputes, in accordance with the principles of the Charter.

12. The Special Committee should consider any proposal referred to it by the General Assembly in the implementation of the decisions of the high-level plenary meeting of the sixtieth session of the General Assembly that concerned the Charter and any amendments thereto, and consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency and utilization of resources with a view to identifying widely acceptable measures for future implementation. Her delegation welcomed the revised working paper submitted by Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes.

13. **Ms. Rios** (Plurinational State of Bolivia) said that the framework of international, bilateral and multilateral treaties provided the essential foundation for peaceful coexistence and mutual respect among States. Nevertheless, treaties could be changed, modified or amended, when necessary, in accordance with developments in international law and changing circumstances. The Special Committee played a fundamental role in revising and strengthening the Charter, a task that required the commitment and collaboration of all Member States. It provided an essential forum for the interpretation or negotiation of any amendment to the Charter and should therefore remain open to inclusive discussion of any proposal submitted by a Member State.

14. The Plurinational State of Bolivia promoted peace with social justice and the peaceful settlement of international disputes or situations that might lead to a breach of the peace. The Special Committee had

contributed to the adoption of a number of important texts that offered a set of tools for settling international disputes peacefully. With regard to assistance to third States affected by the application of sanctions, her delegation reaffirmed that the coercive measures imposed on many sovereign States had a negative impact on development in those States and on their economy and the lives of their citizens, and were contrary to the principles and purposes of the Charter. Her delegation would continue to support the work of the Committee and encouraged States to turn away from violence and war and promote a culture of peace, in line with the provisions of the Charter.

15. **Mr. Bouchedoub** (Algeria) said that the Special Committee could play a critical role in the ongoing United Nations reform process. It was therefore regrettable that, at its 2023 session, the Special Committee had been able to adopt only one chapter of its report, which was entirely procedural in nature. With regard to the maintenance of international peace and security, his delegation called upon the Special Committee to continue its consideration of the question of the introduction and implementation of sanctions imposed by the United Nations and to consider the revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security.

16. The Special Committee should also consider the further revised working paper submitted by Belarus and the Russian Federation on an advisory opinion to be requested from the International Court of Justice as to the legal consequences of the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence; the revised working paper submitted by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations; and the further revised working paper submitted by Ghana on strengthening the relationship and cooperation between the United Nations and regional arrangements or agencies in the peaceful settlement of disputes.

17. With regard to the question of the peaceful settlement of disputes, his delegation welcomed the fact that the Special Committee had focused, in its annual thematic debate, on the subtopic "Exchange of information on State practices regarding the resort to regional agencies or arrangements" and called on the Special Committee to continue its consideration of the proposal by the Russian Federation recommending that the Secretariat be requested to establish a website dedicated to the peaceful settlement of disputes and to update the *Handbook on the Peaceful Settlement of Disputes between States*. It also encouraged the Special Committee to continue its discussion of three written proposals for new subjects submitted in previous sessions by Mexico, the Islamic Republic of Iran and the Syrian Arab Republic, as well as the proposal made orally by Cuba in 2019 concerning the role of the General Assembly. His delegation hoped that the Special Committee would be able to adopt a full report at its 2024 session.

18. **Ms. Sayej** (Observer for the State of Palestine) said that her Government reaffirmed its consistent position and longstanding adherence to all political, legal and diplomatic means for the peaceful settlement of disputes, and believed in a multilateral system anchored in collective solidarity, security and international law, including the principles of the Charter. The obligation of States to use all available means of peaceful settlement enjoyed the status of customary law. In that context, the International Court of Justice remained the cornerstone of the multilateral order. Its decisions had proved key to the peaceful settlement of disputes, and it should be given the greatest possible role in enforcing and promoting the Charter. Her delegation urged the Security Council to make greater use of the Court's advisory capacity. Because its opinions were based on rules of international law and peremptory norms binding on all States, the Court contributed to stability and consistency in international relations.

19. The State of Palestine was grateful to the General Assembly for its request to the International Court of Justice for an advisory opinion on the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, and was encouraged by the unprecedented number of written briefings on the matter submitted by States and international organizations. Her delegation also urged all States to accept the Court's jurisdiction. The States Members of the United Nations had pledged to support the Charter and the rule of international law unconditionally, and that support included helping the Palestinian people in their struggle to exercise the rights that other peoples enjoyed.

Statements made in exercise of the right of reply

20. **Mr. Kim** In Chol (Democratic People's Republic of Korea), responding to the statement made by the representative of South Korea at the previous meeting (see A/C.6/78/SR.33), said that the Special Committee was the body responsible for considering proposals relating to the Charter and the strengthening of the role of the United Nations, with a focus on the maintenance of international peace and security and the development of cooperation among States. It was therefore the appropriate forum in which to address the issue of the

United Nations Command, an illegal entity that had no connection to the United Nations. Security Council resolution 84 (1950) had established a unified command under the United States, yet that country had arbitrarily established the United Nations Command, in violation of the resolution. The United Nations Command was not a subsidiary organ of the United Nations and was not funded from the Organization's budget. Moreover, the United States had the power to designate its commander and was abusing the name of the United Nations and making it appear to be a party to the Korean War, which had damaged the honour and dignity of the Organization. In addition, the resolution had been forcibly adopted without the presence of the representative of the Soviet Union and was in flagrant violation of Article 32 of the Charter and also Article 27 (3), which stipulated that Security Council decisions on non-procedural matters must be made by an affirmative vote of nine members, including the concurring votes of the permanent members.

21. The United States had been making threats of nuclear war against the Democratic People's Republic of Korea, resuming its aggressive, large-scale joint war drills and deploying its strategic nuclear assets in and around the Korean Peninsula, with the alleged goal of bringing an end to the regime in his country. It had also established the Nuclear Consultative Group with a view to deploying nuclear weapons against his country, in collusion with South Korea. His Government had been compelled to resort to nuclear deterrence because the United States had turned the Korean Peninsula into a nuclear arsenal, decades before his country had gained access to nuclear weapons. The joint military exercises being carried out without interruption simulated the occupation of a capital city. His delegation wondered how such exercises could be claimed to be defensive in nature. As a sovereign State exercising its legitimate right to self-defence, the Democratic People's Republic of Korea had the right to increase its national defence capabilities to address the growing military threats from the United States and its allies. If the United States and South Korea continued to perpetuate their reckless military provocation against his country, the result would be disastrous.

22. **Mr. Kim** Hyunsoo (Republic of Korea) said that everyone knew that the claims of the representative of the Democratic People's Republic of Korea were baseless and politically distorted. They were nothing but a poor excuse for the country's flagrant violation of multiple Security Council resolutions. His delegation hoped that the Democratic People's Republic of Korea would stop acting recklessly and begin to act responsibly.

23. **Mr. Kim** In Chol (Democratic People's Republic of Korea) said that the existence of the United Nations Command did not serve peacebuilding efforts on the Korean Peninsula; it was an instrument used to implement the hostile policy of the United States against his country and the geopolitical strategy of the United States for hegemony in the region. His delegation called for an immediate end to the misuse of the United Nations name and flag through the dissolution without delay of the United Nations Command, in accordance with General Assembly resolution 3390 (XXX). The Democratic People's Republic of Korea had never recognized Security Council resolutions that infringed on a State's sovereignty and right to development, nor would it be bound by them.

Agenda item 81: Expulsion of aliens

24. **Mr. Tan** (Singapore) said that the topic of expulsion of aliens was difficult because of the complex and sensitive interface between a State's sovereign right to expel aliens from its territory and that State's obligation to comply with applicable international human rights law, the rights and obligations of receiving States and those of individuals. His delegation had made its views on the topic clear at previous debates and it continued to believe that the progressive development of laws and practices applicable to the expulsion of aliens must be approached with caution. It also continued to have concerns about the lack of distinction, in the International Law Commission's draft articles on the expulsion of aliens, between codification and the progressive development of law. His delegation had consistently disagreed with the expansion of the principle of non-refoulement, as articulated in paragraph 2 of draft article 23, which was not reflective of customary international law, since under that law, a State that had abolished the death penalty was under no obligation not to expel a person to another State where the death penalty might be imposed. In view of those concerns, which had also been expressed by other delegations, Singapore did not support the elaboration of a convention on the basis of the draft articles. The General Assembly should simply take note of the draft articles and any concerns and reservations expressed by delegations on them.

25. **Mr. Silveira Braoios** (Brazil) said that the right of a State to expel an alien from its territory was inherent and flowed from its sovereignty, which was a defining feature of a State's identity and existence. The Commission had correctly stated in its commentary to the draft articles on the expulsion of aliens that that right was uncontested in practice as well as in case law and writings. At the same time, the Commission had

recognized in the draft articles that all forms of disguised expulsion were strictly prohibited under international law. The person concerned should expect his or her case to be handled in an impartial and independent manner. States should not expel individuals from their territories in violation of the principle of non-refoulement, nor did they have the right to carry out collective expulsions.

26. The fact that the expulsion of aliens was such a tangible expression of State sovereignty might be the reason for the limited engagement with the agenda item in the Committee; the lack of interest perhaps reflected the fear that any international regulation might infringe on a prerogative essential to States' administration of their territory and the maintenance of security and social order within their borders. However, the increasing criminalization of migrants and abuses in expulsion proceedings demonstrated the timeliness and importance of the discussion. Those who exploited the inherent vulnerability of people seeking to escape conflict and hardship were the ones that should be held criminally accountable. The separation of children from their families, long detention periods, precarious detention conditions, and violence and torture committed against migrants, refugees and asylum-seekers were utterly unacceptable. The exercise of sovereignty should never serve as a pretext for States to violate their obligations under international human rights law and international refugee law.

27. Although the draft articles did not cover the non-admission of an alien to the territory of a State, their scope was still broad, comprising any formal act or conduct – active or passive – by which a State compelled a foreigner to leave its territory. The draft articles were a laudable attempt to bring legal certainty to a domain in which the exercise of sovereignty might degenerate into arbitrariness. Although some aspects could still be further elaborated upon, the draft articles could serve as the basis for international guidance on managing the expulsion of foreigners in a manner that was compliant with human rights obligations.

28. In 2017, the Brazilian Congress had passed a law on migration to replace its law on foreigners, which had been adopted at a time when migrants were often seen as a potential menace to national security. The new law on migration, while recognizing the need for border control and the peaceful integration of foreigners into the social fabric, was aimed at harnessing the potential of migrants to enrich the culture, enhance diversity, bring new knowledge and contribute to economic development. The law had provided for an overhaul of the visa system, including by expanding the granting of humanitarian visas. It was based on the principle of the universality, indivisibility and interdependence of human rights and contained provisions repudiating xenophobia, racism and all other forms of intolerance. The new law also rejected discrimination and the criminalization of migration and upheld the rights to family reunification, social and professional integration, and equal access to health care, education and other public services, incorporating a human rights approach and narrowing the gap between the legal status of nationals and that of migrants.

29. Under the law on migration, the expulsion of aliens, in the sense of the draft articles, was divided into two modalities: deportation and expulsion *stricto sensu*. Deportation was an administrative procedure to remove from the territory of Brazil an individual in an irregular migratory situation. That procedure followed the principle of *audi alteram partem* and did not necessarily prevent the person from returning to Brazil, if the reasons for the removal were remedied. Deportees were entitled to free legal assistance if they could not afford legal expenses. Expulsion comprised administrative removal and a ban on re-entry into Brazilian territory for a specific period. Those measures applied only to those convicted of genocide, war crimes, crimes against humanity or other intentional crimes punishable by imprisonment, with imprisonment being contingent on the gravity of the crime and the possibility of social reintegration. Persons who had immigrated to Brazil before the age of 12, were older than 70, had a spouse or partner lawfully residing in the country or had a child under their care in Brazilian territory had the right not to be removed. The law on migration also forbade collective deportations and expulsions. It was thus clear that the practices of Brazil concerning the expulsion of foreigners were consistent with the draft articles. In addition, the draft articles called for legal guarantees that were already codified in Brazilian law.

30. In line with the request by the General Assembly in its resolution 75/137, the Committee should make a decision on the action to be taken with respect to the draft articles, including the form that might be given to them. The need for such a decision was an example of the broader challenge the Committee frequently faced in respect of the Commission's products. The sensitivity of the topic of expulsion of aliens and the division it generated might prevent the Committee from reaching the consensus required to negotiate a convention on the basis of the draft articles. In that case, the Committee should at least consider the possibility of establishing a non-binding instrument, such as a set of principles, guidelines or conclusions. Given that State practice on the issue varied, the draft articles could contribute to the progressive development of international law in an area

that undeniably deserved greater attention from the international community.

31. **Ms. Grosso** (United States of America) said that her Government continued to question the wisdom and utility of seeking to augment well-settled rules of law that existed in broadly ratified human rights and refugee conventions, which already provided the legal basis for achieving the key objectives of the draft articles on the expulsion of aliens. Furthermore, key aspects of the draft articles risked being confused with existing rules of law, because the Commission had combined in the same provision elements of existing rules with elements that represented proposals for the progressive development of the law. Accordingly, her delegation did not believe that it was appropriate to elaborate a convention on the basis of the draft articles.

32. **Mr. Evseenko** (Belarus) said that his delegation was grateful to the International Law Commission for its work on the draft articles on expulsion of aliens, which included standards and rules drawn from national and international practice as well as elements of *lex ferenda*. The draft articles could serve as a basis for continued efforts to find an appropriate balance between respect for the rights and legal interests of persons at risk of expulsion and the right of expelling States to take steps to protect their sovereignty and national security.

33. Expulsion was a serious and responsible measure taken by a State that involved restricting the freedom of movement of an alien and members of his or her family. Such a measure could be taken only in compliance with the procedural safeguards applicable to the person subject to expulsion and his or her family members. States were obliged to ensure that the basic rights to life and health of such persons were protected. Despite the fact that the laws of different States established completely different criteria for expulsion, the international community should attempt to identify and codify the most common and universal of them.

34. His delegation believed that it was not right to expel an alien who had lived in the expelling State for such a period of time as to be considered to have temporary or even permanent residence. Such a person should have rights and obligations equal to those of residents of the expelling State. A special status should also be conferred on refugees, forced migrants, victims of trafficking in persons, pregnant women and children – in other words, the most vulnerable persons, whose rights must be protected. At the same time, respect for the human rights of a person subject to expulsion could not obstruct the exercise of the right, or rather the duty, of the State to expel the person if his or her presence in that State constituted a threat to national security.

35. Given the differences in legal practice and the divergence of opinion among States, and the politicized nature of the issue, his delegation believed that the draft articles currently represented elements of progressive development of the law rather than its codification. Although it did not seem, at the current stage, that an international conference would be convened to elaborate and adopt a convention on the issue, his delegation considered it important to keep the item on the Committee's agenda.

36. **Ms. Theeuwen** (Kingdom of the Netherlands) said that, while the draft articles on the expulsion of aliens included many existing obligations concerning the treatment of any person who was expelled by a State, in particular obligations related to human rights, they regrettably also included provisions that went beyond the currently applicable rules of international law on expulsion of aliens and that did not reflect State practice. The Kingdom of the Netherlands had consistently objected to such progressive development of international law in that field. Her delegation could therefore not support the elaboration of a convention, or any other form of codification based on the draft articles.

37. **Mr. Fallah-Assadi** (Islamic Republic of Iran) said that the expulsion of aliens was an area of international law that dealt simultaneously with the sovereign prerogative of States and the human rights obligations of States towards non-nationals in their territory. His delegation reiterated its position that the idea of convening a diplomatic conference on the elaboration of a convention on the basis of the draft articles on the expulsion of aliens was premature. The sensitivity and significance of the topic required that the provisions of a draft convention be based on *lex lata* rather than *lex ferenda*. However, the Commission had gone beyond customary and treaty law in the draft articles and had engaged in progressive development in an area of international law in which State practice was still limited.

38. States had not only the legal right to expel aliens who posed a threat to their national security or public order, but also the right to determine the components of those two concepts in their national laws or regulations. It was therefore unnecessary to draw up an exhaustive list of grounds that might be invoked to justify the expulsion of aliens; States were not always under an obligation to specify the grounds for expulsion. That was, of course, without prejudice to the legal fact that expulsion must be conducted with due respect for the fundamental human rights of the person being expelled. The property rights of all persons subject to expulsion

must also be respected and protected by the authorities of the expelling State.

39. Many national laws contained no provision for appeals against expulsion, and there were serious doubts about the existence of customary rules in that area. The right of return to the expelling State could not be recognized in the case of aliens who had been on the State's 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. By granting unlawful aliens the right to challenge an expulsion decision, the Commission had also gone beyond existing treaty and customary law. Affording equal treatment to aliens who were present in a State's territory lawfully and those who were present unlawfully could create an incentive for illegal immigration. Draft article 27 (Suspensive effect of an appeal against an expulsion decision) was also unacceptable, because it constituted progressive development without a minimum basis in uniform or convergent State practice. His delegation was of the view that the Commission's product could serve as a guide for inter-State cooperation and national legislative measures on the expulsion of aliens.

40. **Mr. Escobar Ullauri** (Ecuador) said that, according to the International Organization for Migration, the number of migrants had tripled in the past 50 years; a substantial number of people were therefore subject to violations of their human rights owing to their status as aliens, including migrants and refugees. Ecuador recognized the State's right to expel an alien from its territory. That right, however, could not be separated from States' international human rights obligations, which were universal, and which were not contingent on a person's migratory status. His delegation therefore was pleased that the Commission had incorporated international standards into the draft articles on the expulsion of aliens, which contributed to an international framework for ensuring that human rights were respected in the face of discriminatory policies. In particular, the draft articles provided that expulsion could be carried out only in pursuance of a duly reasoned decision of a competent authority and that a State must respect due process, including by respecting the rights of an alien to receive notice of an expulsion decision, to challenge the expulsion decision before an impartial authority, to seek consular assistance and to receive equal treatment before the law. The draft articles also set out the prohibition on the expulsion of refugees save on grounds of national security or public order and made clear that expulsion should take place on the basis of an assessment of the individual and his or her protection needs, and that under no circumstances should aliens be subject to collective expulsion.

41. Those standards were supported by international treaties and case law. His delegation therefore believed that the draft articles provided a sufficient basis for discussion among States as to what form they might take in the future. Delegations had the opportunity to explore various possible ways forward, including a General Assembly resolution in which the Assembly took note of the draft articles and submitted them to Member States for their consideration. The obligation to respect the rights of migrants was enshrined in the Constitution of Ecuador, and the country promoted the full exercise of those rights by fulfilling its commitments under various international human rights instruments.

42. **Ms. Jiménez Alegría** (Mexico) said that the draft articles on the expulsion of aliens covered a diverse range of subjects, such as the sovereign right of States to expel aliens, cases in which expulsion was prohibited, the protection of refugees and stateless persons and the protection of the rights of aliens. Each draft article was appropriately referenced, and the accompanying commentaries offered context and background information on particular issues, including developments in the area of human rights, the protection of refugees and the jurisprudence of the International Court of Justice. Despite the high quality of the draft articles, the topic of expulsion of aliens and the recommendation of the Commission concerning the draft articles were still pending before the Committee. Since 2014, in other words at three sessions, including the present session, the Committee had limited itself to taking note of the Commission's recommendation and indicating that it would continue its consideration of the item at a future session. Her delegation had repeatedly stated that the Committee must approach all the Commission's products with the same degree of seriousness; the draft articles on the expulsion of aliens were no exception.

43. The expulsion of aliens must be carried out with strict respect for international law, in particular human rights instruments, and with respect for due process. Neither the nationality of persons facing expulsion nor their legal situation or immigration status could be used to justify the denial or violation of human rights. For Mexico, ensuring respect for human rights in expulsion processes, including upholding the principle of legality and legal certainty, would prevent arbitrariness and ensure due process. Mexico therefore joined the international community in its general willingness to promote the observance of human rights during expulsion processes. It reaffirmed its commitment to non-discrimination in such processes and noted the

importance of paying particular attention to vulnerable persons and groups. It also called for family unity to be maintained in expulsion processes.

44. **Ms. Solano Ramirez** (Colombia) said that her delegation considered that the topic of expulsion of aliens was intimately linked to the fundamental rules of international human rights law and the corresponding obligation of States to respect and protect the rights of persons under their jurisdiction without any discrimination. Her delegation therefore believed that the draft articles on the expulsion of aliens offered a good starting point for a substantive discussion of such an important subject. Indeed, the Secretary-General had indicated in several reports that there had been a significant increase in the number of internally displaced persons, refugees and stateless persons around the world, and the media reported on a daily basis on situations in which people were expelled or returned to the countries they had left for various reasons, without receiving even minimal respect for their most basic human rights or human dignity.

45. States in the Americas were fully aware of the jurisprudence of the Inter-American Court of Human Rights, in which the Court had indicated that human rights, due process and other procedural rights must be upheld for all persons, regardless of their immigration status. Those States were thus obliged to establish policies, laws, protocols and immigration practices that ensured the protection of the human rights of all, offered all procedural safeguards and devoted particular attention to the most vulnerable persons and groups facing such processes.

46. Her delegation would be interested in discussing the draft articles in the light of aspects already established in international human rights law, as reflected in, for example, the jurisprudence of the Inter-American Court of Human Rights, the New York Declaration for Refugees and Migrants, the Global Compact for Safe, Orderly and Regular Migration, the 2030 Agenda for Sustainable Development and other tools currently under development by the General Assembly aimed at ensuring that, when States exercised their sovereign powers, they did so with respect for the dignity of all persons subject to expulsion processes.

47. Her delegation would continue to actively contribute to the study and analysis of the draft articles, with a view to responding to the Commission's recommendation. In that regard, it was prepared to discuss a range of mechanisms. The Committee must continue to discuss the topic of expulsion of aliens and other topics taken up by the Commission with the necessary seriousness and legal insight.

48. **Ms. Arumpac-Marte** (Philippines) said that Commonwealth Act No. 613, also known as the Philippine Immigration Act of 1940, served as the national legal framework for the issuance of Philippine visas, exclusion and deportation proceedings, and the reporting requirements to which aliens were subject. A number of other instruments had also been adopted to supplement the Immigration Act. Due process guarantees were enshrined in Philippine law. Aliens facing expulsion also enjoyed substantive rights. Furthermore, the Philippines was one of the few countries in the region to have acceded to the Convention relating to the Status of Refugees and its Protocol. The country had a broad-based national asylum procedure in place and had ratified the Convention relating to the Status of Stateless Persons. A new law aimed at modernizing the existing legal framework for immigration policy was also in the process of being approved.

49. In her delegation's view, the draft articles could serve as a basis for discussion among States and as a guide for possible reforms to national legal frameworks. Given that there was still no consensus on the next steps to be taken, including the convening of an international conference to adopt a new convention, her delegation would prefer that the item remain on the Committee's agenda so that States could continue to consider it.

50. **Ms. Motsepe** (South Africa) said that the expulsion of aliens was an extreme measure with a profound impact on the lives of individuals and their family members. Such action must therefore be undertaken within the confines of a sound legal framework, encompassing both international law and the law of the State concerned. In that regard, her delegation noted that the draft articles on the expulsion of aliens were for the most part aligned with the principles of South African law as it had evolved since the introduction of the Constitution and Bill of Rights in 1996.

51. The principles of upholding the dignity and human rights of aliens subject to expulsion, as articulated in draft article 13, along with the prohibition of discrimination, as outlined in draft article 14, constituted fundamental tenets of the South African Bill of Rights. Her delegation therefore endorsed the inclusive approach taken in the draft articles, which extended protection to categories of individuals safeguarded by international law, such as refugees and stateless persons, without prejudice to the distinct rules and regimes in international law that might govern their relationship with the host State. Given the divergent views on the content and nature of the draft articles, her delegation considered that the item should be kept on

the Committee's agenda so that States could continue to exchange views thereon.

52. **Mr. Mora** (Cuba) said that his delegation was grateful to the Commission for taking into account the views of Member States in its reports. The draft articles on the expulsion of aliens could serve as a starting point for the elaboration of an international convention, based on the consent of States. It was useful to codify the rights of persons expelled or facing expulsion, provided that such codification was based on the principle of full protection of the human rights of such persons and did not impair the sovereignty of States. It was crucial that States of destination be notified ahead of time about expulsions, in order to expressly protect the right of persons expelled or facing expulsion to communicate with their consular representatives.

53. Cuban criminal law provided for the expulsion of aliens as an accessory sanction that could be imposed by a court on natural persons if the court found that, given the nature of the offence, the circumstances of its commission or the personal characteristics of the suspect, there was evidence that the person's stay in the country would be prejudicial. The law also provided that the expulsion of aliens as an accessory measure applied after the principal sanction had been exhausted. It also gave the Ministry of Justice the discretionary power to order the expulsion of the sanctioned alien before the principal sanction had been implemented, in which case the criminal responsibility of the sanctioned individual would be extinguished.

54. His delegation recognized the contribution of the Commission and each of its members to the progressive development of international law. Nonetheless, the Commission could not, in and of itself, constitute a legislative organ responsible for establishing rules of international law. Its valuable contribution had been to document topics in respect of which States had developed transcendental rules for international law and to propose topics in respect of which States might be interested in developing such rules.

55. **Mr. Nyanid** (Cameroon) said that his delegation believed that the sensitive topic of expulsion of aliens required a balance between the rights of aliens in a host State and the sovereign rights of that State. His delegation welcomed the Commission's efforts in respect of the codification and progressive development of international law in the draft articles on the expulsion of aliens, which established a number of general rules relating to the right of expulsion, the requirement for conformity with law and the grounds for expulsion, and also mentioned cases in which expulsion was prohibited and provisions on protection of the rights of aliens subject to expulsion, from a general perspective.

56. His delegation commended the Commission's efforts to define the key elements of the situation faced by an alien subject to expulsion, taking into account the expulsion decision and the various stages of the expulsion process that preceded and followed such a decision, including the possibility of restrictive measures, such as detention pending expulsion. It also welcomed the scope of the draft articles both *ratione materiae*, which covered all expulsion measures, and *ratione personae*, which covered the expulsion of all aliens present in the territory of the expelling State, with no distinction between the various categories of persons involved. His delegation suggested that the reference to aliens in paragraph 1 of draft article 1 (Scope) be qualified with wording such as "taking into account their status", so as to reflect the Commission's observation in paragraph (3) of the commentary to the draft article that "the draft articles cover the expulsion of both aliens lawfully present and those unlawfully present in the territory of the expelling State". That clarification was important as it had an impact on the rights conferred on aliens.

57. Noting that in paragraph (5) of the commentary to the draft article the Commission referred to "special rules that may govern one aspect or another" of the expulsion of displaced persons, refugees and exiles, his delegation suggested that the draft articles include better guidance with respect to refugees and stateless persons. Special attention should also be devoted to exiles, bearing in mind that, under article 14 of the Universal Declaration of Human Rights, "everyone has the right to seek and to enjoy in other countries asylum from persecution". In that regard, draft article 6 (a), which provided that "a State shall not expel a refugee lawfully in its territory save on grounds of national security or public order", could lead to legal uncertainty; it should therefore be interpreted restrictively. Furthermore, if an expulsion measure did apply to refugees, draft article 6 (b), which provided that "a State shall not expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race [or] religion", would not make sense. His delegation therefore questioned the appropriateness of expelling such persons and was not convinced by the commentary to draft article 7 (Rules relating to the expulsion of stateless persons), in which the Commission stated that the draft article consisted of a "without prejudice" clause. The Commission's reference to a category of "stateless persons lawfully present in the territory of the expelling state" in

paragraph (3) of its commentary to the draft article was also questionable. In that regard, his delegation invited the Commission to take into account the definition of stateless persons provided in article 1 of the Convention relating to the Status of Stateless Persons.

58. His delegation welcomed the exclusion of certain categories of aliens from the scope of the draft articles, as set out in paragraph 2 of draft article 1. Expulsion was a serious act that must be subject to protections. His delegation was therefore concerned about the reference to "conduct attributable to a State", as it could legitimize the forcible departure of an alien from the territory of a State. Such a measure, which ran counter to the principle of protection that was central to the rule of law, opened the way for abuses, rendered ineffective the provisions of draft article 9 on the prohibition of collective expulsion and contradicted the principle established by the International Court of Justice in its judgment in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. Expulsion was a legal act of the State, taking the form of an administrative act; it was a formal act that could be contested before the courts of the expelling State, since expulsion was a procedural process. Expulsion occurred even in the absence of a formal legal act, as explained in the commentary to draft article 10 (Prohibition of disguised expulsion). His delegation was of the view that, in line with draft article 4, the right of expulsion should apply only in pursuance of a decision reached in accordance with law.

59. His delegation questioned the relevance of draft article 8, which provided that "a State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her". The commentary to the draft article did not take into account State practice on the matter, in particular with respect to citizens who had acquired the nationality of the State concerned, over whom a sword of Damocles hung, as reasons could be found to legitimize or justify the deprivation of their nationality, should the State find them troublesome.

60. His delegation also questioned the relevance of draft article 9 (Prohibition of collective expulsion) in the light of the practice of States that, for domestic political and sometimes populist reasons, carried out expulsions by means of conduct that targeted members of a group having the same nationality, which ran counter to the idea of a State expelling "concomitantly the members of a group of aliens" mentioned in paragraph 3 of the draft article and the prohibition of discrimination set out in draft article 14. Despite the fact that paragraph 2 of draft article 9, which provided that "the collective expulsion of aliens is prohibited", was explicitly supported by several international human rights treaties, States would still be able to circumvent that provision by rendering inoperable the procedural safeguards that governed such collective acts, in particular by applying a broad interpretation of the phrase "assessment of the particular case of each individual member of the group" contained in paragraph 3. Such acts, which were generally extrajudicial, were not based on "a reasonable and objective examination of the particular case of each individual alien of the group", as had been called for by the European Court of Human Rights in *Vedran Andric v. Sweden* and other cases. Moreover, the phrase "reasonable examination", which the Commission had reformulated with the phrase "assessment of the particular case of each individual member of the group", was not reassuring. The individuals concerned often did not have the opportunity to present arguments against their expulsion to the competent authorities because they were expelled forcibly, which undermined the obligation to respect the human dignity and human rights of aliens subject to expulsion set out in draft article 13 and weakened the prohibition of torture or cruel, inhuman or degrading treatment or punishment provided for in draft article 17. Contrary to the Commission's remarks in paragraph (4) of its commentary to draft article 9, his delegation believed that paragraph 3 of the draft article, rather than safeguarding against collective expulsion, actually legitimized it because of the aforementioned errors and inaccuracies, which were reinforced by the reference to "good faith" in paragraph 3 of draft article 5 with respect to the assessment of the ground for expulsion. His delegation was concerned about the use of that expression as well as the Commission's explanation of its relevance in the commentary.

61. His delegation questioned the scope of the prohibition on expulsion for the purpose of confiscation of assets set out in draft article 11, given that a State could use any pretext to justify an expulsion, for example, claims of internal security concerns. In such cases, the illegal deprivation of assets would be the ulterior objective of the expulsion. The unlawfulness of such acts mentioned by the Commission in its commentary was difficult to assess, as the confiscation in such cases would be disguised. There was also the question of nationalization, which undermined the regime of property rights as enshrined in various human rights treaties and the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, adopted by the General Assembly in 1985.

62. His delegation noted with interest the concept behind draft article 21 relating to the protection that the

expelling State must grant to an alien subject to expulsion in relation to his or her departure to the State of destination and wondered whether it was appropriate to establish a fundamental difference between a case of voluntary departure and a case of forcible implementation of an expulsion decision. Expulsion was intrinsically a unilateral measure taken against the will of an individual and therefore could not be voluntary. The qualifier "voluntary" should therefore be reconsidered if there was really a need to establish a difference between the two forms of departure. His delegation's concern was reinforced by paragraph 3 of the draft article, which provided that "the expelling State shall give the alien subject to expulsion a reasonable period of time to prepare for his or her departure". That provision embodied a form of pressure on the individual concerned, which demonstrated that there was always an element of coercion.

63. His delegation also questioned the scope of paragraph 2 of the draft article, in particular as it governed the process of departure of a person subject to expulsion over which that person had no control. While his delegation could support the idea of the expelling State taking "necessary measures" for safe transportation, it remained puzzled with regard to the "safe transportation to the State of destination of the alien subject to expulsion". Unlike the Commission, his delegation believed that the phrase "safe transportation … in accordance with the rules of international law" went beyond the requirement to ensure the protection of the rights of the alien subject to expulsion and avoid any excessive use of force and the need to ensure the safety of persons other than the alien in question. For his delegation, the rules governing transportation were even more complex than that, particularly when the transportation involved travel by air and sea.

64. There was also the issue of determining the State of destination of the alien subject to expulsion. The Commission appeared to easily establish the "State of destination", yet draft article 22 established an obligation on the "State of nationality or any other State that has the obligation to receive the alien under international law". In practice, it was not easy to determine the nationality of an individual who might not have official documents available and might refuse to give his or her nationality or provide a false nationality. Such an individual could not be expelled to "any State where he or she has a right of entry or stay" or "to the State from where he or she has entered the expelling State", to say nothing of illegal entries by land and sea. Even if such a State was identified, entry into its territory would be subject to specific conditions established by that State, the undisputed principle being that a State was not required to receive aliens in its territory, except in cases in which a rule of international law imposed such an obligation. Such an obligation would have to be established in an unequivocal manner. His delegation therefore had reservations regarding the Commission's statement in the commentary to the draft article that "the expelling State … should take into consideration … the preferences expressed by the expelled alien for the purposes of determining the State of destination".

65. **Ms. Flores Soto** (El Salvador) said that her delegation had consistently emphasized the importance of maintaining a close relationship between the Commission and the Committee with a view to advancing work on various topics and ensuring broad acceptance of the Commission's outputs. Her delegation therefore regretted that the draft articles on the expulsion of aliens had been deemed finalized by the Commission even though there had still been some substantive questions that had been of particular interest to Member States.

66. Human migration and displacement were currently on the rise globally owing to numerous factors and causes, including conflicts, social and economic challenges, poverty and the effects of climate change and sea-level rise. There was therefore an increasingly pressing need for a normative framework that balanced the sovereign prerogative of States to expel aliens from their territory with the obligation to promote, protect and safeguard the human rights and fundamental freedoms of persons subject to expulsion proceedings. The protection of human dignity and full respect for international human rights law must serve as the foundation for such a framework. The Committee must therefore urgently take steps to facilitate a more active and dynamic debate on the draft articles so that they were more representative and reflected a consensus among Member States.

67. In its general commentary to the draft articles, the Commission had noted that "the entire subject area does not have a foundation in customary international law or in the provisions of international conventions of a universal nature". Her delegation, however, was of the view that there were indeed essential elements that should serve as a basis for codification and progressive development of rules of international law on the subject. In particular, the topic of expulsion of aliens was intimately linked to the rules of international human rights law and the corresponding obligation of States to promote, respect and protect the rights and fundamental freedoms of persons under their jurisdiction without any discrimination.

68. As the Commission had demonstrated in its recent work on subsidiary means for the determination of rules of international law, the jurisprudence of the Inter-American Court of Human Rights was a relevant reference. The Court had indicated that in order to protect the rights set out in articles I and XXV of the American Declaration of the Rights and Duties of Man and article 7 of the American Convention on Human Rights, States should adopt policies, laws, protocols and immigration practices anchored on a presumption of liberty and not on a presumption of detention. That meant that migrants had the right to remain in liberty while waiting for immigration procedures to unfold. The Court had also clarified that all persons should be guaranteed due process, regardless of their immigration status, since the wide scope of the intangibility of due process applied not only *ratione materiae* but also *ratione personae*, without any discrimination. Nonetheless, a presumption of detention against all migrants was retained in draft article 19. That was a matter of concern, as immigration offences were not criminal in nature. While draft article 19, paragraph 1 (b), provided that aliens detained for the purpose of expulsion must be separated from persons sentenced to penalties involving deprivation of liberty, the draft article still referred to detention, which was a form of deprivation of liberty, and therefore constituted a violation of human rights recognized in international instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

69. Even more worrying was the fact that the draft articles did not apply an intersectional approach and did not make any distinction between persons subjected to an expulsion process. In that regard, the draft articles should be reviewed, taking into account the jurisprudence and advisory opinions of regional human rights courts. For example, in its advisory opinion OC-21/14, the Inter-American Court of Human Rights had noted that States might not resort to the deprivation of liberty of children who were with their parents, or those who were unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings. The draft articles also did not address the obligations existing between the expelling State and the destination State of the person subject to expulsion. For example, the draft articles did not refer to article 36 of the Vienna Convention on Consular Relations, which, in the opinion of the Inter-American Court of Human Rights, recognized the individual rights of an alien in detention, including the right to information on consular assistance, which the receiving State had a duty to respect.

70. Given the concerns outlined, her delegation did not support the text of the draft articles. It called on the Committee to devise an appropriate format, whether a working group or a resumed session, that would facilitate a genuine discussion of the topic and ensure that the draft articles were indeed based on the core rules that safeguarded human dignity.

71. **Ms. Abd Karim** (Malaysia) said that her delegation maintained the position it had expressed during the seventy-fifth session of the General Assembly with regard to examining the question of the form that might be given to the draft articles on the expulsion of aliens, or other appropriate action. Draft articles 3, 4 and 6 would limit the discretionary powers held by States in managing matters involving foreigners in their territories. In addition, further consideration should be given to non-States parties to international treaties on the issue, in particular the Convention relating to the Status of Refugees and its Protocol, since the aforementioned provisions of the draft articles would compel such States to implement the obligations set out in those treaties.

72. Malaysia implemented its own laws, rules, policies and measures with respect to migrants, asylum-seekers and refugees. Like all Member States, Malaysia had a sovereign responsibility under international law – a responsibility that included protecting national security, public order (*ordre public*), morals, and the rights and freedom of its citizens. It was important that Member States deliberated on the topic of expulsion of aliens. Her delegation was concerned that the draft articles could not ensure full respect for State sovereignty, territorial integrity and the State obligation to protect national security. It was therefore of the view that the final form of the draft articles should be guiding principles for Member States.

73. **Ms. Antonova** (Russian Federation) said that her delegation welcomed the draft articles. The issue of expulsion of aliens was important in that it concerned both the sovereign prerogative of the State to expel aliens and the need to respect human rights, and it had become even more pressing in the light of the growing number of flashpoints in the migration crisis, in particular in developed countries.

74. The draft articles raised a number of issues that might be faced by victims of unlawful expulsion, including violation of the principle of non-discrimination or of the rules in bilateral agreements on the treatment of aliens or in special agreements on human rights. A State's control over its territory and its right to expel aliens as a means of maintaining such control served to ensure the protection of the interests of society, law and

order and the safety of the population. Expulsion was even more justified when it was connected with the commission of crimes by the individual concerned. Such circumstances did not, however, negate the obligation to respect due process and the rights of the person subject to expulsion, including the right to private and family life, humane and fair treatment and freedom from torture. The key issue was to find a balance between the rights and interests of the expelling State and those of the persons subject to expulsion.

75. The draft articles included some innovative provisions, such as those relating to the prohibition of collective expulsion, disguised expulsion, expulsion for the purpose of confiscation of assets and expulsion aimed at circumventing an extradition procedure. Overall, the text contained elements of both codification and progressive development of international law that required detailed analysis and debate. A general discussion in a plenary meeting of the Committee was unlikely to be suitable for those purposes. Her delegation therefore proposed that the Committee follow the precedent set for the topic of crimes against humanity and convene a resumed session in 2025 and 2026 to continue an in-depth discussion of the draft articles.

76. **Mr. Hernandez Chavez** (Chile) said that the topic of expulsion of aliens deserved special attention as it involved a situation experienced daily by thousands of people around the world. In that regard, the Commission had used State and inter-State practices, national law and relevant provisions of international law to develop the draft articles on the expulsion of aliens. The topic was intimately linked to the fundamental rules of international human rights law and the corresponding obligation of States to respect and protect the rights of persons under their jurisdiction without any discrimination. Therefore, States had the right to expel aliens but, in so doing, must at all times meet certain requirements and follow the necessary procedures, with full respect for the human rights of the persons involved.

77. In 2021, after eight years of preparations, Chile had adopted Act No. 21.325 on migration and alien affairs, which was aimed at ensuring orderly, secure and regular migration and provided that legal safeguards applied to foreigners visiting and residing in the country, including respect for their human rights, regardless of immigration status. The new institutional framework was supported by a Council on Immigration Policy headed by the Minister of the Interior. The implementation of the new law was complemented by State actions at the international level, including at the Ninth Summit of the Americas, during which Chile had signed the Los Angeles Declaration on Migration and Protection. Chile had also hosted the twentieth South American Conference on Migration in 2022.

78. His delegation supported the basic objective of the draft articles, which was to promote the protection of and respect for the human rights of persons subject to an expulsion decision. A discussion of the scope and reach of the provisions would offer a meaningful contribution to a topic that was relevant to international law. In that regard, his delegation was open to the Committee recommending that the item be included in the provisional agenda of the eighty-first session of the General Assembly, with a view to examining the question of the form that might be given to the draft articles, or any other appropriate action.

79. **Ms. Lito** (United Kingdom) said that her Government's position had always been that the expulsion of aliens was a challenging and problematic topic that intruded directly on national border management plans. Her delegation believed that the topic was not currently suitable for a convention or other legally binding instrument, and did not believe that the draft articles reflected customary international law. It also did not agree with the content of those draft articles that were said to represent the progressive development of international law.

80. The role of States in controlling their own borders and managing migration, in particular that of an irregular character, remained especially important and should be afforded considerable discretion. States must continue to enjoy the right to perform that role in accordance with national sovereignty. The detailed written comments on the draft articles submitted by her delegation as an annex to its written statement at the seventy-second session of the General Assembly remained the formal position of the United Kingdom on the issue.

81. **Mr. Caccia** (Observer for the Holy See) said that refugees, asylum-seekers, migrants, and victims of human smuggling and trafficking were unfairly blamed for current social problems. Many people were forced to leave their homes owing to persecution, violence, natural disasters and poverty. Migration in search of a better life was a natural human response to such crises.

82. The Holy See was grateful for the draft articles on the expulsion of aliens, which, with a view to fostering a broad consensus, incorporated elements of State practice and international and national law. The draft articles did not call into question the right of States to regulate migration, nor did they impose undue restrictions on cases in which expulsion was warranted. However, they did emphasize the primacy of human rights and human dignity over national interests. For

that reason, his delegation welcomed draft article 5, which provided that measures relating to the expulsion of aliens must be carried out in accordance with both the State's own legal framework and its obligations under international law. The Holy See also strongly supported the expansion of the principle of non-refoulement provided for in draft articles 23 and 24. In particular, it welcomed paragraph 2 of draft article 23, under which States that did not apply the death penalty even if it still existed in their law were prohibited from expelling aliens to States where there was a real risk that they would be subjected to the death penalty. Indeed, no person should be expelled, returned or extradited to another State where there were substantial grounds for believing that his or her life or physical integrity would be threatened.

83. Persons facing deportation must always be treated with dignity. Detention should be the exception rather than the rule; it should be governed by well-defined criteria and should be non-arbitrary, non-punitive and fully in keeping with requirements to respect human rights. The highest priority must be given to the right to family life and the prevention of family separation, as indicated in draft article 18. The best interest of the child should be the primary consideration in all decisions made on his or her behalf. It was critical to afford aliens facing expulsion both substantive rights and the procedural means by which to exercise those rights. Every person, regardless of his or her legal status, was entitled to due process. Indeed, the safeguarding of human rights was not possible without the granting of procedural rights. For that reason, the Holy See considered the procedural rights set forth in draft articles 26, 27 and 28 to be essential safeguards. However, additional provisions concerning the right to a prompt judicial review of the lawfulness of detention, the right to receive a written decision and the right to information on available legal remedies were also required.

84. Conflicts around the world were leading to an increase in the number of marginalized and distressed people, which required the international community to make critical decisions. The Holy See therefore supported the adoption of an internationally binding instrument on the expulsion of aliens and the establishment of an ad hoc committee or an open-ended working group open to all States to negotiate such an instrument. The complex and politically sensitive nature of the issue required the development of common norms and clear standards.

85. **Mr. Tan** (Singapore), speaking in exercise of the right of reply and responding to the statement made by the observer for the Holy See, said that the General Assembly had recognized that all States had the sovereign right to develop their own legal systems, which included determining the legal penalties for crimes that they had proscribed in their own law, in accordance with their international legal obligations. In that regard, draft article 23 of the draft articles on the expulsion of aliens, which extended the principle of non-refoulement to cover the expulsion of aliens to States where the death penalty was applied, represented progressive development of international law, which his delegation did not support.

The meeting rose at 5.30 p.m.