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Chair: Mr. Gafoor . . . . . (Singapore)

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The meeting was called to order at 10.15 a.m.

Agenda item 82: Expulsion of aliens (*continued*)

1. **Ms. Theofili** (Greece) said that the topic of expulsion of aliens remained of critical importance, particularly for States facing mixed migration flows of unprecedented dimensions as transit countries, like Greece, or a rise in irregular migration. While exercising their right to expel an alien from their territory, States had a paramount obligation to fully respect international human rights law and refugee law. Greece, for its part, was striving to ensure humane conditions of reception and screening of foreign nationals illegally entering its territory, to identify and protect vulnerable persons and to improve the conditions of detention of aliens subject to expulsion.

2. Her delegation continued to believe that the elaboration of an international convention on the basis of the draft articles on the topic, contained in the report of the International Law Commission on the work of its sixty-sixth session (A/69/10), would not be beneficial. Different sets of rules had progressively emerged at the national and regional levels to address the specific challenges faced by the States concerned. European Union legislation, for example, transposed by Member States into their domestic legal order, contained stronger provisions on the protection of human rights. At the regional level, the European Court of Human Rights had developed over the years an important body of case law, interpreting, in particular, relevant provisions of the European Convention on Human Rights concerning procedural rights and the prohibition of ill-treatment and providing specific criteria on how to achieve a fair balance between a State's right to expel an alien and respect for the human rights of persons subject to expulsion. The issue of the expulsion of aliens would accordingly be best addressed through regional instruments tailored to the needs of the countries involved and through the case law of international judicial and quasi-judicial bodies, rather than through the adoption of uniform, universal rules. The draft articles on the expulsion of aliens adopted by the Commission could, however, be used by States as guidelines in designing and implementing legislative frameworks and developing practices in that area, in compliance with their obligations under international law.

3. **Mr. Kabir** (Bangladesh) said that his delegation generally endorsed the Commission's approach to the topic, noting that it had been on the Commission's agenda since 2004. There was particular merit in the current formulation of the scope of the draft articles, as set out in draft article 1, where an explicit reference to aliens present "lawfully or unlawfully" had been omitted without undercutting subsequent provisions that might separately be applicable to either category. Bangladesh agreed with the thrust of draft article 3, which sought to balance a State's uncontested right to expel an alien from its territory with its obligations under international law, particularly human rights law. The provisions of draft article 5 concerning the grounds for expulsion accordingly appeared convincing, although the question whether there should be an explicit reference to "grounds of national security and public order" merited further discussion. Critical elements of the overall draft text included the provisions concerning the deprivation of nationality for the sole purpose of expulsion in draft article 8, the prohibition of collective expulsion in draft article 9, the prohibition of disguised expulsion in draft article 10 and the prohibition of expulsion in order to circumvent extradition in draft article 12.

4. While noting the broad support for the protection of aliens subject to expulsion in the expelling, destination and transit States, his delegation stressed the need for a cautious and practical approach to the suggested progressive development of the law, citing in particular the provision in draft article 23 concerning the death penalty as a prohibitive factor for expulsion. Further discussion would also be useful on the provision in draft article 28 concerning individual recourse to a competent international body. As for the last three draft articles, their provisions on the legal consequences of expulsion appeared convincing, subject to further consideration of the progressive development of law. In conclusion, the draft articles could serve potentially for the development at a suitable time of a convention on the expulsion of aliens, pending which they should be duly considered during ongoing work to develop a global compact on promoting safe, regular and orderly migration.

5. On a related note, Bangladesh urged the international community to reject and condemn the statements and tactics of the Myanmar military leadership and other vested groups aimed at expelling the Rohingya in Rakhine State on the baseless and racially motivated pretext that they were illegal immigrants or aliens. That systematic campaign of ethnic cleansing must end; the Rohingya remaining in Rakhine State must have an unconditional guarantee of protection; and the safe, dignified and sustainable return of those forcibly displaced within and across the borders of Myanmar must be ensured.

6. **Mr. Heumann** (Israel) said that the characteristics and challenges of illegal migration flows differed from one country to another and that each country had to find solutions suited to its own particular situation. Israel,

which in recent years had seen an influx of illegal immigrants across its southern border, shared the view expressed by many delegations during the deliberations on the draft articles, in 2012 and 2014, that the topic was a sensitive one that went to the heart of the principle of the sovereignty of every country. National security interests, the need to uphold the rule of law and the right of each country to establish its own migration policy and protect its borders had to be balanced with the protection of individual human rights.

7. Owing to the diversity of challenges and practices in the field, the codification of State practice was extremely challenging. It was also questionable whether it was appropriate to include a set of norms on such a sensitive topic in a multinational international convention. The issue of expulsion of aliens was bound up with national, local and regional practices and interests and was generally context-specific. It was also relevant to ask whether there was a need for a further legal instrument, given the existence of several multilateral treaties in the field, in particular the 1951 United Nations Convention relating to the Status of Refugees.

8. **Ms. Pucarinho** (Portugal) said that the draft articles offered a good framework for the protection and respect of individual rights in situations of expulsion and struck a balance between those rights and the sovereignty of States over their territory. As an overview of already existing legal norms, they provided general legal guidance concerning the expulsion of aliens. The topic should therefore be included in the provisional agenda of the seventy-fourth session of the General Assembly, in 2019, when the Committee would be better able to assess the influence of the draft articles on State practice.

9. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that, at the current session, the Committee was called on to take action on the recommendation of the International Law Commission on the topic at its sixty-sixth session by preparing a draft resolution whereby the General Assembly would take note of the draft articles, which would be annexed thereto. They were a valuable contribution to the codification and progressive development of international law in an area where there had long been a legal gap, which had affected inter-State relations in the modern age. They offered a glimmer of hope at a time of mass expulsions of aliens worldwide, notably in border areas.

10. His delegation therefore generally supported the draft articles, particularly as they reflected the position that expulsion did not include the extradition of an alien, the transfer of an alien to an international criminal court or the non-admission of an alien into a State's territory and that respect for core human rights remained an overarching principle in all cases of the expulsion of aliens. The Special Rapporteur was to be commended in that connection for having identified a number of basic human rights that must be respected in such cases.

11. The most recent case law of the International Court of Justice, in a case involving his country, was particularly relevant in that respect. In the case of *Ahmadou Sadio Diallo* (*Republic of Guinea v. Democratic Republic of the Congo*), the Court had found that the Democratic Republic of the Congo had violated the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, in that it had failed to adduce reasons for the order to expel Mr. Diallo.

12. The prohibition of collective expulsion in draft article 9 was particularly welcome to his country, which had seen many of its citizens suffer the consequences of such measures in the recent past. The prohibition could prevent possible abuses of a State's sovereign right to expel aliens. His delegation regretted, however, that the draft articles contained no provision for any measure to protect or assist the destination State of persons subject to collective expulsion. The unexpected presence of such persons in the territory of the destination State following cross-border collective expulsions could bring on a humanitarian disaster.

13. **Mr.** Kyaw Moe **Tun** (Myanmar), speaking in exercise of the right of reply, said that at the current time, when there was increasing cooperation between the respective authorities of Myanmar and Bangladesh, the unsubstantiated allegations made by the representative of Bangladesh concerning the displaced persons at the border of their two countries were neither constructive nor helpful. Following a recent visit to Bangladesh by representatives of the Office of the State Counsellor of Myanmar, the two countries had agreed to set up a working group to ensure the voluntary, safe and dignified return of the displaced persons on the basis of an agreement between the two countries existing since 1993. The Minister for Home Affairs of Bangladesh would shortly be visiting Myanmar to further develop their cooperation. Myanmar was resolved to work in a neighbourly spirit with all regional and international partners to resolve the issue.

Agenda item 170: Observer status for the International Network for Bamboo and Rattan in the General Assembly (*continued*) (A/C.6/72/L.8)

Draft resolution A/C.6/72/L.8: Observer status for the International Network for Bamboo and Rattan in the General Assembly

14. **Mr. Shi** Xiaobin (China) said that the original sponsors of the draft resolution had been joined by Malaysia, Panama and Portugal.

15. *Draft resolution A/C.6/72/L.8 was adopted.*

Agenda item 171: Observer status for the ASEAN+3 Macroeconomic Research Office in the General Assembly (*continued*) (A/C.6/72/L.9)

16. *Draft resolution A/C.6/72/L.9: Observer status for the ASEAN+3 Macroeconomic Research Office in the General Assembly.*

17. **Mr. Tang** (Singapore) said that the original sponsors of the draft resolution had been joined by Panama.

18. *Draft resolution A/C.6/72/L.9 was adopted.*

Agenda item 172: Observer status for the Eurasian Group on Combating Money Laundering and Financing of Terrorism in the General Assembly (*continued*) (A/C.6/72/L.4)

Draft resolution A/C.6/72/L.4: Observer status for the Eurasian Group on Combating Money Laundering and Financing of Terrorism in the General Assembly

19. *Draft resolution A/C.6/72/L.4 was adopted.*

Agenda item 87: Responsibility of international organizations (A/72/80 and A/72/81)

20. **Mr. Bruun** (Denmark), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the International Law Commission's articles on the responsibility of international organizations, together with the commentary thereto, already served as a useful tool for practitioners and scholars. However, and as stated in their comments to the Secretary-General on the subject, the Nordic countries did not currently support the elaboration of a convention based on them. That position was shared by other Governments and international organizations that had responded to the request for written comments.

21. Furthermore, very limited information had been submitted on practice in respect of the articles. The scarcity of relevant and consistent practice underpinning a number of them was one of the main reasons why it would be premature to use them as a basis for the negotiation of a treaty. The articles should crystallize through the practice of States and tribunals. While it appeared from the compilation of decisions of international courts and tribunals contained in the report of the Secretary-General on the responsibility of international organizations (A/72/81) that relevant practice was not accumulating quickly and that little significant practice had emerged since the sixty-sixth session of the General Assembly, that compilation would nevertheless prove useful as an overview of a complex subject.

22. **Mr. Simonoff** (United States of America) said that, having regard in particular to the scarcity of relevant practice, many of the rules contained in the articles fell into the category of progressive development rather than codification of the law. As they stood, the provisions did not reflect the current law concerning the responsibility of international organizations to the same degree as the corresponding provisions on the responsibility of States for internationally wrongful acts. It was important to keep that in mind when considering whether those articles adequately reflected the differences between international organizations and States; many of them contained similar or identical phrasing to the corresponding articles on State responsibility. It was likely that some of the principles set out in the articles, such as those concerning countermeasures and self-defence, did not apply generally to international organizations in the same way as they applied to States. For those reasons and in view of the significant differences of opinion remaining as to which principles should govern and how they should operate, his delegation continued to believe that the articles should not be transformed into a convention.

23. **Mr. Arrocha Olabuenaga** (Mexico) said that the increasing involvement of international organizations in matters of international law made it all the more urgent for there to be clear rules concerning their possible responsibility. The compilation of decisions of international courts, tribunals and other bodies contained in the report of the Secretary-General (A/72/81) attested to the relevance of the subject but also revealed differences of approach to the articles in the nine cases described. It nevertheless reflected recognition of the value of the draft articles as a part of international law and even of customary law. His delegation would therefore not be opposed to their being adopted by the General Assembly in an annex to a resolution and being endowed with the same authority as the articles on the responsibility of States for

internationally wrongful acts, thereby giving added weight to the International Law Commission's work on the codification and progressive development of international law.

24. In the absence of an agreement to that effect, the topic should be kept on the Committee's agenda for reconsideration in the near future. In that case, it would be useful for the Secretary-General to update the compilation every year to reflect trends in national and international case law in respect of the articles. In addition, a document could be prepared on possible issues on which there continued to be disagreement in order to make substantive progress in dealing with the important topic of responsibility of international organizations.

25. **Mr.** Elsadig Ali Sayed **Ahmed** (Sudan) said that the articles on the responsibility of international organizations were closely aligned with those on the responsibility of States. That connection should not be taken for granted; in view of the particular nature and function of international organizations, a number of changes were needed. The topic was an important one because the effectiveness of any legal system depended on the extent to which its rules concerning responsibility could mature and evolve in order to provide guarantees against arbitrary conduct. It should, however, be emphasized that the development of such rules was being hampered by power dynamics and the element of force in international relations.

26. The rules that applied to international organizations in general should first be defined. The question of whether different rules applied to specific organizations, particularly with regard to relations with their members, could be raised at a later stage. Such rules might have considerable practical significance, but they should not be set out in the articles, which should be viewed as "default rules". The approach regarding *lex specialis* was analogous to that adopted in the articles on the responsibility of States; the potential importance of that the *lex specialis* principle for international organizations did not appear to warrant a change in approach.

27. It was doubtful whether the article concerning the attribution of acts in excess of authority to international organizations should set out conditions similar to those that applied to States. The World Health Organization and other international organizations had also called that idea into question. A case could be made that the immunities enjoyed by international organizations should not include excess of authority, but should rather be limited to the functions that the organization had been allowed to fulfil on the territory of the State granting immunity. The same could not necessarily be said if the international responsibility of States was invoked with regard to unlawful acts.

28. The idea of elaborating a convention based on the articles continued to raise numerous concerns: relevant practice was scarce and pertained to a wide variety of situations, and the topic was more in the nature of progressive development than codification. In future consideration of the item, it would be useful to refer to the report of the Secretary-General containing a compilation of decisions of international courts and tribunals (A/72/81). In the meantime, the articles should be adopted as an annex to a General Assembly resolution. The articles could be taken as evidence of *jus cogens* only if they came to be applied in practice, as was the case for the articles on the international responsibility of States.

29. Mr. Tang (Singapore) said that his delegation did not support the elaboration of a convention on the basis of the articles on the responsibility of international organizations. It was not convinced that the articles reflected a consensus view of the law. The comments and information received from Governments and international organizations contained in the report of the Secretary-General (A/72/80) did not indicate that the overall view on the question of the form that might be given to the articles had changed since the consideration of the topic during sixty-ninth session of the General Assembly, and the report of the Secretary-General containing a compilation of decisions of international courts and tribunals (A/72/81) did not demonstrate that the articles had been cited as a reflection of existing law. Moreover, it was not appropriate to elaborate a convention on the basis of the articles while there was no consensus on the elaboration of a convention based on the similar articles on responsibility of States for internationally wrongful acts.

30. The articles were an exercise of progressive development, and the Commission indicated in its general commentary that limited legal weight should be attached to them. Several issues specific to international organizations remained to be resolved. International organizations often had mixed membership, and some fulfilled mandates and conducted operations comparable to those of intergovernmental organizations. The work of the International Law Commission could contribute to creative legal and policy solutions to such issues. However, the matter did not need to be included on the agenda of a future session of the General Assembly.

31. **Mr. García Reyes** (Guatemala) said that any act attributable to an international organization that

constituted a breach of an international obligation of that organization was an internationally wrongful act that entailed international responsibility. In its general commentary to the articles, the Commission stated that one of the main difficulties it had faced when elaborating the articles had been the limited availability of pertinent practice, and that its work on the topic was consequently more in the nature of progressive development than codification. The lack of pertinent practice meant that it would be necessary to overcome many challenges before adopting a binding instrument.

32. The Committee should further analyse the compilation of decisions of international courts and tribunals, and the Secretary-General should continue to update that compilation. His delegation stood ready to cooperate with the Working Group on responsibility of international organizations. It might be useful to include the topic on the agenda of the seventy-fourth session of the General Assembly so that it could be considered alongside the topics "State responsibility" and "Diplomatic protection", since elements of the three topics were similar or interrelated.

33. **Ms. Melikbekyan** (Russian Federation) said that the articles on the responsibility of international organizations were appropriate as a whole and took into account a number of features specific to international organizations. While certain provisions, such as those concerning self-defence, warranted further consideration, a number of important matters had been resolved in a satisfactory manner. Given the practical importance of the topic, the Russian Federation had no objection to the elaboration of an international convention based on the articles.

34. **Mr. Celarie Landaverde** (El Salvador) said that international organizations, like States, interacted with other subjects of international law and carried out acts that could produce legal effects. The consolidation of the principle of responsibility at the international level left no doubt that international organizations incurred responsibility for internationally wrongful acts that they committed.

35. The articles were the product of a significant and well-considered exercise of progressive development by the International Law Commission. However, since they were based on limited practice, their authority would depend upon their reception by those to whom they were addressed. The limited jurisprudence also meant that the articles did not have the same level of authority as the similar articles on State responsibility. The situation was further complicated by the fact that the articles would be applicable to a wide variety of international organizations. For those reasons, adopting a binding instrument on the subject still posed multiple difficulties. However, his delegation considered that the item should remain on the agenda of the Sixth Committee, with a view to monitoring practice with regard to the responsibility of international organizations and to then deciding at a later date whether the articles were ripe for uniform application.

36. **Mr. Pino Béquer** (Cuba) said that the topic of responsibility of international organizations was of great importance, given their ever-increasing number. Defining the term "international organization" was not an easy task from a technical and legal point of view. The articles on the responsibility of international organizations reflected the considerable effort made to regulate that responsibility in a uniform manner. In his delegation's view, the Vienna Convention on the Law of Treaties should serve as a guide for any legal definition on the topic.

37. The concept of "injury" was an essential element of the definition of an internationally wrongful act of an international organization, because it established the obligation to make reparation, to cease the violation and to offer guarantees of non-repetition. Another important concept was that of necessity (article 25), which should be defined as "essential interest". The article concerning collective countermeasures should be reworded to include a reference to the collective security system envisaged in the Charter of the United Nations. A mechanism for the settlement of disputes relating to the interpretation of responsibility would provide a guarantee of peaceful dispute settlement, essentially for the developing countries that were often the victims when conflicts were resolved by the use of force.

38. **Mr. Heumann** (Israel) said that the decisions cited in the report of the Secretary-General (A/72/81) should not be given undue weight, as the decisions of national and international courts and tribunals could only serve as subsidiary means of identifying customary international law and, moreover, the cited decisions did not reflect well-established customary international law. The question of the responsibility of international organizations arose frequently at the domestic level, often in the context of contractual, commercial and employment disputes between international organizations and private actors. It was unfortunate that the compilation did not include any such cases, and that the articles did not explicitly address such disputes or distinguish between the responsibility of international organizations towards their member States and their responsibility towards third parties.

39. The fact that the articles on the responsibility of international organizations relied too heavily on the

articles on responsibility of States for internationally wrongful acts meant that they did not take sufficient account of the inherent differences between States and international organizations. Further consideration was needed to determine the degree to which the principle of State responsibility should be applied to situations involving international organizations. Moreover, the extent to which the articles on responsibility of States for internationally wrongful acts reflected customary international law had not yet been determined.

40. Another issue that must be considered was whether a single set of articles could be applied indiscriminately to all international organizations, given that they differed from one another substantially in terms of their nature and purpose, their composition and the legal effects of their decisions.

41. His delegation was also concerned that the articles concerning self-defence, countermeasures and necessity accorded rights to international organizations that were normally regarded as exclusive to States. It also wondered whether countermeasures and necessity should be included within the scope of the articles, since many questions remained about the relationship between international organizations and non-member States and between international organizations and their members.

42. **Ms. Sornarajah** (United Kingdom) said that the articles on the responsibility of international organizations should remain in their current form. Given that the limited availability of pertinent practice moved several of the articles into the area of progressive development rather than codification, it was unlikely that negotiations would result in the adoption of a convention. Furthermore, parallels with the articles on responsibility of States for internationally wrongful acts should be treated with caution, as a particular article on State responsibility might be considered to reflect customary international law while the corresponding article in the text on international organizations did not. There were also few examples of the articles on the responsibility of international organizations being applied in practice.

43. There was great diversity among international organizations, and their practice was often based on their own constitutional instruments rather than their acceptance of the general principles set out in the articles. Several international organizations had expressed the view that many of the articles were controversial and largely unsupported by practice and had accordingly urged caution in relying on the articles as an authoritative statement of positive law.

44. **Ms. Mousavinejad** (Islamic Republic of Iran) said that international organizations had an important role to play in a world in which problems were increasingly becoming global. It was therefore imperative to establish a set of rules to determine the responsibility of those organizations. The articles were generally appropriate and should serve to guide the practice of States and international organizations. However, her delegation questioned whether the articles concerning self-defence, subsidiary or joint responsibility, necessity and countermeasures should be applied directly to international organizations.

45. In its general commentary, the Commission acknowledged that special rules, which the articles did not attempt to identify, could play a significant role, especially in the relations between an international organization and its members. One might wonder whether some organizations, by insisting on the applicability of their special rules, were primarily seeking to exempt themselves from the application of the general rules. A general framework of rules governing international responsibility needed to be upheld to ensure the rule of law.

46. In situations where an organization failed to comply with an obligation to respect a relevant principle of international law, including cases in which an internationally wrongful act caused damage for which the organization was unable to provide redress to the injured State, the brunt of the responsibility should be borne by the members of the organization, taking into account their respective roles in the decision-making processes and their stances on relevant issues. Such situations could be covered by a new article 60 on the coercion of an international organization by a State.

47. The rules on the responsibility of international organizations should be clearly established in the form of a binding treaty. A properly elaborated convention on the responsibility of international organizations could contribute to legal certainty and better application of the rules, thereby promoting compliance with international law. Her delegation therefore supported the negotiation of a legally binding instrument on the basis of the articles.

48. **Ms. Fuad** (Malaysia) said that further study and discussion of the articles were needed before decisions could be taken on the adoption of the articles and the elaboration of a convention. Currently the articles could be considered only as guidelines, as it was not entirely clear how the articles on the use of terms, conduct acknowledged and adopted by an international organization as its own, and self-defence should be interpreted.

49. **Ms. Muratidi** (Australia) said that the number, reach and influence of international organizations had never been greater. International organizations differed from States in key respects, so that the rules applicable to States could not necessarily be directly transposed or applied to international organizations. There remained significant differences of opinion among States on the principles that should govern the responsibility of international organizations. Moreover, a large number of international organizations considered many of the articles to be controversial and unsupported by practice and therefore took the view that the negotiation of a convention based on the articles would be premature. For those reasons, her delegation did not support the elaboration of a convention on the topic at the current time.

50. **Ms. Stavridi** (Greece) said that the articles on the responsibility of international organizations would provide useful guidance to national and international courts in dealing with claims for internationally wrongful acts committed by international organizations. However, many of the articles, given the scant availability of pertinent practice, fell within the category of progressive development rather than codification of international law. They should, therefore, not be seen as having acquired the same authority as the corresponding articles on State responsibility, which reflected existing customary international law. At the current stage, and given the need to revisit them in the future in the light of new developments, they should not serve as the basis for the elaboration of a convention on the topic.

51. **Ms. Sande** (Uruguay) said that the articles on responsibility of States and the articles on the responsibility of international organizations had been cited in the decisions of international courts and tribunals. Matters concerning international responsibility, whether of States or of international organizations, tended to be governed by such texts, which were primarily based on the domestic contractual and non-contractual law of States. The provisions concerning the nature of responsibility and the circumstances precluding wrongfulness in the articles on State responsibility and the articles on the responsibility of international organizations were also based on domestic law. The fact that the provisions in the two sets of articles were largely the same could give the impression that the articles on the responsibility of international organizations were simply applying an established principle in a new context. That was the reasoning given in a number of the decisions mentioned in the report of the Secretary-General (A/72/81). However, international organizations were not simply groups of States; they were independent entities with their own rights and obligations that were not identical to those of States.

52. The provisions concerning joint responsibility between international organizations and States were problematic. The articles should be developed to ensure that States members of an organization could not be held responsible as separate legal persons for an unlawful act committed by an international organization simply because they were members of the organization. There was also far more jurisprudence on the responsibility of States than on the responsibility of international organizations. For those reasons, more work needed to be done before a convention could be elaborated.

53. **Ms. Pucarinho** (Portugal) said that dissenting opinions should be included in future reports of the Secretary-General concerning judicial practice in the area of the responsibility of international organizations. For the time being, the General Assembly should again take note of the articles in a resolution. There was no point in convening a diplomatic conference to adopt a convention on the responsibility of international organizations as long as there were no further developments on the articles on State responsibility. Only at a later stage should the General Assembly contemplate the adoption of a convention based on the 2011 articles. His delegation suggested that the topic of the responsibility of international organizations should be included in the agenda of the seventy-fifth session of the General Assembly, after the consideration of the articles on State responsibility at its seventy-fourth session.

The meeting rose at 12.05 p.m.