

Statement by Mr. Ali Nasimfar

The Representative of the Islamic Republic of Iran

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

On agenda item 82:

“Expulsion of aliens”

New York, 10 November 2020.

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

**Mr. Chairman,**

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

On the final outcome of the work presented to the Sixth Committee, my delegation previously presented its views in the 72<sup>nd</sup> session of the General Assembly, which still remain relevant. Furthermore, we would like to express some observations which demonstrate why the idea of convening a diplomatic conference on the elaboration of a convention, based on the Draft Articles, is still premature.

**First**, the sensitivity and significance of the matter under consideration requires that the provisions of the Draft Convention should be based on *lex lata* rather than *lex ferenda*. However, the Commission has gone beyond customary and treaty law in codifying the Draft Articles and has engaged with the codification of

the progressive development of international law in which the state practice is still limited.

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

**Third**, with respect to appeal against expulsion, it is noteworthy that many national laws make no provision for such appeals, and there is serious doubt about the existence of customary rules in that area. The right of return to the expelling State cannot be recognized in the case of aliens who had been on its territory unlawfully prior to the expulsion. Granting such a right would imply recognition of an acquired right of residence in the territory of a foreign State, something unknown in State practice. The Commission, by granting unlawful aliens the right to challenge an expulsion decision, has also gone beyond existing treaty and customary law. Accordingly, equal treatment to aliens who are lawfully, and those who are unlawfully, present in a State's territory could create an incentive for illegal immigration. Draft article 27 (Suspensive effect of an appeal against an expulsion decision) is also unacceptable because it constituted progressive development without a minimum basis in uniform or convergent State practice.

**Mr. Chairman,**

In light of the aforementioned observations and our previous comments in the 72<sup>nd</sup> Session of the GA, we are of the view that the final product of the Commission

could serve as a guideline in inter-state cooperation and national legislative measures regarding expulsion of aliens, and it does not seem to be ripe enough for the General Assembly to engage in a codification exercise over the matter since the national and regional jurisprudence regarding expulsion of aliens is still evolving.

I thank you, Mr. Chairman.