Thank You, Madam Chairperson,

I would like to thank the Chairman of the International Law Commission for his comprehensive introduction of the Report of the 62nd Session of the International Law Commission on the second cluster of topics.

In connection with the topic “Expulsion of aliens”, we commend the Special Rapporteur Mr. Maurice Kamto, for the revised and restructured draft articles on the protection of the human rights of persons who have been or are
being expelled and the sixth report presented by him. To simplify the general scheme of things and to present the relevant principles in a focused and structured manner, we support the suggestion of the Commission about the reorganization of these articles in five parts.

We also support the general approach taken by the Special Rapporteur. We recognize that the State has the right to expel aliens. However, it is essential that the right of a State to expel aliens is exercised in accordance with the relevant rules of international law, including those relating to the protection of human rights and to the minimum standards for the treatment of aliens.

Madam Chairperson,

On the topic “Effects of armed conflicts on treaties”, let me express our sincere condolences on the sad demise of Professor Ian Brownlie in a tragic accident in the beginning of this year, Professor Brownlie was the first Rapporteur on this topic. We commend the Special Rapporteur Mr. Lucius Caflisch for his report.

We support the view that the treaties should continue in operation as it leads to the stability of the treaties. Regarding the indicative list of treaties which deem to continue in operation, in our view all such treaties cannot be combined into one list. Some of the categories of treaties listed, e.g., treaties relating to IHL, expressly apply during an armed conflict. Similarly treaties on land or maritime boundaries are meant to be permanent in character and are not to be affected by armed conflict. Accordingly such treaties need to be listed separately from other treaties whose continued existence depends on the intention of the parties.

On the scope of the topic, we reiterate our view that it should be limited to treaties concluded between States and not include treaties concluded by international organizations; the definition of “armed conflict” should be considered independently of its effects on treaties; and that the scope of an “armed conflict” should be limited to conflicts between States and that it should not deal with internal conflicts, as treaties are entered into by States, and internal conflicts do not directly affect treaty relations.

The principle of non-automatic termination or suspension contained in Draft Article 3 is useful as it would encourage the stability and continuity in treaty relations. We also welcome the recognition in article 4 that the draft articles would not apply to situations to which articles in IHL apply. We also support article 15 which deals with the prohibition of benefit to the Aggressor State.
Madam Chairperson,

Draft Article 5 provides a listing of treaties which, on the basis of necessary implication from their object and purpose, are considered as continuing in operation during an armed conflict. It is necessary to identify some general criteria for determining the type of treaties that would continue to apply during an armed conflict. In particular, treaties that expressly apply in case of or during an armed conflict, and therefore, can in no circumstances be terminated by an armed conflict, should be identified and considered separately from other treaties.

Madam Chairperson,

On the topic of Protection of Persons in the Event of Disaster, we would like to congratulate the Special Rapporteur, Mr. Eduardo Valencia-Ospina for his third report.

Since there is wide agreement amongst States that armed conflict should not be covered by the draft articles, the reference to the principle of neutrality does not appear to be relevant and it would be appropriate to replace reference to ‘neutrality’ in draft article 6 by a reference to ‘non-discrimination. Further it would also be useful to emphasize in this article that humanitarian response should not be used to intervene in the domestic affairs of States as emphasized by the ICJ in the case of Nicaragua V. United States of America. In that case, the court referred to the purposes followed in the practice of the red cross in the context of humanitarian assistance in order to escape condemnation as an intervention in the internal affairs of the affected State, and specified that these purposes include ‘to prevent and alleviate the human suffering’ and ‘to respect for the human being’, and that humanitarian assistance must be ‘given without discrimination to all in need’.

Draft Article 8, on Primary Responsibility of the Affected State, as proposed by the Sp. Rapp. consists of two paragraphs. Paragraph 1 states that “The affected State has the primary responsibility for the protection of persons and provision of humanitarian assistance on its territory. The State retains the right, under its national law, to direct, control, coordinate, and supervise such assistance within its territory”, while paragraph 2 provides that “External assistance may be provided only with the consent of the affected State.”

Madam Chairperson,

The General Assembly has, on a number of occasions, reaffirmed the primacy of the affected State in disaster response. In Resolution 46/182, the General Assembly held that: Each State has the responsibility first and foremost
to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory."

The General Assembly has also recognised the relevance of the concepts of Sovereign Equality and territorial Sovereignty in the context of disaster response, and the Guiding Principles annexed to Resolution 46/182, (quoted in para 69 of the Report) held that: “The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.”

Accordingly, while emphasizing the duty of cooperation with a view to encouraging assistance to affected persons, and providing for essential human needs as a priority in case of emergency situations resulting from a natural disaster, the Draft articles should recognize the sovereignty of the affected State, its responsibility towards its own nationals, its right to decide whether it requires international assistance, as it is in the best position to assess the needs of the situation, as well as its own capacity to respond, and if it accepts international assistance, the right to direct, coordinate and control such assistance within its territory.

I once again thank the Special Rapporteur for his Third Report, and support sending the Draft articles to the Drafting Committee.

Thank you, Madam Chairperson.