



**United Nations General Assembly | Sixth Committee
78th Session
Expulsion of Aliens
(Agenda item 81)**

2 November 2023

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Mister Chair,

There is no doubt that the right to expel is inherent to States. It flows from their sovereignty, from their intrinsic ability to control its territory, one of the defining features of its very identity and existence. As the International Law Commission rightly stated in its comments on the draft articles, this right is uncontested in practice as well as in case-law and writings.

At the same time, the Commission also recognizes in the articles that any form of disguised expulsion is strictly prohibited under international law. The person concerned must always have the opportunity to obtain an impartial and independent decision from the State. States should not expel individuals from their territories in violation to the principle of *non-refoulement*, nor do they have the right to promote collective expulsions.

This connection to an act that is considered to be a very tangible expression of sovereignty may be the reason behind the limited engagement of Member States so far in the discussions on this agenda item at the 6th Committee. Perhaps a lack of interest born out of a fear that any international regulation in this respect may infringe upon a prerogative essential to the administration of their territory or the maintenance of security and social order within its borders.

This topic is nonetheless pressing and important. Sadly, we have been witnessing the increasing tendency to criminalize migrants, as well as abuse in expulsion proceedings. The ones to be held criminally accountable must be those who exploit, for their own gain, the inherent vulnerability of people who are escaping conflict and hardship to provide a better and safer life for themselves and their loved ones. The separation of children from their families, long detention periods, precarious detention conditions and violence and torture against migrants, refugees and asylum-seekers are 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.

Despite excluding non-admission, the scope *ratione materiae* of the draft articles is broad, comprising any formal act or conduct, active or passive, by which a State compels a foreigner to leave its territory. The articles are a laudable attempt to bring legal certainty to a domain where sovereignty may degenerate into arbitrariness. Although some aspects could deserve further elaboration or improvements, the draft articles could be the basis for international guidance on how to manage the expulsion of foreigners in a manner compliant with human rights.

Mister Chair,

In 2017, the Brazilian Congress passed a bill to replace our former law on foreigners, inherited from a period in which migrants were often seen as a potential menace to national security. The new law on migration, without disregarding the need to control our borders and ensure peaceful integration of foreigners into our social fabric, aimed at harnessing the potential migrants have to enrich our culture, enhance diversity, bring new knowledge and contribute to economic development.

It overhauled our visa system, including by strengthening the possibility of granting humanitarian visas. The law is guided by the principles of universality, indivisibility, and interdependence of human rights. It enshrines the repudiation of xenophobia, racism, and any other forms of intolerance. It rejects the criminalization of migration and discrimination. It upholds the right to family reunion, social and professional integration, equal access to healthcare, education, and other public services. To sum up, it brought a human rights approach to our legislation by aligning it with the objective of narrowing the gap between the legal statuses of nationals and migrants.

In our law, the expulsion of aliens in the sense of the draft articles has two modalities: deportation and expulsion *stricto sensu*.

Deportation is an administrative procedure to remove from the Brazilian territory an individual in irregular migratory situation, which will not necessarily prevent him or her to return to Brazil, if the reasons of the removal are remedied. The procedure follows the principle of *audi alteram partem*. Deportees are entitled to free legal assistance if they cannot afford its legal costs.

Expulsion is an administrative removal measure coupled with a ban of re-entry in the Brazilian territory for a specific period. Only those convicted of genocide, war crimes and crimes against humanity or of other intentional crimes punished by imprisonment, the latter depending on their gravity and the possibility of social reintegration, may be subject to it. However, if they immigrated to Brazil before the age of twelve, are older than seventy, have a spouse or partner lawfully residing in Brazil or have a child under their care in our territory, they have a right not to be removed.

Our law also forbids collective deportations and expulsions. Therefore, it is clear that the ILC's draft articles greatly reflect our national practice concerning the expulsion of foreigners and bring legal guarantees already upheld in our legislation.

Mister Chair,

As mandated in the resolution adopted during the seventy-fifth session of the General Assembly on this agenda item, we should take a decision on the action to be taken with regard to the draft articles, including on the form that might be given to them. This is an example of a broader challenge the Sixth Committee frequently faces in dealing with the products of the ILC.

It may be that the sensitivity of the matter and the division it generates do not allow us to achieve the consensus needed to negotiate a convention on the basis of the draft articles. In this case, we should at least consider the possibility of a non-binding instrument such as principles, guidelines or conclusions. As state practice varies on the matter, these provisions could contribute to the

progressive development of international law, in respect of a topic that undeniably deserves greater attention from the international community.

Thank you.