



Statement by H.E. Archbishop Gabriele Caccia
Permanent Observer of the Holy See to the United Nations
UNGA 75 – Sixth Committee

Agenda item 82 – Expulsion of aliens

Mr. Chair,

Refugees, asylum seekers, migrants, and victims of human smuggling and trafficking are some of the world’s most vulnerable. We must avoid, as Pope Francis has warned, a “globalization of indifference,” whereby “migrants, refugees, displaced persons and victims of trafficking have become emblems of exclusion. In addition to the hardships that their condition entails, they are often looked down upon and considered the source of all society’s ills.”¹

The issues before us – the expulsion of aliens, human beings who are our brothers and sisters – is complex and politically sensitive. While the divergence of opinion on the draft Articles may require additional time for discussion and for States’ practice to develop, the desire for baseline norms regarding the expulsion of aliens deserves our continued perseverance.

We are grateful to the International Law Commission for having prepared, in such a cautious manner and while seeking the broadest possible consensus, a draft built upon standards drawn from State and inter-State practices, national legislation and relevant provisions of international law, as well as elements of *lex ferenda*. They neither call into question the right of States independently to address issues concerning the stay of aliens in their territory, nor do they seek to impose unjustified limitations on those cases where the expulsion of the alien would be legitimate. At the same time, it must be stressed that fundamental human rights must always take precedence over State interests. Refugees, asylum seekers, migrants, and victims of human smuggling have no less human rights than the lawful residents and their rights must therefore be fully ensured and protected. Article 5.4 of the draft rightly provides that “*a State shall not expel an alien on a ground that is contrary to its obligations under international law*”.

¹ Pope Francis, Message for the 105th World Day of Migrants and Refugees, 27 May 2019.

The Holy See welcomes in particular draft Articles 23 and 24 that extend the principle of *non-refoulement* well beyond the traditional confines of International Refugee Law. In fact, no one – not only refugees – should be expelled, returned or extradited to another State where there are substantial grounds for believing that their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion or where he may be subjected to the death penalty. We believe that this provision codifies a growing consensus in the International Community, as evidenced by Article 3 of the *UN Convention against Torture*.

It is also important to improve conditions of detention and to ensure the procedural rights of those in detention. Pope Francis has emphasized that “our response to the challenges posed by contemporary migration can be summed up in four verbs: welcome, protect, promote and integrate.”² We note with concern that draft Article 19 is based on the assumption that persons subject to expulsion would be detained. However, detention should be the exception rather than the rule. In addition, children should never be detained and their best interests should be the primary consideration in all decisions made on their behalf. The rule of law, in fact, requires that the State justifies any limitation on a human right, taking into account any specific circumstances. Further, there should be provisions for detention facilities to be clean, provide access to doctors and take into account the needs of families, women and children, as the basic concept of human dignity requires. The right of children who may be subject to expulsion to enjoy the care of their families must be ensured.

Due process guarantees are enshrined in international law and are non-derogable. States must ensure respect for procedural rights, which emanate from the principle of human dignity and not from an individual’s migratory status nor the period of time he or she had spent in a territory. It is critical to provide both substantive rights to aliens facing expulsion and the procedural means by which to obtain those rights. Otherwise, providing substantive rights while denying the procedural means to claim and obtain such rights would render them virtually meaningless. The right to a speedy judicial review of the lawfulness of detention, the right to receive a written decision, the right to information about available legal remedies are all areas that should be given greater consideration.

² Pope Francis, Message for the 105th World Day of Migrants and Refugees, 29 September 2019. Cf. Message for the 106th World Day of Migrants and Refugees, 27 September 2020.

As regards the next steps, while the Holy See acknowledges that, at the moment, there does not seem to be consensus on convening an international conference to adopt a new Convention on this question, we believe that the topic must be kept in the agenda of the Sixth Committee in order to foster greater awareness on this important issue. As Pope Francis has noted with regard to people on the move that “violent conflicts and all-out wars continue to tear humanity apart; injustices and discrimination follow one upon the other; economic and social imbalances on a local or global scale prove difficult to overcome. And above all it is the poorest of the poor and the most disadvantaged who pay the price.”³ We must keep this reality in mind as we seek to create rules that represent the best of our humanity.

Thank you, Mr. Chair.

³ Ibid.