

Forum on the International Law Commission's "Draft Articles on the Expulsion of Aliens"

The essays that follow result from a workshop convened by the Harvard Law School Human Rights Program, in collaboration with the Journal. They focus on the "Draft Articles on the Expulsion of Aliens" adopted by the International Law Commission of the United Nations (ILC) after a decade-long project of research and deliberation.¹

These Draft Articles seek to restate, with some exercise of progressive codification, the rules of international law relating to the expulsion of aliens. They combine elements of traditional customary international law, human rights law, refugee law, and extrapolation of current trends. The Draft Articles address general norms, categories of prohibited expulsion, protection of the rights of aliens subject to expulsion, and legal consequences of expulsion. They may later form the basis of an international convention, and in the meantime² they offer themselves as a progressive set of international standards on a subject that is once more exciting controversy.

The essays presented here analyze the nature and content of the ILC Draft Articles, especially in comparison with other human rights standards. Professor Jacqueline Bhabha examines the Draft Articles from the perspective of the rights of child migrants, who play a much larger role in contemporary migration patterns than their brief mention in the Draft Articles might suggest. Professor Mathias Forteau, who served as a member of the ILC when the Draft Articles were receiving final form, places them in the context of the Commission's role and methodology when it seeks to codify customary international law in a field where multilateral treaties also operate. Professor Daniel Kanstroom offers a different conceptualization of expulsion as a process that creates a distinct class of deported persons, whose rights need to be articulated and protected. Professor Won Kidane points to areas in which the Draft Articles regress below existing norms or miss an opportunity to clarify them, including with regard to procedural rights of aliens facing expulsion and the rights of refugees. Finally, Professor Gerald

1. Int'l Law Comm'n, Rep. on the Work of Its Sixty-Sixth Session, *Int'l Law Comm'n, Draft Articles on the Expulsion of Aliens*, U.N. Doc. A/69/10, 17, ¶ 45 (2014). In addition to the authors represented here another member of the International Law Commission, Professor Sean D. Murphy, participated in the workshop as a commentator.

2. See *Khlaifia and Others v. Italy*, App. No. 16483/12, ¶¶ 243–45, Eur. Ct. H.R. (2016) (Grand Chamber) (invoking the ILC Draft Articles).

Neuman complements the other essays by examining a series of instances in which the Draft Articles have fallen short of the standards of international human rights law.

Taken together, these essays shed light on current dilemmas in international migration law and also on the processes of the International Law Commission.