

Authority and Responsibility of States

Session III

**Nationality, Admission, Stay, Detention
and Expulsion: the Balance between
State Sovereignty and the Human
Rights of Migrants**

Authority and Responsibility of States

State sovereignty

Sovereignty as a concept of international law has three major aspects: external, internal and territorial. The external aspect of sovereignty is the right of the State freely to determine its relations with other States or other entities without the restraint or control of another State. This aspect of sovereignty is also known as independence. The internal aspect of sovereignty is the State's exclusive right or competence to determine the character of its own institutions, to enact laws of its own choice and ensure their respect. The territorial aspect of sovereignty is the exclusive authority which a State exercises over all persons and things found on, under or above its territory.

States' Authority

State has the power to determine:

- ✓ **Nationality**
- ✓ **Admission of non-nationals**
- ✓ **Residence**
- ✓ **Detention**
- ✓ **Expulsion of non-nationals**

State's Responsibilities

Fundamental principles:

- Power to manage migration must be exercised in full respect of fundamental Human Rights
- Power to manage migration must be exercised in full respect of international commitments

Nationality

- Nationality is a juridical and political link that unites an individual with the state
- It is for each state to determine under its own laws who are its nationals (1930 Hague Convention)
- Contracting states shall as far as possible facilitate the assimilation and naturalization of refugees (1951 Geneva Convention)
- Convention on the Reduction of Statelessness required bestowal of citizenship under certain conditions when the person would otherwise be left stateless.
- Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures (Convention on the Nationality of Married Women)
- Naturalization largely depends on domestic law

Right to Admit

- A migrant has the right to leave own country
- No international obligation on a State to admit a non national
- Categories of persons able to assert right of return limited to citizens
- No one shall be arbitrarily deprived of the right to enter his own country (art 12, sec. 4, ICCPR)

Residence

- Conditions of sojourn largely depend of the domestic law of each State
- Human rights standards protect aliens

Each State Party to the presents Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR, Art 2)

- Amount of rights depends of the status of foreigner
- Economic rights of aliens are, however, less firmly established than other human rights

Detention

- Criminal Detention
 - punitive in nature or
 - aiming at prevention (e.g.: prevent suspect from committing a crime or re-offending, etc.)

- Administrative Detention
 - often under the immigration laws
 - in practice fewer guarantees and safeguards against violations

Detention

- No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Arts. 9 and 10, ICCPR

Right to Remove

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

(Art. 13, ICCPR)

Right to Remove

- State has a right to remove a migrant from the territory
- Limited by
 - Principle of non-refoulement
 - “best interests of the child”
 - Procedural limitations under international law (Art. 13, ICCPR)

National Security

- Power of state to defend its security - central feature of state sovereignty
 - hence, power to derogate
- Migration procedures are becoming tools for combating terrorism