



International Legal Responses to the Expulsion of Aliens and Stateless People

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Introduction

Roughly 12 million people world-wide are stateless, citizens of no-where, with no legal rights except under international law and the law of the country where they find themselves.¹ Some are refugees from wars. Others have been forced from their homes by governments determined to expel their ethnicity.

Among the best known are the Rohingya people, expelled by their homeland, Myanmar, a UN Member State. Myanmar has expelled virtually all two million Rohingya from its territory in 2017.

The failure of the international community to deal with the crisis within and around Myanmar has caused a host of problems. But there is an avenue for the international community to act.² The forced deportation of the Rohingya from Myanmar to Bangladesh has attracted international attention because of work the United Nations has pursued regarding the legality of the expulsion of aliens from state territory within international legal norms. Much of the recent UN work on the subject of these legal frameworks centers on balancing the legal human rights of those expelled with the legal sovereignty of UN Member States.

Stateless people, which usually means people denied citizenship and legal rights in the country of their birth, are a major problem for the international community. Some UN Member States want *international human rights law* extended to ensure no one can be expelled from any country without recourse to legal remedies. Other UN Member States want to preserve the

sovereign right to kick out large numbers of people who they think are not part of their nation, who are not their people. And between are those who want to protect minorities abroad, but also want to have the right to expel particular people, especially insurgents and terrorists.



Another aspect of the issue are former combatants for Islamic State and their families, many of whom lost their citizenship when they traveled to Syria to support the Islamic State. Tens of thousands are stuck in camps in Syria and Iraq. Their home countries refuse to take

¹ Matt Davis, "There are 12 million stateless people in the world. Who are they?" *Big Think*, 26 August 2019, <https://bigthink.com/politics-current-affairs/stateless-people>

² Smith, M., & Riley, A. (2021). Why Joe Biden Should Help the Rohingya People of Myanmar. *Time Magazine*, 6 January 2021, <https://time.com/5926641/biden-rohingya-myanmar/>

them back, fearing future terrorist attacks. What becomes of them?³

Recent UN resolutions show the difficulty of resolving the issue.⁴ Balancing issues of state power and minority protection has been a flagship issue for the UN stretching back to the League of Nations. The UN has continually recognized the importance of the protection of minorities in states across the world in order to prevent state-sanctioned genocide and abuse. This UN objective of minority protection has been pursued through the Universal Declaration of Human Rights and other human rights initiatives. However, UN action requires the commitment of states across its membership in order to achieve its objectives and the status of minority expulsion explored in the case of is no different.

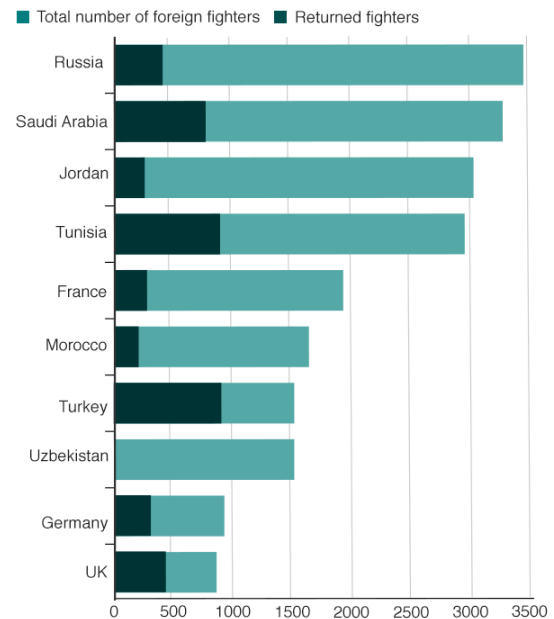
Since 2000, the UN has crafted a framework regarding the expulsion of aliens from states, adopting a bifurcated legal perspective on individuals states can legally expel from their borders and those that are protected under international law. Essentially, the argument put forth is that states need to have options to remove individuals or groups from their borders who do not have a legal right to remain within those borders in compliance with national and international legal norms, commonly derived from criminal or terrorist activity.⁵ However, these contentions for the protection of the rights of states to expel aliens from their borders have taken on new meaning in light of the problems of the current framework as demonstrated by the case of the Rohingya, climate refugees in Africa, and the complex issues within the migration crises in the United States and Europe.

Given the UN's mandate to protect minority rights could be challenged or reified through effective international norm-setting on expulsion regulations and law, adjusting UN legal norms

³ Megan Specia, 'ISIS Cases Raise a Question: What Does It Mean to Be Stateless?' *New York Times*, 22 February 2019, <https://www.nytimes.com/2019/02/22/world/middleeast/isis-shamima-begum-citizenship-stateless.html>

to better address complex issues surrounding deportation is necessary to nip potential issues in the bud.

Nationalities of IS foreign fighters



*Most numbers are approximate and are dated between Mar 2016 and Aug 2017. In the case of Uzbekistan there is no data for returned fighters.

Source: The Soufan Group (Oct 2017)

BBC

History

The need to protect minority rights and to ensure there are some protections for them within the international system has been a thread for UN action since the establishment of the organization in the aftermath of the Second World War on the foundation of the League of Nations. Though the concept of deportation is not a new one it is important to note the legal norms surrounding deportation in the modern sense of the UN lay at the junction of human rights and problems of a new millennium. Key

⁴ *Expulsion of aliens, resolution 75/137*, New York: United Nations General Assembly, 15 December 2020, <https://undocs.org/en/A/75/428>

⁵ United Nations. (2014). *Draft articles on the expulsion of aliens*. Retrieved from https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_12_2014.pdf



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aspects of the League have carried over into the UN's work on human rights and that foundational experience has shaped UN policy in the 21st century, especially regarding issues of expulsion of aliens.

Statelessness

Total population	
12 million ^[1] (2018, est.)	
Regions with significant populations	
Asia and the Pacific	1.582 million registered ^[2]
Africa	715,089 registered ^[2]
Europe	570,534 registered ^[2]
Middle East and North Africa	372,461 registered ^[2]
Americas	2,460 registered ^[2]

Historically, issues of expulsion and minority treatment were of paramount importance for the League of Nations due to the cross cutting of national groups as empires collapsed following the First World War.⁶ While expulsion was certainly not a regular occurrence, states still clamored to protect the rights of foreign citizens and sought to develop mediation practices to protect the rights, property, and movements of those peoples. These actions made up the bulk of the League's work and were one of the principle items carried over into the United Nations when it was founded in the Treaty of San Francisco.⁷ This framework of minority recognition would lead into other

human rights avenues following the establishment of the UN.

The work the UN has done on human rights and codifying the legal norms of the international system amount to some of the most important work the organization has pursued regarding the expulsion of aliens from states, particularly in regards to the establishment of the Universal Declaration of Human Rights. The UNDHR is a critical aspect of the international legal regime for establishing minority rights for those states that have recognized the document, and in the case of the expulsion of aliens creates a ground floor for their rights in consideration of prevailing international legal norms regarding items such as asylum and the settlement of refugees.⁸ Importantly, when it comes to the expulsion of aliens the desires of states needs to be recognized as well.

This area of policy consideration is no different than any other engaged in by the UN for state compliance and policy making, as the organization relies on ready compliance to develop a workable structure for expulsion. Particularly, all major UN frameworks on the prospects of the expulsion of states prioritize the handling of international law and domestic legal codes, while providing for certain exceptions for the variety of cases the UN has deemed it necessary to develop regulations to protect minorities residing within states. Current UN rules provide for the protection of groups from group expulsion, outline the process of expulsion, legal definitions for such action, and a variety of smaller protections to prevent genocide. All-in-all, the provisions for the expulsion of aliens as put forward by the UN provide a groundwork for providing states legal steps to expel aliens while providing aliens

⁶ Matz, N. (2005). Civilization and the Mandate System under the League of Nations as Origin of Trusteeship. *Max Planck Yearbook of United Nations Law Online*. Retrieved from https://www.mpil.de/files/pdf2/mpunyb_matz_9_47_95.pdf 49

⁷ Cottrell, M. P. (2019). 'The League of Nations — the U.N.'s predecessor — was born 100 years ago this month', *The Washington Post*, 10 June 2019,

<https://www.washingtonpost.com/politics/2019/06/10/league-nations-uns-predecessor-was-born-years-ago-this-month/>

⁸ The United Nations. (1948, December 10). *Universal Declaration of Human Rights*. Retrieved from United Nations Documents: <https://www.un.org/en/universal-declaration-human-rights/index.html>



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residing in states some rights and protections under international law.

Current Problem

For all of the provisions and protections granted under the UN system for the expulsion of aliens, there exist persistent problems for the UN. Particularly, since formal discussions of the establishment of a UN framework on the expulsion of aliens began in the early 2000s the legal regime has developed in ways which have compounded some issues related to expulsion in warfare and terrorism. In the midst of this though persist problems associated with forcible expulsions of minorities, stateless peoples, and other migrants.

Initially, the existing legal regime on the expulsion of aliens from the UN possesses three prominent holes within the norms it proposes regarding expulsion from states involved in warfare and terrorism. First, the norms adopted by the UN in 2014 fail to fully describe issues pertaining to the expulsion of individuals residing within states actively involved in conflict warfare. Specifically there exists ambiguity regarding if states are able to expel nationals from any state they are actively engaged in combat with or any other provisions for states in the midst of warfare.⁹ Furthermore, the UN's norms also fail to address national security considerations related to terrorism from refugee groups in consideration to domestic legal norms or systems.¹⁰ Developing cohesion between national and international legal norms on this specific issue is especially pressing in the context of refugees fleeing intense guerilla or terrorist activity, as states fled to could

potentially claim all refugees from a specific state to be a national security risk and thus expel based on domestic national security argumentation rather than in accordance of international legal norms in conjunction with domestic law.¹¹

While the UN legal norms on the expulsion of aliens discusses various avenues of protection for minority and threatened groups, it still falls short in addressing critical areas of protection. Recent developments in Myanmar demonstrate a need to address critical areas of mass expulsion as it allows for the expulsion of groups of individuals predicated on the compliance with existing articles and the domestic legal norms, leaving open a grey area for consideration within expulsion in consideration with the above flaws if a specific group is considered to be a national security risk.¹² In the context of state expulsion especially, this becomes a risk in the context of the vast amount of stateless peoples throughout the global system as they lack any kind of legal protections or advocates outside of the UN, which lacks substantial teeth even in the context of the compliance structure of the UN. The burden of proof for expulsion for the UN is relatively low within the current structures of the UN, leaving open the possibility of abuse regarding expulsions of aliens from states. This is further complicated with the varying amount of stateless individuals within Eastern European states following the 2014 Ukrainian Crisis given Russia's militarization of those groups. Essentially, the laxness of current UN regulations leaves itself open for abuse as seen in the case of the Rohingya where thousands have been expelled from Myanmar and sent to neighboring countries, with some deportations of refugees back to Myanmar from India making headlines.¹³

⁹ Kidane, W. (2017). Missed Opportunities in the International Law Commission's Draft Articles on the Expulsion of Aliens. *Harvard Human Rights Journal*. Retrieved from <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1800&context=faculty> 80

¹⁰ Ibid., 81

¹¹ Ibid., 81

¹² Ibid., 80-81

¹³ Kinseth, A. S. (2019) 'India's Rohingya Shame', *Al Jazeera*, 29 January 2019, <https://www.aljazeera.com/opinions/2019/1/29/indias-rohingya-shame> ; Mahapatra, D. (2020). 'Centre Listened to NHRC on migrant workers and Rohingyas: Justice Dattu', *Times of India*, 24 December 2020,



Role of the United Nations

As the critical actor when it comes to international legal norms and regulations, the UN has a vested interest in developing a cohesive framework to ensure individuals rights are protected and to prevent the abuse of minority groups throughout the international system. The responsibility the UN has to protect minority rights coupled with building international legal norms all states possess a stake within makes up a primary role for the United Nations to commit to developing a workable and enforceable legal code. Developing a set of legal codes has been a principle objective of the UN for years, and in the meantime plays a critical role in enabling minority groups and individuals wrongfully expelled to have a forum to address abuses.

The most prominent way the UN has been involved in these developments remains efforts to develop a resolution from years of reports, research, and negotiations. While work in this area has borne fruit for the UN regarding a series of resolutions that have been accepted and critical publications providing information necessary to understand developments regarding the movements of peoples and their potential expulsion from host countries, the UN's work on issues regarding the motivators for migration is critical for understanding the future of migration. These reports are critical for the development of local and regional responses to the movements of peoples in addition to enabling an understanding of problems as they arise. From a broad perspective then, this fosters

<https://timesofindia.indiatimes.com/india/centre-listened-to-nhrc-on-migrant-workers-and-rohingyas-justice-dattu/articleshow/79933121.cms>

¹⁴ International Law Commission. (2020, February 18). *Analytical Guide to the Work of the International Law Commission*. Retrieved from International Law Commission:

https://legal.un.org/ilc/guide/9_12.shtml#mandate

¹⁵ Ibid.

international cooperation to discuss issues of expulsion and how the various members of the UN are addressing those issues, with much of the General Assembly action on the issue boiling down to support for further research on the subject for members to make informed decisions on expulsion.¹⁴ Unfortunately, this focus on research has not produced any significant results beyond research, leading the last two outcomes of the research of the International Law Commission to be General Assembly votes to continue discussion on the topic for future sessions.¹⁵

Still, the desire of the UN to protect minority and migrant rights has led to the establishment of several compacts to preserve those rights. Compacts like the Global Compact for Migration and the Global Compact on Refugees establish strong baselines for how states should interact with aliens residing or seeking residence within states.¹⁶ Combined, these two compacts provide mechanisms for states and the UN to provide worthwhile solutions on issues of integration, state return, mitigation of harmful drivers of migration, and make migration safer.¹⁷ While not perfectly aligned within all considerations of expulsion, these two compacts coupled with the UNDHR provide a substantial grounding for most interactions on the expulsion of aliens states are likely to come across despite not fully addressing issues of expulsion itself. Discussing the rights of migrants creates some workable foundations for national policies and legal systems while enabling states to meet in international forums to discuss developments within specialized areas. Finally, given the heavy consideration of national security concerns the UN Global Counter-Terrorism

¹⁶ United Nations Refugees and Migrants. (2021). *Global Compact for Migration*. Retrieved from Refugees and Migrants:

<https://refugeesmigrants.un.org/migration-compact>

; United Nations Refugees and Migrants. (2021). *Global Compact on Refugees*. Retrieved from Refugees and Migrants:

<https://refugeesmigrants.un.org/refugees-compact>

¹⁷ Ibid.; Ibid.



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Coordination Compact enables states to work with the UN on issues regarding terrorism, specifically on issues and measures to improve state ability to prevent terrorism.¹⁸ Taken as a whole, these various agencies offer an interesting blend of areas of consideration regarding legal perspectives on the development of the intersection of national security, migrant rights, and the prevention of abuse on peoples that offers insight into potential areas of consideration of the strengthening of legal regimes regarding the expulsion of aliens.

Previous UN initiatives on the Issue¹⁹

Over the past twenty years the UN has developed a series of successes when it comes to the issue of expulsion of aliens, though those successes have largely been confined to the committee. Since the declaration of the pursuit of research on the expulsion of aliens the UN has developed a series of international agreements, resolutions, and draft documents to craft a framework for international law. Several significant areas for consideration on previous UN action are listed below.

UN General Assembly resolution 59/41 (2004) gave credence to the International Law Commission to fully engage with the topic of the expulsion of aliens from an international legal perspective in order to develop a workable

international regime.²⁰ Coupled with **UNGA resolution 55/152 and UNGA 56/82**, these three resolutions laid the foundations for the International Law Commission to pursue regarding the expulsion of aliens from states.²¹ In particular, these agreements gave the Commission the green light to pursue additional research to develop international legal codes on the expulsion of aliens along with the full blessing of the General Assembly.

UN General Assembly resolution 62/66 (2007) carries over much of the efforts to coordinate within the international community on the issue of the expulsion of aliens. This resolution serves to draw particular importance on several key issues for the International Law Commission, notably on the expulsion of aliens, and invites governments within the UN to work with the Commission to develop legal norms for action and research.²²

Draft Articles on the Expulsion of Aliens 2014 serve as an initial iteration on the regulations regarding the expulsion of aliens research thread from the International Law Commission, serving as a first draft on critical issues pertaining to the topic and adopted in 2014.²³ Drawing on a host of legal norms within the UN, this document outlines critical areas for consideration on the topic and draws particular attention to where the limitations of states reside on issues of alien expulsion.

¹⁸ United Nations Office of Counter-Terrorism. (n.d.). *Global Counter-Terrorism Strategy*. Retrieved from United Nations Office of Counter-Terrorism: <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy>

¹⁹ International Law Commission. (2020, February 18). ; International Law Commission. (2015, July 15). *Summaries of the work of the International Law Commission: Expulsion of Aliens*. Retrieved from International Law Commission: https://legal.un.org/ilc/summaries/9_12.shtml

²⁰ International Law Commission. (2015). ; United Nations General Assembly. (2004, December 16).

Resolution adopted by the General Assembly on 2 December 2004 (A/Res/59/41),

<https://legal.un.org/docs/?symbol=A/RES/59/41>

²¹ International Law Commission. (2015, July 15).

²² United Nations General Assembly. (2008, January 8). *Resolution Adopted by the General Assembly on 6 December 2007 (A/RES/62/66)*, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/467/73/PDF/N0746773.pdf?OpenElement> 2

²³ United Nations. (2014). *Draft articles on the expulsion of aliens*.



Country and Bloc Positions

Canada has become a top destination for asylum seekers, refugees, and migrants from across the world for the 21st century. This status as a prime destination for settlement has not wholly carried over into the realm of the expulsion of aliens from Canadian territory though, with Canada famously not accepting refugees attempting to cross the US border in 2020 and early resumption of deportations in the midst of the Coronavirus Pandemic.²⁴ In terms of international law, Canada has pushed forward international codes through a series of international court cases regarding expulsion and cultivated a ubiquitous reputation of being unflinching on issues of expulsion.

China has maintained the importance of state sovereignty while also pushing for more concrete phrasing from the International Law Commission on the expulsion of aliens. Primarily pursued to strengthen the legal framework pursued by the Commission, Chinese perspectives take issue with some key areas for the protection of minority groups within the international system regarding expulsion, extradition, and detainment.²⁵

The European Union represents a complex body on the issue of the expulsion of aliens.

Ostensibly the variety of treaties making up the foundation of the European Union provide a ready framework for the expulsion of aliens, often prohibiting a variety of expulsion based on human rights concerns and provisions regarding the protection of refugees; however, the EU also has had increasing anti-immigration sentiment within a host of its members.²⁶ Thus, in terms of international legal codes, the EU is moving in a direction towards the establishment of solid international law but remains subject to domestic inclinations as to what can be done.

The Non-Aligned Movement (NAM) represents another interesting area of consideration within the frameworks of the UN. The 120 Member States of the UN's largest voting bloc includes most countries of Africa, Latin America, South and Southeast Asia. A bulk of the states within it view the strengthening of international legal regimes regarding the expulsion of aliens to be strengthened alongside other legal norms of the UN regarding the protection of human rights.²⁷ In particular, many of these states argue for a substantial need for clarity for when, where, and how these legal regimes on expulsion are to be applied and enforced. Overall, the movement is focused on the development of a more concrete balance between state sovereignty and the protection of human rights.

²⁴Coletta, A. (2020). 'Canada is turning asylum seekers away at the border. In the U.S., they face deportation', *The Washington Post*, 28 December 2020, https://www.washingtonpost.com/world/the_american/canada-asylum-coronavirus-border-deportation/2020/12/28/28a8c588-40cc-11eb-9453-fc36ba051781_story.html ; Lowrie, M. (2020). Coronavirus: Refugee advocates criticize Canada's decision to resume deportations during pandemic. *Global News*, 2 December 2020, <https://globalnews.ca/news/7497442/quebec-asylum-seekers-deportation-pandemic/>

²⁵Jielong, D. (2010, October 27). *Statement by Mr. Duan Jielong Legal adviser Ministry of Foreign Affairs The People's Republic of China At the Sixth Committee of the 65th Session of the UN General*

Assembly On the Report of the International Law Commission. Retrieved from Permanent Mission of the People's Republic of China to the UN: <http://chnun.chinamission.org.cn/eng/chinaandun/legalaffairs/t778352.htm>

²⁶Lambert, H. (2001). *The Position of Aliens in Relation to the European Convention on Human Rights*. Council of Europe Publishing. Retrieved from [https://www.echr.coe.int/LibraryDocs/DG2/HRFILE_S/DG2-EN-HRFILES-08\(2001\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILE_S/DG2-EN-HRFILES-08(2001).pdf) 7-13

²⁷United Nations General Assembly. (2017, October 12). *Speakers Seek Balance Between National Security, Migrant, Refugee Human Rights, as Sixth Committee Takes up Expulsion of Aliens*. Retrieved from United Nations Meetings Coverage and Press Releases: <https://www.un.org/press/en/2017/gal3550.doc.htm>



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The United States has maintained a course for the development and compliance with international norms and obligations concerning international law on the expulsion of aliens historically. The U.S. government has maintained a commitment to maintaining the right to expel certain aliens from its borders while maintaining protections for those seeking asylum. Since the 2016 Presidential Election though, the U.S. has become known for harsh immigration practices including expulsions of aliens and gained international notoriety because of the treatment of asylum seekers, refugees, and migrants.²⁸ Still, the U.S. remains committed to developing international norms and working with the U.N. to codify international law within the Commission. The impact of the 2020 election on this issue remains to be seen.

Some Proposals for Action

The subject of the proper expulsion of aliens from states is something of interest to all members of the United Nations, as each state desires to maintain their own authority over their borders. Still, the international community and the UN have a mandate to protect minorities, refugees, and stateless peoples from abuse. What follows are some possibilities for UN action:

- **Create expulsion criteria specific to national security**, the expulsion of terrorists and other national security threats makes up a bulk of state arguments against new international law codes. Working with a new set of

definitions specific to national security may help address those concerns.

- **Establish regional compacts on expulsion** to create tailored solutions to problems for specific states regarding the expulsion of aliens from states.
- **Modify international legal norms to empower states** to expel aliens in all cases in order to preserve state sovereignty without restriction other than from existing refugee compacts.
- **Develop a cadre of international expulsion lawyers** to preserve the rights of all aliens threatened with expulsion no matter the country to work within domestic legal systems.
- **Codify a new international body to handle all migration issues** as the continual shopping out of issues regarding the movement of peoples has simply become too legally confusing for states to engage in. A few years of activity from a new parent organization could provide important insight for future legal codes.
- **Do nothing**, make states who expel people and leave them stateless happy. It'll all sort itself out in bilateral agreements and with a majority of shipping lanes being in international water the likelihood of enforcement issues popping up isn't that big of a problem!

²⁸ Felter, C., Renwick, D., & Cheatham, A. (2020, June 23). The U.S. Immigration Debate. *Council on Foreign Relations*. Retrieved from

<https://www.cfr.org/backgrounder/us-immigration-debate-0>



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