ABU LAW JOURNAL (ISSN: 3141-2521)
Faculty of Law, Ahmadu Bello University, Zaria

Article History:
Received: 26 March 2026
Revised: 18 August 2026
Accepted: 22 August 2026
Published: 28 August 2026

Article Info:
DOI: https://doi.org/10.67203/abulj.2026.t3xkem1a
Journal Homepage: https://abulj.org.ng
Volume: 44, No. 1, 2026
Pages: 127-139

CONCEPTUAL REVIEW AND HISTORICAL FRAMEWORK OF THE PROHIBITION OF COLLECTIVE EXPULSION IN PUBLIC INTERNATIONAL LAW

Ogholaja Edebharia Olayemi *, Samuel Ugbo**

Abstract

The prohibition of collective expulsion is a safeguard in international law against the arbitrary removal of foreigners without consideration of their individual circumstances. Despite its recognition in international law, there are issues regarding the evolution and meaning of the terms "collective and "mass expulsion" in relation to the protection of national security by Sovereign States. This uncertainty raises questions about the extent to which international law has shifted States' absolute powers in migration control towards a framework governed by human rights obligations. The purpose of this study is to examine the concept and historical development of collective expulsion, to clarify the relationship between collective and mass expulsion, and to trace the evolution of the prohibition by exploring the gradual development of legal norms from ancient practices to modern international and regional human rights Conventions. It further examines the relationship between State Sovereignty and the Rights of Migrants in the context of expulsion. The paper adopts a doctrinal research methodology relying on primary and secondary sources. It uses a qualitative and analytical approach to interpret legal principles and historical developments relating to the prohibition of collective expulsion. The study finds that collective and mass expulsion are used interchangeably to describe the removal of foreigners without due consideration of their individual circumstances. It further finds that the development of international human rights law has limited the exercise of State power to expel foreigners by requiring individual assessment and procedural safeguards. The study concludes that the prohibition serves to protect the dignity and rights of non-nationals. It recommends that the State should protect human rights while it acknowledges the concerns of national security. It further suggests a balancing for the protection of human rights while protecting state sovereignty.

Keywords: Collective Expulsion; Historical Framework; International Law; Prohibition.

* Faculty of Law, Dennis Osadebay University, Asaba, Delta State, Nigeria; ogholaja.olayemi@dou.edu.ng
** Faculty of Law, University of Delta, Agbor, Delta State, Nigeria. Corresponding author: samuel.ugbo@unidel.edu.ng, +2348080540346, ORCID: 0009-0004-4997-0486

1.1 Introduction

The prohibition of collective expulsion in public international law is a multifaceted concept that has undergone significant development from its historical foundations in State sovereignty to its contemporary recognition as a human rights obligation. Collective expulsion generally concerns the removal of a group of foreigners without a genuine and individual examination of the circumstances of each person affected. It is therefore distinguishable from an ordinary lawful expulsion in which the State considers the circumstances of the individual concerned before deciding to remove him or her. Lena Riemer observes that the prohibition of collective expulsion has developed into an important principle within international law regulating the treatment of foreigners. [1]Article 4 of Protocol No 4 to the European Convention on Human Rights (ECHR) expressly provides that 'collective expulsion of aliens is prohibited', thereby giving the prohibition a specific treaty foundation within the European human rights system. [2]

Historically, the treatment of foreigners, including their admission, residence and expulsion, was regarded largely as an aspect of the sovereign authority of States. The power of a State to determine who could enter or remain within its territory was therefore considered a matter of State discretion primarily. The emergence and progressive development of international human rights law, however, have subjected the exercise of this power to increasing legal constraints. This development raises the question whether, and to what extent, international law has shifted the traditionally broad power of State discretion in the treatment and expulsion of foreigners towards a framework governed by binding human rights obligations.

The study adopts both primary and secondary sources. It adopts relevant international legal instruments and scholarly articles to address the problem from other perspectives. One significant approach has been to examine the prohibition from its historical and conceptual foundations. Scholar like Katharina Riemer, provides a comprehensive examination of the prohibition of collective expulsion in public international law and considers its development within the broader legal framework regulating the treatment of foreigners. Her work demonstrates that the prohibition cannot be adequately understood without considering the historical relationship between State sovereignty, expulsion and the emergence of international human rights protection. Other scholars have focused on the distinction between collective and individual expulsion and the importance of individualized assessment. This approach shifts attention away from the numerical size of the group and towards the procedure adopted by the State in making removal decisions. Under this perspective, the critical issue is whether the circumstances of each individual have been examined before removal or whether the persons concerned have simply been treated as a group. A further body of scholarship has examined the prohibition within the context of migration crises and border control. This scholarship is particularly important because contemporary migration movements have placed considerable pressure on States to adopt expedited procedures for

[1] Lena Riemer, 'The Prohibition of Collective Expulsion in Public International Law' (PhD thesis, Freie Universität Berlin 2020) https://refubium.fu-berlin.de/handle/fub188/27681 accessed 15 August 2026.

[2] Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (adopted 16 September 1963, entered into force 2 May 1968) ETS 46, art 4.

dealing with large numbers of foreigners. The resulting tension has required international and regional courts to determine the point at which legitimate migration control becomes incompatible with the prohibition of collective expulsion.

Despite these scholarly contributions, uncertainty remains concerning the precise boundaries of the prohibition. Existing scholarship has contributed substantially to the understanding of its historical development, conceptual meaning and judicial interpretation, but continuing developments in migration control demonstrate the need for further examination. In particular, the relationship between the prohibition and the continuing sovereign authority of States requires closer analysis. This study therefore seeks to contribute to the existing literature by examining whether the development of the prohibition represents a fundamental transformation of the traditional State power to expel foreigners and, if so, the extent of that transformation.

1.2 Conceptual Clarifications and Theoretical Framework

The terms collective and Mass expulsion in the prohibition of collective expulsion are defined differently in the African Charter on Human and Peoples' Rights and also in the interpretation of the European Court of Human Rights. According to the African Charter, mass expulsion is defined as any removal of non-nationals directed at groups based on nationality, race, ethnicity or religion, which is prohibited under Article 12(5).[3] The European Court of Human Rights on the other hand define collective expulsion as any measure that compels a group of aliens to leave a country without a reasonable and objective examination of each case. [4]The two terms 'Collective and Mass Expulsion' are often expressed interchangeably in different treaties.[5] For example, the European Convention for Human Rights, the Inter-American Convention and the Arab Convention, among others, use the express term collective expulsion, while the African Charter of Human and Peoples' Rights, on the other hand, specifically mentions the term mass expulsion instead of collective expulsion. Thus, the question that comes to mind is: can the two terms be used interchangeably to mean the same thing? According to scholars, there are no distinct solutions as regards whether the two terms expressed are of the same meaning. Deumeland states that the terms should be distinct based on the population or seize of the group, and can only be referred to as collective expulsion if foreigners are jointly expelled by a state according to their membership to a particular society or common traits.[6] In contrast, Henckaerts rejects this distinction, emphasising that the distinction would result in an unjustifiable disparity of the dual standard. He states that the fundamental human rights of every foreigner is paramount and that a different meaning of the two terms may be detrimental to foreigners and against their rights.[7]

[3]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 12(5).

[4] Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (adopted 16 September 1963, entered into force 2 May 1968) ETS 46, art 4.

[5] UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, UN Doc HCR/GIP/03/05 (4 September 2003) para 14.

[6] Jean-Pierre Deumeland, *Das Verbot der Kollektivausweisung von Ausländern* (Duncker & Humblot 1977) 185.

[7] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Volume 1, Rules* (Cambridge University Press 2005) 457.

This distinction, which is being promoted by Article 13 of the International Covenant on Civil and Political Rights, has been criticised by the Committee on Fundamental Human Rights.[8] The committee is of the view that the terms "collective and Mass expulsion" could be used simultaneously to denote separate meanings. In interpreting Article 13, the human rights committee found in its General Comment No.15 that the mentioning of both terms in the treaty is incompatible with the principle as contained in the article. [9]This implies that both expressed terms may mean two different things and would not satisfy the purpose for which the law was made. Accordingly, the committee did not agree with the distinction of the expressed term "collective and mass expulsion" and must have seen it as a separate concept under the internation covenant for civil and political right.[10] while Article 4 Protocol 4 of the ECHR and the Arab Charter for Human Rights may have mentioned "collective expulsion", the African Charter for Human and People's Rights however have used the term "mass expulsion" to mean the same thing in the context of the prohibition. Consequently, the question that will come to mind is why both terms are being used interchangeably by the various regional treaties. The fact is that the French version of the convention, which was first written in French, was translated into English and, in the process of translating, an error of "mass expulsion" was used instead of "collective expulsion". [11] Thus, the mere translation error explains the difference in the expressed terms collective and mass expulsion to mean the same.[12] Therefore, we can find that the often coincidental use of mass expulsion in the African Charter can be said to have strengthened the argument of the terminology used in the various regional conventions, which inferred that there is no legal difference between mass and collective expulsion and that both terms refer to a similar size of a group and that there is no minimum or maximum number required.[13] It is therefore expedient to state that the two terms are used interchangeably, as every collective expulsion is also referred to as mass expulsion, as one term is used to replace the other to have the same meaning.[14]

Having established the conceptual relationship between collective and mass expulsion, the next issue concerns the extent to which the prohibition is recognised and binding upon States under international law. Conversely, it is pertinent to note that the principle in the prohibition of collective expulsion binds over 174 sovereign states either by international or regional treaties through ratification.[15] These conventions are referred to as the American convention for human

[8] UN Human Rights Committee (HRC), 'General Comment No 15: The Position of Aliens Under the Covenant' (11 April 1986) UN Doc HRI/GEN/1/Rev.1 at 18 (1994) para 10.
[9] Ibid.
[10] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 13.
[11]Nsongurua J Udombana, 'So Far, So Fair: The Local Remedies Rule in the African Human Rights System' (2000) 40(3) Virginia Journal of International Law 765, 778.
[12] B Obinna Okere, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems' (1984) 6(2) Human Rights Quarterly 141, 155.
[13] Lena Riemer, 'The Prohibition of Collective Expulsion in Public International Law' (PhD thesis, Freie Universität Berlin 2020) ch II, 45 <https://refubium.fu-berlin.de/handle/fub188/27681>.
[14]UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, UN Doc HCR/GIP/03/05 (4 September 2003) 7, para 14.
[15] Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press 2016) 4–5.

right, the African Charter for human and peoples right, the EU fundamental right Charter, the European Convention on human right, the common wealth of states Convention for human right and fundamental freedom, Arab charter on human right, the UN migrant worker convention and the International Covenant on Civil and Political Rights. However, 25 states have yet to ratify the above-listed conventions. These states include Myanmar, Nauru,China and Cuba. [16]
The extent of treaty participation has also generated scholarly discussion concerning the relationship between human rights protection and State commitment to international treaties. According to scholars, States that are parties to the international convention against the prohibition of collective expulsion are usually States with good human rights records, while States which are not bound by the principle against collective deportation are likely States with poor human rights records. These are States that have yet to rectify the conventions against collective expulsion. For instance, Hathaway finds that human rights are a priority and that it is only states with a greater preference for human rights that are likely to join the treaty against the forceful expulsion of foreigners from host countries. [17] She further states that the ratification of the treaties by these sovereign states with high human rights protection for foreigners is a huge gain for the international community.

Beyond treaty commitment, however, the legal nature of the prohibition raises a further question as to whether the prohibition has acquired a broader status under international law. Maurice Kamto, another International human rights scholar, after studying treaty practice and case law, explains the prohibition of collective expulsion as a general principle of international law that safeguards the rights of foreigners or migrants from their host countries.[18] Kamto in his ninth report on the nature of collective expulsion, acknowledges the principle of the prohibition of collective expulsion as binding internationally and should be applicable globally as France, Germany and Switzerland are already in recognition of the prohibition as binding between member states of the European Union.[19]

Nevertheless, the proposition that the prohibition has a general or customary character is not universally accepted, and this is particularly evident in the Australian position. However, the nature of the prohibition of collective expulsion may be seen differently in Australia as the principle of the prohibition of collective expulsion is merely seen as customary and not of international law or standards, even though the prohibition is still recognized as a legally binding principle under international human rights law. [20] Australia as a nation has found that the prohibition only constitutes customary international law under Article 38(1)(b) of the Statute of the International Court of Justice. [21] Contrary to this view, Kamto urged that the principle of the prohibition of collective expulsion should be a nature of general principle of international law

[16] Sofia Gomes, *The Prohibition of Collective Expulsion in International Law* (Publisher 2020) 10–11.
[17] Oona A Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' (2007) 51(4) Journal of Conflict Resolution 588, 595.
[18] Maurice Kamto, *Third Report on the Expulsion of Aliens*, UN Doc A/CN.4/581 (19 April 2007) para 115.
[19] Maurice Kamto, *Ninth Report on the Expulsion of Aliens*, UN Doc A/CN.4/670 (25 March 2014) para 39.
[20] Natalie Klein, 'The Implementation of International Human Rights Law in Australia' in Donald R Rothwell and Emily Crawford (eds), *International Law in Australia* (3rd edn, Lawbook Co 2017) 359, 373–374
[21] Tim Stephens, 'Customary International Law in Australia' in Donald R Rothwell and Emily Crawford (eds), *International Law in Australia* (3rd edn, Lawbook Co 2017) 91, 102–103 (or pinpoint ch 2, 12–13).

that is recognized by responsible and civilized states under article 38(1)(c) of the ICJ Statute.[22] The disagreement therefore demonstrates that the legal character and binding nature of the prohibition remain important issues for examination. To reconcile the discrepancies, there is no established law that stipulates that the principle of the prohibition of collective expulsion must be of international standard or customary law, as it is not contained under any provision to ascertain if the prohibition is one of international or customary law.[23] Our concern for the study is the prohibition's binding nature and the prohibition's scope of protection.

1.3 Historical Relevance of the Prohibition of Collective Expulsion:

The Principle of collective expulsion, rooted in international human rights law, is to safeguard individuals from being arbitrarily expelled or deported as a group without proper individual assessment.[24] This Principle has been reaffirmed in various International instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and Regional Treaties to include the European Convention on Human Rights, the African, American and the Arab Charter for Human Rights, among others.[25] Scholars have extensively examined the legal work surrounding collective expulsion, emphasising its importance in upholding the Rights to due process and protection from arbitrary interference with family Life.[26] They often highlight landmark cases before International and Regional Human Rights bodies which clarifies the scope and application of the prohibition.[27] Collective expulsion on its whole often addresses the challenges in the implementation and enforcement including issues related to State Sovereignty, Migration and the balancing of National Security interests with Human Right obligations. [28]

The origin of collective expulsion could be traced to violent conflict, human right violation, marginalization of some specific group in the entire globe.[29]Ordinarily, the State uses collective expulsion for nation-building and deterrence. In the same vein, collective expulsion was used as a weapon by the State to commit xenophobia and racism. Thus,

[22] Maurice Kamto, *Third Report on the Expulsion of Aliens*, UN Doc A/CN.4/581 (19 April 2007) para 115.
[23] Brian D Lepard, *Customary International Law: A Theory with Practical Applications* (Cambridge University Press 2010) 217–218.
[24] J F Doerfel, 'Prohibition of the Collective Expulsion of Aliens (Article 4 Protocol 4)' in Javier García Roca and Pablo Santolaya (eds), *Europe of Rights: A Compendium on the European Convention of Human Rights* (Brill Nijhoff 2012) 500.
[25] Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (opened for signature 16 September 1963, entered into force 2 May 1968) ETS 46, art 4.
[26] Frances Nicholson, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and Family Reintegration* (UNHCR Legal and Protection Policy Research Series PPLA/2018/02, 2018) 12.
[27] European Convention on Establishment (opened for signature 13 December 1955, entered into force 23 February 1965) 529 UNTS 141 (ETS No 19) art 3.
[28] International Organization for Migration, *Glossary on Migration* (International Migration Law N° 34, IOM 2019) 45–48.
[29] Randall Hansen, 'State Control: Borders, Refugees, and Citizenship' in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 253, 255.

collective expulsion has been in existence globally, with many foreigners and stateless people being expelled for various and similar offences.[30]Scholars will have it that the practice of collective expulsion started from the ancient era to the modern days of expulsion. In ancient times, collective expulsion first occurred in 'SPARTA '; it was named 'XENELASIA ', meaning foreign individuals deemed to be injurious to the public and are collectively expelled for public control and Security.[31]

The establishment of the AIPING Court in ancient Iceland serves as a Judicial system that could declare criminals guilty who are found to be out of laws, thereby making them lose their Right to Property, hospitality, and the Right to remain within the Borders. The ordinary meaning of the term "out of laws" refers to a ban of unwanted persons who belong to a particular Territory. According to scholars, this has remained a form of practice to the expulsion of some persons belonging to a particular Territory.[32]

Another form of expulsion practised, as described by scholars in the old, was for State representatives seeing Migrants as strangers and barbarians.[33] Siep Stuurman, a strong critic of the ideology, quoted, "Peopleare barbarians but were thinkable to see them as fellow human being when they tend to Communicate Trade with them". Stuurman perspective of individual aliens has today metamorphosed into what is referred to as the power of State Sovereignty. Each Society through their representatives decides who has the Right to enter and reside in their Country.[34]

In view of the foregoing and as highlighted above, collective expulsion has been practised in the old days before the modern practice of Mass expulsion. This has shown that from the old days, States have held unto the power to decide who is included and, until today, has become the basis for State Sovereignty. For example, in 1947 and 1949, over 750,000 Arab Palestinians were forcefully expelled from Israel [35] while States like Poland and Czechoslovakia expelled 12 million Germans in the aftermath of the Second World War as part of the creation of new nation-states. [36] Xenophobia and racism were another form of expulsion used by states to collectively expel the Jews from England in 1290. [37] as they were denied the right of citizenship in the whole of Europe and were the direct victims of collective

[30] Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford University Press 2015) 7 fn 24, 21–44.
[31]Randall Hansen, 'State Control: Borders, Refugees, and Citizenship' in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 253, 255.
[32] Alþingi (Parliament of Iceland), *Alþingi: The Parliament of Iceland* (Information Brochure, Government of Iceland 2018) <https://www.althingi> .is accessed 16 August 2026.
[33] Siep Stuurman, *The Invention of Humanity: Equality and Cultural Difference in World History* (Harvard University Press 2017) 3.
[34] Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford University Press 2015) 7 fn 24, 21–44.
[35] Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (2nd edn, Cambridge University Press 2004) 55–57.
[36] R. M. Douglas, *Orderly and Humane: The Expulsion of the Germans after the Second World War* (Yale University Press 2012) 1–5.
[37]Karl Korinek and Michael Holoubek (eds), *Österreichisches Bundesverfassungsrecht* (Springer 2003) 2.

expulsion in the 20th century.[38]

The Romans were also victims of collective expulsion, as they were expelled from the Meissen region in Germany, and in the year 1943, the whole of the Romans were collectively returned from Milan and were banished from the territory by the French Monarch King, Liouis XLL. [39] Currently, most states are engaged in mass expulsion of foreigners as a legal means of return through their national law. Spain, for example, implemented the pushback policy through their national law to discriminate against migrants at the border. [40] The Greek government had also responded with the mass return and unlawful detention of migrants, with the use of excessive, widespread violence, including blank bullets and live ammunition, to return unlawful migrants after the Turkish government opened its side of the border, allowing large numbers of people to cross simultaneously. [41]

The return of migrants from Lithuania to Belarus during COVID-19 was another form of modern expulsion used by states to return migrants.[42] The return of migrants by Greece authority during COVID-19 was a huge setback, as African migrants were seen being returned by border authorities, whereas other skilled workers from other member states were allowed admission into the territory. [43] Similarly, in recent times, the trump administration in 2019 engaged in mass deportation of which over 30,000.43 migrants were expelled from the United States, and currently, there are mass deportations of undocumented migrants from the United States.[44] To this day, other states, most especially the member states of the European Union, are still engaged in unlawful and indiscriminate deportation of migrants in their territory through their national and local laws. [45] Today, international communities are working out modalities to address the issue of mass expulsion of migrants through different regional and international treaties to balance national security and human rights.

Relatively, the Convention relating to the Status of a Refugee, also known as the Geneva Convention of 1951, is one of the major human rights treaties established to address the issue of Protection of the Rights of Migrants. However, the personal scope of this guarantee cannot be said to be absolute, as it has not fully remedied the Protection of human rights since its Powers are limited only to those present in a Particular Territory and not extended to Foreigners. [46] The principle did not provide for the Protection of economic Migrants moving

[38] Jacob Howley, 'Unlocking the Fortress: Protocol No. 11 and the Birth of Collective Expulsion Jurisprudence in the Council of Europe System' (2006) 21 Georgetown Immigration Law Journal 111, 112.
[39] Adriano Duque, *The Expulsion of the Roma from Milan in 1943* (2017) 12–15.
[40] Anaïs Faure Atger, *Border Control and Right to Life: The Spanish-Moroccan Border* (2020) 10–12.
[41] Siep Stuurman, *The Invention of Humanity: Equality and Cultural Difference in World History* (Harvard University Press 2017) 3.
[42] Gabriella Nagy, *Push-Backs at the Eastern Border: A Study on the Readmission Practices of Lithuania During the Covid-19 Pandemic* (2021) 12–15.
[43] Georgios Karyotis, *Covid-19 and the Securitization of Migration: The Case of Greece* (2021) 15–18.
[44] Lesley Wroughton, 'U.S. to Sharply Limit Refugee Flows to 30,000 in 2019' *Reuters* (17 September 2018)`<https://www.reuters.com/article/us-usa-immigration-pompeo/u-s-to-sharply-limit-refugee-flows-to-30000-in-2019-idUSKCN1LX2HS> accessed 16 August 2026.
[45] Sergio Carrera, *Mass Expulsion in the European Union: A Study of the Compatibility of National Laws with EU Law* (CEPS Research Paper, 2019) 15–18.
[46] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 1(A)(2).

from one Territory to another, nor did it make any provisions for internally displaced persons. This lacuna became an issue that needed to be addressed after years of adoption of the Convention. The European Convention for Human Rights, established in 1950, was able to first address the issue of expulsion of foreigners on a regional level, but its scope of Protection was only limited to Citizens of its member States.[47]. But with the drafting of Protocol 4 to article 4 of the European Convention for HumanRightin1963, the Protective Right of Migrants was codified followed with other existing Regional Treaties like the African, Arab and the American Charter for Human Rights, International Treaties under the United Nations Charters, the Vienna convention of the law of Treaties and the Human Right Commission of the Common wealth of Independent States.[48]

1.4 The Reciprocal relationship between State Sovereignty and Migrants Rights in Public International Law

The principle of collective expulsion rooted in International human right law is to safeguard individuals from being arbitrarily expelled or deported as a group without proper individual assessment. [49]This Principle has been reaffirmed in various international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and Regional Treaties such as the European Convention on Human Rights, the African, American and the Arab Charter for Human Rights, among others. [50] Scholars have extensively examined the legal work surrounding collective expulsion emphasizing its importance in upholding the Rights to due process and protection from arbitrary interference with family Life.[51] They often highlight landmark cases before International and Regional Human Rights bodies which clarify the scope and application of the prohibition.[52]

The discussion of the reciprocal relationship between state sovereignty and human rights entails the need to address the challenges in the implementation and enforcement of migration measures, with the balancing of state sovereignty as to national security interests and human rights in the Prohibition of collective expulsion.Collective expulsion has been practised in the past before the modern practice of Mass expulsion. This has shown that from the olden days, States have held unto the power to decide who is included and, until today, it has

[47] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33(1).

[48]European Convention on Establishment (opened for signature 13 December 1955, entered into force 23 February 1965) 529 UNTS 141 (ETS No 19)

[49] JFD Alba, 'Prohibition on the Collective Expulsion of Aliens (Article 4 Protocol 4)' in Javier García Roca and Pablo Santolaya (eds), *Europe of Rights: A Compendium on the European Convention of Human Rights* (Brill Nijhoff 2012).

[50]Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (opened for signature 16 September 1963, entered into force 2 May 1968) ETS No 46, art 4.

[51]Frances Nicholson, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition* (UNHCR 2018).

[52]European Convention on Establishment (opened for signature 13 December 1955, entered into force 23 February 1965) 529 UNTS 141 (ETS No 19).

become the basis for State Sovereignty. But by the end of the Second World War, the protection of individuals increasingly gained significance in International law, limiting State Sovereignty.[53] Thus, there are different views of various scholars on the discrepancies between State Sovereignty and Migrants Rights in expulsion, Asylum and Migration control in International law.[54] In this view, International law scholars and authors have reflected upon the diminishing State Sovereignty as triggered by the evolution of Migrant's Rights. They have all argued a particular question from different perspectives and have come to various conclusions on how Migrant's rights limits State Sovereign Right to determine the admission and expulsion of foreigners, and how, in turn, states have reacted or counteracted to this change.[55]

One of the first most significant scholars that support State Sovereignty Right over Migrant's rights is Marttik Koskenniemi who in his book titled "*History of International Sovereignty and Property*" attributes Sovereignty in International law as a means of freedom by State to apply their domestic law, therefore sees Sovereignty as an important prerequisites any State or entity must possess to qualify as a State for the purpose of determining the admission and expulsion of foreigners. However, this theory acknowledges the freedom and Sovereignty of the State but fails to imbibe State Sovereignty Right to admit and expel foreigners and the protection of Migrant's right. The theory fails in its entirety, as it did not give any consideration to the protection of Migrant's Rights.[56]

One scholar who has proposed a balancing approach between State Sovereignty and Migrant's right is Rainer Baubock. Baubock, a political theorist and expert in Migration studies, has contributed significantly to the debate on the tension between State sovereignty and the Rights of Migrants. In his work, titled "*The Political Rights of Migrants in Disputed Sovereignty: A Global Citizenship Perspective*", Baubock argues for a normative framework that balances the legitimate interests of States in regulating Migration within the Human Rights and interests of Migrants. He advocates for a system that respects the Sovereignty of States to control their Borders and manage Migration while also ensuring that Migrants are afforded basic Rights and Protections. Baubocks approach emphasises the need to strike a balance between the autonomy of States, recognising that both are important and legitimate in drafting Migration policies. This has given rise to the development of a more inclusive rights-based approach to Migration Management. Though Baubock theory gained significant recognition in Migration advocacy, it failed to make more entry to feasibility. The theory is said to be idealistic and not feasible in practice especially considering the reluctance of many States to relinquish Sovereignty over Migration Policies. More also, some critics have argued on the fact that many states have in recent engaged in Migration control within their State

[53] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 1(A)(2).
[54] Maurice Kamto, *Third Report on the Expulsion of Aliens* (2007) UN Doc A/CN.4/581, para 115.
[55]Michael D Shear and Zolan Kanno-Youngs, 'Trump Slashes Refugee Cap to 18,000, Curtailing U.S. Role as Haven' *The New York Times* (26 September 2019) <https://www.nytimes.com/2019/09/26/us/politics/trump-refugee-cap.html> accessed 16 August 2026.
[56]Rainer Bauböck, *Democratic Inclusion: Rainer Bauböck in Dialogue* (Oxford University Press 2017).

Territory by exercising State Power over Migrants Rights for the interest of Economic concerns and National security. This therefore makes it very challenging to implement Baubock's vision of balancing Sovereignty with Migrant's Rights. While Baubock opined for a proper balancing of State Sovereignty and the protection of Migrants, there are challenges in its implementation and acceptance by the international community.[57]

Another scholar who criticises the diminishing rights of States regarding admission and expulsion is John Rawls, whose opinion is in favour of the State's strong right to control its Territory. He justifies this approach by stating that a democratic society must constitute a complete and closed social system that is self-sufficient. [58] Rawls believes that entering Territory could only be by Birth and exiting could only be by Death. The view was at the time against the massive movement of Refugees from Kosovo and Bosnia in the early 1990s. In his book titled "*The Law of Peoples",* Rawls's argument was for a Democratic Society to be a complete and closed system. In his view, individuals are members of a certain people of bounded communities. He argues in favour of a strong State Prerogative when it comes to migration, as he views it as the government's responsibility to control the size of its population. He clarifies that people have the Right to limit immigration, as the government must protect the people's Political Culture and its constitutional principles. Thus, Rawls rejects the ideal of diminishing State Sovereignty in the area of Migration, arguing for the continuation of states' strong rights to control admission and expulsion processes, which reflects the international law governing the movement of people across the Border.
However, Rawls's theory is primarily focused on domestic justice rather than Global Justice. This limitation may overlook the broad systemic injustices that contribute to migration, such as Economic inequality, conflict and environmental degradation. It also borders on mobility, as Rawls does not fully address the Rights and Freedoms of individuals to move across Borders in search of better opportunities or to escape persecution, which limits its applicability to the complexities of Migration. In its generality, while Rawls theory provides for full Sovereignty of State control, it has its limitations in addressing the Rights of Migrants within the context of State control. Therefore, there is the need for additional perspectives needed to address the complexities and injustices faced by Migrants worldwide.

Seyla Benhabib a Philosopher and Scholar in his Book titled "*The Rights of Others: Aliens, Residents and Citizens" explores the ethnical and political dimensions of Migration*, Citizenship and belonging in Contemporary Society. He further examines the tension between State Sovereignty and the Rights of Migrants therefore advocating for an inclusive approach to Migration Policies. It addresses the issues of State Sovereignty and migrant's right. Benhabib argues that state must adopt a more hospitable approach towards Migrants by recognizing Humanity and affording them certain Rights and protections. He contends that hospitality should be a guiding principle in shaping policies by emphasizing the ethical obligation of States to welcome and accommodate Migrants rather than merely asserting their

[57]Rainer Bauböck, *Democratic Inclusion: Rainer Bauböck in Dialogue* (Oxford University Press 2017).
[58]John Rawls, *Political Liberalism* (Columbia University Press 1993) 135–136.

Sovereignty to control borders. Benhabib challenges the traditional notions of State Sovereignty advocating for a more inclusive and compassionate approach towards Migrants. Benhabib view is that the absolute power for State control over Migration has been delegitimized through international law. [32]Benhabib further states that in spite of the absolute Right of Migrants over State to control their Territory, State is still unwilling to give up Sovereignty and to heed to other guarantees conferred on migrants under international law. Consequently, States have implored the Detention and deportation strategy to enforce absolute Power over migrant's Rights under international law. However, while Benhabib view of hospitality offers a compelling alternative to Traditional approaches to Migration and Sovereignty, it fails to show concerns for National Security.[33] The theory of hospitality has not provided clear guidelines on how to balance the Rights of Migrants with theinterestofthehostStates.Thereare alsoconcernsthatahospitality-based approach may be exploited by Migrants or Human traffickers who will take the advantage of generous hospitality policies for their own gain. While Benhabib view of hospitality offersvaluable perspective on Migration and Sovereignty, it is not without its practical and theoretical limitations.

Similarly, Jurgen Habermas a prominent German Philosopher and sociologist in his book titled *"The Inclusion of the Other: Studies in Political Theory"* had shown the importance of ensuring equal right and protections for all individuals residing within astateterritoryregardlessoftheirnationalityorImmigrationstatusandalsotheobligationfor State to protect their Territories. He therefore advocates for more restrictions of states Sovereignty over Migration and called for the amendment of international law governing the movement of persons across borders, since the present government migration policies have not been able to balance the contemporary migration Crisis.[59] However, in spite of the normative dimensions of State Sovereignty and Migrants' Rights, the theory has failed to address the complex realities and the power dynamics in contemporary migration policies.

It is pertinent to understand the argument of the state's sovereign Right of control over Migrants' rights in the work of Thomas Gammeltoft-Hanssen and Tanja Aalberts. They both agree that recent migration control has shown that the state's reaction to the limitation of its Sovereign powers over the rights of migrants is to expand its limited powers outside its territories.[60]They observe that the high seas, which ordinarily has no sovereignty, has now become a Channel of claims and disclaims to sovereignty and responsibility. They both conclude that states can control migration by extending it outside its State Territory. This is done by contracting its border control to private actors and third State countries to avoid the responsibilities of Protection under International law while they maintain the power to regulate admission into their Territories. Thus, according to both scholars, the essence of States engaging private actors or third State Countries to control Migrants outside their

[59]Jürgen Habermas, 'The European Nation-State: On the Past and Future of Sovereignty and Citizenship' in *The Inclusion of the Other: Studies in Political Theory* (Ciaran Cronin and Pablo De Greiff eds, MIT Press 1998) 237.
[60]Thomas Gammeltoft-Hansen and Tanja E Aalberts, 'Search and Rescue as a Geopolitics of International Law' in Tanja E Aalberts and Thomas Gammeltoft-Hansen (eds), *The Changing Practices of International Law* (Cambridge University Press 2018) 196.

Borders is that States are not willing to subjugate themselves to rules governing Migration.

1.5 Conclusion

The research made the following findings arising from the analysis:
i. The study finds that the prohibition of collective expulsion has evolved from the discretionary power of States to expel foreigners into a recognised human rights safeguard. This development has limited the absolute powers of States by subjecting their exercise to international human rights obligations.
ii. Collective expulsion and mass expulsion are used interchangeably within international human rights protection. The consideration is not the number of persons expelled but whether each person's individual circumstances have been objectively examined before removal, as the prohibition emphasises individual assessment as a fundamental safeguard against arbitrary expulsion.

The study concludes that the prohibition represents a development in international human rights law by transforming the unrestricted power of States to expel foreigners into a regulated power. The protection of migrants' rights and State sovereignty must not be seen as mutually exclusive, as State interests must be balanced to ensure individual assessment and due process.
Based on the foregoing findings, the following recommendations are made:
i. States should strengthen their domestic laws and policies on expulsion to ensure that their exercise is consistent with international human rights obligations and that the power to expel is within defined limits and not regarded as absolute.
ii. States and human rights institutions should adopt a clear interpretation of both terms, as the focus should be placed on whether the individual circumstances of each person have been genuinely examined rather than on the numerical size of the group.