



IOM • OIM

Authority and responsibility of States

Course on International Migration Law
jointly organized by UNITAR, IOM, UNFPA and the MacArthur Foundation
13-15 June 2012



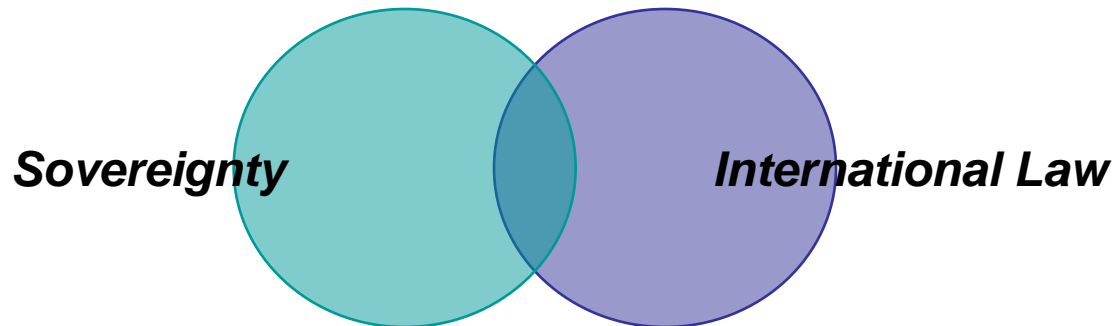
Sovereignty

State sovereignty

- 1) External (independence)
- 2) Internal (competence to enact laws)
- 3) Territorial (authority over all persons/things on its territory)



Fundamental principle:



Power to govern migration must be exercised in full respect of international commitments



States' Competences

States have the power to determine:

- ❖ **Nationality**
- ❖ **Admission of non-nationals/Residence**
- ❖ **Immigration Detention and Alternatives**
- ❖ **Expulsion of non-nationals**
- ❖ **Security / Border control measures**



Nationality

- Nationality: legal bond to a sovereign state each State can determine

International law provides:

- Prohibition of discrimination in granting nationality
- Prohibition of arbitrarily deprivation of nationality
- Naturalization largely depends on domestic law
- Facilitate the naturalization of refugees
- Not left stateless



Freedom of movement

- If lawfully in State, right to liberty of movement and freedom to choose residence
- Free to leave any country, including his own
Restrictions are allowed
- Right to enter his own country



Restrictions on freedom of movement

- provided by law
- necessary to protect national security
- necessary to protect public order
- necessary to protect public health or morals or the rights and freedoms of others.
- consistent with other rights



Immigration Detention

- no prohibition under international law
- international law provides procedural safeguards
- detention must be carried out fairly
- widespread evidence that States breach their obligations



Immigration Detention

- it is extremely expensive,
- it has been found not to be effective at deterring irregular migrants and
- it can harm the health (including mental health) of those detained and therefore
- as the UN Working Group on Arbitrary Detention has stated, it should gradually be abolished
- it is vital for IOM to work on alternatives



Detention

- ***Criminal Detention***
 - Imprisonment under criminal laws

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



Detention (“hard” law)

➤ Art. 9, UDHR

- prohibition against arbitrary detention

➤ Art. 9, ICCPR

- prohibition against arbitrary detention
- detention only on grounds and in accordance with procedures established by law



Detention (“hard” law)

- **Art. 16, ICRMW (extensive procedural rights)**
 - arbitrary detention prohibited
 - detention only on grounds and in accordance with procedures established by law
 - consular authorities of State or origin, if migrant so requests, to be informed without delay
 - right to prompt communication with the authorities
 - right to take proceedings before the court so that lawfulness of detention can be determined
 - enforceable right to compensation if detention unlawful



Conditions of Detention

➤ ***Art. 10, ICCPR***

- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person



Detention (“soft” law)

- Standard Minimum Rules for the Treatment of Prisoners (1955)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)



Right to remove

- State has a right to remove a migrant from the territory
- Limited by
 - Prohibition of collective expulsion
 - Principle of *non-refoulement*
 - “Best interests of the child”
 - Right to family life
 - Procedural limitations under international law (Art. 13, ICCPR)



Non-refoulement principle

No expulsion or return (*refouler*) of a refugee to a State where he would be persecuted

Art. 33, Convention relating to the Status of Refugees, 1951

No expulsion or return (*refouler*) to a State where he would be in danger of being tortured

Art. 3 (1), CAT, 1984



Procedural limitations

➤ **Art. 13, ICCPR**

- Prohibition on arbitrary expulsion (if lawfully in State)
- Decision must be in accordance with law
- Must be able to have case reviewed (unless compelling reasons of national security)



Expulsion of migrant workers

➤ *Art. 22, ICRMW*

Prohibition of measures of collective expulsion

Expulsion allowed only in pursuance of a decision taken by the competent authority and in accordance with law

Decision on expulsion must be communicated with the migrant workers in the language they understand

Right of migrant workers to submit reasons for the review of the expulsion decision

Right to seek compensation in case of annulment of an already executed expulsion decision

Right to settle claims for and receive any wages and other entitlements despite the performance of expulsion



Security/Border control measures

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



Thank you!