



# Authority and Responsibility of States

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**State** A political entity that has legal jurisdiction and effective control over a defined territory and authority to make collective decision for a permanent population, a monopoly on the legislative use of force an international recognized government that interacts, and has the capacity to interact, informal relations with other entities.



## Conceptualizations

**Nationality**      Legal bond between an individual and a State

**Alien**              A person who is not a citizen (national) of a State

### **Customary International Law**

International laws that derive their authority from the constant and consistent practice of States, rather than from formal expression in a treaty or legal text. Customary international law changes as a result of contributions made by individual States. When a State acts from what it determines are its legal obligations in the international community, its practice can contribute to the formation of customary international law. This occurs when other States adopt and consistently follow the contributing State's example.

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## Conceptualizations

**Non-refoulement** A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle is usually considered a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 *Convention relating to the Status of Refugees*.



## State Authority

- States **shape migration policy** to fit economic needs, security concerns and political objectives.
- States enjoy their **widest scope of authority** over migration in setting the standards for admission to and exclusion from their national territory.
- Restrictions on State authority arise by way of exception.



## Human Rights Law and State Authority

- International law now requires the observance by a State of a range of civil and political rights, as well as basic economic, social, and cultural rights towards its citizens.
- The obligation on States to recognize a range of civil and political rights under international law extends to all persons within the jurisdiction of the State, citizen, or alien.
- Human rights norms do not significantly affect the ongoing authority of the State to set its own criteria for deciding who may enter or stay.



## Authority to Admit and Exclude

- In practice, a State will enforce grounds for denial of a visa or of admission based on factors such as disease, or past criminal convictions or activity.
- States may decide that the interests of their citizens call for fairly generous admission policies.
- State practice has tended to allow temporary admission for purposes of study, tourism, business dealings, and employment.
- Permission for permanent immigration is commonly based on a variety of economic and humanitarian factors.

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## Authority to Admit and Exclude

- Increasingly, regional treaties require **transnational regulation of admission and migrant treatment matters.**
- International law imposes few, if any, procedural requirements on decisions regarding admission at the border or on the issuance and refusal of visas.
- States ordinarily **may not refuse entry to their nationals**, nor may they expel or deport them.
- A State has a responsibility to other States to **accept return of its citizens.**

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## Authority to Admit and Exclude

- Some have argued that these re-admission or non-expulsion obligations may include aliens (not only citizens) who have been lawfully resident for a lengthy period.
- A **country of transit** is not obligated by general international law to accept return of someone who passed through that territory, even when that individual may have remained there for a fairly lengthy period.



## Authority to Expel

- In practice, the **grounds for expulsion** are typically more limited than the grounds for barring entry.
- Some States have laws that require authorities to **balance the interest of individuals against the interest of the State** before deciding on expulsion.
- Human rights norms may place substantive limits on a State's normally expansive powers to expel or exclude aliens in some settings.
- Recent years have seen rapid development of case law considering whether, or to what extent, **explicit human rights norms relating to the family now constrain admission and expulsion decisions.**

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## Authority to Expel

- State practice outside Europe more readily accepts the **expulsion of long-time residents on the basis of crimes**, even over objections based on family rights.
- International human rights law imposes **procedural requirements on expulsion decisions**, which are generally considered to carry higher stakes than admissions.



## Restraints on Admission and Expulsion

- Today, **explicit racial distinctions** would not be judged to meet the anti-discrimination norm.
- Distinctions applied on the basis of the **nationality of the migrant** are quite common and are generally accepted without quarrel.



## Restraints on Admission and Expulsion

### **The Non-refoulement Norm: a special case of anti-discrimination**

A highly significant limitation on expulsion derives (initially) from the non-refoulement obligation in Article 33 of the widely accepted 1951 *Convention relating to the Status of Refugees*.



## Restraints on Admission and Expulsion

- Non-refoulement does not prevent expulsion to a third State.
- Non-refoulement does not automatically lead to asylum, permanent residence, or other durable status.
- Comparable non-return obligations have since developed under other treaty regimes, both global and regional.



## State Authority and Citizenship

***It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.***

Article 1  
of the 1930 Hague Convention  
on Certain Questions Relating to the Conflict of Nationality Laws



## State Authority and Citizenship

### **Many States provide for loss of citizenship in case of:**

- voluntary renunciation (at least if the person is not thereby rendered stateless)
- voluntarily acquiring citizenship in another State
- assuming government office in a foreign State
- serving in the military of another State
- proof of fraud in the acquisition of citizenship through naturalization



## State Authority and Citizenship

- States may decide whether to adopt ***jus soli* or *jus sanguinis*** (or more often, a distinctive combination) as the basis for attribution of citizenship at birth.
- **Naturalization regimes** (providing citizenship after birth) may be generous or restrictive, as the State chooses.
- A State is **not required to extend citizenship**, even to the second or third generation born on its territory.
- States **may choose to accept or discourage dual nationality.**

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## State Authority and Citizenship

- Article 34 of the *Convention relating to the Status of Refugees* provides responsibilities for contracting States regarding **naturalization for recognized refugees** lawfully settled in a country of refuge.
- The **1961 Convention on the Reduction of Statelessness** intrudes more deeply into national authority over citizenship, requiring the bestowal of citizenship in a variety of circumstances if the person would otherwise be left stateless (only 26 States are parties to this Convention).



# Conclusion

- Authority of States is well established in migration matters (national interest and security)
- International law provides some constraints on broad State authority
- Needs to balance State authority and rights of migrants
- Emerging migration “system” is progressively attempting to strike a correct balance between the interest of the State and that of individual migrant