

## THE COLLECTIVE EXPULSION OF FOREIGN NATIONALS

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I. INTRODUCTION

On January 17, 1983 the Nigerian Government gave two weeks notice to all illegal immigrants to leave the country. Reportedly over 2 million foreigners were affected.<sup>1</sup> Although the event was given publicity in the international press, it has virtually passed by as yet another event in international affairs. International lawyers have hardly addressed themselves to the issues raised by collective expulsions<sup>2</sup>. It is our objective in this paper to study the legal issues that such upheavals raise. We begin by, re-stating the traditional international law position with respect to the State's competence to expel foreign nationals. Next, we look at the United Nations law on the subject. We then move on to describe some recent or comparatively recent examples of collective expulsions. Matters arising out of the latter are analysed with a conclusion.

II. THE LAWi. A Re-Statement of the Traditional Position

The traditional view often stated by diplomats is that a State is competent to admit and expel foreign nationals - this competency is said to flow from its sovereignty. For example as far back as 1869, U.S. Secretary of State, Fish expressed the view that:

The control of the people within its limits, and the right to expel from its territory persons who are dangerous to the peace of the State are too clearly within the essential attributes of sovereignty to be seriously contested<sup>3</sup>

International lawyers also share this view. A representative view may be said to be the one stated by Oda:

The right of a State to expel, at will, aliens, whose presence is regarded as undesirable, is, like the right to refuse admission of aliens, considered as an attribute of sovereignty of the State..The grounds for expulsion may be determined by each State by its own criteria.<sup>4</sup>

Moreover, international tribunals have been in accord with the traditional position.<sup>5</sup>

On the other hand, it has been pointed out that the State's discretion is not absolute and in exercising its power of expulsion, the State ought not to carry it out in an arbitrary manner.<sup>6</sup> The position of the United Kingdom in this regard was outlined in 1966 to be that, the Government reserves the right to make representations in situations where,

...the manner in which the power [of expulsion] is exercised causes hardship, or seems to be arbitrary or unjust... This is different from representations, which we cannot make, concerning the operation of the laws of a country perfectly correctly according to their concept of their laws.<sup>7</sup>

In effect, customary international law imposes some limits on the State's competency to expel foreign nationals. It would seem, however, that such limitations are far from clear as they are imprecise to determine or to delineate their exact scope.

#### ii. United Nations Norms

The United Nations Charter contains general prescriptions on human rights in Articles 1(3), 55, 56 and 76(c). The first direct reference to the subject of expulsion, admittedly in the reverse, is Article 13 of the Universal Declaration of Human Rights of 1948.<sup>8</sup> It reads:

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country including his own and to return to his country.

The International Convention on the Elimination of All Forms of Racial Discrimination of 1965<sup>9</sup> repeats these words<sup>10</sup> Probably, the most relevant document is the Covenant on Civil and Political Rights of 1966<sup>11</sup> which declares in Article 2(1) that:

Each State Party...undertakes to respect and to ensure to all individuals within its territory, and subject to its jurisdiction the rights recognised 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.

The status of these instruments is clear. Members of the United Nations are under obligation to observe human rights of people residing in their territory, and of course, as well as those of their own nationals. Jessup emphasises this point.

It is already the law at least for Members of the United Nations, that respect for human dignity and fundamental human rights is obligatory.<sup>12</sup>

The International Court of Justice expressly endorsed this position in the Namibia Opinion.<sup>13</sup> Similarly, the Universal Declaration which gives specific content to the Charter prescriptions, is regarded as part of customary international law.<sup>14</sup> The Covenants bind the parties thereto. They are further interpretation of the Charter and so part of customary international law as they contribute "mightily to the stabilization of authoritative expectations about the defense and fulfillment of human rights."<sup>15</sup>

It is clear then, that the foreign national is entitled to certain fundamental human rights whilst he is resident in the host country. And in the words of the Covenant on Political and Civil Rights, he is entitled to those rights, irrespective of nationality, birth or other status. We maintain that the obligation on the host State continues until the last expellee leaves the last bit of territory of the expelling state.

In sum, both customary international law as well as United Nations norms, do not seem to have specific rules on the question of expulsion of foreign nationals. But the foreigner is entitled to certain protection whilst he is an alien and he is entitled to return to his country.

### III A STUDY OF COLLECTIVE EXPULSIONS

In the heat of the Suez Canal nationalization and the invasion of Egypt, several thousand French and British subjects were expelled from Egypt between November 1956 and January 1957, on notice ranging between seven and ten days. Some 11,000 stateless Jews were also ordered to leave in February 1957.<sup>16</sup> In 1961, Egypt carried out further expulsion measures. Beginning from December 23 members of the Greek community of about 40,000 were compelled to leave. This was at a rate of 500 a week.<sup>17</sup>

In 1958 as a result of local hostility, Benin nationals (then Dahomeyans) resident in Ivory Coast were expelled from that country.<sup>18</sup> The Beninois were again expelled in December 1963 from the Republic of Niger. The measures which involved at least 8,000 nationals of Benin was caused by the dispute between the two countries over sovereignty to the Lete Island, an islet in the River Niger on their common frontier.<sup>19</sup> Allegedly due to hostilities expressed towards the Gabonese team during a soccer match between the two countries in the Congolese capital in September 1962. Congolese residing in Gabon were attacked resulting the death of four. Consequently, the Gabonese Government expelled some 2,500 Congo nationals from the country.<sup>20</sup>

One of the noted instances of collective expulsions took place in Ghana in 1969. In July, the Military Government of the National Liberation Council gave neighbouring countries eight months to provide travel and identity documents to their nationals residing in Ghana. It was estimated that out of a population of 8 million, a high 2 million were aliens, the majority being Nigerians. On November 18, the new civilian administration of Dr. Busia issued a directive referred to in the press as a "quit order", requiring all foreigners who did not possess the requisite residence permits to leave the country within two weeks.<sup>21</sup> The arrival of about 40,000 people in Togo caused alarm. The authorities closed the border saying the country could absorb no more. Some 80,000 Nigerians were temporarily resettled in Ogbomosho in the then Western State at a cost of N 1 million. The Red Cross had to cater for another 20,000 Nigerians in transit camps in Lagos. By January 1970, about 200,000 of those affected by the "quit order" had left.

Uganda had gone on record as having carried out one of the most infamous expulsion measures in recent history. In all fairness to President Amin, it must be highlighted that the expulsion was first contemplated in the late 1960s under the previous Government. On January 5, 1969 President Obote warned that about 40,000 Asians holding U.K. passports would eventually have to leave Uganda. His reason:

We are not going to push anybody out, but we are not going to have a large body of foreigners controlling a vital aspect of our economy.<sup>22</sup>

It was left for President Amin to do the actual pushing. On August 4, 1972 Amin indicated that he would ask Britain to take over responsibility for the Asians holding U.K. passports. Five days later, he announced the signing of the Immigration (Cancellation of Entry Permits and Certificates of Residence) Decree of 1972.<sup>23</sup> It revoked with immediate effect the permit or certificate of residence issued or granted under the provisions of the Immigration Act of 1969 to any person of Asian origin, extraction or descent and who was a citizen of the U.K., India, Pakistan and Bangladesh.<sup>24</sup> They were given 90 days within which to fold up and be gone. Initially, professionals such as doctors and teachers were exempted. Amin changed his mind one week later and ordered them to leave as well, because they could not "serve the country with a good spirit after the departure of other Asians".<sup>25</sup> On August 19, Amin took a further step by announcing the Asians who were Ugandan citizens were to be expelled, because of "acts of sabotage and arson". He had to drop the idea when he came under strong fire from both within Uganda and without. President Nyerere had described the measure as "clearly racialism"<sup>26</sup>

President Amin's objective in carrying out the expulsion can be summed up in these words:

I have taken effective measures to ensure that we do not eventually lose our political independence as a result of not ensuring that our economy is in our hands. Political independence is meaningless without economic independence.<sup>27</sup>

The expulsion order affected between 60,000 and 75,000 Asians, many of whom arrived in Britain. Less publicized was the expulsion in October 1982 of many thousands of Ruandans from Uganda. Most of them had fled their country during intertribal fighting which began in 1959.<sup>28</sup>

Earlier, the Government of Zaire, between September and November 1971 expelled 4,750 foreigners who were found to be either unemployed or allegedly engaging in fraudulent activities such as smuggling of diamonds. Another 2,248 were classified as undesirable and so liable to expulsion.<sup>29</sup> Nationals of Benin suffered another ill-fate when in July 1977 a "spontaneous" outbreak of rioting and attacks against them in Gabon was said to have been caused by the violent recriminations made by their President, Kerekou, against the Gabonese leadership (as well as Morocco) for their alleged involvement in an attempted coup in January against Kerekou, at the Assembly of Heads of State and Government of the O.A.U. in Khartoum.<sup>30</sup> More than 6,000 Beninois were forcibly assembled in school grounds near the airport and ordered out of the country. Gabon hit the headlines again in 1981. In May, nearly 10,000 nationals of Cameroon were expelled after demonstrations against them took place in the capital Libreville and Port-Gentil.<sup>31</sup>

The most recent example of collective expulsion took place in Nigeria. On January 17, 1983 the Internal Affairs Minister gave all illegal immigrants two weeks to leave the country. Those who did not comply were to be "flushed out" by security agents and have their names placed on a "stop list" to ensure that they could not return to the country again. Mainly affected were nationals of Ghana, Niger, Chad, Benin, Togo, Upper Volta, Ivory Coast and Cameroon. According to the Ghana Embassy in Lagos, 1 million of its nationals were affected - the Nigerians put the figure at twice that number. Niger also had a high figure of some half a million nationals<sup>32</sup>. The Minister pointed out that the foreigners, majority of whom were employed by private organizations were in violation of the Nigerian Immigration Act and that such "flagrant abuse of our laws can no longer be tolerated".<sup>33</sup>

The Nigerian measure received a lot of publicity in the international press. Locally it was received with approval. The Government-owned Daily Times editorialized:

The advanced countries are known to have been notorious for the inhuman treatment against illegal immigrants and therefore there is no reason why the Western press is now screaming because Nigeria has decided to expel over 2,000,000 illegal aliens.<sup>34</sup> In August this year Zambia expelled about 2,500 nationals of Zaire as a result of which thousands of Zambians were either expelled or compelled to leave Zaire<sup>34a</sup>

Expulsion measures have not been confined to the African continent. A number of "Overseas Chinese" were expelled from Indonesia between December 1959 and early 1960.<sup>35</sup> The policies of the Burmese Government, in particular the nationalization of shops in 1963 and 1964 effectively resulted in the expulsion of the Indian community from that country<sup>35a</sup>. The implementation of the 1964 Agreement<sup>35b</sup> between India and Sri Lanka (then Ceylon) in respect of the nearly one million stateless Indians in Sri Lanka, led to at least 525,000 Indians being repatriated to India. These were mainly descendants of South Indians who had migrated to Sri Lanka in the nineteenth and the early part of the century to work in the tea and rubber plantations. Under clause 3 of the Agreement, Sri Lanka was to accept some of them as its citizens and India was to confer citizenship on the rest<sup>35c</sup>. In February 1979 Vietnam expelled hundreds of thousands of Chinese "Hoa people" from the country. The International Red Cross had to organize the departure of another 2,700 Taiwanese.<sup>36</sup>

#### IV. MATTERS ARISING

As we pointed out earlier,<sup>37</sup> there is little direct United Nations norms on the issue of expulsion. Traditional international law is also not clear as to the exact scope of the rules. International arbitral awards which have dealt with the question, have at best dealt with individual cases of expulsion. Examples which come to mind include, the Chevreau case,<sup>38</sup> which involved the deportation of an alleged French spy from Persia by the British and the case of Mr Raphael<sup>39</sup> who in 1907 was expelled by the Italian authorities case - the list is too long to reproduce.

The General Assembly of the United Nations, does not seem to have addressed itself seriously to the whole question of collective expulsion of foreign nationals in international law. When President Amin expelled the Asians from Uganda, the United Kingdom initially pressed for a debate in the Assembly. This was abandoned when President Mobutu of Zaire offered to mediate and to seek an extension of the deadline for the expellees.<sup>41</sup> It would be contended in this paper that there are limitations on the State's sovereignty to expel foreign nationals. Where the numbers involved are large, there is an additional responsibility to ensure a smooth and orderly movement.

i. Justification and the Expellee's Right to a Hearing

It is claimed that, the State in exercising its power of expulsion, is under obligation to offer adequate grounds on which the order is being made. In the Boffolo case<sup>42</sup> Umpire Ralston put forward the proposition that the expelling State ought to state the grounds for the expulsion and an international tribunal is competent to consider the adequacy of the justification. In the Fürst's case, the Queen's Advocate made it clear that the U.K. Government was entitled not only to adequate compensation, but also an apology as the justification given for the expulsion was of a "vague and indefinite character, inconsistent with the admitted facts and unsupported by any proof or corroboration whatsoever."<sup>43</sup>

It is doubtful if States today would be willing to question the justification offered by an expelling State, except in perhaps few cases. The fact is that the host State is entitled to a margin of appreciation of the situation. It has been suggested that the justifications which would be acceptable in international law are:<sup>44</sup>

- (a) for entry in breach of law;
- (b) for breach of the conditions of admission;
- (c) for involvement in criminal activities;
- (d) in the light of political and security considerations.

When in March 1977, Libya expelled some 24,000 Egyptians and Tunisians working in the country, no reasons were given for the measure.<sup>45</sup> The reasons given by Ghana and Nigeria for the expulsions of 1969 and 1983 are interesting. It was alleged in both cases that they were illegal migrants and were (or the majority) engaging in criminal activities. Ghana's Aliens Compliance Order of 1969 was defended thus:

Ghana's prison statistics show that 90 percent of persons known to have criminal records of serving sentence in the prisons for criminal activities are aliens. A high percentage of crimes of violence is also largely attributable to aliens many of whom are in the country illegally. In addition, it is estimated that as much as 5,000 to 10,000 sterling annually of Ghana's diamonds are being smuggled out of the country by aliens illegally in Ghana.<sup>46</sup>

The statement added that, in a country of 600,000 registered unemployed, the economic realities of planning alone would have necessitated the checking of the influx of illegal aliens. Similarly, in January 1983, the Nigerian Internal Affairs Minister had blamed foreigners as "one of the remote causes" of Nigeria's social problems. He cited in particular the bloody riots in Kano, Maidugri and Kaduna (in the North) involving Muslim fundamentalists in the previous year, which had resulted in the loss of lives and destruction of property. He concluded that the Government could not allow "such unwholesome developments to continuously plague the nation".<sup>47</sup>

A closer study reveals that whilst the economy of these countries is in good shape, they turn a blind eye on the influx of foreigners who are quickly absorbed into the work force and in a few cases, petty business operations. At this stage the foreigners are found useful. On the other hand, when the economy gets into trouble the authorities all of a sudden discover these illegal aliens who are then expelled on short notice. As an editorial in West Africa<sup>48</sup> rightly commented in the case of Nigeria:

That the measure should come at this time is also understandable. The economic boom years from the early 1970s onwards made Nigeria look more and more like a land of oil recycled as milk and honey especially for countries like those to the north in the Sahel that were crippled by drought, or those like Ghana that were unable to solve their economic or political problems. Their presence was tolerable as long as the boom conditions continued but when the climate changed, there was an increasing sentiment against foreigners that developed in Nigeria.

The presence of over 2 million foreign nationals in Nigeria can be explained largely by the operation of the Treaty of the Economic Community of West African States.<sup>49</sup> Under a Protocol adopted in May 1980 (it is to be implemented over a 15 year period) a citizen of a member State has the right to visit any member State for up to 90 days without a visa; he can obtain the right to residence in the second stage and finally he can establish a business in that other country.

Economic reasons were chiefly cited for the expulsion of the Asians for Uganda. They were accused of sabotaging the economy by such acts as creating artificial shortage, infringement of foreign exchange regulations, the evasion of tax and the corruption of officials.<sup>50</sup>

Whatever the real reasons for the expulsion of foreign nationals, it is doubtful today if a collective expulsion can be faulted solely on the grounds of unacceptable justification or inadequacy thereof. Another aspect of the requirement of justification is that the expellee ought to be given a hearing and have his case reviewed. Article 21 of the Code adopted by the Institute of International Law in 1892 declared that in all cases where the expellee contested the expulsion order or claimed to be a national, he ought to be given a hearing.<sup>51</sup> In the Chevreau case<sup>52</sup> the arbitrator stated the proposition that the arrested person is entitled to be given the opportunity to defend himself. Article 13 of the International Covenant on Civil and Political Rights may also be cited. Although, this is the method which States use in the normal deportation process, for collective expulsions, the evidence indicates that States are not willing to adhere to such a rule. The large numbers involved make it impractical to insist on granting the expellees a hearing or reviewing their cases.

At any rate, the exception provided is discharged from this obligation, can always be resorted to by a State embarking on collective expulsion.

ii. Discrimination and Expulsions

There has now emerged in international law a norm against discrimination.<sup>53</sup> Discrimination is contrary to the United Nations Charter, the Universal Declaration of Human Rights, the 1966 Political and Economic Covenants, the Racial Discrimination Convention and other international instruments. In the words of Brownlie, non-discrimination is one of "least controversial" examples of jus cogens.<sup>54</sup>

If the collective expulsions are discriminatory, then they are contrary to international law. This would provide a strong basis on which to challenge the measure and to seek indemnity. Discrimination can take various forms. In 1983 the mass expulsion of foreigners in Nigeria, expressly exempted those employed by the Federal, State and parastatal institutions as well as those who have been resident in the country since 1963. General as this statement was worded, it could hardly be contested as it did not differentiate between nationalities.<sup>55</sup> The extension of one-month deadline from the end of January to February 28 was also granted only to skilled workers who were expected to regularize their stay during the period. The distinction between the skilled and the large army of unskilled foreign workers, could also not be seriously contested in so far as it did not differentiate between nationalities. In the actual implementation, the story was different. The question was legitimately raised, as to why the expulsion had not affected for example, Europeans and Asians.<sup>56</sup>

The clearest recent violation of the norm of non-discrimination in expulsion occurred in Uganda in 1972. The Immigration (Cancellation of Entry Permits and Certificates of Residence) Decree of 1972 referred explicitly to persons of Asian origin, extraction or descent who were citizens of the U.K., India Pakistan and Bangladesh. Those of Zambia, Kenya, Tanzania and Zaire were later added. This is manifest racial discrimination and so contrary to customary international law,<sup>57</sup> irrespective of whether Uganda was a party to the Racial Discrimination Convention of 1965 or not.

France had argued in the General Assembly in 1956 that the collective expulsions of thousands of its nationals from Egypt was contrary to the Universal Declaration of Human Rights and the Charter.<sup>58</sup> As a State is not expected to expel its own nationals and so a foreigner cannot insist on national treatment in this context, it would seem to be a violation of international law if the State discriminates against other foreigners in carrying out its expulsion.

ii. Dispossession of Property

Expulsion measures raise issues of dispossession of property. The classic type<sup>59</sup> of nationalization or expropriation is hardly involved. An unusual case was that of Asians in Uganda. The Declaration of Assets (Non-Citizen Asians) Decree<sup>60</sup> stipulated that those leaving Uganda could not transfer any immovable property, bus company, farm including livestock or business to any person. They also could not mortgage the property nor issue new shares, vary the terms of employment of their staff nor appoint new directors.<sup>61</sup> The Minister was to appoint trustees to look after their businesses who could act as agents if the departed Asians did not return within three months.<sup>62</sup> An amending Decree (No.29) of 1972 empowered the agents appointed under the first Decree to sell, lease, acquire or transfer the property of Asians with the consent of the Abandoned Property Custodian



Board comprising six Ministers.<sup>63</sup> Under s.12(2), the Board could also declare other abandoned property vested in it. Under four instruments,<sup>64</sup> 63 companies and other properties including manufacturing, trading, hotel and 20 saw mills were accordingly vested in the Board. Finally, The Acquired Asian Business (Rights and Obligations Ascertainment) Decree (No.26) of 1973 sought to consolidate the various decrees affecting the Asian properties. Under it, the Abandoned Property Custodian Board was to fix the value of the business transferred to the new owners who did not gain ownership of the premises of the business. The bank accounts of the Asians were blocked and transferred to the Commercial Bank of Uganda. They were allowed to take only 50 on them and the personal effects could not be more than 481b.

For an expropriation measure to be valid in international law, it must not be discriminatory and it must be accompanied by compensation. Two recent arbitral awards have restated the customary rule. Sole arbitrator Mahmassani state in Liamco v. Libya.<sup>65</sup>

It is clear and undisputed that non-discrimination is a requisite for the validity of a lawful nationalization. This is a rule well established in international legal theory and practice. Therefore a purely discriminatory nationalization is illegal and wrongful.

Similarly, Judge Llargergren, dealing with the nationalization of British Petroleum's interest in the Sarir Oilfield on December 7, 1971 concluded:

Further, the taking by the Respondent of the property rights and interests of the Claimant clearly violates public international law as it was made for purely extraneous political reasons and was arbitrary and discriminatory in character. Nearly two years have now passed since the nationalization and the fact that no offer of compensation has been made indicates that the taking was also confiscatory.<sup>66</sup>

The Ugandan take-over of Asian property was hence wrongful in international law.<sup>67</sup> The Decree (No.29) of 1972 made provision for the payment of compensation which was to be assess by valuers. Appeal to a tribunal against the decision of the valuers was possible and further appeal lay to the High Court.<sup>68</sup> It was, however, unrealistic for somebody whose residence permit had been revoked, to hang around, seeking compensation for property taken. The provision then became a case of illusory local remedy which could not be exhausted.

By far the more common technique of dispossessing foreign nationals is to prevent them from taking their belongings out of the country or to give them so short a time that they end up abandoning them. These indirect or surreptitious means, usually described as "creeping" or "constructive" expropriation have been recognized as disguised instances of take-overs for which the rules of expropriation apply.<sup>69</sup>

When Libya expelled Egyptians and Tunisians in 1976, the latter were seized in the streets and at their places of work. They were denied the chance of taking any money with them, let alone their belongings. Most of the hundreds of thousands of Chinese "Hoa people" expelled from Vietnam in 1979 arrived in China possessing only the clothes they were wearing.<sup>70</sup> In 1975, Malawi, had allowed the head of each family of the Asians expelled to take out only 500.<sup>71</sup> In 1956, Egypt had allowed the thousands of French, British and other British protected persons as well as the stateless Jews to take only 20 per head out of the country. Since, many of them had lived in Egypt for the greater part of their lives, the businesses and personal effects left behind, involved considerable amounts of money. The situation was made worse, when it was reported that some of the expellees had been made to sign a declaration in Arabic (which they did not understand) undertaking not to return to Egypt and renouncing any claim to damages. The Swiss legation at the time described the measures as a "veritable catastrophe"<sup>72</sup> Again, in 1961 when the Greek community were compelled to leave Egypt, at least some E 120 million was at stake. Yet the Nasser Government permitted each to take no more than E20 and a few belongings. Not surprisingly, the Greek Prime Minister protested and demanded prompt payment of indemnity.<sup>73</sup>

The other aspect of indirect taking resulting from expulsion is where the time period given for the aliens to go is so short that practically there is little that can be done. For example, in 1969 when Ghana ordered aliens out of the country within two weeks, of the thousands who began to leave, the Bank of Ghana announced that, not one had applied for transfer facilities.<sup>74</sup> In view of the general atmosphere of haste, the large numbers involved and the red-tape of the system itself, this was understandable. Recently, when Nigeria expelled over 2 million foreigners, although the Government did not prevent anybody from taking out his property the two week deadline resulted in reportedly robberies, abandonment of property and refusal by employers to pay least wages and salaries.<sup>75</sup>

It is our contention that whether the expelling State expressly takes over the expellee's property as in Uganda or he is prevented from taking it as in Libya or even when the expulsion is carried out in such a manner that practically he is forced to abandon the property, an international illegality had been committed and the host state is under obligation to pay compensation. The latter is one of the most vexed issues in international economic law today. Under the traditional formulation, the requirement is to pay "prompt adequate and effective compensation". This is the position taken mainly by the Western countries, but in practices that standard had not been applied.<sup>76</sup> Under the New International Economic Order, particularly the Charter of Economic Rights and Duties of States<sup>77</sup> the State taking foreign-owned property should pay "appropriate compensation" taking into account its relevant laws and regulations and all circumstances that it considers pertinent. The Western countries, however, regard this formulation as statement de lege ferenda and not lex lata.<sup>78</sup> Whether one takes the traditional position or the NIEO formulation, one thing is not in dispute - that is some compensation must be paid.

There is already some recognition in state practice of the need to pay compensation for loss caused by expulsion measures. The expulsion of Congolese from Gabon in September 1962 was resolved at a conference in Yaounde chaired by President Ahidjo of Cameroon. It was agreed to indemnify persons who had suffered during the expulsion and the expellees were free to return to the host country.<sup>79</sup> Similarly, the expulsion of several thousands of Benin nationals from Niger in December 1963; was resolved in March the following year. It was agreed that the expellees were to be compensated and they were also free to return.<sup>80</sup> As part of the settlement of disputes between Egypt and the United Kingdom, it was agreed in February 1959 that Egypt pay the sum of 27.5m towards claims for injury and damage to property suffered by U.K. nationals expelled in 1956.<sup>80a</sup> Under an Agreement ratified by the Ghana Government in February 1971, Nigeria was to receive "reasonable compensation" for farms and other property left behind by Nigerians expelled in late 1969 estimated to be at about N2.5m.<sup>80b</sup> The present Ugandan authorities took steps in 1982 to compensate the dispossessed Asians. Parliament on September 2 passed the Expropriated Properties Act.<sup>81</sup> Under the legislation any Asian who returned within 90 days of the passage of the Bill, would have his property restored to him and would have to run it for at least five years before selling it. The property of those who did not return would be sold and the owners compensated out of the proceeds. In early 1984 four of such businesses became joint ventures with shares held by the Uganda Government and the original owners who had returned.<sup>81a</sup> The Chinese approach, on the other hand, was to terminate all economic and technical aid to Vietnam and to recall its technical personnel on July 3, 1979 because of Vietnam's "anti-Chinese activities and ostracism of Chinese residents".<sup>82</sup> That aid in 1976 was said to amount to \$330, million. The Chinese said it would be used to resettle the expellees.

### iii. Treatment of Expellees

Foreign nationals are entitled to certain rights whilst they are in the host country<sup>83</sup> - such protection continues until they leave the last bit of territory of the host. With the exception of political rights, "The International Bill of Rights", particularly the Universal Declaration gives him the same fundamental human rights as the national. Moreover, the protection of human rights as a whole is regarded as having attained the status of ins cogens.<sup>84</sup> A State, even when carrying out an expulsion order, is clearly under obligation to ensure that the fundamental rights of the expellees are upheld.

In practice this has not been done. Iraq's expulsion of Iranians from that country in April and May 1969 was carried out with great brutality. Not only were they given too short a notice but also they were taken in buses and dumped at the border towns.<sup>85</sup> The Chinese people were "greatly angered". They had been assaulted and robbed.<sup>86</sup> Human dignity was not upheld during the expulsion of Benin nationals from Gabon. Over 6,000 people were forcibly assembled in school grounds near Libreville airport. Their shops were looted and destroyed. People were attacked and injured and thousands of families lost their possessions in the process.<sup>87</sup>

The enforcement of Ghana's Aliens Compliance Order in 1969 caused a lot of hardship through general panic and delays. The Togo Government temporarily closed its border on December 6 saying it could take no more than 40,000 who had already crossed into the country. There were attacks in the markets by young men and shops of aliens fell victim to looting. Police carrying truncheons questioned people who resembled aliens. They also conducted pre-dawn raids through the markets and the residential areas

searching for illegal aliens. Reportedly, in some cases, husbands returned from work to find that their wives had been taken away.<sup>88</sup>

Other examples of ill-treatment can be found in the Nigerian expulsions. The Nigerian Government having refused Libya permission to provide planes for the evacuation, Ghana, whose nationals comprised about 1 million of the expellees, chartered five airlines in addition to its own. There were reports of drowning in Lagos Harbour (Apapa Wharf) as people scrambled into the crowded vessels sent by Ghana.<sup>89</sup> The expellees were charged inflated prices by bus and taxi drivers only to be "dumped" at the border by the Nigerian drivers. There was shortage of food and water and people had to be treated for cholera and exhaustion. Three women gave birth at Apapa Wharf whilst waiting for evacuation.<sup>90</sup> The situation was exacerbated by the initial refusal of Togo and Benin to open their borders for the Ghanaians to cross overland to their country. When the border was opened, Togolese police counted as many as 7,600 vehicles crossing the border and up to 25,000 people crossing on foot, having made the last 100 miles of the journey by foot.

International agencies played an important role in the evacuation of the expellees. The Organization of African Unity sent a team to monitor the evacuation having apparently failed to get the Nigerians to give more time for a more orderly departure.<sup>91</sup> U.N. Secretary General Perez de Cuellar called on Nigeria to "slow down" the expulsions and for international assistance to relieve Benin of the burden imposed by the "pressing humanitarian needs". The F.A.O. said it was providing 5 million ration kits worth about \$1.5 million. The U.N. High Commissioner for Refugees contributed \$300,000 each to Benin and Togo. The British Government granted 150,000 to Ghana and the EEC provided \$5 million in early February. The Italian Government also offered \$4.5 million. All these aids were co-ordinated by the U.N. Disaster Relief Co-ordinator.<sup>92</sup>

Under the Universal Declaration, as we have pointed out earlier,<sup>93</sup> every person is entitled to return to his country and we may add, through the means available to him. Ghana seemed to have shirked its responsibility by refusing to open the border to its own nationals until three days before the expiry of the two week deadline.<sup>94</sup> Whether one takes the view that the obligation to admit back its own nationals is owed to the expelling State alone, or as an *actio popularis* owed to the international community in general,<sup>95</sup> there is little doubt that Ghana's refusal to open the border to its own nationals to return was a breach of its responsibility in international law. This provided the pretext for Togo and Benin not to open their side of the border too, thus leaving its nationals stranded in a foreign country.

#### iv. Issue of Domestic Jurisdiction

Expulsions have been claimed to be within the domestic jurisdiction of States within the meaning of Article 2(7) of the U.N. Charter. For instance, the Ugandan delegate at the U.N. made such a claim in 1972 arguing that the Asians were a relic of colonialism and a matter essentially within the domestic jurisdiction of Uganda.<sup>96</sup> However, because of the potential to threaten international peace and security when large scale violations occur, contemporary international law has raised human rights issues to the level of international concern.<sup>97</sup> Thus, though the State's right to expel foreign nationals is recognized, the international community is entitled to scrutinize the actual implementation to ensure that basic human rights are not breached.

## V. CONCLUSION

The following conclusions suggest themselves from our analysis of the study. Firstly, the State has the right to expel foreign nationals residing in the country, individually or collectively. It is doubtful if the State is under obligation to justify it. Even if this were so, the State could always refer to the maintenance of ordre public as the reason for the expulsion. This cannot be seriously challenged. Economic reasons have been prominent for many expulsions, though political reasons were principally responsible for the Libyan, Egyptian and Vietnamese expulsions. Secondly, States have not given the expellees the right to a hearing or a review of their cases as it is normally done in the deportation of individuals.

Thirdly, in exercising its power of expulsion, the State must adhere to the norms of international law. Such limitations on the power to expel include the non-discrimination of any nationality, the non dispossession of the foreigner of his property, directly or indirectly and the observance of fundamental human rights. Although, this may already be the case with regard to individual expulsions, the sheer numbers involved in collective expulsion, as exemplified by the Nigerian case, place and added responsibility on the State carrying out the expulsion to ensure the smooth and orderly movement of the expellees. It may be necessary in some cases to grant a temporary reprieve or an extension of the deadline, as for example in the case of pregnant women and frail children.

Perhaps its time for the international community to begin to seriously consider formulating clear rules on the issue of collective expulsions. It is not enough for the international community to come to the rescue by way of assistance, when people numbering more than the entire population of some U.N. member States, have to be moved in a matter of days. The International Court in the Barcelona Traction, Light and Power Company case,<sup>98</sup> pointed out that the obligation to protect human rights are the concern of the international community - they are erga omnes. But when it comes to the actual capacity to protect the victims, we have to look at the regional level, such as the European Human Rights Convention. This makes it more urgent for the international community to come out with basic international procedures for the execution of expulsion orders as these regional human rights conventions have not been developed in some parts of the world.

1. Infra notes 32-34 and accompanying text. Early in 1984 the new Military Regime of General Buhari ordered another large number of aliens to leave the country.
2. Related, but another dimension of the issue, is the expulsion out to sea of thousands of people seeking refuge. For example in December 1978, a fishing trawler carrying 269 Vietnamese "boat people" was escorted back to international waters by a Singapore Navy gun boat. See The Sydney Morning Herald Dec 19, 1978 For commentary, Johnson, Refugees Departees And Illegal Migrants, 9 SYDNEY LAW REVIEW II (1980); Schaffer, South-East Asian Refugees: The Australian Experience. 9 AUSTRALIAN YB I. L 200 (1979)
3. MOORE, 4 DIGEST OF INTERNATIONAL LAW 74, WHITEMAN, 8 DIGEST OF INTERNATIONAL LAW 620.
4. Oda, The individual in International Law in M. SORENSEN (ed) MANUAL OF PUBLIC INTERNATIONAL LAW 489, 482 (1968).
5. See eg. Fong Yue Ting v. U.S. 698 (1892); Musgrove v. Chun Teeong Toy (1891) A.C. 272; Nishimura Ekin v. U.S. 142 U.S. 651 (1892). See also infra notes 38-39.
6. E.g. L. OPPENHEIM, INTERNATIONAL LAW vol 1. 611 (8th ed. 1955)
7. Hansard, H.C. DEB. vol. 733 col. 1223-5. Cited BRITISH PRACTICE IN INTERNATIONAL LAW 112-14 (1967).
8. U.N.G.A. Res. 217
9. Entered into Force Jan 4, 1969. 660 U.N.T.S. 195.
10. Art 5(d).
11. Entered into force Jan 4, 1976. The Optional Protocol came into force on March 28, 1979; similarly, but more broadly, Art 2(2) of the Covenant on Economic, Social and Cultural Rights of 1966 which came into force on March 23, 1976.
12. P. JESSUP, A MODERN LAW OF NATIONS - AN INTRODUCTION 91 (1968). See also, H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 147 (1950); Newman Interpreting the Human Rights Clauses of the U.N. Charter, 5 HUMAN RIGHTS J. 283 (1972).
13. 1971 1. C.J. REP .16.
14. E.g. Waldock, Human Rights in Contemporary International Law and the significance of the European Convention, in THE EUROPEAN CONVENTION ON HUMAN RIGHTS 1, 15 (1965) (British Institute of Int. R Comp. L., Int. L. Series No. 5); Humphrey, The International Bill of Rights: Scope and Implementation 17 WM. P. MARY L. REV. 527. 529 (1976)
15. M. MCDUGAL, H. LASSWELL and L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 327 (1980).
16. KEESING'S CONTEMPORARY ARCHIVES 15391 (hereinafter cited simply as KEESINGS).
17. Id. 187368.
18. Id 20191
19. Id.
20. Id.
21. Ministry of Interior Directive reprinted in KEESINGS 23824.
22. Press Statement issued at Heathrow Airport on his arrival for the Conference of Commonwealth Heads of State and Government in London. KEESINGS 23186.
23. Reprinted in 11 I.L.M. 1388-9 (1972)

24. s.1. Another Decree of October 24 (No.30) of 1972 extended its application to cover Asians holding citizenship of other African countries. Those affected were mainly from Kenya, Zambia, Tanzania, and Zaire.
25. The exemptions were made under S.I. No. 124 of 1972. s.2 of the principal Decree had given the Minister power to make exceptions by statutory order.
26. The Ugandan Students Union presented a memo on August 21 to the President which said in part: "The National Union of Students considered that the Government has total responsibility to ensure and guarantee equal protection for all the citizens of this country irrespective of their race, colour, sex, language and religion. It is in this spirit, therefore that the entire student body of Uganda earnestly requestes you to rescind the move of depriving some Ugandan Asians of their citizenship". KEESINGS 25469-70.
27. Id.
28. Id 31847
29. Id 25147
30. Id 29288
31. West Africa June 15, 1981
32. Id Jan 31, 1983 at 245. The figures were estimates. It is well-known that Nigeria does not have accurate statistics for its own nationals, let alone foreigners.
33. Under 3.8(1) of the Act, the prior written authority of the Director of Immigration was required before employing such foreigners.
34. Cited West Africa Feb 7, 1983 at 386; similarly, The Daily Sketch wrote: Two years ago in France, the houses of illegal African immigrants were destroyed. The immigrants were law-abiding but the mayor of the town where this racist act took place said being law abiding was not everything and that the immigrants must leave to create jobs for Frenchmen. Id.
34. The Sydney Morning Herald August 25, 1984 at 8.
- 35 KEESINGS 17381
- 35a. Id. 20315
- 35b. Exchange of Letters of October 30, 1964; relevant parts reprinted in KEESINGS 20405. In 1948 these Indians numbered 950,000. Under the India and Pakistani Residents (Citizenship) Act of 1949, Sri Lanka initially conferred citizenship on no more than 134,188. However the country was to take on some more after the 1964 Agreement. In September this year, the Sri Lanka President announced that his Government has denied to grant citizenship to another 90,000. see The Sydney Morning Herald, Sept 18 (1984) at 7.
36. Id. 29470-1
37. Supra
38. 6 BRITISH DIGEST OF INTERNATIONAL LAW 151
39. 4 MOCRE, INTERNATIONAL ARBITRATIONS 3348

41. The Times and The Guardian Sept 30, 1972. This does not appear to have been successful. But in 1956 the subject was in issue. Whilst Egypt and Sudan argued that the expulsions from Egypt were within the domestic jurisdiction of Egypt, M. Giscard D'Estaing had argued that they contravened the Charter and the Universal Declaration of Human Rights. See U.N.G.A. OR 11 Sep. 624th Plenary Meeting at 124-5.
42. 10 U.N.R.I.A.A. 528.
43. 6 BRITISH DIGEST OF INTERNTIONAL LAW 114; see also Davidson's case in 1855, Id. The U.S. called for a detailed justification from the Venezuelan Government as the reason it gave for the expulsion in Loubriel's case in 1923 was too vague. HACKWORTH, 3 DIGEST OF INTERNTIONAL LAW 699-700.
44. Goodwin-Gill, The Limits of the Power of Expulsion in Public Interntional Law 47 B.Y.I.L. 55, 121 (1974-5).
45. KEESINGS 272673.
46. Govt Statement of Dec 12 reprinted in KEESINGS 23824
47. West Africa Jan 31, 1983 at 245.
48. Id. editorial.
49. Under Arts 2(2) (d) and 27 of the Treaty, member States undertake to remove all obstacles to the movement of persons within the Community. The ECOWAS Treaty done at Lagos May 28, 1975 is reprinted in 14 I.L.M. 1200 (1975).
50. They were also accused of refusal to integrate into the Ugandan society. The Asians strongly defended these allegations in a memo to the President. See J. O'BRIEN, BROWN BRITONS 32 (1972).
51. 12 ANNUAIRE DE : 'INSTITUT DE DROIT INTERNTIONAL 218,222.
52. 2 U.N.R.I.A.A. 1113.
53. E.g. W.McKEAN, EQUALITY AND DISRIMINATION UNDER INTERNTIONAL LAW (1983)
54. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 513 & n.4 (3rd ed. 1979) similarly, Schwelb, Some Aspects of International Jus Cogens as Formulated by the International Law Commission. 61 A.J.I.L. 946, 960 (1967).
55. In the Oscar Chinn case, the Permanent Court said, "The form of discrimination which is forbidden is...discrimination based upon nationality and involving differential treatment by reason of their nationality as between persons belonging to different national groups" (1934) P. C.I.J. Ser. A/B No.63 at 87.
56. It was raised by the Nigerian National Concord. Cited West Africa Jan 31, 1983, It was later reported that a number of Pakistanis were leaving through Sokoto and Kano in the northern end of the country.
57. See e.g. Diss. Op. of Judge Tanaka in the South West Africa cases (Second Phase), (1966) I.C.J. 4,284 and the International Court's opinion in the Namibia Opinion, supra note 13.
58. U.N.G.A.O.R. 11th Sess. 624th Plenary Meeting at 125-5; Earlier in 1948 Egypt had contended that the expulsion of Arabs from Palistine in 1948 was contrary to Art 3 and Art 6 of the Universal Declaration U.N.G.A.O.R. 3rd Sess. First Committee, 22nd Mtg 868.
59. Generally, B. WORTLEY, EXPROPRIATION IN PUBLIC INTERNTIONAL LAW (1959); G. WHITE, NATIONALIZATION OF FOREIGN PROPERTY (1961); I. FOIGHEL, NATIONALIZATION (1957); K. KATZAROV, THE THEORY OF NATIONALIZATION (1964); S. FRIEDMAN, EXPROPRRIATION IN INTERNATIONAL LAW (1953).
60. Signed on Oct 4, 1972 but made retroactive to Aug 9, 1972 Decree No. 27 reprinted in 11 I.L.M. 1389-91 (1972).



61. s.1.
62. s.6.
63. s.1. The Assets of Departed Asians Decree (No.27) of 1973. reconstituted the Abandoned Property Custodian Board as the Departed Asians Property Custodian Board. The latter was to "take over and manage" all assets vested in the Government under the Decree.
64. S.I. Nos. 169 and 197 of 1972 and S.I. Nos 101 and 102 of 1973.
65. Award on the Merits para 114-115 and 120 reprinted in 20 I.L.M. 1 (1981)
66. B.P. v. Libya reprinted in 53 I.L.R. 297, 329 (1979).
67. In accord, Wooldridge and Sharma, The Expropriation of the Property of the Ugandan Asians, 14 IND.J. I. L54 (1974); see also, Id, The Expulsion of the Ugandan Asians and Some Legal Questions Arising Therefrom VII C.I.L.S.A. 1 (1974); Read, Some Legal Aspects of the Expulsion in EXPULSION OF A MINORITY ESSAYS ON UGANDAN ASIAN (M. Twaddle ed. 1975).
68. s.16
69. Christie, What Constitutes a Taking of Property Under International Law. 38 B.Y.I.L. 307 (1962); Weston, "Constructive Takings" Under International Law: A Modest Foray into the Problem of "Creeping Expropriation" 16 VA. J. 1. L103 (1975); Kotecha, Comparative Analysis of Nationalization laws Objectives and Techniques. VIII C.I.L.S.A. 87 (1975)
70. KEESINGS 29470.
71. Id. 27547
72. KEESINGS 15391 The Swiss legislation was looking after British interest at the time.
73. Protest made on Feb 16, 1962, KEESINGS 187368.
74. The Daily Graphic (Accra) Dec 17, 1969. A few later applied.
75. West Africa Feb 7, 1983 at 305.
76. Surveys made by various writers have been consistent e.g. Z. KRONFOL, PROTECTION OF FOREIGN INVESTMENT 118-21 (1972); C AMFRASINGHE, STATE RESPONSIBILITY FOR INJURIES TO ALIENS 96-104 (1967); S. FRIEDMAN, supra note 59 at 206-211. Flint concludes on this point: "In the light of practice it is difficult to continue to argue that prompt adequate and effective compensation is a norm of international law, if indeed it ever was". D. FLINT FOREIGN INVESTMENT AND THE NEW INTERNATIONAL ECONOMIC ORDER 76 (Martin Place Paper No. 1, 1982).
- 76b. Dolzer, New Foundations of the Law of Expropriation of Alien Property, 75 A.J.I.L. 553 esp 570 (1981).
77. Art 2(2) (c), U.N.G.A. Res. 3281 of 1974 reprinted in 14 I.L.M. 251 (1975).
78. E.g. Sole arbitrator in the TOPCO/CALASIATIC v. Libya, Award para 85-87 reprinted in 17 I.L.M. 3 (1978) contra, Chowdhury, Legal Status of the Charter of Economic Rights and Duties of States in LEGAL ASPECTS OF THE NEW INTERNATIONAL ECONOMIC ORDER 79 (K. Hossain ed. 1980).
79. KEESINGS 20191.
80. Id.
- 80a The Agreement is reprinted in H. LAUTERPACHT, THE SUEZ CANAL SETTLEMENT 47 (1960); Art. IV

- 80b. AFRICA RESEARCH BULLETIN, ECONOMIC AND TECHNICAL SERIES 2. 1982 and 2172 (March 15 April, 14, 1971)
81. Id. 31848.
- 81a. Id. 7196 (Feb 15 - March 14, 1984).
82. Id. 29470
83. Generally, G. GOOWIN-GILL, INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES Ch.5 (1978); P. WEIS, NATIONALITY AND THE STATELESSNESS IN INTERNATIONAL LAW. (1956).
84. E.g. Judge Tanaka contended: "If we can introduce in the international field a category of law, namely jus cogens, recently examined by the International Law Commission, a kind of imperative law which constitutes the contrast to the jus dispositivum, capable of being changed by way of agreement between States, surely, the law concerning the protection of human rights may be considered to belong to the jus cogens". Diss. Op. in South West Africa cases (1966) I.C.J. REP. 4. 298. See also supra the section under U.N. norms.
85. KEESINGS, 23544.
86. KEESINGS 29470. Protest note of May 12, 1979.
87. Id. 29288.
88. The Pioneer (Accra) Jan 16, 1970; The Daily Graphic (Accra) July 17, 1970; for comments, Peil, The Expulsion of West African Aliens, 9J.MOD.AFR.STUDS 205 (1971).
89. West Africa Jan 31, 1983 at 243.
90. The Guardian Feb 6, 1983 at 7
91. Id.
92. KEESINGS 32610
93. Supra note 8.
94. The border had been closed earlier on Sept 21, 1982 due to incidents between Ghana and Togo. But Ghana's main reason for not opening the border was attributed to the fear of the Rawlings Government that Sudanese trained dissidents would infiltrate the ranks of the evacuees to enter the country and to seek the overthrow of the Government.
95. The latter view is taken by R. PLENDER, INTERNATIONAL MIGRATION LAW 74 (1972); see also Higgins, The Right in International Law of an Individual to enter, stay in an leave a Country, 49 INTERNATIONAL AFFAIRS 341 (1973).
96. U.N.G.A.O.R. 27th Sess. Gen. Cttee. 206th mtg; Press Release GA/4618 and GA/4622; see also supra note 41.
97. Reisman and Suzuki, Recognition and Social Change in International Law: A Prologue for Decision making in TOWARD WORLD ORDER AND HUMAN DIGNITY 403 424 (W. Reisman and H. Weston ed. 1976); R. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 118-130 (1963); M. McCOUGAL, H.LASSWELL, and L. CHEN supra note 15 at 208-215. Contra Watson The Limited Utility of International Law in the Protection of Human Rights 74 A.S.I.L. Prods 3 (1980).
98. [1970] I.C.J. Rep 3,32.