Aliens

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A. Introduction

1 The legal status of aliens, and the law relating to them, have traditionally been matters of international law. Two contrary concepts are relevant regarding this body of law. Firstly, the international \textit{minimum standards} that define the law pertaining to aliens, as the body of law that grants them certain rights and obligations independent of the treatment of the State’s nationals. Secondly, the national treatment standard proposed by Latin American countries in particular, which states that aliens should be treated in the same way as the nationals of a State (\textit{National Treatment, Principle}). This approach was developed to counter the influence of Western nations in Latin America, whose influence was seen as being exercised by aliens (see also \textit{International Law, Regional Developments: Latin America}).

2 Despite the development of \textit{human rights} law, the significance of the law relating to aliens should not be underestimated. Each State has a number of rights and obligations concerning its nationals on its own territory and to some extent on foreign territory, as well as concerning the aliens on its territory. Therefore, an alien is subject to two jurisdictions: that of his nation State and that of his State of residence, thereby raising a number of specific questions. Possible conflicts between the laws of the nation State and those of the State of residence are resolved by domestic law, however, as influenced by international law. Furthermore, the application of administrative, penal, and other laws is decided by the respective domestic law of the State in question.

3 Whether or not a person is to be classified as an alien generally depends on his or her qualification as a foreign national. However, \textit{nationality} is commonly a question of a State’s internal legislation. As far as the determination of nationality is consistent with international law, it is also to be recognized by the legal order of other States. Furthermore, other criteria might justify the grant of the status of non-alien, namely the pledge of common allegiance to the Crown by British subjects lacking British nationality (see also \textit{Commonwealth, Subjects and Nationality Rules}). Despite of the fact that a foreign business entity cannot be a national of a State strictly interpreted, foreign corporations are treated nowadays as aliens, since a classification is often inevitable (see also \textit{Corporations in International Law}). Furthermore, in general, \textit{Stateless persons} cannot be classified as or treated like aliens.

4 Nowadays, the status of aliens is mainly regulated by \textit{treaties}, supplemented by \textit{customary international law} and to some extent by \textit{general principles of law}. Furthermore, a separate body of law exists in regard to aliens who have diplomatic status (see also \textit{Immunity, Diplomatic}). The \textit{ius in bello} and the laws of neutrality provide special rules for aliens in wartime (\textit{Neutrality, Concept and General Rules}). Examples are the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (\textit{Geneva Conventions I–IV [1949]; Geneva Conventions Additional Protocol I [1977]; Geneva Conventions Additional Protocol II [1977]}).
B. Historical Evolution

5 In ancient times, aliens were, in general, classified as outcasts and enemies and hence denied legal capacity and rights. It was commonly accepted that individuals could only be members of their own communities, which were based upon common personal elements, namely birth, language, and creed (see also → History of International Law, Ancient Times to 1648). The grant of asylum (→ Asylum, Territorial) and/or the offer of hospitality were the only ways to improve an alien’s position; however, these often required recognition as a fugitive. Hospitality was considered a sacred duty in these times and the authority as a host included the right to grant the alien, as guest, legal capacity as well as a number of special rights, far-reaching protection, and judicial assistance. In later times those rights were, to some extent, confirmed by law, and also advanced by treaties, namely the Roman hospitium publicum agreements, which granted certain advantages to some or all inhabitants of specific States, and the ‘isopolity’ treaties of Ancient Greece, which allowed for the grant of citizenship under the principle of → reciprocity.

6 The Middle Ages lead to further changes in the law of hospitality in that the status of aliens was, henceforth, interpreted as a legal position. However, its content differed according to region and time. Furthermore, the growth of trade improved, in general, the treatment of aliens.

7 → Extradition and asylum were also considered to be of sacred origin, and hence important. Their roots go back as early as 1400 BCE, when conventions between sovereigns in Asia Minor regulated asylum, which was granted to alien → refugees. Thereafter, political and not legal, considerations took over in that extradition laws primarily dealt with political offenders. Only in the 18th century, with the creation of modern extradition law, were ordinary criminals put at the centre of these laws.

8 Significant differences existed between the legal position of aliens and of citizens. For example, the droit d’aubaine, which is of French origin, obligated the king and, later, the seigneurs to protect aliens. However, over time, it formed the basis for the treatment of aliens comparable to that of servants as it was reinterpreted as an arbitrary power. Therefore, restrictions on land acquisitions, trade restrictions, as well as the ius naufragii, the right to take possession of foreign shipwrecks and their cargoes, are examples of infringements on the legal status of aliens.

9 On the other hand, the legal status of aliens improved, to a certain extent, in the Middle Ages. In German towns so-called Gastgerichte (medieval guest courts) developed and partly survived, well into the 19th century. These courts offered privileged merchants several advantages such as the provision of prompt legal assistance and facilities for complaints. However, on the other hand, the right of detention, which made the apprehension of a guest alleged to be a debtor possible, and the so-called act of reprisal (see also → Reprisals), which allowed for the detention of a guest based on the collective responsibility for the alleged debts of another individual from the same town (see also → Collective Punishment), soon acted as counterbalances. Later, based on reciprocity, agreements between countries or towns barred those arrests. In the 16th century, treaties concluded between Oriental and European rulers, the so-called capitulations, granted, for example, to alien merchants the right of settlement under their particular laws and usages, as well as waivers of duties and further trading facilities, → consular jurisdiction, and religious freedom (→ Religion or Belief, Freedom of, International Protection).
In the 16th and 17th centuries, natural law (→ Natural Law and Justice) theory, inherited from Greek and Roman philosophy, had a significant effect upon international law. Individual rights were acknowledged as a common gift of nature. However, the special situation of aliens was not taken proper account of, and thus natural law theory could not influence the behaviour of States in this regard. Nevertheless, the alien’s right to free trade was especially emphasized by natural law theorist Vitoria and accepted by Gentili, Grotius, and Vattel. Yet, the theory promoted, most notably, internal equality, but, faced with developing national sovereignty, could not improve the international situation of aliens, specifically their admission to a State. The French Revolution and the US American constitutional process, and their philosophical foundation, further promoted an internal standard for the treatment of aliens, endorsing human rights as a clearly separate category compared to civil rights, which belong exclusively to citizens.

Furthermore, aliens and alien merchants in particular were more and more the subject of a developing standard of legal provisions. Especially, the national treatment principle became part of → commercial treaties of the 17th century. The admission of aliens and their opportunity to leave a country after the outbreak of war were sometimes made mandatory through trade agreements. → Diplomatic protection as a State’s right was established and based on reciprocal → State responsibility. Furthermore, a minimum standard for the treatment of aliens was also furthered by international custom and took root in customary international law during the 19th century, with treaties specifying rights that reflected a minimum standard dating back to an earlier period.

C. Current Legal Situation

The requirements for nationality, admittance, expulsion, or extradition of an alien are generally a matter of domestic law (→ Aliens, Expulsion and Deportation). Public international law, establishing rules on restrictions of discretionary domestic decisions, has to be taken into account (→ International Law and Domestic [Municipal] Law).

1. Nationality

In general, States have legal leeway in matters of nationality (Nationality Decrees Issued in Tunis and Morocco [Advisory Opinion] 24; → Nottebohm Case). Therefore, the conferment of nationality upon a person and/or a corporation, as well as the right to determine the conditions on which conferment is based, are principally matters of domestic law. However, international law imposes restrictions on States, eg, through the Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws. States do not need to recognize the conferment of nationality upon a person which is contrary to these rules. In the Nottebohm Case, the → International Court of Justice (ICJ) referred to the requirement of a genuine link between the individual and the conferring State, which may be based on birth, marriage, or residence etc. However, according to Commentary 5 of Art. 4 ILC Draft Articles on Diplomatic Protection with Commentaries, this requirement has now been expressly abandoned. In general, naturalization requires the consent of the concerned individual. Furthermore, the recognition of an individual’s nationality depends decisively on its effectiveness. If the respective individual does not give up his or her former nationality, he or she will be a dual national, a concept which is becoming more accepted in international law (→ Multiple Nationality). Domestic law also contains the rules for the deprivation of nationality, but faces serious restrictions through international law. For example, statelessness of a person shall be avoided by all available means, as stipulated in the Convention on the Reduction of Statelessness. The determination of the nationality of corporate entities depends primarily on domestic law. Citizens’ links to their respective States might be harshly affected by an obligation to serve in a foreign military. Compulsory military service may, hence, only be required from citizens owing allegiance to the respective State, because of the home State’s continuing personal sovereignty over its
nationals abroad. Nonetheless, in exceptional circumstances it is not contrary to international law to inflict compulsory military service upon an alien, eg, if there is an evident intention to immigrate and the compulsory military service could be avoided by simply cancelling his or her application for naturalization. Furthermore, European citizenship is not an independent national citizenship, but rather complementary, according to Arts 20–25 Treaty on the Functioning of the European Union (‘TFEU’). Nevertheless, it is a ‘fundamental status of nationals of the Member States’ (Case C-34/09 Gerardo Ruiz Zambrano v Office national de l’emploi [2011]).

2. Admission and Residence

14 Traditionally, States have no obligation under international law regarding the admission of aliens and the conditions for such admission. However, recent developments in international law require certain adjustments of that principle. Of late, States have, to a certain extent, been obliged to participate in international relations and therefore cannot totally exclude aliens from their territory. Nevertheless, restrictions under international law are only fragmentary. Recognized restrictions include, eg → abuse of rights, non-discrimination and severely endangering an alien’s life or well-being. Up until now, a universal treaty regarding admission or residence of aliens has not been achieved. However, several bilateral and multinational treaties are in place, which grant a qualified or unlimited right of admission to citizens of each Contracting State to the territory of other Contracting States, eg, agreements regarding the establishment of a special legal order, such as the law of the European Union (‘EU’). Rights of admission and residence may also derive from human rights treaties, which ensure the protection of families. The → European Court of Human Rights (ECHR), deciding on the implications of Art. 8 → European Convention for the Protection of Human Rights and Fundamental Freedoms [1950] (‘ECHR’) for claims to family reunion, has established that States may be obliged, under particular circumstances, to grant spouses or children of aliens entry and residence for the purpose of family reunion, if the unity of the family cannot reasonably be established in the State of origin of the family member seeking admission, or in a third State (cf Aristimuño Mendizabal v France; see also → Family, Right to, International Protection).

15 Persons seeking asylum are not entitled by treaty law or customary international law to choose a State of protection. Under the Convention relating to the Status of Refugees and the human rights treaties, they may not be returned, expelled, or deported to a persecuting State. Exceptionally, the non-refoulement principle may imply a right of temporary admission if there is no other reasonable alternative for an individual to seek protection. It does not include, however, an individual right of residence in the chosen country of refuge.

16 Special treatment is often given to → migrant workers and self-employed persons, who may derive a right to admission from bilateral or multilateral treaties, such as the provisions on freedom of movement in the Treaty on the Functioning of the European Union (‘TFEU’) and related secondary community law (see also → Movement, Freedom of, International Protection). The EU has also concluded association treaties and development treaties, which grant limited rights of admission to nationals of a Contracting State, particularly to nationals of an associated State who intend to take up self-employed activities.

17 Attempts to establish a comprehensive treaty regime that regulates the rights of migrant workers have resulted, on the European level, in the European Convention on the Legal Status of Migrant Workers (‘ECLSMW’) and, on the universal level, in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (‘ICRMW’). The ICRMW and ECLSMW have not, however, received sufficient support from States receiving larger numbers of migrant workers. The ICRMW and ECLSMW are considered by the major → immigration countries as taking a...
unilateral position in favour of migrant workers, while the rights of \textit{migration} States to control illegal immigration are not taken proper account of. Therefore, until now, both the ICRMW and ECLSMW have not been widely ratified and there is a striking disparity in the number of ratifications by sending States and receiving States. One of the reasons for the opposition of receiving States may be the fact that nationality is not admitted as a distinctive factor in these documents. Less controversial is the equal treatment principle regarding work-related matters, such as remuneration and hours of work. A number of specialized conventions are also in existence, concluded under the auspices of the \textit{International Labour Organization (ILO)} such as the Convention (No 97) concerning Migration for Employment (revised 1949) and the Convention (No 143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers as well as the Convention (No 189) concerning Decent Work for Domestic Workers to some extent. Moreover, the ILO Multilateral Framework on Labour Migration was issued in 2006. So far however, no general codification of the human rights of migrants has been achieved. Rights of migrant workers are frequently dealt with in the context of human rights treaties, particularly relating to non-discrimination on account of race and ethnic origin. While neither nationality nor alienage is listed as a reason for non-discrimination, protection against discrimination is granted on account of race, gender, ethnic origin, and religion etc (see also \textit{Racial and Religious Discrimination}; \textit{Women, Rights of, International Protection}).

18 Recently, efforts have been undertaken to alleviate admission to trade in services (\textit{Services, Trade in}). The \textit{General Agreement on Trade in Services (1994)} ("GATS"), as one of the agreements of the \textit{World Trade Organization (WTO)}, applies to measures by WTO members that affect trade in services. The GATS does not contain a right of entry and residence as such. However, the most-favoured-nation principle obliges Member States to accord to service receivers and service suppliers of any other Member State treatment no less favourable than it accords to like service suppliers of any other country (\textit{Most-Favoured-Nation Clause}). These obligations, however, apply only between WTO members. As a rule, governments do not acknowledge additional obligations to admit service suppliers.

19 States are also free to grant tourists or temporary visitors’ admission for a limited time, generally for up to three months, unless they have subscribed to obligations to grant temporary admission or tourist visas (see also \textit{Tourism}). Such admission, however, may be refused for a wide variety of reasons, including public order, health, or internal security. The German Constitutional Court, in \textit{2 BvR 1908/03}, decided that the sovereign right of States to grant admission may not infringe fundamental constitutional rights, such as the freedom of opinion (\textit{Opinion and Expression, Freedom of, International Protection}). A decision to refuse entry to the leader of a religious group considered by the authorities as authoritarian was, therefore, quashed as having violated the freedom of religion granted by Art. 4 \textit{Grundgesetz für die Bundesrepublik Deutschland} (Basic Law for the Federal Republic of Germany). However, the US Supreme Court in \textit{Kleindienst v Mandel} (408 US 753 [1972]) took a different approach, allowing the government to bar aliens from entering the country based on their speech, even if that speech would be protected by the constitution if the speaker were a US national.

20 Whilst residing in the receiving State, aliens have a general duty of allegiance, they are subject to the laws of the State of residence, and are obliged to perform general services which do not require the nationality of the State of residence, eg, they have to testify as witnesses in court if necessary.
3. Expulsion

21 Expulsion of aliens is still a matter of domestic law in which States enjoy a wide discretionary power. Nevertheless, the decisive influence of international law is obvious (see also → Human Rights, Domestic Implementation). States are forbidden, by a general rule of international law, to expel a person if there is no sufficient reason to assume that public order or, in some cases, morality is endangered. Furthermore, the principle of non-discrimination and the prohibition of the → abuse of rights set additional limits. An expulsion infringing upon human rights protected under the → International Covenant on Civil and Political Rights (1966) (‘ICCPR’) or a regional instrument, for example the ECHR, may be a violation of obligations under this convention for the respective signatory State. In particular, the protection of the family according to Arts 3 and 8 ECHR may constitute an obstacle to the expulsion of an alien. Additionally, certain restrictions on procedure are accepted. For example, according to Art. 13 ICCPR, an alien lawfully staying on the territory of a State Party to the ICCPR ‘may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority’. Similar regulations can be found in the ICRMW. In cases in which the procedure of the expulsion itself constitutes an infringement upon human rights, the expulsion itself must be considered as being contrary to international law, even if it was otherwise reasonably justified. Additional restrictions exist, if the existence of an objective → international public order is recognized.

22 The principle of non-refoulement, as laid down in Art. 33 (1) Convention relating to the Status of Refugees, grants protection from expulsion, from the moment in which the individual is admitted to the territory of a State and has been granted asylum. Nevertheless, the individual can still be expelled to a safe country. Article 3 ECHR contains a similar principle prohibiting the expulsion to States in which the individual would be subjected to torture, or inhuman or degrading treatment (→ Torture, Prohibition of). Furthermore, international law also precludes collective expulsion, as laid down in Art. 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 and Art. 22 → American Convention on Human Rights (1969). In 2002, the ECtHR applied this provision to a series of expulsions of Roma and Sinti, which were based upon largely identical individual administrative expulsion orders, such as in Conka v Belgium (2 February 2002).

4. Extradition

23 Extradition of a person means the official surrender of a suspected or convicted person by the residential State to the requesting State without the consent of the individual. By way of extradition, the requesting State can realize its ius puniendi. In cases in which the requesting State is also the individual’s native country, the State’s continuing personal sovereignty over its citizen competes with the territorial sovereignty of the requested State. The requested State has, in general, the right, but not the duty, to extradite an alien under international law. Bilateral or multilateral treaties are often concluded to ensure an extradition, such as the European Convention on Extradition, the Inter-American Convention on Extradition, or the Agreement Concerning the Extradition of Fugitive Offenders by the → League of Arab States (LAS). Customary international law as well as treaty law set limits to extradition, which have, in general, also been laid in domestic law. Hence, the principle of reciprocity as to criminality, the double criminality rule, and also to punishment must be observed. Additionally, political crimes are generally exempted from extradition, except → war crimes and → terrorism. Furthermore, the principle of speciality must be observed, meaning that the surrendered person may only be convicted for the
crimes for which the surrender was requested. Moreover, most States follow the principle → *aut dedere aut iudicare* that prohibits the extradition of their nationals. Other restrictions may follow from States’ Constitutions or other human rights treaties, eg, the prohibition to extradite a person who might receive the → *death penalty* according to Art. 3 ECHR. Within the European Union, special provisions apply under the framework decision on the → *European arrest warrant* (‘EAW’) (Council Framework Decision of 13 June 2002). An EAW based upon a specified offence is no longer subject to an examination of double criminality. The EAW also constitutes an exception to the rule that a State’s own nationals must not be extradited.

5. **Diplomatic Asylum**

24 Territorial and diplomatic asylum (→ *Asylum, Diplomatic*) have to be distinguished from each other. In case of diplomatic asylum, protection from persecution is sought within the persecuting State, with a diplomatic mission providing legal or at least physical protection (→ *Premises of Diplomatic Missions*), and not in the State of refuge, as is usually the case. Hence, the grant of refuge is exercised by diplomatic personnel in their capacity as privileged aliens. It is however doubtful whether such a right exists in international law (see also → *Haya de la Torre Cases*). Neither the → *Vienna Convention on Diplomatic Relations (1961)* nor customary international law covers the matter. However, both regional custom in South America, and a few treaties such as the Convention on Diplomatic Asylum by the → *Organization of American States (OAS)*, provide for diplomatic asylum. Thereafter, it is restricted to cases of politically motivated persecution.

6. **Diplomatic Protection**

25 Diplomatic protection is the State’s right to support and assist its citizens through diplomatic and consular organs in a foreign State. Consequently, it is the State’s right, for the benefit of its citizens, to assert violations of international rules regarding the treatment of aliens against the receiving State. It is the exercise of the sending State’s personal sovereignty over its citizens. The principles of diplomatic protection are, to a large extent, laid down in the → *Vienna Convention on Consular Relations (1963)* (‘VCCR’). Whereas States have no obligation under international law to exercise diplomatic protection for the benefit of their citizens, they are obliged to allow the exercise of this right by other States for the benefit of their citizens. In this context, Art. 36 VCCR is particularly important. It not only facilitates the free communication between the national and its sending State, but it further enables the assistance of nationals in distress by obliging the competent authorities of the receiving State to inform the sending State’s consular post of the detention of its nationals, as well as granting them the right to visit and arrange for legal representation. The importance of this provision has recently been emphasized by the ICJ in the → *Avena and Other Mexican Nationals Case (Mexico v United States of America)* and the → *LaGrand Case (Germany v United States of America)*, which held that it is not just a right of the State, but also a right of the individual concerned. The → *Inter-American Court of Human Rights (IACtHR)* in *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (Advisory Opinion)* went so far as to include Art. 36 (1) VCCR in the corpus of human rights. An important extension of the right to diplomatic protection is expressed in Art. 23 TFEU, whereby every national of an EU Member State is entitled to diplomatic protection by any Member State. Moreover, in 2006, the → *International Law Commission (ILC)* adopted comprehensive Draft Articles on Diplomatic Protection with Commentaries that attempted to lay down the current state of law regarding diplomatic protection.
7. Minimum Standard

26 In general, aliens are subject to the jurisdiction of the receiving State as long as they do not merit special treatment as diplomats, as Heads of State, or as military personnel of foreign States (see also Military Forces Abroad). However, international law requires a minimum standard of rights for aliens. The national treatment standard, as proposed by many Latin American countries, could not prevail in international law. Therefore a standard is required that consists of certain fundamental rights, which may be extended by domestic or international law. Rights, which are generally accepted, are the recognition of juridical personality and legal capacity, standards of humane treatment, law-abiding procedures in cases of detention, the right of unobstructed access to courts, the protection of life and liberty against criminal actions, and the prohibition of confiscation etc (see also Fair Trial, Right to, International Protection; Liberty, Right to, International Protection; Life, Right to, International Protection; Property, Right to, International Protection). The freedom of movement is not, however, part of the minimum standard. Political rights and participation of aliens can also be restricted, but the rights of free speech, assembly, and association are part of the minimum standard in its general form (see also Assembly, Freedom of, International Protection; Association, Freedom of, International Protection; Life, Right to, International Protection; Property, Right to, International Protection).

27 Today, human right treaties, which grant certain rights to individuals regardless of nationality, also have to be taken into account, thus enlarging the minimum standard in many important aspects. The law of the EU forms a special legal order for integration that is distinct from traditional public international law. Discrimination on the basis of a Member State’s nationality is excluded pursuant to Art. 18 TFEU. These provisions, which are part of the so-called primary law of the EU, are directly applicable in the domestic law of the Member States, which enables the individual to claim his or her rights directly before domestic tribunals. The same partly applies to the so-called secondary law of the EU, which consists of rules created by the authorities of the EU. The legal development of the EU order shows advancement in the status of aliens in relation to that of the citizens of the Member States which is unprecedented within the international legal order. This process is being vigorously furthered by the jurisdiction of the European Court of Justice (European Union, Court of Justice and General Court).

28 The minimum standard does not, however, apply to stateless persons, although it may be extended to them by treaty.

8. Property

29 In general, a State can restrict the acquisition of certain types of property by aliens. Moreover, its territorial sovereignty enables States to expropriate or nationalize the property of aliens. Nationalization as such is perfectly legitimate under international law. However, the consequences of the nationalization of an alien’s property remain in dispute. The traditional and probably prevailing rule under international law is that States are obliged to pay adequate, prompt, and effective compensation for the expropriation of the alien’s property, regardless of its internal expropriation measures. However, in particular, developing countries have tried to challenge that rule by completely or partially ruling out compensation by deducting ‘unjustified profits’, or by requiring that compensation is in line with their internal expropriation measures. This position is often justified with reference to a purported sovereignty of States over natural resources (Natural Resources, Permanent Sovereignty over). There are numerous agreements, which aim at ensuring compensation and establishing international arbitration over disputes on those issues (see also Arbitration and Conciliation Treaties; Investments, Bilateral Treaties).
9. Redress

30 If an alien is injured through a violation of a rule of international law, this violation constitutes an internationally wrongful act. However, the injured international legal person is not the alien itself, but the State whose citizen the alien is. Therefore, only the State has the right to exercise diplomatic protection for its nationals. Thus, taking into account the local remedies rule, a variety of measures may be available to remedy the wrongful act, eg, if admissible, an action brought before the ICJ, as well as the execution of peaceful reprisals, insofar as they are proportionate to the harm done and do not constitute a human rights’ violation themselves (see also → Local Remedies, Exhaustion of; → Proportionality). In cases of refugees and de facto stateless persons, the UN High Commissioner for Refugees (→ Refugees, United Nations High Commissioner for [UNHCR]) is competent to exercise protection. However, in cases of stateless persons who are not refugees, no such protection is available. As an individual, the alien by him- or herself, generally does not have the right to bring a claim before an international court, even if his or her human rights are concerned. The individual right of access to the ECtHR under Art. 34 ECHR stands out as an important exception to this rule. The → Human Rights Committee, as well as some other judicial or quasi-judicial institutions, offers also some protection, though in less effective ways for individual cases.

D. Evaluation

31 Today, the situation of aliens and, most notably, individuals in general is more and more regulated and influenced by public international law, namely by human rights law. However, even though, more previously exclusive matters of domestic law have been internationalized (→ internationalization), at the international stage, the State’s national sovereignty still sets limits to a comprehensive protection of the individual. Thereafter, the rules relating to aliens are, in significant terms, still part of the domestic realm, and therefore vary extensively according to State practice. Describing the situation in a nutshell, domestic law is, at present, more and more restricted by public international law and, to some extent, certain legal matters, such as human rights, are more and more regulated by public international law. However, international rules still lack sufficient legal enforcement mechanisms for individuals. To some extent, the long-standing system of categorizing the → subjects of international law is another reason for the deficient legal position of aliens under international law. Furthermore, phenomena such as the refugee problems of the 20th century can only be resolved on the level of international law.

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