Protection granted to foreigners and their property

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DOI Number: 10.14704/nq.2022.20.13.NQ88397 Neuro Quantology 2022; 20(13):3225-3238

Introduction:

The right to property is one of the civil rights that people enjoy, and this right has known a steady development and is linked to the development of human societies and human thought, as ownership began in ancient groups, collective ownership of the tribe, then the family, before it appeared in the form of individual or private property. This development has resulted in the possibility of foreign ownership of real estate, and benefiting from this right, taking into account the controls and restrictions imposed by the national law of each country. However, this right may be encountered by symptoms and deficiencies related to the legal status of a foreigner within the national territory that prevent them from enjoying it, including the state's expulsion of the foreigner from its national territory.

Given the seriousness of the expulsion procedure on the legal status of foreigners, its effects go beyond the individual level of a foreigner to damage his property [1] and his private life. This issue was of great theoretical importance, as it was dealt with in detail by the Institute of International Law, on the occasion of its discussion of the international rules for the admission and expulsion of foreigners that were adopted in 1892 [2]. The International Law Commission of the United Nations decided to include it in 2004 in its program of work, with the aim of codifying it in a way that guarantees the rights of foreigners on the one hand, and frames the state's right to exercise it, and this work culminated in the adoption of draft articles related to the expulsion of aliens in 2014 [3].

The practical importance is evident through the controls in which international law restricts the exercise of this right by states to a set of international controls and rules that must be respected and adhered to, otherwise they will be subject to international accountability. Among these obligations are the protection of the property of a foreigner subject to expulsion [4]. Where the expulsion process should be carried out in accordance with the rules of international law that govern property rights and other economic interests of the foreigner.

The questions raised by the topic stem from a basic idea that the state has wide discretionary power in organizing the expulsion of foreigners from its territory. In return, the property of foreigners subject to expulsion enjoys international legal protection enshrined in a group of international covenants and treaties. Hence, the problem that the subject raises is how to achieve the desired balance between the state's right to organize and practice the expulsion of foreigners, and between the legal and judicial protection of the property of foreigners that are the subject of the expulsion.

By extrapolating and deconstructing the elements of the subject, its problem can be formulated as follows: To what extent were the rules and principles of international law able to achieve a balance between the state's sovereign right to expel foreigners and provide the necessary protection for the property of this group?

From this problem, a set of sub-questions that would contribute to the understanding and analysis of the subject, which can be summarized as follows:

What is meant by expelling an alien? What distinguishes it from similar procedures?

What are the international legal protections for the property of foreigners subject to expulsion?

What are the most important real estate disputes raised during the expulsion of foreigners?

What are the international judicial remedies,

and where are the efforts of the judiciary to extend its control and protect the property of foreigners subject to expulsion?

Based on the above, and in order to answer the central problem and the sub-questions raised by the topic, we will approach it according to the analytical approach of various legal texts and jurisprudential opinions, as well as international jurisprudence related to the topic, and we will address this through two basic studies: In the first topic we deal with the conceptual and legal framework for the protection of property Foreigners subject to expulsion, and we devote the second section to real estate disputes regarding the expulsion of foreigners and the judicial remedies available to a foreigner, especially litigation at the International Court of Justice

The first topic: the conceptual and legal framework for protecting the property of foreigners subject to expulsion

Due to the multiplicity of definitions regarding the concepts of the subject, especially the concept of expelling the foreigner, the process of defining the conceptual and legal framework for the subject is of utmost importance in helping to understand and analyze, as well as defining the scope of the subject. Hence, it is necessary to shed light on the definition of the additional compound "expelling the foreigner" (first). In addition to the extension of various international legal protections for the right to property in general, and in the context of expelling a foreigner in particular (II).

The first requirement: the conceptual framework for the expulsion of foreigners

Since it is impossible to understand the term expulsion except in relation to the term foreigner, and given the development that the latter has known, and the people who fall within its framework, it is necessary to shed light on it first, then define expulsion after that, and distinguish it from other similar measures and measures that the state may take In the right of foreigners.

The first paragraph the concept of a foreigner

The United Nations International Law Commission defined a foreigner as every individual who does not have the nationality of the country in whose territory he resides [5]. The committee has adopted the nationality criterion as a determinant of the distinction between a foreigner and a citizen, and although this definition does not refer to individuals who do not have any nationality - that is, stateless persons -, this category may implicitly fall under the category of individuals who do not have the nationality of the state in whose territory they are.

Whereas, the Institute of International Law defined foreigners when it defined international rules for the entry and expulsion of foreigners in 1892, as "those who do not enjoy the right to nationality in the country, without distinguishing between whether they are mere visitors, or residents who live in it, or whether they are refugees or have entered." The country voluntarily "[6]. It is noticeable that this definition also adopted the nationality standard in determining the category of foreigners regardless of their length of stay, or how they entered the region, whether they were foreigners with

legal status as a result of their respect for the legislation governing the entry and residence of foreigners, or their status was illegal.

As for international law jurists [7], they did not address the definition of a foreigner when dealing with the issue of nationality. Rather, they confined themselves to defining a national, as it is evident from its definition - in the sense of contravention - that a foreigner is the one who does not hold the national nationality. Anyone who does not have the nationality of the country in which he is residing in accordance with the provisions of the Nationality Law [8]. Meanwhile, various national legislations have defined the foreigner in the laws regulating the entry and residence of foreigners in its territory [9].

The second paragraph: the concept of expulsion

The International Organization for Migration defines expulsion in the dictionary of immigration terms as “the establishment of a government agency that has the intention to expel a person, or several persons (“ foreign ”or sub-state strangers) from the country against their will from the

territory of that country. [10] It is noticeable

that this definition excludes the systems that grant the right of expulsion to the judicial authority, and it also gave the government agency the ability to expel several people, or what is termed collective expulsion, which is forbidden according to the norms of international law.

Whereas the International Law Commission of the United Nations affirmed that what is meant by

expulsion is: "It is every official act or behavior attributed to a state by which a foreigner is forced to leave the territory of that state. The expulsion does not include surrender to another country or surrender to an international criminal court or body, or Not allowing a foreigner to enter the country "[11].

It is noticeable that this definition defined expulsion in terms of it being an act carried out by the state, without specifying the party to which this jurisdiction is entrusted, and this definition used the term compulsion in reference to the forced implementation of expulsion, noting that the implementation of the expulsion decision may be the voluntary departure of the foreigner without coercion or Forcing. Then he distinguished between expulsion and the process of extradition to another country, which takes place within the framework of judicial cooperation between countries with the aim of extraditing the accused according to special procedural conditions. In addition to his distinction between expulsion and the process of denial of entry that is governed by the legal texts related to the entry of foreigners, not those related to expulsion.

As for the jurist Paul Fauci, he defined expulsion as an act by which the state warns or forces a person or several foreign persons who are in its soil to leave as soon as possible [12].

It is noticeable that most of the definitions [13] did not define expulsion as a legal event, which begins with the decision to expel it by the authority that has this jurisdiction, and then follows it according to the cases. Voluntary implementation of the expulsion decision, or a judicial stage to challenge the legality of the decision, and then implement the expulsion decision. Moreover, these definitions did not specify the reasons and reasons for expulsion, noting that most legislations adopt the reason for disturbing the public order and the preservation of state security as a justification for expulsion.

Based on the foregoing, it is possible to give a synthetic definition of expelling foreigners as the order to leave the soil and the accompanying measures that the state takes in accordance with the

law against the foreigner legally residing in it, and whose presence within its territory constitutes a threat to its public order, security, or interests [14].

The above definition tried to add four basic elements, which are:

ü The procedures accompanying the process of expulsion, such as keeping the person subject of expulsion in the places designated for this process or detaining him until the implementation of the decision through his deportation, or confiscation of his property, and not restricting the expulsion of foreigners to the process of issuing the expulsion decision only;

ü Restricting and subjecting the expulsion to the law in order to give it legitimacy

ü An indication of the legal status of the foreigner who is the subject of the expulsion, given that the expulsion process includes foreigners legally residing in a country without the aliens residing illegally, or those who entered illegally;

ü Mention the reason for the expulsion, which is the threat to public order or national security, as long as most international and national legislations adopt it as grounds for expulsion.

The expulsion of an alien in the manner referred to above, and his denial of disposing of his property, allows him to enjoy the procedural and substantive guarantees stipulated in the various international charters and treaties protecting the right to property.

The second requirement: legal protection for foreigners 'property

The international protection of foreigners 'property is closely linked to the historical development that has witnessed the development of the treatment of foreigners in general, as this center went through a series of historical stages. At the beginning, the ancient societies did not recognize any rights for

foreigners in their territory, and the foreigner for a long time was deprived of the legal personality and the most basic rights, This situation only improved with the development of international law and human rights, and the growth of international commercial transactions [15], which greatly contributed to the recognition of the minimum rights that a foreigner should enjoy. This is reflected in his personal protection, as well as the protection of his property. The international protection of foreign property can be divided into general legal texts that protect the right to property regardless of the legal status of its owner, and other special provisions that protect this right in the context of the expulsion of foreigners.

First paragraph: General provisions for the protection of property rights

The right to property generally enjoys international protection approved by a group of international charters and treaties, foremost of which is the Universal Declaration of Human Rights of the year 1948, in which the second paragraph of its Article 17 stipulates that "Everyone has the right to own property alone or in association with others, and no one may be arbitrarily stripped of his property. ". And it has a clear indication to prevent arbitrary expropriation.

The right to own property is one of the rights covered by the principle of equal enjoyment of human rights, which was endorsed by the International Convention on the Elimination of All Forms of Racial Discrimination. This principle prohibits discrimination on the basis of race, color, descent or origin between people in the enjoyment of rights. Article 5 of this convention stipulates the necessity to guarantee the human right to own property alone or in association with others, without discrimination based on race, color, or national or ethnic origin [16].

In addition to protecting the right to property in international treaties and conventions in the event of peace, the Fourth Geneva Convention prohibits infringement of the right to property in the event of war and armed conflicts, as Article 53 stipulates that: "The occupying power is prohibited from destroying any fixed or movable private property related to individuals. Or groups, or the state or public authorities, or social or cooperative organizations, unless the war operations inevitably require this destruction "[17].

Although the two International Covenants on Economic, Social and Cultural Rights, and Civil and Political Rights contain a large variety of rights, they did not address the right to property.

On the regional level, Article 1 of the First Protocol to the European Convention on Human Rights stipulated the need to protect the right of every natural or legal (legal) person to the peaceful enjoyment of his property. No person may be deprived of his property except for the public benefit and under the conditions stipulated in the law and the general principles of international law. As for the second paragraph of this article, it stipulates the possibility of controlling the use of property in accordance with the public interest. This paragraph represents a consensus reached intended to protect property rights, but without harming or affecting the state's power to nationalize property for the public benefit [18].

Article 14 of the African Charter on Human and Peoples' Rights stipulates: "The right to property is guaranteed. It may not be violated except for a public necessity or a public interest, in accordance with the provisions of the laws issued in this regard" [19].

Guinea based its claims on this article in the case of the expulsion of Mr. Ahmed Sadiou Diallo [20], and claimed that: "Under the circumstances in which Diallo was expelled, he violated his right to property, guaranteed under Article 14 of the African Charter, because he left most of his successors behind him. His money when I hate to leave Congo. " In the court's opinion, "this aspect of the dispute is not related to the legality of Mr. Diallo's expulsion in light of the international obligations of the Democratic Republic of the Congo, as it is related to the damage Mr. Diallo suffered as a result of the internationally wrongful acts to which he was victim…" [21].

Paragraph two: Special provisions for the protection of property right in the context of expulsion of an alien

The property of the foreigner subject to expulsion has received special protection by the Institute of International Law, as it was affirmed in Article 41 of the international rules relating to the admission and expulsion of foreigners

adopted in 1892 that: "The order to expel foreigners who are permanently or non-permanent residents or who have a commercial interest in The region except in a way that is free from the betrayal of trust that these people have placed in the laws of the state, and it must give them the freedom to use every possible legal means, directly if possible, or through a third party they choose themselves, to settle their affairs and interests, including what they have of money and what they owe Dion, in the province "[22].

The issue of choosing a third party to settle the affairs and interests of the expelled foreigner, was raised by the International Court of Justice in the case of the expulsion of Ahmed Sadio Diallo, where the court concluded, "It cannot support Guinea's claim that the Democratic Republic of the Congo violated Mr. Diallo's right to participate and vote in general assemblies and perhaps the Democratic Republic of the Congo." By expelling Mr. Diallo, it prevented him from participating personally in any public assembly, but that disability, according to the court, does not amount to a denial of his right to participate in voting and in general assemblies. [23] Based on that, the partner's right to participate and vote in general assemblies can be exercised by the partner personally or through an agent of his

choice, and there is no doubt in this regard that the vote expressed through an agent in a general assembly has the same legal effect as that of the vote that he performs. Partner personally [24].

The Declaration of Human Rights for Individuals Who Are Not Nationals of the Country in which They Live, adopted by the United Nations General Assembly in 1985 under Resolution 40/144, also devoted protection to this right, as Article 9 stipulates: "The foreigner shall not be arbitrarily deprived of the assets he acquired. In a legal manner "[25].

Under Article 20 of the foreign expulsion projects, there are two basic obligations for the expelling state, the first of which is to take appropriate measures to protect the property of the foreigner, and the second is to allow the foreigner to dispose of his property. This article stipulates: "The expelling state shall take appropriate measures to protect the property of a foreigner subject to expulsion, and allow him, in accordance with the law, to dispose of it freely, even if it is from abroad." [26] It is noted that the general wording of this article includes all the guarantees related to the protection of property under international law.

The property of a special category of foreigners subject to expulsion was also granted international protection through the adoption of the "reasonable opportunity" guarantee. The sixth paragraph of Article 22 of the International Convention for the Protection of the Rights of All Migrant Workers states: "In the event of expulsion, the person concerned shall be given a reasonable opportunity before or after departure to settle any demands related to wages and other dues due to him and to settle any outstanding responsibilities." [27].

It can be said that international covenants and treaties have tried hard to find a formula to achieve

the desired balance between the state's sovereign right to expel the foreigner and protect the

foreign's property, by establishing international legal protection that allows the subject of expulsion to enjoy procedural and substantive guarantees to protect his property, but on the other hand, it included exceptions to this protection. Countries enjoyed powers that allowed them to restrict the right to protect foreign property. The conflict between the interests of the state and the foreigner's right to protect his property was often the subject of legal disputes.

The second topic: Real estate disputes regarding the expulsion of foreigners and remedies

Real estate disputes in the context of expelling foreigners are distinguished by the fact that they do not only concern arbitrary assault on the foreigner's property, but may be linked to arbitrary measures during the implementation of the expulsion process by the expelling state. Thus, it constitutes a fertile field for measuring the level of protection enjoyed by foreigners' property on the one hand, and the procedural guarantees granted to them on the other hand (the first requirement). In order to settle these disputes, the International Court of Justice is considered an international judicial organ that provides the possibility of redress in accordance with the principles and rules of international law (second requirement).

[1] Charles De Boeck, l'expulsion et les difficultés internationales qu'en soulève la pratique, recueil des cours de l'Académie de droit international, volume 18, 1927, p 638.

[2] Annuaire de l'Institut de droit international, volume XII 1892-1894, session de Geneve, septembre 1892, p 218 à 226.

[3] "The International Law Commission of the United Nations decided at its fifty-sixth session (in 2004) to include the topic of" expulsion of aliens "in its program of work, and appointed Mr. Maurice Camto as Special Rapporteur on this topic. At the 3238th meeting held on 5 August 2014, The International Law Commission adopted draft articles relating to the expulsion of aliens.

United Nations, Official Records of the General Assembly, Sixty-ninth Session, Report of the International Law Commission, Sixty-sixth Session, Supplement No. 10 (A / 69/10), New York, 2014, pp. 12 and 14.

[4] Charles De Boeck, op cit, 1927, p 474.

[5] Article 2 of the draft articles on the expulsion of aliens. Report of the International Law Commission, document symbol: A / 69/10, previous reference, p. 14.

[6] Annuaire de l'Institut de droit international, op. cit, page 219.

[7] Hisham Sadiq, Hafizah Al-Sayed Al-Haddad, Muhammad Abdel-Al Okasha, Nationality and the Center for Foreigners, a Comparative Study, University Press, 2006, p. 473

Shams Al-Din Al-Wakeel, Al-Wajeez in Nationality and the Foreigners Center, Third Edition, Egypt, Al Ma'arif Foundation, Alexandria, 1968, p .: 331.

Hafizah Al-Sayed Al-Haddad, Introduction to Nationality and the Foreigners Center, First Edition, Lebanon, Al-Halabi Legal Publications, 2010, p .: 301

Cathrine wihtol de wenden, l'immigration, France, groupe eyrolles, 2017, page: 30.

[8] Abdel-Majid Ghossoub, Lessons in Private International Law, First Edition, Beirut, Majd University Foundation for Studies, Publishing and Distribution, 2008, p. 749.

[9] In this regard, he mentioned the definition of a foreigner in the Law on Entry and Residence of Foreigners in Morocco and Illegal Immigration, which affirmed in Article 1: "Foreigners" are intended in the meaning of this law, persons who do not have Moroccan nationality or who do not have a known nationality or who were not Determine their nationality. " Law No. 02.03 related to the entry and residence of foreigners in the Kingdom of Morocco and to illegal immigration, promulgated by the Honorable Dahir No. 1.03.196 on 16 Ramadan 1424 corresponding to November 11, 2003. Official Gazette No. 5160 on 11/13/2013. P. 3817.

[10] International Organization for Migration, Dictionary of Migration Terms, Second Edition, Issue 32, 2013, p. 44.

[11] United Nations, Official Records of the General Assembly, Sixty-ninth Session, previous reference, p. 26.

[12] «L'expulsion est l'acte par lequel un Etat somme et au besoin contraint un ou plusieurs individus étrangers se trouvant sur son conoire d'en sortir dans un bref délai» Paul Fauchille, op.cit, p 974 et 975 .

[13] «An administrative measureconsisting in an order of the Governmentdirecting a foreigner to leave the country» Lassa Francis Oppenheim, International Law. A Treatise, Volume I peace, New york, 1905, p 381.

"Mesure de police administrative enjoignant à une personne de quitter le importoire de l'Etat ou elle se trouve" Jean Salmon, dictionnaire de droit international public, Bruxelles, Bruylant, 2001, p 488.

He acted according to which the state warns one or several foreigners residing on its land to leave it and coerces them to do so when necessary. Fouad Abdel-Moneim Riad, Mediator in Nationality and the Center for Foreigners, Dar Al-Nahda Al-Arabiya, Cairo, Fifth Edition, 1988, p. 356.

(14) Anwar Bouziani, Expulsion of Foreigners between Sovereignty Obligations and the Principles of International Law, Journal of Political Science and Law, Issue 16, July 2019, Arab Democratic Center, Germany, p .: 66.

[15] Hisham Sadiq, Hafizah Al-Sayed Al-Haddad, Muhammad Abdel-Al Okasha, previous reference, pp. 475 to 477.

André Weiss, traité théorique et pratique de

droit international privé tome 2 le droit de l'étranger,

paris, L. Larose éditeur, 1894, pages 7 à 57.

[16] Unies, Recueil des Traites, volume 660, New York, 1971, p 221.

[17] Article 53: "Il est interdit à la Puissance occupante de détruire des biens mobiliers ou immobiliers, appartenant individuellement ou collectivement à des personnes priv6es, A l'Etat ou à des collectivités publiques, à des organizations sociales ou coopératives, sauf dans les cas où ces destructions seraient rendues absolument nécessaires par les opérations militaires ». Unies, Recueil des Traités, volume 1520, New York, 1975, p 323.

[18] Conseil de l'Europe, convention européenne des droits de l'homme, Strasbourg, article 1, page

32.

[19] Unies, Recueil des Traites, volume 75, New York, 1997, p 239.

[20] Ahmed Sadio Diallo, a Guinean citizen who moved to reside in the Democratic Republic of the Congo, established in 1974 a company for import and export called Avercom-Zayer. In 1979, with the support of two private partners, he established another company specialized in transporting goods. In the 1990s, Mr. Diallo, as director of the two companies, entered into legal disputes through which he demanded the Democratic Republic of the Congo to pay outstanding debts related to the delivery of orders to the latter during the years 1983 and 1986. On October 31, 1995, the Prime Minister of Zayer (now the Democratic Republic of the Congo) issued an expulsion order against Mr. Sadio for breaching public order in Zayer, especially in the economic, financial and monetary fields. As a result, Guinea accused the Democratic Republic of the Congo that the procedures for arresting, detaining and expelling Mr. Diallo were the culmination of the latter's policy aimed at preventing him from recovering the debts owed to his two companies. (United Nations, Summary of Judgments and Orders of the International Court of Justice, 2003-2007, New York 2011, pp. 215 and 216, Case relating to Ahmadou Sadioodialo Republic of Guinea v. Democratic Republic of the Congo)

[21] Case relating to the expulsion of Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). United Nations, Summary of Judgments and Orders of the International Court of Justice, 2008-2012, New York 2015, p.173.

[22] Annuaire de l'Institut de droit international, op. Cit, p: 226.

[23] Summary of judgments and orders issued by the International Court of Justice, 2008-2012, previous reference, p. 174.

[24] Ibid, p. 174.

[25] Article 9 of the annex to resolution 40/144, Declaration of the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, dated December 13, 1985.

[26] Report of the International Law Commission, Document Symbol: A / 69/10, ibid., P. 19.

[27] Nations Unies, Recueil des Traités, vol 2220, New York 2004, p: 37.

The first requirement: Real estate disputes regarding the properties of expelled foreigners

Real estate disputes over foreign property are often linked to two situations: The first relates to the privilege enjoyed by the state in order to confiscate property in the public interest, and the second relates to the procedural guarantees granted to a foreigner during the implementation of the expulsion, especially granting a "reasonable opportunity" to the foreigner to liquidate and manage his property.

Paragraph one: The reasonable opportunity to liquidate a foreigner's property:

The obligation to protect the property of foreigners subject to expulsion necessitates giving them a "reasonable opportunity" to protect their property in the expelling country by disposing of it freely, or liquidating it in a manner that does not harm their interests. The breach of this obligation has led to numerous international claims. In the "Holland" case, the United States demanded compensation from Guatemala for the urgent expulsion of one of its citizens, and indicated that Mr. Hollander "was thrown out of the country in every sense of the word, leaving behind his wife, children, business and property, and everything dear and dependent on him." That "the government of Guatemala, regardless of what its laws may allow, has no right in times of peace and inner

calm to expel Hollander without notifying him or to give him the opportunity to arrange his family and his work on the pretext that he committed an alleged crime three years ago" [1].

In the Rankin case, the Special Court of Iran and the United States' claims held that the expulsion would be unlawful if the foreigner concerned was deprived of a reasonable opportunity to protect his property interests: "The implementation of this policy may, in general, violate the procedural and substantive restrictions that limit the state's right to expel Foreigners from its territories, as stipulated in the provisions of the Treaty of Friendship and customary international law. [...] For example: by depriving the foreigner of a reasonable opportunity to protect his property interests before his expulsion. "[2]

In the case of expelling Qataris from the Emirates, Qatar petitioned the International Court of Justice to order the United Arab Emirates to take the necessary measures in order to protect the rights

enjoyed by Qataris and their family members, including: "Qataris re-enjoying their rights, including the right to property ... and to take measures. Aims to ensure that those rights are respected. " It also demanded full reparation for the damage resulting from the acts committed "[3].

The state's rules of law did not specify a specific period to measure the extent to which the guarantee of "reasonable opportunity" granted to a foreigner is respected due to the difference and specificity of each case. The ruling: "It can be said that according to generally accepted principles of international law, the state may expel a foreigner at any time it wishes, provided that it does not expel him in an arbitrary manner, for example by using undue force to implement the expulsion or treat the alien badly or refuse to give him an opportunity In view of Dr. Breger's statement that he was ordered by the Italian authorities to leave the island of Rhodes within six months, it seems doubtful that the responsibility of the Italian government would arise on the basis that he was not given ample time to protect his property "[4].

The second paragraph: expulsion with the aim of confiscating the foreigner's property

One of the most important aspects of the state's exercise of its sovereignty over its lands is the process of confiscating the property of persons in general, and foreigners in particular, provided that the principle of legality in exercising this right is adhered to, which was stated in the fourth paragraph of United Nations General Assembly Resolution 1803 related to permanent sovereignty over natural resources for the year 2015. 1962: "Nationalization, expropriation, or expropriation must be based on foundations and causes of public benefit, security, or national interest, given their

preponderance over individual or purely private interests, both domestic and foreign. In such cases, the owner is paid appropriate compensation, in accordance with the rules in force in the state.

Which take those measures to exercise its sovereignty in accordance with international law "[5].

Article 11 prohibits the expulsion of foreigners with the aim of confiscating their property, as it is stated in this article: "It is prohibited to expel a foreigner for the purpose of confiscating his money" [6]. That is, the prohibition of expulsion whose purpose is to unlawfully deprive a foreigner of his property. Expulsion of foreigners should be carried out in line with international human rights law governing property rights and other economic interests of foreigners; The expulsion of an alien that involves unlawful confiscation or destruction of property or unlawful expropriation may constitute unlawful expulsion, and unlawful appropriation of property may be considered incompatible with the purpose and function of the expulsion process [7].

It should be noted that an exception is made to the prohibition stipulated in draft article 11, as it does not include cases in which the decision to confiscate property is taken as a punishment in accordance with the law for the foreigner's commission of a crime that results in the confiscation of property [8]. A distinction should be made in this context between expulsion whose purpose is to confiscate the foreigner's money, that is, unlawful or unlawful expulsion, and confiscation by the state to limit the foreigner's disposal of certain property, especially those acquired illegally.

However, according to the practical reality, there

have been cases of "expulsion for the purpose of confiscation" in many cases, such as the expulsion of the British from Egypt [9] and other cases [10]. In this context, the Nottebohm case, which demanded Liechtenstein for compensation for the latter's arrest, unlawful arrest and expulsion, and for refusal to allow his return, must be cited, along with other general compensation for unlawful encroachment and dispossession of property. She said, "If the court was ready to deal with the substance of the case, it would have to consider whether the expulsion of Nottebohm and his refusal to allow his return were in accordance with the order of the dispossession of his property. The subsequent initiation of more than a hundred different procedures in order to deprive him of his property interests may have pushed the court." To consider the

implicit intentions of the expelling state "[11].

The problem of confiscating the property of Moroccans expelled from Algeria was brought up before the Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families by the Association of Moroccans Victims of Arbitrary Expulsion from Algeria, where the association emphasized in particular the continued violation of the rights of expelled Moroccan immigrants, with the adoption of a clause in the Finance Law. For the year 2010, published in the Official Gazette No. 78 of December 31, 2010, it provides for the state's confiscation of abandoned real estate properties, which authorizes the real estate governorate to finish off the names of neglected real estate owners. The committee issued its observations and demanded that the expelled Moroccans be able to recover their property and facilitate family reunification. She expressed her fear that the property of Moroccans who were expelled from Algeria in 1975 would be subject to the requirements of Chapter 42 of the Algerian Finance Law of 2010. The committee's position is logical because those concerned were forced to abandon their property by the Algerian authorities in violation of all applicable rules in this regard [12]].

In another context related to the protection of foreigners subject to expulsion in the event of a war between two countries, the Ethiopia and Eritrea Special Claims Committee concluded, in the partial arbitration decision regarding Ethiopia's civil claims, that the expulsion of enemy foreigners was not accompanied by adequate protection of their property rights as a result of the unlawful confiscation they were subjected to. Their property was inflicted by Eritrean government officials and unlawful

interference in their efforts to protect their property. In this decision, in the section on claims for loss of property, the following states: "… Article 33 of the Fourth Geneva Convention prohibits reprisals against the property of protected persons, while paragraph (g) of Article 23 of the Hague Rules prohibits appropriation of The property of the enemy unless required by military necessity.

These guarantees, of course, apply side by side with a wide and sometimes conflicting range of rights conferred on the belligerents with the aim of denying the enemy state access to the resources of the enemy citizens. "[13]

The second requirement: judicial remedies

The authorities and mechanisms that can consider real estate disputes involving foreigners subject to expulsion transgress, as the state's responsibility arises from expelling an expelled foreigner that is inconsistent with international law, especially the expelling state's illegal act that harms the foreigner's property. This article will be limited to litigation before the International Court of Justice, as it is an international judicial body affiliated with the United Nations, which guarantees the right to litigation for all member states of the United Nations Organization. In the cases they initiate before the International Court of Justice, states rely on the diplomatic protection system [14], as this mechanism played a pioneering role in developing rules of international law protecting the property of foreigners.

Mr. Hussein Hanafi Omar says in this context: "The individual and foreign money deserve protection

... from the risks of being attacked, nationalized or confiscated, especially if this is done by the state on whose lands the investment is made, and there is no doubt that the best means of protection is in adopting the claimant investor's state. By conducting diplomatic protection. "[15]

The aim of this article is not to lay down the conditions [16] and the litigation procedure

before the International Court of Justice, but rather to present the most important problems facing litigation before this international mechanism.

First paragraph: Limited access to litigation before the court 1- Initial approval of the parties

The judicial system of the International Court of Justice is based on the principle of consent of the parties to the conflict explicitly or in writing to refer the dispute to the court, whereby the court cannot consider the dispute without the consent of the parties [17]. This provision often denies the affected side access to the International Court of Justice. In the case of Moroccans expelled from

Algeria in 1975, Professor Eric David asserted that: "Although this process has known a clear violation, especially with regard to respect for private property, the process of litigation before the International Court of Justice is interrupted by a set of restrictions, foremost of which is:" It is permissible for any country to Litigate another country before the International Court of Justice on the condition that the court recognizes its jurisdiction according to a bilateral agreement or identical unilateral statements by the parties to the conflict, something that neither Morocco nor Algeria has done to this day; Out of the 193 member states of the United Nations, only 69 states have approved the mandate of the Court by virtue of a unilateral declaration. Since referring the case of the expulsion of Moroccans from Algeria to the International Court of Justice requires Morocco and Algeria to agree to submit the dispute to this court, the statute of the International Court of Justice, it is also impossible for the two countries to agree "[18].

2- Restriction to states in filing a lawsuit

The confinement of litigating cases to countries according to Article 34 of the Court's Basic Law deprived foreigners of legal protection for the property of foreigners subject to expulsion, as the country of the expelled foreigner whose property was damaged enjoys wide discretionary power with regard to filing a lawsuit and in choosing the means it deems appropriate to redress the damage [19]. The court does not recognize the legal capacity of a foreigner to sue before it, which denies the individual the right to direct litigation except through the diplomatic protection system. In the case of the expulsion of British citizen Thomas Melville White from the State of Peru, White submitted a personal memorandum in parallel with the memorandum submitted by the State of Britain to the Court of Arbitration. Arbitrator M. von Ulniann rejected it, asserting that only countries could be the subject of international law [20].

Paragraph two: Exhaustion of internal remedies

Responsibility for protecting the property of the foreigner subject of expulsion rests with the expelling state, as it is the holder of sovereignty over its territory, and taking into account the obligations of this sovereignty, which require that the state in which the violation occurred has the opportunity to redress it by its own means, within the framework of its domestic laws. Article 14 of the International Law Commission's draft on diplomatic protection stipulated the necessity of exhausting domestic remedies in the expelling state before submitting an international claim regarding damage to one of its nationals [21]. This requirement was stipulated in Article 13 of the International Covenant on Civil and Political Rights in the context of expulsion as a basic procedural guarantee, by emphasizing that a foreigner may not be deported except after enabling him to present the reasons in favor of not being deported [22], so that the foreigner must be given all the necessary facilities. To pursue procedures for his remedy against expulsion so that this right in all circumstances of his case is effective [23]. The same requirement was enshrined by the United Nations General Assembly through Article Seven of the Declaration of Human Rights for those who are not citizens of the country in which they live, which affirmed that a foreigner who is the subject of expulsion is permitted to present reasons against his expulsion [24]. This guarantee has also been granted to special groups of foreigners, such as migrant workers and members of their families, within the framework of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which stipulated in the fourth paragraph of Article 22 the right of migrant workers and members of their families subject to expulsion to present the reasons justifying not being expelled [25].

In the case of the expulsion of Sadio Diallo and his being prevented from using his property, the court notes: "... the rule requiring domestic remedies to be exhausted before international proceedings can begin is a well-established rule of customary international law, and this rule has generally been observed in the cases in which it has been adopted. The state is the case of one of its nationals, who claims that his rights were not respected in another country. "[26]

The issue of exhaustion of domestic remedies is a point of great complexity, both in terms of the exceptions to this requirement [27] and in terms of the burden of proof that this condition is met. The plaintiff must prove that these means have been exhausted. On the other hand, the burden of persuading the court that the expelling state's legal system is in place is a legislative system and effective remedies have not been exhausted. As stated in the Sadio case: "The court notes that, in matters of diplomatic protection, the claimant party must prove that domestic remedies have actually been exhausted, or establish evidence that there are exceptional circumstances that exempt the person alleged to have suffered harm and whom the claimant party seeks to obtain Protect him from the obligation to exhaust available domestic remedies, and the defendant must convince the court that its domestic legal system provides effective remedies that have not been exhausted. "[28]

In another context related to the conclusions and observations of the United Nations Committee, the Human Rights Committee noted in the case of Advocate Eric Hamel v. Madagascar [29] that "the author of the letter (Lawyer Hamel) did not enable, in these circumstances, effective remedies to deport him, and that the State party did not. Proving that she has compelling circumstances related to national security that led her to deny him the means of redress. " The Committee against Torture also noted that the expulsion of sub-Saharan migrants in an illegal situation was carried out very quickly and without prior notification, and the authors did not have the opportunity to object to the expulsion decision before the internal authorities because they did not have a lawyer to represent them. And because they were not notified of their right to object to the expulsion decision [30].

It can be said that despite the increase in real estate disputes related to foreigners subject to expulsion, and the important judicial jurisprudence accumulated by the International Court of Justice in this context, the failure to recognize the legal capacity of the foreigner to litigate before this court limits the right of the foreigner to access the international court, where the assessment of the behavior remains. This way is subject to the discretionary power of the foreign state, which enjoys complete freedom to take the place of its citizens to demand reparation through diplomatic protection or to refrain from doing so.

Conclusion:

After laying out the various legal, jurisprudential and judicial aspects related to the topic, the following conclusions can be drawn:

ü That the legal international protection of foreigners 'property has not received the necessary care, either in terms of its recognition in some international treaties and treaties, or in terms of the efficacy of the available remedies;

Establishing the state's sovereign right to confiscate and nationalize foreign property in the exceptional cases referred to;

ü The weakness of the guarantees established to protect the property of foreigners, represented in giving a reasonable opportunity to the foreigner to arrange his affairs and disposing of it, and the prohibition of expulsion with the aim of confiscating the foreigner's property;

ü Despite the multiplicity of remedies available to the foreigner subject to expulsion to protect his property, the multiplicity and complexity of the conditions for their access, as well as the weakness of the implementation mechanisms, limit their effectiveness;

[1] United Nations, Official Records of the General Assembly, International Law Commission, Fifty- eighth Session, Note by the Secretariat on Expulsion of Aliens No. A / CN.4 / 565, Geneva, 2006, pages 426.

[2] Report of the International Law Commission, Document Symbol: A / 69/10, ibid., P. 68.

(3) United Nations, General Assembly, Report of

the International Court of Justice, Seventy-fourth Session, Supplement No. 4, Document Symbol A / 74/4, New York 2019, pp. 55 and 56.

[4] Report of the International Law Commission, document symbol: A / 69/10, previous reference, p. 67.

[5] General Assembly Resolution 1803 (17D) of 12/14/1962 on "Permanent Sovereignty over Natural Resources".

[6] Report of the International Law Commission, document symbol A / 69/10, ibid., P. 17.

[7] United Nations, Official Records of the General Assembly, International Law Commission, Fifty- eighth Session, Memorandum of the Secretariat on Expulsion of Aliens No. A / CN.4 / 565, Geneva, 2006, p. 296.

[8] Ibid, p. 50.

[9] Guy S. Goodwin-Gill, The Limits of the Power of Expulsion in Public International Law, British Yearbook of International Law, Volume 47, Issue 1, 1975, p 84. "confiscatory expulsion". The United Kingdom adopted a similar stand in regard to the property of its citizens following the expulsions from Egypt in 1956 and, in retaliation, the Government imposed exchange control restrictions on Egyptian banks in London »

[10] "In certain circumstances, the expulsion may be just one aspect of something else, such as expropriation. In August 1972 the President of Uganda" Amin "announced that he was asking Britain to assume responsibility for all UK citizens of Asian descent and residing in Uganda, Because they are sabotaging the economy, a three-month deadline has been set for their departure and strict rules have been adopted in order to restrict the transfer of money abroad ... The 1972 decree on the declaration of property for non-Asians, which occurred on October 4, but its effect was retroactive as of August 9: "It is not permissible for any person leaving Uganda due to the aforementioned decree to transfer the ownership of any real estate, bus company or farm, including livestock, or commercial businesses to any other person. Other provisions were adopted stating that every Asian who departed must declare his assets and transfer his property or business to an agent ... "Although a three-month period may seem reasonable, it was a period that witnessed widespread confiscation of personal and other property. There are little or no indications of an intention or desire to pay compensation. This fact in and of itself indicates that the evictions were carried out, at least in part, for the purpose of unlawfully expropriating property. "ibid, p 82.

[11] ibid, p 81.

[12] Abdallah Harisi, Expulsion of Moroccans from Algeria and International Law of Migration, Publications of the National Council for Human Rights, Expulsion of Moroccans residing in Algeria in 1975 from the perspective of international humanitarian law, 2014, pp. 8 and 10.

[13] United Nations, Official Records of the General Assembly, International Law Commission, Fifty- eighth Session, Memorandum of the Secretariat on Expulsion of Aliens No. A / CN.4 / 565, Geneva, 2006, pages 530.

[14] The credit for creating the theory of diplomatic protection is due to the ruling of the Permanent Court of International Justice in the MAVROMMATIS case

In 1924, and confirmed by several subsequent rulings issued by the International Court of Justice, including: The judgment of the case (NOTTEBOHM) in 1955. The judgment of the case of (DIALLO SADIO AHMADOU) in 2014

[15] Hussein Hanafi Omar, The Case for Diplomatic Protection of Nationals Abroad, Dar Al-Nahda Al- Arabiya, Cairo, 2005, pp. 15-17.

[16] - For the case to be filed by the country of the immigrant's nationality, or the state to protect the immigrant. All countries of the immigrant's nationality can also participate in one claim for his protection.- Filing the lawsuit comes after exhausting the internal remedies of the country receiving the

immigrant and the source of the assault.

[17] This approval takes many forms:

According to a special agreement: two or more states in the event of a dispute over issues of protection of foreigners or others can agree to submit it to the court under a special agreement for this purpose

Under the jurisdiction clause: it is a condition that states include in the international agreements that they enter into in which they undertake in advance to accept the jurisdiction of the court in the event of a future dispute with the other state party. By a unilateral declaration: it is the state's issuance of a declaration in which it acknowledges the mandatory nature of the court's jurisdiction to consider the dispute of which it is one of its parties and deposited it with the Secretary-General of the United Nations, and this declaration may be time-bound or objectively specific, and these declarations may be withdrawn at any time before the presentation The dispute is on the court.

Statute of the International Court of Justice, UN Charter Annex No. 01, Department of Public Information, United Nations, New York, Article 36.

[18] Eric David, Collective Expulsion of Migrant Workers and Possible Complaints Mechanisms for International Bodies, Publications of the National Council for Human Rights, 2014, The expulsion of Moroccans residing in Algeria in 1975 from the perspective of international humanitarian law, pp. 16 and 18.

[19] Muhammad Sami Abd al-Hamid, The Fundamentals of Public International Law, The International Standard, Part 1, Second Edition, 1977, p. 481.

[20] "Dans la célèbre affaire White, entre la Grande-Bretagne et le Pérou, qui fut déférée a

l'arbitrage du Sénat de Hambourg et jugée par la sentence arbitrale du 13 avril 1864,... le compromis d'arbitrage de 1863 autorisait M. White à présenter un mémoire personnel qui devait être soumis au Sénat de Hambourg, en même temps que le mémoire du gouvernement britannique. Dans sa note doctrinale, M. von Ulniann se demande si cette particularité pouvait avoir pour effet d'attribuer à White un certain rôle dans la procédure arbitrale. Et à la question ainsi posée il répond

négativement. "Les États seuls, dit-il, peuvent en droit international être sujets de droits et d'obligations: par conséquent, lorsqu'un litige international est soumis au jugement d'un arbitre, seuls les États intéressés peuvent avoir la situation de parties en cause. »

Charles De Boeck, op.cit, p 477.

[21] The first paragraph of Article 14: "A state may not file an international claim in relation to damage to one of its nationals or to another person from the persons referred to in draft article 8 before that person has exhausted all domestic remedies, subject to draft article 15. United Nations, Official Records of the General Assembly, International Law Commission, Fifty-eighth Session, Document Symbol: A / 61/10, New York, 2006, p. 59.

[22] Article 13 of the International Covenant on Civil and Political Rights.

[23] General Comment No. 15 regarding the status of aliens under the International Covenant on Civil and Political Rights, Human Rights Committee, twenty-seventh session 1986.

[24] Article Seven: An alien who is lawfully present in the territory of a state may not be expelled from that region except by virtue of a decision reached in accordance with the

law, and he is permitted, unless compulsory reasons related to national security otherwise require, to present the reasons against his expulsion. .. "

[25] Paragraph 4 of Article 22: "The person concerned has the right, except in the event of a final decision issued by a judicial body, to present the reasons justifying his failure to expel him and for the competent authority to review his case, unless the necessities of national security dictate otherwise. The person concerned has the right to request the suspension of the expulsion decision."

[26] Case relating to the expulsion of Ahmadou Sadio Diallo, Summary of Judgments and Orders Issued, ibid., Pg. 217.

[27] Article 15 regarding diplomatic protection: "There is no need to exhaust domestic remedies,as:

A - There are no reasonable domestic remedies available to obtain effective redress or domestic remedies that provide a reasonable possibility of obtaining such redress;

B - There is an undue delay in the redress process attributable to the State allegedly responsible;

C- There is no good link between the injured individual and the state claimed to be responsible at the date of the injury.

D- The injured person is clearly prohibited from resorting to domestic remedies;

C- The state claimed to be responsible waives the condition that domestic remedies have been exhausted.

[28] Sadio Diallo Case, Summary of Judgments and Orders Issued by the International Court of Justice, 2003-2007, previous reference, p. 217.

[29] Eric Hamel, a French citizen, was practicing the legal profession in Madagascar. He was expelled by the Malagasy authorities in 1982, and he submitted a letter to the Human Rights Committee claiming that the state of Madagascar violated local laws and Article 13 of the International Covenant on Civil and Political Rights, especially not enabling him to Remedies against the expulsion decision.

United Nations, General Assembly, Report of the Human Rights Committee, forty-second session, Supplement No. 40, Document Code: A / 42/40, New York 1987, pages 179-191.

[30] United Nations, Committee against Torture, Communication No. 321/2007 Resolution adopted by the Committee at its fifty-third session in November 2014, document symbol CAT / C / 53 / D / 321/2007, 2015, p. 10.