

INTELLIGENCE DOSSIER

Migration & Seeking Refuge as a Human Right: A Sovereign-Grade Legal, Geopolitical, and Jurisprudential Analysis

I. Executive Summary

Migration—whether voluntary, forced, or compelled by persecution—is not merely a sociopolitical phenomenon; it is a **codified human right** embedded in the architecture of international law. The right to **leave any country**, the right to **seek asylum**, and the prohibition against **refoulement** constitute binding obligations upon states under treaty law, customary international law, and peremptory norms (*jus cogens*).

This dossier consolidates the **legal foundations, jurisprudential authorities, international obligations, and state responsibilities** governing migration and refuge, situating them within the broader framework of **international criminal law, human rights law, and state accountability mechanisms**.

Key takeaways

- Freedom of movement includes the right to **leave any country**; asylum law protects the right to **seek refuge** from persecution.
- **Non-refoulement** is central and broadly recognised as non-derogable; return is prohibited where there is a real risk of persecution, torture, or serious harm.
- States must provide **access to fair procedures** (individual assessment, representation, review) and ensure **humane treatment** without discrimination.

II. Foundational Legal Instruments Establishing Migration as a Human Right

1. Universal Declaration of Human Rights (UDHR, 1948)

- **Article 13(1)** — “Everyone has the right to freedom of movement and residence within the borders of each State.”
- **Article 13(2)** — “Everyone has the right to leave any country, including his own, and to return to his country.”
- **Article 14(1)** — “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Although not a treaty, the UDHR is widely treated as reflecting **customary international law** and remains the normative backbone of modern refugee protection.

2. 1951 Convention Relating to the Status of Refugees & 1967 Protocol

The cornerstone of refugee law, binding upon all signatory states.

Key provisions:

- **Article 1A(2)** — Definition of “refugee”.
- **Article 31** — Prohibition on penalising refugees for irregular entry.
- **Article 32** — Restrictions on expulsion.
- **Article 33(1)** — *Non-refoulement*: “No Contracting State shall expel or return (‘refouler’) a refugee... to territories where his life or freedom would be threatened...”

Non-refoulement is widely recognised as a *jus cogens* norm, meaning no derogation is permitted.

3. International Covenant on Civil and Political Rights (ICCPR, 1966)

- **Article 12(2)** — Right to leave any country.
- **Article 12(4)** — Right to enter one’s own country.
- **Article 7** — Absolute prohibition on torture and cruel, inhuman, or degrading treatment (engaged when refoulement risks such harm).

The UN Human Rights Committee has repeatedly held that **forced return to danger violates Article 7**, even outside the refugee framework.

4. Convention Against Torture (CAT, 1984)

- **Article 3** — Absolute prohibition on returning any person to a state where there are substantial grounds for believing they would be tortured.

This obligation is **non-derogable**, binding even in national emergencies.

5. International Criminal Law (ICL) Framework

Forced displacement intersects with international crimes:

- **Rome Statute of the International Criminal Court (1998)**
 - **Article 7(1)(d)** — Deportation or forcible transfer as a *crime against humanity*.
 - **Article 7(1)(h)** — Persecution.
 - **Article 6** — Genocide (where displacement forms part of genocidal acts).
 - **Article 8** — War crimes involving displacement of civilians.

States that create conditions forcing flight may incur **international criminal liability**.

III. Jurisprudential Authorities Affirming Migration & Asylum Rights

1. European Court of Human Rights (ECtHR)

- ***Soering v United Kingdom (1989)*** — Extradition is prohibited where a real risk of inhuman treatment exists.
- ***Hirsi Jamaa v Italy (2012)*** — Interdiction at sea and pushbacks can violate non-refoulement.
- ***M.S.S. v Belgium & Greece (2011)*** — States may be liable for transferring asylum seekers into an unsafe asylum system.

2. UN Human Rights Committee

- ***General Comment No. 27 (1999)*** — Freedom of movement includes the right to leave any country.
- ***A.R.J. v Australia (1997)*** — Non-refoulement obligations may arise under ICCPR Article 7.

3. Inter-American Court of Human Rights

- ***Advisory Opinion OC-21/14*** — States must protect migrants irrespective of status; collective expulsions are prohibited.

4. International Court of Justice (ICJ)

- ***Ahmadou Sadio Diallo (2010)*** — Reinforced protections for non-nationals under the ICCPR.
- ***Asylum Case (Colombia v Peru) (1950)*** — Early recognition of asylum as a legal institution.

IV. State Obligations Under International Law

1. Non-Refoulement (Absolute Obligation)

States must not:

- Return individuals to persecution, torture, or serious harm.
- Engage in pushbacks, maritime interceptions, or indirect refoulement.
- Outsource asylum processing to unsafe third countries.

2. Due Process & Fair Procedures

States must ensure:

- Access to asylum procedures.
- Individualised assessment.
- Legal representation.

- Judicial review of detention or removal.

3. Humane Treatment of Migrants

Under ICCPR, CAT, and customary law:

- Arbitrary detention is prohibited.
- Conditions must meet minimum humanitarian standards.
- Children must not be detained except as a last resort.

4. Non-Discrimination

Migration policies must not discriminate on grounds of:

- Race
- Religion
- Nationality
- Political opinion
- Membership of a particular social group
- Gender or sexual orientation (per evolving jurisprudence)

V. Migration as a Human Right in Customary International Law

Customary norms arise from:

- **State practice**
- **Opinio juris** (belief that practice is legally required)

Customary norms relevant to migration include:

- Prohibition of refoulement
- Prohibition of collective expulsion
- Right to leave any country
- Protection against torture
- Protection of family unity
- Protection of stateless persons

VI. International Criminal Law Dimensions

Migration crises often arise from:

- Persecution

- Ethnic cleansing
- Crimes against humanity
- War crimes
- Genocide

Under the **Rome Statute**, leaders who create conditions forcing mass displacement may be prosecuted.

Examples:

- **Prosecutor v. Krstić (ICTY)** — Forced displacement as part of genocide.
- **Prosecutor v. Gbagbo (ICC)** — Persecution and displacement as crimes against humanity.

VII. Obligations of States Under the UN Charter

- **Article 1(3)** — Promotion of human rights and fundamental freedoms.
- **Article 55 & 56** — Binding obligations to cooperate in achieving universal respect for human rights.

Migration governance is therefore not discretionary; it is a **Charter-mandated responsibility**.

VIII. Sovereign Accountability Mechanisms

States may be held accountable through:

- UN Human Rights Committee
- Committee Against Torture
- International Court of Justice
- International Criminal Court
- Regional human rights courts
- Universal jurisdiction statutes
- UN Special Rapporteurs
- Treaty-monitoring bodies

IX. Strategic Intelligence Assessment

1. Migration is a structural, not episodic, global reality

Drivers include:

- Armed conflict
- Climate change

- State collapse
- Persecution
- Economic deprivation
- Transnational criminal networks

2. Criminalisation of migration contradicts international law

Penalising irregular entry violates:

- Refugee Convention Art. 31
- ICCPR Art. 12
- Customary non-refoulement norms

3. States increasingly rely on extraterritorial deterrence

Examples include:

- Offshore processing
- Maritime pushbacks
- Safe-third-country arrangements
- Externalised border controls

These practices frequently breach binding obligations.

X. Conclusion

Migration and the seeking of refuge are **not privileges granted by states**; they are **inalienable human rights** grounded in:

- Treaty law
- Customary international law
- Peremptory norms
- International criminal law
- Global jurisprudence
- The UN Charter itself

The right to flee danger, the right to seek asylum, and the prohibition on refoulement form the **legal, moral, and civilisational bedrock** of the international order.

Any state that obstructs these rights risks:

- Treaty violations
- Human rights breaches
- International criminal liability

- Diplomatic censure
- Judicial accountability

Migration is, unequivocally, a **human right**—and the international legal system recognises it as such with profound clarity and binding force.