

# International Migration and State Sovereignty: Reconciling Human Rights Obligations with Border Control

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Article	Abstract
<p><b>How to cite:</b> Kudakwashe Zhou &amp; Thomas Sheku Marah, 'International Migration and State Sovereignty: Reconciling Human Rights Obligations with Border Control' (2025) Vol. 6 No. 3 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v6i3.379</p> <p><b>Article History:</b> Submitted: 20/11/2025 Reviewed: 01/21/2025 Revised: 06/12/2025 Accepted: 20/12/2025</p> <p><b>ISSN:</b> <b>2723-0406 (printed)</b> <b>E-ISSN:</b> <b>2775-5304 (online)</b></p>	<p>The movement of people across borders has become one of the most contested issues in contemporary international law, as the sovereign prerogative of states to regulate entry, exit, and residence increasingly collides with obligations arising from international human rights and refugee law. Global migration flows driven by armed conflict, poverty, environmental degradation, and political instability have intensified this tension, placing states under pressure to manage borders while upholding the dignity and fundamental rights of migrants. This study examines the legal and political challenges that emerge when states attempt to balance border control with international human rights commitments, with particular focus on asylum seekers, refugees, and irregular migrants. It analyzes the evolving interpretation of two core international instruments the 1951 Refugee Convention and the International Covenant on Civil and Political Rights alongside relevant regional frameworks, drawing on the jurisprudence of international courts and treaty bodies. The research further explores the interaction between domestic legal systems and international treaty obligations in shaping migration governance. Key areas of legal controversy, including the principle of non-refoulement, offshore processing, and the externalization of border controls, are critically assessed. Ultimately, this study seeks to contribute to the development of legal frameworks capable of reconciling state sovereignty with the protection of migrant rights in an increasingly fragmented yet interconnected global order.</p> <p><b>Keywords:</b> <i>International Migration, State Sovereignty, Human Rights.</i></p> <p><b>Abstrak</b></p> <p>Pergerakan manusia lintas batas negara telah menjadi salah satu isu paling diperdebatkan dalam hukum internasional kontemporer, seiring dengan semakin tajamnya benturan antara prerogatif kedaulatan negara untuk mengatur masuk, keluar, dan tinggalnya orang di wilayahnya dengan kewajiban yang timbul dari hukum hak asasi manusia dan hukum pengungsi internasional. Arus migrasi global yang didorong oleh konflik bersenjata, kemiskinan, degradasi lingkungan, dan ketidakstabilan politik telah memperkuat ketegangan tersebut, sehingga negara dihadapkan pada tekanan untuk mengelola perbatasan sekaligus menjunjung tinggi martabat dan hak-hak fundamental para migran. Penelitian ini mengkaji tantangan hukum dan politik yang muncul ketika negara berupaya menyeimbangkan pengendalian perbatasan dengan komitmen internasional di bidang hak asasi manusia, khususnya terkait pencari suaka, pengungsi, dan migran tidak berdokumen. Analisis dilakukan terhadap perkembangan penafsiran dua instrumen internasional utama, yaitu Konvensi Pengungsi 1951 dan Kovenan Internasional tentang Hak-Hak Sipil dan Politik, serta kerangka regional yang relevan, dengan merujuk pada yurisprudensi pengadilan internasional dan badan perjanjian. Penelitian ini juga menelaah interaksi antara sistem hukum nasional dan kewajiban perjanjian</p>

internasional dalam membentuk tata kelola migrasi. Isu-isu hukum yang paling kontroversial, termasuk prinsip non-refoulement, pemrosesan di luar wilayah negara, dan eksternalisasi pengendalian perbatasan, dianalisis secara kritis. Pada akhirnya, penelitian ini bertujuan memberikan kontribusi bagi pengembangan kerangka hukum yang mampu mendamaikan kedaulatan negara dengan perlindungan hak-hak migran dalam tatanan global yang semakin terfragmentasi namun saling terhubung.

**Kata Kunci:** *Migrasi Internasional, Kedaulatan Negara, Hak Asasi Manusia.*

## Introduction

The movement of people across borders is now recognized as one of the central global challenges of the twenty-first century. Record numbers are departing home countries, propelled by violence, deprivation, climate pressures, and the upheaval of broken or tyrannical regimes.<sup>1</sup> While such flows can enrich economies, diversify societies, and foster cultural interchange, they have simultaneously sharpened political conflicts over territorial authority, border strategies, and national safety. Governments undeniably retain the prerogative to determine who may enter, reside, or leave their jurisdictions; yet this power increasingly collides with persistent duties inscribed in global human rights statutes.<sup>2</sup> Sovereignty, long defined by classical Westphalian doctrine as unquestioned territorial and demographic authority, is today porous, challenged by interconnected economies and law-making bodies that audibly elevate transnational standards.<sup>3</sup>

This tension between the duty to protect territorial integrity and the obligation to respect human rights can most clearly be observed in the treatment of asylum seekers, refugees, and irregular migrants. Rising to prominence are tactics like sea pushbacks, the relocation of asylum processing to offshore facilities, and the transfer of border-management functions to partner nations. Officials frame these measures as rational responses to the need for order and security, yet analysts contend that the actions erode indispensable safeguards, most notably the non-refoulement principle and the recognized entitlement to **submit** an asylum request.<sup>4</sup>

This paper asks: Can states reconcile the demand to control their own borders with the duty imposed by international law to respect migrants' rights? In other words, what normative or institutional arrangements allow governments to enact border policies without violating the fundamental dignity and freedoms that treaties and customary law guarantee to all persons, regardless of their migratory status?

The importance of this study lies in its effort to refine the debate surrounding migration governance and international law. While prior analyses underline the widening distance between sovereign entitlements and the protections accorded by human rights instruments,<sup>5</sup> this work moves beyond critique. By tracing how doctrines in the 1951 Refugee Convention and the International Covenant on Civil and Political Rights, along with selected regional case law,

<sup>1</sup> UNHCR. *Global Trends: Forced Displacement in 2023*. United Nations High Commissioner for Refugees, 2024. <https://www.unhcr.org>

<sup>2</sup> Setfanie Grant, "Sovereignty, Asylum, and the Limits of International Law." *International and Comparative Law Quarterly* 70, no. 4 (2021): 843–872.

<sup>3</sup> Stephen D Krasner, *Sovereignty: Organized Hypocrisy*. 2nd ed. (Princeton: Princeton University Press, 2020).

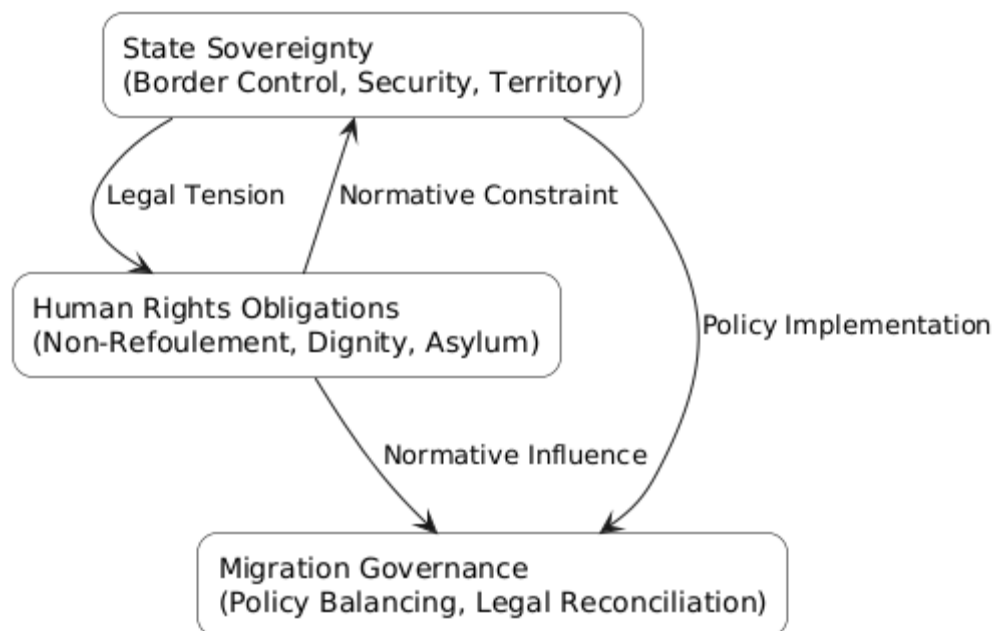
<sup>4</sup> Anna Paulin, John Smith, and Lina Rahman. "Non-Refoulement and the Crisis of Asylum: Contemporary Challenges." *Journal of Refugee Studies* 37, no. 2 (2024): 215–233.

<sup>5</sup> Thomas Gammeltoft-Hansen, and James C. Hathaway. "Non-Refoulement in a World of Cooperative Deterrence." *Columbia Journal of Transnational Law* 60, no. 2 (2021): 115–168.

have evolved, the paper recasts migration as a case study in negotiating sovereignty, legitimacy, and the imperatives of collective responsibility.

The findings of this study carry concrete implications for present-day policy. Heightened migration securitization, compounded by surging populist and nationalist trends, now confronts asylum regimes with pressures of an unparalleled magnitude.<sup>6</sup> Grasping the interplay between sovereign prerogatives and the duties arising from human-rights instruments is therefore essential, not merely for the progressive development of international jurisprudence, but for the establishment of migration governance that is both humane and lasting. The inquiry aspires to offer a normative structure that judiciously balances the legitimate interests of states with the intrinsic worth of the human persons who migrate. The interaction between state sovereignty, human rights obligations, and migration governance forms the foundation of this study's analytical framework. As illustrated in **Figure 1**, these three elements are interconnected through constant negotiation between legal authority and moral responsibility.

### Conceptual Framework of Migration and Sovereignty



**Figure 1.** Conceptual Framework of Migration and Sovereignty  
*Source: Author's illustration (2025).*

### Overview of Relevant Literature

The migration-sovereignty nexus remains central to contemporary academic debate, revealing a persistent friction between states' territorial authority and the legal claims of moving populations. Foundational texts framed sovereignty as a monolithic pillar of the Westphalian order, asserting the absolute right of states to regulate entry and expel whom they will without foreign scrutiny.<sup>7</sup> Subsequent inquiries, however, documented the encroachment of human

<sup>6</sup> Elspeth Guild, and Violeta Moreno-Lax. *Externalization of Migration Control and International Law*. (Oxford: Oxford University Press, 2022).

<sup>7</sup> Kresner, *Loc.cit.*

rights norms, forged after 1945, which recast sovereignty as a bundled package of rights and obligations, thus contesting the premise of untouchable domestic jurisdiction.<sup>8</sup>

State sovereignty, calibrated through human rights lenses, has mutated from a bounded to a productive site. Contemporary analyses affirm that migration governance is co-produced by a heterogeneous ensemble of state and non-state agents, including regional bodies and civil society, who collectively renegotiate the boundaries of state authority and international responsibility.<sup>9</sup> Guild and Moreno-Lax specifically catalogue the diffusion of control practices whereby states contract out border surveillance and adjudication to neighboring polities or to profit-maximizing sub-contractors. Though these outsourcing purports to forestall encroachment on sovereign turf, it operates under the veiled logic of delegating risk, ultimately hollowing the protective guarantees embedded in the 1951 Refugee Convention and the non-refoulement imperative.<sup>10</sup>

Three major theoretical paradigms inform the recent scholarship. The sovereignty model positions the authority of the state over migration as sacrosanct, asserting that states alone possess the prerogative to admit or exclude on grounds of security and national interest.<sup>11</sup> By contrast, the human rights approach reinterprets sovereignty as constrained, asserting that rights attach to the person and not the status, and therefore exigencies of dignity and survival render states accountable to admit and to protect all incomers.<sup>12</sup>

Equally vital is the principle of non-refoulement, commonly acknowledged as the fundamental safeguard of asylum, which bars the expulsion of any person to jurisdictions where credible risk of persecution or serious harm is present.<sup>13</sup> The literature now scrutinizes the principle's large geographical ambit, questioning whether debarkation away from an asylum country's coasts, coupled with agreements to relegate status determination to third states, does not breach the norm. The practice of externalizing migration deficits along regional frontiers has therefore crystallized into a decisive analytic frame, exposing the ways in which states circumnavigate their human rights liabilities through territorial and juridical delegations.<sup>14</sup>

Despite a robust body of scholarship, several important omissions and unresolved disputes persist. First, analysts have not reached a shared view on the degree to which the principle of state sovereignty must defer to emerging human rights obligations. Some, like Franck (1990), maintain that sovereignty is gradually adjusting to the imperatives of humanitarian law, whereas others, notably Macdonald (2025), assert that states are still willing to sacrifice protective norms in favor of material control and security.<sup>15</sup>

Second, the legitimacy of offshore processing regimes continues to attract sharply conflicting readings. A strand of the literature treats these practices as latent violations of the

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<sup>8</sup> Thomas M Franck. *The Power of Legitimacy among Nations*. (Oxford: Oxford University Press, 1990).

<sup>9</sup> Alexander Betts. *Global Migration Governance*. (Oxford: Oxford University Press, 2011).

<sup>10</sup> Elspeth Guild, and Violeta Moreno-Lax. *Loc.cit.*

<sup>11</sup> Kresner, *Loc.cit.*

<sup>12</sup> Gammeltoft-Hansen & Hathaway, *Loc.cit.*

<sup>13</sup> Anna Paulin, John Smith, and Lina Rahman. "Non-Refoulement and the Crisis of Asylum: Contemporary Challenges." *Journal of Refugee Studies* 37, no. 2 (2024): 215–233.

<sup>14</sup> Elspeth Guild, and Violeta Moreno-Lax. *Loc.cit.*

<sup>15</sup> Ronan Macdonald, "Security versus Dignity: Rethinking Sovereignty in Migration Law." *Journal of International Migration and Integration* 26, no. 1 (2025): 33–52.

non-refoulement obligation,<sup>16</sup> while a rival view concedes their permissibility on the condition that effective procedural and material safeguards are rigorously applied.

Third, a noticeable ossification in norms of multilateral migration governance is now evident. Whereas the previous several decades were marked by concerted multilateral frameworks, contemporary responses in Europe, the United States, and parts of Africa have reverted to unilateral, restrictive, and contract-based paradigms. This fragmentation casts doubt on the resilience and the legitimating capacity of presently operative refugee protection regimes in an era marked by an increasingly calcified international political landscape.

## **Research Method**

This study employs a qualitative, doctrinal framework. Doctrinal approaches focus on a meticulous examination of normative texts such as treaties, conventions, statutes, judicial decisions, and scholarly critiques to map the prevailing legal architecture governing international migration and the competing claims of state sovereignty.<sup>17</sup> This design is appropriate because the inquiry prioritizes the alignment between binding legal obligations and actual state practices, rather than quantifiable metrics. By analyzing differing interpretations of sovereignty, human rights, and the non-refoulement principle, the framework elucidates doctrinal foundations and highlights the potential flexibility within various jurisdictions.

Data sources comprise both primary and secondary legal materials. Primary sources include key international instruments, notably the 1951 Refugee Convention, the 1967 Protocol, and the International Covenant on Civil and Political Rights, as well as regional treaties such as the European Convention on Human Rights and the African Charter on Human and Peoples' Rights. Relevant rulings from international and national courts are also incorporated.

Secondary sources encompass peer-reviewed journal articles, monographs, policy reports, and scholarly commentaries, complemented by materials issued by authoritative agencies such as the UNHCR, the International Organization for Migration (IOM), and leading non-governmental organizations. Emphasis is placed on publications postdating 2018 to ensure engagement with contemporary doctrinal and policy debates.

The case studies were chosen through purposive sampling to represent various legal and political environments, which align with the research goals. Externalization policies and migration securitization find their most clear demonstration through the European Union example. The United States serves as a case study to understand how nations defend their sovereignty while managing asylum policies and using courts to resolve migration issues. The selected African states display regional doctrinal systems, and show how nations with weak administrative structures handle their operational obstacles. These cases together present a balanced comparison of state approaches to managing the conflict between their sovereign power and their international human rights duties.

These cases encompass both advanced and emerging economies, providing a balanced perspective on the persistent tension between sovereign prerogative and migrant entitlements.

The study employs a combined comparative and thematic legal analysis. Comparative legal analysis identifies similarities and divergences in how different jurisdictions implement migration-related obligations. Thematic analysis organizes findings around core constructs

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<sup>16</sup> Princeton Legal Journal. "Offshore Processing and International Refugee Protection." *Princeton Legal Journal*, 2024.

<sup>17</sup> Paul Chynoweth, "Legal Research." In *Advanced Research Methods in the Built Environment*, edited by Andrew Knight and Les Ruddock, 28–38. Wiley-Blackwell, 2008.



including sovereignty, non-refoulement, offshore processing, and border externalization enhancing interpretive clarity. By integrating treaty texts, case law, and academic discourse, the research aims to articulate a coherent normative framework that reconciles the lawful prerogatives of states with the fundamental rights and dignity of migrants. The research applies a doctrinal qualitative analysis, following a series of systematic steps from identifying legal sources to interpreting findings within human rights frameworks. These methodological stages are presented in **Figure 2** below.



Figure 2. Doctrinal Legal Analysis Process

*Source: Author's illustration (2025).*

## Result and Discussion

### Legal Tensions in State-Led Migration Control: Reinterpreting Non-Refoulement and the Expansion of Extraterritorial Border Practices

The analysis reveals three interconnected tensions that emerge when sovereign control of migration intersects with international legal obligations.

#### 1. Non-Refoulement and Its Constraints

Non-refoulement remains the foundational principal safeguarding refugees. However, findings indicate that states increasingly reinterpret this obligation to align with national interests by transferring responsibility to geographically distant third states willing to intercept asylum seekers before they reach national territory. Such externalization undermines the principle, as these third states frequently lack comparable legal and institutional safeguards.

#### 2. Offshore Processing and Its Legal Implications

Offshore processing facilities, prevalent in Australia and certain EU schemes, are now a common tool of migration management. While these facilities offer states the appearance of procedural efficiency, the data indicate that protective frameworks within these sites often fail to meet treaty standards. Gaps in procedural safeguards and review mechanisms create

significant risk that ineligible arrivals may be detained or exposed to potential non-refoulement violations.<sup>18</sup>

### 3. Externalization of Borders

A third dimension is the strategic outsourcing of migration control to third states willing to assume operational responsibility. Through formal partnerships, states extend their border enforcement beyond national territory, applying deterrent measures at a distance. These arrangements reduce procedural safeguards for asylum seekers and dilute accountability for their treatment.<sup>19</sup>

Evidence demonstrates that, although states publicly affirm adherence to international obligations, national security and border control consistently take precedence over the rights and dignity of migrants. This hierarchy generates zones of legal and procedural uncertainty, wherein safeguards may emerge temporarily but often dissolve before asylum seekers achieve formal recognition.

Moreover, jurisdictions frequently interpret the same treaty obligations differently, introducing significant variability. This multiplicity of interpretation exacerbates the already fragmented architecture of migration governance and hampers the establishment of unified or equitable transnational oversight. The dynamics of migration control and human rights accountability can be understood through the interaction among sovereignty, non-refoulement, and externalization practices. As shown in Figure 3, the transfer of migration control to third countries creates complex accountability pathways within the international human rights framework.

**Relationship between Sovereignty, Non-Refoulement, and Externalization**

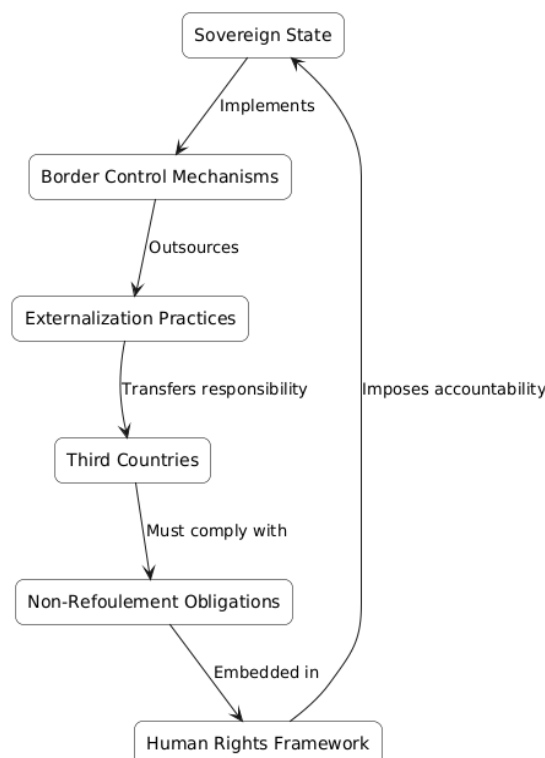


Figure 3. Relationship between Sovereignty, Non-Refoulement, and Externalization

Source: Author's illustration (2025).

<sup>18</sup> Princeton Legal Journal. "Offshore Processing and International Refugee Protection." *Princeton Legal Journal*, 2024.

<sup>19</sup> Guild, Elspeth, and Violeta Moreno-Lax.

The findings support the hypothesis that contemporary migration governance has outpaced and in some respects redefined the traditional boundaries of state sovereignty. The deliberate externalization of migration control, coupled with persistent ambiguities in legal obligations, illustrates an expansion of sovereign prerogatives in which protective norms recede in parallel to jurisdictional claims. Rather than functioning as mere extensions of authority, these practices reflect a substantive transformation a “metastasis” of sovereignty reshaping the balance between state interests and migrant protections.

The research demonstrates that state sovereignty continues to conflict with human rights principles when states govern migration. The exercise of sovereignty, as a fundamental concept in international law, faces growing pressure from external treaty and customary international law requirements. The methods of avoiding non-refoulement obligations, offshore processing, and border externalization demonstrate that state sovereignty exists as a flexible concept that requires ongoing negotiation with international legal standards. These developments demonstrate a dual nature because states attempt to maintain border control while appearing to follow human rights standards. The compromises frequently favor restrictive approaches, which lead to diminished practical implementation of migrant rights.

The implications are twofold. The ongoing use of restrictive migration policies requires international bodies to restart joint efforts that will guarantee standardized protection and norm enforcement. Migration control becomes impossible for states that lack international standard-based sharing mechanisms. The findings reveal that rights protections remain exposed to political expediency because they depend on doctrinal commitments instead of solid enforcement mechanisms.

The research faces limitations because it depends on doctrinal analysis together with specific case study selections. The normative framework gains important understanding from legal texts and judicial decisions, but these sources fail to reveal migrant experiences and operational conditions in offshore facilities and externalized border zones. Future research that incorporates empirical perspectives could offer a comprehensive understanding of the differences between legal norms and their actual implementation practices.

## Conclusion

The investigation proves that state sovereignty functions as a primary authority element yet migration sovereignty faces increasing limitations through international human rights requirements. States work to maintain their sovereign authority while they deal with treaty obligations by implementing measures such as non-refoulement circumvention and offshore processing and externalization. Sovereignty exists as a concept that faces both limitations and endurance since it must adapt to the dynamic legal system which demands states to protect migrants while maintaining domestic security.

The study advances current discussions about migration governance through its analysis of sovereignty as an adaptable framework shaped by human rights legal interactions. The research establishes a legal framework which enables states to achieve legitimate security goals while protecting migrant dignity and rights. Through its analysis of European Union member states and United States and African nations the research generates comprehensive knowledge about sovereignty-humanitarian protection reconciliation challenges and solutions.

The next generation of research needs to extend beyond traditional legal examination by conducting field-based studies on migrant conditions under externalized and offshore



migration management practices. Research should examine how different regional organizations, such as the African Union and European Union, implement burden-sharing strategies to identify improved methods that connect sovereignty frameworks to collective responsibilities. The combination of legal studies with political and sociological approaches will expand the discussion on practical, humane migration governance solutions.

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