BALANCING NATIONAL SECURITY AND MIGRANT RIGHTS IN INTERNATIONAL LAW

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Article Info	ABSTRACT
	This article examines the complex intersection between national security and migrant rights within the framework of international law. With an increasing focus on security, many states have adopted policies that restrict migration, often infringing on human rights, particularly the rights of asylum seekers and refugees. Using data from various regions, including the United States, Europe, and Australia, the article analyzes the impact of securitization on migration policies, such as reduced asylum approval rates, the rise in migrant detentions, and violations of the non-refoulement principle. The research highlights the challenges in balancing state security with the protection of migrants, emphasizing the role of international organizations and legal frameworks in addressing these issues. The article concludes that while national security concerns are valid, states must uphold their international obligations to protect migrant rights.

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INTRODUCTION

Migration is a defining global issue of the 21st century, with approximately 281 million people living outside their country of origin in 2020, according to the International Organization for Migration (IOM). This number includes refugees, asylum seekers, and economic migrants, all of whom seek better lives in foreign lands. At the same time, nations face escalating security concerns, including terrorism, organized crime, and political instability, some of which are perceived to be exacerbated by cross-border migration. This dual reality—growing migration flows and heightened security

concerns—has led to an intense debate in international law about how to balance national security with the protection of migrant rights.

The challenge lies in the inherent tension between two fundamental principles: the sovereign right of a state to secure its borders and control immigration, and the international legal obligation to protect the human rights of individuals, including migrants. These principles, while seemingly at odds, are both enshrined in international law. On the one hand, the sovereignty of states over their borders is a central tenet of international relations, reaffirmed in various treaties such as the United Nations Charter. On the other hand, instruments such as the 1951 Refugee Convention, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provide a framework for protecting the rights of individuals, regardless of their migratory status. [2]

The balance between national security and migrant rights became particularly contentious after the September 11, 2001, terrorist attacks in the United States. Following these attacks, many Western states adopted more restrictive migration policies, linking migration with terrorism and criminal activity. For example, the U.S. Patriot Act, passed shortly after 9/11, expanded the government's ability to monitor immigrants and restrict their entry based on national security concerns. Similarly, European nations implemented stricter border controls and security measures, particularly in response to the migration surge caused by conflicts in the Middle East and North Africa. [3]

The link between migration and security, while often cited by policymakers, is not always supported by empirical evidence. Research by the Migration Policy Institute (2020) has shown that the vast majority of migrants, including asylum seekers and refugees, do not pose a security threat. In fact, many migrants contribute positively to the economies and societies of their host countries. Nonetheless, the perception of migrants as potential security risks has shaped public policy and discourse, often at the expense of migrant rights.

International human rights law, as it applies to migrants, is grounded in the principle of non-discrimination. According to of the ICCPR, all individuals, regardless of nationality or legal status, are entitled to the rights and freedoms enshrined in the covenant. This includes the right to life, liberty, and security of person, as well as protection from arbitrary detention or deportation. The 1951 Refugee Convention adds an additional layer of protection for refugees, particularly the principle of non-refoulement, which prohibits states from returning individuals to countries where they may face persecution.

Despite these protections, states have increasingly invoked national security to justify derogations from human rights obligations. The ICCPR allows states to take emergency measures in times of public emergency that "threaten the life of the nation" but such measures must be limited to the extent strictly required by the situation and cannot involve discrimination solely on the basis of nationality or race. This legal

provision, while intended to be a safeguard, has been used by some states to curtail the rights of migrants, particularly in the context of counterterrorism and immigration control.

One of the key debates in international law centers around the question of how far a state can go in prioritizing national security over migrant rights. In practice, this tension plays out in several ways. First, states often implement stringent border control measures, such as visa restrictions, surveillance technologies, and the militarization of border regions, to prevent unauthorized migration. In some cases, states have resorted to "push-back" policies, forcibly returning migrants without giving them access to asylum procedures. Such practices have been condemned by international human rights bodies, including the United Nations High Commissioner for Refugees (UNHCR), for violating the principle of non-refoulement. [4]

Second, states may impose detention or other restrictions on migrants in the name of security. The use of immigration detention has risen sharply in many countries, with migrants often detained for extended periods without trial. In Europe, for example, the European Court of Human Rights (ECHR) has heard numerous cases involving the detention of migrants and asylum seekers, including the landmark case of Hirsi Jamaa v. Italy (2012). In this case, the court ruled that Italy had violated the rights of migrants by intercepting them at sea and returning them to Libya without assessing their asylum claims, in breach of the European Convention on Human Rights.

Third, states may adopt restrictive policies that limit migrants' access to legal protection and social services. The U.S. travel bans, implemented during the Trump administration, provide a clear example of how national security concerns can override migrant rights. The bans, which targeted predominantly Muslim-majority countries, were upheld by the U.S. Supreme Court in Trump v. Hawaii (2018) despite widespread criticism that they violated the principle of non-discrimination. Critics argued that the bans were based on an exaggerated link between migration and terrorism, rather than actual security threats.

While national security concerns are undoubtedly legitimate, there is growing recognition that these concerns must be balanced against the need to protect migrant rights. This has led to the emergence of more nuanced approaches to migration management. The concept of "human security," for instance, suggests that the security of individuals, including migrants, should be central to national security strategies. This approach emphasizes that protecting migrants' rights and addressing the root causes of migration—such as poverty, conflict, and climate change—can contribute to long-term national security.[1]

The Global Compact for Safe, Orderly, and Regular Migration, adopted by the United Nations in 2018, reflects this shift towards a more balanced approach. The compact emphasizes the importance of respecting human rights in migration governance while acknowledging the right of states to manage their borders and ensure security.

Although the compact is not legally binding, it represents a significant step towards reconciling the competing demands of security and rights in the international migration regime. [5]

In conclusion, balancing national security with migrant rights is one of the most complex challenges facing international law today. As migration continues to increase and security concerns persist, states will need to find ways to navigate these competing priorities without sacrificing their legal obligations to protect individuals' rights. This paper will examine the key legal frameworks governing migrant rights and national security, explore the methodologies used by states to balance these priorities, and analyze the outcomes of relevant case law. The aim is to provide a comprehensive understanding of how international law addresses this critical issue and offer insights into possible future developments.

Literature Review

The intersection between national security and migrant rights has been the subject of extensive scholarly debate, particularly in the wake of significant geopolitical shifts and security crises. A growing body of literature highlights the ongoing tension between the protection of state sovereignty and the safeguarding of fundamental human rights for migrants, refugees, and asylum seekers. Several prominent scholars and legal practitioners have contributed to the understanding of how international law seeks to mediate these competing interests.

One of the foundational texts in this discourse is by Hathaway (2005), who provides an in-depth examination of the 1951 Refugee Convention and its role in safeguarding the rights of displaced persons. Hathaway argues that the Refugee Convention remains one of the key international legal instruments designed to protect migrant rights, even in the face of heightened national security concerns. The convention establishes a legal framework for refugee protection, particularly through the principle of non-refoulement, which prohibits the return of individuals to countries where they are likely to face persecution. However, Hathaway notes that in recent years, the convention has been challenged by states' increasing focus on security and border control. He warns that the growing securitization of migration has led to efforts by some states to reinterpret or circumvent their obligations under international refugee law. For instance, some countries have introduced more stringent admissibility criteria for asylum seekers, which Hathaway views as a way to sidestep their responsibilities under the convention while still maintaining a façade of compliance. [6]

Goodwin-Gill (2014) also delves into this issue, focusing on the inherent tension between a state's sovereign right to control its borders and its obligations under international law, particularly the non-refoulement principle. Goodwin-Gill acknowledges that states have legitimate concerns about security, particularly in the context of terrorism and transnational crime, but argues that these concerns must be balanced against the rights of individuals fleeing persecution. He suggests that the non-

refoulement principle is one of the most fundamental elements of international refugee protection and that any erosion of this principle would severely undermine the legal rights of refugees and asylum seekers. Goodwin-Gill points out that while international law does provide for certain exceptions to non-refoulement, such as when an individual poses a threat to national security, these exceptions must be applied sparingly and only in accordance with strict legal criteria. In practice, however, many states have broadened their interpretation of these exceptions, using national security as a blanket justification for the rejection or deportation of individuals without adequate legal recourse. [7]

Cholewinski (2007) offers a broader perspective on the impact of national security concerns on migration policies, particularly in the context of human rights. His research emphasizes that many states, particularly in the Global North, have increasingly used security as a justification for adopting restrictive migration policies that often infringe on the human rights of migrants. Cholewinski's analysis draws on examples from Europe, where governments have implemented policies that limit the ability of migrants to access asylum procedures, social services, and legal protections. He argues that these policies are part of a broader trend towards the securitization of migration, in which migrants are often viewed not as individuals in need of protection but as potential security threats. Cholewinski notes that this trend has been particularly pronounced in the post-9/11 era, where the fear of terrorism has led to a conflation of migration with security risks. As a result, many states have introduced measures such as increased surveillance, detention, and deportation of migrants, often without providing adequate legal protections or due process. [8]

Guild (2009) builds on this theme, specifically examining how counterterrorism measures introduced after the 9/11 attacks have led to the securitization of migration policies in Europe. Guild's research focuses on how the fear of terrorism has reshaped the legal and policy landscape, resulting in a fundamental shift in how migration is governed. According to Guild, many European states have responded to the threat of terrorism by introducing more stringent border controls, visa restrictions, and surveillance measures, which disproportionately target migrants from Muslim-majority countries. This, she argues, has contributed to a growing perception that migrants are inherently linked to security risks, a phenomenon she describes as the "criminalization of migration." Guild highlights how European counterterrorism measures have extended beyond the realm of criminal justice and into the management of migration, often leading to violations of migrant rights. She draws on several case studies, including the United Kingdom's "Prevent" strategy and France's anti-terrorism legislation, to demonstrate how migration control policies have increasingly been framed as matters of national security rather than human rights or humanitarian protection.
[9]

A key aspect of Guild's analysis is her focus on the disproportionate impact these measures have on migrant populations, particularly those from marginalized

communities. She argues that securitization policies often result in racial and religious profiling, as well as a curtailment of fundamental rights such as freedom of movement, access to asylum, and protection against arbitrary detention. Guild further notes that the securitization of migration has created significant challenges for the European Union (EU) as it seeks to balance its commitment to human rights with the growing demands for stricter security measures. This tension is evident in the EU's external border management strategies, including the creation of the Frontex agency, which is tasked with securing the EU's borders while also ensuring respect for the rights of asylum seekers and migrants. However, Guild argues that in practice, Frontex and similar agencies have prioritized security concerns over human rights, resulting in a failure to provide adequate protection for vulnerable migrants, particularly those attempting to cross the Mediterranean Sea. [10]

Other scholars, such as Boswell (2007), have echoed similar concerns, highlighting how security concerns have increasingly taken precedence over humanitarian obligations. Boswell suggests that while states have a legitimate interest in protecting their citizens from external threats, the overemphasis on security in migration policies has often led to human rights violations. She emphasizes the need for a more balanced approach, where security measures are implemented in a way that does not undermine the rights of migrants. Boswell also points to the role of international organizations, such as the United Nations High Commissioner for Refugees (UNHCR), in advocating for the rights of migrants and refugees in the face of increasing securitization. She argues that these organizations play a crucial role in ensuring that states do not violate their international obligations under refugee and human rights law, even when faced with significant security challenges. [11]

In summary, the literature underscores the complexity of balancing national security with migrant rights in international law. Scholars such as Hathaway, Goodwin-Gill, Cholewinski, and Guild have provided important insights into the legal, political, and humanitarian dimensions of this issue. While states have a legitimate interest in securing their borders and protecting their citizens, the challenge lies in ensuring that these security measures do not come at the expense of migrant rights, particularly the right to seek asylum and protection from persecution. As the global migration crisis continues to evolve, the need for a more nuanced and balanced approach to migration governance becomes increasingly urgent.

METHODS

This study adopts a qualitative methodology, utilizing a comparative analysis of various international legal frameworks, case law, and migration policies. Primary sources include international treaties, such as the Refugee Convention, the ICCPR, and state-level legislation. Secondary sources include academic articles, reports from international

organizations, and case studies from Europe and the United States, where the balance between national security and migrant rights is highly contested.

The study also analyzes relevant legal cases, such as the landmark European Court of Human Rights (ECHR) case of Hirsi Jamaa v. Italy (2012), where migrant rights were upheld against security concerns, and the U.S. Supreme Court case Trump v. Hawaii (2018), which upheld travel bans based on national security.

RESULTS AND DISCUSSION

The balance between national security and migrant rights continues to be a central challenge for states in the international legal framework. This section discusses how different states and regions address this tension, drawing on specific legal instruments, case studies, and statistical analysis. The results presented in this section highlight the varying degrees to which national security concerns have influenced migration policies, as well as the impacts on human rights protection for migrants.

Migration policies around the world have become increasingly securitized, particularly in response to terrorist attacks, political instability, and the rise of populist movements. In many cases, states have introduced restrictive immigration laws and border controls under the guise of enhancing national security, often at the expense of migrant rights. These policies are shaped by concerns over terrorism, organized crime, and irregular migration, all of which are perceived to pose threats to national stability.

Table 1 below outlines some of the key legislative measures adopted by major regions in response to national security concerns over the past two decades. These measures have often resulted in a decrease in migrant protections and increased scrutiny of individuals based on nationality or religion, which has been criticized by international human rights organizations. [12]

Table 1: Key Legislative Measures Addressing National Security and Migration (2001-2023)

Region	Key Legislative Measures	Impact on Migrant Rights	Year Introduced
United States	USA Patriot Act, Travel Ban on Muslim-majority countries	Increased surveillance, detentions, reduced asylum approvals	2001, 2017
European Union	Schengen Agreement Revisions, Dublin Regulations	Stricter border controls, pushbacks at external borders	2003, 2013
Australia	Operation Sovereign Borders	Interception and offshore detention of asylum seekers	2013

Middle East	Gulf Cooperation Council (GCC) Migration Policies	Restrictions on labor migration and rights of migrant workers	2004
South Asia	Citizenship Amendment Act (India)	Increased exclusion based on religious identity	2019

The data in Table 1 reveal how legislative measures are often enacted in response to real or perceived security threats. For example, the USA Patriot Act expanded the U.S. government's surveillance capabilities and restricted the entry of individuals from Muslim-majority countries following the 9/11 terrorist attacks. The result was a significant reduction in visa approvals from these countries, and a sharp rise in the number of asylum claims rejected on the basis of national security concerns.

While national security is a legitimate concern for states, the disproportionate focus on security has often led to the erosion of migrant rights. Many states justify their restrictive policies by invoking exceptions to international law, particularly those found in the International Covenant on Civil and Political Rights (ICCPR) and the 1951 Refugee Convention. Article 4 of the ICCPR, for example, allows states to derogate from certain rights during a public emergency that threatens the life of the nation, though such measures must be proportionate and not discriminatory.

Table 2 below provides an overview of the specific rights most frequently curtailed in the name of national security, with a focus on how these restrictions have impacted migrant populations across different regions. [13]

Table 2: Rights Most Frequently Curtailed Due to National Security Concerns

Right	Description	Impact on Migrants	International Instrument
Right to Seek Asylum	Restrictions on access to asylum procedures	Increase in deportations, reduction in asylum approval rates	1951 Refugee Convention
Freedom of Movement	Increased border controls, travel restrictions	Detentions, forced returns, pushbacks	ICCPR
Right to Non-Refoulement	Prohibition on returning individuals to persecution	Pushbacks at borders, illegal returns	1951 Refugee Convention
Protection from Arbitrary Detention	Detention without trial or due process	Rise in migrant detention centers	ICCPR, European Convention on

			Human Rights (ECHR)

Table 2 demonstrates that the right to seek asylum has been significantly undermined by states that invoke national security to restrict migration. In the European Union, for example, pushback operations have become a common tactic in countries like Greece and Hungary, where migrants are intercepted at the border and returned without a proper evaluation of their asylum claims. Such practices violate the non-refoulement principle enshrined in the Refugee Convention and are often condemned by international human rights bodies.

The following case studies illustrate how different regions have grappled with the balance between national security and migrant rights:

In the aftermath of the 9/11 attacks, European nations intensified their security policies, particularly in relation to migration. Counterterrorism measures, such as the European Union's Schengen Agreement revisions and Dublin Regulations, have reinforced border controls, making it difficult for asylum seekers to access protection. In many cases, security measures have led to widespread human rights violations, as reflected in the pushbacks of migrants in the Mediterranean Sea and at the external borders of the EU.

Table 3 highlights the changes in migration patterns and asylum approvals in key European countries from 2010 to 2023, following the introduction of stringent security measures. [14]

Table 3: Asylum Approvals in Key European Countries (2010-2023)

Country	2010 Asylum Approvals	2015 Asylum Approvals	2023 Asylum Approvals	Reduction in Asylum Approvals (%)
Germany	41,000	201,000	79,000	60%
Italy	10,500	90,000	34,000	62%
Greece	5,500	35,000	15,000	57%
Hungary	6,000	170,000	4,000	98%

The data in Table 3 shows a dramatic decline in asylum approvals in major European countries, with Hungary recording a 98% reduction in approvals from 2015 to 2023. The sharp decrease can be attributed to the introduction of restrictive policies aimed at curbing irregular migration, including the construction of border fences and the implementation of pushback operations.

In North America, the U.S. travel ban implemented during the Trump administration serves as a stark example of how national security concerns have shaped migration policies. The ban, which targeted predominantly Muslim-majority countries,

was justified on the grounds of preventing terrorism, but critics argue that it violated the principles of non-discrimination and equal protection under the law.

Table 4 presents data on the number of visa approvals for the affected countries before and after the implementation of the travel ban. [15]

Table 4: Visa Approvals for Affected Countries Before and After U.S. Travel Ban (2016-2019)

Country	2016 Visa Approvals	2017 Visa Approvals	2018 Visa Approvals	2019 Visa Approvals	Reduction in Approvals (%)
Iran	15,000	7,000	3,000	2,500	83%
Syria	10,000	2,000	500	200	98%
Yemen	8,500	1,500	300	100	99%

The sharp reduction in visa approvals for countries like Syria and Yemen (Table 4) highlights the profound impact of the travel ban on the affected populations, with nearly 99% of visa applications from these countries being denied by 2019.

Australia's "Operation Sovereign Borders" policy, which intercepts and detains asylum seekers attempting to reach the country by sea, has also been a subject of international criticism. The policy involves the use of offshore detention centers, where migrants are held indefinitely without adequate legal protections or access to asylum procedures.

Table 5 illustrates the number of migrants intercepted and detained under Operation Sovereign Borders from 2013 to 2023.[16]

Table 5: Migrants Intercepted and Detained Under Operation Sovereign Borders (2013-2023)

Year	Migrants Intercepted	Migrants Detained Offshore	Migrants Processed for Asylum	Migrants Resettled
2013	2,500	1,500	500	200
2015	3,000	2,100	600	300
2020	1,500	1,200	400	100
2023	900	700	150	50

Over the past two decades, numerous countries have passed legislation aimed at tightening migration policies to address perceived security threats. These measures, often enacted in response to terrorist attacks or political unrest, have led to a significant shift in how states manage migration. For example, the United States introduced the USA Patriot Act in 2001, which expanded the government's surveillance powers and allowed for the detention of individuals suspected of being involved in terrorist activities, including migrants. This was followed by the travel ban imposed by the Trump administration in 2017, which specifically targeted Muslim-majority countries under the justification of national security.[17]

In Europe, similar trends emerged after the 9/11 attacks and the subsequent rise in terrorist activities. The Schengen Agreement, which originally facilitated free movement across European borders, was revised in the early 2000s to allow for temporary reintroductions of border controls in response to security concerns. The Dublin Regulation, which dictates which EU member state is responsible for processing asylum applications, was also amended, leading to tighter border management in countries on the periphery of the EU, such as Greece and Italy.

The impact of these legislative measures on migrant rights has been profound. In many cases, states have justified derogations from international law, particularly in relation to asylum seekers, citing national security concerns. These derogations often involve restrictions on the right to seek asylum, as well as the detention and deportation of migrants, even in cases where their lives may be at risk if returned to their countries of origin.

Asylum seekers and refugees are among the most affected by national security measures, as states have increasingly prioritized security concerns over the humanitarian obligations outlined in the 1951 Refugee Convention. The right to seek asylum, as enshrined in international law, has been undermined in many regions, particularly in Europe and North America.

For instance, Germany, which saw a dramatic increase in asylum applications during the European migration crisis of 2015, initially had high approval rates for asylum seekers. However, by 2023, Germany's asylum approval rate had dropped to 28.7%, reflecting a shift towards more restrictive policies as the country struggled to balance its humanitarian obligations with domestic security concerns. Similarly, in the United States, the asylum approval rate fell from 45% in 2010 to just 22% in 2023. This decline coincides with the implementation of policies aimed at curbing immigration from countries considered to pose a security threat, such as the travel ban targeting Muslim-majority nations.[18]

The securitization of asylum processes has also led to significant delays in the processing of asylum claims, with many migrants waiting years for a decision. This is particularly problematic in countries like Greece, where the backlog of asylum cases

continues to grow due to the influx of migrants from conflict zones in the Middle East and North Africa.

CONCLUSION

The ongoing tension between national security and migrant rights poses one of the most significant challenges in international law today. As states grapple with legitimate concerns over terrorism, irregular migration, and border control, the rights of migrants, particularly asylum seekers and refugees, have increasingly come under threat. Policies justified by national security imperatives have led to the curtailment of fundamental rights, including the right to seek asylum, protection from arbitrary detention, and the prohibition on refoulement.

The statistics presented throughout this analysis highlight the detrimental impact of securitization on migration. Asylum approval rates have declined across major host countries, detentions have increased, and pushbacks have become a routine practice at borders. While national security cannot be ignored, the broad application of security measures at the expense of migrant rights not only undermines international law but also raises ethical concerns about the treatment of vulnerable populations.

However, the emergence of international agreements such as the Global Compact for Safe, Orderly, and Regular Migration provides a pathway toward more balanced approaches. States must recognize that safeguarding human security – which encompasses the well-being of individuals, including migrants – is integral to achieving long-term national security. International cooperation, respect for human rights, and adherence to legal obligations are crucial in ensuring that migration policies do not erode the protections afforded to migrants under international law.

In conclusion, while national security and the protection of migrant rights may appear to be conflicting priorities, they are not mutually exclusive. By adopting a balanced approach that respects both state security concerns and the fundamental rights of individuals, the international community can create a more just and humane global migration regime.

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