

The Right to Leave a Country: General Implications and the Case of Migrants

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Abstract

The article explores the right to leave a country, including one's own and its relation to migration. Taking states' sovereignty as a point of departure, it examines the correlation between the international provisions on the right to leave a country (e.g., the International Covenant on Civil and Political Rights 1966) and the methods that States use to control migration; such as the externalisation and closure of borders, increased document requirements and the criminalisation of migration. Moreover, the right to enter a country is critically examined as it constitutes the necessary corollary to the right to leave a country. The analysis reveals a systematic violation of the discussed right due to the States' fear of cross-border crime and as a demonstration of their sovereign power. Therefore, the data lead to the conclusion that there is a negative impact on people on the move, and particularly asylum refugees.

Introduction

Recent years have witnessed an increased movement of people and goods across borders. The cheap, easy and fast means of communication and transportation made available by globalisation have enabled people to circulate capital, commodities and at the same time travel across the world. On the other hand, states struggle to assert their sovereignty in an ongoing globalised world, focusing their attention on control over migration. On that basis, the need to examine the concept and legal implications of freedom of movement becomes more than apparent. The right of freedom of movement is composed of three elements: the right to leave any country, including one's own, the right to enter or return to one's country and the right of everyone lawfully found within a state's territory to enjoy the freedom of movement and choice of residence within its borders.¹ This paper will examine the right to leave any country, including one's own. In particular, the component parts and exceptions of this right and its dependence on the right to enter a country will be explored. Finally, it will show how states' practices of sovereignty challenge this right, most significantly about refugees and asylum seekers. Creation of a stricter definition of the permitted limitations of the right to leave a country therefore seems imperative.

Sovereignty and Legal Frameworks

As a concept of international law, sovereignty is the supreme and absolute power over a particular territory and persons within it.² Sovereign states are entitled to regulate aspects concerning their institutions, legislation, exercise of power over individuals found within their territory, and relationship with other countries. Further,

¹ Richard Perruchoud, 'State sovereignty and freedom of movement' in Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross (eds), *Foundations of International Migration Law* (Cambridge University Press 2012) 129.

²Ibid 123-125.

the fundamental aim of these states is to promote safety and security for their inhabitants and in parallel ensure the state's territorial integrity. On that ground, the states' interest is confined to not only control of the territory, but also control of movement across their borders. Attempts to control border movement and, more broadly, nationality, can thus be seen as states struggling to assert their sovereignty in one of the areas still left mostly to them.³

However, the state's authority to regulate persons' exit and entry through their borders is not without its limits. After World War II, a body of both universal and regional law was developed to articulate and protect the right of freedom of movement and particularly the right to leave any country, including one's own. The first international instrument to recognise and set *expressis verbis* the right to leave a country was the Universal Declaration of Human Rights (1948) ('UDHR'). Article 13 affirms that: 'Everyone has the right to leave any country, including his own, and to return to his country'.⁴ Simply put, the UDHR acknowledges the right to leave and return beyond any limitations, but is not binding in itself. The international instrument which made the right to leave universally binding was the International Covenant on Civil and Political Rights (1966) ('ICCPR').⁵ According to article 12, 'Everyone shall be free to leave any country, including his own'.⁶ The ICCPR guarantees the right in greater detail than UDHR while introducing certain exceptions which will be analysed below. The right to leave a country has been adopted by numerous specialised universal instruments in various contexts. More specifically, the right to leave a country is included in: the 1965 International Convention on Elimination of All Forms

³Colin Harvey and Robert P. Barnidge, 'Human Rights, Free Movement, and the Right to Leave in International Law' (2007) 19 International Journal of Refugee Law 1.

⁴Universal Declaration of Human Rights 1948.

⁵ Nora Markard, 'The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries' (2016) 27 EJIL 591.

⁶International Covenant on Civil and Political Rights 1966.

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of Racial Discrimination, the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid, the 1989 Convention on the Rights of the Child and the 1990 International Convention for the Protection of All Migrant Workers and Members of their Families.⁷ Some regional instruments reinforce the right to leave in Europe, Africa and the Americas as well.

As mentioned above, states seek to control migration in an endeavour to assert their sovereignty. To that end, governments in many cases act in a manner which results in them posing the gravest threat to the right to leave a country. The Soviet Union is such an example: while it still existed, the majority of the population were not allowed to leave the country, especially if they were skilled personnel or Soviet Jews who wanted to flee to Israel. The same applied to East Germany, where the well-known Berlin Wall illegally constrained persons' liberty to leave one's country. However, the right to leave a country and return is considered to be a 'constituent element of personal liberty' and self-determination,⁸ which is part of why the Soviet Union's behaviour was so heavily criticised. And yet although there has been a massive international effort made to enforce this right and promote a free society, there is still no general right to enter a country. The implementation of the right depends mainly on the other state's willingness to permit entrance into its territory. Unfortunately, instead of trying to enforce the exercise of the right, states focus their attention on blocking it. The emphasis is on control, not facilitation, of irregular movement. States seek to export their migration policies beyond their geographical borders; they attempt to criminalise particular forms of migrants and put

⁷ Vincent Chetail, 'Freedom of Movement and Transnational Migration' in Thomas Alexander Aleinikoff and Vincent Chetail (eds), *Migration and international legal norms* (TMC Asser Press 2003) 48-49.

⁸ Jack Kemp, 'A Basic Human Right: The Right to Leave' (1971) 31 *Human Events* 9.

pressure on third states to regulate the irregular movement of their citizens.⁹ Consequently, instead of being broadened, the right to leave a country is constantly being narrowed down, almost to the point of becoming an empty right.

Component Parts of the Right

The right to leave a country, including one's own, as articulated in the ICCPR, can be analysed as two rights: the right to travel abroad and the right to emigrate.¹⁰ Simply put, the right to leave is a broad concept which encompasses both temporary and long-term departures, regardless the purpose of the travel. However, following some commentators, the right to emigrate may, like other individual rights, be overridden by applications of concerted welfare when forming public policy.¹¹ Moreover, the right to leave a country entails a twofold duty on states. States ought not to intentionally impede departure from their land, feeding into a second duty: an obligation to issue the required travel documents unless there is proper reason not to do so.¹² The latter constitutes an explicit right which is part and parcel of the right to leave. Some form of identification documents is regularly required for a person to cross borders, often passports, the usual prerequisite travel documents considered to be the *sine qua non* of the exercise of the right to leave.¹³ In some cases, other substitute or supplement documents may be required, such as identity cards, *laissez-passer* or tourist cards. Either way, any obstacles posed by states in obtaining travel documents have an immediate impact on the implementation of the right, and yet deliberate use of procedural obstructions constitutes the norm, as will

⁹Harvey (n3).

¹⁰Frederick G. Whelan, 'Citizenship and the Right to Leave' (1981) 75 American Political Science Association 636.

¹¹Ibid.

¹²Chetail (n7) 55.

¹³Harvey (n3).

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be analysed below. ¹⁴ Correspondingly, in *Loubna El Ghar v. Socialist People's Libyan Arab Jamahiriya*,¹⁵ the Human Rights Committee found that the denial to issue a passport for a citizen who legally applies for it, without any valid justification, infringes the right under Article 12(2) of the ICCPR. ¹⁶

However, the right to leave a country does not translate into a right to enter another country and acquire citizenship. More importantly, the right to leave a country in all regional and universal instruments does not make distinctions between citizens and non-citizens (migrants). ¹⁷ The principle of non-discrimination appears to be the core issue when tackling migration matters. ¹⁸ Everyone has the right to leave a country regardless of his or her legal status: even a person who is in an irregular situation or unlawfully within the territory of a signatory state is as free to leave that country as a national of that state. A denial of this right might amount to a violation of individual rights concerning freedom of personal development as well as breaching of Article 2 of the UDHR, which prohibits discrimination. ¹⁹ That being said, freedom of movement and the right to leave a country have widely been disputed: the USSR maintained that Article 13 of the UDHR contradicts Article 2(7) of the UN Charter as it constitutes a forbidden 'intervention in issues of domestic jurisdiction' of the sovereign signatory states. ²⁰ On the other hand, many commentators have argued that if human rights are to be considered a matter of international law, then they are excluded from the 'domestic jurisdiction' category and therefore the 'non-intervention'

¹⁴Perruchoud (n1) 147-148.

¹⁵Harvey (n3).

¹⁶ See Communication No. 1107/2002, *Loubna El Ghar v. Socialist People's Libyan Arab Jamahiriya* (*Loubna El Ghar*), para 2.1.

¹⁷Perruchoud (n1) 137.

¹⁸Guy S. Goodwin-Gill, R. K. Jenny and Richard Perruchoud, 'Basic Humanitarian Principles Applicable to Non-Nationals' (1985) 19 Center for Migration Studies of New York, Inc 556.

¹⁹ Rosalyn Higgins DbeQc, 'The Right in International Law of an Individual to Enter, Stay in and Leave a Country*' in Themes and Theories, *Themes and Theories, chapter 30* (OUP 2009) 443.

²⁰Whelan (n10).

demand.²¹ Additionally, according to Katja Aas, the new technologies of mobility surveillance that States increasingly use to control the movement of population across their borders tend to acquire a transnational character, thereby undermining the concept that border control is a purely national and sovereign matter.²² Hence, from a legal standpoint, it can be argued that international treaties and regional instruments which enunciate the right to leave a country and freedom of movement do not actually interfere with the domestic jurisdiction of a sovereign state.

Limitations

General Limitations

Having considered the parts of the right as mentioned above, it is reasonable to look at its exceptions, as the right to leave a country is not absolute. The first instrument to introduce limitations was the UDHR, which in Article 29 (2) provided that:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of security, due recognition and respect for the right and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.²³

Accordingly, Article 12 (3) of the ICCPR authorises the States to enforce limitations to the right to leave a country justified by certain reasons. In particular, it allows exceptions to the right on the basis of protecting national security, public health and

²¹ Ibid.

²² Katja Franko Aas, 'Crimmigrant' bodies and bona fide travellers: Surveillance, citizenship and global governance' (2011) 15 *Theoretical Criminology* 331.

²³ Universal Declaration of Human Rights 1948, Article 29 (2).

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morals, public order (*ordre public*) and the rights and freedoms of others.²⁴ These grounds allow States to restrict the mobility of those considered to be criminals or those who do not conform to certain national or international health regulations, among others.²⁵ It should be noted that the ICCPR does not include the term 'general welfare', and that *ordre public* is similar to public policy, while 'public order' implies the absence of physical disorder.²⁶ National security also constitutes a common ground for a State's denial to allow the exercise of the right to exit the country.²⁷ As this is a very broad concept that encompasses various conditions under which this right can be limited, it has been held that a general constraint to leave a country is not allowed unless there is an armed conflict, public emergency or a particular person is 'seriously suspected of being engaged abroad in activities prejudicial to the security of his or her own country'.²⁸

Restrictions of human rights are in general permitted only when: (i) they are provided for by law, (ii) they are imposed to protect human rights and freedoms included in human rights treaties and defence vested state interests and (iii) required to achieve this goal.²⁹ In the face of the restrictions mentioned earlier, the Human Rights Committee (HRC) examined the right under Article 12 of the ICCPR, addressing some General Comments and Communications. General Comment No. 27 in particular serves as a useful guideline to States to secure individual rights in practice,³⁰ stating that restrictions imposed on the right to leave should comply with the principle of proportionality. That is to say: the permissible limitations should fulfil

²⁴Perruchoud (n1) 137-139.

²⁵Rosalyn Higgins (n19) 452.

²⁶Ibid.

²⁷Perruchoud (n1) 137-139.

²⁸Ibid.

²⁹Chetail (n7) 55.

³⁰UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <http://www.refworld.org/docid/45139c394.html> [accessed 16 December 2016].

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a specific legitimate purpose; they should be necessary and appropriate to achieve this purpose; and they should be the least intrusive means among those available to serve it.³¹ Restrictions ought to be established by the law and they ought to be justified by precise criteria in a non-discriminatory manner.³² Hence, States should impose these restrictions bearing in mind that they must not impair the essence of the right and that the principle of proportionality should be respected by all administrative, judicial and legislative authorities in respect of this.³³ Any restriction that does not comply with these guidelines is contrary to the prerequisites of Article 12(3) of the ICCPR, constitutes a violation of the protected right, and is therefore considered unlawful. However, States regularly impose legal and bureaucratic obstacles with the intention of preventing people from leaving the country. These measures in many cases result in unjustified violations of human rights, rendering thus the right to leave a country ineffective in practice. Furthermore, Article 4 of the ICCPR allows for further restrictions on the right: 'limitations are also permissible in a public emergency where a nation's life is threatened'.³⁴ When this is the case, States are obliged to conform to the principle of proportionality, and they must not deviate from their obligations under the International law. On the other hand, that States implement the limitations stated in the ICCPR for political reasons other than those permissible implies a need for a stricter definition of these exceptions in order to ensure the effectiveness of the right.

³¹ Ibid.

³² Dutch Human Rights and Foreign Policy Advisory Committee, 'Crossing Borders: The Right to Leave a Country and The Right to Return' (1988) 10 Human Rights Quarterly 138.

³³ Perruchoud (n1) 137-138.

³⁴ International Covenant on Civil and Political Rights 1966, Article 4.

Required Limitations

The guidelines from the HRC shed some light on the essence of the right to leave a country and its limitations. There are some cases, however, in which the States are required by international law to prevent irregular or illegal movement of their citizens. The most significant of those is found in the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime (Smuggling Protocol).³⁵ The aim of this treaty is to 'prevent and combat the smuggling of migrants' while at the same time 'protecting the rights of smuggled migrants'.³⁶ Particularly, when it comes to measures taken to prevent migrant smuggling by sea, States' practices should be conducted in a manner by which the safety and the humane treatment of migrants a can be secured.³⁷ Moreover, Article 7 of the Smuggling Protocol imposes on States the obligation to 'cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea'.³⁸ Simply put, coastal States are empowered to take appropriate measures, such as boarding and searching vessels which may be reasonably suspected of smuggling, exchanging information regarding smuggling of migrants with other States, enforcing strict border control, and imposing checks of travel documents.³⁹ Still, States need to acquire the consent of the vessel's flag State before they proceed with any measures unless there is an immediate threat to the life of persons.⁴⁰ Additionally, if any evidence of smuggling is found during the investigation, the investigating State

³⁵Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime.

³⁶Ibid.

³⁷Randall Hansen, 'State Controls: Borders, Refugees, and Citizenship' in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 2.

³⁸Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime.

³⁹ Hansen (n37).

⁴⁰Markard (n5).

should inform the flag State of the results as well as any measures taken.⁴¹ Thus while the right to leave a country is widely articulated and protected in international law, its application in law reveals a difference in approach between nationals and migrants. Migrants are granted the right to leave their country of sojourn unless not doing so can be justified by under article 12(3) of the ICCPR, while nationals can be subject to stricter restrictions when it comes to preventing them from leaving their own country by irregular means. In other words, migrants' right to leave is characterised as a right to enter, while nationals' right to leave is viewed as a right to leave the country of their nationality, and it is these specific aspects which are the subject of stricter restrictions. However, there is concern that measures taken against cross-border movement are so easily justified that the restrictions on the right to leave can end up 'swallowing the right'.⁴² If States are left without clear guidance and supervision when implementing the right and its exceptions, this would lead to vast interference with the right, rendering it an empty gesture.

The Right to Enter a Country

Emphasis should also be given to the right to enter another country, which constitutes the inevitable corollary to the right to leave one's country. One can safely say that without the reassurance of the right to enter another country, the right to leave (travel or emigrate) is incomplete.⁴³ It is therefore often argued that the effective exercise of the right to leave is ultimately linked to the capacity of entering another State.⁴⁴ Despite this, there is no general legal obligation of sovereign States to admit non-nationals in their territory under international law. Still, like every rule, this one has its exceptions as well. Firstly, as mentioned in the article 12(4) of the

⁴¹ Perruchoud (n1) 273-274.

⁴² Hansen (n37).

⁴³ Goodwin-Gill (n18).

⁴⁴ Chetail (n7) 57.

ICCPR: 'No one shall be arbitrarily deprived of the right to enter his own country'.⁴⁵

This right is a means of strengthening the right to leave. It implies that no one shall be deprived of the right to return to his own country and therefore deprived of his or her nationality as an after-effect of leaving the country. States, in turn, have an obligation under customary international law to accept or re-admit their nationals.⁴⁶ Hence, this right should be characterised more as a right to return than as a right to enter another state.⁴⁷

Nationality and the Refugee Convention

The right to a nationality has recently acquired great importance. As the current trend is towards the closing of borders and strict control of migration movement, statelessness is increasingly considered to be an intolerable position.⁴⁸ Accordingly, the right to return raises questions concerning the meaning of the term 'own' country. The European Convention⁴⁹ and the American Convention⁵⁰ for protecting human rights expressly enunciate this right only for the nationals of that State. On the other hand, the UDHR, the ICCPR as well as the African Charter⁵¹ refer to 'his country' or 'his own country' without mentioning nationality. It is widely recommended, however, that the term should be broadly interpreted so as to encompass everyone who cannot be considered as an alien to that country.⁵² According to this school of thought, the right to return should cover not only the nationals of a State but also permanent residents within its territory, including migrant workers who have contributed to the country's welfare for a sufficiently long period of time.⁵³ This would

⁴⁵International Covenant on Civil and Political Rights 1966.

⁴⁶Perruchoud (n1) 129-130.

⁴⁷Ibid.

⁴⁸Whelan (n10).

⁴⁹European Convention for the Protection of Human Rights and Fundamental Freedoms (1963).

⁵⁰American Convention on Human Rights (1969).

⁵¹African Charter on Human and People's Rights 1981.

⁵²Chetail (n7) 57-58.

⁵³Dutch Human Rights and Foreign Policy Advisory Committee (n32).

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follow the Convention relating to the Status of Stateless Persons, which provides that a stateless person who has a travel document issued by a certain State shall be free to enter that territory as long as the document is still valid.⁵⁴ In short, the most appropriate definition of 'one's own country' may be one which covers every individual who has proof of a link with that country. However, there is no unanimous decision on that and the matter remains debatable.

A further restriction to on States' sovereignty to regulate entry into their territory comes from the Refugee Convention⁵⁵ and its 1967 Protocol,⁵⁶ which states that 'when a person arrives at the border of a State seeking refuge, the State is obliged not to return the asylum seeker to the frontier of a territory where his or her life or freedom would be threatened on account of persecution'.⁵⁷ This is the principle of *non-refoulement* which imposes on States a duty not to expel refugees regardless their irregular status, if they are out of their country of nationality due to a well-founded fear of persecution. This duty is absolute and binding on all signatory members of the treaty in both peacetime and armed conflict periods.⁵⁸ Deviation is permitted only on the grounds of maintaining the public order and national security. Simply put, this principle applies either when the refugee is at the border of a State or within its territory, no matter if he or she is lawfully, irregularly, or without documentation within it.⁵⁹ Thus, the acknowledgement of this principle is closely connected to the right to leave a country as it ensures the security of people at risk by other States. It is in this manner that the right to leave becomes effective in practice, and the prohibition of refoulement becomes a buffer against persecution,

⁵⁴Convention relating to the Status of Stateless Persons 1954.

⁵⁵Convention relating to the Status of Refugees 1951.

⁵⁶Protocol relating to the Status of Refugees 1967.

⁵⁷Perruchoud (n1) 132-135.

⁵⁸Ibid.

⁵⁹Ibid.

torture or inhuman or degrading treatment or punishment in the state they are departing.⁶⁰ Consequently, preventing departure by sea, pre-departure immigration control, criminalising certain types of migrants, and other contemporary measures that States use to prevent migration movement and entrance into their territory constitute an interference with the effective exercise of refugees' right to leave and a breach of the aforementioned Refugee Convention.

Violation of the Right in Practice

As analysed above, the right to leave a country, including one's own, is widely recognised and articulated in various universal and regional instruments. The act of ratifying a treaty implies a general agreement on the part of the signatory States to respect and protect the rights under this treaty, but contemporary practice shows exactly the opposite occurs in reality. States use their sovereignty to justify the control of migration movement, imposing unjustified restrictions on human rights and particularly on the right to leave a country. These restrictions are unjustified because they are in contradiction of the process the States are meant to adhere to.

Firstly, the freedom of States to regulate the entry of non-nationals into their territory is equivalent to a right to request them to leave as soon as the authorised permission to enter the country for a specified duration and purpose ends.⁶¹ After the end of the authorised stay, States are entitled to make an expulsion order expelling these aliens from their territory, balancing their right of sovereignty with the rights granted by international law. Therefore, at this point, the right to leave a country turns into an obligation to leave. However, a risk assessment should take place before deportation to ensure that the *non-refoulement* principle holds in

⁶⁰Markard (n5).

⁶¹Perruchoud (n1) 143.

practice.⁶² The latter prevents States from deporting or extraditing refugees and asylum seekers who are fleeing their own country due to a well-founded fear of persecution. Despite this, in practice, Western States have responded to this obligation with efforts to stop asylum seekers flows, even using drastic measures such as blocking access to their soil or extended deportation.⁶³ A recent survey in the USA and the UK revealed an upward trend in deportations. In the USA, deportations climbed from 114,432 in 1997 to 400,000 in 2009, whereas in the UK, they rose from 30,000 to 67,000, respectively.⁶⁴ Many other States have also started using extensive deportation as a means to deal with illegal migration and failed asylum-seekers. These arbitrary deportations can - and in fact, do - lead to grave violations of refugees' rights in the sense that they are prevented from effectively exercising their right to leave their country and seek safety in another State.

Secondly, States have introduced a variety of measures attempting to keep migrants away from their soil, and asylum seekers away from their borders, since the duty to provide asylum only arises when the asylum seekers have entered the State. Borders are considered to be 'a tool of exclusion' which divide nationals from aliens and are broadly used to secure a State's integrity. Additionally, the political coupling of migrants and crime has led to an extended closure of borders using the excuse of preventing cross-border crime and illegal migration.⁶⁵ Scholars have suggested that these attempts indicate a systematic criminalisation of many migrant categories and a further effort to bring refugees and asylum seekers under the remit of military policy, leading to the creation of what has been coined 'crimmigrant bodies'.⁶⁶ Many countries have developed strict surveillance methods to assist in controlling

⁶² Ibid.

⁶³ Randall Hansen (n37).

⁶⁴ Hansen (n37) 6.

⁶⁵ Whelan (n10).

⁶⁶ Hansen (n37) 7.

population movement across borders. In Europe, for instance, among other systems, the following databases are maintained to help secure the EU borders: the Schengen Information System, the Eurodac, Visa Information System, European Border Surveillance System (Eurosur), Registered Travellers System and others.⁶⁷ In addition to enforcing borders already in place, States also expend every effort to shift the location of their borders, asserting their sovereignty outside their territory. This is known as the externalisation of migration control, which is defined as a State's effort to curtail migrant flows, including asylum seekers, before they reach its borders and jurisdiction or render them legally inadmissible without any consideration of their individual claims for protection.⁶⁸ Borders are being enforced, in effect transferred, beyond the borderline.⁶⁹ An illustration of such State practices is Australia and its 'Pacific Solution', which involved certain asylum claims being processed extra-territorially in 'declared safe countries' like Papua New Guinea. As a result, 'off-shore applicants' were at the same time within and out of Australia while borders were in different locations for different purposes.⁷⁰ States also adopt further measures in an attempt to exert control over migration extra-territorially. One common practice is the imposition of 'international zones' at airports so that refugees cannot reach European or other countries.⁷¹ Furthermore, they deploy liaison officers to prevent illegal migration and contract 'mobility partnerships' with third countries, exchanging obligations to take back irregular migrants, cooperate in

⁶⁷Whelan (n10).

⁶⁸Bill Frelick, Ian M. Kysel and Jennifer Podkul, 'The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants' (2016) 4 JMHS 190.

⁶⁹ Alison Kesby, 'The Shifting and Multiple Border and International Law' (2007) 27 Oxford Journal of Legal Studies 101.

⁷⁰ Ibid.

⁷¹ Frances Nicholson, 'Implementation of The Immigration (Carriers' Liability) Act 1987: Privatising Immigration Functions at the Expense of International Obligations?' (1997) 46 International and Comparative Law Quarterly 586.

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surveillance and prevent illegal departures of their nationals.⁷² All these measures are highly problematic with regard to the right to leave. Refugees and asylum seekers have a right to leave their countries, and receiving states have an obligation under international law not to push them back to territories where they are in danger. Practically speaking, this means that the receiving states have a duty to accept them, so refugees and asylum seekers can also be said to have a right to enter safe third countries. Yet these rights are rendered a meaningless formalism by the frequent imposition of legal barriers, detention and push-back measures, and use of deportation. Whatever rights they have in theory, refugees and asylum seekers are increasingly left with no place to go.

Finally, as already explained, the right to leave a country is tied to the right to obtain travel documents. Since travel documents are issued by States, this is the area where they impose legal and bureaucratic— as opposed to other — barriers. High fees, difficult-to-obtain documents, requiring application for special forms, and processing delays are only some of the obstacles that, according to the General Comment No 27, States impose to restrict their nationals leave their country.⁷³ These are all violations of the right to leave. It should be noted that the most evident violations, politically-motivated refusals to issue travel documents, have been explicitly recognised as such in courts of law. In *Samuel Lichtensztejn v. Uruguay*, where Uruguayan authorities refused to renew the plaintiff's passport, the HRC found that there was a violation of article 12 of the ICCPR and that 'the authorities had manipulated the passport renewal to punish him for his politically subversive views.'⁷⁴ These are distinct situations which allow grave violations and interference with one's right to leave any country, including one's own. This, in turn, reveals a

⁷²Markard (n5).

⁷³UN Human Rights Committee (HRC), *CCPR General Comment No. 27* (n30).

⁷⁴Hansen (n37).

severe need to revise the legal framework of the right and reset its exception with precision.

Conclusion

In recent years, States' desire to control migration movement across their borders has become increasingly apparent. Triggered by the rise in people on the move, States adopt increasingly extensive packages of measures to deal with this movement. In the name of their sovereignty, they make use of practices that contradict the protected right to leave one's country. This interference has a particularly adverse impact on refugees and asylum seekers, in practice depriving them of the right to flee their country and find protection under another safe State. The majority of such violations arise out of an insufficient balancing of individual and common interests or a disproportionate imposition of restrictions.⁷⁵ In order to protect this right effectively, the emphasis should be placed more on its protection rather than the protection of the States' sovereignty. Moreover, a procedural framework to secure the active exercise of the right and stricter, more precise definitions of the permitted deviations of the right should be introduced.

⁷⁵ Markard (n5).