

**SIXTEENTH COMMISSION**

**Mass Migrations**

**Rapporteur : M. Maurice Kamto**

**FINAL RESOLUTION**

The *Institute of International Law*,

*Considering* that international mass migration is one of the most striking phenomena of the contemporary world which profoundly affects individuals, peoples and States,

*Recognising* that migrants generally make a positive contribution to inclusive economic and social progress and sustainable development, but that forced displacements and irregular migratory flows often raise complex problems,

*Recalling* the principles proclaimed by the Charter of the United Nations and various instruments for the protection of human rights, of international humanitarian law and of refugee law which recognise the inherent dignity of the human person and the equal and inalienable rights of all members of the human family,

*Recognising* the legitimate right of States to control their borders and to exercise their sovereignty over entry and residence on their territory,

*Recognising* also that the situation of mass migrants requires special attention on the part of States and the international community in accordance with elementary considerations of humanity,

*Recalling* in this regard, in particular, the principles relating to the protection of the human person set out in the instruments concerning the fate of refugees and migrant workers and members of their families,

*Considering* the importance of solidarity among States and of international cooperation among the various actors involved in managing mass flows of migrants,

*Considering* further the need to take account of the capacity of each State to cope with a situation of mass migration,

*Considering* that, to the extent possible, States of origin must redress situations which generate mass migration,

*Convinced* of the need and usefulness of drawing up basic rules and proposals of international law relating to mass migration,

*Considering* in this regard the previous works of the *Institut* on various aspects of internal displacement of persons, in particular its Resolutions of Geneva (1892), Copenhagen (1897) and Bath (1950),

*Recognising* the importance of the endeavours undertaken during the past decades in certain regions of the world to broaden the protection of vulnerable or defenceless persons so as to encompass all those affected by mass migration,

*Considering* also Resolution A/RES/71/1, adopted by the United Nations General Assembly on 19 September 2016, on the New York Declaration for Refugees and Migrants,

*Convinced* of the need to strengthen the treaty framework governing mass migration,

*Adopts* the following Resolution:

**PART ONE**  
**SUBJECT MATTER, SCOPE AND DEFINITIONS**

*Article 1*  
**Purpose**

The purpose of this Resolution is to recall and contribute to the development of rules applicable to international mass migration.

*Article 2*  
**Scope of the present Resolution**

This Resolution applies to migration and to mass migrants, whether they are entitled to refugee status or not, from the departure of the State of origin to entry into the host State.<sup>1</sup>

*Article 3*  
**Definitions**

For the purposes of the present draft Resolution, the following definitions shall apply:

- (a) “Mass migrants”, persons who collectively, in large number, leave their country for refuge or settlement in another country.

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<sup>1</sup> In the present Resolution, the term “State” also refers, depending on the circumstances, to regional organisations to which their member States have transferred competence over migration matters.

- (b) “Transit State”, the State through which migrants pass or intend to pass, with no intention of finding refuge or settlement there, to get to a State of destination or reception.
- (c) “State of destination”, the State to which mass migrants intend to travel as final destination for their refugee claim or settlement, but of which they have not yet crossed the border.
- (d) “Host State”, the State where mass migrants have effectively found refuge or where they are present.
- (e) “State of origin”, the State of which the migrant is a national or in which that person has their habitual residence.

**PART TWO**  
**FREEDOM OF MOVEMENT OF MASS MIGRANTS**

*Article 4*  
**Right to leave a country**

Mass migrants have the right to leave any country, including their own, subject to restrictions imposed by law, necessary for national security, public order, public health or morals, or the rights and freedoms of others, and in accordance with the other rights recognised by the International Covenant on Civil and Political Rights.

*Article 5*  
**Right to return to one's own country**

Mass migrants may not be arbitrarily deprived of the right to return to their country. The State of origin shall accept the return of migrants who are its nationals, or who have the right of permanent residence in its territory at the time of their removal.

**PART THREE**  
**OBLIGATIONS OF STATES**

*Article 6*  
**Non-refoulement**

1. Every State is bound by the obligation of non-refoulement. This obligation applies only to refugees, excluding economic mass migrants.
2. However, the benefit of the principle of non-refoulement may not be invoked by a refugee if there are reasonable grounds for regarding that person as a danger to the security of the country in which that person is, or if, having been convicted by a final judgment of a particularly serious crime or offence, that person constitutes a danger to the community of that country.
3. The principle of non-refoulement also applies to a vessel on the high seas.

*Article 7*

**Duty to provide assistance**

The transit State, the State of destination and the host State are duty-bound to assist mass migrants on the basis of elementary humanitarian considerations.

*Article 8*

**Passage of mass migrants through the transit State**

Without prejudice to the provisions of Article 4, the transit State should ensure the passage of mass migrants through the transit State. It may ensure the organisation of their transit, where appropriate in cooperation with the United Nations High Commissioner for Refugees, relief organisations and the State of destination.

*Article 9*

**Non-discrimination**

1. Mass migrants must be treated without discrimination, in accordance with international law.
2. Notwithstanding the provisions of paragraph 1, distinctions may be made between migrants on the basis of existing State legislation on entry and residence, provided that they pursue a legitimate and reasonable aim and are based on objective considerations.

*Article 10*

**Conditions for removal of a refugee**

1. A refugee shall not be removed by the host State, unless that State has reasonable grounds for regarding that person as a danger to its security, or if that person has been convicted by a final judgment of a particularly serious crime or offence and constitutes a danger to the community of that State.
2. The removal of the refugee in question is merely an option at the discretion of the host State, which is free to choose other less stringent options.

*Article 11*

**Prohibition of collective removal of migrants**

1. Collective removal of mass migrants is prohibited.
2. Collective removal means any measure by which the host State compels mass migrants as a group, not admitted to refugee status or asylum, to return to their country of origin or provenance, without an assessment of the particular situation of each of them.

**PART FOUR**  
**ASSISTANCE TO MASS MIGRANTS AT SEA**

*Article 12*  
**Duty to render assistance at sea**

1. States shall cooperate with each other to render assistance to mass migrants in danger or distress at sea.
2. Every State shall require ships flying its flag to render assistance to mass migrants in danger or distress at sea.
3. Every coastal State shall render assistance to mass migrants in danger or distress in maritime areas subject to its sovereignty.
4. States shall endeavour to render assistance to mass migrants in danger or distress in waters beyond their territorial seas.
5. This Article shall be applied in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea.
6. This Article is without prejudice to the provisions of Article 4.

**PART FIVE**  
**HUMAN RIGHTS OF MASS MIGRANTS**

*Article 13*  
**Respect for human dignity and the principle of humanity**

1. In managing the situation resulting from mass migration, States must respect and ensure respect for the human dignity of migrants. They must act in accordance with the principles of humanity, human rights law, refugee law and international humanitarian law.
2. To this end, the host State must determine the status of the migrants as expeditiously as possible. Pending determination of that status, the host State must provide access to education and training to mass migrants.

*Article 14*  
**Protection of life and prohibition of torture and inhuman or degrading treatment**

Mass migrants may not be returned to a State where they are at risk of being subjected to torture or inhumane and degrading treatments, or to a State in which their lives are threatened by reason of, inter alia, their race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other reason not permitted under international law.

*Article 15*

**Special situation of women, children and other vulnerable persons**

1. In managing the situation resulting from mass migration, States must take into account the special situation of women, children and other vulnerable persons, in accordance with international law.
2. States that have not yet become Parties to the international conventions protecting these persons are encouraged to do so.

**PART SIX**

**BURDEN-SHARING IN THE MANAGEMENT OF MASS MIGRATION**

*Article 16*

**Sharing the burden of receiving mass migrants with "safe countries"**

1. In order to alleviate the burden of receiving mass migrants, a State may direct part of them to one or more "safe countries" which agree to accept them, in the framework of bilateral or multilateral arrangements.
2. In this respect, the concept of a "safe country" must be defined according to precise criteria agreed upon by States. The determination of a State as a "safe country" should be entrusted to an *ad hoc* international body which could be composed of representatives of main international bodies charged with matters of human rights, refugees, international migration and humanitarian affairs.

*Article 17*

**Solidarity and common and shared responsibility**

1. The management of mass migration requires solidarity of all States, taking into account their geographical situation, capacities and resources.
2. In particular, it entails the responsibility of States and/or international organisations which are at the origin of, or involved in, the situation that generates mass migration. The contribution of these States and/or organisations to the management of this situation must depend on the level of their involvement in its occurrence.

*Article 18*

**Particular assistance to the host State**

In view of the special efforts of the host State in the management of mass migration, it is entitled to adequate assistance from the international community with regard to the burden it bears in the interest of mankind. Such assistance must take particular account of the situation in which a mass influx of migrants is likely to constitute a threat to the stability of the host State through the disorganisation of its social institutions and structures.

*Article 19*

**Responsibility for internationally wrongful acts**

If the cause of mass migration is unlawful, the responsible State and/or international organisation are subject to the regime of international responsibility for internationally wrongful acts.

**PART SEVEN**

**COOPERATION BETWEEN STATES AND WITH RELIEF AND  
REFUGEE ASSISTANCE BODIES**

*Article 20*

**Coordination and cooperation**

In the management of the situation resulting from mass migration, States shall cooperate and coordinate their actions among themselves and with international organisations and competent non-governmental organisations.

*Article 21*

**Readmission agreements**

States are encouraged to conclude agreements for the readmission of mass migrants who are not admitted to the host State in order to ensure an organised return of these mass migrants, respecting their human dignity and their rights.

**PART EIGHT**

**STRENGTHENING THE CONVENTIONAL FRAMEWORK  
GOVERNING MASS MIGRATION**

*Article 22*

**Conclusion of a legal framework instrument on mass migration**

States are encouraged to negotiate a basic legal instrument, of a universal character, governing direct cooperation between States of origin and host States of mass migration flows, including temporary migratory flows.

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