
THE PRINCIPLE OF NON-REFOULEMENT AND INTERNATIONAL HUMANITARIAN LAW: EUROPEAN ASYLUM POLICIES IN WAR CONTEXTS

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ABSTRACT

The principle of non-refoulement is a cornerstone of International Humanitarian Law (IHL), enshrined in treaties such as the 1951 Refugee Convention, the Geneva Conventions and its Additional Protocols, and the European Convention on Human Rights (ECHR). However, European states increasingly violate this obligation through restrictive asylum policies, pushbacks, third-country deportations, and externalization of asylum processing; thereby undermining fundamental refugee protections. This paper critically examines the systematic erosion of non-refoulement obligations by European Union states and assesses the legal, ethical, and humanitarian consequences of such violations. Through analysis of case laws, treaties, and recent policy developments, this paper highlights the lack of enforcement mechanisms within the European Court of Human Rights, the geopolitical bias in asylum policies, and the dangers of deterrence-based migration control measures. It argues that these practices not only violate IHL but also threaten the foundational values of the European Union and the core tenets of Human Rights Law enshrined under the United Nations Charter, Universal Declaration of Human Rights and other key international frameworks. The paper concludes by advocating for stronger international enforcement mechanisms, sanctions for non-compliant states, and the expansion of safe and legal migration pathways as essential measures to uphold rights of asylum seekers and prevent further humanitarian crisis and violations.

Research Question

This paper examines whether European asylum policies, particularly those involving pushbacks, third-country deportations, and asylum restrictions, violate IHL protections of non-refoulement or not.

Thesis Statement

European states' current asylum policies systematically violate the principle of non-refoulement under IHL. Despite their obligations under treaties like the 1951 Refugee Convention, Geneva Conventions, and European Convention on Human Rights (ECHR), many EU countries engage in illegal expulsions, human rights abuses, and procedural loopholes that undermine protection of asylum seekers.

INTRODUCTION

As I sit down to write this paper from the comfort of my space along with the resources that I'm equipped with, there are more than 120 million people¹ who are forcefully displaced worldwide as a result of persecution, violence, conflict and grave human rights violations. Three-year-old Alan Kurdi, a Syrian refugee, was left lifeless on the shores of the Mediterranean Sea only as his family was escaping war and seeking refuge in a European country.² This sadly, is not an exception but rather a ripple in the sea of examples and bodies alike.

The principle of non-refoulement is a fundamental norm of International Humanitarian Law (IHL), Refugee Law, and International Human Rights Law. It prohibits states from expelling or returning, also known as "refouling" a refugee or asylum seeker to a territory or in most cases their home country, where they face serious threats to their life, freedom, or safety due to war, persecution, or other serious harm.

There are certain classes of rights known as non-derogable rights which are so essential and sacrosanct to the existing Human Rights law that they cannot be suspended or restricted no

¹ UN Refugee Agency, *Refugee Statistics*, USA for UNHCR, <https://www.unrefugees.org/refugee-facts/statistics/> (last visited Mar. 25, 2025).

² Adnan R. Khan, Alan Kurdi's Father on His Family Tragedy: 'I Should Have Died with Them', *The Guardian* (Dec. 22, 2015), <https://www.theguardian.com/world/2015/dec/22/abdullah-kurdi-father-boy-on-beach-alan-refugee-tragedy>.

matter what the prevailing circumstances are, and this extends to even war. This principle of non-refoulement is considered absolute and essentially non-derogable under international law, meaning that states cannot justify deportations or pushbacks based on national security, border control, prioritising domestic interest or political concerns.

In recent years, European nations have increasingly violated this principle through restrictive asylum policies, pushbacks, and third-country deportation schemes. For a long time, European countries have used border control measures that extend beyond their own territories, such as imposing penalties on transport companies that carry undocumented migrants and requiring visas before travellers even reach Europe and practices of a similar nature. A recent proposal titled “New Pact on Migration and Asylum”³ agreed upon in December 2023 suggests taking this further by processing asylum applications outside of Europe or “externalisation” of asylum procedures which is decided to be implemented upon by 2026

While this idea is not entirely new, it is now being taken more seriously than in previous discussions. The United Kingdom first introduced a similar proposal to the European Union in 2003. Currently, 15 EU member states have signed a joint letter urging the European Commission to consider setting up asylum processing centers in so-called “safe third countries.” This term of safe third countries is given under Article 19(1) of the Asylum Code of European Council of Refugee and Exiles (ECRE). However, concerns have been raised about the potential legal and ethical implications, particularly regarding the risk of leaving asylum seekers in a legal vacuum and the uncertainty of how the sending state's obligation of non-refoulement would apply in such situations. These proposals are aiming to dismantle the core tenet of international protection. These governments argue that responsibility for asylum seekers would shift from EU states to these third countries while still complying with international law whereas this stands as a weak justification at best. Attempts by states to outsource their asylum responsibilities to other countries are not new – but have long been criticized, condemned, and rejected for good reason. Just as the [UK-Rwanda](#) scheme (aiming to deport asylum seekers to Rwanda without processing their claims in the UK) is rightly collapsing, the EU and its member states should pay attention, stop making false promises and

³ European Parliamentary Research Service, *Extraterritorial Processing of Asylum Claims: A Legal and Policy Perspective*, Eur. Parl. Doc. EPRS_BRI(2024)757609 (2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757609/EPRS_BRI\(2024\)757609_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757609/EPRS_BRI(2024)757609_EN.pdf).

wasting time and money on expensive, inhumane and unworkable proposals.⁴

Therefore, the primary concern is that this approach by the EU could leave asylum seekers in legal limbo. These measures would eventually cause severe human rights violation, prolonged or indefinite detention period of the asylum seekers along with legal uncertainty adding on to the already existing ethical implications of such transference of responsibility; thus violating the spirit of Geneva Conventions by prioritizing deterrence over protection and eroding the foundational EU values and setting a dangerous precedent encouraging other nations to evade refugee responsibility.

LEGAL FRAMEWORK GOVERNING NON-REFOULEMENT

A. Treaty Law Protections

The principle of non-refoulement is firmly established under multiple international treaties:

1. Article 33(1) of UN Convention relating to The Status of Refugees, 1951

This article states that *"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion."*⁵

This article would be held binding on all EU states that are signatory to the convention. There is no reservation allowed to this article and therefore no derogation permitted as well. This stands as an obligation under Article 1(1) of the 1967 protocol which aimed at removing temporal and geographical restrictions in order to make the convention would have universal application.

2. Geneva Conventions and Additional Protocols

i. Common Article 3 of the 1949 Geneva Conventions⁶

⁴ Amnesty International, *EU: Reject Plans to Offshore Asylum and Safeguard Refugee Protection, Say Over 90 NGOs* (11 July 2024), online: Amnesty Int'l

⁵ United Nations High Commissioner for Refugees, Note on Non-Refoulement, EC/SCP/2 (23 August 1977).

⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 31, online at *Int'l Comm. of the Red Cross* <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-3>.

This article provides minimum humanitarian protections to non-international armed conflicts (NIAC) and is crucial while discussing non-refoulement as it establishes a baseline of protection wherein even formal refugee laws may not apply.

The International Committee of Red Cross (ICRC) recognizes that states must not expel individuals to a place where they face harm under Common Article 3 protections.⁷

Additionally, the UNHCR has emphasized that the **prohibition on returning individuals to war zones applies even if they do not qualify as "refugees" under the 1951 Convention.**⁸

ii. Article 45 of the Fourth Geneva Convention⁹

This article bans the transfer of protected persons or civilians to a state where persecution is likely by explicitly stating that such persons cannot be transferred to a state which is not bound by the obligations of the Geneva Conventions and hence in extension not bound to uphold the key principles enshrined under the core tenets of International Humanitarian Law.

It further states that this article can in no way be used to pose an obstacle to repatriation of these civilians or unfairly detain them by taking shelter of this article and prevent them from returning to the country of their residence after the hostilities have duly ceased and their safety can be foreseeably ensured.

In order to check whether EU owes compliance to the Geneva Conventions, it is to be duly noted that all EU member states have in fact ratified the conventions¹⁰ which shows a compliance with international humanitarian law and a breach of such treaty obligations should call for prosecution and penal sanctions.

⁷ ICRC, *Commentary on the First Geneva Convention*, 2016, para. 723

⁸ UNHCR, *Note on Non-Refoulement (EC/SCP/2)*, 23 August 1977

⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 45, Aug. 12, 1949, 75 U.N.T.S. 287, online at *Int'l Comm. of the Red Cross* <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-45>.

¹⁰ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, online at *United Nations Treaty Collection*

3. European Convention on Human Rights (ECHR)

i. Article 3: Prohibits torture, inhuman, or degrading treatment.¹¹

This article explicitly prohibits acts of torture, inhuman and degrading treatment to individuals, opting to externalise asylum seekers is in clear contravention with this Convention.

Furthermore in Article 1 and Article 17 relating to “Obligation to respect Human Rights” and “Prohibit of Abuse of Rights” respectively, it binds all high contracting parties to the core tenets of human rights law while at the same time deciding to disregard its international obligations to non-refoulement shows a level of hypocrisy and ignorance towards its international obligations.

- ii. **The European Court of Human Rights** has ruled that returning individuals to states where they may face harm is a violation of this Article 3.¹² In the landmark case of *Soering v. United Kingdom*,¹³ decided by the European Court of Human Rights the principle of non-refoulement was applied in a significant manner here. This was one of the first few notable examples of this topic wherein there are restrictions placed upon the state to extradite someone to a country where there is a potential or prevalent risk of human rights violations or degrading treatment even if that risk is not particularly torture.

B. CUSTOMARY INTERNATIONAL LAW PROTECTIONS

Even for non-signatory states, non-refoulement is considered to be customary law, which essentially means that all states must respect it regardless of treaty ratification. The United Nations High Commissioner for Refugees (UNHCR) along with several other international bodies have time and time again affirmed that non-refoulement is a fundamental principle which applies universally, regardless of a treaty being ratified by that particular country or not.

The view that the principle of non-refoulement has become a part of the well-recognised rule

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, online at *Eur. Ct. H.R.* https://www.echr.coe.int/documents/d/echr/convention_ENG.

¹² *Hirsi Jamaa v. Italy*, App. No. 27765/09, 2012-II Eur. Ct. H.R. 97

¹³ *Soering v. United Kingdom*, App. No. 14038/88, 11 Eur. Ct. H.R. (ser. A) (1989)

of international customary law is based on a consistent practice combined with the factor of recognition on the part of States which shows that the principle has a character that is normative in nature. This conclusion is supported by the fact that the principle has been incorporated in international treaties adopted at the universal and regional levels to which a very large number of States have now become parties. The principle has, moreover, been reaffirmed in the 1967 United Nations Declaration on Territorial Asylum.¹⁴

CASE STUDIES OF EUROPEAN VIOLATIONS OF NON-REFOULEMENT

A. Greece's Pushbacks and Maritime Expulsions

In January 2025, the European Court of Human Rights has confirmed the systematic violations of the principles of non-refoulement by Greece wherein there's an unlawful pushback of asylum seekers from the third world countries in Greece back to Turkey. There have been 2 prominent cases in this regard, namely *A.R.E. v. Greece*¹⁵ and *G.R.J. v. Greece*.¹⁶ The former was concerning a Turkish national who had fled to Greece as she was facing persecution with regards to her political affiliations and an asylum in such a necessary situation was denied without even a prior examination of the risks she would be facing upon her return. In the case of *G.R.J. v. Greece*, where an Afghan unaccompanied minor who was taken from a Greek refugee camp and was forced to board an inflatable raft in the Aegean Sea by Greek Officers. Even though the application was declared to be inadmissible due to certain inconsistent statement of applicant, upon investigation for this particular case, there were several strong indications of such a systematic "pushback" to be found and the court was also criticised for showing such heightened expectation of evidence to be provided by victims of these pushbacks, thus creating more obstacles in State accountability.

These two cases were just a small fraction of the cases filed by a total of 47 Applicants against Greece's practices between January and December 2021.

Reports from Amnesty International 2024 submitted to the UNHRC in its 142nd session confirm that Greek authorities engage in illegal pushbacks of asylum seekers from Syria, Afghanistan,

¹⁴ UNHCR, Note on Non-Refoulement (Submitted by the High Commissioner), EC/SCP/2 (Aug. 23, 1977)

¹⁵ *A.R.E. v. Greece*, App. No. 55363/19, Eur. Ct. H.R. (Apr. 4, 2023)

¹⁶ *G.R.J. v. Greece*, App. No. 15067/21, Eur. Ct. H.R.

and Africa.¹⁷

In February 2024, the European Court of Human Rights ruled against Greece for violating the principle of non-refoulement under Article 3 of the European Convention on Human Rights. The Court found that Greek authorities had in fact in several occasions unlawfully expelled asylum seekers to Turkey without even assessing the risk of inhuman or degrading treatment that they may face upon return. The court thus emphasized that collective expulsions without individualized assessments violate the core tenets of the Convention, reinforcing that states cannot evade their non-refoulement obligations by shifting responsibility to third countries thus underscoring that even in border control policies, states must uphold fundamental human rights standards, no matter what.

B. Italy's Libya Cooperation: Forced Returns to Torture

Italy, a signatory to the 1951 refugee convention and the ECHR, faces the obligation to uphold the principle of non-refoulement yet it has significantly moved away from it. Italy funds and supports the Libyan Coast Guard to intercept asylum seekers in the Mediterranean so that it reduces the number of asylum seekers or in fact completely prevents it and those asylum seekers who are returned to Libya face grave human rights violations in the form of torture, indefinite detention, forced labour, and human trafficking.

This is in clear violation of Article 3 of ECHR and the fourth Geneva Convention, prohibiting the return of individuals to inhumane conditions.

The case of *Hirsi Jamaa and Others v. Italy*¹⁸ is a landmark one in this context. Herein, on May, 2009, a group of approximately 200 individuals from Somalia and Eritrea had departed from Libya by boarding three vessels, each aiming to reach the Italian coast. While navigating through international waters within the Maltese Search and Rescue Region, their boats were intercepted by Italian authorities, including the Italian Coast Guard. The migrants were then transferred onto Italian military ships and returned to Tripoli, Libya, where they were handed over to Libyan authorities and henceforth they were faced with severe human rights violations

¹⁷ Amnesty International, *The Proposed EU Asylum Reform and Its Impact on Refugee Protection*, EUR 25/8525/2024 (Sept. 2024), available at <https://www.amnesty.org/en/wp-content/uploads/2024/09/EUR2585252024ENGLISH.pdf>.

¹⁸ *Hirsi Jamaa v. Italy*, App. No. 27765/09, 2012-II Eur. Ct. H.R. 97

caused against them in the form of extreme measures and overall degrading treatment.

The judgement of the European Court of Human Rights ruled against Italy highlighting how its actions violated multiple provisions of the ECHR, including but not limited to Article 3 (Prohibition of Inhuman or Degrading Treatment), Article 4 of Protocol 4 ECHR (Prohibition of Collective Expulsions), Article 13 (Right to Effective Remedy) read with Article 3 and 4 of Protocol 4.

The Italian government was further directed to pay each applicant 15,000 Euros in non-pecuniary damages in addition to the legal costs incurred by them.

This case was therefore a landmark ruling as it set a precedent on the principle of non-Refoulement and extra-territorial Human Rights Obligations, once again reinforcing that **states cannot evade their responsibilities by intercepting migrants outside their territorial waters.**

C. UK's Rwanda Asylum Plan, 2022

In April 2022, UK signed a deal with Rwanda to deport asylum seekers without processing claims, this was known as the 'Migration and Economic Development Partnership'¹⁹ or 'Rwanda Plan'. However, in November 2023 the UK Supreme Court ruled this plan to be a breach of International Human Rights Obligations, the response to this was met by a new treaty with Rwanda bringing forward a new legislation – Safety of Rwanda (Asylum and Immigration) Act²⁰ which was designed to override any legal hurdles placed before it by the UK Supreme Court.

Under the scheme, asylum seekers arriving in the UK would be prohibited from seeking asylum here, and would instead be sent to Rwanda, where they would be processed under Rwanda's legal system and would not be able to return to the UK.

This was widely criticised by not only the international communities but also the opposition party ministers in the UK, various charities and Human Rights Groups as this violates the principle of individual assessment, a key aspect of non-refoulement.

¹⁹ UK Government, *Migration and Economic Development Partnership Factsheet*, GOV.UK

²⁰ Illegal Migration Act 2024, c. 8 (UK)

UNHCR and human rights bodies have strongly condemned the plan, calling it an "offshore detention scheme".

D. Cyprus' Alleged Pushbacks (March 2024)

Cyprus has faced accusations of violating its non-refoulement obligations by the UNHRC for engaging in pushbacks and ignoring distress signals from NGO vessels. The Cyprus Refugee Council and Human Rights Watch have documented cases where Cypriot authorities allegedly turned back asylum seekers to Lebanon without properly assessing their protection needs, exposing them to potential persecution and human rights violations²¹

These allegations against Cyprus reflect a much broader concern about European border enforcement strategies which in its trends are seen prioritizing deterrence over protection. Cyprus goes on to justify its actions under border security without taking into consideration the fact that this violates ECHR and Refugee Convention Standards.

Furthermore, a leaked EU document revealed that Malta has deliberately refused to engage in rescues, despite being fully aware of boats in distress.²² Such policies actively violate obligations under the United Nations Convention on the Law of the Sea (UNCLOS)²³ and the International Maritime Organization's (IMO) guidelines.²⁴

E. Serbia's Violation of Refugee Movement Rights (July 2023) – Hungary Serbia and Slovakia proposal

In July 2023, Serbia was found to have violated the movement rights of a Syrian refugee by denying them travel documents despite granting asylum. This restriction was inconsistent with international obligations under the 1951 Refugee Convention and European human rights standards.

²¹ Human Rights Watch, *"I Can't Go Home, Stay Here, or Leave": Pushbacks and Pullbacks of Syrian Refugees from Cyprus and Lebanon* (4 Sept. 2024), online: Human Rights Watch <https://www.hrw.org/report/2024/09/04/i-cant-go-home-stay-here-or-leave/pushbacks-and-pullbacks-syrian-refugees-cyprus>.

²² European Council on Refugees and Exiles (ECRE), *Mediterranean: More Rescues and Deaths in Central Mediterranean – Cyprus Accused of Pushbacks and Ignoring NGO Warnings Prior to Tragedy – Leaked EU Document Suggests Malta Refuses to Engage in Rescues* (6 Sept. 2024)

²³ United Nations Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 3 (entered into force 16 Nov. 1994)

²⁴ United Nations Convention on the Law of the Sea, 10 Dec. 1982, 1833 U.N.T.S. 3 (entered into force 16 Nov. 1994)

The European Court of Human Rights ruled against Serbia in this, emphasizing that recognized refugees must be provided with necessary documentation in order to enable their freedom of movement. This ruling aligns with broader concerns regarding Hungary, Serbia, and Slovakia's proposal to limit refugee mobility within Europe.²⁵

The abovementioned cases and examples are a few of the many ongoing and already occurred violations to the principles of Non-Refoulement caused by EU nations which defeat the purpose of promoting international human rights and humanitarian laws in order to achieve a state wherein every individual can live a life of dignity without the fear of persecution.

CRITICAL ANALYSIS OF LEGAL & ETHICAL VIOLATIONS

A. Legal Violations

1. Absolute vs. Conditional Non-Refoulement

When it comes to international law, there has inherently been a clash between upholding international standards and prioritising domestic interests and this finds a way to spread into the principle of non-refoulement as well. While some states argue that non-refoulement does not apply in national security cases., the UNHCR states that non-refoulement is absolute under international law and even acts as customary international law to bind nations not signatory to certain treaties which this principle finds its place in.

2. Lack of Accountability

Many European Court of Human Rights rulings against EU states lack enforcement mechanisms, allowing repeated violations.

The lack of accountability in enforcing European Court of Human Rights (ECHR) rulings has led to several repeated violations by EU states, thus undermining the court's authority and not taking the protection of fundamental rights of asylum seekers in a serious manner.

While the European Court of Human Rights has ruled against states for breaching obligations under the European Convention on Human Rights (ECHR), such as in *Hirsi Jamaa v. Italy*,

²⁵ *A.A. v. Serbia*, App. No. 53659/22, Eur. Ct. H.R. 2023

where Italy was condemned for unlawful pushbacks, enforcement of the treaties and conventions where non-refoulement is upheld remains weak.

Without binding mechanisms to ensure compliance, states continue to evade responsibility, as seen in cases like *N.D. and N.T. v. Spain*²⁶, where Spain's summary expulsions were deemed illegal yet they still continue to persist in practice. The absence of deterrent tangible consequences allows such systemic violations of consistent non-refoulement practices and other refugee rights violations to continue, weakening the legal framework meant to safeguard these vulnerable individuals.

B. Ethical Dilemmas

1. Selective Humanitarianism

The European response to seekers of asylum has been marked by systematic disparities, revealing a pattern of selective humanitarianism driven by racial and geopolitical considerations, which in itself is a violation of the fundamental principles of non-discrimination and equality prescribed under the core tenets of human rights law.

Following Russia's invasion of Ukraine in 2022, the European Union swiftly activated the Temporary Protection Directive, granting Ukrainian refugees immediate residency rights, access to social services, and the freedom to move across member states.²⁷

In contrast, Middle Eastern and African asylum seekers routinely face pushbacks, prolonged detention, and dire conditions in border camps, violating the principle of non-refoulement and several other basic human rights under the 1951 Refugee Convention.²⁸

Reports from Amnesty International and Human Rights Watch document systematic abuses, including violent border rejections and arbitrary detention, particularly in Greece, Italy, and Poland.²⁹

²⁶ App. Nos. 8675/15 & 8697/15, Eur. Ct. H.R. 2020

²⁷ Council Implementing Decision (EU) 2022/382

²⁸ UNHCR, *Note on Non-Refoulement*, EC/SCP/2, 1977

²⁹ Amnesty International, "Greece: Violence, Lies, and Pushbacks," 2021; Human Rights Watch, *No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya*, 2023

Such discrepancy raises severe concerns over racial and geopolitical bias in European asylum policies, as predominantly white and Christian Ukrainian refugees receive preferential treatment compared to asylum seekers from the middle-east and Africa; even as late as in 2025 where such discrimination is seen to persist.

2. State Justifications & Political Agendas

European governments often justify their restrictive asylum measures under the guise of national security and migration control, reinforcing false narratives that insist on framing non-European refugees as threats rather than individuals who are in need of protection.

Right-wing populist parties have taken advantage and capitalized on public fears surrounding migration, fuelling certain policies that sideline international human rights obligations. For instance, the UK's Migration and Economic Development Partnership with Rwanda seeks to transfer asylum seekers offshore, circumventing domestic asylum procedures in a move which has been highly condemned by the UNHRC³⁰.

Similarly, Italy's recent agreements with Libya to detain and intercept migrants at sea, which has been discussed at length above; have led to documented cases of torture and mistreatment in Libyan detention centres.³¹ Such policies not only erodes the fundamental right each individual has by the virtue of being human and being able to seek asylum in order to live and in an ideal world, live without fear, but also violates international legal frameworks.

Ultimately these state-led justifications reflect broader political agendas that prioritize deterrence over humanitarian obligations, further increasing the plight of the already plighted asylum seekers.

RECOMMENDATIONS & THE FUTURE OF NON-REFOULEMENT

1. Strengthening International Legal Enforcement

To uphold rights of asylum seekers and prevent systematic violations, stronger international legal enforcement mechanisms are necessary to be put in place and actually implemented.

³⁰ UNHCR, *Legal observations on the UK-Rwanda Asylum Partnership*, 2022

³¹ Human Rights Watch, *Pushed Back, Pushed Around*, 2020

One potential solution is the implementation of EU-wide penal sanctions against member states that violate asylum obligations under international law. The European Commission has previously used infringement procedures against countries failing to comply with EU asylum directives, but these measures remain highly inconsistent and lack some serious financial or political repercussions.³²

Introducing targeted sanctions, including strict funding restrictions and legal consequences for non-compliant states, would enhance accountability and actually make the states take international obligations seriously.

Additionally, expanding the jurisdiction of the International Court of Justice (ICJ) over asylum cases would create a more robust and holistic legal framework to address state incurred violations of non-refoulement. While the ICJ has previously ruled on refugee matters under broader human rights principles, explicitly granting it stronger jurisdiction over asylum cases would reinforce binding international commitments as well as set up a system wherein strong precedents will exist and may act as a deterrent in the future.³³

Strengthening these mechanisms would prevent states from violating refugee protections and ensure greater legal accountability at the international level

2. Expanding Safe & Legal Migration Pathways

A key strategy to mitigate irregular migration and reduce human rights abuses is the expansion of safe and legal migration pathways.

Humanitarian visas and EU-wide asylum quotas would allow a systematic process for refugees to seek protection in a structured manner rather than undertaking perilous journeys. Several EU countries, including Germany and France, have piloted humanitarian visa programs, enabling refugees to apply for asylum before reaching European territory.³⁴

However, the lack of a unified EU-wide policy leaves asylum seekers vulnerable to inconsistent national policies which they may be subject to and which more often than not is pitted against them. Establishing a comprehensive asylum quota system across the EU, based on population

³² European Commission, *Infringement Decisions on Asylum Policy*, 2023

³³ ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, 2010 I.C.J. 639

³⁴ European Parliament, *Humanitarian Visas: EU Framework and Proposals*, 2022

size and economic capacity, would distribute responsibility in a more equitable manner among member states.

Additionally, granting temporary protection status for war refugees, as was done for Ukrainian refugees, should be extended to conflict-affected populations from regions such as Syria, Afghanistan, and Sudan³⁵. Expanding these legal pathways would reduce much of the reliance on dangerous smuggling networks, uphold humanitarian obligations, and foster a more sustainable approach to asylum policy.

CONCLUSION

European asylum policies continue to erode the fundamental principle of non-refoulement, contradicting international humanitarian law and human rights obligations, as can be seen from the several case studies cited in the paper. The persistent use of pushbacks, third-country deportations, and restrictive asylum frameworks reflects a broader failure to uphold refugee protections. To rectify these violations, the European Union and international bodies must implement stricter enforcement measures, impose tangible consequences for non-compliance, and reinforce judicial decisions and uphold the precedents which are in compliance with the international law and more so which seeks to protect human rights and prevent the loss of life and degrading treatment of asylum seekers. A commitment to genuine accountability, alongside the expansion of safe and legal migration pathways, is essential to ensuring that asylum policies align with the fundamental humanitarian values they are meant to uphold. Such actions and solidarity of the international community and more importantly the willingness by each and every nation to ensure every human life is valued will ultimately propel change towards the right direction.

³⁵ Council Implementing Decision (EU) 2022/382