
T W E L F T H S E S S I O N



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G E N E R A L A S S E M B L Y (T H I R D C O M M I T T E E)

B A C K G R O U N D G U I D E



LA MARTINIÈRE MODEL UNITED NATIONS 2025





LETTER FROM THE EXECUTIVE BOARD

Esteemed Delegates,

It is with great pleasure and a profound sense of purpose that we welcome you to the United Nations General Assembly – Third Committee (SOCHUM) at La Martiniere Model United Nations 2025. As members of the Executive Board, we are honored to convene a forum where diplomacy transcends dialogue, subsequently creating an instrument of empathy, justice and change.

The agenda before us is:-

“Assessing the Human Rights Implications of the Externalization of Asylum Responsibilities and Border Securitization: Reaffirming and upholding the Principle of Non-Refoulement under the 1951 Refugee Convention and its 1967 Protocol and fostering International Collegiality among nations.”

It effectively captures one of the most defining humanitarian and legal challenges of our time.

Across continents, asylum seekers are met with rising walls, shifting responsibilities, and diminishing compassion. The externalization of asylum procedures and the securitization of borders have redefined global migration governance, often at the cost of human dignity. As policymakers, jurists, and advocates in simulation, you stand at the intersection of sovereignty, security and solidarity tasked with addressing how far a state may go to protect its borders without eroding the universal promise of refuge.

At the heart of this debate lies the principle of non-refoulement which serves as the moral and legal cornerstone of the international refugee protection regime. Enshrined distinctively in the 1951 Refugee Convention and reaffirmed in the 1967 Protocol, it represents humanity’s enduring pledge: that no person shall be returned to a place where their life or liberty is threatened. In a world increasingly polarized by politics and fear, this principle must not merely be preserved, rather it must be championed.

We urge you to engage with nuance and empathy, subsequently transcend state narratives with statistics and recognize the human stories that animate this seating of the UNGA. The refugee is not a crisis, but a call to conscience.

While you debate, negotiate, and draft resolutions, let your diplomacy embody both intellectual depth and moral clarity.

Your task is not to echo national positions but to redefine global responsibility in order to craft frameworks that safeguard human rights while respecting the legitimate concerns of states. Through principled negotiation and creative thinking, you can reaffirm that justice and compassion are not opposing ideals but twin pillars of humanity’s progress.

We eagerly await the thoughtful discourse, collaborative spirit, and conviction that you will bring to this committee. May your deliberations reflect the best traditions of international diplomacy, reasoned, humane and resolute in their pursuit of truth and peace.

With respect, conviction and hope, may the best win and the wisest inspire!

Sincerely,

The Executive Board,
United Nations General Assembly – Social, Humanitarian & Cultural Committee (SOCHUM),
La Martiniere Model United Nations 2025.
Email address - sochum.lmun2025@gmail.com (for paperwork and queries)



THE NATURE OF PROOF/EVIDENCE IN COMMITTEE

EVIDENCE OR PROOF IS ACCEPTABLE FROM THE FOLLOWING SOURCES

News Sources:

State operated News Agencies – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any Country as such but in that situation, they can be denied by any other country in the council. Some examples are –

1. Reuters (Thomson Reuters Corporation) (United Kingdom) <https://www.reuters.com/>
2. RIA Novosti (Russia) <http://en.rian.ru/>, IRNA (Iran) <http://www.irna.ir/ENIndex.htm>.
3. BBC (United Kingdom) <http://www.bbc.co.uk/>
4. Xinhua News Agency and CCTV (P.R. Of China) <http://cctvnews.cntv.cn/>

Government Reports:

These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a nuance is that a report that is being denied by a certain country can still be accepted by the Executive Board as credible information. Examples are Government Websites like:

1. State Department of the United States of America: <http://www.state.gov/index.htm>.
2. Ministry of Defense of the Russian Federation: <http://www.eng.mil.ru/en/index.htm>.
3. Permanent Representatives to the United Nations Reports: <http://www.un.org/en/members/> (Click on any country to get the website of the Office of its Permanent Representative.
4. Multilateral Organizations like the NATO (<http://www.nato.int/cps/en/natolive/index.htm>) ASEAN (<http://www.aseansec.org/>), OPEC (http://www.opec.org/opec_web/en/), etc.

UN Reports:

(If Available)

All UN Reports are considered as credible information or evidence for the Executive Board of the General Assembly.

1. UN Bodies: Like the Security Council (<http://www.un.org/Docs/sc/>), General Assembly (<http://www.un.org/en/ga/>), HRC (<http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>) etc.
2. UN Affiliated bodies like the International Atomic Energy Agency (<http://www.iaea.org/>), World Bank (<http://www.worldbank.org/>), International Monetary Fund (<http://www.imf.org/external/index.htm>), International Committee of the Red Cross (<http://www.icrc.org/eng/index.jsp>), etc. Treaty Based Bodies like the Antarctic Treaty System (<http://www.ats.aq/e/ats.htm>), The International Criminal Court (<http://www.icc-cpi.int/Menus/ICC>).

Under no circumstances will sources like Wikipedia (<http://www.wikipedia.org/>), Amnesty International (<http://www.amnesty.org/>) or newspapers like the Guardian (<http://www.guardian.co.uk/>), Times of India (<http://timesofindia.indiatimes.com/>) etc. be accepted as credible.



INTRODUCTION

Key Definitions:

- **Asylum responsibility:** In a nutshell, asylum responsibility means the duty to assess claims for international protection, to afford asylum seekers procedural safeguards and humane treatment while claims are processed, and to respect commitments of protection for individuals found to be refugees. It also includes search and rescue, reception conditions, detention practices, legal aid, alternatives to detention, and or resettlement.
- **Externalization of asylum responsibilities:** Externalization means the measures that aim to prevent asylum seekers from reaching a state's territory or to shift the obligations to other territories or actors. Externalization can be unilateral or cooperative. It includes extraterritorial interception and pushbacks, third-country processing or offshore processing centres, formal and informal return agreements with transit states, transit monitoring and surveillance contracts, and funded programs that strengthen border controls in other states with the intent of deterring onward movement. The UN Refugee Agency has defined externalization as "measures implemented outside a state's territory which directly or indirectly prevent asylum seekers and refugees from reaching territory where they could apply for protection or otherwise shift obligations to other states in ways that reduces protection."
- **Border securitization:** Border securitization is the political framing that treats migration primarily as a security threat. Securitization often justifies extraordinary measures that may curtail rights of migrants and asylum seekers by prioritizing border control goals over protection needs.
- **Non-refoulement:** Non-refoulement is the obligation not to return a person to a territory where their life or freedom would be threatened for reasons covered by the Refugee Convention. It is expressed most clearly in Article 33 of the 1951 Convention and is widely treated as a central norm in refugee protection. Non-refoulement applies at minimum to refugees as defined in the Convention and it is reinforced by multiple human rights documents that prohibit torture or inhuman or degrading treatment.

Why non-refoulement matters and what it requires

Article 33(1) of the Refugee Convention states that no Contracting State shall expel or return a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened" on grounds defined in the Convention. Article 33 therefore prohibits not only formal expulsions from a state's territory, but also returns that expose refugees to serious risks. The Convention does include a narrow exception in Article 33(2) for individuals considered a danger to the security of the host state or convicted of particularly serious crimes, but that exception is interpreted restrictively in practice. Non-refoulement has strong reinforcement in human rights law such as the Convention against Torture and other regional instruments. These instruments can provide protections even for people who do not technically meet the Refugee Convention definition but would face torture, cruel or inhuman treatment if returned. The result is that states have overlapping duties not to remove people to such harm.



INTRODUCTION

A critical legal question is the extent to which non-refoulement applies extraterritorially, for example to actions taken on the high seas, in cooperation with third states or in areas where a state exercises control but not sovereign territory. UNHCR and many courts have found that when a state exercises jurisdiction or effective control over people outside its territory, nonrefoulement and other human rights obligations can apply. The European Court of Human Rights' ruling in the *Hirsi* case is the leading example. That judgment said that Italian authorities were responsible for the fate of migrants intercepted at sea because Italy exercised control over them, so Italy could not remove them to Libya where they would face ill-treatment.

Externalization practices and non-refoulement

There are Two general methods of externalization:

First, states stop people from reaching their territory through interception, interdiction, and pushbacks at sea or at land borders. These acts aim to prevent the asylum claim from ever being made on the state's soil. Second, states transfer the asylum processing or reception function to another state or an offshore facility, often with financial or technical support. Both approaches are designed to reduce arrivals, lower domestic political costs, and deflect legal obligations. Externalization creates three interlocking legal risks. First, it can produce direct refoulement if people are returned or transferred to countries where they will face persecution, torture, or other serious harm.

Second, it can deny access to a procedure in which a competent authority determines whether international protection is needed. Without effective procedures, nonrefoulement cannot be given effect. Third, externalization often produces accountability gaps because deterrence and control are shifted to third states, private contractors, or to a zone outside ordinary judicial oversight. Externalization can delay or prevent durable solutions, expose people to detention, abuse, lack of health care, sexual violence, family separation, and mental health harm. It creates incentives for irregular routes and dangerous journeys to evade interdiction.



BACKGROUND AND HISTORY

The modern international refugee protection architecture grew after World War II in response to massive displacement. The 1951 Convention relating to the Status of Refugees was adopted to provide a common definition of a refugee and a legal basis for rights and procedures. The 1967 Protocol removed geographic and temporal restrictions from the Convention so the refugee definition applied universally. The Convention's Article 33 enshrined the prohibition of refoulement, which became a cornerstone of refugee protection and a primary legal restraint on state action regarding forced returns.

Over time refugee protection extended beyond the Convention to include regional instruments, human rights treaties, and the practice of UNHCR as the global agency responsible for protecting refugees. The Convention's norms were complemented by obligations under the Convention against Torture and regional human rights covenants that provide non-refoulement protections in contexts of torture and cruel or inhuman treatment.

Debates emerged about when a state is legally responsible for actions taken outside its territory. UNHCR advisory guidance and international court decisions began to clarify that when a state exercises control over persons outside its territory, for example during interception at sea, or in facilities that the state effectively runs, that state will have human rights obligations toward those persons. The Hirsi judgement of the European Court of Human Rights applied that reasoning to sea interceptions, finding that Italy had violated rights by returning migrants to Libya. That ruling strengthened the argument that states cannot evade non-refoulement by acting outside their territory when they exercise effective control.

Early forms and pragmatic cooperation

States have for decades cooperated over migration management. Some cooperation is legitimate sharing of responsibility and lawful transfer arrangements done with proper safeguards. However, a particular policy trajectory, broadly labelled externalization, took off when states sought to prevent asylum seekers from reaching their territory to avoid processing claims or reduce domestic political costs.

Conditions since 2015

The large-scale movement of people towards Europe in 2015 crystallized new policy responses. States scaled up joint operations, negotiated deals with transit states, and invested heavily in external cooperation to prevent arrivals. Externalization practices proliferated in both regional and bilateral forms.

The COVID-19 pandemic saw some states invoke public health measures to justify faster expulsions or interdictions. The US's use of Title 42 to bar entry and expel many migrants without processing became emblematic. Human rights groups criticized this as misuse of public health rules to avoid asylum obligations.

Over the last decade, independent reporting, and UN critiques have steadily documented the human rights costs of externalization. That pressure has produced legal losses for some externalizing states and sustained public debates about the limits of deterrence-based policies. The existence of precedent has helped hold some measures to account, but new forms of outsourcing and surveillance keep testing the boundaries of law and practice.



KEY LEGAL FRAMEWORKS

The cornerstone of international refugee law is the **1951 Convention relating to the Status of Refugees and its 1967 Protocol** [1] which together define who is a refugee and set out States' core obligations toward refugees. Most importantly for this agendum, **Article 33** of the 1951 Convention enshrines the prohibition of refoulement, i.e., States "shall not expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened", while also specifying the limited exceptions for persons regarded as a danger to the security of the host State or convicted of a particularly serious crime. The Convention's scope was broadened by the 1967 Protocol, which removed the Convention's original temporal and geographic limits and made the regime globally applicable to persons fleeing persecution. The non-refoulement obligation is not merely a treaty promise between parties to the 1951 convention; it is recognized by UN bodies and scholarship as a norm of customary international law binding on all States, irrespective of treaty ratification (States may not derogate from it in times of emergency). That customary status means practices such as intercepting, returning or outsourcing asylum seekers to places where they face persecution or ill-treatment risk breaching international law even if a particular State is not a party to the Convention. In addition, the UN and UNHCR have clarified that Article 33 admits very narrow exceptions (Article 33(2)) but does not permit States to sidestep obligations through bilateral deals that simply relocate their protection duties.

States' non-refoulement duties are reinforced and complemented by general international human rights treaties that independently bar return to torture and other ill-treatment. **Article 7 of the International Covenant on Civil and Political Rights (ICCPR)** [2] prohibits torture and cruel, inhuman or degrading treatment and has been interpreted to give rise to non-refoulement obligations under human-rights law; likewise, **Article 3 of the Convention against Torture (CAT)** [3] expressly prohibits a State Party from returning a person to another State where there are substantial grounds for believing they would be in danger of being subjected to torture. These treaty provisions mean that even where refugee law is not engaged, human-rights norms can prohibit transfers that would lead to torture or serious ill-treatment. International humanrights organs (Human Rights Committee, CAT Committee) and courts have repeatedly relied on these provisions in assessing State conduct.

Regional human-rights and refugee instruments add further obligations or interpretive detail. For example, the **European Convention on Human Rights (ECHR)** [4], through Article 3 (the absolute prohibition of torture and inhuman or degrading treatment), has been used by the European Court of Human Rights to block expulsions or transfers when there is a real risk of such ill-treatment. In Africa, the **1969 OAU (now AU) Refugee Convention** [5] adopts a broader definition of refugee and contains obligations on reception and non-penalization that are particularly significant for States in the region; similar regional standards and jurisprudence exist in the Inter-American system. These regional regimes therefore operate alongside global instruments to constrain externalization and securitization policies in region-specific ways.

[1] The 1951 Convention and its 1967 Protocol - <https://www.unhcr.org/sites/default/files/legacy/pdf/4ec262df9.pdf>

[2] International Covenant on Civil and Political Rights -

<https://www.ohchr.org/en/instrumentsmechanisms/instruments/international-covenant-civil-and-political-rights>

[3] Convention against Torture (CAT) <https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

[4] ECHR - https://www.echr.coe.int/documents/d/echr/convention_ENG

[5] OAU - <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>



KEY LEGAL FRAMEWORKS

Two interpretive and operational strands are particularly important for the current agenda. First, international law and UN practice now tackle the question of extraterritorial application: States cannot avoid non-refoulement by performing asylum-related acts outside their territory (for example, by intercepting people at sea, shifting claimants to third countries, or contracting third States to undertake processing) if those acts result in return to danger or if the third State cannot guarantee Convention/human-rights standards. The UNHCR and UN legal findings (including the UN advisory analysis on extraterritorial application) emphasize that the duties flow from control and power over persons, not only from formal territorial borders. Second, UNHCR's operational guidance and repeated policy statements make clear that while cooperative arrangements and burden-sharing are legitimate, forced externalization that shifts risk and evades protection responsibilities is inconsistent with refugee protection standards; any transfer or third-country processing must ensure rights-compliant safeguards, monitoring and access to independent status determination. These clarifications are central to evaluating contemporary externalization and securitization practices.

Treaty obligations are supplemented by sectoral and special-protection rules such as the **UN Convention on the Rights of the Child (CRC)** [6] requires that the best interests of the child be a primary consideration and underpins special procedural protections for asylum-seeking children (e.g., Best Interests Determination procedures), while other human-rights standards (economic, social, procedural) impose positive duties on States in how they treat asylum seekers and refugees. Collectively, this body of law (refugee law, human-rights treaties, regional instruments, UNHCR guidance and interpretive jurisprudence) creates a legal architecture that constrains how States may securitize borders or externalize asylum processing and provides multiple legal bases to challenge or assess policies that would breach nonrefoulement or expose vulnerable people to torture, persecution or other serious harm.

[6] UNCRC - <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>



HUMAN RIGHTS IMPLICATIONS

The externalization of asylum responsibilities and the securitization of borders have profound and often predictable human-rights consequences because they change where and how people who are fleeing reach the protection systems they are entitled to. When States intercept, divert, transfer or otherwise process people outside their territory (including by contracting third States or private actors), those actions can sever access to fair asylum procedures, independent oversight, and effective remedies, which in practice increases the risk that people are returned, indirectly or directly, to places where they face persecution, torture or other serious harm. UNHCR's advisory analysis on extraterritorial application stresses that non-refoulement and related duties can attach wherever a State exercises control over people, not only within formal borders; therefore, offshore processing and third-country arrangements cannot be used as legal shortcuts to avoid protections. [7]

Offshore or third-country processing regimes and similar externalization measures have repeatedly been shown to produce concrete harms: prolonged or indefinite detention in remote facilities, severely inadequate medical and mental-health care, exposure to violence and exploitation, and barriers to family unity and durable solutions. Investigations and monitoring by UN human-rights mechanisms and major NGOs (for example, reporting on Australia's Nauru/Manus policies) document how these harms are not hypothetical but systemic and how governments' claims that externalization protects lives are undercut when conditions inside receiving locations fall well short of protection standards. Those documented harms matter not only as humanitarian failures but as potential breaches of States' binding obligations under refugee and human-rights law.

Border securitization, from militarized land borders and criminalized arrivals to so-called "pushbacks" at sea, raises immediate risks to the right to life and physical integrity. Blocking rescue at sea, towing boats back, or forcibly pushing people back across maritime or land frontiers has been linked to deaths and disappearances in international waters and transit routes; human-rights bodies and regional courts have repeatedly criticized pushbacks as incompatible with obligations to preserve life and to assess protection needs, and have emphasized that collective expulsions and denial of access to asylum procedures violate core norms. [8] These practices also shift responsibility onto transit States and non-state actors (including smugglers or abusive detention authorities), creating protection vacuums where abuses flourish.

Certain rights protections heighten the State's duty of care in these contexts. The absolute prohibitions against torture and cruel, inhuman or degrading treatment, reflected in Article 3 of the Convention against Torture and Article 7 of the ICCPR means that States may not remove, transfer or expose individuals to a real risk of torture or ill-treatment; regional human-rights instruments (for example the European Convention) and supervisory bodies have applied this principle in cases of expulsions and maritime interdictions. For children, the UNCRC requires that their best interests be a primary consideration and that special procedural safeguards be in place, requirements that are frequently strained or ignored in offshore and securitized responses.

[7] Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol - <https://www.unhcr.org/us/media/advisoryopinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>

[8] Search and Rescue Efforts for Mediterranean Migrants – https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733712/EPRS_BRI%282022%29733712_EN.pdf



HUMAN RIGHTS IMPLICATIONS

Externalization and securitization also magnify specific vulnerabilities and intersectional harms. Women and girls face heightened risks of sexual and gender-based violence in poorly supervised reception environments; survivors of torture and trauma may be retraumatized by indefinite detention or by transfers to States that lack adequate medical, legal or psychosocial services; and LGBTIQ+ claimants can be placed at acute risk when pushed into countries or regions hostile to sexual-orientation-based claims. These patterns mean that a one-size-fits-all migration-management approach will routinely fail the most vulnerable and may trigger additional violations of economic, social and cultural rights (health, education, housing) alongside civil-political harms.

On accountability and remedies, international law provides multiple pathways to challenge abusive externalization and securitization: treaty obligations (refugee law and core humanrights treaties), regional court jurisprudence, UN special procedures and treaty bodies, and the supervisory functions of UNHCR and OHCHR. Yet practical obstacles lack of access to lawyers, limited independent monitoring in third countries, confidentiality clauses in bilateral arrangements, and the political leverage of wealthier States in negotiating third-country deals often frustrate effective redress. Human-rights practice therefore emphasizes both legal standards (non-refoulement, prohibition of torture, children's rights, due process) and operational safeguards: independent status determination, judicial review, oversight and monitoring, timely access to protection actors, and feasible alternatives to detention. [9]

[9] IML Information Note on the Principle of Non-refoulement -

https://www.iom.int/sites/g/files/tmzbd12616/files/our_work/ICP/IML/2023-updated-impl-information-note-onnon-refoulement.pdf



CASE STUDIES & PRECEDENTS

A. Hirsi Jamaa and Others v. Italy (ECHR, 2012)

- Italy intercepted migrants on the high seas and returned them to Libya under bilateral arrangements, without examining their protection claims. The European Court found violations of Article 3 (prohibition of inhuman or degrading treatment), prohibition of collective expulsion, and the right to an effective remedy. (https://ec.europa.eu/home-affairs/sites/default/files/what-isnew/news/pdf/grandchamberjudgmenthirsijamaaandothersvitaly2302121_en.pdf)
- The ruling clarified that State obligations under the ECHR extend extraterritorially when State agents exercise control over persons outside the territorial jurisdiction (e.g. on a vessel). https://law.unimelb.edu.au/data/assets/pdf_file/0006/2983056/Oudejans%2CRijken-and-Pijnenburg-unpaginated.pdf

B. EU–Turkey (2016) / EU externalisation through third States

- The EU–Turkey Statement of March 2016 is a prominent example of externalisation: the EU funds Turkey to host refugees and prevent onward movement into the EU, in exchange for readmission and border cooperation. Read more using the link - [Council of Europe+3Melbourne Law School+3asileproject.eu+3](#)
- Critics argue this arrangement enables the EU to “outsource” its asylum obligations, raising serious concerns of jurisdiction, safe third country status, and non-refoulement. [SpringerLink+3Melbourne Law School+3Council of Europe+3](#)
- Some European legal scholarship treats the arrangement as a paradigmatic case to test when external border control triggers obligations under non-refoulement. [Melbourne Law School+2Oxford Academic+2](#)

C. Australia’s Offshore Processing (e.g. Nauru, Manus Island)

- Australia has long used offshore processing and detention in Nauru and Papua New Guinea to prevent asylum seekers from landing on its territory. [National Immigrant Justice Center+2Amnesty International+2](#)
- Human rights bodies have criticized the prolonged detention, limited access to legal services, and inadequate oversight. [Amnesty International+2National Immigrant Justice Center+2](#)
- Recently, a UN human rights committee ruled that Australia violated asylum seekers’ rights on Nauru (arbitrary detention) and that the outsourcing of processing does not absolve Australia’s responsibility. [The Guardian](#)

D. Interdiction & pushbacks in the Mediterranean

- The EU and its Member States have been accused of pushbacks (refoulement at sea), often in coordination with coast guards of North African states. [Council of Europe+4European Parliament+4ccis.ucsd.edu+4](#)
- Some operations under Operation Sophia and others were authorized via UN Security Council resolutions concerning migration and smuggling, raising debates about legality and responsibility



CHALLENGES AND CONFLICTS

Weaker Justice and Exploitation

A central human rights cost of externalization is that asylum seekers are prevented from accessing fair and effective procedures where their protection needs can be assessed. Interdiction, swift expulsions, and informal returns can mean that people are never given the chance to claim asylum. Without a procedure, neither refugee status nor non-refoulement protections can be effectively applied. The absence of credible screening increases the risk of wrongful returns.

When a state returns or transfers a person to a country where they face persecution, torture, or inhuman treatment, it violates non-refoulement. Externalization increases this risk. Transfers to transit states whose protection systems are weak, or cooperation with partners known to use detention and abuse, can amount to de facto refoulement even if the sending state argues the transfer is lawful.

Externalization often places asylum seekers in contexts where they are more vulnerable to violence, trafficking, and exploitation because protection and oversight are weaker in transit states or offshore sites.

Legal conflicts and jurisprudential challenges

A central legal question in the debate over externalization and border securitization is when a state's jurisdictional obligations, including non-refoulement, apply extraterritorially. Courts such as the European Court of Human Rights (ECtHR) have clarified that when a state exercises effective control or authority over individuals beyond its borders, its human rights obligations still apply, regardless of territorial limits. The *Hirsi Jamaa and Italy* (2012) judgment is a cornerstone in this jurisprudence, establishing that Italy's interception of migrants on the high seas and their return to Libya constituted a violation of Article 3 of the European Convention on Human Rights and the principle of non-refoulement, because Italy exercised de facto control over the intercepted individuals. These precedent limits states' ability to evade accountability by acting outside their borders. However, many states continue to challenge the threshold of control, arguing that actions taken beyond national territory such as funding, coordination, or surveillance, do not automatically attract obligations under the 1951 Refugee Convention, its 1967 Protocol, or domestic law. The issue of "safe third country" and transfer rules, through which states justify returning asylum seekers to another country deemed safe. Under international law, especially UNHCR guidelines, such transfers are lawful only if the third country offers effective access to asylum procedures, genuine protection from persecution, and safeguards against onward refoulement. Yet, many such arrangements like the EU-Turkey Statement (2016) or Italy-Libya cooperation have fallen short, often sending refugees to countries where rights are inadequately protected.



CONTRACTUALIZATION AND LIABILITY

As states increasingly outsource detention and asylum processing to private contractors, questions arise over accountability for abuses in these facilities. Private actors may be shielded by contractual clauses or limited oversight, while doctrines of state responsibility and corporate liability are still evolving. Similarly, donor states that fund or direct operations in third countries such as EU support for border forces in North Africa face murky questions about shared responsibility for rights violations. The situation is further complicated by immunity and diplomatic protections, where status-of-forces agreements or immunity clauses limit judicial review and restrict access for human rights monitors, weakening protection frameworks. Lastly, states often invoke public health and emergency exceptions to justify restrictive asylum policies, claiming necessity during crises.

During the COVID-19 pandemic, for instance, measures such as the U.S. Title 42 expulsions barred asylum seekers on public health grounds. Critics, including the UNHCR and OHCHR, have argued that such measures must remain proportionate, non-discriminatory, and timebound, and cannot be used to circumvent non-refoulement obligations. Together, these legal controversies jurisdictional reach, safe third country standards, privatized accountability, immunity, and emergency justifications form the core normative tensions in the externalization of asylum responsibilities, and delegates must evaluate how they interact with international refugee law, human rights treaties, and the enduring principle of non-refoulement.

Accountability Gaps and Monitoring Challenges

Financial flows that underpin externalization are often not transparent. Aid packages tied to migration control create incentives for transit states to criminalize irregular migration or to detain migrants. Audits of agreements have flagged poor measurement of outcomes and accountability problems. The EU-Turkey arrangement has been audited and criticized for gaps in monitoring and unclear sustainability. Offshore facilities and arrangements with transit states often restrict independent monitoring. That makes it harder for human rights bodies to document abuses and for courts to adjudicate claims. Closed environments produce systemic abuses that remain hidden until high-profile leaks or litigation occurs. Externalization frequently fragments responsibility among origin, transit, and destination states and among private actors. This fragmentation affects effective legal remedies because plaintiffs must navigate complex jurisdictional and contractual barriers. Litigation can succeed in landmark cases but it is resource intensive and slow



PAST UN / INTERGOVERNMENTAL ACTIONS & MONITORING

UN Human Rights Council & Special Procedures:

The Human Rights Council has increasingly recognised the human rights challenges linked to the externalisation of asylum procedures. The UN Special Rapporteur on the human rights of migrants has actively sought State and civil society input on the consequences of outsourcing migration control, noting the heightened risk of violations when asylum processing is pushed beyond national borders (OHCHR, 2023).

Periodic Reports & Treaty Body Observations:

The Office of the High Commissioner for Human Rights (OHCHR) and several UN treaty monitoring bodies—such as the Committee against Torture (CAT) and the Human Rights Committee (HRC)—have consistently flagged the dangers of externalisation. These concerns often appear in concluding observations and within the Universal Periodic Review (UPR) cycles, where States are urged to align practices with international refugee and human rights obligations (Amnesty International, 2022; Council of Europe, 2021).

The UN General Assembly's Global Impact:

The General Assembly has addressed the issue indirectly through the Global Compact on Refugees (2018) and the Global Compact for Safe, Orderly and Regular Migration (2018). While not legally binding, both frameworks encourage cooperative burden-sharing and adherence to protection standards. These instruments stand as soft-law alternatives to deterrence-driven approaches, fostering dialogue on solidarity rather than unilateral securitisation (asileproject.eu, 2020; National Immigrant Justice Center, 2021).

Judicial and Regional Court Rulings:

Case law has also shaped international standards. For example, the European Court of Human Rights' judgment in *Hirsi Jamaa v. Italy* (2012) clarified that States remain responsible for human rights violations even when acting extraterritorially. Such rulings have influenced broader debates about States' obligations when engaging in maritime interceptions or transfer agreements.

Collaborative Declarations & NGO Advocacy:

Civil society organisations, including Amnesty International and other coalitions which have issued joint statements emphasising the risks of chain refoulement, lack of accountability, and secrecy surrounding externalisation deals. These declarations call for greater transparency, monitoring, and international cooperation to uphold refugee protection norms.



STAKEHOLDERS AND THEIR POSITION

1. States in the Global North (The Destination Countries)

European Union & Member States (e.g., Italy, Greece, Hungary, Germany, France):

The EU and individual Member States have actively sought externalisation through agreements like the EU–Turkey Statement (2016), cooperation with Libya on sea interceptions, and financing third-country border infrastructure. Although some governments (e.g., Hungary, Italy over the last few years) justify these as needed for border security, deterrence, and domestic political credibility, others in the EU are still concerned with legality and human rights observance.

<https://rm.coe.int/report-on-externalisation-of-migration-by-michael-o-flaherty-council-o/488028300a?utm>

Australia

Has a long-term policy of offshore processing in Papua New Guinea and Nauru, positioning it as a deterrence model that maintains national sovereignty. Australia positions it, despite global criticism, as "saving lives at sea" with stringent border control.

United States & Canada

Both nations have had "safe third country" arrangements (e.g., U.S.–Mexico agreements, Canada–U.S. Safe Third Country Agreement). Such policies are explained as burden-sharing devices, although rights organizations contend these actually close off asylum access.

2. Transit & Third States

Turkey:

Hosts over a million Syrian refugees under the EU–Turkey agreement. Officially defines cooperation as burden-sharing but also employs it as political capital within wider EU–Turkey relations. Criticized for weak protections and chain refoulement risks.

Libya:

Receives EU money and gear for its coast guard to deter departures over the Mediterranean. Libya's detention facilities, though, have been roundly criticized for inhumane treatment, torture, and abuse, with serious questions about complicity by EU actors.

Serves as a buffer region for the U.S., with heightened enforcement of migration control at its southern border (with Guatemala). Mexico is pressured by Washington but has capacity limitations and systematic abuses of rights in detention and return procedures.



STAKEHOLDERS AND THEIR POSITION

Balkan & North African States:

Frequently receive EU assistance to control migrant flows (e.g., Morocco, Tunisia, Serbia). Most of these countries receive externalisation offers reluctantly, invoking economic reliance on aid but invoking concerns about sovereignty at home.

3. International Organisations

United Nations High Commissioner for Refugees (UNHCR):

Warns against externalisation policies undermining access to asylum and the principle of nonrefoulement. UNHCR advocates cooperative burden-sharing but has consistently cautioned that this approach transfers, but does not eliminate, responsibility.

International Organization for Migration (IOM):

Typically, operationally engaged in capacity building, voluntary returns, and border management initiatives in transit countries. IOM prioritizes safe and orderly migration but has been accused at times of providing a legitimacy cloak for restrictive externalisation measures.

United Nations Human Rights Council & Special Procedures

The HRC and Special Rapporteurs (i.e., on the human rights of migrants) routinely point to risks of rights abuses, gaps in accountability, and chain refoulement associated with externalisation policies.

4. Regional & Judicial Bodies

European Court of Human Right:

In milestone cases like *Hirsi Jamaa v. Italy* (2012), the Court held the state responsible for extraterritorial pushbacks, confirming that jurisdiction extends with the state agent beyond territorial borders. ECtHR case law continues to be an important check on externalisation practices. <https://hudoc.echr.coe.int/eng?i=001-109231>

Court of Justice of the European Union:

It has been observed to have had cases related to safe third country designation and asylum procedures in EU law, influencing the legal framework applicable to the Member States.

<https://eumigrationlawblog.eu/circumventing-non-refoulement-or-fighting-illegal-migration/?print=print>



STAKEHOLDERS AND THEIR POSITION

5. Civil Society & Non-Governmental Organisations (NGOs)

According to Amnesty International, Human Rights Watch, International Detention Coalition, National Immigrant Justice Center:

These groups are vocal opponents of externalisation, recording human rights abuses in detention facilities, sea interceptions, and transfer arrangements. They call for transparency, accountability, and adherence to non-refoulement.

Council of Europe:

Unceasingly denounces pushbacks and externalisation practices that circumvent asylum responsibilities, calling on member states to maintain ECHR safeguards.

Academia & Research Institutes

Scholars and think tanks increasingly frame externalisation as creating “grey zones” of responsibility, arguing it undermines the integrity of the international protection regime.

6. Refugees, Asylum Seekers & Affected Communities

Often excluded from policy formation, asylum seekers remain the most vulnerable stakeholders, facing risks of indefinite detention, refoulement, and denial of access to asylum procedures. Civil society organisations and grassroots networks increasingly amplify their voices, calling for rights-based, humane alternatives.



POSSIBLE SOLUTIONS / A WAY FORWARD

Meaningful responsibility and Burden-Sharing is the single most practical foundation for reducing incentives to externalize asylum. The **Global Compact on Refugees (2018)** and the processes it created, notably the Global Refugee Forum and tools for mobilizing finance, resettlement places and technical support, were designed to make burden-sharing predictable and cooperative rather than ad hoc. Strengthening these mechanisms means richer States and institutions commit predictable funding, expand third-country resettlement and humanitarian admission pathways, and back capacity-building for frontline hosts so those states are not left to shoulder crises alone. Effective burden-sharing reduces the political pressure that drives deterrence and outsourcing policies. [10]

Expand and diversify safe, regular pathways so that fleeing people have real alternatives to dangerous journeys and to being processed offshore. Practical tools include scaled-up resettlement and group processing, humanitarian corridors, family-reunification schemes, labor mobility agreements and targeted refugee visas; UNHCR's resettlement guidance and group processing approaches show how third-country solutions can be systematized rather than left to emergency politics.

End or drastically limit the use of indefinite offshore detention and replace it with humane, law-based alternatives to detention that respect liberty and family life. **UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)** [11] and subsequent operational guidance make clear that detention of asylum seekers should be a last resort and that community-based case management, reporting requirements, supervised release, and tailored housing solutions are effective, rights-consistent substitutes. Alternatives reduce the mental-health harms, protection gaps and legal liabilities associated with remote camps and closed facilities used in many externalization schemes

Respect extraterritorial non-refoulement and stop pushbacks that place lives at risk. The UNHCR Advisory Opinion on extraterritorial application, together with landmark regional case law such as *Hirsi Jamaa v. Italy* (ECHR, 2012), [12] confirms that jurisdiction and thus protection duties can attach where a state exercises control over people outside its borders (for example, at sea or in intercepted transit). Accordingly, interception and pushback practices must be replaced by search-and-rescue, disembarkation procedures and prompt access to asylum procedures so that non-refoulement, life and due-process protections are upheld.

Invest in durable solutions and root-cause responses that reduce long-term displacement pressure i.e. development assistance for host communities, livelihood and self-reliance programs for refugees, and diplomatic efforts to resolve conflicts and structural drivers of forced migration. Strengthen accountability, transparency and remedies. States, International Organizations and civil society should ensure monitoring (including by UNHCR, OHCHR and independent NGOs), preserve access to counsel and judicial remedies for asylum seekers, and create public reporting on third-country arrangements so abuses can be documented and corrected.

[10] **Burden and Responsibility Sharing** (Global Compact on Refugees) - <https://globalcompactrefugees.org/sites/default/files/2020-05/GRF%20Fact%20Sheet%20-%20Burden%20and%20Responsibility-Sharing.pdf>

[11] **UNHCR's Detention Guidelines** - <https://www.unhcr.org/il/wp-content/uploads/sites/6/2020/11/UNHCRDetention-Guidelines-English.pdf>

[12] *Hirsi Jamaa v. Italy* (2012) - <https://hudoc.echr.coe.int/fre?i=001-109231>



ADDITIONAL READINGS

- UNHCR, *Resettlement Handbook* - <https://www.unhcr.org/resettlement-handbook/>
 - Submission by Human Rights Watch on the Situation in Australia - https://www.hrw.org/sites/default/files/supporting_resources/human_rights_watch_submission_on_australia_to_cesr_may_2017.pdf
 - The Externalization of Migration and its Impact on the Human Rights of Migrants - <https://www.ohchr.org/sites/default/files/documents/issues/migration/cfis/externalization/subm-ext-migr-impact-cso-4-asgi.pdf>
 - Third Country Solutions for Refugees: Roadmap 2030 - <https://globalcompactrefugees.org/sites/default/files/2022-08/Third%20Country%20Solutions%20for%20Refugees%20-%20Roadmap%202030.pdf>
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B I B L I O G R A P H Y

<https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534>

<https://www.unhcr.org/sites/default/files/2025-02/1951-refugee-convention-1967-protocol.pdf>

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-102%22\]}.](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-102%22]})

<https://www.dhs.gov/archive/news/2019/01/24/migrant-protection-protocols>

<https://www.americanimmigrationcouncil.org/fact-sheet/guide-title-42-expulsions-border/>

<https://www.reuters.com/world/europe/rights-concerns-costs-undermine-turkey-eu-migrant-deal-say-auditors-2024-04-23/>

<https://www.hrw.org/news/2022/12/12/eu-frontex-complicit-abuse-libya>

<https://rm.coe.int/report-on-externalisation-of-migration-by-michael-o-flaherty-council-o/488028300a?utm>

<https://www.hrw.org/topic/refugees-and-migrants>



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