E-PAPER

The EU and the externalisation of migration and asylum:

An analysis of potential human rights violations and legal responsibility

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ARIO	Draft Articles on the Responsibility of International Organisations
ARSIWA	Draft Articles on State Responsibility
CAT	Convention Against Torture
CCPR	Human Rights Committee
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EUTF	Emergency Trust Fund for Africa
ICCPR	International Covenant on Civil and Political Rights
(IO(s	(International organisation(s
IOM	International Organization for Migration
MIDAS	Migration Information Data Analysis System
MoU	Memorandum of Understanding
NDICI	Neighbourhood, Development and International Cooperation Instruments
(NGO(s	(Non-governmental organisation(s
STC	Safe third country
UN	United Nations

1. INTRODUCTION

Shifting responsibility for migrants and refugees to third countries has become a central feature of the European Union (EU)'s migration, asylum, and border governance. Although not new, these practices are expanding in scope, while the rhetoric of the EU and its member states has grown increasingly permissive. For instance, in 2018, the European Commission found that the external processing of asylum applications and externally located return centres would risk infringing the principle of non-refoulement and would likely be at odds with EU values.[1] The Commission appears to have shifted its position, as in 2025 it issued proposals that paved the way for both measures. A proposal for the Return Regulation provides for the possibility of establishing "return hubs" outside the EU for people subject to a return decision.[2] In turn, a proposal to amend rules concerning safe third countries (STC) would allow asylum applications to be processed in "safe countries" outside the EU, which are not necessarily the transit country.[3] The shift in the Commission's position reflects a changing approach among the member states. While proposals for external processing put forward by the UK and Germany in the early 2000s were outliers,[4] in 2024, fifteen EU member states had jointly asked the Commission to propose measures including extraterritorial processing and return hubs.[5]

This report uses the term "externalisation" to refer to cooperation between the EU or its member states with non-EU states ("third countries"), which aims to shift responsibility for migration and asylum governance. Although it involves cooperation and "partnerships," externalisation is premised upon unequal power relations between the externalising and third countries. The EU exercises substantial leverage to secure cooperation from non-EU countries. This is done through a combination of incentives and pressures—what is commonly referred to as a "carrots and sticks" approach. The incentives often include financial assistance, a promise of EU accession, visa facilitation, and diplomatic support, such as recognition and legitimacy. The pressures involve diplomatic pressure, denial of access to aid, or

1. European Commission, The legal and practical feasibility of disembarkation options, 2018.

2. European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM(2025) 101, 11 March 2025.

3. European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept, COM(2025) 259, 20 May 2025.

4. Amnesty International, Unlawful and Unworkable – Amnesty International's views on proposals for extra-territorial processing of asylum claims, 2003; U.S. Committee for Refugees and Immigrants, World Refugee Survey 2005 - European Union, 2005.

5. Joint Letter from the undersigned Ministers on new solutions to address irregular migration to Europe, 15 May 2024, https://www.politico.eu/wp-content/uploads/2024/08/27/Joint-Letter-to-the-European-Commission-on-new-solutions-to-address-irregular-migration-to-Europe.pdf

suspension of visa facilitation. The lack of good faith and ethical grounding underpins the leverage used. For instance, development aid is used to finance migration control measures, often tied to specific conditionalities. Instruments like the EU Emergency Trust Fund for Africa (EUTF) and the Neighbourhood, Development and International Cooperation Instruments (NDICI)– Global Europe fund, which were initially designed to support sustainable development and poverty reduction, have been increasingly repurposed to serve EU migration policy objectives.[6] Externalisation has created a reverse leverage: third countries have gained significant leverage to extract financial or geopolitical concessions, while the EU has grown hesitant to criticise human rights abuses and democratic backsliding for fear of losing externalisation partners.[7]

The paper examines externalisation through a legal lens, offering an analysis of potential violations of migrants' human rights and the corresponding responsibility. Section 2 outlines two forms of externalisation and provides examples of measures falling within each. Section 3 addresses possible human rights violations arising in the context of externalisation, while Section 4 discusses how responsibility for those violations could be established. Section 5 presents the paper's concluding reflections.

2. FORMS OF EXTERNALISATION

Externalisation measures fall into two broad categories, namely preventing migrants from arriving in the EU (2.1) and transferring them out of the EU (2.2).[8]

2.1. BORDER EXTERNALISATION

This form of externalisation comprises a range of measures—either undertaken by cooperating states or implemented jointly with them—to prevent migrants from reaching the EU. At its core, it entails the interception and containment of migrants in third countries, effectively turning those states into a buffer zone. In

6. Privacy International, Borders Without Borders: How the EU is Exporting Surveillance in Bid to Outsource its Border Controls, 2020; EuroMed Rights, Artificial Intelligence: The New Frontier of the EU's Border Externalisation Strategy, 2023; Statewatch and TNI, Exporting Borders: Frontex and the Expansion of Fortress Europe in West Africa, 2025.

7. EuroMed Rights, Artificial Intelligence; Statewatch and TNI, Exporting Borders; J. Kohlenberger, Migration Policy: European Union Increasingly Outsources Responsibility for Asylum, Heinrich Böll Stiftung, 2024. In Libya, militia leaders engaged in extortion to secure funding and official recognition from the EU, as seen in W. Lacher and J. Tubiana, The extortion state: how the EU helps Libya turn migrants into cash, Le Monde Diplomatique, September 2025.

8. Other classifications of externalisation measures use three categories, whereby they distinguish between transferring the person for a return and for an asylum procedure, see for instance UN Special Rapporteur on the Human Rights of Migrants, Externalization of migration governance and its effect on the human rights of migrants, A/80/302, 2025, para. 6; Council of Europe Commissioner for Human Rights, Externalised asylum and migration policies and human rights law, 2025, p. 7.

practice, these measures are designed to prevent migrants from entering cooperating states, transiting through them, or departing from those toward the EU. To enable such actions, the EU and its member states provide funding, equipment and capacity-building support, influence domestic laws that criminalise irregular migration, and supply surveillance technologies. The following paragraphs present some of the most significant examples of this type of externalisation.

Western Balkans. Border management cooperation with Western Balkan countries (Albania, Bosnia and Herzegovina, Serbia, Montenegro, North Macedonia, Kosovo) is anchored in the EU enlargement (pre-accession) framework, which explicitly requires candidate and potential-candidate countries to build "integrated border management" systems that match EU standards. Funded primarily through the Instrument for Pre-Accession Assistance, these measures involve funding, capacity building, technical support, and the provision of border surveillance equipment to enhance these countries' border management. Except for Kosovo, all these countries have status agreements with the European Border and Coast Guard Agency (Frontex), allowing the agency to deploy officers with executive powers, such as patrolling borders or conducting identity checks.[9] Using EU funds, the International Organization for Migration (IOM) assists governments in returning migrants and in establishing reception centres.[10] In several states, the EU has financed or supported the operation of detention or reception facilities—for example, in Bosnia and Herzegovina[11] and North Macedonia.[12] Several countries received border surveillance equipment and database systems.[13] Throughout the region, numerous credible reports document violence, chain pushbacks, and detention practices in border areas.[14]

Middle East and North Africa. Recently, strengthened or fresh cooperation with the Middle East and North Africa region has come to the forefront. Within two years (2023-2025), the EU signed six agreements, notably with Morocco (March

9. Frontex, Frontex status agreements with non-EU countries, https://eur-lex.europa.eu/EN/legal-content/summary/frontex-status-agreements-with-non-eu-countries.html

10. T. Siviero, Concerns Raised over EU-Funded Migrant 'Detention' Centre in Bosnia, BalkanInsight, March 2023; IOM, IOM and EU support the establishment of a new reception center for migrants, November 2021, https://kosovo.iom.int/news/iom-and-eu-support-establishment-new-reception-center-migrants

11. Detention unit within the Lipa reception centre, see Global Detention Project, Bosnia and Herzegovina: Secrecy and Confusion Surrounding New Detention Centre for "Fake Asylum Seekers", June 2023, https://reliefweb.int/report/bosnia-and-herzegovina/bosnia-and-herzegovina-secrecy-and-confusion-surrounding-new-detention-centre-fake-asylum-seekers

12. Transit centres at Vinojug and Tabanovce, see European Commission, Instrument for Pre-Accession Assistance (IPA II) 2014-2020: Republic of North Macedonia, 2020.

13. European Council on Refugees and Exiles, Balkan Route, January 2025, https://ecre.org/balkan-route-ngo-warning-about-frontex-data-showing-major-fall-in-irregular-crossings-%E2%80%95-agreement-on-frontex-deployment-in-bosnia-and-herzegovina-%E2%80%95-agreement-on-border-control-co-oper

14. Border Violence Monitoring Network, Black Book of Pushbacks, 2022.

2023),[15] Tunisia (July 2023),[16] Egypt (March 2024),[17] Mauritania (March 2024),[18] Lebanon (May 2024),[19] and Jordan (January 2025).[20] In all these agreements, the migration component includes the strengthening of the country's border management. The cooperation with Libya is based on the 2017 Italy-Libya Memorandum of Understanding (MoU)[21] and funded primarily through the EUTF and NDICI-Global Europe.[22] The upcoming Pact for the Mediterranean, which is a framework for cooperation with Southern Neighbourhood countries, will set out concrete initiatives in several areas, including mobility.[23]

Based on these agreements, the EU provides funds, equipment (including surveillance tools) and training. Some agreements speak explicitly of such support. The agreement with Tunisia, for instance, talks explicitly about additional financial support for acquisition, training and technical support for improving the management of Tunisia's borders. Under the cooperation with Lebanon, the EU committed to offering support to the Lebanese Armed Forces and other security forces with equipment and training for border management. Partnership with Mauritania refers to building the capabilities and capacities of the authorities responsible for border management, surveillance and control, particularly in terms of equipment

15. European Commission, EU launches new cooperation programmes with Morocco worth €624 million green transition, migration and reforms, March 2023, https://enlargement.ec.europa.eu/news/eu-launches-new-cooperation-programmes-morocco-worth-eu624-million-green-transition-migration-and-2023-03-02_en

16. Mémorandum d'entente, July 2023, https://ec.europa.eu/commission/presscorner/api/files/attachment/875834/Memorandum_d

17. European Commission, Joint Declaration on the Strategic and Comprehensive Partnership between the Arab Republic of Egypt and the European Union, March 2024, https://enlargement.ec.europa.eu/news/joint-declaration-strategic-and-comprehensive-partnership-between-arab-republic-egypt-and-european-2024-03-17_en; see C. Jakob and S. Malichudis, Egypt: The EU's unexpected ally against migration, Heinrich Böll Stiftung, 2025.

18. Joint Declaration Establishing a Migration Partnership between the Islamic Republic of Mauritania and the European Union, March 2024, https://home-affairs.ec.europa.eu/document/download/24425c1c-dd34-4c71-8f9e-77ecbac22305_en?filename=De%CC%81claration-conjointe-Mauritanie-EU_en.pdf

19. European Commission, President von der Leyen reaffirms EU's strong support for Lebanon and its people and announces a €1 billion package of EU funding, May 2024, https://enlargement.ec.europa.eu/news/president-von-der-leyen-reaffirms-eus-strong-support-lebanon-and-its-people-and-announces-eu1-2024-05-02_en; Heinrich Böll Stiftung, EU-Lebanon deal: Turning a blind eye to reality, July 2024.

20. European Commission, EU-Jordan Strategic and Comprehensive Partnership, January 2025, https://ec.europa.eu/commission/presscorner/api/files/attachment/880349/EU-JordanSCP.pdf

21. Italy-Libya agreement, February 2017, https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf

22. European Commission, Libya, https://enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/libya_en

23. European Commission, The Pact for the Mediterranean: Co-creating a space of peace, prosperity and stability through a genuine partnership, https://north-africa-middle-east-gulf.ec.europa.eu/what-we-do/pact-mediterranean_en. At the time of writing, cooperation with Niger, which relied on the EU–IOM Joint Initiative for Migrant Protection and Reintegration, was being put on hold, see Statewatch, EU: Commission halts migration cooperation with Niger, but for how long?, September 2023.

and training. In addition, some agreements, including with Morocco, Egypt, and Tunisia, also provide for "voluntary" return of migrants to their countries of origin. The EU supports the IOM in organising assisted voluntary return, in practice for migrants intercepted by the countries.

Considerable funds, most frequently under the EUTF and the NDICI, are earmarked for migration management. For instance, a programme addressing irregular migration under the partnership with Morocco foresees an investment of 152 million euros. As for Tunisia, in 2023, the country received an indicative amount of 105 million euros in migration-related funding under the NDICI-Global Europe.[24] Frontex is also involved, though without the operational powers it exercises in the Balkans. The agency maintains working arrangements with Morocco, Tunisia, Egypt, Libya, and Jordan, and its cooperation is also referenced in the EU's agreement with Mauritania.

EU cooperation with North African and Middle Eastern partners has been repeatedly linked to serious human rights violations. In Libya, EU funding and training of the Libyan Coast Guard have enabled repeated interceptions and forced returns of migrants to detention centres notorious for torture, sexual violence and forced labour.[25] In Tunisia, support for border control has coincided with mass expulsions of sub-Saharan migrants to desert border zones, while deaths and inhuman treatment were also recorded.[26] In Lebanon, EU-backed border security forces have carried out violent pushbacks of Syrians, involving beatings and arbitrary detention.[27] In Morocco, cooperation on migration control has been tied to excessive force and mass arrests, including the 2022 Melilla incident in which at least 23 migrants died after Spanish–Moroccan joint operations.[28]

2.2. TRANSFER TO THIRD COUNTRIES

Under this form of externalisation, the externalising states seek to transfer migrants to cooperating states that are not the individuals' country of origin. Arrangements vary with respect to the procedures applied after transfer, either asylum or return procedure. In the past, such measures entailed sending people in an irregular situation back to the transit countries they had passed through. More recently, however, the scope of this cooperation has expanded beyond transit countries.

24. European Commission, Tunisia, https://enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/tunisia_en

25. UNSMIL/OHCHR, Detained and Dehumanised, 2022.

26. Researchers X, State trafficking: Expulsion and sale of migrants from Tunisia to Libya, 2025.

27. Lebanese Centre for Human Rights, European Policies of Border Externalization In Lebanon, July 2023.

28. Amnesty International, Melilla: Never again, June 2022, https://www.amnesty.org/en/latest/news/2022/06/melilla-never-again/

Readmission agreements. The traditional instrument underpinning this form of externalisation has been the readmission agreements. They work in tandem with the Return Directive. Under the Directive, a person in an irregular situation who has been issued a return decision can be returned not only to their country of origin but also to a transit country in accordance with readmission agreements (Art. 3(3)). So far, the EU has signed (formal) readmission agreements with 18 countries, namely with Hong Kong (2004), Macao (2004), Sri Lanka (2005), Albania (2006), North Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2014), Azerbaijan (2014), Turkey (2014), and Cape Verde (2014).[29] Besides regulating the readmission of their own nationals, all of these agreements contain a so-called third-country national clause. It permits the EU member states to return to the other party persons in an irregular situation who are not nationals of that state party, but who have at least transited its territory directly before unlawfully entering the EU.[30]

EU-Türkiye statement. More recently, cooperation on readmission with non-EU countries has become increasingly informal. This shift fundamentally reduces transparency and oversight.[31] The key example of an informal readmission arrangement that covers non-nationals of the contracting party is the 2016 EU-Türkiye statement.[32] Under this agreement, all persons crossing irregularly from Türkiye into the Greek Aegean islands since 20 March 2016 were to be returned to Türkiye. To this end, Türkiye was declared a STC or "first country of asylum," despite evidence about a lack of access to the asylum procedure, torture and ill-treatment and refoulement. Declaring Türkiye as a STC or "first country of asylum" implies that Greece could consider asylum applications of people arriving in the country via Türkiye inadmissible and refuse to consider them on merits. Initially, the EU-Türkiye statement was applied only to Syrians. In 2021, Greece designated Türkiye as a STC also for nationals of Afghanistan, Pakistan, Bangladesh and Somalia. Besides the concerns about whether Türkiye can be considered a safe country, this designation is at odds with the practical implementation of the agreement. In fact, the EU-Türkiye deal was unilaterally halted by Türkiye in 2020, and no readmissions have taken place since then. If Greece considers an application inadmissible based on the STC concept, the person is left in a legal limbo. However, in October 2024, the Court of Justice of the EU ruled that when a STC, in this case Türkiye, does not readmit people who have applied for asylum in an EU member

29. European Commission, An effective, firm and fair EU return and readmission policy, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/effective-firm-and-fair-eu-return-and-readmission-policy_en

30. In parallel to the EU readmission agreements, EU Member States concluded bilateral (readmission) agreements with non-EU countries, but it is unclear how many of them include a third-country national clause, see https://www.jeanpierrecassarino.com/datasets/ra/?utm

31 J.-P. Cassarino and M. Giuffré, Finding Its Place In Africa: Why has the EU opted for flexible arrangements on readmission?, 2017.

32. European Council, EU-Turkey statement, 18 March 2016, https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

state, their applications cannot be rejected as inadmissible.[33] The implementation of the EU-Türkiye statement has led to instances of detention in appalling conditions and a lack of access to remedies.

Safe third country agreements. The 2025 proposal for a Return Regulation, intended to replace the Return Directive, expands the list of countries to which the person can be sent. The person could be sent to a STC in relation to which their asylum application has been rejected as inadmissible under the Asylum Procedure Regulation (Art. 4(3)(f)).[34] The Asylum Procedure Regulation lists requirements for designating a country as a STC (Art. 59(1))[35] and clarifies that the concept of STC may be applied if there is a connection between the applicant and the third country on the basis of which it would be reasonable for them to go to that country (Art. 59(5)(b)). The proposal for a Regulation on the application of the STC concept weakens the connection criterion. Under the proposal, a mere transit through the third country can fulfil the connection criterion. In addition, even this minimal requirement of transit would no longer be required (except for unaccompanied children) if there is an agreement with that country, requiring the examination of the merits of the requests for effective protection made by applicants subject to that agreement (Art. 1). This means that, under the Asylum Procedure Regulation, member states may qualify an asylum application inadmissible and refuse to assess it on merits if another country can be considered a STC for the applicant. Under the proposed Return Regulation, member states may return the person to that country. While under the current rules, the person would need to have a meaningful connection with that country, under the STC Regulation proposal, a mere transit or an existing agreement with that country would be enough to fulfil the connection requirement.

Return hubs. The proposal for the Return Regulation further expands the list of countries to which a person can be transferred. If adopted, member states will be allowed to send persons having received a return decision — except unaccompanied children and families with children — to a third country that is not necessarily a transit country and with which the applicants do not necessarily have any connection (Art. 17). The proposal solely requires that states have an agreement or arrangement with the third country ("return hub"), and the country respect international human rights standards and principles, including the prin-

33. Fenix, A Rare Win: The CJEU Judgment on Greece's designation of Türkiye as a Safe Third Country, November 2024.

34. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

35. Under the Asylum Procedure Regulation (Art. 59(1), a third country may only be designated as a STC where in that country: non-nationals' life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; non-nationals face no real risk of serious harm; non-nationals are protected against refoulement in accordance with the Geneva Convention and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment; and the possibility exists to request and, where conditions are fulfilled, receive effective protection.

ciple of non-refoulement.[36] It is unclear who would assess the compliance and how. Similarly, although independent monitoring is mandated, its scope and mandate remain undefined. Return hubs raise concerns regarding detention and onward return, as it can be expected that persons transferred from the EU member states would be deprived of their liberty and further sent to their country of origin. In the case of human rights violations in the context of return hubs, it raises the question of whether EU member states can escape any responsibility.

Italy-Albania protocol. Under the 2023 protocol, Italy was granted use of facilities on Albanian territory for the establishment of two centres.[37] The plan envisions that migrants rescued or intercepted on the high seas by Italian authorities, particularly adult men from countries deemed "safe," will be transferred to these centres for a fast-track asylum procedure based on the safe country of origin concept. The asylum procedure would be carried out in accordance with Italian law, and the centres would be overseen by Italian personnel. In the event of a successful application, the individual will be transferred to Italy. However, following Italian court rulings in late 2024 that questioned the legality of channelling certain nationalities into accelerated procedures based on the "safe country of origin" concept, the original function of the centres has been put on hold. Italy then approved a decree in March 2025 to repurpose one of the two centres as a repatriation hub. Under the new framework, the centre in Gjader is designated to hold migrants whose asylum requests have been rejected or declared inadmissible in Italy and who are awaiting deportation. There has been at least one deportation carried out directly from Albania. Unlike proposed return hubs under the EU Return Regulation, the centre is controlled by Italy and operates according to Italian law. The key problematic elements include automatic detention and a lack of adequate legal assistance.[38]

UK-Rwanda MoU. As an example of an offshore processing arrangement, the 2022 UK-Rwanda MoU provided for sending asylum seekers arriving in the UK via irregular routes, particularly those crossing the English Channel in small boats, to Rwanda for the processing of their asylum claims. Successful applicants would be required to remain in Rwanda, while those whose applications had been rejected would be required to leave Rwanda or apply for permission to stay on other grounds.[39] In 2023, the UK Supreme Court ruled that Rwanda was not a safe coun-

36.I. Majcher, The New EU "Common System for Returns" under the Return Regulation: Evidence-Lacking Lawmaking and Human Rights Concerns, 2025.

37. Protocol between the Government of the Italian Republic and the Council of Ministers of the Albanian Republic, https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf

38. K. Millona, What awaits for Italy-Albania migrant deal?, Heinrich Böll Stiftung, 2025; K. Millona, From fast-track asylum to return hubs. The Italy-Albania deal on trial, Heinrich Böll Stiftung, 2025.

39. Memorandum of understanding between the UK and Rwanda, 2022, https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda. https://gr.boell.org/en/2022/06/22/uks-refugee-deal-rwanda-setting-catastrophic-precedent; K. Krampe, The UK's refugee deal with Rwanda: "Setting a catastrophic precedent," Heinrich Böll Stiftung, 2022.

try due to the risk of returns in violation of the principle of non-refoulement. The UK government then signed a treaty with Rwanda, promising that people would not be sent onward and issued a new act declaring Rwanda a "safe" country. However, the deal was abandoned after the change of government in 2024. The arrangement raised concerns about the risk of indirect (chain) refoulement and the absence of individualised and fair assessment.

3. HUMAN RIGHTS CONSEQUENCES OF EXTERNALISATION

Externalisation measures carry a high risk of violations of the human rights of migrants. The underlying objective of the EU and its member states is to keep migrants away from their territory. At the same time, cooperating states are often either unable or unwilling to uphold the rights of migrants subject to externalisation measures. Neither reports of general poor human rights records in cooperating states, nor even well-documented reports of rights violations related to externalisation, led to changes in the policy of the EU member states. Human rights defenders who denounce externalisation practices or bring assistance to migrants are also at heightened risk of reprisals[40] or even direct violence. This trend was starkly illustrated when the EU-equipped and trained Libyan Coast Guard opened fire, without warning, on an SOS Méditerranée rescue vessel searching for a migrant boat in distress in international waters.[41] Another recurring feature of externalisation that enables human rights violations and makes accountability more difficult is its persistent lack of transparency. This stems from the increasing informality of externalisation arrangements, which—unlike formal readmission agreements—evade democratic scrutiny by the European Parliament under the Treaty on the Functioning of the EU, as well as by national parliaments. Negotiations conducted by the European Commission and certain member states are often shrouded in secrecy; the resulting agreements use vague language that reveals little about how they will be implemented. Moreover, implementation through EU-funded projects - frequently involving international organisations (IOs), Frontex, and non-governmental organisations (NGOs) - is rarely disclosed to the public. This Section focuses on the human rights risks for migrants (3.1) and looks into the impact on the local population of the collaborating states (3.2).

40. ICJ, The Price of Complicity: Tunisia-EU Partnership Agreement fuels egregious human rights abuses against refugees, asylum-seekers and migrants, 2024

41. SOS Mediterranee, Ocean Viking under heavy fire by Libyan Coast Guard in unprecedented attack against survivors and humanitarian workers, https://www.sosmediterranee.org/sos-med-libyan-attack/

3.1. MIGRANTS

Externalisation measures entail human rights risks for migrants. Three recurring features of externalisation measures or the situations of migrants subjected to them can facilitate potential human rights violations or amplify their impact. First, migrants subjected to externalisation often find themselves in vulnerable situations, and externalisation measures exacerbate or create new situations of vulnerability.[42] Regarding gender-specific harms, women and LGBTQIA+ people are more likely than others to be stuck in transit, experience sexual and gender-based violence, lack access to services (especially reproductive health), and face heightened risks during journeys (including death).[43] Second, migrants sometimes suffer from various forms of discrimination in the cooperating states, including racial discrimination. In Tunisia, for instance, sub-Saharan migrants have been targeted by racially motivated hostility and violence. At the same time, racial and social discrimination has likewise underpinned both economic exploitation and the forced evictions from their homes.[44] Third, externalisation arrangements increasingly involve the use of technology. The provision of surveillance technology, such as cameras, drones, satellite imagery or social media monitoring, to cooperating states can help detect migrants and facilitate human rights violations such as pushbacks.[45] In the Central Mediterranean, aerial surveillance footage and location data provided by people in distress are regularly shared with the Libyan Coast Guard to conduct pullbacks.[46]

This section outlines the rights that are at the greatest risk of being violated in the context of externalisation. These human rights obligations are laid out in various binding conventions to which externalising and third states are parties. Firstly, these rights are enshrined in the United Nations (UN) human rights conventions, particularly the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), and some of them have attained the status of customary international law, thus binding on all countries. Secondly, these rights are also enshrined in regional instruments, particularly the African Charter on Human and Peoples' Rights (ACHPR) and the European Convention on Human Rights (ECHR), which thus represent a further source of binding norms for both externalising and many cooperating states alike. Thirdly, externalising EU mem-

42. OHCHR migrants in vulnerable situations, p. 5-7. One of the most glaring examples of the extreme vulnerability faced by externalised migrants occurs in Libya. After interception by the EU-supported Libyan Coast Guard or expulsion from Tunisia, they are often detained in inhuman conditions and exposed to torture, ill-treatment, ransom extortion, and forced labour, see Amnesty International, Libya: Impunity Fuels Protracted Human Rights Crisis, 2025. Migrants are also at risk of exploitation beyond detention, including public auctions in open-air slave markets, see F. Lahai, The new slave trade in Libya: evaluating the modern humanitarian crisis (2015–2024), Frontiers, 2025.

43. J. Freedman, The Gendered Impacts of EU Externalization Policies, 2024.

44. Forum Tunisien pour les Droits Économiques et Sociaux, Migrants Subsahariens en Tunisie, 2025, p. 23-25 and 105-106.

45. EuroMed Rights, Artificial Intelligence, 2023, p. 2.

46. EuroMed Rights and Statewatch, Europe's Techno Borders, 2023, p. 42.

ber states should act in accordance with the EU Charter of Fundamental Rights (EUCFR) when implementing EU law, for example, the Return Directive, the Schengen Borders Code, or the Asylum Procedures Directive.

Right to leave any country: The variety of measures described in Section 2.1 aims at ensuring that people do not leave the cooperating state to move towards the EU. Such measures violate the right to leave any country, including one's own, which is enshrined in the ICCPR (Art. 12(2)), ECHR Protocol 4 (Art. 2(2)), and ACHPR (Art. 12(2)). It is recognised that the right to leave any country has attained the status of international customary law. This right benefits nationals of the state and migrants, including those in an irregular situation. However, this right is not absolute, and states are allowed to impose (permissible) restrictions. Under the ICCPR (Art. 12(3)), for instance, there are three cumulative conditions for restrictions to be permissible. First, such a restriction should be provided by law, which should use precise criteria and not confer unfettered discretion to those charged with its execution. Second, restrictions should be necessary to protect one of the permissible purposes, namely national security, public order (ordre public), public health, morals or the rights and freedoms of others. Third, restrictions should be consistent with the other ICCPR rights and fundamental principles of equality and non-discrimination. As the Human Rights Committee (CCPR) noted, it would be a clear violation of the ICCPR if the right to leave any country were restricted by making distinctions of any kind, such as race, colour, religion or national origin.[47]

Right to seek asylum. Externalisation measures can prevent migrants from seeking safety and protection, thereby contravening their right to seek asylum. The right to seek asylum, although enshrined in the Universal Declaration of Human Rights (Art. 14(1)), is not explicitly laid down in the ICCPR. It is, however, set out in the relevant regional instruments. Under the ACHPR (Art. 12(3)), every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation and international conventions. The strongest legally binding enshrinement of the right to asylum is provided in the EUCFR (Art. 18), which provides that the right to asylum should be guaranteed.

Prohibition of refoulement. Under the absolute prohibition of refoulement, no one should be transferred to a place where they would face a real risk of irreparable harm, including death, torture, ill-treatment and persecution. In the framework of refugee law, the prohibition of refoulement is laid down in the 1951 Convention relating to the Status of Refugees (Art. 33(1)) and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (Art. II(3)). Within human rights law, the principle of non-refoulement is explicitly set out in the CAT (Art. 3) and the International Convention for the Protection of All Persons from Enforced Disappearance (Art. 16), and inferred under the ICCPR (Art. 6 and 7). Similarly, at the regional level, the prohibition of refoulement is explicitly laid down in the EUCFR (Art. 19(2)) and inferred under the ACHPR (Art. 5 and 12) and the ECHR (Art. 2 and 3). It is considered a norm of international customary law.

47. CCPR, General Comment No. 27, 1999, para. 8, 13, 18.

Two aspects of the principle of non-refoulement are particularly relevant to the externalisation measures. First, the principle of non-refoulement also prohibits rejection at the border without examining a person's claim for protection,[48] which is the essence of pushbacks. Second, the prohibition of refoulement includes the prohibition of indirect (so-called chain) refoulement, which is transferring a person to an intermediary state that may then send the person to another state where they would face a real risk of irreparable harm. Pushbacks and pullbacks, carried out without any assessment of the person's needs for protection and their situation in the third state, would invariably violate the principle of non-refoulement. Transferring the person to a third state for onward return (return hubs) or asylum processing would also violate the prohibition on refoulement if the person would face serious human rights violations in the third country or in a country to which they might be further transferred. In such scenarios, third countries would violate their non-refoulement obligations, and the externalising states would violate the prohibition of indirect refoulement.

Prohibition of collective expulsion. Collective expulsions are explicitly prohibited under the ECHR Protocol 4 (Art. 4), EUCFR (Art. 19(1)), ACHPR (Art. 12(5)) and, at the global level, implied under the ICCPR (Art. 13) and the CAT (Art. 3(1)). Prohibition of collective expulsion is also considered a norm of customary international law. Collective expulsion is understood as any measure compelling migrants, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each person of the group. The prohibition on collective expulsion requires that states put in place sufficient guarantees to ensure that the individual circumstances of each case are the subject of a detailed examination. Each person should be subjected to an identification procedure and have a genuine and effective opportunity to submit reasons against their return and to have those arguments individually and appropriately examined.[49] Pushbacks, pullbacks, and automatic returns based on readmission agreements, as well as indiscriminate onward expulsions by cooperating states, prevent migrants from raising arguments against their expulsion, making it impossible for the authorities to assess these arguments in an individualised manner. These measures will typically result in collective expulsions.

Right to an effective remedy. The right to an effective remedy is provided in the ICCPR (Art. 2(3)) and, at the regional level, in the ECHR (Art. 13) and EUCFR (Art. 47), and inferred under the ACHPR (Art. 7 and 26). As developed by the European Court of Human Rights (ECtHR), in expulsion cases, an effective remedy should be accessible, effective, and endowed with suspensive effect.[50] In the context of externalisation, migrants tend not to have access to such remedies.

48. See for instance, UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, 2011, para. 7.

49. ECtHR, Hirsi Jamaa and Others v. Italy, 27765/09, GC, 23 February 2012, para. 185.

50. ECtHR, M.S.S. v. Belgium and Greece, 30696/09, 21 January 2911, para. 293.

Prohibition of torture and ill-treatment. Torture and ill-treatment are prohibited in absolute and non-derogable terms under most international and regional human rights instruments, including the ICCPR (Art. 7), CAT (Art. 2 and 16), ACHPR (Art. 5), ECHR (Art. 3), and EUCFR (Art. 4). This prohibition is considered a customary international law. Externalisation measures can lead to acts amounting to torture or ill-treatment, including during pushbacks and pullbacks and other border control measures preventing migrants from leaving cooperating states and/or entering externalising states. Migrants are also exposed to torture or ill-treatment in cooperating states after the transfer, pushback, or pullback.

Right to life. The right to life is a non-derogable right enshrined in numerous conventions, including the ICCPR (Art. 6), ACHPR (Art. 4), ECHR (Art. 2) and EUCFR (Art. 2) and is part of customary international law. As clarified by the CCPR, the obligation to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States may violate the right to life even if such threats and situations do not result in loss of life. Specifically, states are required to respect and protect the lives of all individuals not only within their physical territory, but also on vessels registered by them. At the same time, they are also obliged to do so with individuals who find themselves in a situation of distress at sea, in accordance with their international obligations regarding rescue at sea.[51] Most frequently, arbitrary deprivation of life can arise as a result of excessive use of force in the context of border control measures, including pushbacks, pullbacks and interceptions. Leaving boats in distress, delayed search and rescue and pushbacks to high seas amount to a life-threatening situation, violating the right to life.[52]

Prohibition of arbitrary detention. All key global and regional human rights instruments, including the ICCPR (Art. 9), ACHPR (Art. 6), ECHR (Art. 5), and EUCFR (Art. 6), enshrine the right to liberty and security, and the prohibition of arbitrary detention is regarded as customary international law. The implementation of externalisation arrangements leads to multiple circumstances of deprivation of liberty. In the context of formal readmission or (future) offshore processing arrangements, migrants may face detention both in the externalising state before transfer and in the cooperating state after transfer. Third countries sometimes detain migrants to prevent them from transiting or leaving their territories towards the EU. Sometimes these countries officially criminalise irregular stay or exit, which can provide a legal basis in domestic law for detention. Even when detention is based on domestic law, it may still amount to arbitrary detention. Besides such more widely recognised instances of detention, migrants can also be deprived of their liberty during pushbacks and pullbacks. In such a context, the person would be subject to a secret and outright unlawful detention. In order not to amount to

51. CCPR, General comment No. 36: Article 6: the right to life, CCPR/C/GC/36, 2019, para. 7, 13, 63.

52. UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Unlawful death of refugees and migrants, A/72/335, para. 23, 25, 33; United Nations Support Mission in Libya (UNMSIL) and OHCHR, Detained and dehumanized, 2016.

arbitrary detention, any deprivation of liberty must be in accordance with law and be necessary in the individual case and proportionate to a legitimate purpose. It must be imposed only as a measure of last resort, following consideration of less coercive alternatives, based on an individual assessment of the need to detain, and it must be subject to independent judicial review.[53]

Data protection rights. Externalisation measures often rely on digital technologies for the collection and processing of personal data, particularly biometric data such as fingerprints and facial images.[54] Specifically, the EU has provided or funded databases and digital ID systems for use by third countries. For instance, MIDAS (Migration Information and Data Analysis System) is a platform, developed by the IOM and primarily funded by the EU, capturing travellers' biometric data at border-crossing points between various West African countries, including Burkina Faso, Niger, Benin, Nigeria, Mali and Mauritania. It allows storing those biometrics in national migration databases and analysing them in real-time to monitor migration patterns. EU-backed personal-data collection initiatives also include support for national digital identity registers in Senegal and Nigeria, as well as biometric residence permits for migrants in Mauritania.[55] Collecting and processing personal data of migrants can be at variance with the right to privacy and data protection.[56] Although the EU countries are subject to more detailed data protection obligations, the right to privacy under the ICCPR (Art. 17) provides relevant requirements.

Under the EUCFR, the right to data protection (Art. 8(1)) is recognised as a fundamental right. Detailed data protection principles applicable to the EU countries are set out in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108+) (Art. 5 and 7) and the EU General Data Protection Regulation (Art. 5). The key principles include lawfulness, fairness and transparency of data processing; purpose limitation (collection of data for specified and legitimate purposes and not further processed in a manner incompatible with them); data minimisation (data being limited to what is necessary in relation to the purposes for which they are processed); accuracy (data being accurate and up to date); storage limitation (data kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed); and integrity and confidentiality (data processed in a manner that ensures its appropriate security, including protection against unauthorised processing).[57]

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53. UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, A/HRC/39/45, 2018.

54. OHCHR and University of Essex, Digital Border Governance: A Human Rights Based Approach, 2023.

55. N. L. Uzomah, Technological Interventions in EU Border Management: Impacts on Migrant Mobility and Rights in Africa, 2024; V. C. Iwuoha, European Biometric Borders and (Im)Mobilities in West Africa, 2025.

56. EuroMed Rights and Statewatch, Europe's Techno Borders, 2023.

57. There is no universally agreed-upon list of data protection principles; the Council of Europe Con-

The right to protection of personal data has been implied under the right for private and family life under the ICCPR (Art. 17) and the ECHR (Art. 8). According to the CCPR, under Art. 17, collecting and holding personal information must be regulated by law. Effective measures have to be taken by states to ensure that personal data does not reach the hands of persons who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the ICCPR. Every individual should have the right to ascertain, in an intelligible form, whether and, if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities, private individuals, or bodies may control their files. If such files contain incorrect personal data or have been collected or processed in violation of the law, every individual should have the right to request that their records be rectified.[58]

3.2. THIRD-COUNTRY NATIONALS WITHOUT INTENTION TO MIGRATE TO THE EU

The EU frames externalisation arrangements as partnerships that often offer benefits for the nationals of the cooperating countries, such as reducing visa requirements or various investments to boost local jobs. However, externalisation measures often have a negative impact on local populations of cooperating states – people who did not intend to migrate to the EU.

Freedom of movement. North and West Africa have been traditionally characterised by circular migration and informal mobility. Today, the freedom of movement across this region is enshrined in the Economic Community of West African States (ECOWAS) free movement agreement, which provide for free movement of persons, goods and services. The cooperation with the EU has led to increased border restrictions and surveillance, impacting the intra-regional mobility. It disrupts the everyday cross-border movement of people and livestock, employment possibilities, trade, and local economies, which is fundamentally at variance with the freedom of movement guaranteed within the ECOWAS. EU-backed border-strengthening measures also affect ECOWAS citizens financially, as they now face higher fees when travelling across local borders. More specifically, the MIDAS, deployed by the EU in Nigeria, affects long-standing cross-border mobility through the country. Previously, Nigerian immigration officers occasionally allowed migrants, some of whom were fleeing conflicts, to pass through without travel documents. The implementation of the border management information system has led to increased scrutiny, resulting in the detention and deportation of migrants. This has also impacted the movement of cross-border traders, who have travelled without documents for generations. Another example is Niger's Anti-Smuggling Law, which overnight criminalised bus drivers and others working in related industries. People who had long facilitated cross-Saharan movement as

vention 108 + uses slightly different language, but the underlying requirements are largely the same.

58. CCPR, General Comment 16, 1988, para. 10; CCPR, General Comment No 34, 2011, para. 18.

a legitimate livelihood suddenly faced the loss of their jobs and the threat of severe legal penalties, including imprisonment.[59]

Freedom of expression, assembly and association. Sometimes surveillance technology provided for border management has been used for surveillance of and the strengthening of political control over local populations. For instance, reportedly, a Senegal police unit, which had been trained and funded by the EU to tackle cross-border crime at its border with Mali, was used to crush pro-democracy protests.[60] In some third states, as a result of externalisation cooperation, civil society faces growing restrictions. This has been the case in Tunisia, where, following the MoU, NGOs working in the protection of migrants' and refugees' rights have suffered a crackdown, and many of their staff have been arrested on charges of conspiracy.[61]

4. RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS

As discussed in Section 3, externalisation measures can result in violations of multiple human rights obligations that are binding on both externalising and third states. Yet establishing responsibility and securing redress for victims is far from straightforward, owing to the very characteristics of externalisation—the involvement of multiple states and non-state actors, its opacity and its extraterritorial dimension. This section first examines two principal obstacles to accountability: the participation of multiple states and non-state actors (4.1), and the extraterritorial nature of externalisation practices (4.2). It concludes with a reflection on avenues for obtaining remedies and the challenges associated with them (4.3).

4.1. RESPONSIBILITY UNDER INTERNATIONAL LAW

With the involvement of many different actors in externalisation measures, the question arises as to which entity bears international responsibility when human rights violations occur. The rules of customary international law on state responsibility are codified in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), while the parallel Draft Articles on the Responsibility of International Organizations (ARIO) address the responsibility of IOs. A fundamental principle of state responsibility provides that every "internationally wrongful act" of a state entails that state's international responsibility (ARSIWA, Art. 1). An "internationally wrongful act" exists when conduct—whether an action or an omission—is attributable to the state

59. Statewatch and TNI, Exporting Borders: Frontex and the Expansion of Fortress Europe in West Africa, 2025; N. L. Uzomah, Technological Interventions in EU Border Management.

60. Privacy International, Borders Without Borders: How the EU is Exporting Surveillance in Bid to Outsource its Border Controls, 2020; Statewatch and TNI, Exporting Borders.

61. ICJ, The Price of Complicity: Tunisia-EU Partnership Agreement fuels egregious human rights abuses against refugees, asylum-seekers and migrants, 2024, p. 15-17.

under international law and constitutes a breach of an international obligation (ARSIWA, Art. 2). Analogous rules govern the responsibility of IOs (ARIO, Art. 3–4). Accordingly, a state (or an IO) will incur international responsibility if a violation of a human rights obligation binding upon that state (or IO) can be attributed to it. The attribution of conduct is therefore crucial in determining which entity bears international responsibility.

Attribution of conduct. As detailed in the ARSIWA (Chapter II), attribution is most straightforward when the conduct is carried out by state organs exercising legislative, executive or judicial functions (for instance, law enforcement organs and armed forces). The conduct of a broader range of actors can also be attributed to a state, including persons or entities empowered by law to exercise elements of governmental authority (for instance, security companies); organs placed at a state's disposal by another state, provided they exercise governmental authority; individuals or groups acting under the direction or control of a state or exercising elements of governmental authority in the absence of official authorities. As regards IOs, pursuant to the ARIO (Chapter II), the conduct that is primarily attributable to an IO is that of its organs or agents when acting in the performance of their functions. Also, the conduct of state organs or the organs or agents of another IO placed at the disposal of an IO is attributable to the latter if it exercises effective control over the conduct.

Joint responsibility. In the context of externalisation, where multiple states or non-state actors are involved in the same conduct, it can be difficult to attribute it to just one entity. Both the ARSIWA (Art. 47) and the ARIO (Art. 48) acknowledge that multiple states or IOs can be responsible for the same violation. The concept of shared responsibility has been further developed in the Guiding Principles on Shared Responsibility in International Law.[62] According to the Guiding Principles, shared responsibility arises when two or more states or IOs share responsibility for the same or multiple violations. This occurs if they contribute to a single indivisible injury suffered by another actor, and the conduct is then attributable to multiple states or IOs. The Guiding Principles note that one of the frequent context in which shared responsibility can arise are "cooperative actions aimed at stemming migration."

Complicity. Internationally wrongful conduct often arises from the collaboration of several states (ARSIWA, Art. 16, commentary). In some situations where multiple states or IOs are involved, multiple attribution—and thus shared responsibility—cannot be established. Nevertheless, a state can still incur responsibility for complicity. While the primary responsibility rests with the state or IOs that commit the wrongful act, a complicit state or IO bears derivative responsibility for its causal contribution to that act. Such derivative responsibility is relevant in the context of such externalisation arrangements where the involvement of the

62 A. Nollkaemper, et al, Guiding Principles on Shared Responsibility in International Law, 2020.

externalising state is less direct (for instance, financing, training, equipment).[63] Under the ARSIWA (Art. 16–18), a state may be internationally responsible for complicity in human rights violations attributable to another state if it aids, assists, directs, controls, or coerces the perpetrating state or IO provided that it does so with knowledge of the circumstances of the act. To meet this threshold, it must be shown that the assistance made a significant—though not necessarily decisive—contribution to the commission of the violation.

4.2. EXTRATERRITORIAL JURISDICTION

Building on the foregoing discussion of responsibility under international law, the analysis now turns to the responsibility of an externalising state for human rights violations occurring beyond its territory. The ARSIWA's rules on attribution, discussed above, make no reference to a state's jurisdiction. It could then be assumed that conduct attributable to a state can engage that state's responsibility wherever the conduct occurs. Yet, under international human rights law, the question of whether a state exercises jurisdiction is crucial to determining responsibility. Although jurisdiction is primarily territorial, human rights bodies have recognised that a state's obligations may extend beyond its borders. The ICCPR requires states to respect and ensure rights to all individuals "within their territory and subject to their jurisdiction" (Art. 2(1)). The CCPR, however, interprets this disjunctively: states must protect the rights of persons within their jurisdiction even if those persons are outside the state's territory.[64] The ECHR is more explicit, obliging states to secure rights to "everyone within their jurisdiction" (Art. 1). Under these instruments, extraterritorial jurisdiction is triggered when a state exercises authority or "effective control" over an area or an individual abroad.[65] The following paragraphs highlight a few illustrative cases in which the ECtHR or the UN human rights treaty bodies have found that a respondent state exercised jurisdiction extraterritorially.

In M.I. et al. v. Australia and Nabhari v. Australia, the CCPR considered Australia's offshore detention arrangements in Nauru. Although Australia did not exercise physical control over detainees, the Committee concluded that the applicants were within Australia's jurisdiction, as the country exercised several aspects of effective control over detention operations. It had financed and organised the construction of the Regional Processing Centre, and directed or oversaw its functioning, including security, cleaning, catering, recreational and educational services.[66] The maritime context demonstrates how extraterritorial jurisdiction can be exercised

63. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Migration-related torture and ill-treatment, A/HRC/37/50, 2018, para. 56.

64. CCPR, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, 2004, para. 10.

65. CCPR, General Comment 31, para. 10; ECtHR, S.S. and Others v. Italy, 21660, 20 May 2025, para. 100-108.

66. CCPR, Mona Nabhari v. Australia, CCPR/C/142/D/3663/2019, 25 October 2024, para. 7(15); CCPR, M.I. et al. v. Australia, CCPR/C/142/D/2749/2016, 31 October 2024, para. 9(9).

through control over persons. The case of Hirsi and Others v. Italy concerned the pushback of a group of migrants from the high seas to Libya. The ECtHR found that Italy exercised jurisdiction over the intercepted applicants because they were "under the continuous and exclusive de jure and de facto control of the Italian authorities."[67] In J.H.A. v. Spain, the CAT Committee found that Spain exercised jurisdiction over migrants and asylum seekers rescued in international waters and transferred to Mauritania, including during their initial screening and subsequent repatriation procedures.[68]

As recent case law shows, states can also exercise extraterritorial jurisdiction through control over a situation or operation in a manner that directly and foreseeably affects the enjoyment of a right, such as the right to life.[69] In A.S. and Others v. Italy, which concerned a shipwreck that killed roughly 200 people, the CCPR held that Italy exercised jurisdiction over those on board the vessel in distress because of a special relationship of dependency. This relationship arose from factual circumstances, including the vessel's initial contact with the Italian maritime rescue coordination centre, the presence of an Italian naval ship nearby, and Italy's obligations under the international law of the sea. The Committee concluded that the individuals were directly and foreseeably affected by Italy's decisions, given its legal responsibilities.[70] On the other hand, in S.S. and Others v. Italy, concerning a pullback to Libya, the ECtHR found that Italy did not exercise sufficient control to establish extraterritorial jurisdiction.[71]

4.3. LEGAL REMEDIES

Under international law, the principle is clear: a state (or IO) to which a breach of a binding legal obligation is attributable is, in principle, responsible for that breach. When the alleged violation occurs outside a state's territory, however, extraterritorial jurisdiction must first be established before responsibility can be assessed. Yet, this legal framework does not readily translate into practical avenues of redress for victims. Individuals whose rights are violated in the context of externalisation measures face numerous barriers to obtaining remedies. In practice, three main types of fora are available in which to seek legal redress.

The first is the domestic courts of the country within whose jurisdiction the alleged violation occurred, which may provide remedies for breaches of fundamental rights protected under national law. However, this path is fraught with practical obstacles for many victims—such as language barriers, limited knowledge of local law, and fear of exposing an irregular migration status. More fundamentally,

67. ECtHR, Hirsi Jamaa and Others v. Italy, 27765/09, GC, 23 February 2012, para. 81-82.

68. CAT, JHA v. Spain, CAT/C/41/D/323/2007, 10 November 2008, para. 8(2). See also, CAT, Fatou Sonko v. Spain, CAT/C/47/D/368/2008, 25 November 2011, para. 10(3).

69. CCPR, General Comment 36, CCPR/C/GC/36, 2018, para. 63.

70. CCPR, A.S. and Others v. Italy, CCPR/C/130/D/3042/2017, 4 November 2020, para. 7(8).

71. ECtHR, S.S. and Others v. Italy, 21660/18, 20 May 2025.

a domestic court generally lacks competence to rule on the responsibility of another state or of an IO, the latter typically enjoying jurisdictional immunities. The key advantage of bringing a claim before domestic courts is that their decisions are directly enforceable within the national legal system, allowing for remedies such as cessation of the unlawful act, compensation for victims, and, where applicable, criminal penalties for perpetrators.

A second avenue is to bring a claim before regional human rights courts or quasi-judicial bodies, alleging violations of the rights protected in the relevant regional instruments. Ordinarily, the key procedural requirement is the exhaustion of domestic remedies, unless those remedies are unavailable or ineffective. In the context of EU externalisation, the principal bodies are the ECtHR—which determines whether a state party has breached the ECHR—and the African Commission on Human and Peoples' Rights together with the African Court on Human and Peoples' Rights (ACtHPR), both charged with monitoring compliance with the ACHPR. Judgments of the ECtHR and the ACtHPR are legally binding on the states concerned, whereas the African Commission's recommendations, while authoritative, are not binding. For ECOWAS member states, the ECOWAS Court of Justice provides an additional forum: individuals may allege violations of the ACHPRwithout first exhausting domestic remedies, and the Court's decisions are binding. The ECtHR has ruled in several cases concerning pushbacks, some of which arose in the context of EU externalisation cooperation—where EU member states worked with third countries to prevent migrants from reaching European territory.

Third, individuals may submit individual communications to UN human rights treaty bodies. For the rights most frequently implicated in externalisation practices, the most relevant committees are the CCPR, the CAT Committee, the Committee on Enforced Disappearances, and the Committee on the Elimination of Racial Discrimination, which monitor implementation of the ICCPR, the CAT, the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Elimination of Racial Discrimination, respectively. A complaint is admissible only if the state concerned has recognised the committee's competence to receive individual communications and if the applicant has exhausted available and effective domestic remedies, unless those remedies are unduly prolonged or ineffective. The procedural rules are generally less cumbersome for applicants than those of regional courts such as the ECtHR. While the committees' views are not legally binding judgments, they carry significant authoritative and political weight and are regularly cited by national and regional courts. The cases discussed earlier—such as A.S. v. Italy, Nabhari v. Australia, and J.H.S. v. Spain—were decided under the individual complaint procedure.

However, all three categories of fora remain difficult for externalised migrants to access. Practical obstacles include the need to identify the specific rights allegedly violated, navigate procedural rules, and overcome language barriers—challenges compounded by the typical features of externalisation, such as a general lack of transparency and the involvement of multiple actors. Legal proceedings are invariably lengthy, and victims are often in a particularly vulnerable position, frequently with an irregular migration status.

5. CONCLUSIONS

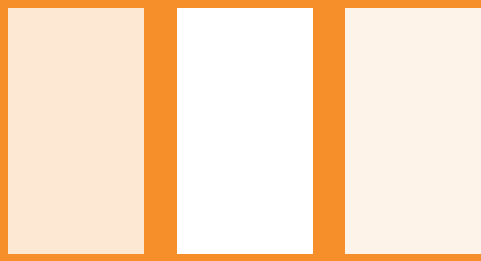
As this paper has discussed, shifting responsibility for migrants and refugees to third countries has become a central feature of the EU's migration, asylum and border governance. Although externalisation is not new, such cooperation has steadily expanded in scope, and the rhetoric of the EU and its member states has grown increasingly permissive. Externalisation fundamentally contradicts the values of the rule of law, including transparency, participation in decision-making, good faith and human dignity. As such, it creates a context where human rights violations are likely to occur.

The paper identified two principal forms of externalisation. First, border externalisation entails expecting third countries to prevent migrants from reaching EU territory. This is facilitated through EU financing, training, and the provision of equipment. Second, transfer to third countries encompasses measures by which persons are sent either for return or for the examination of their asylum claims to a country other than their own state of nationality.

Externalisation creates human rights risks: most directly to migrants subject to externalisation measures, but also to the population of third countries which did not intend to migrate to Europe, and, in a broader perspective, as a result of reduced development aid and concessions to (authoritarian) countries. Migrants' rights placed at particular risk include: the right to leave any country; the right to seek asylum; the prohibitions of refoulement and of collective expulsion; the right to an effective remedy; the prohibition of torture and ill-treatment; the right to life; the prohibition of arbitrary detention; and the right to data protection. These human rights obligations are enshrined in global and regional human-rights treaties to which both externalising states and many of their third-country partners are parties.

Under the law of international responsibility, an internationally wrongful act occurs when conduct amounting to a breach of a binding obligation can be attributed to a state or an IO. Such an act engages the responsibility of the state or IO. The concepts of multiple attribution and responsibility for complicity are especially relevant in the context of externalisation, where numerous actors are involved. Externalisation arrangements that provide funding, training, or equipment may constitute aid or assistance sufficient to establish responsibility for complicity.

Despite these clear legal principles, it is often difficult to hold an externalising state accountable for violations occurring abroad, because human rights bodies generally require a prior finding of extraterritorial jurisdiction. In practice, victims of rights violations linked to externalisation face significant obstacles in obtaining redress; however, three main avenues remain available: domestic courts, regional human rights courts, and UN treaty bodies.



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