



Europe Team - May report

The European Framework on Migration, Asylum and Refugee Status

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Introduction



Europe is one of the main poles of international and regional migration, which makes achieving a comprehensive and long-term immigration policy a priority. According to Article 79 of the Treaty on the Functioning of the European Union, the European Union (EU) “shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States” fighting illegal immigration and the smuggling of human beings through the principle of solidarity and fair sharing of responsibilities (TFUE, 2012). Europe had responded to the largest migratory flow since the Second World War, peaking in 2015, when 1.25 million new asylum seekers were registered in the EU (European Parliament, 2020b). This number dropped to 612,700 applicants in 2019, with 141,700 illegal border-crossing, 92 percent below 2015's migratory peak.

While migration flow has diminished, the crisis has revealed the shortcomings of the European asylum system (European Parliament, 2020b). To combat this flaw, the European Commission published the European Agenda on Migration to respond promptly and firmly to the 2015 human tragedy in the

Mediterranean (European Commission, 2015). Following the European Agenda, the European Commission issued a Communication to promote a reform of the common European asylum framework, intending to develop a more fair system that will offer systematic, secure, and sustainable pathways to Europe for non-EU nationals needing protection (European Commission, 2016). In 2017, the European Parliament proposed a reform on the Dublin III regulation, which determines the European member country responsible for processing requests for international protection (European Parliament, 2020a). Since the reform of the common asylum policy was at a standstill, in September 2020, the European Commission proposed a New Pact on Migration and Asylum, laying out speed-up processes throughout the EU's asylum and migration network, incorporating a review of the Dublin regulation and providing new alternatives for how Member States can show solidarity and support (European Parliament, 2020a).

In 2020, numerous unpredicted developments and challenges emerged in migration and asylum. Through the closure of borders and travel restrictions, the global Covid-19 pandemic brought the movement of persons and daily routines to a virtual standstill. Consequently, the EU and its Member States rapidly established emergency measures to maintain and support the functioning of their asylum and migration systems as much as possible (European Migration Network, 2021). In the first ten months of 2020, the asylum applications in the EU were only 390,000, 33 percent less compared to the same period of the previous year. While between 2015 and 2016, more than 2.3 million illegal crossings were reported, this figure dropped to 114,300 in January to November 2020 (European Parliament, 2021). The year 2020 also saw the disastrous fire in the Moria refugee camp in Lesbos, Greece, placing the topic of refugee reception in the EU in the spotlight again. Also, 2020 was the year of the formal withdrawal of the United Kingdom from the EU, with wide-reaching implications in the migration domain. Indeed, several domestic developments, particularly in the field of legal migration, have been motivated by the United Kingdom's change of status in the European Union's context (European Migration Network, 2021).

This report will introduce the European Union framework on asylum and refugee status, focusing on the Common European Asylum System (CEAS) and the European Convention on Human Rights (ECHR). Afterwards, a section will be dedicated to the current crisis of the European Agency for the Border and Coast Guard (Frontex), concerning the allegations over the role of Frontex in human rights violations that have emerged in the last years. The last section of the report will focus on the EU's practices of externalisation of migrants, with a specific focus on the EU-Turkey Deal; a direct consequence of the 2015 Refugee Crisis, and the Memorandum of Understanding Between Libya and Italy.

Framework of asylum and refugee status in Europe

Asylum is a fundamental right and an international obligation for States in line with the 1951 Geneva Convention on the Status of Refugee ('the Geneva Convention'). Within Europe, there are two significant frameworks directly applicable to States depending on their commitments: the European framework contained in the Common European Asylum System (CEAS) and obligations following the ratification of the European Convention on Human Rights (ECHR).

2.1. The Common European Asylum System

The Common European Asylum System was created in 1999 as an initiative of the European Union to organise an area of protection for people fleeing persecution or serious harm in their country of origin. It acts as a practical system to respond to the challenges created by the creation of the Schengen area, within which individuals can flow through the Union without being subjected to border control. All Member States of the European Union have a common obligation to protect the fair and effective treatment of all asylum seekers within this framework. To this end, the CEAS establishes a comprehensive approach to migration and asylum based on three pillars defined by the European Commission: 1. efficient asylum and return procedures; 2. solidarity and a fair share of responsibility; and 3. strengthened partnerships with third countries (Common European Asylum System, n.d.). Multiple specific directives and regulations - namely the Qualification Directive, the Asylum Procedures Directive, the Reception Conditions Directive, the Dublin Regulations and the EURODAC Regulation - bind the European Member States to achieve this. The European Union Agency for Asylum assists States in the implementation of the obligations mentioned above.

2.1.1. Qualifying for Asylum

The Qualification Directive provides for the definition of 'refugee' and the specific grounds accepted to obtain refugee status within the European Member States. It consists of a codification of the Geneva Convention into European law following Article 78(1) of the Treaty on the Functioning of the European Union (TFEU). The most relevant Article of this provision is Article 2(d), modelled after Article 1 of the Geneva Convention, which defines a refugee as:

“a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of

nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it” (Directive 2011/95/DU).

2.1.2. Assigning State Responsibility

The Asylum Procedures Directive enacts Member States' procedural obligations relating to processing refugee status applications. All asylum requests must be examined. Therefore it is necessary. It is thus necessary to establish which State bears responsibility for which applications. This is codified in the Dublin Regulations (I, II, III). The overarching principle assigns responsibility to the state of first entry into the Union. However, it has been made clear in the last version of the regulation – or New Pact on Migration and Asylum – that no Member States should have to bear disproportionate responsibility. This is aimed to limit the overflow of applications to the border of a Union's State, which receives a majority of refugees as points of first entry into the Union. It is unclear to what extent this will be implemented in practice and what aspects of the asylum procedures it will affect for asylum seekers.

2.1.3. Asylum Procedure and Attached Safeguards

When it has been established that the State is responsible for processing the application, it will examine the request based on three criteria (hierarchically): “family considerations; recent possession of a visa or residence permit in a Member State; and whether the applicant has entered the EU irregularly or regularly” (Dublin Regulation III, Article 7). Consequently, the applicant's identity must be determined by the authorities. The EURODAC system, enacted by the 1990 Dublin Convention, permits the cross-checking of fingerprint data from all EU Member States. This is done to prevent readmission; meaning a situation where an individual applies for asylum in more than one Member State either consecutively or concurrently. Additionally, the individual can be subjected to personal interviews (Dublin Regulation III, Article 5), including particular protections and guarantees for minors (Dublin Regulation III, Article 6). One particular consideration is the principle of non-refoulement which entails an obligation for States not to return individuals to a country where they would face a serious risk of ill-treatment.

During the entire procedure, the applicant should be provided with free legal assistance and information in a language they can understand (right to information – Dublin Regulation III, Article 4). Overall, the new regulation sets the maximum duration to 11 months for processing asylum requests – nine months when it is clear that the individual will be sent back. Finally, detention of asylum seekers is possible only where there

is a real risk of the individual absconding and as a last resort (Dublin Regulation III, Article 28). The duration of the detention shall extend only for the period necessary to carry out the administrative procedures linked to the asylum request.

2.2. Complementary Human Rights Framework – ECHR

The Geneva Convention and the provisions mentioned above are considered *lex specialis* in migration and asylum matters. However, the ECHR is equally relevant in cases of asylum, and the European Court of Human Rights is a significant avenue of remedy for applicants. There is no explicit mention of a right to enter, stay or reside in High Contracting Parties to the Convention. Nevertheless, some provisions are extremely relevant to the treatment of asylum seekers in the European States, particularly the prohibition of collective expulsion under Article 4 of Protocol 4 to the ECHR. Additionally, Article 1 of Protocol 7 to the ECHR provides procedural safeguards relating to alien expulsion, including the right to legal review of the decision. Different standards of protection have been set through case law, especially in matters relating to border control, detention, reception conditions, as well as deportation and extradition.

The Court recognises that migration and asylum are largely left to the discretion of States.¹ To this end, States have a right to control entry into their territory.² Nevertheless, there are mandatory safeguards to be applied regarding the reception conditions. There are three types of obligations pursuing this: 1. the protection against arbitrary detention, 2. availability of remedies to challenge the denial of entry and rejection of asylum claims, and 3. remedies to prevent deportation.

First, the detention of illegal aliens is accepted under Article 5(1)(f) of the ECHR. Subsequent safeguards were set through the Court's case-law on deprivation of liberty and restriction of movement. The conditions of detention should be examined in the light of the level of supervision and control exercised over the individual, the availability of social contacts, the size of the area and the possibility to leave it effectively.³ The duration of the detention should be short. Any detention, similar to within the CEAS framework, is justified as long as the administrative proceedings are ongoing. However, the proceedings should be carried out in good faith and with due diligence on behalf of the authorities.⁴

Second, effective remedies should be available according to Article 13 ECHR. All applications should be assessed individually, meaning that, under Article 4 Protocol 4, collective

1. Nunez v Norway (Application no. 55597/09), § 66, ECHR, 28 June 2011.
2. Ilias and Ahmed v. Hungary (Application 47287/15), ECHR, 21 November 2019.
3. Guzzardi v. Italy (Application no. 7367/76), ECHR, 6 November 1980.
4. Chahal v. UK (Application no. 22414/93), §112, ECHR, 15 November 1996.

expulsion of aliens is prohibited. This renders all push-back operations at the borders illegal under the Convention framework.⁵ Additionally, applicants should be protected against deportation in cases where there is a real risk of ill-treatment under Article 3 ECHR (non-refoulement principle).⁶

It must be noted that the ECHR framework presents serious weaknesses from a jurisdictional standpoint. Following Article 1 of The Convention, guarantees apply when the individual is under the jurisdiction of a High Contracting Party only. In its case-law, the Court has excluded transit-zone at land borders⁷ or when applying for a visa in embassies and consulates abroad.⁸ Additionally, the system – similar to the CEAS – relies on assumptions of safe-third countries allowing states to automatically reject claims of risk of ill-treatment from certain States based on the overall human rights situation there.

5. Hirsi Jamaa a.o. v. Italy (Application no. 27765/09), ECHR, 23 February 2012.

6. Soering v UK (Application no. 10730/84), §93, ECHR, 7 July 1989.

7. Supra 5.

8. M.N. and others v. Belgium (Application no. 3599/18), ECHR, 5 March 2020.

Frontex - The European Agency for the Border and Coast Guard

Over twenty thousand migrants have lost their lives in the previous decade while attempting to enter Europe by travelling across the Mediterranean Sea (IMO, 2021). Since the "migrant crisis" that occurred in Europe in 2015, the people of Europe have increased the amount of pressure that they put on the European Union and their respective governments. As a consequence, the focus has shifted away from rescue operations and toward migration control. The European Agency for the Border and Coast Guard (Frontex) was given the directive to establish its very own standing corps in the agency's 2019 regulation (EU, 2019). Furthermore, Frontex was the first uniformed EU agency with officers allowed to carry handguns. This was highly criticised by many people, including Frontex's ex-director, Gil Arias Fernández, who claimed that "Weapons are not needed for Frontex operations, they are more of a problem than a help" (Bautista and Rojas, 2021).

The screening and identification of migrants, the prevention of terrorist activities and smuggling of both people and goods, as well as rapid border interventions are all part of Frontex's responsibilities. Other duties include joint search and rescue operations and, humanitarian aid, and joint search and rescue operations. According to statistics provided by Frontex, it assisted in the rescue of 13,000 migrants in 2020 and identified 1,200 individuals and drug traffickers (Frontex, 2021).

3.1 Human rights violations

Recent disputes over Frontex's role in breaches of human rights, which derive from the organisation's participation in Greek pushback operations (Christides et al., 2020), underscores the existing concerns regarding the agency's policies (Fink, 2020). It is considered a breach of international refugee protection agreements to engage in the practice of pushback, which involves driving would-be refugees away from a border before they can reach a country and claim asylum there. The guidelines stipulate that people should not be expelled or returned to a place where their lives and safety could be in danger because they are members of a social or political organisation, members of a certain race or religion, or their nationality falls into one of those categories. Furthermore, the European Court of Human Rights has held that undocumented migrants should be provided with information and care and processed their asylum claims.

Since 2020, reports have surfaced in international media of fires breaking out on the water and pushbacks involving the Greek coast guard and Frontex (The Irish Times, 2020). Several victims lost their lives due to the Greek coast guard turning back migrant boats in the Aegean Sea. In 2021, activists, captains of rescue

ships, and over 80 human rights organisations from around the globe issued an open letter to the European Commission, the Council of the EU, and the European Parliament. The open letter called attention to the "illegal and cruel tactics" of Frontex, the EU border agency, accused of promoting and enforcing aggressive measures toward migrants. According to the organisations, "over 740 people have died so far this year trying to cross the Mediterranean, looking for a place of safety" (Tondo, 2021). Furthermore, they claimed that "the EU's border regime forced them to take dangerous migration routes, often on unseaworthy vessels; it enlisted neighbouring countries to stop them on their way; met them with violence and pushbacks; or refused to rescue them – abandoning them to drown at sea" (Ibid). Also, the campaign coalition, which includes Sea-Watch, Mediterranean Saving Humans, Iuventa10, Baobab Experience and Alarm Phone said that lives were lost because of the European Union's obsession with reinforcing borders instead of protecting people and claimed that "the EU has blood on its hands" (Tondo, 2021).

Furthermore, a joint investigation carried out by France's *Le Monde* newspaper, German weekly *Der Spiegel*, Swiss news outlets *SRF Rundschau* and *Republik*, and Netherlands-based *Lighthouse Reports* revealed in 2022 that Frontex had repelled at least 957 asylum seekers in the Aegean Sea between March 2020 and September 2021 (*Lighthouse Reports*, 2022). According to the accounts, Greek coast guard boats were impeding, damaging, or even sinking the boats of migrants attempting to cross from Turkey to Greece. These migrants were attempting to cross from Turkey to Greece. In certain instances, it is alleged that Frontex, although aware of the pushbacks that violate international law, accepted and did not prevent abuses of fundamental rights. Intermittently, it allegedly assisted Greek officials in carrying them out. It was said that Frontex was complicit in pushback operations that resulted in the deaths of some migrants, and that these operations affected thousands of individuals.

3.2 Being held accountable

As a result of publicity in the media, Frontex and its management have been subjected to criticism in Brussels. Leggeri was subject to calls for his resignation from certain members of the European Parliament, which led to his resignation this year. An investigation against Frontex was

initiated in 2020 by the European Anti-Fraud Office (*Office européen de lutte antifraude, OLAF*), over allegations of harassment, suspected abuse of office and the pushback of migrants in the Aegean Sea. The results of the investigation highlighted significant concerns that Frontex was failing to respect the human rights of asylum seekers and was failing to execute EU legislation. It was concluded that Frontex supported Greece in the repatriation of illegal offshore migrants, operating in a manner that was in breach of international law (Newman, 2022).

The German MEP, Erik Marquardt, declared that “reveals that Frontex's management was aware of human rights violations and deliberately avoided reporting them” (Newman, 2022). This caused the European Parliament to refuse to sign off on the accounts of Frontex, citing the agency's failure to investigate alleged breaches of asylum seekers' human rights in the Aegean Sea earlier this May. According to the European Parliament, Frontex "did not evaluate its activities" in Greece, despite official reports from national authorities, the Council of Europe, and the United Nations that the agency was operating in areas where breaches of fundamental rights were taking place. The resolution criticising Frontex was approved with a vote count of 492 in favour and 145 members of the European Parliament against it (Rankin, 2022). The opposition was primarily composed of members of conservative nationalist parties and the extreme right. Such support from the opposition did not come as a surprise since the agency was criticised for its inability to stop the far-right from infiltrating its ranks (Bautista & Rojas, 2021).

On the other hand, there is no evidence shown to the public that OLAF is now pursuing any legal action against the individuals who were guilty of these violations. For instance, a representative for OLAF acknowledged that an investigation into Frontex was concluded on February 15, 2022. However, they declined to comment, citing confidentiality regulations to protect the persons involved and "possible follow-up in administrative and criminal judicial proceedings" (Rankin, 2022).

The amount of authority involved in the European Union's and notably Frontex's endeavours to control migration is not matched by mechanisms for keeping it responsible, which generates a moral hazard owing to the absence of superior authority to hold it accountable. Such concerns were raised by Green MEP Saskia Bricmont, who remarked that "the departure of [Frontex] head last week does not address structural flaws, nor the agency's support for the Fortress Europe agenda" (Rankin, 2022). As a result, more accountability measures are required for Frontex because of their role in ensuring the strong protection of migrants' rights and preventing similar abuses committed by Frontex in the future. It remains to be seen to what extent the agency's organisational structure will be able to go through some change to fulfil its mission in a manner that is more efficient and more in line with human rights principles.

Externalisation of Migration: Turkey & Libya

It is evident from the New Pact on Migration and Asylum that the EU will continue its tradition to externalise the responsibility regarding migration management, especially on the border controls and interceptions at sea (European Commission, 2020). Externalisation raises several questions regarding the human rights of the refugees and asylum seekers. The most problematic aspect of this policy is that attribution of responsibility regarding the violations of human rights takes place on a third country's territory (Santos Vara & Pascual Matellán, 2021). The number of cases at the ECtHR related to push-backs at sea and the collective expulsion of aliens demonstrates an increasing trend. In one of the landmark cases, *Hirsi Jamaa and Others v Italy*,⁹ the Court found Italy in violation of Article 3 ECHR (prohibition of torture, inhuman or degrading treatment), Article 4 Protocol 4 (prohibition of collective expulsion of aliens), and Article 13 ECHR (right to remedy) with regard to the push-back operation that took place in 2009 affecting almost 200 asylum seekers intercepted at sea by the Italian authorities.

Member States of the EU pursue these deterrent migration policies through multilateral and bilateral migration agreements, which are usually soft law instruments that can overcome the rule of law and check and balances system of democracy (Reviglio, 2020). These agreements generally consist of two main elements: the EU (or the Member State) provides financial assistance to the third country; and provides training and equipment to strengthen the migration management (Reviglio, 2020). There is a growing need to assess the human rights impact of these soft law agreements. The EU and its Member States should not be transferring their responsibility to respect and protect the rights of asylum seekers within their borders. Another issue here is that the third countries taking over the responsibility of the EU are not always signatory to main human rights treaties or treaties protecting refugees. The EU turns a blind eye and hopes that throwing money to some third countries would solve the problems. In this chapter, two externalisation agreements of the EU will be examined regarding their impact on the human rights of refugees. The first subsection will focus on the EU-Turkey Deal, which was announced shortly after the 2015 Refugee Crisis. The second subsection will examine the Memorandum of Understanding Between Libya and Italy.

4.1. EU-Turkey Deal

Turkey is one of the main transit countries, especially for refugees from Syria and Afghanistan. Currently, Turkey hosts more than four million refugees and asylum seekers (UNHCR, 2021). The Turkey-EU Deal

9. See ECtHR - *Hirsi Jamaa and Others v Italy* [GC], Application No. 27765/09

(the Deal) was concluded in 2016 after the increased use of migration routes from Turkey to the EU in 2015. This deal, also known as the “One-in-one-out” deal, holds that for every irregular migrant Turkey accepted from the EU-27 States, one migrant/refugee will be relocated to an EU Member State (Council of Europe, 2016). The agreement states that such returns will take place “in full accordance with EU and international law” and aims to prevent irregular arrivals by boat, declaring these refugees' asylum applications inadmissible since Turkey is considered a “safe third country” or “first country of asylum” (Frelick et al., 2016). The deal also includes six billion euros in humanitarian aid to Turkey and positive negotiation promises regarding a visa liberation scheme for Turkish nationals and a “voluntary” humanitarian scheme to transfer Syrians from Turkey to the EU Member States once the numbers drop. Legally, this is not a convention, treaty, or even agreement in the hard law sense. However, legality questions arising from the Deal have been left without an answer when the Court of Justice of the European Union (CJEU) declared¹⁰ that the cases are inadmissible since the Deal is not between the EU and Turkey, but it is a “European” agreement between the Member States and Turkey (Danisi, 2017).

The Deal was a “success” in the eyes of the European leaders who were only concerned about the number of refugees: the irregular entries have dropped down drastically after the Deal. Albeit, other premises of the Deal are still not fulfilled. A year after the Deal, only 3565 Syrian refugees relocated to the EU Member States from Turkey, 0.1 percent of all the refugees in Turkey back then (Amnesty International, 2017). Apart from the inability to achieve the aims of the Deal, it caused human rights breaches due to the system and structure proposed. First of all, the irregular migrants who made it to Greece or the Greek islands clustered in “hotspots”, which turned into detention centres. Many NGOs and international organisations withdrew their staff and other support out of concerns about conditions in the detention centres and their legitimacy, and the possible human rights violations (Collett, 2016). This caused a lack of structural support and deterioration of conditions in the hotspots and legitimacy questions directed to the process. Second, the Deal portrays the refugees and asylum seekers, who lost their homes in the conflict, as some “meta” or a “commodity” to be bargained over. The “One-in-one-out” scheme developed in the Deal does not take the asylum seekers as the end goal is not to give them a thorough assessment of their application but to limit the number of asylum applications. It also instrumentalises the refugees as a mere international policy tool. This became apparent on February 28th, 2020, when the Turkish government declared that they would no longer stop refugees from moving toward the EU.

10. See CJEU, Orders of 28 February 2017, Cases NF v European Council, T-192/16; NG v European Council, T-193/16; NM v European Council, T-257/16.

4.2. Memorandum of Understanding Between Libya and Italy

The externalisation of the migration management policy of the EU continued with assistance to the Libyan Coast Guard in 2016 when the interceptions began at sea. Influenced by the EU-Turkey Deal, Italy and Libya adopted a Memorandum of Understanding (The Memorandum) on 2nd February, 2017.¹¹ The Memorandum's purpose is to limit illegal migration flows from Libya, to provide means to develop the country's migration management and reinforce migration control by Libya (Vara & Matellán, 2021). The deterrence policy followed with this Memorandum by establishing non-arrival measures preventing access to the territory of asylum, externalising the asylum processing and relocation of migrants to Libya (Reviglio, 2020). There are two main flaws of the Memorandum: it constantly refers to illegal migrants but makes very few references to human rights or international protection mechanisms (Vara & Matellán, 2021). Second, it follows the EU – Turkey Deal in the sense of creation of hotspots in transit countries; however, it neglects the status quo of Libya: a failed State amid conflict and, contrary to Turkey, where the concern is mainly Syrian asylum seekers, a transit country for also economic migrants (Reviglio, 2020).

Italy provides material tools to Libyan coastguards for patrolling a large area in the central Mediterranean, where the Libyan coastguards coordinate search and rescue operations. As a result of the EU off-shoring its responsibilities to Libya through funds, many refugees were intercepted at the sea and disembarked in total violation of the principle of non-refoulement. Libyan coastguards intercepted and returned 32,425 refugees and migrants to Libya in 2021, without any assessment or access to apply for asylum (Amnesty International, 2022). Amnesty International reported abuses by non-State actors and security forces shooting refugees with impunity, arbitrary detentions and inhumane conditions in overcrowded and unsanitary detention centres without adequate access to water and food (Amnesty International, 2022). There are also testimonials and reports on the cooperation of the Libyan coastguards with human traffickers, tortures to pay ransom to guards and widespread sexual violence (UNHCR, 2018)

The Memorandum refers to human rights and international treaties in Article 5, stating that the Memorandum should be applied and interpreted in accordance with international obligations arising from human rights treaties to which Italy and Libya are parties. However, the text of the provision can be understood as limited to international agreements to which both parties are signatory. This creates an implementation gap as well as a bedrock for human rights violations specifically concerning refugees since Libya is not a party to the 1951 Geneva Convention Relating to the Status of Refugees. Additionally, the

11. See for the Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, Available at: https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

Libyan Ministry of Interior has the authority to block any control and monitoring of detention centres by international organisations and NGOs (Reviglio, 2020). Thus, there is no means of enforcement in the Memorandum of international protection mechanisms and State obligations arising from human rights treaties, which makes the Memorandum almost an enabler of several human rights violations. The transfer of responsibilities to Libya increases the risk of refugees being subjected to arbitrary detention, inhuman treatment and violation of the principle of non-refoulement (Vara & Matellán, 2021). The soft law characteristic of the Memorandum gives leeway to the Libyan government to breach human rights obligations without any material sanctions or conditionality, afforded by Italy and overlooked by the EU (Reviglio, 2020).

Amnesty International stated that the Memorandum of Understanding between Italy and Libya expires in February 2023, however, it will be renewed automatically unless the Italian authorities cancel it before November 2022 (Amnesty International, 2022). The EU-Turkey Deal was initially signed for five years, but von der Leyen Commission declared that the EU assistance would continue from 2021 to 2023 (European Commission, 2021). Italy as a party to the Memorandum and the Member States as a party to the EU Turkey Deal can be considered in breach of their obligation to protect human rights under the Responsibility of States for Internationally Wrongful Acts (ARSIWA). According to Article 6, a State can be held liable for the wrongful acts of another State if the former transfers the conduct of its organs to the latter State. Article 16 of ARSIWA also states that if a State aids or assists another State in commissioning an internationally wrongful act, both States are internationally responsible. Thus, the violations in Turkey and Libya concerning refugees are attributable to the EU and its Member States. The EU should incorporate the human rights obligations through the conditionality of the aid transferred to third countries and must focus on protecting the lives and rights of the refugees instead of trying to keep them away using questionable methods and avoiding responsibility.

Conclusion

This report assessed the state of migration in the European Union. At first, presenting the framework for asylum seekers and refugees in Europe, alongside the flaws in the existing system, the prospects of many migrants finding help and shelter in the European Union remain bleak. Those coming to the EU by crossing the Mediterranean face particularly difficult circumstances, both from the natural risks that accompany such a journey and from violent pushbacks from the Frontex. Reforms and reorganisation of this aspect of the EU's approach to migrants are much needed. However, a genuine change in the system that would positively impact asylum seekers seems improbable. Still, reforming Frontex as well as ensuring that those responsible for past violations are held accountable should remain a priority for the European Union.

Lastly, both the actions of the Frontex in the Mediterranean and policies of externalisation of migration management are shifting the focus from the protection of the human rights of the refugees to preventing them from reaching the borders of the European Union. EU Member States transfer their responsibilities and obligations from international law to third countries with poor human rights records using questionable soft law mechanisms. The EU, as a leading normative power, should work on addressing the root causes of illegal migration flows instead of bargaining with third countries to avoid responsibility. The EU's neglect and omission cause violations of the rights to asylum, right to an effective remedy, freedom of movement, right to leave a country; prohibition of non-discrimination; prohibition of torture and inhuman or degrading treatment; and the principle of non-refoulement (Vara & Matellán, 2021). Pushbacks, transferring responsibilities, and offshoring migration management do not absolve the EU and its Member States of responsibility for violations occurring outside their borders. Rather, they make the European promise of solidarity and its values of human rights seem like hollow words.

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