



## REFUGEES AT SEA: WHO'S LIABLE WHEN BORDERS BECOME "DEATH TRAPS"?

---

Ishrat Jahan\*

### ABSTRACT

*Maritime borders have drastically become spheres of exclusion where most states evade their legal obligations towards sea migrants routinely. This article examines the critical gap in protection regarding the obligation to sea migrants under international law using case studies from the Mediterranean and Australia's Operation Sovereign Borders. It argues that the fragmentation of maritime, refugee, and human rights regimes enables systemic avoidance of accountability, and such practices undermine core obligations such as the duty to rescue and the principle of non-refoulement. With case studies from the Mediterranean and Australia's offshore regime, the article presents a debate about whether maritime sovereignty is growingly used as a shield for inhumanity. Through a combined legal analysis and human rights framing, this article reveals the deadly gap between law and lived experience at sea. Observing these violations of core international human rights, the article calls for a national maritime law with international human rights obligations to protect the sea migrants from exploitation.*

**Keywords:** Refugees at Sea, Offshore Processing Australia, Human Rights Violations in Maritime Borders, Non-Refoulement at Sea, Maritime Pushback.

### INTRODUCTION

In a world defined by borders, every year, a lot of refugees attempt to cross oceans in search of safety. This issue remains one of the most urgent human rights crises. From the Mediterranean to the Andaman Sea, thousands of people risk their lives crossing dangerous maritime routes every year. Imagine calling for help while drowning, and the world hears you but turns away. This is not fiction but a practical scenario of the lived experience of

---

\*LAW GRADUATE.

thousands of refugees who risk their lives at sea. On 14 June 2023, a decayed fishing boat carrying more than two hundred migrants drowned on the coast of Greece, Pylos. Despite repeated calls, help came too late. By 18 June, officials had acknowledged that over five hundred people were "presumed dead".<sup>1</sup> This tragedy is a sign of a global form of in that shows refugees at sea are dying in waters governed by laws that commit to protection but fail in practice.

## **CASE STUDIES: WHEN HUMAN RIGHTS SINK WITH THE BOAT**

**The Mediterranean Sea: Where Lives Drown with the Refugee:** The Mediterranean has become the world's most dangerous route, and it has acquired fame as the world's deadliest sea crossing. Nowadays, the Mediterranean has become the world's deadliest migration route. In October 2013, more than five hundred people drowned near Lampedusa. A year later, over 3,500 died attempting the same journey. In April 2015, a single incident claimed the lives of more than eight hundred people.<sup>2</sup>

Since 2014, more than 30,000 people have gone traceless in the Mediterranean according to the International Organisation for Migration (IOM).<sup>3</sup> And these deaths are not due to the irony of fate; they are the result of policy design. Moreover, Europe has become the epicentre of maritime human rights violations. Many EU countries, including Italy, Greece and Malta, have adopted many hostile policies to prevent migrants from reaching their shores.

In the landmark case of *Hirsi Jamaa and others v. Italy*,<sup>4</sup> the European Court of Human Rights held that Italy violated the rights of the African migrants who were intercepted at sea. And later, they were forcibly returned to Libya without assessing their protection needs. In this case, the court affirmed that even in international waters, states are bound by the principle of non-refoulement. Also, states must ensure access to individualised procedures for removal. Moreover, the Court found breaches of certain articles, including Article 3-Protection from

---

<sup>1</sup> Helena Smith, 'We Just Want to Know if He Is Alive or Dead': Migrants Desperate for News of Relatives in Greece Shipwreck Disaster, *The Observer* (London, 18 June 2023) <https://www.theguardian.com/world/2023/jun/18/greece-shipwreck-disaster-migrants-desperate-for-news-relatives> accessed 2 October 2025.

<sup>2</sup> Amnesty International UK, *The World's Deadliest Sea Crossing: The Mediterranean* (3 October 2014) <https://www.amnesty.org.uk/worlds-deadliest-sea-crossing-mediterranean> accessed 2 October 2025.

<sup>3</sup> Sea-Eye, *Number of People Missing in the Mediterranean Has Risen to Over 30,000* (20 June 2023) <https://sea-eye.org/en/number-of-people-missing-in-the-mediterranean-has-risen-to-over-30000/> accessed 2 October 2025.

<sup>4</sup> Amnesty International UK, *Italy: 'Historic' European Court Judgment Upholds Migrants' Rights* (23 February 2012) <https://www.amnesty.org.uk/press-releases/italy-historic-european-court-judgment-upholds-migrants-rights> accessed 2 October 2025.

torture and inhuman treatment, Article 4 Protocol 4-Prohibition of collective expulsion, and Article 13-Right to an effective remedy. Crucially, the Court affirmed that states exercise jurisdiction on the high seas when they have de facto control over individuals and must uphold the principle of non-refoulement. This decision sets a strong precedent that border enforcement must not override international human rights obligations, even beyond territorial waters.<sup>5</sup> Amnesty International called it a "historic judgment" which reinforced human rights protections for migrants and asylum seekers across Europe.

**Australia's Offshore Brutality:** In September 2013, Australia launched a military-led border control policy titled Operation Sovereign Borders (OSB). The key aim of the policy framework was that it maintained that no irregular migrant arriving by boat will be resettled in Australia, rather those granted refugee protection will be resettled in third countries.<sup>6</sup> As a successor to the Pacific Solution, OSB resurrected offshore processing in Regional Processing Centres (RPCs) situated in Nauru and Papua New Guinea, where intercepted asylum seekers were transferred without being allowed to land on Australian territory. The detention centres in Nauru Island, Manus Island, and Christmas Island, where intercepted asylum seekers undergo atrocious health and sanitation conditions in congested and inadequate accommodation facilities. Also, many detainees, including children, have self-harmed, attempted suicide, and developed mental illness.

"Everyone has the right to seek and enjoy, in other countries, asylum from persecution." - Article 14.

The UN Refugee Agency (UNHCR) has recognised the institution of asylum from persecution under Article 14 of the Universal Declaration of Human Rights to be among the most basic mechanisms for the protection of refugees.<sup>7</sup> But Australia's policies and treatment continuously violate the international obligations towards asylum seekers at sea, including:

---

<sup>5</sup> Human Rights Law Centre, *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECtHR, 23 February 2012) <https://www.hrlc.org.au/case-summaries/hirsi-jamaa-and-others-v-italy-2012-echr-application-no-2776509-23-february-2012/> accessed 2 October 2025.

<sup>6</sup> Michael Grewcock, *Australian Border Policing: Preventing Refugee Arrivals* (Federation Press 2010); Paul Hodge, 'A Grievable Life? The Criminalization and Securing of Asylum Seeker Bodies in the "Violent Frames" of Australia's Operation Sovereign Borders' (2015) 58 *Geoforum* 122.

<sup>7</sup> UN High Commissioner for Refugees (UNHCR), *Conclusion on International Protection* UN Doc A/AC.96/951 (8 October 2001) <https://www.unhcr.org/publications/conclusion-international-protection-1> accessed 2 October 2025.

Article 7 of the ICCPR - Freedom from Torture, Cruel, Inhuman or Degrading Treatment of the ICCPR, which strictly prohibits subjecting individuals to such treatment under any circumstances.<sup>8</sup>

The principle of non-refoulement is enshrined in Article 33(1) of the 1951 Refugee Convention, which prohibits states from returning refugees to any country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.<sup>9</sup>

Obligations under the Convention on the Rights of the Child (CRC), to which Australia is a party. According to Article 3 of that convention, states must ensure the best interests of the child are a primary consideration in all actions concerning children. According to articles 37 and 22 state must protect them from torture, inhuman treatment, and unlawful detention. This includes refugee and asylum-seeking children, who are entitled to special protection and humanitarian assistance.

It is a matter of concern that, although Australia is a party to several international human rights treaties, they have not been implemented by legislation. Australia claims that policies like Operation Sovereign Borders (OSB) save lives by discouraging boat journeys, but human rights groups argue that deterrence through cruelty cannot justify systemic violations of international obligations.

## **WHO IS LIABLE FOR THE DEATH OF SEA? LEGAL RESPONSIBILITY IN A FRAGMENTED SYSTEM**

**State Responsibility under International Law:** States are responsible according to Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001).<sup>10</sup> The Articles on Responsibility of States for Internationally Wrongful Acts affirm that:

- States are liable for breaches of international obligations.

---

<sup>8</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UNGA Res 2200A (XXI).

<sup>9</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33(1) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees> accessed 3 August 2025.

<sup>10</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, in Report of the International Law Commission on the Work of Its Fifty-Third Session, UN GAOR, 56th Sess, Supp No 10, UN Doc A/56/10, 28–143 (2001) [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) accessed 2 October 2025.

- States cannot avoid responsibility by outsourcing actions to third parties.

States, like Italy and Malta, support Libyan authorities in intercepting migrants to Libya. According to data from the International Organisation for Migration (IOM) in 2021, approximately 32,425 people were intercepted and returned to Libya in the Central Mediterranean.<sup>11</sup> This exposes them to serious human rights violations, including torture and inhumane detention conditions. It is important to note that states violate international human rights, including the right to life, the prohibition of torture, through maritime pushbacks.

**Accountability of Regional and International Courts:** The courts face significant challenges in addressing the violations of human rights of sea migrants. There is a lack of a judicial framework to address the violations faced by sea migrants, including:

- Limited access to justice
- Insufficient case law
- A fragmented legal system
- Jurisdictional ambiguity
- Lack of enforcement

Courts often struggle to establish authority over incidents occurring at sea, especially in international waters controlled by third parties like Libya.<sup>12</sup> Also, even when violations are identified, the International Courts fail to enforce decisions against states that are responsible.<sup>13</sup> These challenges collectively hinder the court's ability to protect the sea migrants from human rights violations.

As shown in Table 1, various human rights obligations are frequently breached in maritime enforcement practices, particularly regarding the right to life and non-refoulement.

---

<sup>11</sup> International Organization for Migration (IOM), IOM Libya Maritime Update: 28 December 2021–01 January 2022 (2022) <https://dtm.iom.int/reports/libya-%E2%80%94-maritime-update-28-december-2021-01-january-2022> accessed 2 October 2025.

<sup>12</sup> Adriana Di Stefano (ed), Migration Issues Before International Courts and Tribunals 46 (CNR Edizioni 2019) <https://www.iriss.cnr.it/wp-content/uploads/2020/02/Migration-Issues-before-international-Courts-and-Tribunals-CNR-Edizioni-2019.pdf> accessed 26 July 2025.

<sup>13</sup> Adriana Di Stefano (ed), Migration Issues Before International Courts and Tribunals 46 (CNR Edizioni 2019) <https://www.iriss.cnr.it/wp-content/uploads/2020/02/Migration-Issues-before-international-Courts-and-Tribunals-CNR-Edizioni-2019.pdf> accessed 26 July 2025.

**Table 1: Common Violations of Human Rights of Migrants at Sea**

State Actions in Maritime Context	Relevant Human Rights Violated
Failure to efficiently rescue persons in distress at sea	Right to life  (UDHR, art. 3; CRC, art. 6; ICCPR, art. 6; ICRMW, art. 9; ICRPD, art. 10; African Charter, art. 4)
Collective expulsion through push-backs result in persons being returned to a territory where their life and/or freedom is threatened.	Principle of non-refoulement (CAT, art. 3(1); ICPPED, art. 16(1); Refugee Convention, art. 33).  Right to seek asylum (UDHR, art. 14; African Charter, art. 12(3); Arab Charter, art. 28).
Dangerous rescue and interception practices (e.g. firing, unsafe manoeuvres, capsizing of boats, violence and use of force, and discrimination).	Right to life  (UDHR, art. 3; CRC, art. 6; ICCPR, art. 6; ICRMW, art. 9; ICRPD, art. 10; African Charter, art. 4; Arab Charter, art. 5).
The special needs of children rescued at sea are not addressed, and family reunification efforts are not made.	Right to privacy and family life (UDHR, art. 12; CEDAW, art. 16; CRC, arts. 8 and 16; ICCPR, arts. 17 and 23;

## INTERNATIONAL LAW AND THE PROMISE OF PROTECTION

There are three primary legal frameworks which are supposed to guarantee the rights and safety of refugees at sea:

**The Refugee Convention (1951) and the Protocol of Non-Refoulement:** The principle of non-refoulement is codified in Article 33 of the Refugee Convention (1951), which is considered as a customary international law and binding on all states regardless of ratification. The principle of non-refoulement is expressed firstly in article 33(1) of the 1951 Geneva Convention relating to the Status of Refugees (1951 Refugee Convention)<sup>14</sup> which states that:

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

The obligation of non-refoulement is the core of asylum-seekers' protection<sup>15</sup> because it is the only guarantee that refugees will not be subjected again to the persecution which has caused their departure and responds to the refugees' necessity to enter the asylum country. The Tampa Case<sup>16</sup> exemplifies the principle of non-refoulement relevance. In 2002, the Norwegian vessel Tampa rescued 453 asylum seekers on the high seas. The vessel was denied entry into Australian territorial waters despite the terrible health conditions of the passengers. Here, Australia's refusal to allow disembarkation violated non-refoulement as it obstructed refugees from seeking asylum safely. A case like Tampa highlights the tension between national policies and international obligations. The application of this principle faces challenges because of maritime jurisdiction and state sovereignty. However, the 1951 Refugee Convention's principle of non-refoulement is official for sea refugees too.

**The United Nations Convention on the Law of the Sea (UNCLOS):** The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982, which provides a comprehensive legal framework governing maritime activities, including provisions relevant

---

<sup>14</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, 150 et seq.

<sup>15</sup> Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement: Opinion’, in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* 87, 107 (2003).

<sup>16</sup> Andrea Trevisanut, *The Principle of Non-Refoulement at Sea and the Effectiveness of the Human Rights Approach*, MPIL UNYB No 5 (2012) [https://www.mpil.de/files/pdf3/mpunyb\\_05\\_trevisanut\\_12.pdf](https://www.mpil.de/files/pdf3/mpunyb_05_trevisanut_12.pdf) accessed 2 October 2025.

to the sea migrants. UNCLOS outlines key provisions indirectly protecting sea migrants, including:<sup>17</sup>

- Article 98 - Duty to Render Assistance
- Article 12 - Right of innocent passage
- Article 18 - Meaning of passage.
- Article 19 - Meaning of innocent passage.
- Article 33 - Contiguous zone
- Article 56 - Rights, jurisdiction and duties of the coastal State in the exclusive economic zone
- Article 82 - Freedom of the high seas
- Article 94 - Duties of the Flag State

These UNCLOS articles provide a legal framework foundation to address migrant rights at sea, strengthening jurisdiction, rescue and most importantly, the best balance between state sovereignty and humanitarian obligations.

**Human Rights Law:** "Human rights apply at sea as they do on land. There are no maritime-specific reasons for denying human rights at sea."<sup>18</sup> Refugees and immigrants navigating dodgy routes are entitled to the human rights guaranteed under international law because every human being, regardless of migration status, has inalienable rights. However, states prioritise concentrating on national sovereignty and border control; nowadays, maritime borders are rapidly becoming zones of violence, dismissal, and redemption. Every human being, including all the refugees and migrants, is entitled to human rights, and these human rights are enshrined in the Universal Declaration of Human Rights (UDHR). Moreover, there are some core international human rights instruments which are mentioned below.

- **CAT:** Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (United Nations, 1984).
- **ICCPR:** International Covenant on Civil and Political Rights (United Nations, 1966).

---

<sup>17</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, 21 ILM 1261  
[https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) accessed 2 October 2025.

<sup>18</sup> Human Rights at Sea, The Geneva Declaration on Human Rights at Sea (2022) Principle 1  
<https://www.humanrightsatsea.org/GDHRAS> accessed 30 July 2025.

- **CEDAW:** Convention on the Elimination of All Forms of Discrimination Against Women (United Nations, 1979).
- **CRC:** Convention on the Rights of the Child (United Nations, 1989).
- **ICRMW:** International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (United Nations, 1990).
- **ICRPD:** Convention on the Rights of Persons with Disabilities (United Nations, 2006a).
- **ICESCR:** International Covenant on Economic, Social and Cultural Rights (United Nations, 1966).

The Geneva Declaration on Human Rights at Sea (GDHRAS) is a significant soft-law instrument that validates the application of international human rights law in the maritime context. It notably reaffirms that human rights are not left behind onshore or travel with the individual, no matter what their status or location is. The four foundational principles<sup>19</sup> of GDHRAS are mentioned below:

1. Human rights are universal; they apply at sea, as they do on land.
2. All persons at sea, without any distinction, are entitled to their human rights.
3. There are no maritime-specific reasons for denying human rights at sea.
4. All human rights established under both treaty and customary international law must be respected at sea.

Some of the key human rights in international human rights instruments relevant to maritime migration include:

- **Right to Life:** UDHR, art. 3; CRC, art. 6; ICCPR, art. 6; ICRMW, art. 9; ICRPD, art. 10.
- **Right to Seek Asylum:** UDHR, art. 14; African Charter, art. 12(3); Arab Charter, art. 28.
- **Right to Non-Refoulement:** CAT, art. 3(1); ICCPED, art. 16(1); 1951 Refugee Convention, art. 33.
- **Right to Non-Discrimination:** UDHR, art. 2; CEDAW; CRC, art. 2; ICCPR, arts. 24 and 26; ICRPD, arts. 4–7.

---

<sup>19</sup> Human Rights at Sea, The Geneva Declaration on Human Rights at Sea (2022) <https://www.humanrightsatsea.org/GDHRAS> accessed 30 July 2025.

- **Right to Access Justice:** UDHR, art. 10; CRC, art. 40(2); ICPPED, art. 24; ICCPR, art. 14; ICRPD, art. 13; 1951 Refugee Convention, art. 16.
- **Right to Leave any Country:** UDHR, art. 13(2); CRC, art. 10; ICCPR, art. 12; ICERD, art. 5(d)(ii); ICRPD, art. 18(1)(c).
- **Right not to be Arbitrarily Arrested or Detained:** UDHR, art. 9; CRC, art. 37(b); ICPPED, arts. 1 and 17(1); ICCPR, art. 9; ICRMW, art. 16(4).

For refugees and migrants, the sea is not just a route; it is often the last port for them. At sea, where borders become blurred and jurisdictions become irrepressible for those migrants, human rights become only a faithful shield.

## **RECOMMENDATIONS IN CASES OF HUMAN RIGHTS VIOLATIONS AT SEA**

**Enshrine human rights obligations into national or migration and maritime law:** States must impart binding human rights obligations, particularly the rights to life, freedom from torture and non-refoulement under the core human rights instruments into national maritime law and migration enforcement.

**Prohibit Pushbacks and expulsion at sea:** All forms of maritime pushbacks and expulsions must be prohibited in national law and policy and must be treated as forms of gross human rights violations.

**Acknowledge extraterritorial human rights obligations:** States must acknowledge that human rights obligations apply extraterritorially, including via flag state jurisdiction and operations conducted by private actors under state direction.

**Generate independent monitoring and complaint mechanisms:** Establish independent mechanisms at sea borders for the victims of maritime rights violations so that they can access effective remedies.

**Prioritise protection for vulnerable groups at sea:** States must enact specific legal safeguards for vulnerable sea migrants, including women, children, persons with disabilities, and others.

## CONCLUSION

"Refugees do not drown because the sea is wild; they drown because the law is violent where it should scream." Refugees' cross oceans not for adventure but for survival. When they drown, it is not the sea that kills them; it is policy choices that prioritise symbolic border enforcement over human rights. The oceans are not lawless, but when law is used to justify pushbacks & delay rescue, it becomes the centre of injustice for the survivors of the sea. International human rights, under the core human rights frameworks, to retain legitimacy, must be enforced at the territorial borders, in boats and on the open water. Until then, the open sea will continue to swallow those we were promised rights but given none.