

PRINCIPLE OF NON-REFOULMENT AND ITS LIMITS IN THE CONTEXT OF CONFLICTS IN SYRIA AND UKRAINE

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Abstract

This paper examines complexities and dynamics surrounding the principle of non-refoulment within the context of the conflicts in Syria and Ukraine, both of which significantly influence European Union refugee policies. While one conflict is intrastate and the other interstate, each of them plays a pivotal role in shaping how refugees are received and treated within the European Union. The study explores the legal framework, practical applications, and arguments concerning exceptions to non-refoulment, focusing on its significance. Furthermore, it highlights contrasting responses that reveal disparities in treatment and pose challenges, such as contradictory safety assessments in Syria and variations in the European Union's reception of the Ukrainian refugees. The swift activation of the Temporary Protection Directive (TPD) in Ukraine serves as a model for effective international response, yet critiques emerge regarding unequal treatment and perceptions of racial bias. Conversely, the Syrian situation highlights the complexity of the crisis with debates over safety assessments and the reluctance of certain countries to accept refugees. While security concerns might occasionally warrant the categorization of refugees, such actions must strictly adhere to the principles outlined in international law and human rights norms. The study underscores the importance of upholding the non-refoulment principle in addressing the refugee crisis amidst present-day complexities and challenges.

Keywords: *non-refoulment, Syria, Ukraine, refugees, human rights*

Introduction

Migration, whether voluntary or involuntary, has always been a defining aspect of human history. Among the most common reasons for migration is a vision of a better economic future, or in the case of those fleeing from conflict, a hope for a more stable and safer living environment. In recent years, parts of the world where the life or liberty of a person would be threatened have multiplied. Several new conflicts have emerged, and the state of ongoing ones has worsened significantly. Since October 2022, the UNHCR has had to declare a record 46 emergencies in 32 countries (United Nations, 2023a). Amidst a backdrop of escalating conflicts, the plight of refugees who face or might face involuntary repatriation has again come to the forefront and thus deserves closer attention.

As conflicts continue to proliferate and worsen, as evidenced by the recent emergencies declared by the UNHCR in numerous countries, including Syria and Ukraine, the need for adherence to the principle of non-refoulment becomes urgent. Although the unfolding events in Israel, Gaza, and Ukraine compete for the world's attention, it's imperative that international institutions such as the United Nations have the capacity to address multiple crises simultaneously. Coordinated international response efforts are crucial as conflicts, violence, and persecution persist globally, resulting in the loss of lives, injuries, and the displacement of innocent civilians. Often, these atrocities occur with blatant disregard for the fundamental principles of warfare and basic human decency (Grandi, 2023). The significance of the United Nation's ability to address multiple crises simultaneously was stressed during the 78th session of the United Nations General Assembly Third Committee, where concerns were voiced over ongoing conflicts, including those in Afghanistan, Myanmar, Ukraine, and Palestine. The alarming repatriations of North Koreans against their will were also highlighted by the representative for the Republic of Korea, Kim Sangjin (United Nations, 2023b).

Yet, despite the numerous human rights concerns and the principles of non-discrimination enshrined in international law, the fact remains that states maintain the authority to regulate the presence of foreigners within their territories. This prerogative, however, is not absolute. The principle of non-refoulment is defined in Black's Legal Dictionary as "a refugee's right not to be expelled from one state to another, especially to one where his or her life or liberty would be threatened," (Garner, 2004, p. 1083) is considered to be one of the pillars of international law, whether treaty-based or customary, covering areas such as human rights, humanitarian, or refugee law.

While acknowledging the broader landscape of displacement and persecution in the world, this paper narrows its scope for reasons of clarity and depth to the wars in Syria and Ukraine. These two conflicts have been consciously chosen with the aim of comparing an intrastate and an interstate ongoing conflict, both of which have produced the highest number of refugees in recent times, and both of which have significantly affected European Union responses and policies towards refugees. The paper aims to provide insights

into the complexities surrounding the non-refoulement principle within these specific contexts.

1. Legal Framework

The non-refoulement principle is primarily codified in Article 33 of the 1951 Refugee Convention (henceforth Convention), which was initially intended to protect European refugees of the Second World War, and further expanded by its 1967 Protocol. It should be noted that the English version of the Convention intentionally uses the French term “refouler” and its derivatives, despite the existence of the synonymous term “return” in English, which is also employed in the Convention. The French term was selected to officially acknowledge the traditional civil law interpretation. However, it was established that this understanding would not be applicable in situations where there was a genuine threat to national security or public order due to a large-scale influx of people (Hathaway, cited in Haertel, 2022, p. 9), therefore limiting the situations which the principle covers. Similarly, the definition of a refugee in Article 1 of the Convention is occasionally interpreted narrowly, despite many major international and regional treaties warning against doing so. For example, some nations do not consider those fleeing environmental disasters (Tiryaki, 2023), domestic violence, poverty, and even indiscriminate violence covered by the definition (Luquerna, 2022).

The principle of non-refoulement has also been incorporated in a number of international human rights treaties, such as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 3 and 22), and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (Article 16). The principle is explicitly included in multiple regional legislatures in Americas, Asia and Europe, such as the 1985 Inter-American Convention to Prevent and Punish Torture (Article 13), the 1969 American Convention on Human Rights (Article 22), the 1966 Bangkok Principles on the Status and Treatment of Refugees (Article III), the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article II and V), the 1984 Cartagena Declaration on Refugees (III,5) and more generally, the Charter of Fundamental Rights of the European Union, European Convention on Human Rights and Declaration on Territorial Asylum.

Human rights bodies on an international scale, regional human rights courts as well as domestic judicial systems agree that this principle is implicitly guaranteed by the obligations to uphold and respect human rights (OHCHR, n.d.). The prohibition of refoulement can be codified as a right on its own, or alternatively, as an inherent element within other rights (Gillard, 2008, p. 708). This principle applies at all times, to all migrants irrespective of migration status and it guarantees that no one should be returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm (OHCHR, n.d.).

Lastly, the principle of non-refoulement also explicitly appears in international humanitarian law. For example, Article 45 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War stipulates that under no circumstances should a protected individual be sent to a nation where they might face persecution due to their political views or religious beliefs. Furthermore, although not referring to the principle explicitly, it is implicit in the wording of Article 12 of the Third Convention Relative to the Treatment of Prisoners of War, which specifies that prisoners of war can only be moved by the detaining state to another country that is a signatory to the Convention, and only after the detaining state ensures that the receiving state is both willing and capable of adhering to the provisions outlined in the Convention. The main difference between the common interpretations of the principle of non-refoulement and Article 12 is that while the principle forbids transfers if there is a risk that the person could be tortured, persecuted or subjected to other forms of ill-treatment, Article 12 forbids transfer in any case when the rights and protections provided by the Third Geneva Convention cannot be guaranteed (Gillard, 2008, p. 710).

2. Principle of Non-Refoulement in Practice

In practice, the non-refoulement principle is recognized as an essential safeguard within international human rights, refugee, humanitarian, and customary law (OHCHR, n.d.). It is a foundational principle of international refugee and human rights law that prohibits states from returning refugees to countries or territories, in which they may be subjected to persecution, torture, inhuman or degrading treatment, or any other human rights violation based on various aspects of their identity, such as nationality, race, religion, being a member of a particular social group or having a particular political opinion (European Commission, n.d.). The right not to be returned to a place of persecution is the most important right an asylum seeker has (*Rights at the border*, n.d.). While the protection as provisioned by the principle of non-refoulement is primarily sought by those seeking asylum or those at risk of being deported, it is important to note that its scope does not need to be so limited. Situations in which states are obliged to provide protection are varied. One such example is when a state assumes effective control over a person (Gillard, 2008, p. 704).

According to the 1966 International Covenant on Civil and Political Rights, if an individual would upon return be subjected to treatment contrary to Article 6, which focuses on the right to life, and Article 7, which focuses on freedom from torture, cruel, inhuman, or degrading treatment or punishment, then there is a duty of a state to provide refuge and respect the principle of non-refoulement. Additionally, the obligation of non-refoulement established by the Covenant stands separate from and in certain aspects is broader than the scope of Article 33 of the Refugee Convention (Hathaway, 2023). In fact, according to Fionnuala Ní Aoláin, a former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering

terrorism, in accordance with relevant international humanitarian law, non-state armed groups may also have the obligation to respect the principles of non-refoulment when acting as a detaining authority. This claim is based on the Fourth Geneva Convention, with Article 45 stating that the entity conducting the transfer is accountable for ensuring the humane treatment of the individuals being transferred and guaranteeing that they will not face discriminatory treatment or persecution from the receiving authority (Aoláin, 2023, p. 14).

2.1. Scope and Exceptions

Most importantly, the ban on refoulement is recognized as a part of customary law in international law. All States (and perhaps non-state armed groups too), regardless of whether they are signatories of treaties and similar legally binding documents that explicitly or implicitly address the principle of non-refoulment, have an obligation to uphold the principle (Luquerna 2022). The main aim of the principle is to protect individuals against life-threatening situations, such as the death penalty and other cruel punishments. It also protects minors from child recruitment and subsequent participation in hostilities. Under refugee law, it primarily protects refugees against returning to places where they would be in danger of being persecuted. In international humanitarian law, the principle of non-refoulment pertains solely to particular groups of individuals impacted by armed conflicts. However, if a pertinent danger exists in the state to which the person is to be transferred, any person under a state's jurisdiction is protected under human rights law. Despite certain limited exceptions acknowledged by refugee law, the principle remains unconditional, regardless of alternative legal frameworks (Rodenhäuser, 2018).

In human rights law, the principle of non-refoulment is absolute and applies universally without any exception, irrespective of a person's citizenship, nationality, statelessness, or migration status. It is an integral component of the prohibition against torture and various forms of mistreatment. Consequently, its scope under relevant human rights law is broader than that in international refugee law. Furthermore, it applies beyond the borders of a state that exercises authority or control (OHCHR, n.d.). Non-refoulment has been described on several occasions as the cornerstone of refugee protection. As such, there would be no protection framework without it, as there would be no obligation for states to provide protection for asylum seekers, let alone grant them other rights pertaining to refugee status (Kamal, 2021, pp. 35–36). To propose any exceptions to the principle of non-refoulment is therefore contradictory to the spirit of international refugee law, international humanitarian law, and the very purpose of their legal frameworks (Kamal, 2021, p.38).

Despite this, there are arguments supporting the possibility of an exception to the principle, the most common being in cases of mass influx. Article 1(F) of the Convention specifies three specific circumstances under which its provisions do not apply: first when a person has committed a crime against peace, a war crime, or a crime against humanity, as defined in the

international instruments; second, when a person has committed serious, non-political crimes outside the country of refuge prior to their admission to that country as a refugee; and third, when a person has engaged in acts contrary to the purposes and principles of the United Nations. Additionally, Article 33(2) of the Convention states that a refugee can be denied protection outlined in this provision if there are valid reasons to consider such persons as a security risk to the host nation or if they represent a threat to the local community due to a conviction for a notably severe offense confirmed by a conclusive verdict.

To support the argument that the non-refoulement principle is not absolute, the second paragraph of Article 33 refers to mass influx situations as potentially presenting a danger to national security. In short, it is an unexpected arrival of a large number of individuals on a large scale that can be interpreted as an exception to non-refoulement. A mass influx situation, although lacking an official legal definition, is characterized by two key factors: the size of the influx and the suddenness of the arrival (Durieux & McAdam, 2004, p. 17). Indeed, a number of states claim the right to close their borders or even to return the refugees during a mass influx situation (Long, 2010). In doing so, states may wish to argue for an exception from the principle of non-refoulement on two grounds: (a) a mass arrival of refugees that can potentially cause a public emergency and (b) a mass influx as a potential threat to national security. Yet, using either of these reasons to deviate from non-refoulement might not be sustainable (Kamal, 2021, p. 33). As Kamal points out, states have been blatantly violating their non-refoulement obligations, thereby endangering numerous lives (p.30) as the dangers to security referred to in Article 33 are offenses committed by an individual (Hathaway, cited in Haertel 2022, p.13). Considering that the right to non-discrimination is a fundamental pillar of the principle of non-refoulement, it seems unreasonable to grant different rights to those arriving individually compared to those arriving in groups (Haertel 2022, p.14).

In addition to the provisions stipulated in Article 1(F), Article 33(2) further specifies that the refugee must pose a danger to the security or to the community of the country of refuge to be exempt. The provision is therefore attempting to prevent a future threat, rather than one from the past (Lauterpacht & Bethlehem, 2003, p. 129). Consequently, if the conditions for exclusion under Article 1(F) have not been met, it is unlikely that a refugee would be legally excluded in accordance with the provisions of Article 33(2). Nevertheless, when examining the 1951 Convention in its entirety, Lauterpacht and Bethlehem contend that Article 33(2) should be interpreted as applying to refugees, who after being admitted to a country, are convicted of a notably grave crime committed either within the host country or elsewhere. Such a conviction should lead to the assessment that such a refugee poses a threat to the community of that country (p.130).

3. Application of Non-Refoulement in the Current Major Conflicts – Examples of Syria and Ukraine

3.1. Syria

Over the past decade, the war in Syria has resulted in an average of 84 civilian deaths per day, potentially totaling up to 306 887 by the end of March 2021, as reported by OHCHR (*Behind the Data*, 2023). These numbers are likely increasing each day. Meanwhile, available data indicates that the ongoing situation with Syrian refugees is pushing the boundaries of the non-refoulement principle. Since the conflict started in March 2011, more than 14 million Syrians have been forced to leave their homes, according to UNHCR (2024), resulting in massive numbers of refugees and internally displaced persons. Currently, Syrian refugees face the greatest amount of pressure to return since the civil war broke out 13 years ago, with countries neighboring Syria, such as Türkiye and Lebanon sometimes forcing refugees to return (European Asylum Support Office 2021, 12–17).

Syria's readmission to The Arab League¹, from which it was suspended in 2011, has provided a convenient pretext to claim that the country is now stable and safe. Millions of Syrians sought asylum in Türkiye due to many reasons, the main one being proximity. As a result, Türkiye is currently the country with the highest number of Syrian refugees (3,332,896 Syrian refugees according to the latest available statistics from the summer of 2023 provided in UNHCR Data Finder)². Upon the EU-Turkish refugee agreement of 2016 (*EU-Turkey Statement & Action Plan*, 2016) Türkiye receives a financial contribution from the EU in return.

According to the latest UNHCR statistics from 2023, Türkiye, Lebanon, and Jordan together host around 4.8 million of the region's 5.3 million registered Syrian refugees (*Refugee Data Finder*, n.d.). These states, facing either political or economic crises and declining support from international donors, are reportedly forcibly deporting Syrian refugees (Dhingra, 2023).

Yet the EU continues to outsource its protection obligations in these states. When the EU countries shift responsibility to neighboring countries such as Türkiye or Lebanon, they might be risking violation of non-refoulement. Concentrating a high number of refugees in one region has already proven to lead to many complications. Across Europe, nations are displaying a growing reluctance to assume refugee protection duties, while the EU persists in its efforts to outsource border controls and refugee hosting (Stel & Lindberg, 2023). In addition to the increasing pressure from regional host nations for the

¹ On 7 May 2023, the Arab League reinstated Syria after more than ten years of suspension, solidifying the efforts within the region to normalize relations with President Bashar al-Assad (Lewis & Safty, 2023).

² According to the latest statistics from 18 April 2024 provided by Republic of Türkiye Ministry of Interior's Presidency of Migration Management, there are 3 116 996 Syrians under temporary protection in Türkiye (*Distribution of Syrians under Temporary Protection by Year*, n.d.).

return of refugees to Syria, this creates a potential danger where optimistic expectations about stability in Syria may result in a dual deterioration in terms of refugee protection and adherence to the principle of non-refoulement.

Research indicates that European and Middle Eastern countries could use each other's rhetoric and actions to rationalize their own deportations (Stel & Lindberg, 2023). The increase in anti-refugee rhetoric fuels violence and discrimination against them. According to Human Rights Watch, continuous political and public hostility against refugees, along with the mismanagement of Lebanon's economic crisis, has resulted in Syrian refugees facing impoverishment and deliberate unlawful deportations. Therefore, media outlets and political figures should prioritize protecting the rights of all individuals—including refugees—rather than further encouraging violence against them and blaming them for a country's own shortcomings (2023).

In this situation, the measures aimed at regional normalization³ in regard to the al-Assad regime and the subsequent narrative suggesting that Syria is a safe country for repatriation, create concerns about the potential for coerced mass returns (Stel & Lindberg, 2023). Furthermore, Syrian refugees, particularly those in Lebanon and Jordan, are concerned that the move by Arab states to normalize relations with Assad may have negative consequences for them. They fear that they could be forcibly sent back and face the risk of detention or death at the hands of a vengeful regime (Khalifa & Hiltermann, 2023).

Some European states have justified sending Syrians back and preventing the arrival of new refugees in Europe by arguing that Syria, or at least parts of it, is safe to return to. The most noticeable example is Denmark which has withdrawn the protected status of a significant number of Syrian refugees. Despite this assertion, due to the absence of diplomatic relations with Syria, refugees who contest the return rulings cannot be deported by force (Stel & Lindberg, 2023).

The position of the EU on the al-Assad regime and refugee returns to Syria is in fact more ambivalent than one might assume. While officially the EU remains firmly against the al-Assad regime and has acknowledged that the conditions in Syria are not safe (Baladi, 2023), member states such as Italy (*Far-Right Italy Government Mulls Syria Embassy Reopening*, 2019) and Hungary (*Hungary Looking to Upgrade Diplomatic Relations with Assad's Syria*, 2019) have declared their intentions to re-open embassies in Damascus. However, as of now, neither country has followed through with reopening its embassy in the capital of Syria. Since 2012, the Czech Republic stands as the only EU country with its embassy operating at full capacity (*O Velvyslanectví*, n.d.). Bulgaria (*Syria*, n.d.) and Germany (*German Missions in Syrian Arab Republic*, n.d.) operate their embassies in Damascus at limited size. According to information available on the respective Foreign Ministry websites, the

³ Some of the countries in the region, which started the process of normalization of their relationship with the al-Assad regime, include Saudi Arabia, the UAE and Jordan (Ioanes, 2024).

majority of the EU states have either relocated their consular activities to Beirut or elsewhere in the region or have no diplomatic presence in Syria.

Syrian refugees in Lebanon also face deportation. It has been reported that since April 2023, the Lebanese Armed Forces have been raiding the houses of Syrian refugees in Lebanon, and the seized refugees were deported almost immediately. Many of these refugees are even registered or known to UNHCR (Human Rights Watch, 2023). According to information provided by deportees to Amnesty International, they were not given an opportunity to speak with a lawyer or UNHCR, nor were they allowed to challenge their deportation or argue their case further (Amnesty International, 2023). In addition to the deportations, discriminatory measures against Syrians, such as curfews and limitations on access to housing have been imposed across the country. Moreover, Syrians were required to share their personal information and identification documents with local authorities, under the threat of deportation if they did not comply (Human Rights Watch, 2023).

According to the Amnesty International reports, in 2019, Lebanon's Higher Defence Council issued orders for the deportation of Syrian refugees entering Lebanon illegally. By December 2020, a total of 6002 Syrians had been deported, as confirmed by the Directorate of General Security in a letter to Amnesty International (2023). Meanwhile, a 2021 report from Amnesty International documented numerous egregious violations against Syrian refugee returnees. This report highlighted the experience of 66 individuals, including 13 children, who were subjected to severe mistreatment by Syrian intelligence officers (2021a). The majority of these children had returned from Lebanon, with 2 having been deported. Upon their return to Syria, they faced unlawful or arbitrary detention, torture, and other forms of mistreatment, directly linked to their perceived association with Syria's political opposition and their status as refugees (Amnesty International, 2021b).

3.2. Ukraine

The situation in Ukraine, due to the Russian military invasion, can serve as a comparison of different approaches and treatments, particularly from the perspective of the EU. It has been estimated that over one million individuals have fled Ukraine to neighboring countries within the first week of the war (Chachko & Linos, 2022). In fifty-seven days, there were more than 5.1 million refugees, more than 10% of the population of Ukraine (Luquerna, 2022). The main obstacle to return continues to be safety and security concerns as the invasion and international armed conflict continues. Despite these obstacles and the inherent danger, the vast majority of Ukrainian refugees want to return home (Billing, 2023).

The Russian invasion of Ukraine prompted the European Union to develop a swift response. On 2 March 2022, the European Commission rapidly proposed to activate the Council Directive 2001/55/EC also known as the EU Temporary Protection Directive (TPD). This directive, developed in 2001 to manage mass influxes of refugees fleeing conflict in the Balkans, had never

been put into action before. On 4 March 2022, the European Council unanimously adopted the Council Implementing Decision (EU) 2022/382, granting Ukrainian refugees the right to live, work, and receive benefits in an EU country of their choice for the period of at least one year (*Temporary Protection*, n.d.). Some of the rights and provisions granted by the TPD to Ukrainian refugees include housing and residence permit (Articles 8 and 13), information on temporary protection (Article 9), access to the asylum procedure (Chapter IV), employment, medical care, and social welfare (Article 12-13), education for minors (Article 14), and reunification of separated families (Article 15). This applies to all Ukrainians, regardless of whether they have already left the country or will do so in the future. Furthermore, the plan applies to all Ukrainians seeking protection, not just those with refugee status, and to their family members, broadly defined. It applies to stateless individuals and refugees, as it does to citizens equally.

According to Article 2(1) of Council Implementing Decision (EU) 2022/382, three specific groups fleeing Ukraine are eligible for protection under TPD: Ukrainian nationals residing in the country before the date of the Russian invasion, stateless persons, nationals of third countries who were receiving protection in Ukraine before the invasion, and family members of these two groups. However, as emphasized by Kienast, Tan, and Vedsted-Hansen, the TPD does not create any separate legal status, such as the refugee status or subsidiary protection status for persons granted protection under the Directive 2011/95/EU of the European Parliament and of the Council, also known as Qualification Directive for those under temporary protection.

Conversely, it is clear from both Recital 10 and Articles 2(a), 3, and 17 of TPD that individuals granted temporary protection might potentially meet the criteria for refugee or subsidiary protection status, however, their exact status remains to be decided (Kienast et al., 2022). In regard to the application of the TPD by individual states, as per Article 2(3) of the Council of the European Union's Decision, individual Member States are allowed a choice whether to apply the TPD or other comparable measures for yet another group—stateless persons without refugee status and nationals of a third country who are permanent residents in Ukraine who would not be safe upon return to their home country.

Never before has there been such a degree of choice regarding the country where those in need of safe relocation can settle and work, nor have such extensive rights been granted. However, the EU Council Decision highlights the disparity between seemingly conflicting legal principles. As some scholars and international agencies were quick to point out, it treats citizens of Ukraine and their families very differently in comparison to refugees from the Middle East, such as Syrians (Wagner, 2015) or Afghans (*IRC*, 2023), who could as well have been offered protection on a group basis, thus raising questions about preferential treatment and discrimination between categories of forced migrants.

Although the reaction of European nations to the Ukraine crisis drew significant criticism for alleged racial discrimination against asylum seekers

from the Middle East at borders, it is still arguably the best contemporary example of genuine responsibility sharing, a concept in refugee law and policy, which is increasingly receiving scholarly attention (Chachko & Linos, 2022).

Despite all this positive approach, the advisory against return, issued by UNHCR soon after the invasion in March 2022 (UNHCR, 2022), remains valid. Civilians fleeing Ukraine—regardless of their nationality—are to be given refuge and respectful treatment in the country they flee to, and all countries are urged to respect the principle of non-refoulment. Furthermore, the need for international protection should not be disregarded, despite the fact that many refugees have returned to Ukraine short-term. The UNHCR advocates for host states to adopt a flexible stance regarding brief visits to Ukraine, as it can assist in making well-informed choices regarding longer-term returns. The legal status and rights linked to it in the host country should remain unaffected by visits to Ukraine lasting less than three months (Billing, 2023).

Overall, the global response to refugees has been described as a movement of “tremendous solidarity and hospitality”. The European Commission promised to welcome refugees with “open arms”. Estimating the arrival of 200,000 individuals, the United Kingdom relaxed its visa requirements for refugees. The European Union offered Temporary Protection for at least three years to these refugees, and the United States attempted to fast-track the application process, pledging to accept 100,000 refugees from Ukraine (Luquerna, 2022).

Even though those fleeing the war in Ukraine could theoretically be refused refugee status by any government based on the 1951 Convention—as it is the prerogative of each individual state to decide how to incorporate the Convention into their national legislature—more extensive safeguards based on regional agreements or international human rights law can offer international protection and/or refugee status. According to Article 15(c) of the EU Qualification Directive, individuals whose life or safety would be at risk due to indiscriminate violence in times of international or internal armed conflict are eligible for protection. Additionally, for an illustration, the Cartagena Declaration provides an even broader definition of a refugee than the Convention, as it also includes individuals who have left their homeland due to threats to their lives, safety, or freedom arising from widespread violence, foreign invasion, internal strife, extensive human rights abuses, or other situations severely disrupting public order (III,3). Currently, there are no significant contentions suggesting that individuals escaping Ukraine are not refugees, and they are referred to as such in global media (Luquerna, 2022).

The situation in Ukraine has therefore unveiled the existing hierarchy of refugees that exists in modern Europe. There seems to be a distinction between the good, bad, and ideal refugees. The issue with the concept of the “ideal refugee” is in its tendency to treat refugeehood as an exception, fostering debates on the deservingness of protection for refugees that extend well beyond the parameters outlined in the Convention (Su, 2022). One example of this is the additional visa exemption Ukrainian citizens have. In addition to having the freedom to select their resettlement location under the TPD, these individuals

also enjoy unrestricted movement within the Schengen area. Conversely, some other individuals seeking safe relocation are barred by law from undertaking “secondary movement” because of the legal interaction between the Schengen Borders Code and the Dublin Regulation (Kienast et al., 2022).

Conclusion

In essence, this study has delved into complexities surrounding the principle of non-refoulement, particularly in the context of the Syrian and Ukrainian refugee crisis. While certain aspects of this principle remain steadfast and universally understood, such as its fundamental prohibition of returning individuals where they face serious harm, nuances arise in this interpretation and application. Examining the cases of Ukraine and Syria, we witness contrasting responses and challenges. The swift activation of the Temporary Protection Directive (TPD) in Ukraine exemplifies an effective international response, yet criticism surfaces regarding disparities in treatment and the perception of racial discrimination. Conversely in Syria, the conundrum of safety assessments and the reluctance of certain countries to accept refugees underscores the complexity of the crisis.

While the 1951 Convention and its accompanying Protocol may not suffice in the current refugee crisis, their principles remain imperative. Action is needed to alleviate the burden shouldered by countries like Türkiye, Lebanon, or Jordan (in the case of Syrian refugees). Moreover, addressing the root causes of displacement and recognizing that the non-refoulement principle operates within a rapidly evolving global context is paramount. Contemporary challenges such as climate change-induced displacement and the proliferation of conflicts demand innovative approaches and heightened international cooperation. Additionally, the nexus between non-refoulement and other human rights principles, such as the right to asylum and the prohibition of discrimination, necessitates a holistic approach to refugee protection.

Although relevant security issues might often justify the “classification” of refugees, it needs to be done in strict accordance with the principles enshrined in international law and human rights norms *per se*. By upholding the dignity, safety, and rights of refugees without compromising on international law, we contribute to long-term peace and stability.

References

- American Convention on Human Rights, 'Pact of San Jose', Costa Rica (1969).
<https://www.refworld.org/legal/agreements/oas/1969/en/20081>
- Amnesty International. (2021a). *Syria: 'You're going to your death' Violations against Syrian refugees returning to Syria*. Amnesty International.
<https://www.amnesty.org/en/documents/mde24/4583/2021/en/>
- Amnesty International. (2021b, September 7). *Syria: Former refugees tortured, raped, disappeared after returning home*. Amnesty International.
<https://www.amnesty.org/en/latest/news/2021/09/syria-former-refugees-tortured-raped-disappeared-after-returning-home/>
- Amnesty International. (2023, April 24). *Lebanon: Authorities must halt unlawful deportations of Syrian refugees*. Amnesty International.
<https://www.amnesty.org/en/latest/news/2023/04/lebanon-authorities-must-halt-unlawful-deportations-of-syrian-refugees/>
- Aoláin, F. N. (2023). *Non-Refoulement and the Obligations of States to Persons Arbitrarily Detained in North-East Syria: Position Paper of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*.
<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/non-refoulement-in-context-repatriation-from-northeast-syria-oct2023.pdf>
- Baladi, E. (2023, March 20). *Italian Rapprochement with Assad: Supported by Right, Constrained by West*. The Syrian Observer.
<https://syrianobserver.com/news/82223/italian-rapprochement-with-assad-supported-by-right-constrained-by-west.html>
- Bangkok Principles on the Status and Treatment of Refugees ('Bangkok Principles') (1966).
<https://www.refworld.org/legal/resolution/aalco/1966/en/18604>
- Behind the data: Recording civilian casualties in Syria*. (2023, May 11). OHCHR. <https://www.ohchr.org/en/stories/2023/05/behind-data-recording-civilian-casualties-syria>
- Billing, K. L. (2023, July 7). *Ukraine – UN Refugee Agency update on solutions and challenges to return and recovery amid ongoing war*. UNHCR.
<https://www.unhcr.org/news/briefing-notes/ukraine-un-refugee-agency-update-solutions-and-challenges-return-and-recovery>
- Cartagena Declaration on Refugees, Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984. Retrieved 29 March 2024, from <https://www.unhcr.org/fr-fr/en/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central>
- Chachko, E., & Linos, K. (2022, March 5). *Sharing Responsibility for Ukrainian Refugees: An Unprecedented Response*. Lawfare.

- <https://www.lawfaremedia.org/article/sharing-responsibility-ukrainian-refugees-unprecedented-response>
- Charter of Fundamental Rights of the European Union (2000). https://www.europarl.europa.eu/charter/pdf/text_en.pdf
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* (1984). OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.* (n.d.). Retrieved 29 March 2024, from <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949>
- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.* (n.d.). Retrieved 29 March 2024, from <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>
- Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, 32001L0055 (2001). <http://data.europa.eu/eli/dir/2001/55/oj/eng>
- Council Implementing Decision (EU) 2022/382 of 4 March 2022 Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection, 32022D0382 (2022). http://data.europa.eu/eli/dec_impl/2022/382/oj/eng
- Declaration on Territorial Asylum (1967). <https://www.refworld.org/legal/resolution/unga/1967/en/10415>
- Dhingra, R. (2023, May 2). *Syrian refugees face a grim future without international policy shifts.* Brookings. <https://www.brookings.edu/articles/syrian-refugees-face-a-grim-future-without-international-policy-shifts/>
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast), 32011L0095 (2011). <http://data.europa.eu/eli/dir/2011/95/oj/eng>
- Distribution of Syrians under Temporary Protection by Year.* (n.d.). Republic of Türkiye Ministry of Interior Presidency of Migration Management. Retrieved 23 April 2024, from <https://en.goc.gov.tr/temporary-protection27>
- Durieux, J.-F., & McAdam, J. (2004). Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass

- Influx Emergencies. *International Journal of Refugee Law*, 16(1), 4–24. <https://doi.org/10.1093/ijrl/16.1.4>
- European Asylum Support Office. (2021). *Syria situation of returnees from abroad: Country of origin information report*. Publications Office. <https://data.europa.eu/doi/10.2847/980660>
- European Commission. (n.d.). *Non-refoulement*. https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/non-refoulement_en
- European Convention on Human Rights*. (1950). European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_ENG
- EU-Turkey Statement & Action Plan*. (2016). Legislative Train Schedule - European Parliament. <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>
- Far-right Italy government mulls Syria embassy reopening*. (2019, January 11). The New Arab; The New Arab. <https://www.newarab.com/news/far-right-italy-government-mulls-syria-embassy-reopening>
- Garner, B. A. (2004). Nonrefoulement. In *Black's Law Dictionary* (Eighth, p. 1083). Thomson West.
- German missions in Syrian Arab Republic*. (n.d.). German Federal Foreign Office. Retrieved 23 April 2024, from <https://www.auswaertigesamt.de/en/aussenpolitik/laenderinformationen/syrien-node/syria/227514>
- Gillard, E.-C. (2008). There's no place like home: States' obligations in relation to transfers of persons. *International Review of the Red Cross*, 90(871). <https://www.corteidh.or.cr/tablas/R22409.pdf>
- Grandi, F. (2023, October 31). *High Commissioner's statement to the Third Committee of the United Nations General Assembly*. UNHCR. <https://www.unhcr.org/news/speeches-and-statements/high-commissioner-s-statement-third-committee-united-nations-general>
- Haertel, L. M. (2022). A Non-Refoulement Exception? An Analysis of Article 33 of the 1951 Convention Relating to the Status of Refugees in Light of the General Rule of Interpretation of Treaties. *Revista Direito UFMS*, 8(1), Article 1. <https://doi.org/10.21671/rdufms.v8i1.12386>
- Hathaway, J. C. (2023). Trapped in Gaza. *Verfassungsblog*. <https://verfassungsblog.de/trapped-in-gaza/>
- Human Rights Watch. (2023, May 11). *Joint Statement- Lebanon: Halt Summary Deportations of Syrian Refugees*. Human Rights Watch. <https://www.hrw.org/news/2023/05/11/joint-statement-lebanon-halt-summary-deportations-syrian-refugees>
- Hungary looking to upgrade diplomatic relations with Assad's Syria*. (2019, September 11). The New Arab; The New Arab. <https://www.newarab.com/news/hungary-looking-upgrade-diplomatic-relations-assads-syria>

- Inter-American Convention to Prevent and Punish Torture*. (1985). <https://www.oas.org/juridico/english/treaties/a-51.html>
- International Convention for the Protection of All Persons from Enforced Disappearance (2006). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>
- International Covenant on Civil and Political Rights*. (1966). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Ioanes, E. (2024, April 2). *Why Arab Countries Are Welcoming Back Assad*. Foreign Policy. <https://foreignpolicy.com/2023/06/14/why-arab-countries-are-welcoming-back-assad/>
- IRC: *New research reveals the EU's "staggering neglect" of Afghan refugees*. (2023, May 31). International Rescue Committee. <https://www.rescue.org/eu/press-release/irc-new-research-reveals-eu-staggering-neglect-afghan-refugees>
- Kamal, A. (2021). The limits of refugee protection in mass influx situations: Are there exceptions to non-refoulement? *IALS Student Law Review*, 8(2), 30–39. <https://doi.org/10.14296/islr.v8i2.5331>
- Khalifa, D., & Hiltermann, J. (2023, June 29). *Normalising Relations with Syria: How Significant?* International Crisis Group. <https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/syria/normalising-relations-syria-how-significant>
- Kienast, J., Tan, N. F., & Vedsted-Hansen, J. (2022, April 27). *Preferential, differential or discriminatory? EU protection arrangements for persons displaced from Ukraine*. Asile. <https://www.asileproject.eu/preferential-differential-or-discriminatory-eu-protection-arrangements-for-persons-displaced-from-ukraine/>
- Lauterpacht, E., & Bethlehem, D. (2003). *The scope and content of the principle of non-refoulement: Opinion*. <https://www.unhcr.org/sites/default/files/legacy-pdf/419c75ce4.pdf>
- Lewis, A., & Safty, S. E. (2023, May 7). *Arab League readmits Syria as relations with Assad normalise*. Reuters. <https://www.reuters.com/world/middle-east/arab-league-set-readmit-syria-relations-with-assad-normalise-2023-05-07/>
- Long, K. (2010). *No entry! A review of UNHCR's response to border closures in situations of mass refugee influx*. UNHCR Policy Development And Evaluation Service. <https://www.unhcr.org/sites/default/files/legacy-pdf/4c207bd59.pdf>
- Luquerna, A. (2022, April 22). *Why the Discrimination against Non-white Ukrainian Refugees is a Violation of International Law*. *Opinio Juris*. <https://opiniojuris.org/2022/04/22/why-the-discrimination-against-non-white-ukrainian-refugees-is-a-violation-of-international-law/>

- O velvyslanectví [About Embassy]*. (n.d.). Velvyslanectví České Republiky v Damašku [Embassy of the Czech Republic in Damascus]. Retrieved 23 April 2024, from https://mzv.gov.cz/damascus/cz/o_velvyslanectvi/index.html
- OUA Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted by the Assembly of Heads of State and Government at Its Sixth Ordinary Session, Addis-Ababa, 10 September 1969. Retrieved 29 March 2024, from <https://www.unhcr.org/fr-fr/en/media/oua-convention-governing-specific-aspects-refugee-problems-africa-adopted-assembly-heads>
- OHCHR. (n.d.). *The principle of non-refoulement under international human rights law*. <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>
- Refugee Data Finder*. (n.d.). UNHCR. Retrieved 23 March 2024, from <https://www.unhcr.org/refugee-statistics/>
- Rights at the border*. (n.d.). Human Rights Guide. Retrieved 29 March 2024, from <https://www.humanrightsguide.sk/en/themes/migration-asylum/asylum/access-to-asylum-procedure/rights-at-the-border>
- Rodenhäuser, T. (2018, March 30). *The principle of non-refoulement in the migration context: 5 key points*. Reliefweb. <https://reliefweb.int/report/world/principle-non-refoulement-migration-context-5-key-points>
- Stel, N., & Lindberg, A. (2023, June 14). *Beware of the circular logic encouraging refugee returns to Syria*. The New Humanitarian. <https://www.thenewhumanitarian.org/opinion/2023/06/14/beware-circular-logic-encouraging-refugee-returns-syria>
- Su, Y. (2022, March 9). *Ukraine: The good, bad and ideal refugees*. Deccan Herald. <https://www.deccanherald.com/world/ukraine-the-good-bad-and-ideal-refugees-1089614.html>
- Syria*. (n.d.). Republic of Bulgaria Ministry of Foreign Affairs. Retrieved 23 April 2024, from <https://www.mfa.bg/en/embassyinfo/syria>
- Temporary Protection*. (n.d.). European Commission. Retrieved 29 March 2024, from https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en
- The 1951 Refugee Convention. Retrieved 29 March 2024, from <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>
- Tiryaki, S. (2023). Klimatický utečenec, klimatický migrant, či vnútorný vysídlenec? [Climate refugee, climate migrant or internally displaced person?]. *Paneurópske právnické listy*, VI.(1). <https://www.paneurópskepravnickelisty.sk/index.php/2023/06/14/tiryaki-s/>
- UNHCR. (2022). *UNHCR Position on Returns to Ukraine*. <https://www.refworld.org/policy/countrypos/unhcr/2022/en/124038>

- UNHCR. (2024, March 13). *Syria Refugee Crisis Explained*. USA for UNHCR. <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>
- United Nations. (2023a, October 31). *With Conflicts, Climate Change Pushing Displacement to Record Levels, Third Committee Highlights Need to Ramp Up Refugee Funding, Address Root Causes | Meetings Coverage and Press Releases*. <https://press.un.org/en/2023/gashc4395.doc.htm>
- United Nations. (2023b, November 1). *Highlighting Leap in Displaced Persons Worldwide, Third Committee Underscores Heavy Burden Placed on Developing Host Countries, Dangers of Forced Returns | Meetings Coverage and Press Releases*. <https://press.un.org/en/2023/gashc4396.doc.htm>
- Wagner, M. (2015, December 21). *2015 in review: How Europe reacted to the refugee crisis*. International Centre for Migration Policy Development. <https://www.icmpd.org/blog/2015/2015-in-review-how-europe-reacted-to-the-refugee-crisis>