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# **POLICY PAPER**

**Externalization and the UN Global Compact  
on Refugees: Unsafety as Ripple Effect**

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**ASILE**

Global Asylum  
Governance and  
the European  
Union's Role



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## **Abstract**

This Policy Brief examines recent externalization policy and legal initiatives in Europe that are affecting asylum seekers' and refugees' access to asylum. It analyses the main legal issues and policy challenges characterizing the externalisation of border controls – including the so-called push backs and pull backs by several EU Member States, and the recent unilateral initiatives to externalise asylum processing by the United Kingdom and Denmark governments, in light of their commitments under the UN Global Compact on Refugees and their obligations in international refugee and human rights law. The Policy Brief outlines the profoundly harmful consequences of externalisation of asylum initiatives considering the lessons learned from similar international experiences and their condemnation by relevant United Nations human rights monitoring bodies. It then provides a set of policy recommendations aimed at guaranteeing a genuine system of inter-state responsibility sharing in line with the UN GCR, where the EU plays an active role towards its implementation, and which fully upholds international refugee and human rights standards.

## **Keywords**

Externalisation; Offshoring asylum; push backs; United Nations Global Compact on Refugees

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<sup>1</sup> The webinar was held on 2 February 2022: <https://www.asileproject.eu/externalization-and-the-global-compact-on-refugees/> The Policy Brief draws on insights from the webinar but has been updated in light of subsequent developments and events.

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## 1. Introduction

The end of 2021 marked three years since the adoption of the United Nations Global Compact on Refugees (GCR),<sup>1</sup> an international non-legally binding framework for ‘predictable and equitable responsibility sharing’ to refugee situations, and two years since the first Global Refugee Forum,<sup>2</sup> which brought together a diverse range of actors who collectively committed to contribute to better protection outcomes for refugees around the world through concrete pledges. The first Global Refugee Forum (GRF), convened in December 2019, in many ways presented a breakthrough in international refugee protection in terms of the strong political commitment of both states and non-state actors to a common agenda to increase refugee protection, self-reliance, responsibility sharing and solidarity with both refugees and refugee-hosting nations and local communities.

A first stocktaking event, the High-Level Officials Meeting (HLOM),<sup>3</sup> was held in December 2021 to assess progress and maintain momentum towards the achievement of the objectives of the Compact. In the face of new and re-emerging humanitarian crises, including the large-scale displacement caused by the war in Ukraine and return of the Taliban rule in Afghanistan, and its broader implications, as well as a clear trend towards more protracted displacement situations, the urgency of translating GCR political commitments into action has not diminished.

At the same time, however, low- and middle-income countries continue to shoulder most of the responsibility, hosting more than 83% of the world’s refugees,<sup>4</sup> and lack of political will and leadership remains an impediment for the achievement of more equitable global responsibility sharing system. In some high-income countries, such as Australia, and some European States, recent years have seen hardening of positions and negative rhetoric towards refugees and asylum seekers, and an acceleration of attempts to contain and deter refugee movements and to shift protection responsibility to other countries. Yet, despite this trend, the GCR is curiously quiet on the centrality of access to territory and to asylum to the upholding of the refugee system.

The EU’s response to the refugee displacements emerging from the war in Ukraine has been an uplifting reverse of the negative trend, although in this case, solidarity has been clearly confined to a limited group, raising discrimination concerns. Despite the positive narrative and approach in the response to those displaced from Ukraine, and some sense of momentum at the HLOM in December 2021, it is, however, difficult to ignore the multiple parallel developments and attempts by States to evade responsibility for non-European refugees and their protection through third-country migration management arrangements and recent restrictive changes in asylum law and policy. In particular, renewed efforts by some European States to offshore asylum processing to third countries prompt a range of illegality questions from an international and EU law perspective, as well as more overall concerns of the risk that such transfer models would represent to the global refugee protection and human rights regime.

This Policy Brief describes and analyses these developments in the European context. It explores the relationship between externalization efforts and the GCR with an emphasis on the protection and human rights implications at the level of individual asylum seekers and refugees as well as potential ripple effects to the protection system as a whole. It ends with a set of policy recommendations on how to achieve genuine responsibility sharing by States.

1 UN Global Compact on Refugees - <https://www.unhcr.org/5c658aed4>

2 2019 Global Refugee Forum - <https://www.unhcr.org/programme-and-practical-information.html>

3 2021 High Level Officials Meeting (HLOM): <https://www.unhcr.org/high-level-officials-meeting.html>

4 UNHCR (2022): <https://www.unhcr.org/figures-at-a-glance.html>

## 2. What are externalization policies?

The term “externalization” is applied broadly to describe migration control measures - taken unilaterally or multilaterally by States - that affect the ability of refugees to seek asylum and shift protection responsibilities for people seeking asylum outside the territory of the State. As pointed out by Nikolas Feith Tan in a recent article, the term is not defined in international law, and despite its broad application, it is marred by lack of clear definition or stated scope of activities to which it refers.<sup>5</sup>

The recently released Refugee Law Initiative (RLI) Declaration on Externalization and Asylum defines externalisation as “the process of shifting functions that are normally undertaken by a State within its own territory so that they take place, in part or in whole, outside its territory.”<sup>6</sup> The accompanying analytical paper<sup>7</sup> distinguishes between externalised border controls (including practices of pushbacks) and externalised asylum systems (such as offshore models).

States in some cases present externalization efforts as the humane alternative to what is perceived to be a flawed, unfair, and dangerous global asylum system that grants access to asylum only to those who have the means to make the journey. Measures described under the term have, however, principally the effect of reducing the States’ obligations under international human rights and refugee law, shifting responsibility elsewhere, and often leading to harmful consequences for those seeking safety and protection.

UNHCR distinguishes, in its recent Note on Externalization of International Protection, between lawful and unlawful practices, defining unlawful externalization actions as those that “*involve inadequate safeguards to guarantee international protection as well as shifting responsibility for identifying or meeting international protection needs to another State or leaving such needs unmet.*”<sup>8</sup>

In contrast to externalization policies and practices, the concept of ‘containment’ refers to legal instruments and policy arrangements that aim to confine refugees, asylum seekers and Internally Displaced Persons (IDPs) to their own states or regions through restricting mobility and access to territory and increasing expulsions of people seeking asylum via third-country cooperation. These can, for instance, include restrictive visa regimes, carrier sanctions, the application of the “safe third country” and “first country of asylum” concepts and readmission agreements and arrangements.<sup>9</sup>

For the purpose of this Policy Brief, the term externalization is applied in accordance with the definition of the RLI Declaration. From a legal perspective, measures and practices encompassed by the term are highly different in nature, and their legality and protection implications must be assessed individually. This is particularly so when considering the specificity of the European Union legal system, in particular as regards its founding legal principles enshrined in the Treaties and the EU Charter of Fundamental Rights.

5 Tan N.F. (2021): *Conceptualising externalisation: still fit for purpose?* <https://www.fmreview.org/externalisation/tan>

6 International Journal of Refugee Law (2022), Vol 34, No 1, 114-119. <https://doi.org/10.1093/ijrl/eeac022>

7 Cantor D et al. (2022): Externalisation, Access to Territorial Asylum, and International Law. Analytical Paper, Refugee Law Initiative (RLI)

8 UNHCR Note on the “Externalization” of International Protection (2021): <https://www.refworld.org/docid/60b115604.html>.

9 See e.g., Carrera S and Cortinovis R (2019), The EU’s Role in Implementing the UN Global Compact on Refugees: Contained mobility vs International Protection, CEPS Paper in Liberty and Security in Europe ‘ - <https://www.ceps.eu/ceps-publications/eus-role-implementing-un-global-compact-refugees>.



### 3. Externalization policies and the Global Compact on Refugees

The Global Compacts on migration and refugees were in part born out of the so-called ‘European refugee crisis’ in the EU in 2015-2016, triggered chiefly by the increase of arrivals of people seeking asylum to the EU’s external borders. The EU policy response to the situation within its borders was largely one of containment at all costs and externalization, as seen most notably with the introduction and implementation of the EU-Turkey Statement as of March 2016.<sup>10</sup>

The GCR was intended to strengthen the international response to large movements of refugees based on a “more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees.”<sup>11</sup> It, however, left out an explicit mention of the issue of access to territory and to asylum, which was at the core of the policy debate at the EU level at the time. It also failed to include any references to externalization policies and related non-entry approaches such as e.g., offshoring models, pushbacks, and interceptions at sea, and to reflect and consider its undermining effect on the right to asylum as well as responsibility sharing.<sup>12</sup>

While concerns around the potential risks related to these omissions were initially raised by academia and NGOs during negotiations of the Compact and in the immediate aftermath of the adoption, the result of the omissions is increasingly evident in terms of the effectiveness of the GCR to carry the political commitments forward and hold States accountable.

An [evaluation of the implementation of the GCR three years](#) on in advance of the HLOM in December 2021 concludes that the international community has yet to deliver on its commitments to share responsibility for refugees. The report suggests that “donor states often perceive the GCR as a foreign policy tool, rather than a domestic responsibility.” It explains that current externalization efforts by some European States and the predominant translation of responsibility sharing into a simple financial transaction from donor countries to refugee hosting states are putting international refugee protection and the support to the Compact as a global instrument at risk. While key donors engage under the framework of the GCR, migration management continues to drive the engagement including in terms of funding priorities, recipient countries, and engagement vis-à-vis host country governments.<sup>13</sup>

The absence of assertive and explicit language related to access to territory and to asylum allows States to be seen to honor commitments to the Compact, on the one hand, while seeking to contain and deter refugee populations and externalize protection responsibilities to other States on the other. Rather than providing a basis for challenging this disconnect, the Compact contributes to reinforcing this perception, with its emphasis on support to hosting States through financial and technical support, and its lack of attention to access to territory and to asylum in order to effectively uphold and safeguard States’ legally binding human rights obligations.

10 European Council (2016) :<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

11 UN Global Compact on Refugees - <https://www.unhcr.org/5c658aed4>

12 See also Crisp Jeff (2022): The cruelty of containment: how the world’s wealthiest states are using inhumane and illegal methods to undermine the right to asylum <https://www.against-inhumanity.org/2022/04/29/the-cruelty-of-containment-how-the-worlds-wealthiest-states-are-using-inhumane-and-illegal-methods-to-undermine-the-right-to-asylum/>

13 Danish Refugee Council (DRC), Norwegian Refugee Council (NRC), International Rescue Committee (IRC) 2021: The Global Compact on Refugees Three Years On: Navigating barriers and maximising incentives in support of refugees and host countries: <https://drc.ngo/about-us/for-the-media/press-releases/2021/11/evaluation-of-global-compact-on-refugees/>

## 4. Containment, deterrence and externalized border controls in the European context

Initiatives and efforts by European States to contain, deter and externalize are not new. However, they have gained renewed political attention with the increased arrivals of people seeking asylum in Europe in 2015-2016, reinforcing an overall preoccupation with reducing arrivals of people seeking asylum and refugees to the EU's external borders through migration management cooperation with third countries. This is evident in the EU Pact on Migration and Asylum<sup>14</sup> – a package of legislative files put forward by the EU Commission in September 2020 – where reliance on third countries for the control and management of irregular migration, and the prevention of onward movements of refugee populations, is a key priority.

The general focus on reducing spontaneous arrivals of people seeking asylum and refugees to the EU's territory is also evident in practice. This is illustrated for instance by the continued EU support to the pullbacks, interceptions and forced returns of refugees and people seeking asylum by the Libyan Coast Guard in the Central Mediterranean, despite well-documented human rights consequences;<sup>15</sup> or the ongoing widespread and systematic push-back practices that are happening at multiple EU Member States' external borders<sup>16</sup> - all different practical barriers to accessing protection in the EU.

The EU Pact does not mention the Global Compact on Refugees or in any substantial way, reflect on the commitments to more equitable responsibility sharing therein, although some sections of the Pact more generally address the need for supporting host countries and providing 'legal pathways'<sup>17</sup> While some elements of the Pact related to predictable internal responsibility sharing in the EU are needed, the prominence of reinforced borders, and swift screening and border procedures, as well as a clear underlying focus on containment and deterrence of migration and onward movements of refugees - including through third-country cooperation - are cause for concern and contrast the commitments towards equitable responsibility sharing and more generally States human rights obligations.<sup>18</sup>

## 5. Unilateral efforts by European States to externalize asylum systems

While the EU policies on asylum and migration, and the legislative package under the new Pact on Migration and Asylum, are based on a logic of containment and deterrence, they do not support or underpin the idea of externalizing or 'offshoring' asylum systems. The recent Danish and British attempts to outsource asylum processing and refugee protection in exchange of funding and other inducements for third countries, are clear examples of unilateral externalization efforts by States in the European context.

Denmark was the first EU Member State to pass legislation,<sup>19</sup> establishing the legal grounds for the transfer of people seeking asylum to a third country outside Europe for asylum processing and potential subsequent refugee protection. The law provides that transfers must take place under an international agreement between Denmark and the third country, and that people seeking asylum are to be transferred "unless it would be in breach of Denmark's international obligations."

14 European Commission (2020): [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706).

15 OHCHR (May 2021). 'Lethal Disregard: Search and rescue and the protection of migrants in the central Mediterranean Sea' - <https://www.ohchr.org/en/stories/2021/05/report-call-safeguard-migrants-central-mediterranean-sea>

16 FRA European Union Agency for Fundamental Rights (June 2022) Fundamental Rights Report 2022 <https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022>, Danish Refugee Council et al. (2021-2022) Protecting Rights at Borders <https://drc.ngo/our-work/resources/pushbacks/prab/>

17 European Commission (2020): [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_17](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_17).

18 Carrera S, Vosyliute L, Brumat L and Tan N.F. (2021) Implementing the United Nations Global Compact on Refugees? Global Asylum Governance and the Role of the European Union [https://www.asileproject.eu/wp-content/uploads/2021/07/PB\\_2021\\_26.pdf](https://www.asileproject.eu/wp-content/uploads/2021/07/PB_2021_26.pdf)

19 See critical analysis of the bill by Tan, Nikolas Feith and Vedsted-Hansen, Jens (2022): Denmark's Legislation on Extraterritorial Asylum in Light of International and EU Law; [https://www.ft.dk/ripdf/samling/20201/lovforslag/l226/20201\\_l226\\_som\\_vedtaget.pdf](https://www.ft.dk/ripdf/samling/20201/lovforslag/l226/20201_l226_som_vedtaget.pdf)

While earlier European externalization ambitions have included the resettlement of refugees on European territory, in the Danish model, people seeking asylum found to be in need of international protection upon transfer, would not be afforded protection in Denmark, but in the third country. This model also does not include any commitments in terms of resettlement from Rwanda as part of the cooperation. Similarly, the responsibility to return rejected asylum seekers will fall on the third country.

Whereas the transfer law refers to non-refoulement obligations, it is quiet on the broader set of rights and obligations included in the Refugee Convention, such as e.g., the right to paid employment (Art. 17), the right to education (Art. 22), the right to freedom of movement (Art. 26) and the right to travel documents (Art. 28). The implementation of the law is dependent on a binding agreement with a third country, and it will not enter into force until such a formalized agreement is in place.

While Denmark has not yet secured an agreement with a third country on a transfer scheme, the United Kingdom has succeeded in landing an arrangement with Rwanda on a similar scheme. The UK-Rwanda [Asylum Partnership Agreement \(APA\)](#) is a Memorandum of Understanding (MoU) for the forcible transfer of people seeking asylum who have arrived irregularly. Similar to the Danish model, Rwanda will assume responsibility for the asylum processing, subsequent refugee protection as well as return of rejected individuals seeking asylum. Contrasting the Danish scheme, however, the UK-Rwanda APA includes a resettlement component, and significantly does not rest on a legally binding international agreement. While this may have meant a speedier process in the negotiations with the third country, it is also likely to open it up to legal challenges.<sup>20</sup>

The EU has also spoken out quite clearly against models that transfer asylum processing outside its borders, including the Danish and British externalization attempts. While emphasizing that it “raises fundamental questions on the right to seek asylum,” the EU Commissioner for Home Affairs, Ylva Johansson has also pointed to the risks related to how such responsibility shifting will be perceived by countries outside Europe.<sup>21</sup> The Commissioner has further clarified that such practice “is (...) not possible for Member States bound by the EU asylum acquis.”<sup>22</sup>

The transfer of people seeking asylum to a third country for asylum processing, refugee protection and return is not possible under EU law. It is at odds with the Treaty on the Functioning of the EU, prevailing primary law obligations to comply with the right to asylum and the EU Charter of Fundamental Rights, as well as secondary legislation ensuring the right to asylum, which includes access to asylum procedures. The fundamental right to asylum is also confirmed in the New Pact on Migration and Asylum.<sup>23</sup>

While the United Kingdom is not bound by EU law, Denmark has certain legal obligations in this area under a parallel agreement on the Dublin Regulation as well as commitments on the Returns Directive, which may render such transfer arrangements legally impossible, despite the Danish opt-out from the Common European Asylum System in general. Denmark is also bound by the EU Charter of Fundamental Rights and must uphold the legal principles or values foreseen under Article 2 TEU.

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20 Tan N.F. (2022): [Externalisation of asylum in Europe: Unpacking the UK-Rwanda Asylum Partnership Agreement](#)

21 See e.g., EU Observer (2021): <https://euobserver.com/migration/152193>

22 P-003626/2021 Answer given by Ms Johansson behalf of the European Commission(14.9.2021): [https://www.europarl.europa.eu/doceo/document/P-9-2021-003626-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-9-2021-003626-ASW_EN.html)

23 European Commission (2020): [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

## 6. Harmful consequences of externalized asylum initiatives

There is no shortage of evidence of the harmful consequences of externalized asylum systems. While legal frameworks differ, there are lessons to be learned from international experiences with models of extraterritorial asylum processing such as e.g., the so-called ‘Pacific Solution’ by Australian authorities. The restricted freedom of movement that often accompanies such schemes and the fact that reception centers are often situated in remote areas, contribute to creating zones of exception in which violations of fundamental rights are more likely to occur systematically. At the same time, a lack of clarity about jurisdiction for asylum processing and protection can dilute responsibility and accountability for violations of fundamental rights.<sup>24</sup>

Most notably, Australia’s asylum policy of interception, interdiction, and detention of refugees and those seeking asylum provides a catalogue of lessons learned of the implications from a rights perspective that should be carefully considered by policy makers. The Australian experience demonstrates the devastating impact of the prolonged detention and confinement of people seeking asylum. The lengthy confinement and uncertainty put their lives in limbo, keep families apart, seriously hamper both mental and physical health of people seeking asylum and refugees, and exposes them to gross rights violations.

In regions outside that of the EU, the harmful consequences of offshore models are clear.<sup>25</sup> At the same time, comparative analysis and lessons learned from international experiences with externalization of asylum and migration question the effectiveness of the schemes in terms of the objective of deterring arrivals.<sup>26</sup> Both should inform any political ambitions of transfer schemes including in the European context.

The continued efforts by Denmark and the UK to pursue externalized asylum processing, in essence mirroring the Australian offshore model, ostensibly disregard lessons learned as above, but also run contrary to the explicit recommendations put forward through the United Nations Universal Periodic Review (UPR) mechanism, which has strongly recommended changes to the Australian Government’s refugee, asylum and immigration detention policies and the abolition of the offshore model.<sup>27</sup>

Such efforts equally pass over strong criticism and concerns from UNHCR and relevant UN Special Human Rights Procedures on the incompatibility of these initiatives with their international human rights obligations. These include not only the risk that they pose to onward refoulement, but also their failure to provide sufficient protection against irreparable harm contrary to Article 3 of the European Convention of Human Rights (ECHR). The UN Special Rapporteurs have also underlined that State parties have the obligation to ensure that “any legislative changes do not diminish their current level of legal protections regarding the prohibition of torture and other ill-treatment”.<sup>28</sup>

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24 For a comparative analysis of experiences of extraterritorialisation of asylum and migration and lessons learned including in terms of challenges from a rights perspective and feasibility for the EU see e.g., Carrera S et al. (2018): [Offshoring Asylum and Migration in Australia, Spain, Tunisia and the US](#) Lessons learned and feasibility for the EU, Brussels

25 Gleeson & Yacoub (2021) [Cruel, costly and ineffective: The failure of offshore processing in Australia](#)

26 Carrera S et al. (2018): [Offshoring Asylum and Migration in Australia, Spain, Tunisia and the US](#). Lessons learned and feasibility for the EU.

27 OHCHR (2022) Universal Periodic Review - Australia - <https://www.ohchr.org/en/hr-bodies/upr/au-index>

28 UNHCR (June 2022) UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement; UNHCR (March 2021) UNHCR Observations on the Proposal for amendments to the Danish Alien Act (Introduction of the possibility to transfer asylum-seekers for adjudication of asylum claims and accommodation in third countries); See also address by Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on violence against women, its causes and consequences <https://www.statewatch.org/media/3395/un-sr-paper-uk-rwanda-asylum-arrangement-1-7-22.pdf>

## 7. Rights violations related to externalized border controls in the European context

In the EU context, the continued situation at the EU's external borders with widespread, violent, and systematic pushback practices,<sup>29</sup> are the bluntest examples of states' efforts to evade responsibility for refugees and their human rights protection. Pushbacks constitute arbitrary expulsions without legal certainty and administrative safeguards, usually carried out by border police, law enforcement officials or other authorities of the relevant country of intended destination.

Pushbacks are antithetical to the rule of law. They stand in violation of EU Member States legal obligations under international human rights law, and their commitments under the UN Global Compact on Migration (GCM). The GCM recognizes that the rule of law, due process and access to justice constitute fundamental aspects of migration and border management policies. Push backs are being used to push people seeking asylum and refugees from a state's territory to the territory of another state without regard for the individual's circumstances, running contrary to the prohibition against collective expulsions, the principle of non-refoulement and right to seek asylum in the EU Charter.

The Danish Refugee Council (DRC) has, as part of the [Protecting Rights at Borders \(PRAB\)](#) initiative in cooperation with other actors,<sup>30</sup> over the past years systematically documented pushbacks including so-called chain-pushbacks at the borders of EU Member States – revealing systematic and violence and cruelty towards men, women and children seeking safety. The pushback methods often include physical and sexual violence, harassment, extortion, destruction of property, theft, forced separation of families, and denial of the right to apply for asylum. While the EU Commission has afforded considerable attention to the issue through the course of 2021, these malpractices remain in place contrary to EU Member States' obligations under EU and international law.

At some EU external borders – such as the Polish-Belarus border – restrictive national non-entry measures and the related rights violations, while clearly at odds with the EU Charter and the Schengen Borders Code (SBC) and EU asylum law standards, have been insufficiently opposed by the European Commission in response to a situation that was framed as a “hybrid-war” and “instrumentalization of migrants”.<sup>31</sup> When pushed back to Belarus, people have reported experiencing violence, including beatings, kicking, being forced back to the border with Poland, being deprived of food, water, money and having their phones destroyed.<sup>32</sup>

Instead of enforcing current EU legal standards, the Commission has tried to ‘legalize’ ex post some of these Member States' malpractices through the enactment of a legislative proposal for a Regulation addressing situations of instrumentalization in the field of migration and asylum published in December 2021.<sup>33</sup> According to a Joint NGO Statement published on 8 September 2022,<sup>34</sup> this proposal “will be the final blow to a common European asylum system”. The Statement recommends not to codify the notion of “instrumentalization” – as it allows major derogations to EU law – and

29 Council of Europe (April 2022) Pushed beyond the limits Four areas for urgent action to end human rights violations at Europe's borders <https://www.coe.int/en/web/commissioner/-/pushed-beyond-the-limits-urgent-action-needed-to-stop-push-back-at-europe-s-borders>; FRA European Union Agency for Fundamental Rights (June 2022) Fundamental Rights Report 2022 <https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022>

30 The PRAB initiative gathers partner organizations operating across a range of different countries: Italy (Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Diaconia Valdese (DV) and Danish Refugee Council (DRC) Italy); Hungary (Hungarian Helsinki Committee); Bosnia and Herzegovina (DRC BiH); Serbia (Humanitarian Center for Integration and Tolerance (HCIT)); North Macedonia (Macedonian Young Lawyers Association (MYLA)); Greece (Greek Council for Refugees (GCR) and DRC Greece); Poland (Association for Legal Intervention); Lithuania (Diversity Development Group), Belarus (Human Constanta); and Brussels (DRC Brussels).

31 Carrera S (2021): Walling off Responsibility? The Pushbacks at the EU's External Borders with Belarus, <https://www.ceps.eu/ceps-publications/walling-off-responsibility/>

32 Danish Refugee Council & PRAB Initiative partners (April 2022) [When there's a will there's a way to protection](#), Grupa Granica (December 2021) [Humanitarian crisis at the Polish-Belarusian border](#)

33 Proposal for a Regulation, addressing situations of instrumentalization in the field of migration and asylum, COM(2021) 890 final, 14.12.2021.

34 European Council on Refugees and Exiles (2022): <https://ecre.org/joint-statement-ngos-call-on-member-states-agreeing-on-the-instrumentalisation-regulation-will-be-the-final-blow-to-a-common-european-asylum-system-ceas-in-europe/>



underlines that the proposal is disproportionate, counterproductive, unnecessary, misguided and unfair.

## **8. Policy recommendations**

Policies that block access for spontaneous asylum seekers in high-income countries contribute to the undermining of international cooperation on refugees. When the European Union and its Member States fail to live up to their international and EU law obligations on refugee protection and human rights it may create a precedent for how countries outside the EU, hosting the vast majority of the world's refugees, manage arrivals at their borders, and it therefore risks undermining the entire global protection system.

The closing of borders and shifting of protection responsibilities through externalisation policies place a disproportionate burden on developing countries. In light of the 100 million people who are currently displaced globally, out of which 83% are hosted in low- and middle-income countries, the call for and commitment to more equitable responsibility sharing of the GCR continues to be central.

How do we achieve progress on genuine responsibility sharing by States?

- 1. Accept in word and action the foundational role of genuine responsibility sharing to the international refugee system.** The Global Compact on Refugees (GCR) recognizes as its basis the fundamental and paramount role of responsibility sharing. Yet the same States that negotiated and adopted the GCR in 2018 are pursuing policies that in essence are undermining this very central tenet of international refugee cooperation. The EU must continue to reject efforts to externalize asylum processing and refugee protection by Member States and take effective enforcement action against illegal pushback and expulsions practices and do so with clear reference to obligations under international law and EU law. Initiatives such as the “instrumentalization of migration” proposal should be abandoned as they allow for major derogations and arbitrary interferences by EU Member States on asylum seekers’ rights. Refugee advocates should use the GCR as a basis for advocacy to push forward concrete action on resettlement, humanitarian admission, support to asylum capacity in third States and insisting on maintaining access to territory and asylum.
- 2. Understand the legal and reputational risks of externalization as well as the potential ripple effect that such approaches can have on global refugee protection.** While the Global Compact on Refugees, to which States have committed voluntarily, is a non-binding framework, it is anchored in and reliant on respect for existing international human rights and refugee law. Outsourcing protection responsibilities directly collide with these standards and comes with considerable risk – both from a legal and a reputational perspective. Beyond central legal challenges and reputational risks for individual States, engaging in externalization efforts also present a real risk that major refugee hosting states will follow suit with potentially devastating consequences for the protection of refugees across the world.
- 3. Acknowledge and address the harmful consequences of schemes aimed at deterring and diverting refugees and asylum seekers movements.** Current political flagship projects by individual European States – such as Denmark and the United Kingdom - of externalizing asylum procedures and refugee protection to a third country, are largely aimed at accommodating domestic public concerns and at deterring refugees from seeking asylum. While they may not result in comprehensive deportation schemes and the reform of asylum policies they are presented to constitute, they have, however, a very real and direct impact on those targeted by the policies. The threat of deportation of people seeking safety and protection puts an enormous strain on those seeking asylum and the uncertainty is highly damaging, regardless of the threat materializing or not. These initiatives should be abandoned as they have proved to be unfeasible, inhumane and to breach international human rights law standards.

- 4. Recognize the opportunities as well as the limitations of resettlement and complementary pathways.** Externalization efforts by States are often framed as attempts to achieve “safer and more orderly” mobility including by replacing spontaneous asylum with resettlement and complementary pathways. States are, however, legally obliged to provide effective access to seek asylum to those who arrive at borders, while there are no legal obligations to resettle or provide complementary pathways. This is even more so in the EU legal system, where the EU Charter expressly enshrines a right to asylum. While resettlement has a crucial role to play and should be promoted as a means to support durable solutions and to strengthen global responsibility sharing, it must remain additional to spontaneous asylum arrivals. Furthermore, attempts to instrumentalize resettlement for migration management or containment purposes, as seen e.g., through the EU-Turkey Statement 1:1 scheme, should be countered as they have proved to be largely ineffective, inhumane and extremely damaging for the EU’s reputation. Resettlement should never be used as an attempt to replace territorial asylum.
- 5. Support a humanitarian, non-discriminatory and human rights-centric narrative that does not dehumanize refugees and asylum seekers.** With the current predominance of securitization of borders and criminalization of mobility in asylum and migration policy development, refugees and asylum seekers are often reduced to numbers, statistics and even ‘threats’. In the highly politicized and sometimes toxic environment in which refugee and migration policy issues are debated, maintaining a humanitarian, non-discriminatory and human rights-centric narrative that portrays and seeks to understand the refugee experience is crucial. The positive and empathetic narrative around the displacement situation triggered by the war in Ukraine, has shown that another and more welcoming approach is possible, and has also demonstrated the positive effects to the refugee response and public opinion of a narrative based on empathy, sympathy, and solidarity. Words and narratives matter.

It is crucial to maintain a positive momentum on moving the commitments under the Global Compact on Refugees forward. This necessitates ongoing reflections on the relationship between externalization efforts and the EU’s role in the implementation of the GCR. It also requires an honest exchange on the implications of the disrespect of legally binding obligations under international and regional refugee and human rights legal standards demonstrated by some States.

The predominant perception of the GCR as ‘foreign policy’ tool, rather than a domestic one unlocking EU responsibility, the key focus of the EU Pact on containing onward movements and third country cooperation, and the blunt attempts by a few European States to externalize refugee protection, not only undermines international human rights obligations and damages their reputation across Europe and internationally, but also the potential of the Global Compact to achieve real progress towards genuine responsibility sharing.

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