Extraterritorial Application of *Non-Refoulement*: Triggering the Prohibition on the High Seas

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**Abstract**

This article challenges the conventional argument that *non-refoulement* obligations do not apply unless and until an individual is within the territory of a State and that formal asylum procedures seeking refugee status have commenced. In order to challenge this assertion, this article examines the extraterritorial application of the principle of *non-refoulement* on the high seas. This article argues that, regardless of the proximity of an individual to the border or territory of a State or the individual’s legal status as determined by law, States are nonetheless responsible for complying with *non-refoulement* obligations, even if that means a duty not to *refoule* asylum claimants and refugees on the high seas.

**Keywords:** *Non-refoulement*, Extraterritoriality, High Seas, Asylum, Refugees, Responsibility

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**Introduction**

Individuals seeking asylum continue to risk their lives to cross the Mediterranean Sea. These individuals make perilous journeys across the sea because they are unable to seek asylum through legal routes as a result of so-called *non-entrée* policies as well as internal migration and border controls by States that attempt to discourage asylum claimants from accessing asylum procedures. The tragic story of Alan Kurdi’s death just over two years ago serves as a painful reminder of the reality of deaths that continue at sea and the inaction by the international community to improve the situation. The lack of political will by States may be attributable to more clarity which is needed in international law surrounding the triggering of State responsibility at sea. A question of state responsibility entails an examination of jurisdiction and the relationship of that with international law obligations such as *non-refoulement*. This article begins by discussing the principle of *non-refoulement* under international refugee and human rights law as well as under European Union (EU) and *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) law. Next, this article argues that international law prohibits *refoulement* on the high seas.

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and that a State’s effective authority and control triggers non-refoulement obligations. Thus, the principle of non-refoulement requires States to evaluate future risks upon return. Finally, this article ends with a suggestion that States should adopt a rights-based approach when complying with international obligations such as non-refoulement.

Non-refoulement has been described as the cornerstone of international refugee law. The principle itself originates from before World War II, when massive numbers of people were fleeing from the war and claiming asylum. The most widely-accepted definition of the norm in international refugee law is found under Article 33(1) of the 1951 Convention Relating to the Status of Refugees (Refugee Convention), which states that:

no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of the 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 norm itself is codified under a number of other international instruments such as the Cartegena Declaration, the American Convention on Human Rights, and the OAU Convention. There is a wide consensus that the norm has entered customary international law, and has been regarded by some scholars as a jus cogens norm, from which there is no derogation, is universal, and is a higher norm than a treaty norm. Under international law, non-refoulement may arise in two different contexts, the first being the refugee law context, and the second being the human rights context. Under the refugee law context, the burden of proof is upon the asylum claimant to prove a “well-founded fear of persecution” on the basis of race, religion, nationality, membership of a particular social group or political opinion. After refugee status is granted, the State would be the one with the onus of proof pursuant to Article 33(2) to rebut the presumption that non-refoulement obligations apply, where it can be shown that the refugee is a national security risk or a danger to the community. Where the State is able to prove that the refugee is a national security risk or a danger to the community, the exception to refoulement applies except where there are substantial grounds for believing that there is a real risk that the refugee may be exposed to torture or other cruel, inhuman, or degrading treatment or punishment on return.

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6 Ibid.
7 Refugee Convention, supra note 3, at art. 1A.
8 Ibid, art. 33(2).
9 For the prohibition against torture or other cruel, inhuman or degrading treatment or punishment, see: United Nations, “Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment”, art. 3 (CAT).
The threshold or standard of proof for the asylum claimant is to prove a) a threat of persecution; b) real risk of torture or cruel, inhuman, degrading treatment or punishment; and c) a threat to life, physical integrity or liberty. Under international refugee law, the beneficiaries of non-refoulement protection are asylum claimants and refugees. Under the international human rights context, non-refoulement is formulated as the prohibition against torture and the right to life as captured in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights. In the human rights context, the individual claimant has the burden of proof to establish a prima facie case that there is a real risk of torture upon return.

The Principle of Non-Refoulement under EU and ECHR Law

This section provides important context to this article by exploring the nature as well as scope and content of the principle of non-refoulement under EU law and ECHR law. First, the nature of the principle of non-refoulement formulated as the prohibition against torture is absolute. Second, non-refoulement applies both within the territory of the sending State and outside of the territory of the State (extraterritorially).

Nature and Scope of Non-Refoulement Under EU and ECHR law

The EU is itself not a contracting party to the Refugee Convention or the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol). However, all of the EU member states are signatories to both treaties and, more importantly, the EU itself, is bound by the Treaty on the Functioning of the European Union (TFEU). Article 78 of the TFEU provides the legal basis for EU to comply with the principle of non-refoulement: this article obliges EU member states to establish a common European asylum policy which complies with the Refugee Convention and the Refugee Protocol. Additionally, the principle of non-refoulement, as a prohibition against torture, is found in Article 19(2) of the Charter of Fundamental Rights of the European Union (EU Charter), which states that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” The principle is violated when a State removes a person, if there is a real risk of ill-treatment in the receiving State, whether or not the removed person is actually ill-treated in the...
receiving State. Article 15(b) of the Qualification Directive of 2011/95/EU similarly recognizes the importance of non-refoulment, and qualifies subsidiary protection for asylum claimants who do not meet the refugee definition under the Refugee Convention. Under Article 15(b), serious harm consists of “torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.”

The Council of Europe, an international organization and a separate entity from the EU, consists of 47 member states that acceded to the ECHR. The European Court of Human Rights (ECHR), on the other hand, is a body of the Council of Europe that monitors Council of Europe member state compliance with the ECHR. The Council of Europe also provides for the prohibition against torture under Article 3 of the ECHR, and the ECHR case law have developed non-refoulment under this Article. For example, in the case of Soering v. the United Kingdom, the Strasbourg court decided that although States parties to the ECHR has the right, under domestic legislation, to control the entry, residence and expulsion of aliens, this right is not absolute and is restricted by their obligations under the ECHR, such as the requirement to comply with the prohibition against torture under Article 3. This prohibition against torture has been ruled by the ECHR as an absolute prohibition in other cases such as Ireland v. the United Kingdom.

It has also been held by the ECHR that the obligation of non-refoulment under Article 3 of the ECHR extends to cases where there is a real risk of cruel, inhuman, degrading treatment or punishment in the receiving State. The protection against refoulment under Article 3 of the ECHR as developed by Strasbourg case law is wider than that provided by Article 33(1) of the Refugee Convention. Subsequent expulsion cases by the same court have reaffirmed this position. The protection from refoulment guaranteed under Article 3 of the ECHR is also wider than the protection against torture as required under Article 3 of CAT, in that Article 3 of the ECHR protects individuals not only from being returned where a real risk of torture exists, but also

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15 Eman Hamdan, The Principle of Non-Refoulment under the ECHR and the UN Convention Against Torture (Netherlands: Brill, 2016), 16.
17 Ibid.
23 Soering, supra note 19, 88 and 91.
25 See, for example, European Court of Human Rights, D v. the United Kingdom App no 30240/96 1997) 48.
offers individuals protection from being expelled where there is a risk of cruel, inhuman or degrading treatment or punishment.  

The obligation of non-refoulement arises at the moment in time when an asylum claimant is at the border of an EU member state, which includes both territorial waters and transit zones. However, this obligation does not arise unless the State exercises jurisdiction. A State may exercise its jurisdiction over a person or a territory. Article 1 of the ECHR guarantees its rights and freedoms to “everyone.” The protection against refoulement therefore is guaranteed to all individuals regardless of their status under the law, in contrast with Article 33(1) of the Refugee Convention, which protects only asylum claimants and refugees from refoulement. The Committee Against Torture and ECtHR case law apply the principle to protect those without status under the law, including refused asylum claimants and those deprived of protection under Article 1F of the Refugee Convention.

In the case of “safe” third countries, the specific case of Greece may illustrate how the use of “safe” third country concepts may be a ground for inadmissibility for refugee status, yet at the same time the use of such concepts may increase the potential for risk of refoulement for the claimant. “Safe” third country concepts involve the sending back of a claimant to a country deemed “safe” which he or she has passed through and where he or she should have applied for asylum but did not. The criteria as laid down under the “safe” third country concept for Greece is based on, inter alia, compliance with the principle of non-refoulement. Although the law provides for compliance of the “safe” third country concept with the principle of non-refoulement, instances of misuse of this concept continues to take place. Instances of returning claimants to countries deemed “safe” continue to take place, but in reality no monitoring has taken place to ensure that the country the claimants are being sent to in fact complies with relevant international human rights law or non-refoulement obligations.

28 Hamdan, supra note 13, at 35.
30 ECHR, supra note 18, art. 1.
31 Hamdan, supra note 13, 36-37.
34 Asylum Information Database, Safe Third Country: Greece L4375/2016, art. 56(1)(b).
In sum, the principle of *non-refoulement* under EU law and ECHR law, formulated as the prohibition against torture, is absolute in nature so that no derogation from the principle is permitted. However, despite this prohibition of non-derogation, in practice especially in the case of “safe” third country concepts, the misuse of such concepts may often lead to cases where the *non-refoulement* principle is violated. As will be shown, the principle is also applicable both within the territory of the sending state, as well as extraterritorially, as an exception to the general rule provided for under Article 1 of the ECHR.

**Extraterritorial Application of Non-Refoulement**

The EU Agency for Fundamental Rights (FRA), an EU agency tasked with providing EU institutions and member states with independent, evidence-based advice on fundamental rights, produced a 52-page report on the “Scope of the principle of non-refoulement in contemporary border management: evolving areas of law.”

In this report, the FRA detailed the obligations of EU member states when they comply with the principle of *non-refoulement* including questions of jurisdiction. The report indicates that jurisdiction under “public international law and human rights law is presumed to be exercised within a state’s sovereign territory.” This is illustrated in the case of *Bankovic et al. v. Belgium and 16 other States parties* in which the ECtHR held that:

> Article 1 of the [ECHR] must be considered to reflect this ordinary and essential territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.

This case also affirmed the extraterritorial application of *non-refoulement* under Article 3 of the ECHR. In the case, the ECtHR held that there are two grounds for extraterritorial application of *non-refoulement*, namely: the State, through its agents, over an individual outside its territory, and the State over an area outside its national territory. The jurisdiction clause under Article 1 of the ECHR establishes the norm, which states that “the High Contracting Parties shall secure to everyone *within their jurisdiction* the rights and freedoms defined in Section 1 of this Convention” (emphasis added). Despite the jurisdiction clause, there are three exceptions to Article 1 of the ECHR as interpreted by the ECtHR. The extraterritorial applicability of *non-

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38 Ibid., 1.3.
39 Ibid.
41 Ibid., 132.
43 ECHR, *supra* note 18, art. 1.
Refoulement is also in line with the view of the United Nations High Commissioner for Refugees (UNHCR) and is supported by leading academic commentators.  

First, a State exercises jurisdiction extraterritorially through its diplomatic and consular agents. Where a State’s diplomatic and consular agents exercise authority and control over individuals, that State then has jurisdiction over those individuals, through the acts or omissions of the State’s agents. Whether the act or omission of a State’s agent constitutes effective control is a matter of fact, determined in light of the circumstances of each case. Second, in some cases, the use of force by a State’s agents outside of the State’s territory may bring an individual under the control of these agents into the State’s jurisdiction. For instance, where an individual is in the custody of a State’s agent extraterritorially, the State’s jurisdiction extends to the acts of the State’s agent, so that the State is under an obligation not to refoule the individual in custody to torture or other cruel, inhuman, or degrading treatment or punishment. Third, through consent, invitation or acquiescence of a foreign State’s government, a State may exercise all or some of the public powers normally exercised by that foreign State’s government. For example, the jurisdiction of the State will extend to the acts or omissions of immigration border officers checking travel documents for asylum claimants outside the State’s territory.

While some States argue that non-refoulement obligations do not begin until and unless the individual concerned has arrived within the territory of a State and has sought entry into the State’s territory, this article argues that non-refoulement obligations apply regardless of whether or not the individual concerned is seeking asylum and/or has begun the formal application for refugee status. Further, non-refoulement obligations apply as soon as the individual concerned is within the jurisdiction of the State, as evidenced by the test of effective control and authority under international law, so that the individual need not be on the State’s territory, in order to benefit from non-refoulement protection. This claim is substantiated in three ways. First, international human rights law requires that all individuals be protected from refoulement. Second, as evidenced by Strasbourg case law, non-refoulement is triggered when the State exercises effective control or

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46 ECHR, supra note 38, 73; ECHR, supra note 40, 134.
47 European Court of Human Rights, Hirsi Jamaa and Others v. Italy App no 27765/09 (2012) 73.
48 ECHR, supra note 40, 134.
49 Hamdan, supra note 13, 48; See, also: European Court of Human Rights, Ocalan v. Turkey App no 6221/99 (2005) 88.
50 ECHR, supra note 38, 71.
51 Hamdan, supra note 13, 50.
52 Australia, for example, cites non-refoulement of the Refugee Convention has not taking into account the potential impact on receiving countries, and interprets the obligations of the Refugee Convention, including the principle of non-refoulement, to come into effect after an asylum seeker enters the signatory country in Adrienne Millbank, “The Problem with the 1951 Refugee Convention,” 2000, accessed September 1, 2017, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0001/01RP05.
authority over the individual asylum claimant. Third, States are obliged to fully evaluate the future risk that an individual face before it makes the decision to return the individual.

**International Law Prohibits Refoulement on the High Seas**

International human rights norms such as the prohibition against torture, or other cruel, inhuman, or degrading treatment or punishment, necessarily entail that all individuals (regardless of status) should be guaranteed the right against refoulement. This notion that all individuals, regardless of status, should benefit from *non-refoulement*, mean that even individuals who are not seeking asylum or, who have not yet formally initiated the refugee status determination process, would benefit from this protection. In the context of the high seas, once it can be shown that a State is exercising effective authority and control, by extension through the actions or omissions of that State’s agents, over the asylum claimants arriving in boats towards the shore of a State’s territory, *non-refoulement* obligations are triggered.53

The *United Nations Convention on the Law of the Seas* (UNCLOS) governs State jurisdiction in relation to the sea. Article 2 of UNCLOS states that “sovereignty of a coastal State extends, beyond its land territorial and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of the sea, described as the territorial sea.”54 “Territorial sea” is defined as “12 nautical miles, measured from baselines determined in accordance with [UNCLOS].”55 According to this definition, coastal States do not have jurisdiction on the high seas. In fact, Article 87 of UNCLOS provides that “the high seas are open to all States, whether coastal or land-locked” and further, under Article 89, “no State may validly purport to subject any part of the high seas to its sovereignty.”56 “High seas” is defined as “all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”57

While the law is clear that *non-refoulement* obligations apply when vessels or “boat people” arrive on the territorial sea of a coastal State, the law is less clear with regards to when and how *non-refoulement* obligations would trigger on the high seas. Some States may argue that *non-refoulement* obligations do not trigger on the high seas where the nearest coastal State does not have jurisdiction over the individual in question, and without jurisdiction, the State in question cannot be held responsible under international law.58 Other States may argue that even where *non-refoulement* obligations may trigger on the high seas, it would be difficult to know which coastal State would have jurisdiction over the individuals in question, much less whether responsibility would be shared, and if so, how to determine that shared responsibility, where there are multiple nearby coastal States potentially liable.59 It is argued, however, that policies that prevent asylum claimants and refugees from arriving at coastal States in so-called *non-entrée* migration control

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53 For the test of effective authority and control, see: ECHR, supra note 38, 37-38.
55 Ibid, art. 3.
56 Ibid, art. 87 and 89.
57 Ibid, art. 86.
58 Australia and United States for example, follow a more ‘positivist’ approach to the interpretation of *non-refoulement*, as can be seen in US Supreme Court, Sale v. Haitian Centers Council, Inc, 509 US 155 (1993).
would amount to *de facto* *refoulement*, since precluding vulnerable individuals from accessing territorial asylum would in effect be a rejection that leads to a refusal of international protection for potential claimants.\textsuperscript{60}

The shipmaster of the flag State has a duty to render assistance to a boat in distress in accordance with UNCLOS. Article 98(1) of UNCLOS specifically requires a State, through the shipmaster flying its flag, to render assistance to “any person found at sea in danger of being lost” and “to proceed with all possible speed to the rescue of persons in distress.”\textsuperscript{61} The duty to rescue, on the other hand, is an obligation of the coastal State, pursuant to Article 98(2) of UNCLOS, which states that “every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea.”\textsuperscript{62}

Both the law of the sea as well as the maritime law on the duty to render assistance and to rescue indicate a positive duty upon the flag State as well as the coastal State to offer assistance to individuals and vessels found in distress. A positive duty to render assistance and to rescue would also correspondingly entail a duty not to send back, expel, or remove individuals under distress when the flag State or coastal State exercise their jurisdiction extraterritorially. This assertion is in line with international law since asylum claimants and refugees are not to be penalized for illegal entry pursuant to Article 31 of the Refugee Convention.\textsuperscript{63} Furthermore, a right to (access) asylum and international protection would mean a corresponding right not to be *refouled* since an individual is not safe until and unless he or she is not sent back to face persecution.\textsuperscript{64}

**A State’s Effective Authority and Control Triggers Non-Refoulement Duties**

Since the test determining whether a State is obliged to offer protection to an individual under international human rights norms is based on jurisdiction, and state responsibility is not triggered until the State has jurisdiction over a certain individual or territory, the triggering of the obligation of *non-refoulement* necessarily entails the State to first have jurisdiction over the individual concerned. This test to determine when State responsibility over an individual is triggered, and thus the beginning of the obligation of *non-refoulement*, as determined by the ECtHR in *Hirsi Jamaa and Others v. Italy*, is whether the State in question has effective control and authority over the individual in question:

under international law concerning the protection of refugees, the decisive test in establishing the responsibility of a State was not whether the person being returned was on the territory of a State but whether that person fell under the effective control and authority of that State.\textsuperscript{65}

The effective control and authority test mean that even where the individual has not yet reached the territory of a State, the State is deemed, pursuant to this test, to be exercising effective control and authority over the individual in question, and therefore would be subjected to the

\textsuperscript{60} For more on *non-entrée* practices and how they can potentially violate *non-refoulement* obligations, see: Hathaway, *supra* note 40.

\textsuperscript{61} United Nations, *supra* note 52, art. 98(1).

\textsuperscript{62} Ibid., art. 98(2).

\textsuperscript{63} Refugee Convention, *supra* note 3, art 31.

\textsuperscript{64} UNHCR, *supra* note 1

\textsuperscript{65} European Court of Human Rights, Hirsi Jamaa and Others v. Italy App no 27765/09 (2012) 69.
obligation to comply with non-refoulement.

**States are Required to Evaluate Future Risks on Return**

Although neither international law nor the Refugee Convention contains an explicit right to asylum, States are not free to simply reject individuals at their border without first assessing whether returning the individual would lead to substantial grounds for believing that there would be a real risk of the individual being subjected to refoulement. This interpretation is consistent with various international instruments such as the United Nations Declaration on Territorial Asylum and the OAU Convention, as well as developing international human rights norms. Further, non-refoulement is a forward-looking responsibility and requires the State to assess whether there would be a future risk of refoulement where the individual is forcibly removed from a State’s exercise of authority and control.

**Towards a Rights-Based Approach to Extraterritorial Application of Non-Refoulement**

It has been asserted by some scholars that State sovereignty and individual rights paradigms are contradictory. On the one hand, State sovereignty permits migration controls and internal immigration policies which curtail individual rights such as the right to access territory and asylum procedures. On the other hand, international law requires States to also respect individual rights in the implementation of those sovereign rights. When exercising extraterritorial migration controls through interdiction on the high seas, States should be cautious to provide at least the bare minimum human rights standards in line with the letter and spirit of the Refugee Convention and relevant international human rights norms. Although non-refoulement obligation itself does not entail access to asylum procedures, it is intrinsically related to the concept of asylum, since the corpus of international protection requires that individuals are not forcibly removed to a place where their life or freedom would be threatened on any of the Refugee Convention grounds.

Non-refoulement, therefore, hinges not on its extraterritoriality but on its strong human rights basis. In other words, the norm of non-refoulement is considered a cornerstone of refugee protection not because of its wide scope of applicability both inside and outside of a State’s territory, but because proper compliance may potentially elevate individual rights over a State’s sovereign prerogative. For instance, non-refoulement does not permit a State to refoule an individual interdicted on the high seas even if the State decides not to grant the individual access to its territory. Despite the tensions between the State and the individual, a strong rights-based emphasis when implementing international law norms such as non-refoulement may permit individual rights to triumph while prohibiting refoulement at sea.

Based on the above understanding of non-refoulement, it is suggested that States should follow a rights-based approach when implementing international law obligations such as non-refoulement. This rights-based approach to complying with non-refoulement is derived from three

66 Lauterpacht, *supra* note 8, 77 and 86.
69 United Nations, Refugee Convention, *supra* note 3, art. 1A.
principles, namely: the universality of human rights, the collective duty to protect, and the balance of State interests and individual rights.

**Universality of Human Rights, Duty to Protect, and Balancing of Interests**

The universality of human rights entails a set of guiding principles for States to follow. The universality and immovability of human rights are firstly reflected in the *Charter of the United Nations* and secondly within the *Universal Declaration of Human Rights*.\(^{70}\) The principles laid down in both international instruments are both universal and applicable. Universal and inalienable human rights require States to observe these fundamental and non-derogable rights even when exercising their sovereignty at sea. In particular, the principle of *non-refoulement* encompasses the right to life and the right to be free from torture of all forms.\(^{71}\)

All States enjoy universal jurisdiction of the high seas.\(^{72}\) Such freedom of the high seas is to be exercised “with due regard for the interests of other States […] and also with due regard for the rights under [the UNCLOS].”\(^{73}\) In other words, States have corresponding duties along with their enjoyment of the freedom of the high seas. As reiterated earlier, these duties include the duty to render assistance and to rescue individuals and vessels in distress. The enjoyment of freedom of the seas, therefore, would entail a corresponding duty upon all States to respect and observe the prohibition of *non-refoulement* at sea.

As with certain derogable human rights under extraordinary circumstances such as situations concerning national security of a State, any exceptions to fundamental rights must be read restrictively and limits on those rights must only be necessary and proportionate as demonstratively justifiable in a democratic society with adequate safeguards in place.\(^{74}\) Accordingly, any limits on human rights when a State is exercising its sovereignty on migration or border controls at sea may only be made pursuant to the standards aforementioned. In the same way, limits placed on rights at sea should only be made under extraordinary circumstances, having full regard to fundamental human rights norms and respect for *non-refoulement* duties.

**Concluding Remarks**

It has been shown that *non-refoulement* obligations apply extraterritorially on the high seas. International law requires States to take positive action to render assistance and to rescue individuals or vessels experiencing distress. Extraterritorial application of *non-refoulement* would also mean that States exercise effective authority and control to prohibit the return of asylum claimants or refugees from persecution, death or torture, and such duty would also entail an evaluation of future risks that might result to these vulnerable individuals. This article has suggested that States take a rights-based approach when complying with international law obligations such as *non-refoulement* at sea. This rights-based approach is derived from three principles, namely: the universality of human rights, the collective duty to protect, as well as the


\(^{71}\) See, for example: United Nations, *International Covenant on Civil and Political Rights*, *adopted* Dec. 16, 1966, 999 UNTS 171, art. 6; *CAT*, *supra* note 7, art. 3.

\(^{72}\) *United Nations*, *supra* note 52, art. 87(1).

\(^{73}\) Ibid., art. 87(2).

\(^{74}\) See, by analogy, derogation on the right to life in times of war: ECHR, *supra* note 40, article 2.
need to balance State and individual interests. With the deaths at sea continuing to rise, it is all the more important to ensure that States are complying with international human rights law such as the prohibition against *refoulement* fully. Now more than ever, the rights of asylum claimants and refugees must be safeguarded to discourage perilous journeys across the Mediterranean Sea.

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