

^{1067H} **RIGHT TO BE RESCUED AND
NON-REFOULEMENT OF REFUGEES AT SEA**

(MÜLTECİLERİN DENİZDE KURTARILMA HAKKI VE
GERİ GÖNDERMEME İLKESİ)

Dr. Öğr. Üyesi Kayser (Qaisar) NASRAT ^{1068*} ^{1069**}

ABSTRACT

Today, asylum and migration are increasing more than ever. Some of this asylum is carried out by sea. In addition to the easy accessibility of sea travel, we are witnessing the tragic sinking of boats and the increase in victims. Therefore, thousands of refugees lose their lives while crossing the seas every year and today it has become a global problem. In this context, the international community must take urgent measures regarding the tragedies of refugee victims. While rescue persons at sea and consequently the right to life are protected by many international documents, the right to life of refugees is no different.

This study examines the problems experienced by refugees at sea, the responsibilities of the target state and coastal states, international documents on the subject and the human rights of refugees. It also addresses the issue of protecting human rights, especially the right to life at sea.

As a result of the study, the strict policies of the coastal state and target states to prevent refugees from entering their countries cause refugees to face major risks at sea. Therefore, states must act in accordance with international human rights and law of the sea in order to protect refugees.

Key Words: *Asylum Seekers, Human Rights, Non-refoulement, Rescue at Sea, Refugees.*

ÖZ

Günümüzde iltica ve göç olgusu her zamankinden daha fazla artış göstermektedir. Söz konusu ilticanın bir kısmı deniz yoluyla gerçekleşmektedir. Deniz yolculuğunun amaca daha kolay ulaşabilir

^{1067H} Eserin Dergimize geliş tarihi: 07.03.2025. İlk hakem raporu tarihi: 25.03.2025. İkinci hakem raporu tarihi: 09.04.2025. Onaylanma Tarihi: 12.05.2025.

^{1068*} Doktor Öğretim Üyesi, İbni Haldun Üniversitesi Uluslararası Hukuk Anabilim Dalı.

^{1069**} Yazarın ORCID belirleyicisi: 0000-0003-4676-8122.

Esere Atıf Şekli: Kayser Nasrat, “*Right to be Rescued and Non-Refoulement of Refugees at Sea*”, YÜHFD, C.XXII, 2025/2, s.813-830.

olmasının yanı sıra teknelerin trajik bir şekilde batmasına ve mağdurların artmasına tanık olmaktadır. Bu da konunun ciddiyetini ve önemini ortaya koymaktadır. Bu nedenle her yıl binlerce mülteci denizleri geçerken hayatını kaybederek küresel bir sorun halini almaktadır. Bu bağlamda, denizde kurtarılma ve buna bağlı olarak yaşam hakkı birçok uluslararası belgeyle korunurken, mültecilerin yaşam hakkı da bundan müstesna değildir. Nitekim denizde mültecilerin kurtarılması ve güvenliği de bazı belgeler ve uluslararası örf ve adet hukuku ile garanti altına alınmıştır. Bu belgeler ışığında uluslararası toplum, mülteci mağdurlarının trajedileri konusunda acil önlemler alması gerekmektedir.

Bu çalışma, mültecilerin denizde yaşadıkları sorunları, hedef devlet ve kıyı devletlerinin sorumlulukları, konuyla ilgili uluslararası belgeler ve mültecilerin insani haklarını incelemektedir. Ayrıca, insan haklarının, özellikle denizde yaşam hakkının korunması konusunu ele almaktadır.

Çalışmanın sonucunda, kıyı devleti ve hedef devletlerin mültecilerin ülkelerine girmesini engellemek için uyguladıkları katı politikalar, mültecilerin denizde büyük risklerle karşı karşıya kalmasına neden olmaktadır. Bu nedenle, devletler mültecileri korumak için uluslararası insan hakları ve deniz hukukuna uygun hareket etmesi gerekmektedir.

Anahtar Kelimeler: Denizde Kurtarma, İnsan Hakları, Geri göndermeme İlkesi, Mülteciler, Sığınmacılar.

Introduction

In some countries, increasing instability, violence, war and economic concerns have forced people to leave their homelands and have caused a significant increase in the number of refugees and asylum seekers. Especially since the Syrian civil war in 2011, there has been intense human mobility up until today. This intense forced human mobility has mostly been towards European Union countries. This situation has led to the reconsideration of legal regulations regarding migration in the European Union and the world, and it has been determined that there are serious deficiencies due to excessive migration. Therefore, the refugee issue is one of the biggest problems today. Neither the states nor the international community have yet offered a permanent solution to this problem.

As mentioned above, millions of people are leaving their homelands due to security and other reasons such as economic concerns. Most of these departures are made by sea. Although the seas are an easy route for refugees, they still pose vital risks. In fact, the tragic and deadly

disappearance of refugees at sea has brought this issue to the agenda of the international community.

The recent tragic and deadly June 14 shipwreck off the Greek coast is a clear example of this. In this incident, 600 migrants are believed to have perished and hundreds of thousands of people are still in danger of sinking. This is one of the recent incidents, thousands of refugees and asylum seekers have lost their lives since 2011. Most of them are Syrian and Afghan citizens.

In addition, more than 1.4 million people attempted to reach Europe in 2015 to seek asylum and migration, of whom 3,279 died en route to Europe, and 5,267 people died globally in 2015 alone. The numbers have increased further in 2016 and the following years. The number of deaths increased significantly globally in 2016, reaching 7,509. These shows, while significantly higher than in previous years, are likely to be largely inaccurate. Many more people are likely to have died, but their deaths are unknown and unrecorded. The IOM uses the phrase ‘at least’. So while it says its numbers are based on various reports, this is unrealistic and misrepresents the scale of the crisis. The true number of people killed and missing is undoubtedly much higher than the numbers reported by the IOM and other agencies. It is important to note that ‘the number of missing is much higher than the known number’. It is significant that in 2010, some people working in the field estimated that at least three times as many people died as the reports given¹⁰⁷⁰. However, the rescue of these individuals is one of the most important principles of customary law and international law. In fact, coastal states and target states are reluctant to accept or evacuate refugees. Therefore, they do not take the initiative and do not help in rescuing the boats. This leads to more loss of life and is seen as a violation of the right to life.

This study firstly analyzes in which national and international documents the right to be rescued is regulated and whether it needs to be expanded. What is its place in international human rights? Secondly, the legal framework of the right to life and the right to life of asylum seekers and refugees and its implementation at sea will be discussed. It will also emphasize the duty of care of both flag states and coastal states in the implementation of the rescue duty and more generally in the protection of

¹⁰⁷⁰ Jeremy Sarkin, “Respecting and protecting the lives of migrants and refugees: the need for a human rights approach to save lives and find missing persons,” *The International Journal of Human Rights* 22, no. 2 (2018): 207-236.

life safety at sea. Finally, the study will examine the principle of non-refoulement in terms of customary international law and law of treaties.

I. PRINCIPLE OF THE RIGHT TO BE RESCUED AT SEA

Right to be rescued is one of the foundations of maritime law and international law. Seline Trevisanut uses the following expressions on this matter: *“the main aim of the law of the sea consists of allocating obligations and rights in different maritime zones to states. However, the multiplication of activities at sea and the increased human presence lead to the question of the protection of the human element, in particular of the application of human rights at sea”*¹⁰⁷¹.

In this context, the following topic of right to be rescued will be discussed in terms of maritime law and human rights law.

A. Rights of Refugees At Risk in the Sea to be Rescued

In order to implement the right to be rescued, human rights norms and institutions must first come into play. Thus, the duty to rescue people in need of rescue at sea falls within the scope of the right to life under human rights law.

Regarding the human rights of refugees of the Right to be rescued, Seline Trevisanut states the following: *“the duty to render assistance can be considered as the operational obligation deriving from the application of the human right to life at sea”*¹⁰⁷².

Furthermore, the human right that comes first among human rights is the right to life. The right to life is guaranteed in many international documents. Therefore, this right has a prominent place in Article 2 of the European Convention on Human Rights (ECHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). As the European Court of Human Rights ruled in the *Osman Case*¹⁰⁷³, Article 2 of the Convention requires states not only to refrain from causing death, but also to take measures to protect the lives of individuals within their jurisdiction. In addition, the positive nature of the obligations under Article 2 of the Convention also requires the state to initiate an appropriate official,

¹⁰⁷¹ Efthymios D. Papastavridis, “Is there a right to be rescued at sea? A skeptical view,” *QIL* 4 (2014): 20.

¹⁰⁷² Papastavridis, “A Skeptical,” 24.

¹⁰⁷³ *Osman v. United Kingdom*, 87/1997/871/1083, Judgment of the European Court of Human Rights, Strasbourg, 28 October 1998.

YÜHFD Cilt: XXII Sayı: 1 (2025)

independent and public investigation into any death caused by state officials or other individuals¹⁰⁷⁴.

The doctrine established by Court of Justice of the European Union regarding the detention of asylum seekers rescued in European territorial waters is one more step in the humanization of migration processes, enshrining the right of asylum-seeking migrants not to be deprived of their liberty. It delves into the trend already initiated by the European Court of Human Rights regarding irregular migration by sea, by putting the consideration of people before the illegal status. The Ombudsman in Spain has stated on repeated occasions that *“the Spanish authorities must guarantee that foreigners can formalize requests for international protection when they are intercepted by Spanish officials, regardless of whether this eventuality occurs outside or within Spanish territorial waters”*¹⁰⁷⁵.

As highlighted in the previous statements, states have both negative and positive obligations regarding human rights. These obligations entail not only the duty to rescue and prevent harm but also to implement the necessary legal measures and establish the relevant institutions. This includes not only refraining from causing harm but also ensuring they do not ignore instances of harm or death.

Flag states and coastal states have an inherent obligation under human rights law to take all necessary actions to safeguard the lives of refugees and asylum seekers who are in danger within their jurisdiction¹⁰⁷⁶. The duty to protect vulnerable individuals seeking asylum is not only a legal responsibility, but also a moral and conscientious imperative. In this context, states should provide emergency assistance, such as search and rescue operations, and facilitate safe passage for individuals fleeing dangerous conditions, in accordance with international human rights standards and conventions. By fulfilling this obligation, flag and coastal states protect the dignity and rights of individuals in need of protection and strengthen global commitment to human rights and humanitarian principles.

In cases where the right to life is threatened or lost, legal action should be taken against both States and individuals who fail to fulfil their human rights obligations. It is vital to establish strong international courts

¹⁰⁷⁴ Papastavridis, “A Skeptical,” 25.

¹⁰⁷⁵ Emilia Girón Reguera, “El derecho de los migrantes rescatados en el mar que soliciten protección internacional a no ser internados,” *Revista Saber, Ciencia y Libertad* 18, no. 2 (2023): 4.

¹⁰⁷⁶ Papastavridis, “A skeptical,” 25.

specifically designed to address these violations. This is particularly true in cases where a State has failed to fulfil its responsibilities, whether in terms of its negative obligations or its positive obligations. In this context, there is an urgent need for an effective and comprehensive legal and judicial framework that can protect refugees and asylum seekers, especially those at risk of losing their lives while attempting to cross the sea. This mechanism must ensure accountability and provide urgent protection to those in need of safety and asylum.

B. State Obligations Relating to Rescue at Sea

The subject of Rescue at sea has been secured in various international documents. These documents bring many obligations to states. One of these is Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹⁰⁷⁷. We can convey the content of the article as follows:

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. 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 and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

Apart from the above-mentioned document, Rescue at sea is also secured in international documents such as the International Convention for the Safety of Life at Sea (SOLAS)¹⁰⁷⁸, the International Convention on

¹⁰⁷⁷ United Nations Convention on the Law of the Sea, Article 98.

¹⁰⁷⁸ *International Convention for the Safety of Life at Sea (SOLAS)*, London: International Maritime Organization, 1974.

YÜHFD Cilt: XXII Sayı: 1 (2025)

Maritime Search and Rescue (SAR Convention)¹⁰⁷⁹, and the International Convention on Salvage¹⁰⁸⁰.

In this context, the SAR Convention specifically aims to create an international system that guarantees the effectiveness and safety of rescue operations. States Parties are therefore invited to enter into SAR agreements with neighboring States to organize and coordinate SAR operations and services in the agreed maritime area. Such agreements technically and operationally fulfill the obligation set out in Article 98(2) LOSC, which provides that neighboring states shall cooperate, where necessary, through regional agreements to promote and maintain adequate and effective SAR services¹⁰⁸¹.

In addition, the SAR convention ensures that rescued persons are brought down to a safe place. Article 3(1)(9) of the SAR Convention provides as follows:

“Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships’ intended voyage (...). The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety (...). In these cases, the relevant Parties shall arrange for such disembarkation to be effective as soon as reasonably practicable”.

As regards the scope of the duty to rescue and assist persons in distress at sea, it covers all maritime zones. In this context, Article 98 of United Nations Convention on the Law of the Sea (UNCLOS) refers to it in Part VII (High Seas), but it also applies to the exclusive economic zone based on the cross-reference in Article 58(2). As for the territorial waters, although UNCLOS does not contain a similar statement, the duty to rescue life at sea can be inferred from the reference to assistance in distress in Article 18(2)

¹⁰⁷⁹ *International Convention on Maritime Search and Rescue (SAR)*, London: International Maritime Organization, 1979.

¹⁰⁸⁰ *International Convention on Salvage*, London: International Maritime Organization, 1989.

¹⁰⁸¹ Seline Trevisanut, “Is there a right to be rescued at sea? A constructive view,” *QIL Zoom-in* 4 (2014): 6.

of UNCLOS. In contrast to UNCLOS, the SOLAS Convention expressly states that it applies to ships in all maritime zones¹⁰⁸².

The duty to provide assistance applies in the event of a collision between two ships and when a ship receives information that one or more persons are in danger of being lost at sea because their ship is in distress or has sunk. This duty applies to all persons in distress, without distinction. The nationality of the ships or persons, their legal status and the activity in which they are engaged are irrelevant. The fact that the persons are engaged in an unlawful activity should not make any difference to the duty to rescue. Furthermore, the fact that the persons to be rescued are immigrants should in no way impede their right to be rescued. It should be noted here that, although it is against the law, States and ship captains are sometimes less willing to rescue ships carrying migrants and refugees¹⁰⁸³.

While the International Salvage Convention and SOLAS hold ship masters as well as states responsible for their rescue missions, UNCLOS holds only states responsible. In this context, according to Article 10(1) of the International Salvage Convention: “*every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea*”. Also Regulation 33.1 of SOLAS Convention states that: “*The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so*”¹⁰⁸⁴.

Therefore, as can be understood from the two Conventions mentioned above, both states and civilians have the obligation to rescue people in danger of death at sea.

In addition, the International Organization for Migration (IOM) has made significant contributions to defending the rights of refugees, particularly in relation to their right to be rescued at sea and the principle of non-refoulement. Two important documents on this issue are the *IOM Principles for the Protection of Migrants* (2011) and the *IOM Migration Crisis Operational Framework* (2015). The IOM Principles for the Protection of Migrants emphasize the fundamental rights of migrants, such

¹⁰⁸² Irini Papanicolopulu, “The duty to rescue at sea, in peacetime and in war: A general overview,” *International Review of the Red Cross* 98, no. 2 (2016): 495.

¹⁰⁸³ Papanicolopulu, “The duty,” 495.

¹⁰⁸⁴ Papanicolopulu, “The duty,” 495.

as the right to life and the prohibition of the return of individuals to countries where they would face a real risk of harm. The document emphasizes that States must comply with the principle of non-refoulement and ensure that individuals are not forcibly returned to places where they may face persecution or danger¹⁰⁸⁵. The IOM Migration Crisis Operational Framework outlines operational guidelines for IOM's activities in crisis situations, including those involving refugees at sea. It guides IOM in ensuring safe and dignified migration and meets the urgent needs of refugees, such as rescue operations and safe disembarkation¹⁰⁸⁶.

II. RIGHT TO NON-REFOULEMENT OF RESCUED REFUGEE AT SEA

The principle of non-refoulement is one of the most fundamental issues in international law and refugee law. It is a concept that is especially secured in terms of refugee law.

The term 'non-refoulement' comes from the French word 'refouler', meaning to send back or return. The principle can be interpreted literally as the principle of prohibiting refoulement. The principle was first established by *the international societies of international lawyers* who drafted an international regulation on the admission and expulsion of aliens in 1892 (Session de Genève). Another name for the regulation is *Règles Internationales sur l'admission et l'expulsion des étrangers*. International Regulations on the Admission and Expulsion of Aliens provide that, although states have sovereignty over their territory, countries around the world, based on humanitarian principles, respect the rights and freedoms of aliens who wish to enter their territory. They are obliged to exercise this right. In other words, the rights of the state must be balanced with the principles of humanity and justice, taking into account the security of the state and the rights of foreigners¹⁰⁸⁷.

Taking into account Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees, Noll provided the following definition: "*Non-refoulement is about being admitted to the State community, although*

¹⁰⁸⁵ International Organization for Migration (IOM). (2011). IOM Principles on the Protection of Migrants.

¹⁰⁸⁶ International Organization for Migration (IOM). (2015). IOM Migration Crisis Operational Framework.

¹⁰⁸⁷ Heribertus Untung Setyardi, "The Origins of the Non-Refoulement Principle and Refugee Admission Considerations in the Refugee Protection Framework," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2472.

in a minimalist form of non-removal. It could be described as a right to transgress an administrative border”¹⁰⁸⁸.

The concept of the principle of non-refoulement was known from the early 18th century to the mid-19th century. However, at that time, the term 'non-refoulement' was not yet used, only the concepts of asylum and the principle of non-extradition for political criminals were known and implemented. The term 'refoulement' first appeared in 1933, when the League of Nations adopted the Convention Relating to the International Status of Refugees on 28 October¹⁰⁸⁹.

However, fundamental regulations were made on the subject after the Second World War. The most important of these regulations is the 1951 Geneva Convention. Non-refoulement was officially addressed in Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees as follows:

1. 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.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

The above provision primarily uses the concept of refugee, which is our subject. This provision strictly prohibits sending back any refugee whose life is under threat because of his/her language, religion, sect, nationality, etc.

However, it is also possible to see reservations to this article. One of these is the situation where the host state poses a threat to its national security. The second is when the refugee has been convicted of a serious crime. In fact, the final decision on this matter should be made by the courts. Also, we believe that the issue of national security should be interpreted narrowly here.

The obligation of non-refoulement is the essence and foundation of the protection of refugees, as it is the only guarantee that refugees will not be

¹⁰⁸⁸ Gregor Noll, “Seeking Asylum at Embassies: A right to Entry under International Law?,” *International Journal of Refugee Law* 17, no. 3 (2005): 548.

¹⁰⁸⁹ Setyardi, ‘The Origins,’ 2473.

re-subjected to persecution and guarantees that the refugee will enter and stay in the country of asylum. However, it does not explicitly guarantee that the refugee will be granted refugee status and be accepted once he has entered the country of asylum. In fact, some authors have tried to support the existence of an additional obligation that aims to bind states to accept persons applying for protection into their territory, but at present state practice does not confirm these attempts¹⁰⁹⁰.

The European Court of Human Rights (ECtHR) has given several important decisions in the rights of refugees at sea, highlighting the importance of non-refoulement and the right to be rescued. One of the most important decisions of the Court is the case of *M.S.S. v. Belgium and Greece* (2011), in which the Court found that Greece had violated the European Convention on Human Rights (ECHR) by returning the asylum seeker to Afghanistan via Belgium despite the risk of ill-treatment. The Court held that the principle of non-refoulement applies, in particular, to the prohibition of refoulement when there is a risk of torture or inhuman or degrading treatment during refoulement¹⁰⁹¹.

In the case of *Hirsi Jamaa and Others v. Italy* (2012), the ECtHR found that Italy had violated the Convention by intercepting migrants at sea and returning them to Libya without ensuring their safety. The Court emphasised that refoulement in such cases is prohibited under Article 3 of the Convention without an appropriate risk assessment¹⁰⁹². In its decisions, the ECHR has consistently defended the duty of states to prevent refoulement and to ensure the right to rescue at sea in accordance with both human rights law and international conventions.

A. Non-Refoulement Principle in the Human Rights

Some of the victims of human rights violations are asylum seekers and refugees. In fact, the Universal Declaration of Human Rights has guaranteed asylum and refuge as a fundamental human right. The relevant provisions of the UDHR are as follows: “everyone has the right to leave any country, including his own, and to return to his country” (article 13(2))²⁵ and “everyone has the right to seek and enjoy in other countries asylum from persecution” (article 14(1)).

¹⁰⁹⁰ Seline Trevisanut, “The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection,” *Max Planck Yearbook of United Nations Law* 12, (2008): 208.

¹⁰⁹¹ *M.S.S. v. Belgium and Greece* (2011), ECHR, No. 30696/09.

¹⁰⁹² *Hirsi Jamaa and Others v. Italy* (2012), ECHR, No. 27765/09.

When we examine the principle of non-refoulement in International Human Rights Law, we must first mention the *International Covenant on Civil and Political Rights*. Article 7 of the Convention makes non-refoulement an integral part of the prohibition of torture and cruel, inhuman or degrading treatment or punishment. At the same time, it interpreted the said article of the Convention as aiming to protect both the dignity and the physical and mental integrity of the individual.¹⁰⁹³ This means that all forms of torture and other forms of ill-treatment are also prohibited. The United Nations Human Rights Committee expresses its views on this matter as follows: ‘*States Parties must not expose individuals to the danger of torture or cruel or inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement*’¹⁰⁹⁴.

Another Convention that addresses the principle of non-refoulement is the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Article 3 of this convention states that “no state party shall expel, return or extradite any person to another”. The principle of non-refoulement is not only binding on states party to the Convention or other international agreements, as this principle has been considered a provision of Customary International Law and is binding on all countries in the world¹⁰⁹⁵.

One of the most important conventions on refugees and asylum seekers is the 1951 Geneva Convention. The principle of non-refoulement contained in this Convention covers not only refugees but also asylum seekers awaiting status determination. Additionally, the principle of non-refoulement prohibits the return of a person to a country where he or she would face a serious risk of persecution or harm as a result of direct or indirect rejection¹⁰⁹⁶.

Nehemiah Robinson's statement on the principle of non-refoulement emphasizes its role in limiting a state's sovereign power to return individuals to countries where they face potential harm. According to Robinson, even if an asylum seeker is not granted refugee status, the state is still bound by this

¹⁰⁹³ Official Journal of the European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT> (Date of Access: 12.12.2024)

¹⁰⁹⁴ Setyardi, “The Origins,” 2474.

¹⁰⁹⁵ Setyardi, “The Origins,” 2474.

¹⁰⁹⁶ Setyardi, “The Origins,” 2475.

principle to prevent their deportation. This reflects the idea that the principle prioritizes the protection of individuals from possible dangers in their home country, irrespective of their legal status in the host country¹⁰⁹⁷.

Gregor Noll, on the other hand, expands this concept by defining non-refoulement as the right to cross borders without being rejected. Noll's interpretation suggests that the principle is not contingent on the host state's willingness to accept the asylum seeker or refugee. Rather, it ensures that individuals are granted entry to the country to seek protection, regardless of the outcome of their asylum application¹⁰⁹⁸.

Together, these perspectives highlight the non-refoulement principle as a fundamental protection for those fleeing persecution, emphasizing both the right to seek asylum and the obligation of states to provide refuge from imminent danger.

As can be understood from the above documents and other international documents, the principle of non-refoulement is a fundamental human right. As a matter of fact, it shows how important it is to ensure the principle of non-refoulement in various international human rights documents.

B. The Scope of Individuals Covered Under The Protection Against Refoulement

In order for a person to be subject to the principle of non-refoulement, he/she must not only have refugee status but also as an asylum seeker. In this context, the following definition of the Refugee Convention will provide more clarity on the issue: *'any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his (or her) nationality and is unable or, owing to such fear, is unwilling to avail himself (or herself) of the protection of that country'*¹⁰⁹⁹.

As stated in the definition, the applicant must be subjected to persecution for the reasons set out in Article 1.A(2). In order to apply for this asylum and refugee status, four basic conditions are stipulated: "race, religion, nationality and membership of a particular social group or political opinion". In addition, the persecution suffered must be reasonably linked to the Convention grounds. Even if it seems right that an individual should

¹⁰⁹⁷ Setyardi, "The Origins," 2475.

¹⁰⁹⁸ Setyardi, "The Origins," 2475.

¹⁰⁹⁹ Convention Relating to the Status of Refugees, Article 1.A(2).

face persecution upon return to their country of origin, they are likely to be rejected if they cannot offer a reasonable connection¹¹⁰⁰.

As seen in the definition above, the Refugee Convention has brought a strict restriction on the principle of non-refoulement. However, this strict definition of refugees, which is of vital importance in determining the principle of non-refoulement, has been changed positively in other international human rights law documents. Article 3 of the European Convention, Article 3 of the Convention against Torture and Article 7 of the Political Convention provide broad protection for individuals regardless of their behavior and nationality¹¹⁰¹. All three of the instruments in question declared that they apply to everyone without discrimination, not just those who meet the requirements of the definition of a refugee under the Refugee Convention. The Committee Against Torture has declared that the principle of non-refoulement applies even to persons suspected of terrorism¹¹⁰².

CONCLUSION

In recent years, there has been a refugee boat accident crisis worldwide. While this crisis is a problem that needs to be given much attention and solved, it is seen as a problem that is not recognized and paid enough attention to. Refugees continue their lives in an extremely unsafe environment especially during their journey. Women and children are also exposed to this vulnerability. In this context, all rights of migrants,

¹¹⁰⁰ Nicholas Poynder, "Mind the Gap: Seeking Alternative Protection under the Convention against Torture

and the International Covenant on Civil and Political Rights," in *The Refugees Convention 50 Years On: Globalisation and International Law*, edited by Susan Kneebone, 176. Aldershot: Ashgate, 2003.

¹¹⁰¹ Hélène Lambert, "Protection against Refoulement from Europe: Human Rights Law Comes to the

Rescue," *International and Comparative Law Quarterly* 48, no.3 (1999): 8.; D. Weissbrodt and I. Hortreiter, "The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties," *Buffalo Human Rights Law Review* 5, (1999): 7.

¹¹⁰² Weissbrodt and I. Hortreiter, *ibid*, 13; Aoife Duffy, "Expulsion to Face Torture? Non-Refoulement in International Law," *International Journal of Refugee Law* 20, no. 3 (October 2008): 373-390; Berna Gunduz, "Non-Refoulement Principle In The 1951 Refugee Convention and Human Rights Law," *ASSAM International Refereed Journal (ASSAM - UHAD)* 10 (2018): 18.

YÜHFD Cilt: XXII Sayı:1 (2025)

especially the right to life are limited. Especially during sea travel, lives are lost, they are discriminated against and mistreated. They are generally prevented from seeking their rights. In this context, more measures are needed at national and international levels to protect migrants and prevent deaths. The increase in loss of life and victims makes these regulations mandatory. The greatest duty of states is to approach migration more humanely.

In this context, the duty to rescue at sea is one of the oldest and most important rules of international maritime law and customary law, and therefore, it has rules that bind all states. However, the lack of authority to enforce these rules and the danger of rescuers being faced with criminal proceedings are the biggest obstacles. In addition, after the rescue, state officials and individuals face legal uncertainty.

Some states not incorporating conventions such as UNCLOS and SOLAS into their domestic law is a major deficiency and leads to the abuse of the refugee issue by the relevant states and cause to negligence and deficiencies in rescue. In addition, the failure to incorporate the said conventions into domestic law also leads to the inadequacy and ineffectiveness of the courts.

As mentioned above, the first is the lack of an effective sanction mechanism regarding refugees. In this context, the lack of an international judicial body whose decisions are binding.

The responsibility for supporting refugees and asylum seekers and monitoring state practices lies primarily with the host state. The United Nations High Commissioner for Refugees (UNHCR) has only an advisory role, which limits its ability to intervene. This places the host state in a position of absolute authority, potentially leading to unlawful acts and exploitation. Moreover, there is no effective mechanism to hold states accountable for such abuses. The European Court of Human Rights (ECtHR) has emphasized the obligation of states to protect refugees and asylum seekers from violations under international human rights law, arguing that the state is bound by the European Convention on Human Rights (ECHR) to ensure the protection of the fundamental rights of individuals, including refugees. However, this approach also fails to lead to responsible state action.

Many states today are militarizing their borders, which is leading to increasing human rights violations. Instead of turning borders into military zones, states should implement more thoughtful and humane policies that prioritize human dignity. The refugee problem in particular requires greater

international cooperation. With this awareness in mind, states should hold those who fail to rescue at sea accountable and, if necessary, include the obligation to rescue in their criminal laws. Allegations of state violations, such as those committed by the Greek government against asylum seekers and refugees in the Aegean Sea, highlight the urgency of addressing these issues with a focus on human rights and international responsibility.

BIBLIOGRAPHY

Duffy, Aoife. “Expulsion to Face Torture? Non-Refoulement in International Law.” *International Journal of Refugee Law* 20, no. 3 (October 2008): 373-390.

Gunduz, Berna. “Non-Refoulement Principle In The 1951 Refugee Convention and Human Rights Law.” *ASSAM International Refereed Journal (ASSAM - UHAD)* 10 (2018): 13-23.

International Convention for the Safety of Life at Sea (SOLAS), London: International Maritime Organization, 1974.

International Convention on Maritime Search and Rescue (SAR), London: International Maritime Organization, 1979.

International Convention on Salvage, London: International Maritime Organization, 1989.

Lambert, Hélène. “Protection against Refoulement from Europe: Human Rights Law Comes to the Rescue.” *International and Comparatively Law Quarterly* 48, no.3 (1999): 8.

Noll, Gregor. “Seeking Asylum at Embassies: A right to Entry under International Law?.” *International Journal of Refugee Law* 17, no. 3 (2005): 542 - 573.

Official Journal of the European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT> (Date of Access: 12.12.2024)

Papanicolopulu, Irini. “The duty to rescue at sea, in peacetime and in war: A general overview.” *International Review of the Red Cross* 98, no. 2 (2016): 491–514.

Papastavridis, Efthymios D. “Is there a right to be rescued at sea? A skeptical view.” *QIL* 4 (2014): 17-32.

Poynder, Nicholas. “Mind the Gap: Seeking Alternative Protection under the Convention against Torture and the International Covenant on Civil and Political Rights.” in *The Refugees Convention 50 Years On: Globalisation and International Law*, edited by Susan Kneebone, 176. Aldershot: Ashgate, 2003.

Reguera, Emilia Girón. “El derecho de los migrantes rescatados en el mar que soliciten protección internacional a no ser internados.” *Revista Saber, Ciencia y Libertad* 18, no. 2 (2023): 21 – 47.

Sarkin, Jeremy. “Respecting and protecting the lives of migrants and refugees: the need for a human rights approach to save lives and find missing persons.” *The International Journal of Human Rights* 22, no. 2 (2018): 207-236.

Setyardi, Heribertus Untung. “The Origins of the Non-Refoulement Principle and Refugee Admission Considerations in the Refugee Protection Framework.” *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2472.

Trevisanut, Seline. “Is there a right to be rescued at sea? A constructive view.” *QIL Zoom-in* 4 (2014): 3-15.

Trevisanut, Seline. “The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection.” *Max Planck Yearbook of United Nations Law* 12, (2008): 205-246.

United Nations Convention on the Law of the Sea, 1833 UNTS 3 (10 December 1982- entered into force 16 November 1994).

Weissbrodt, D. and Hortreiter, I. “The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties.” [Buffalo Human Rights Law Review](#) 5, (1999): 1-73.