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# Literature review on the lawfulness of migration partnerships

**Annick Pijnenburg**
Assistant professor, International and European Law,
Research Centre for State and Law (SteR),
department of International and European Law,
Radboud University

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# Content

# 1. Introduction

The quick scan literature review used Google scholar and includes scholarship published since 2016. It used (a combination of) the following search terms: migration partnership; migration deal; externalisation; deterrence; remote control; containment; cooperation-based non-entrée; return (agreement(s)); readmission (agreement(s)); migration; refugee(s); asylum; voluntary return; Netherlands; Morocco; Algeria; Tunisia; Egypt; Nigeria; Niger; Iraq; Turkey; North Africa; West Africa; Middle East; Frontex; Emergency Transit Mechanism; (International/EU/European) law. A few sources are based on the literature (snowballing) and the author's knowledge of the field.

This quick scan literature review includes literature that concerns the following sources of legal obligations: international and European human rights law (e.g. European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR)) and international refugee law (e.g. 1951 Refugee Convention). It also includes the rules on responsibility in international law as embodied by the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) and Draft articles on the responsibility of international organizations (DARIO). Furthermore, given the preponderant role of the European Union (EU) and EU law in the literature, it also addresses primary EU law (Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU) and Charter of Fundamental Rights of the EU (Charter)) and secondary EU law (e.g. Return Directive) where relevant. Likewise, soft law sources like the 2018 Global Compact on Refugees (GCR) and Global Compact for Migration (GCM) are also included where relevant.

# 2. The policy objectives and international obligations

While the evaluation focuses on Dutch migration partnerships rather than EU-wide migration partnerships, most literature focuses on the latter. It is therefore also briefly addressed here. As no literature was found that addressed Dutch migration partnership policy specifically, the literature review examines EU Member States (MS) more generally.

## 2.1 Facilitating returns

According to Art. 4(2)(j) TFEU, shared competence between the EU and the MS applies to the area of freedom, security and justice (AFSJ). As a result, bilateral readmission agreements coexist with both formal EU readmission agreements and informal agreements concluded both by the EU and by its Member States.[1]

Giuffré's monograph *The Readmission of Asylum Seekers under International Law* provides an in-depth analysis of the international (and to a lesser extent European) legal framework applicable to the readmission of asylum seekers under bilateral agreements. The principle of *non-refoulement* plays a key role in this regard. It is enshrined in various treaty provisions, notably Art. 33(1) Refugee Convention and Art. 3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and has been read into other human rights treaty provisions, notably Arts. 6 and 7 ICCPR and Arts. 2 and 3 ECHR. While the exact scope of these treaty provisions varies, the principle entails that 'expulsion, removal, or extradition to a country where an individual can be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment should be outlawed, regardless of the irregular status or dangerousness of the individual concerned.'[2] In other words, *non-refoulement* prohibits exposing individuals to a risk of serious harm upon transfer to another country. Thus, Art. 33(1) Refugee Convention refers to territories where life or freedom 'would be threatened', while Art. 3 CAT refers to 'substantial grounds for believing that he would be in danger'. The exact scope of the principle differs slightly depending on the instrument in question. First, as regards the personal scope: Art. 33(1) Refugee Convention applies only to

1 Eleonora Frasca and Emanuela Roman, 'The Informalisation of EU Readmission Policy: Eclipsing Human Rights Protection under the Shadow of Informality and Conditionality' (2023) 8(2) European Papers 931, 933.
2 Mariagiulia Giuffré, The Readmission of Asylum Seekers under International Law (Hart 2020) 124.

refugees (including asylum seekers who have not yet been recognised as refugees),[3] whereas the *non-refoulement* provisions in human rights treaties apply to all human beings (including irregular migrants who have not applied for asylum, 'failed' asylum seekers and suspected criminals). Second, as regards the risk: Art. 33(1) Refugee Convention protects against threats to 'life or freedom [...] on account of [...] race, religion, nationality, membership of a particular social group or political opinion', Art. 3 CAT protects against torture, and Arts. 6 and 7 ICCPR and 2 and 3 ECHR prohibit return to a risk of death, torture and cruel, inhuman or degrading treatment. Third, while Art. 33(2) Refugee Convention excludes refugees who are deemed dangerous from the scope of protection of Art. 33, the principle of *non-refoulement* in international human rights law is absolute, meaning no exceptions are allowed.[4] *Non-refoulement* is also widely accepted as a customary law principle.[5]

Furthermore, the principle is enshrined in primary EU law (Art. 78(1) TFEU and Art. 19 Charter) and secondary EU law (e.g. Art. 5 Return Directive and Arts. 9(3), 35(b) and 38(1)(c) Asylum Procedures Directive (APD)). The principle of *non-refoulement* also prohibits chain *refoulement*: return to a country from where a further return to an unsafe country is possible.[6] Frasca and Roman that the 2016 and 2021 readmission agreements between the EU and Afghanistan ('Joint Way Forward' and 'Joint Declaration on Migration Cooperation') could lead to breaches of the *non-refoulement* principle in light of the situation in Afghanistan since 2016 and especially since August 2021.[7]

### 2.1.1 Before removal

As regards asylum seekers, the right to access asylum procedures and effective remedies are procedural guarantees to prevent *refoulement*.[8] In theory, asylum seekers cannot be removed from an EU MS to a third country until their asylum application has been examined and received a negative decision. The Return Directive and the APD, as interpreted by the Court of Justice of the EU (CJEU), require EU MS to establish the safety of the third state in individual cases. However, in practice, where appeals do not have suspensive effect, these safeguards are weakened.[9] In the Netherlands, the first appeal, which is before a district court, has an automatic suspensive effect, with some exceptions. A (second) appeal against the district court's decision may be lodged before the Administrative Law Division of the Council of State. The appeal before the Council of State has no automatic suspensive effect, although the applicant may request a suspensive effect to remain in the territory.[10]

The principle of *non-refoulement* also applies to individuals who have not applied for international protection in an EU MS, or who have not been granted international protection. The Return Directive contains several safeguards that must be complied with when transferring a person to a third country. Thus, returns must take place 'in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.'[11] While the Return Directive has been criticised for failing to sufficiently protect the rights of those transferred, in addition to the principle of *non-refoulement* discussed above, the Charter – which applies when EU MS implement EU law[12] - contains various provisions that returns must comply with, including the right to asylum (Art. 18), the prohibition of ill-treatment (Art. 4), arbitrary detention (Art. 6), the right to an effective remedy (Art. 47) and the right to family and private life (Art. 7). Most of these provisions correspond to rights guaranteed by the ECHR.[13] In

3 Refugee status is declaratory rather than constitutive: a person becomes a refugee at the moment when they satisfy the definition.
4 See Annick Pijnenburg, 'Containment Instead of Refoulement: Shifting State Responsibility in the Age of Cooperative Migration Control?' (2020) 20 Human Rights Law Review 306, 315-316.
5 Giuffré (n 2) 40.
6 Benjamin George Hulme, *Readmission and the European Union's Founding Values* (PhD thesis, Warwick University 2020) 207-208.
7 Frasca and Roman (n 1) 952-953.
8 Giuffré (n 2) 74-113.
9 Ibid 154.
10 https://caselaw.euaa.europa.eu/Pages/asylum-appeals-systems.aspx?country=Netherlands#. For an overview of appeal procedures in other EU MS see https://caselaw.euaa.europa.eu/Pages/asylum-appeals-systems.aspx.
11 Art. 1 Return Directive.
12 Art. 51(1) Charter.
13 Izabella Majcher, 'The EU Return System under the Pact on Migration and Asylum: A Case of Tipped

particular, depending on the circumstances, removal can be considered a disproportionate encroachment on the right to family or private life, protected under Art. 8 ECHR and Art. 7 Charter.[14] Art. 4 Protocol 4 and Art. 1 Protocol 7 ECHR also apply to readmission procedures.[15]

### 2.1.2 Readmission

Much scholarship finds that, under customary international law, states have an obligation to readmit their own nationals.[16] Giuffré, however, nuances this with regard to involuntary deportees, and there is consensus that there is no customary norm that requires states to readmit third country nationals.[17]

States cannot evade their obligations under international refugee and human rights law by concluding an agreement on the readmission of irregular migrants.[18] In other words, EU MS remain bound by international and European refugee and human rights obligations when they transfer a person to a third country.[19] Fernando-Gonzalo examined EU readmission agreements in the light of the GCM, with a special focus on Objective 21: 'Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration'.[20] The GCM confirms that the implementation of readmission agreements must comply with states' obligations under international law, including procedural guarantees and full respect for the principle of *non-refoulement*, which includes an individual assessment prior to readmission.[21]

The text of readmission agreements does not seem incompatible with international refugee and human rights law. However, their implementation in practice may fail to comply with these legal standards.[22] For instance, the 2014 readmission agreement between the EU and Turkey requires Turkey to take back its own nationals as well as third country nationals who have transited through its territory, who can be returned to their country of origin. Yet the majority of foreigners who transited through Turkey were asylum seekers who fled from Afghanistan, Syria and Iraq, who risked being *refouled* to their country of origin because of the EU-Turkey readmission agreement.[23] Readmission agreements sometimes contain saving or non-affection clauses, which requires the parties to the agreement to comply with their obligations under refugee and human rights treaties.[24] Yet even where *on paper* bilateral migration control agreements include nonaffection clauses, their implementation *in practice* may enhance the risk of *refoulement* by transferring asylum seekers to third countries without examination of the asylum seekers' protection claims, notwithstanding the abovementioned right to access asylum procedures and effective remedies.[25] Indeed, non-affection clauses in readmission agreements insufficiently

address the risk of human rights violations, as they remain vague, non-operational, and their implementation remains unclear.'[26]

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Interinstitutional Balance?' (2021) 26 European Law Journal 199, 202.

14 Ibid 205.

15 Hulme (n 6) 185.

16 See for instance Elsa Fernando-Gonzalo, 'The EU's Informal Readmission Agreements with Third Countries on Migration: Effectiveness over Principles?' (2023) 25(1) European Journal of Migration and Law 83, 89; Sergio Carrera, *Implementation of EU Readmission Agreements: Identity Determination Dilemmas and the Blurring of Rights* (Springer 2016) 48.

17 Giuffré (n 2) 133-142.

18 Ibid 155.

19 Ibid 159.

20 GCM para 37.

21 Elsa Fernando-Gonzalo, 'EU's Readmission Deals Under the Light of Global Compact on Migration' (2022) ASILE Project Working Paper accessed 30 May 2025, p 4.

22 Giuffré (n 2) 133.

23 Mehdi Rais, 'European Union Readmission Agreements' (2016) 51 Forced Migration Review 51, 45, 46.

24 Giuffré (n 2) 155.

25 Ibid 156.

26 Julia Kienast, Nikolas Feith Tan, and Jens Vedsted-Hansen, 'EU Third Country Arrangements: Human Rights Compatibility and Attribution of Responsibility' in Sergio Carrera Nunez and others (eds), *Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees (Springer 2024) 289.*

Kienast, Tan and Vedsted-Hansen argue that, while an abstract agreement without implementation does not breach states' human rights obligations in itself, the question arises whether a state which concludes an agreement where the breach of human rights obligations during its implementation is clearly foreseeable and without the text or context securing compliance with these duties might amount to a violation of the state's obligations.[27] This may be the case for Afghanistan (see above) and for Tunisia and Turkey for instance (see Section 3 below). In addition, it can be argued that concluding such agreements can amount to providing aid and assistance to a third state which commits human rights violations in contravention of Art. 16 ARSIWA (see Section 2.2.1 below): concluding a readmission agreement, with requisite levels of knowledge, can be seen as a way to prepare the ground for human rights violations being committed by the third state.[28]

### 2.1.3 EU readmission agreements

Art. 79(3) TFEU grants the EU the competence to conclude readmission agreements with third countries. Art. 218 TFEU lays down the procedure that must be followed when the EU concludes agreements with third countries. Agreements concluded following these legal provision are *formal* or *legally binding* agreements. Examples include the agreements with Albania, Georgia and Serbia.[29] However, the EU increasingly concludes informal agreements, which are known as *soft law*, as they are *not legally binding*. Examples include the 2016 EUTurkey Statement (see Section 3.4 below) and the 2023 EU-Tunisia deal (see Section 3.3 below), as well as the agreements with Afghanistan (see above), Bangladesh and Ethiopia.[30] By concluding *informal* agreements, the EU bypasses the safeguards of Art. 218 TFEU.[31] This is problematic as regards the principle of institutional balance: Art. 13(2) TEU provides that '[e]ach institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.' Informal readmission agreements are also problematic because of their lack of transparency, whereas Art. 1 TEU requires that 'decisions are taken as openly as possible".[32] Moreover, informal agreements hamper judicial control.[33] In other words, the use of informal agreements raises serious rule of law issues, as the Commission can side-step the Parliament and Council, and they fall outside the jurisdiction of the CJEU.[34]

A key issue with EU readmission agreements is that there is no meaningful way to ensure that the rights of people with protection claims will be properly guaranteed upon return.[35] Yet Art. 3(5) TEU requires the EU, in its relations with the wider world, to contribute to the protection of human rights and the strict observance of international law. Moreover, the use of conditionality in readmission agreements is problematic. Indeed, EU conditionality is usually associated with human rights performances, yet in the context of migration, conditionality linked to migration control and readmission bypasses a third country's human rights records: '[s]ince the main objective of the Union and its Member States is to make the EU return policy effective, it becomes irrelevant if foreign relations on migration are fostered with third countries which do not effectively respect human rights (nor protect their own nationals).'[36]

27 Ibid.
28 Ibid.
29 For a full list see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al14163.
30 Eva Kassoti and Narin Idriz, 'The Informalisation of the EU's External Action in the Field of Migration and Asylum' in Eva Kassoti and Narin Idriz (eds) *The Informalisation of the EU's External Action in the Field of Migration and Asylum* (Springer 2022) 3.
31 Fernando-Gonzalo, 'The EU's Informal Readmission Agreements' (n 16) 86.
32 Ibid 103-104.
33 Ibid 97-104.
34 Hulme (n 6) 266-267.
35 Carrera (n 16) 55.
36 Frasca and Roman (n 1) 948-949.

## 2.2 Preventing irregular migration

The policy objective of preventing irregular migration includes, on the one hand, containment, i.e. containing people in third states to prevent them from reaching the EU in the first place (notably by providing funding, training and/or equipment or sharing information); and, on the other hand, *deterrence*: agreements that negatively affect some individuals with the aim to deter others (e.g. through extraterritorial asylum processing).[37] While literature on externalisation covers both aspects, the main focus lies on containment, as the Netherlands has not yet concluded agreements on extraterritorial processing (though existing partnerships can also have a deterrent effect). As the evaluation does not focus on the role of the EU and its agencies, this quick scan literature review only briefly addresses the legal framework applicable to Frontex.

### 2.2.1 Containment

The literature consistently identifies two ways in which EU MS can violate international law by cooperating with third states to contain people on the move: direct and indirect (or derived) responsibility. In each case, the starting point is that containment policies can violate various human rights of people on the move, including the prohibitions of *refoulement*, torture and other forms of ill-treatment and arbitrary detention, and the right to seek asylum.[38] Containment policies can also breach the right to leave, which is enshrined in Art. 12(2) ICCPR and Art. 2(2) Protocol 4 ECHR. While the right to leave is not absolute, restrictions may not be arbitrary, and policies that entail a complete inability to leave breach this right.[39] Although the right to leave has been underused in litigation against externalisation measures, several recent cases have been brought arguing that the measure in question violates the right to leave.[40]

**Direct responsibility**

According to Art. 2 ARSIWA, EU MS incur direct responsibility under international law if the conduct that violates international law is attributable to them and breaches their international obligations. As regards the first requirement (attribution), the general rule is that, in principle, only the conduct of state organs and agents is attributable to the state; the conduct of private or non-state actors is not. Arts. 4-11 ARSIWA list the attribution rules in international law. In addition, when it comes to human rights law, some decisions of the ECtHR and other treaty bodies suggest that the conduct of a non-state actor may also be attributed to the state if the former acts with the acquiescence of the latter.[41] In the context of migration partnerships, the act of *concluding an agreement* with a third state is thus attributable to the EU MS in question (since it is a state organ that signed the agreement). As regards the *implementation of the agreement*, whether the conduct that causes alleged human rights violations is attributable to the EU MS depends on who does what in practice.

As regards the second requirement (breach of an international obligation), in the context of human rights, a key question is whether EU MS exercise jurisdiction over people on the move who are contained on the territory of third states, as under most human rights treaties – notably the ECHR and ICCPR – states only have obligations towards persons who are within their jurisdiction.[42] The question under which circumstances a state exercises extraterritorial jurisdiction and, if so, to what extent it has human rights obligations towards persons outside its territory, is a thorny issue in

37 On the terminology of 'containment' and 'deterrence' see Jens Vedsted-Hansen, 'European Governance of Deterrence and Containment: A Legal Perspective on Novelties in European and Danish Asylum Policy' (2025) 51(8) Journal of Ethnic and Migration Studies 2015-2032, 2017-2020.

38 Tamás Molnár, 'EU Member States' Responsibility Under International Law for Breaching Human Rights When Cooperating with Third Countries on Migration: Grey Zones of Law in Selected Scenarios' (2023) 8(2) European Papers 1013, 1016.

39 Mariagiulia Giuffré and Violeta Moreno-Lax, 'The Rise of Consensual Containment: From Contactless Control to Contactless Responsibility for Migratory Flows' in Satvinder Singh Juss (ed) Research Handbook on International Refugee Law (Edward Elgar 2019) 94-96; Thomas Spijkerboer, 'Asylum for Containment' in Sergio Carrera Nunez and others (eds), Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees (Springer 2024) 174.

40 Emilie McDonnell, 'Challenging Externalisation Through the Lens of the Human Right to Leave' (2024) 71 Netherlands International Law Review 119, 148.

41 E.g. ECtHR, El-Masri v Macedonia [GC] App No 39630/09 (13 December 2012) para 206. For a detailed discussion see Annick Pijnenburg, *At the Frontiers of State Responsibility: Socio-economic Rights and Cooperation on Migration* (Intersentia 2021) 194-197.

42 Art. 1 ECHR, Art. 2(1) ICCPR.

international human rights law. The jurisprudence of the European Court of Human Rights (ECtHR) has played a significant role in developing this concept. According to the ECtHR, a state exercises jurisdiction outside its territory if it exercises effective control over an area abroad (spatial model) or if a state agent exercises authority and control over a person abroad (personal model).[43] The ECtHR has recently recognized that the duty to investigate killings abroad can also create a jurisdictional link,[44] and its jurisprudence contains many exceptions.[45] Other human rights treaty bodies, notably the Human Rights Committee, recently seem to have adopted a functional model of extraterritorial jurisdiction. Under this model, jurisdiction is triggered if a state's conduct leads to direct and reasonably foreseeable human rights violations abroad,[46] even if the state does not exercise effective control over the territory or person.

The Office of the High Commissioner for Refugees (UNHCR) has clarified that when a state exercises effective control outside its territory, its obligations under international refugee and human rights law continue to apply.[47] Thus, pushbacks and other border control measures that would be unlawful if carried out within the territory of an EU MS or at its borders are also unlawful if committed extraterritorially by the EU MS or its agents.[48] However, many contemporary migration control agreements provide that third states are the ones that control migration, while EU MS limit their role to providing training, equipment, funding and advice.[49] These forms of 'contactless control'[50] make it more difficult to establish that EU MS exercise jurisdiction over people on the move contained in third countries, as EU MS often do not exercise effective (physical) control abroad: the jurisdictional test of effective control, as developed by the ECtHR, is too high for most cases of externalised controls.[51]

It is more likely that EU MS that provide training, equipment, funding and advice to third states exercise jurisdiction over people on the move contained in these countries if one applies the functional model (rather than the spatial or personal models) of jurisdiction: under the functional model, it can be argued that providing training, equipment, funding and advice leads to direct and reasonably foreseeable human rights violations in third countries. Likewise, as for the conclusion of readmission agreements (see Section 2.1 above), knowingly entering into an agreement with unsafe countries where risks of *refoulement* are blatantly and reliably documented, with the result of heightening the possibility of an Art. 3 ECHR violation instead of diminishing or avoiding it, should be seen to breach the ECHR.[52] Indeed, externalised border control measures not involving effective control may nonetheless have unlawful effects where the pertinent decision by that State forms part of a chain of conduct that directly exposes an individual to a breach of protected human rights, including, but not limited to, the principle of *non-refoulement*.[53]

In sum, it remains unclear whether EU MS exercise jurisdiction over people on the move intercepted by third States on their behalf. This depends on one's understanding of jurisdiction as well as the specific facts of the case.[54]

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43 See ECtHR, *Al-Skeini and others v UK* [GC] App No 55721/07 (7 July 2011) paras 130-142.
44 ECtHR, *Ukraine and Netherlands v Russia* [GC] Apps Nos 8019/16, 43800/14 and 28525/20 (25 January 2023) [Admissibility] paras 559-575.
45 For a (somewhat outdated) overview of the ECtHR's jurisprudence on extraterritorial jurisdiction see <www.echr.coe.int/documents/d/echr/FS_Extra-territorial_jurisdiction_ENG>.
46 Human Rights Committee, 'General Comment No 36 on the Right to Life' (30 October 2018) UN Doc CCPR/C/GC/36, para 63.
47 UNHCR, 'Note on the "Externalization" of International Protection' (28 May 2021) <www.refworld.org/policy/legalguidance/unhcr/2021/en/121534> accessed 30 May 2025, para 9(d).
48 'Refugee Law Initiative Declaration on Externalisation and Asylum' (2022) 34(1) International Journal of Refugee Law 114, para 12.
49 Annick Pijnenburg, Thomas Gammeltoft-Hansen and Conny Rijken, 'Controlling Migration through International Cooperation' (2018) 20(4) European Journal of Migration and Law 365, 367.
50 Giuffré and Moreno-Lax (n 39).
51 Anna Liguori, Migration Law and the Externalization of Border Controls: European State Responsibility (Routledge 2019) 93; see also Lina Sophie Moller, 'Containing the Containment: Using Art. 16 ASR to Overcome Accountability Gaps in Delegated Migration Control' (2024) 14 Goettingen Journal of International Law 91, 96.
52 Giuffré (n 2) 307.
53 'Refugee Law Initiative Declaration on Externalisation and Asylum' (n 48) para 14.
54 Pijnenburg, 'Containment Instead of Refoulement' (n 4) 327. See also Salvatore Fabio Nicolosi, 'Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law' (2024) 71 Netherlands International Law Review 1, 13.

**Indirect responsibility**

Even if they do not incur direct responsibility, EU MS can incur derived or indirect responsibility for providing aid and assistance to third states under Art. 16 ARSIWA (generally referred to as complicity). That is the case if the following requirements are met:

The conduct of the third state constitutes an internationally wrongful act;

- There is a sufficiently close link between the aid or assistance provided and the violation committed;
- the sponsoring destination State has knowledge of the circumstances of the internationally wrongful act;
- the violation would be internationally wrongful if committed by the EU MS.55 There is almost no jurisprudence that helps clarify how these requirements should be interpreted. The International Court of Justice has pronounced itself on Art. 16 ARSIWA only in one case that concerned genocide.56 Because applying Art. 16 ARSIWA would require a court to rule not only on the conduct of the allegedly complicit state but also of the principal perpetrator (since a requirement to apply Art. 16 ARSIWA is that the conduct of the third state constitutes an internationally wrongful act), it is extremely difficult for courts to apply this provision, as they often have jurisdiction only over the respondent (allegedly complicit) state. Therefore, it also remains unclear how these requirements should be interpreted and applied in the context of migration partnerships.

It remains notably unclear what the adequate standard is for the mental element. Indeed, while the text of Art. 16(a) refers to 'knowledge of the circumstances', the commentary refers to the complicit state's intention to facilitate the commission of the internationally wrongful act. In the context of migration control, various authors suggest that the requirement is met if the assisting state has knowledge, or even virtual certainty, that the assisted state will use the assistance unlawfully.[57] More generally, Ashraf concludes that complicity can be established when the aid or assistance materially facilitates the commission of extraterritorial human rights violations, and when the assisting state has knowledge and intention of its assistance being used to commit (part of) these violations.[58] Kienast, Tan and Vedsted-Hansen note that the provision of financial assistance, patrol boats or other material equipment to third state authorities meets the material definition of aid and assistance, but whether training is sufficiently linked to the subsequent violation depends on the facts and the nature of the training undertaken.[59] EU funding, equipment and training may lead to indirect responsibility, but only where European aid and assistance contributes significantly to the wrongful act, with the requisite level of knowledge or intent.[60] The last requirement (the existence of common obligations on behalf of both cooperating states) is unlikely to raise issues as the fundamental nature of the obligations at stake in migration control mean they are owed by almost all states via one source of international law or another.[61] A significant part of the literature applies Art. 16 ARSIWA to the cooperation between Italy and Libya and concludes that it meets the requirements.[62]

55 Pijnenburg, 'Containment Instead of Refoulement' (n 4) 328-331. See also Tasawar Ashraf, 'State Complicity in Aiding and Assisting Extraterritorial Human Rights Violations: The Case of Informal Externalisation of Asylum Controls' (2025) 27(1) European Journal of Migration and Law 20, 32-33; Kienast, Tan and Vedsted-Hansen (n 26).

56 International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) Judgment (26 February 2007) ICJ Reports 2007, 43.

57 E.g. Ashraf (n 55) 36; Moller (n 51) 114; Pijnenburg, 'Containment Instead of Refoulement' (n 4) 329; Liguori (n 51) 26, Azadeh Dastyari and Asher Hirsch, 'The Ring of Steel: Extraterritorial Migration Controls in Indonesia and Libya and the Complicity of Australia and Italy' (2019) 19(3) Human Rights Law Review 435, 464.

58 Ashraf (n 55) 40

59 Kienast, Tan and Vedsted-Hansen (n 26) 289-290.

60 Ibid 293.

61 Ibid 290.

62 E.g. Liguori (n 51); Moller (n 51) 115; Ashraf (n 55) 39; Dastyari and Hirsch (n 57) 464.

Molnár identifies 3 scenarios in which the international responsibility of EU MS for possible human rights violations remains unclear:

- Activities carried out by EU MS within third countries for the benefit of the latter and capacity building activities for third countries implemented by EU MS;
- Activities carried out by EU MS officials on board of vessels flying the flag of third countries;
- Situations where EU MS border guards identify people moving towards the border and share this information and request assistance from the neighbouring third country to intercept these people before they cross the border.[63]
- Information campaigns are unlikely to engage the responsibility of the would-be destination state for any potential human rights violations.[64]

**EU law**

Art. 2 TEU lists respect for human dignity and human rights among the fundamental values upon which the EU is founded. According to Art. 6 TEU, fundamental rights as guaranteed by the ECHR constitute general principles of EU law. Art. 4(3) TEU requires EU MS to cooperate sincerely and loyally in achieving the EU's objectives, one of which is to promote its values according to Art. 3(1) TEU. However, the EU has so far failed to set clear, public benchmarks in its external policies, necessary to assess and monitor compliance with fundamental rights.[65] While the CJEU has held that the EU must avoid situations where an agreement indirectly encourages violations of fundamental rights,[66] the required safeguards are not foreseen in the current external cooperation on migration.[67] Strik concludes that the external dimension of asylum and migration policy falls short of respecting key EU principles, in particular democracy, institutional balance, fundamental rights and coherence.[68]

García Andrade notes that the close relationship between EU migration and development cooperation policies raises legal controversies as regards the EU financing of migration cooperation. Indeed, development funds have been used for migration management purposes, and the distortion of development funds cannot be excluded under the Neighbourhood, Development and International Cooperation Instrument (NDICI).[69] Yet '[t]he use of development legal bases and instruments to finance migration cooperation with partner countries could distort development objectives and thus infringe EU primary law, particularly the principles of conferral and consistency of EU external action';[70] and '[i]t is contentious whether actions directed towards reinforcing capacity building in third countries on migration management directly contribute to the development of these countries'.[71] Likewise, the EU also uses Common Foreign and Security Policy/Common Security and Defence Policy rather than AFSJ instruments in its external action to control migration, which raises the question whether that is the right legal basis.[72]

While it remains unclear to what extent international human rights instruments apply to Frontex directly, it is bound by the EU human rights regime, notably the Charter.[73] Regulation 2019/1896 confirms that Frontex must comply with EU law and human rights standards in its cooperation with third countries.[74] Aviat demonstrates that Frontex violates the principle of *non-refoulement* if it

63 Molnár (n 38).
64 Giuffré and Moreno-Lax (n 39) 96.
65 Tineke Strik, 'EU External Cooperation on Migration: In Search of the Treaty Principles' (2023) 8(2) European Papers 905, 911.
66 CJEU, *Case T-512/12 Front Polisario v Council* (10 December 2015) para 231.
67 Strik (n 65) 914.
68 Ibid 928.
69 Paula García Andrade, 'The External Dimension of the EU Migration Policy: The Legal Framing of Building Partnerships with Third Countries' in Evangelia Tsourdi and Philippe De Bruycker (eds) *Research Handbook on EU Migration and Asylum Law* (Edward Elgar 2022) 373-374.
70 Ibid 373.
71 Ibid.
72 Paula García Andrade, 'Tackling Migration Externally Through the EU Common Foreign and Security Policy: A Question of Legal Basis' (2023) 8(2) European Papers 959.
73 Florin Coman-Kund, 'The Cooperation between the European Border and Coast Guard Agency and Third Countries According to the new Frontex Regulation: Legal and Practical Implications' in Herwig CH Hofmann, Ellen Vos and Merijn Chamon (eds) *The External Dimension of EU Agencies and Bodies* (Edward Elgar 2019) 52.
74 Martina Previatello, 'Frontex Actions Beyond EU Borders: Status Agreements, Immunities and the Protection of Fundamental Rights' EUI, LAW, AEL, Working Paper, 2023/06, European Society of International Law (ESIL) Paper,

shares information with third countries that leads to *refoulements*.[75] From the perspective of international law, when cooperating with third states, Frontex could also incur both direct responsibility under Art. 4 DARIO and indirect responsibility under Art. 14 DARIO (the parallel provisions to Arts. 2 and 16 ARSIWA that apply to international organisations).[76]

### 2.2.2 Deterrence

One way for states in the Global North to deter arrivals is by concluding agreements on extraterritorial asylum processing. The refugee Law Initiative Declaration on Externalisation and Asylum details the international legal framework applicable to extraterritorial asylum processing. The starting point is that 'States are allowed to externalize elements of their asylum functions to a State or entity outside their own territory only where this is done in a way consistent with their own legal obligations and for good faith reasons'.[77] Likewise, UNHCR noted that measures that serve to shift rather than share responsibility and that involve inadequate safeguards or leave protection needs unmet are unlawful.[78] In other words, while international law does not prohibit the transfer of asylum seekers from one country to another for asylum processing, such policies are only legal if they are implemented in good faith, serve to share rather than shift responsibility, and comply with international refugee and human rights law. Yet contemporary extraterritorial asylum processing agreements are bad faith intents to evade international responsibility.[79] As regards EU law, the Italy-Albania model raises various concerns about its compatibility with the EU legislation it claims to respect and the rights of the asylum seekers involved.[80] Likewise, the transfer of asylum seekers to a third country like Rwanda would be incompatible with current EU standards on 'safe third countries'.[81]

## 2.3 Protecting migrants and promoting regular migration initiatives

The large majority of the legal literature on externalisation and migration partnerships focuses on return and readmission as well as containment and deterrence, focusing specifically on the question whether these policies comply with international law and to what extent and how accountability for violations can be realised.[82] Some scholars have recently started exploring the role of funding in migration governance, albeit not from a legal perspective.[83] Therefore, this section follows the literature which tends to adopt a narrow understanding of protection, which focuses primarily on international protection under international refugee law and civil and political human rights, such as the principle of *non-refoulement*, the prohibition of torture and ill-treatment, and the rights to life and liberty.

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<https://hdl.handle.net/1814/75751> accessed 30 May 2025, pp 5-6; Mona Aviat, 'Externalising Refoulement Through New Technologies: The Case of Frontex's Specific Situational Pictures under the Lens of EU Non-Contractual Liability' (2024) 71 Netherlands International Law Review 177; Juan Santos Vara, 'The Activities of Frontex on the Territory of Third Countries: Outsourcing Border Controls Without Human Rights Limits?' (2023) 8(2) European Papers 985, 1006; Kienast, Tan and Vedsted-Hansen (n 26) 292.

75 Aviat (n 74).

76 Kienast, Tan and Vedsted-Hansen (n 26) 292; Santos Vara (n 74) 1009.

77 'Refugee Law Initiative Declaration on Externalisation and Asylum' (n 48) para 25.

78 UNHCR (n 47) paras 4 and 5.

79 Annick Pijnenburg and Kris van der Pas, 'Litigating Externalisation Policies: The Added Value of a Multi-Level Legal Order?' (2025) Refugee Survey Quarterly.

80 Stefano Montaldo, 'Not in my Backyard! Outsourcing EU Asylum Procedures to Third Countries: A Challenge for the Common European Asylum System' (2025) 62(2) Common Market Law Review 327, 372.

81 Vedsted-Hansen (n 37) 2026.

82 See for instance the following special issues: https://germanlawjournal.com/volume-21-issue-3/ (Border Justice: Migration and Accountability for Human Rights Violations) and https://link.springer.com/journal/40802/volumesand-issues/71-1 (Externalisation of Migration and Border Controls and Accountability Challenges in International Law).

83 See for instance www.tandfonline.com/toc/wimm20/23/1?nav=tocList (Migration Governance through Funding: Theoretical, Normative, and Empirical Perspectives).

According to UNHCR, what is key is that states fulfil their obligations under international refugee and human rights law in good faith.[84] UNHCR recognises that 'States may make arrangements with other States to ensure international protection, as long as these arrangements enhance responsibility sharing and are consistent with the 'widest possible exercise of [...] fundamental rights and freedoms' of refugees.'[85] Policies and practices aimed at sharing – rather than shifting - international protection responsibilities and that are undertaken in accordance with international standards are in line with the 1951 Refugee Convention and principles of international cooperation and solidarity.[86] UNHCR further notes that 'protection and solutions for refugees may be provided through other lawful arrangements including resettlement, humanitarian admissions and other complementary and regular pathways'.[87] The Michigan Guidelines on Protection Elsewhere are also a useful departure point to identify minimum standards for accessing asylum and effective protection in the context of deterrence policies.[88]

Spijkerboer notes that the implementation by third countries of EU instruments that support asylum systems in third countries as part of the externalisation of migration control can contribute to violations of international legal norms by these third countries.[89] Moreover, European projects fund non-governmental as well as intergovernmental and international organisations to carry out activities in the field of refugee protection and migration management, and these organisations sometimes exercise state functions by providing essential services or carrying out refugee status determination procedures. Yet this jeopardises the right to an effective remedy,[90] as many of these organisations only have internal complaint mechanisms, which is not equal to granting access to an effective remedy that lives up to the standards of international law.[91]

Pijnenburg addresses the question to what extent EU MS have obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) towards people on the move contained in third countries as a result of migration deals. First, while the ICESCR, unlike the ICCPR and ECHR, does not contain a jurisdiction clause that limits its scope, in practice it has been interpreted in jurisdictional terms, following a functional approach to jurisdiction (see Section 2.2.1 above). As a result, when EU Member States conclude migration deals with third countries, they must take reasonable measures to avoid reasonably foreseeable violations of economic, social and cultural rights that result from such agreements.[92] Second, as the ICESCR also refers to 'international assistance and cooperation', Pijnenburg suggests that states parties to the ICESCR do not only have direct obligations when they exercise jurisdiction, but also global obligations of international assistance and cooperation, which do not require a jurisdictional link. However, the scope and nature of the obligation to provide international assistance and cooperation are contentious and in need of further clarification. Pijnenburg proposes that the obligation to provide international assistance and cooperation rests more heavily on EU MS that cooperate with third countries than on other States on account of their cooperation.[93] *In theory*, '[t]he assistance provided by EU Member States could comply with their global obligations of international assistance and cooperation provided that it contributes to realizing the socio-economic rights of people on the move in third countries.'[94] Yet in practice this is unlikely to be the case because EU MS' assistance tends to focus on preventing onward movement rather than realizing the rights of people on the move in third countries.[95] Pijnenburg concludes that it is more likely that EU MS comply with their (direct and global) obligations under the ICESCR in their cooperation with Turkey than with Libya.[96]

84 UNHCR (n 47) para 9(b).
85 Ibid para 2.
86 Ibid paras 4 and 6.
87 Ibid para 6.
88 Nikolas Feith Tan, 'International Models of Deterrence and the Future of Access to Asylum' in Satvinder Singh Juss (ed) *Research Handbook on International Refugee Law* (Edward Elgar 2019) 180. See James C Hathaway, 'The Michigan Guidelines on Protection Elsewhere' (2007) 28 Michigan Journal of International Law 207.
89 Spijkerboer (n 39) 173.
90 Art. 13 ECHR; Art. 47 Charter; Art. 14 ICCPR.
91 Spijkerboer (n 39) 175.
92 Annick Pijnenburg, 'Migration Deals Seen through the Lens of the ICESCR' (2023) 35 International Journal of Refugee Law 151, 158-164.
93 Ibid 164-168.
94 Ibid 169.
95 Ibid.
96 Ibid 170.

This illustrates that a tension exists between the deterrence aim of migration partnerships and their ability to protect migrants.[97] Indeed, as many migration partnerships seek to prevent the arrival of 'unwanted' people on the move in EU MS, they focus on border control and deterring movement, which often leads to human rights violations. Thus, migration partnerships often contribute to *violating* human rights instead of contributing to *realizing* human rights.

A related question concerns voluntary returns from third countries to countries of origin as a result of externalisation policies. Negishi that situations where asylum seekers are forced to accept 'voluntary' repatriation due to long-term detention in poor conditions, extreme poverty resulting from the deprivation of essential goods for survival, and despair arising from the complete loss of prospects for successful applications, amount to constructive *refoulement*.[98] Dastyari and Hirsch likewise recall that *refoulement* arises when life in a country becomes so untenable that a refugee is forced to accept 'voluntary repatriation' and return home, and they argue that voluntary returns from Libya and Indonesia facilitated by the International Organisation for Migration (IOM) may in fact amount to *refoulement*.[99]

Finally, as a matter of EU law, the ability of the EU to use legal migration as a bargaining tool with third countries in exchange for their cooperation in the fight against irregular migration and the return of their citizens is limited by the fact that under EU law, labour migration remains mainly a MS prerogative:[100] the EU needs the cooperation and consent of MS to be able to offer third countries effective access to the EU labour market.[101] Only bilateral agreements between an EU MS and a third country can provide such legal pathways for labour migration.[102]

# 3. Country-specific findings

## 3.1 Niger

Tinni and Hamadou examine political, legal and financial instruments of cooperation between the EU and Niger and examine their compatibility with international law, notably international refugee law and international human rights law, as well as ECOWAS Community law.[103] While some instruments are in line with international law, they also note various points of tension. They conclude that Niger's implementation of these instruments is difficult to reconcile with international and regional law.[104]104 Depending on the chosen perspective, the Emergency Transit Mechanism - an arrangement agreed between the state of Niger, UNHCR and IOM, and funded by the EU whereby certain categories of people are transferred from Libya to Niger, with a view to admission as a refugee in European countries[105] - can also be deemed contrary to international law.[106]

Law 2015–36 and its implementation pose problems in the areas of freedom of movement, given Niger's membership of ECOWAS, the right to asylum, the right to freedom of movement within

97 See Emanuela Roman, 'The "Burden" of Being "Safe": How do Informal EU Migration Agreements Affect International Responsibility Sharing?' in Eva Kassoti and Narin Idriz (eds) *The Informalisation of the EU's External Action in the Field of Migration and Asylum* (Springer 2022) 337.

98 Yota Negishi, 'Constructive Refoulement as Disguised Voluntary Return: The Internalised Externalisation of Migrants' (2024) 71 Netherlands International Law Review 155, 157.

99 Dastyari and Hirsch (n 57) 458-459

100 Art. 79(5) TFEU.

101 Fanny Tittel-Mosser, 'Labour Immigration: Can "Soft" Instruments Provide Legal Pathways for Third Country Nationals?' in Eva Kassoti and Narin Idriz (eds) *The Informalisation of the EU's External Action in the Field of Migration and Asylum* (Springer 2022) 61-62.

102 García Andrade, 'The External Dimension of the EU Migration Policy'(n 69) 372; Tittel-Mosser, 'Labour Immigration' (n 101) 64. See also Leonhard den Hertog, 'Funding the EU–Morocco "Mobility Partnership": Of Implementation and Competences' (2016) 18(3) European Journal of Migration and Law 275, 296.

103 Bachirou Ayouba Tinni and Abdoulaye Hamadou, 'The Outsourcing of European Migration and Asylum Policy in Niger' in Sergio Carrera Nunez and others (eds), *Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees* (Springer 2024) 191-200.

104 Ibid 196-197.

105 Spijkerboer (n 39) 170.

106 Tinni and Hamadou (n 103) 194 and 200.

one's own country, and the right to leave.[107] Indeed, Law 2015-36, which was drafted and implemented with European support, deprives people of the possibility to leave Niger and deprives Nigerien and ECOWAS citizens the right of free movement within Niger.[108] This is not only contrary to international human rights law but also ECOWAS law.[109] In 2022 a complaint was submitted to the ECOWAS Court of Justice arguing that Law 2015-36 is illegal.[110] The law was repealed in November 2023 following the junta's military coup.[111] The African Commission on Human and Peoples' Rights has identified many human rights violations suffered by migrants in Niger.[112]

## 3.2 Tunisia

Strik and Robbesom argue that a strong argument can be made that the implementation of the 2023 EU-Tunisia deal risks violating human rights - since it results in the containment of people on the move in a country where they suffer severe human rights violations - or at least the due diligence obligation to perform ex ante impact assessments and monitoring activities.[113] While it is difficult to argue that the EU and its MS incur direct responsibility (because of the threshold for establishing extraterritorial jurisdiction), they can incur indirect responsibility under international law.[114] This deal also causes tension in terms of compliance with EU law, as its informal nature prevents the safeguards of Art. 218 TFEU from applying, and the EU does not comply with the obligation to ensure that external actions are compliant with the EU Treaties.[115] More generally, EU instruments regarding Tunisia contribute to the containment of refugees and asylum seekers and undermine their access to protection for several reasons, and are not compatible with international refugee law and the GCR.[116] Notably, EU support for interceptions by the Tunisian coast guard breaches international law because Tunisia does not qualify as a place of safety.[117] Other authors have questioned the qualification of Tunisia as a safe country of origin (to which Tunisians can be returned) and a safe third country (to which third country nationals could be returned),[118] and have identified multiple human rights violations committed by Tunisian authorities in the context of externalisation of the EU's migration policy, such as pushbacks, detention, and violations of the rights to due process, to work and to leave.[119] On a positive note, the practice of the Tunisian consular authorities - especially in France - of verifying that the social rights of their nationals are respected before approving any return order helps realise migrants' social rights.[120]

107 Ibid 195.
108 Spijkerboer (n 39) 174.
109 Protocol A/P1/5/79 on the free movement of persons, the right of residence and establishment, adopted in Dakar on 25 May 1979.
110 McDonnell (n 40) 140.
111 Ibid.
112 African Commission on Human and Peoples' Rights, 'Pilot Study on Migration and Respect for Human Rights: Focus on the Responses Provided by Niger' (2019) <https://achpr.au.int/en/node/900> accessed 30 May 2025.
113 Tineke Strik and Ruben Robbesom, 'Compliance or Complicity? An Analysis of the EU-Tunisia Deal in the Context of the Externalisation of Migration 2024) 71 Netherlands International Law Review 199, 217.
114 Ibid 217-218. See also Kienast, Tan and Vedsted-Hansen (n 26) 290.
115 Strik and Robbesom (n 113) 213 and 221.
116 Fatma Raach and Hiba Sha'ath, 'Tunisia-EU Cooperation in Migration Management: From Mobility Partnership to Containment' in Sergio Carrera Nunez and others (eds), *Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees* (Springer 2024).
117 Ibid 227.
118 Mariagiulia Giuffré, Chiara Denaro and Fatma Raach, 'On "Safety" and EU Externalization of Borders: Questioning the Role of Tunisia as a "Safe Country of Origin" and a "Safe Third Country"' (2022) 24(4) European Journal of Migration and Law 570.
119 Vasja Badalič, 'Tunisia's Role in the EU External Migration Policy: Crimmigration Law, Illegal Practices, and Their Impact on Human Rights' (2019) 20 Journal of International Migration and Integration 85.
120 Hiba Sha'ath and Fatma Raach 'Cooperation within Reason: Tunisia's Approach to Asylum and Readmission' 26(2) European Journal of Migration and Law 179, 194. See e.g. Art. 9 ICESCR.

## 3.3 Turkey

Scholars remain divided regarding the question whether the EU-Turkey Statement of 18 March 2016 is a treaty under international law.[121] The Vienna Convention on the Law of Treaties defines a treaty as 'an international agreement [...] in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'.[122] Various factors play a role in determining whether the EU-Turkey Statement is a treaty, including its form, text and context.[123] If one accepts that it is a treaty, the Art. 218 TFEU procedure should have been followed to conclude this agreement.[124] In February 2017 the CJEU found in the case of *NF v European Counci*l that the EU-Turkey Statement was not concluded by the EU but by its MS, precluding the review of its lawfulness under EU law.[125] This finding has been heavily criticised in academic literature.[126] Art. 21 TEU requires the EU to consolidate and support democracy, the rule of law, human rights and the principles of international law in its external action. Yet these principles would only apply to the EU-Turkey Statement if it were concluded by the EU rather than its MS.[127] Therefore, the CJEU's finding implies that general principles of EU law and constitutional safeguards can be circumvented.[128] The strategy of deliberately avoiding using the set of rules, procedures and guarantees laid down in Art. 218 TFEU can be qualified as a *mala fide* breach of Art. 4(3) TEU (principle of loyal and sincere cooperation) and undermines the fundamental rights protection standards of the Charter.[129]

The EU-Turkey Statement also risks violating multiple human rights norms. It is premised on the assumption that Turkey is a safe third country to which asylum seekers can be returned, and in which they can be contained. Yet scholars unanimously question Turkey's qualification as a safe third country.[130] Moreover, containing refugees in Turkey is at odds with the right to leave and the right to seek asylum.[131] Knowingly entering into an agreement with Turkey, which can lead to *refoulement* or curtailing the right to leave, can breach EU MS's obligations under Art 2. ECHR and Art. 2 Protocol 4 ECHR.[132] Scholars disagree whether the EU-Turkey Statement triggers indirect responsibility under Art. 16 ARSIWA.[133] Finally, the EU-Turkey Statement's compliance with the GCR is a mixed bag: it increases instead of easing the pressure on Turkey, yet financial assistance provided under the Facility for Refugees in Turkey can be considered as easing pressures on Turkey and contributing to the self-reliance of refugees.[134]

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121 Lynn Hillary, 'Down the Drain with General Principles of EU Law? The EU-Turkey Deal and "PseudoAuthorship"' (2021) 23(2) European Journal of Migration and Law 127, 142; Sergio Carrera, Leonhard den Hertog and Marco Stefan, 'The EU-Turkey Deal: Reversing Lisbonisation in EU Migration and Asylum Policies' in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds) *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar 2019); Mauro Gatti and Andrea Ott, 'The EU-Turkey Statement: Legal Nature and Compatibility with EU Institutional Law' in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds) *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar 2019).

122 Art. 2(1)(a) Vienna Convention on the Law of Treaties.

123 Hillary (n 121) 142; Gatti and Ott (n 121).

124 Hillary (n 121) 142.

125 CJEU, *NF v European Counci*l T-192/16 (28 February 2017).

126 See for instance Hillary (n 121) 138-140; Gatti and Ott (n 121) 177-182.

127 Hillary (n 121) 143.

128 Hillary (n 121) 144; Carrera, Den Hertog and Stefan (n 121) 173.

129 Carrera, Den Hertog and Stefan (n 121) 173.

130 Manuel P Schoenhuber, 'The European Union's Refugee Deal with Turkey: A Risky Alliance Contrary to European Laws and Values' (2018) 40(2) Houston Journal of International Law 633, 659; Gamze Ovacık, Meltem Ineli-Ciger and Orçun Ulusoy, 'Taking Stock of the EU-Turkey Statement in 2024' (2024) 26(2) European Journal of Migration and Law 154; Giuffré and Moreno-Lax (n 39); Carrera, Den Hertog and Stefan (n 121); Orçun Ulusoy and others, 'Cooperation for Containment: An Analysis of the EU-Türkiye Arrangements in the Field of Migration' in Sergio Carrera Nunez and others (eds), *Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees* (Springer 2024) 241242.

131 Frasca and Roman (n 1) 955; Giuffré and Moreno-Lax (n 39) 99; Gregor Noll, Gamze Ovacık and Eleni Karageorgiou, 'Attributing Legal Responsibility in the Context of Mobility Containment' in Sergio Carrera Nunez and others (eds), *Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees* (Springer 2024) 300.

132 Giuffré and Moreno-Lax (n 39) 107.

133 Compare Giuffré and Moreno-Lax (n 39) 101-103 and Noll, Ovacık and Karageorgiou (n 131) 301.

134 Ulusoy and others (n 130) 248-250.

# 4. Conclusion

This quick scan literature review answered the following question: what can we say based on current scientific literature about the extent to which migration partnerships or similar agreements are in line with international law and other international obligations? It revealed that the implementation of readmission agreements can breach international human rights and refugee law, notably the principle of *non-refoulement* and procedural guarantees. As regards preventing irregular migration, such policies can violate various human rights, including the right to leave, the prohibition of *refoulement* and the right to seek asylum. There are two ways in which EU MS can incur responsibility under international law for these violations: they can incur direct responsibility if they exercise jurisdiction, or indirect responsibility for providing aid and assistance to third states. Responsibility sharing is allowed under international law, but not responsibility shifting. The inherent tension between deterrence and protection explains why even migration partnerships that seek to protect people on the move can be problematic under international law.