

# **VOICE OF FREEDOM AND RIGHTS**



**VOLME 1 AND ISSUE 1 OF 2023**

**INSTITUTE OF LEGAL EDUCATION**



**Voice of Freedom and Rights**  
**(Free Publication and Open Access Journal)**

**Journal's Home Page – <https://vfr.iledu.in/>**

**Journal's Editorial Page – <https://vfr.iledu.in/editorial-board/>**

**Volume 1 and Issue 1 (Access Full Issue on – <https://vfr.iledu.in/category/volume-1-and-issue-1-of-2023/>)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://vfr.iledu.in/terms-and-condition/>



## ASYLUM SEEKER AND THEIR RIGHTS UNDER THE INTERNATIONAL LAW OF SEA

**Author** - VEDANT RATHA, Student at KIIT SCHOOL OF LAW, BHUBANESWAR

**Best Citation** - VEDANT RATHA, ASYLUM SEEKER AND THEIR RIGHTS UNDER THE INTERNATIONAL LAW OF SEA, *Voice of Freedom and Rights*, 1 (1) of 2023, Pg. 47-51, ISBN - 978-81-961120-1-1.

### ABSTRACT

This research article focuses on the legal rights of asylum seekers under the international law of the sea. Asylum seekers are individuals who have fled their country of origin due to a well-founded fear of persecution based on their race, religion, nationality, political opinion, or membership in a particular social group. These individuals are entitled to legal protection under international law, which prohibits their return to a country where they may face persecution or torture. The international law of the sea, as governed by the United Nations Convention on the Law of the Sea (UNCLOS), plays a crucial role in ensuring the protection of asylum seekers who arrive by sea.

UNCLOS establishes the obligations of states and ships to render assistance to persons in distress at sea, regardless of their nationality or status. This includes providing medical care, food, and water, as well as informing the authorities of the nearest port where the asylum seeker can disembark safely. Additionally, the principle of non-refoulement, which is enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, prohibits states from returning refugees or asylum seekers to a country where they may face persecution or torture.

This article emphasizes the importance of respecting and upholding the legal rights of asylum seekers who arrive by sea. It argues that adherence to these legal obligations is crucial to ensuring the safety and protection of asylum seekers, who are among the world's most vulnerable populations. The article concludes that further efforts are necessary to promote

and protect the rights of asylum seekers under international law, particularly in light of the increasing number of asylum seekers arriving by sea in recent years.

**KEYWORDS:** Asylum seekers, International Law of the Sea, United Nations Convention on the Law of the Sea (UNCLOS), legal protection, persecution, torture, non-refoulement

### INTRODUCTION

The number of asylum seekers arriving by sea has increased significantly in recent years. Asylum seekers are individuals who have fled their country of origin due to a well-founded fear of persecution based on their race, religion, nationality, political opinion, or membership in a particular social group. These individuals are entitled to legal protection under international law, which prohibits their return to a country where they may face persecution or torture. The international law of the sea, as governed by the United Nations Convention on the Law of the Sea (UNCLOS), plays a crucial role in ensuring the protection of asylum seekers who arrive by sea. This paper will explore the legal rights of asylum seekers under the international law of the sea and the challenges and opportunities for upholding these rights in practice.

### INTERNATIONAL LAW OF THE SEA

The international law of the sea is a body of law that governs the use of the world's oceans and seas. It sets out the rights and obligations of states in their use of the world's oceans and regulates marine affairs, including navigation, fishing, pollution, and scientific research. The international law of the sea is governed by a number of international treaties, including



UNCLOS, which was adopted in 1982 and has been ratified by 168 countries, including all the major maritime powers.

UNCLOS sets out the obligations of states to render assistance to persons in distress at sea. Under UNCLOS, all ships are required to render assistance to any person found at sea in danger of being lost, to provide assistance regardless of the nationality or status of such a person or the circumstances in which they are found.

Article 98 of UNCLOS states that "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."

### **ASYLUM SEEKERS AND THE INTERNATIONAL LAW OF THE SEA**

Asylum seekers who arrive by sea are protected by a number of international laws, including the international law of the sea. UNCLOS requires all ships to render assistance to any person found at sea in danger of being lost, including asylum seekers who may be in distress due to their journey. The captain of a ship must provide medical care, food, and water, and inform the authorities of the nearest port where the asylum seeker can disembark safely.

Asylum seekers who arrive by sea are also protected under the principle of non-refoulement, which is a fundamental principle

of international law that prohibits states from returning refugees or asylum seekers to a country where they may face persecution or torture. This principle is enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which have been ratified by 146 countries, including all major maritime powers.

The principle of non-refoulement is also recognized under customary international law, which means that it is binding on all states, regardless of whether they have ratified the 1951 Convention and its Protocol. The principle of non-refoulement applies to all refugees and asylum seekers, including those who arrive by sea.

### **RIGHTS OF ASYLUM SEEKERS UNDER INTERNATIONAL LAW OF SEA**

The International Law of the Sea provides several key rights and protections for asylum seekers who are seeking protection by sea. These include

The right to non-refoulement: The principle of non-refoulement prohibits states from returning individuals to countries where they face the risk of persecution or torture. This principle is enshrined in several international treaties, including the 1951 Refugee Convention and the Convention against Torture. States have an obligation to respect the principle of non-refoulement and ensure that individuals are not returned to countries where they face persecution or torture.

The right to rescue: The International Law of the Sea requires ships to render assistance to individuals in distress at sea, including asylum seekers. The right to rescue is a fundamental obligation of all ships and is enshrined in the International Convention on Maritime Search and Rescue.

The right to be disembarked in a place of safety: Asylum seekers rescued at sea have the right to be disembarked in a place of safety. This right is



enshrined in several international treaties, including the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

The right to access asylum procedures: Asylum seekers have the right to access asylum procedures and to have their claims assessed on an individual basis. This right is enshrined in several international treaties, including the 1951 Refugee Convention.

### **CHALLENGES TO THE PROTECTION OF THE ASYLUM SEEKERS' RIGHT UNDER THE INTERNATIONAL LAW OF SEA**

Despite the legal obligations set out in UNCLOS and the 1951 Convention and its Protocol, the protection of asylum seekers rights under the international law of the sea faces numerous challenges in practice. One of the primary challenges is the lack of clarity and consistency in the implementation of these laws. Many states have different interpretations of the laws and fail to apply them consistently, leading to inconsistent treatment of asylum seekers. Some states also have restrictions on rescue operations in their territorial waters, which can lead to delays in rescue and endanger the lives of asylum seekers.

Lack of Consistency in Implementation: There is a lack of consistency in the implementation of international laws and standards related to the protection of asylum seekers' rights under the international law of the sea. Some states may not fully comply with their obligations under international law, and there may be discrepancies in the interpretation and application of international law.

Lack of Resources: Many states may not have the necessary resources and infrastructure to effectively process asylum claims and provide the necessary support and services to asylum seekers upon arrival. This can result in delays and long waiting periods, which can further endanger the health and well-being of asylum seekers.

Lack of Coordination and Cooperation: The lack of coordination and cooperation among states and international organizations can impede the protection of asylum seekers' rights. Without effective communication and collaboration, it can be challenging to ensure that asylum seekers receive adequate protection and support throughout the asylum-seeking process.

Discrimination and Xenophobia: Discrimination and xenophobia can pose significant challenges to the protection of asylum seekers' rights. Asylum seekers may face hostility and prejudice from the host population, which can make it difficult for them to access services and support.

Dangers of Sea Travel: Asylum seekers who make the dangerous journey by sea may face a range of risks, including drowning, exposure to extreme weather conditions, and physical and emotional trauma. This underscores the importance of ensuring the safety of asylum seekers and preventing loss of life at sea.

Addressing these challenges requires a comprehensive approach that involves the cooperation and coordination of states and international organizations, as well as the provision of adequate resources and infrastructure to support the arrival and processing of asylum seekers. Additionally, it is essential to prioritize the protection and support of vulnerable populations, such as women, children, and unaccompanied minors, throughout the asylum-seeking process. By addressing these challenges, we can ensure that the fundamental human rights of asylum seekers are respected and upheld under the international law of the sea.

### **OPPORTUNITIES FOR THE PROTECTION OF ASYLUM SEEKERS' RIGHTS UNDER INTERNATIONAL LAW OF SEA**

Despite these challenges, there are opportunities for the protection of asylum seekers' rights under the international law of the sea. One opportunity is through greater



cooperation and coordination among states and international organizations. By working together, states can ensure consistent implementation of international laws and share resources to support the arrival and processing of asylum seekers.

Strengthening International Cooperation: States and international organizations can work together to strengthen cooperation and coordination in addressing the challenges facing asylum seekers. This can involve sharing information, resources, and best practices to improve the effectiveness of asylum processing systems and ensure consistent implementation of international laws and standards.

Enhancing Legal Assistance and Support: Providing asylum seekers with adequate legal assistance and support can help ensure that their rights are protected throughout the asylum-seeking process. This can involve providing access to legal aid, interpretation services, and other essential services to help asylum seekers understand their rights and entitlements.

Promoting Humanitarian Visas: Humanitarian visas can provide a safe and legal alternative for asylum seekers who are at risk of persecution or torture. States can promote the use of humanitarian visas as a means of protecting the rights of asylum seekers and reducing the risks associated with dangerous sea journeys.

Prioritizing the Needs of Vulnerable Populations: Women, children, and unaccompanied minors are particularly vulnerable when seeking asylum by sea. Prioritizing the needs of these groups, providing tailored support and services, and ensuring their protection throughout the asylum-seeking process can help improve the protection of their rights under the international law of the sea.

Providing Safe and Legal Migration Pathways: Providing safe and legal migration pathways can reduce the risks associated with dangerous sea journeys and ensure that asylum seekers'

rights are protected. This can involve expanding resettlement programs, family reunification schemes, and other legal pathways for migration.

By taking advantage of these opportunities, states and international organizations can improve the protection of asylum seekers' rights under the international law of the sea. Such efforts are critical in ensuring that asylum seekers receive the protection and support they need to rebuild their lives in safety and dignity.

## **CONCLUSION**

In conclusion, the protection of asylum seekers' rights under the international law of the sea is crucial in ensuring that the fundamental human rights of individuals are respected and upheld. While there are various challenges that need to be addressed, such as the lack of consistency and clarity in the implementation of laws and the lack of resources to support asylum seekers, there are also opportunities to improve the protection of asylum seekers' rights.

One way to achieve this is through greater cooperation and coordination among states and international organizations, which can facilitate consistent implementation of international laws and sharing of resources to support the arrival and processing of asylum seekers. Additionally, the use of technology can provide significant support to search and rescue operations at sea, which can help to prevent loss of life and ensure that asylum seekers are brought to safety.

It is important to recognize the particular vulnerabilities faced by certain groups, such as women, children, and unaccompanied minors, and ensure that they receive adequate protection and support throughout the asylum-seeking process. This requires a comprehensive approach that includes access to legal assistance, medical care, and other essential services.

Hence, the protection of asylum seekers' rights under the international law of the sea is a



critical issue that requires the attention and cooperation of states and international organizations. By working together, we can ensure that the rights of vulnerable populations are protected and that they are able to access safe and legal means of seeking asylum.

## REFERENCES

- I. United Nations High Commissioner for Refugees (UNHCR). (2021). Refugee Protection and International Law. <https://www.unhcr.org/protection/basic/3b73b0d63/refugee-protection-international-law.html>
- II. International Organization for Migration (IOM). (2021). Facts and Figures: Mediterranean Migrant Arrivals. <https://migration.iom.int/europe/country-profiles/mediterranean>
- III. European Union Agency for Fundamental Rights (FRA). (2018). Severe labor exploitation: workers moving within or into the European Union. <https://fra.europa.eu/en/publication/2018/severe-labour-exploitation-workers-moving-within-or-european-union>
- IV. United Nations Convention on the Law of the Sea (UNCLOS). (1982). [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)
- V. United Nations General Assembly. (2018). Global compact for safe, orderly and regular migration. [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/195](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195)
- VI. International Maritime Organization (IMO). (2019). Rescue at Sea: A Guide to Principles and Practice as Applied to Refugees and Migrants. <https://www.imo.org/en/OurWork/Safety/Navigation/Pages/RescueatSea.aspx>
- VII. Human Rights Watch (HRW). (2018). Libya: Humanitarian Crisis, Rights Abuses Demand International Action. <https://www.hrw.org/news/2018/06/19/libya-humanitarian-crisis-rights-abuses-demand-international-action>
- VIII. International Crisis Group. (2018). Preventing Irregular Migration from Libya to Europe. <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/libya/066-preventing-irregular-migration-libya-europe>
- IX. International Chamber of Shipping (ICS). (2020). Guidance to Shipping Companies: Addressing the humanitarian and safety crisis in the Mediterranean. [https://www.ics-shipping.org/docs/default-source/resources/ics-guidance-to-shipping-companies-addressing-the-humanitarian-and-safety-crisis-in-the-mediterranean.pdf?sfvrsn=d88c5621\\_4](https://www.ics-shipping.org/docs/default-source/resources/ics-guidance-to-shipping-companies-addressing-the-humanitarian-and-safety-crisis-in-the-mediterranean.pdf?sfvrsn=d88c5621_4)