

<p style="text-align: center;"><b>UNHCR POSITION: VISA REQUIREMENTS AND CARRIER SANCTIONS</b></p>
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Carrier sanctions involving the penalization of transporters bringing in aliens without proper travel documentation and/or entry permits have been the practice in many countries worldwide for a number of years. The majority of European countries now have provisions dealing with carrier liability.

In 1987, five European countries introduced this concept into their legislations: Belgium, Denmark, Italy, Germany and the United Kingdom.

The imposition of fines on airline companies also exists at an international level. In 1988, Annex 9 to the Chicago Convention on Civil Aviation was amended to provide that States should not fine operators in the event that passengers are found inadmissible unless there is evidence to suggest that the carrier was negligent in taking precautions to see that the passenger has complied with the documentary requirements for entry into the receiving State. The wording of the amendment suggests that the burden of proof should fall on the State. In fact, most legislations are drafted in such a way that the burden falls on the shoulders of the carriers.

In 1990, the Schengen Supplementary Agreement also provided for carrier sanctions without, however, any proviso relating to negligence. Since then more countries have introduced carrier liability provisions, with some allowing exemption where there has been no carrier negligence, such as Sweden and France.

Furthermore, in France, if the asylum claim is not manifestly unfounded or, as in the Netherlands if the applicant is recognized as a refugee or if the carrier has reasonable grounds to believe that such a person may be a refugee, then the carrier is also exempted from liability. The UK also allows for some flexibility in the application of the carrier legislation although this flexibility is rather limited in that it is only exercised where the applicant is subsequently recognized as a refugee. Other legislations such as the Italian and the Finnish however, involve strict liability for carriers even where there has been no negligence and where the alien is a refugee. More recently, carrier sanctions have been increased, as in the United Kingdom where fines have been doubled.

The issue of carrier sanctions as a measure to counter illegal migration must be seen in connection with and in the context of increased visa requirements placed on individuals originating from certain countries which are generally recognized as being refugee producing. Most Western European States have now introduced visas for all countries which generate substantive numbers of claimants (the former Yugoslavia, Romania, the Republic of Bosnia and Herzegovina, Bulgaria, Iraq, Vietnam and Sri Lanka). The emphasis which has recently been placed by States Parties to the Dublin Convention on entry authorization will also cause those States to increase visa requirements and carrier sanctions.

### **UNHCR Position**

States have a legitimate interest in controlling irregular migration and a right to do so through various measures, including visa requirements, airport screening and sanctions imposed on airlines and other group carriers for transporting irregular migrants. When however, these measures interfere with the ability of persons at risk of persecution to gain access to safety and obtain asylum in other countries, then States act inconsistently with their international obligations towards refugees.

UNHCR believes that States' concerns about unfounded claims are better addressed by careful harmonization of standards of application, treatment and implementation such as accelerated procedures rather than through the use of carrier sanctions.

If States have recourse to carrier sanctions they should be implemented in a manner which is not inconsistent with international human rights and refugee protection principles, notably Article 14 of the Universal Declaration according to which each person has the right to seek asylum and in a way which is in keeping to the intention of Articles 31 and 33 of the 1951 Convention.

States should not sanction against carriers which have knowingly brought into the State a person who does not possess a valid entry document but who has a plausible claim for refugee status or otherwise needs international protection. Thus, States should not apply sanctions unless the carrier has shown negligence in checking documents, if the asylum claim is subsequently not considered as manifestly unfounded or the asylum-seeker is recognized as a refugee or granted stay on other humanitarian grounds.

The combination of carrier sanctions and visa requirements renders even more likely potential inconsistencies with international obligations. With regard to the imposition of visa requirements on persons originating from certain countries, it would be desirable for States not to impose these where considerable human rights violations occur (Bosnia and Herzegovina, for example). This requirement is even more important now in view of the Resolution agreed upon by the Immigration Ministers which classifies as manifestly unfounded claims lodged by applicants who have used false documents or destroyed such documents.

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