



**Submission by the Office of the United Nations High Commissioner for Refugees
in the case of *S.A.A. and Others v. Greece* (No. 22146/21) before the European Court of Human Rights**

1. Introduction*

1.1. The Office of the United Nations High Commissioner for Refugees (“UNHCR or the Office”) has been entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek solutions for them.¹ UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.² The Office welcomes the opportunity to intervene, following leave granted by the European Court of Human Rights (‘the Court’) in its letter of 4 July 2022.

1.2. In this submission, UNHCR outlines the domestic legislative framework and practice concerning the treatment of asylum-seekers at land and sea borders in Greece (Part 2). The submission then provides UNHCR’s interpretation of the relevant principles of international and European law (Part 3). This is followed by an Annex providing detailed information received by UNHCR on the reported incident off the coast of Crete on 20-21 October 2020 that is the subject of the present proceedings.

2. Legislative framework and practice regarding the treatment of asylum-seekers at land and sea borders in Greece

2.1. Legislative framework

2.1.1. Under the Greek national legal framework, any third-country national or stateless person is entitled to file an application for international protection.³ Persons arrested on account of irregular entry in the country shall be transferred promptly by the police, port authorities⁴ or Reception and Identification Service (RIS) to a Reception and Identification Center (RIC) to undergo reception and identification procedures, which include information about asylum procedures.⁵ Asylum-seekers may submit an asylum application to the RIS which will be referred to the Regional Asylum Offices.⁶ Under Greek law, an individualized assessment on the asylum application is a prerequisite before taking any decision on removal from the territory. In principle, asylum-seekers have the right to stay⁷ and it is only after a final rejection of the asylum application, on admissibility or on merits, that an asylum-seeker can be removed from the territory based on an individual return or deportation decision.⁸

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly (UNGA), *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, www.refworld.org/docid/3ae6b3902.html.

¹ UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1.

² *Ibid.*, para. 8(a) and Article 35 of the *1951 Convention relating to the Status of Refugees* (‘1951 Convention’) and Article II of the *1967 Protocol Relating to the Status of Refugees*, www.unhcr.org/4ec262df9.pdf.

³ Law 4636/2019 (OG A 169/01-11-2019), Article 65(1). Greece ratified the 1951 Convention in 1959: Legislative Decree 3989/1959 (OG A 201/26-9-1959).

⁴ In the context of reception and identification procedures, Article 39 of the Law 4636/2019 confers the responsibility to transfer to the RIC also to the Hellenic Coast Guard (HCG) when involved. The HCG is the authority entrusted with the responsibility to coordinate search and rescue operations at sea and to perform arrest of illegal entrants at sea and coastal areas as per the provisions of Law 4150/2013 (OG A 102/29-04-2013), Articles 1 and 5.

⁵ As per Article 39 of the Law 4636/2019, reception and identification procedures include: a. registration of personal data and fingerprinting; b. identification and nationality screening; c. medical screening, care and psycho-social support; d. information about rights and obligations, in particular asylum procedures and the voluntary return program; e. identification of persons belonging to vulnerable groups, referral to appropriate procedures and provision of specialized care and protection; f. referral of those who wish to submit an application for international protection to the Asylum Service; and g. referral of those who do not submit an application for international protection or whose application is rejected (while they remain in the RIC) to the competent authorities for readmission, removal or return procedures.

⁶ Law 4636/2019, Articles 39(6)(a) and 65(7).

⁷ Article 104 of the Law 4636/2019 provides the option of exemption from the right to stay in limited cases upon an individualized assessment and without violating the principle of *non-refoulement*.

⁸ A return decision is issued on the basis of Law 3907/2011 (Article 21) transposing the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals while a deportation decision is issued on the basis of the provision of the national Law 3386/2005 (Article 76). In both situations, persons are protected from removal in case of violation of the *non-refoulement* principle (Law 3907/2011, Article 24 and Law 3386/2005, Article 78A).

2.2. The relevant practice

2.2.1. In accordance with its mandate, UNHCR observes the conditions of entry and safe access to asylum at Greece's eastern land and sea borders, where the vast majority of irregular arrivals occur. It analyses information collected through direct contact with persons of concern, or communications with family members or relatives, legal representatives and civil society organizations, that are triangulated with other available sources.

2.2.2. During 2020-2021, UNHCR recorded 539 incidents of informal enforced return⁹ at land and sea borders (informally referred to as '*pushback*' or '*driftback*'), involving at least 17,000 people, during which potential violations of a number of rights were reported. Among those were the rights to: life; seek asylum; protection against *refoulement*; integrity of the person; protection from torture, inhuman or degrading treatment; liberty; an effective remedy; property and family life. UNHCR has observed that in most cases, the people affected were already in Greek territory, including territorial waters, or jurisdiction, when they were apprehended, placed under the control of the Greek authorities and ultimately informally removed. The severity and frequency of the reported incidents, together with the credibility and consistency of the accounts collected by UNHCR, point to the potential occurrence of serious violations of international human rights as well as EU fundamental rights law.

2.2.3. Among those affected by these practices, there has been a high number of asylum-seekers who are reported to have been returned to their country of origin. These actions, if proven, would be in clear breach of the principle of *non-refoulement*.¹⁰ In some instances, UNHCR has established that returned individuals have been subjected to confinement, imprisonment, conditions of house arrest, or other forms of persecution in their country of origin.

2.2.4. There have been several cases of 'irregular expulsions'¹¹ where the return does not take place immediately upon entry, at the border areas, but from within Greek territory. In several instances these irregular expulsions have concerned registered asylum-seekers and persons granted international protection, in the form of refugee status or subsidiary protection.

Situation at the sea border

2.2.5. Starting in early 2020, UNHCR observed a notable decrease in sea arrivals followed by a sharp increase of reports and serious allegations about informal enforced returns from Greece to Turkey at the sea borders. During the period of 2020-2021, UNHCR recorded 228 incidents of informal enforced returns at sea, or after people had landed on shore. In 93 of these 228 incidents, UNHCR has testimonies, audio-visual material, GPS location data or other well substantiated information, that strongly indicate that individuals who were in Greek territorial waters, in the Greek Search and Rescue (SAR) area, or had already landed on a Greek island or shore, were subsequently returned to Turkey by the Hellenic Coast Guard (HCG).

2.2.6. Thirteen informal enforced return incidents recorded by UNHCR, involving over 544 persons, occurred after vessels had reached locations in Greek territorial waters further away from the Greek-Turkish sea borders. These involved boats apparently on their way to Italy, often with many persons on board, that suffered engine failure or were caught in dangerous weather conditions while in Greek territorial waters close to Crete, the Peloponnese, or the Cyclades islands. On some occasions, local community members reported that they witnessed the arrivals. However, the Greek authorities did not subsequently confirm such arrivals.¹²

⁹ The term 'informal enforced return' is utilized to signify acts which lead to the return or removal, in summary proceedings, of any person or group of persons, including asylum-seekers, to a third country outside the scope of the applicable legal framework of a State without due individual examination and without observance of core procedural guarantees (i.e. of return or detention procedures), which may also result in direct or indirect violation of the principle of *non-refoulement* as established in the 1951 Geneva Convention and other international human rights legal instruments.

¹⁰ In the period of January 2020 – December 2021, UNHCR received direct testimonies with regard to 19 incidents affecting asylum-seekers who were informally returned to their country of origin, while lawyers and reputable civil society organisations alerted UNHCR about additional 31 incidents of direct return to the country of origin, raising the total number to at least 50 incidents in total. In at least 9 cases in which UNHCR was informed real-time about the presence of asylum-seekers in the territory and intervened with the authorities to prevent the informal enforced return, UNHCR subsequently learnt that the persons were back in Turkey.

¹¹ The term 'irregular expulsion' is used as a sub-category of 'informal enforced return' to signify that the return does not take place at the border areas immediately upon entry but from other mainland locations even after asylum-seekers have been registered and also granted international protection status.

¹² On 22 September 2021, 25 males from Iraq, some allegedly appearing to be underaged, reportedly arrived by sea in the Greek mainland (Peloponnese, village of Vassilitsi) and were taken charge of by the police and HCG. Several locals reported witnessing the arrival and helped them with food and other items. The arrival was denied by the Greek authorities despite public reports and questions put by Parliamentarians about the whereabouts of the group.

2.2.7. In some cases, informal enforced return took place after UNHCR (with the concerned person's consent) had alerted the HCG and/or the Hellenic Police about the presence of new arrivals who wished to seek asylum on the islands. In most cases, persons provided their exact coordinates which were communicated to the HCG and the Hellenic Police to facilitate the rescue operation and their referral to reception and identification procedures. Of 110 such incidents, where UNHCR intervened in 2021, only 42 were subsequently confirmed by the Greek authorities as arrivals. In another 19 instances, the authorities confirmed the arrival of some members of the group, while for the rest no official arrival was recorded by the authorities. In many instances, UNHCR has collected *post factum* information, such as testimonies by the affected persons and other reports, indicating that although their arrival had not been confirmed by the Greek authorities, they had reached the Greek territory and were informally returned to Turkey.

2.2.8. Between early 2020 and end February 2022, UNHCR formally submitted 59 cases of incidents at land and sea through 17 official letters addressed to the competent authorities requesting investigation. UNHCR received three official responses, in which the Greek authorities (Hellenic Police and Hellenic Coast Guard) denied that informal enforced returns took place, without providing concrete information on any of the specific queried cases. By end 2021, UNHCR was aware of only two cases under administrative (disciplinary) investigation. UNHCR is also aware of criminal complaints submitted by defending lawyers to the Public Prosecutor concerning 209 cases. Judicial investigations were initiated in 12 of these cases. UNHCR submitted its information to the investigating authorities in nine cases concerning events at and near sea borders in 2020 and 2021, and in one case at the land border in 2019. As of the date of this submission, the outcome of these investigations remains unknown to UNHCR.

2.2.9. In seven incidents in the spring of 2020, UNHCR noted delays in the Search and Rescue (SAR) response at sea.¹³ Similar reports were recorded in 2021.¹⁴ In 2021, UNHCR was informed of 58 distress calls via the NGO 'Watch the Med - Alarm Phone', mainly concerning boats facing difficulties at sea, calling for assistance. In late 2021, four shipwrecks were reported in December alone, with at least 34 deaths and 16 missing persons.¹⁵

2.2.10. UNHCR has recorded reports alleging dangerous operational tactics applied by the HCG, such as hindering a boat from continuing its journey through a manoeuvre creating high waves, towing the boat with a rope and abandoning it at sea, or removing the engine and abandoning the dinghy to float. UNHCR has received testimonies by affected people who report having experienced such dangerous behaviours by the authorities.¹⁶ Footage is also available in the public domain.¹⁷

2.2.11. In 2021 and thus far in 2022, UNHCR has recorded six direct accounts of alarming allegations about five incidents where six people died after they were forced to jump into the water, some without life vests, and swim to nearby shores or islets in Turkish territory.¹⁸ The practice, described to UNHCR by survivors was similar:

¹³ On 20 November 2020, UNHCR received reports about delayed response when a vessel with 71 persons was in distress south of Crete. The initial call was sent at 22:42 on 20 November while the final rescue was recorded on 21 November in the afternoon hours. One person died and several were injured.

¹⁴ On 21 May 2021, a boat with 10 persons (including a sick and pregnant woman) was in distress close to Rhodes. The NGO 'Watch the Med'/Alarm Phone sent repeated urgent notifications to the Greek and Turkish authorities, starting from 4.39 am, indicating that the boat was in Greek territorial waters, that water was entering the boat and that a person was unconscious. Despite UNHCR's interventions with the HCG, there was no confirmation. Later, the Alarm Phone tweeted that the group was forced to Turkish waters and left adrift. The group was rescued by the Turkish Coast Guard on 21 May at 9:30 am.

¹⁵ Alarm Phone, '[Dozens of people drown in the Aegean Sea](#)', 23 December 2021; Alarm Phone, '[Four shipwrecks with dozens feared dead in the Aegean while pushbacks continue to happen](#)', 25 December 2021; Refugee Support Aegean, '[DEATHS AT THE BORDERS: A pressing need for appropriate protocols for refugee and migrant shipwrecks](#)', 24 February 2022.

¹⁶ See also reports by media and NGOs, for example: Lighthouse Reports, '[Unmasking Europe's Shadow Armies](#)', 6 October 2021; InfoMigrants, '[Unprecedented rights violations against migrants in Aegean Sea: NGO](#)', 12 February 2021; Legal Centre Lesbos, '[Crimes against humanity in the Aegean](#)', 1 February 2021; The Guardian, '[Catastrophe for human rights as Greece steps up refugee 'pushbacks'](#)', 27 September 2020; DW '[Migrants accuse Greece of forced deportations](#)', 21 May 2020; The Sunday Times UK, '[Masked gangs terrify migrants as they force boats in Aegean back to Turkey](#)', 9 June 2020.

¹⁷ See for example, Spiegel International, '[Beatings at the Border: Europe's Violent Shadow Army Unmasked](#)', 7 October 2021; BBC, '[The EU countries 'pushing back' asylum-seekers at sea](#)', 13 July 2021; PBS News Hour, '[Migrants left adrift at sea after boat pushback from Greek coast guard](#)', 22 July 2021; France 24 '[Migrants endure severe beating before being abandoned at sea](#)', 19 August 2020; Der Spiegel, '[Greece Suspected of Abandoning Refugees at Sea](#)', 16 June 2020.

¹⁸ See also, The Guardian '[It's an atrocity against humankind: Greek pushback blamed for double drowning](#)', 17 February 2022; Spiegel '[EU-Grenzschtützer sollen Flüchtlinge ins Meer geworfen haben](#)', 17 February 2022; Lighthouse Reports '[Aegean Pushbacks Lead to Drowning: Examining what whistleblowers claim is a new tactic of throwing asylum-seekers overboard off Turkish coast](#)', 17 February 2022; Mediapart '[Révélations sur la mort de migrants repoussés en mer par des gardes-côtes grecs](#)', 17 February 2022.

people who had reached the islands of Samos and Chios hid in the woods, and when detected by Greek authorities, were taken back to sea by HCG vessels. Instead of being placed on a life raft, they were forced into the water to swim to the Turkish shores.

2.2.12. In the Eastern Aegean, there is an abundance of photographic material presenting people, including children, placed in perilous life rafts in the middle of the sea.¹⁹ Such practices expose people's lives to risk. In 29 testimonies obtained by UNHCR, people who had reached a Greek island or shore and were subsequently forcibly and informally returned to Turkey by the HCG, reported the following: they were taken on board a grey or similar coloured official speedboat and driven out at sea, forced into inflatable life rafts which were often described as orange, red or black, made of rubber or plastic, sometimes tent-like, without engine or steering wheel. Reportedly, men, women, and children – including elderly persons, persons with medical conditions and pregnant women – were forced onto the life rafts and left adrift without life jackets and paddles for several hours, mainly at night, sometimes in rough seas, until their rescue by the Turkish Coast Guard. People to whom UNHCR spoke said that they asked to keep at least one phone to call for help but their request was ignored. In their testimonies, people refer to officers engaged in such operations in Greece, wearing dark/black uniforms, some bearing lines of rank and/or the Greek flag, all wearing full-face masks to cover their face, and sometimes holding guns and/or batons.

2.2.13. Persons to whom UNHCR spoke also stated that they signed no document, were not interviewed, or registered by the HCG or another authority, were not informed about their rights and obligations, had no access to the means to claim for asylum, and were not given information about the length and conditions of their deprivation of liberty in restricted areas on the shores, on vessels, or in other informal facilities. They were given no opportunity to resort to any legal remedy. They also stated that they had no access to food and water, hygiene facilities, medical services or clothes. Most of the incidents reported to UNHCR alleged undue and inappropriate use of force by the HCG and/or Hellenic Police, such as pushing, slapping, hitting with batons (especially when forcing people to embark on a boat, vessel or life raft), and forcing people to remain still and restricted in one area for hours. Affected persons reported to UNHCR that during the return operation they experienced insulting and degrading behaviour by members of law enforcement authorities. Testimonies frequently report intrusive and inappropriate body searches, including for women and children, carried out by male officers. Most people reported that all or part of their possessions were taken away after they were apprehended on Greek territory. Most frequently this concerned money, mobile phones and personal identity and other documents.²⁰ On some occasions, deception was involved. For example, in one incident on Lesbos on 17 February 2021, new arrivals were told that they had to walk to a nearby location to take a COVID-19 test but they were subsequently locked in a container for several hours before they were informally returned to Turkey.²¹

2.2.14. The Greek Ombudsman's Office in its capacity as the National Mechanism for the Investigation of Arbitrary Incidents is competent to examine the issues raised by these practices.²² The Government of Greece requested the National Transparency Authority to examine allegations presented by the *Lighthouse Report*²³ and a case of ill-treatment and subsequent unlawful informal removal to Turkey of a Frontex-deployed cultural mediator.²⁴ The latter case is also under investigation by the Greek Ombudsman.²⁵ The National Transparency Authority issued a Press Release on the *Lighthouse Report* stating that there was no evidence to corroborate the allegations.²⁶ UNHCR has advocated for the establishment of an independent national border monitoring mechanism as an essential element to help prevent fundamental rights violations at the borders and ensure that responsive measures can address any allegations of such violations.²⁷

¹⁹ See note 17 above.

²⁰ A woman from Iran said that when she arrived with other persons on Kos in June 2021, persons with covered faces, holding batons, approached them, started shouting, hit the men, and took all the belongings, including mobile phones and some 5,000 Euros she carried.

²¹ UNHCR has received direct accounts credibly alleging the informal enforced return from Lesbos to Turkey, of a group of 13 Afghan nationals, including pregnant women and children, who arrived on Lesbos on 17 February 2021, entered a State quarantine facility (Megala Therma) and were told they would take a COVID-19 test. Instead, the group was forcibly returned to Turkey. UNHCR intervened with the authorities requesting an investigation.

²² https://www.synigoros.gr/resources/docs/report-2020_en_web.pdf.

²³ See [Unmasking Europe's Shadow Armies - Lighthouse Reports](#).

²⁴ New York Times, [E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup](#), 1 December 2021.

²⁵ Greek Ombudsman, [press release](#), 1 December 2021.

²⁶ National Transparency Authority, [Press Release of 29 March 2022](#).

²⁷ In September 2021, UNHCR, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the European Network of National Human Rights Institutions shared with the Government of Greece a set of 'Ten Points' to guide the creation of an Independent National Border Monitoring Mechanism in Greece, echoing the European Commission's [Report on Migration and Asylum](#).

Situation at the land border

2.2.15. Whereas this submission primarily focuses on the situation at the sea border, reports of apprehensions and subsequent informal enforced returns to Turkey also concern the land border. UNHCR has received alarming reports about apprehensions and subsequent irregular expulsions of asylum-seekers registered in Greece or even beneficiaries of international protection.

2.2.16. Regarding ‘irregular expulsions’, the affected persons described similar situations: they were found in urban centres or commuting between cities when they were stopped by police and asked to cooperate in what appeared to be a document check. They reported having been taken to a police station or, in some instances, were told that they would be taken there. They were thereafter transferred to the Evros border area. From there, they were forcibly and informally returned to Turkey. In the period 2020-2021, UNHCR documented, through direct testimonies from persons affected and cases brought to UNHCR’s attention by representing lawyers and by civil society representatives, 21 cases of irregular expulsion of registered asylum applicants in Greece and of two refugees who had been granted international protection in Germany. UNHCR also recorded the irregular expulsion of five persons who had a ‘police note’²⁸ confirming their presence in Greece. Irregular expulsions carry a risk of family separation.²⁹

2.2.17. From January 2020 to December 2021, UNHCR recorded 311 substantiated incidents of informal enforced returns concerning at least 6,680 affected persons, that had taken place at the Greek-Turkish land border. The information came primarily from direct sources (testimonies of affected persons), as well as secondary sources such as civil society organisations and representing lawyers. Out of those 311 incidents, UNHCR collected direct testimonies in 200 of them, with some having experienced several instances of informal enforced return. The testimonies suggest that individuals were apprehended either, after their irregular crossing of the border, or further inside the mainland and were held arbitrarily without guarantees of due process, formal proceedings or the possibility of resorting to legal assistance or any legal remedy, prior to their informal enforced return. People affected described patterns of threats, intimidation, violence and humiliation, including testimonies of people being stripped of their clothes. Such incidents posed significant risks for the lives of persons forcibly transferred across the river Evros – a natural border between Greece and Turkey – in rubber boats, under harsh weather conditions, or abandoned on the riverbanks or on islets on the river, sometimes for days without food, water and medical assistance.

2.2.18. Between 2020-2021, UNHCR directly observed and intervened in the cases of 99 asylum-seekers who were found in Greek territory and sought safe access to fair and efficient procedures. Of these 99 persons, the authorities confirmed that 48 persons were identified and would be channelled to registration procedures. The remaining persons were not confirmed as arrivals. In at least 12 cases not confirmed as arrivals in 2021, UNHCR was subsequently contacted by the affected persons or by organizations representing them, who stated that they had been informally returned through the Evros river.

2.2.19. The Ombudsman’s intermediate report of April 2021 on informal enforced returns through land borders, highlights a repetitive and consistent practice of “illegal pushbacks of hundreds or even thousands of foreign nationals, from Greece to Turkey, in the area of Evros River”.³⁰ The Greek National Commission for Human Rights noted a gradual but steady consolidation of the phenomenon of informal enforced returns to Turkey.³¹

²⁸ ‘Police note’ is a document provided by the police to third-country nationals that includes the person’s photo and personal data. It proves that the person has been registered by the Greek police, upon arrest, and summarizes the content of decisions on administrative treatment (e.g. registration of asylum application, return/deportation).

²⁹ For example, UNHCR was informed in May 2020 of a 14-year old Afghan child, a registered asylum-seeker with his family in Greece, who was reportedly picked up during a police check in Thessaloniki, driven to Evros along with other third-country nationals and informally expelled. The child has remained in Turkey ever since, housed in a shelter for minors. His family members, mother and two siblings, are in Greece. The examination of their asylum claim is still pending at first instance.

³⁰ Greek Ombudsman, [060521-pushbacks-interim-report_eng.pdf \(synigoros.gr\)](#), April 2021, page 23.

³¹ Greek National Commission for Human Rights, [National report on the situation of human rights of migrants at borders](#), 19 July 2021. See also [Statement on the reported practices of push backs](#), 9 July 2020.

3. Relevant principles of international and European refugee and human rights law

3.1. The protection of the right to life in the context of forced return practices

3.1.1. Under relevant provisions of maritime law, States are obliged to coordinate and ensure search and rescue and to require shipmasters to proceed with all possible speed to the rescue of persons in distress at sea.³² Failure by a State vessel to promptly provide assistance is contrary to the Convention on the Law of the Sea. Such failure evidently poses risks for human life, the effective protection of which should be States' first priority.³³ States' obligations require that they scrupulously avoid dangerous interception measures, including arbitrary or collective expulsions, and must disembark individuals in places where their safety and human rights are no longer threatened.³⁴

3.1.2. Under Article 6 of the *International Covenant on Civil and Political Rights* ('ICCPR'), States have an obligation to respect and protect the lives of all individuals within their territory including on vessels flying their flag and at sea, in accordance with their international obligations.³⁵ States are required to take 'reasonable, positive measures that do not impose disproportionate burdens [...] in response to reasonably foreseeable threats to life.'³⁶ In its first case on SAR in the migration context, involving Italy and Malta, the UN Human Rights Committee ('HRC') found that Italy had violated the right to life under Article 6 ICCPR by failing to promptly dispatch a vessel to rescue asylum-seekers in distress.³⁷ Regarding Malta, while eventually finding the complaint inadmissible due to non-exhaustion of domestic remedies, the HRC rejected the claim that Malta did not have jurisdiction and relied on the 'direct and reasonably foreseeable causal relationship between the State parties' acts and omissions and the outcome of the operation'.³⁸ A violation of the right to life does not necessarily presuppose loss of life. Under Article 6 ICCPR, States' obligations to respect and ensure the right to life extend to reasonably foreseeable *threats* and *life-threatening situations*. The right to life may therefore be violated even if such threats and situations do not eventually result in loss of life.³⁹ Torture and ill-treatment, where it seriously affects the physical and mental health of an individual, may also generate the risk of deprivation of life.⁴⁰

3.1.3. As held by the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, pushback practices may violate the right to life, where the State intentionally and knowingly exposes refugees or migrants to life-threatening circumstances. This includes situations where persons are pushed back on the high seas without water or food.⁴¹ In his most recent report to the UN Human Rights Council, the Special Rapporteur on the human rights of migrants equally recalled States' obligation to ensure that border governance measures respect the right to life.⁴² Delays in SAR, violent pushbacks, or leaving survivors adrift at sea without access to medical assistance, water, food and basic means of survival may amount to torture or ill-treatment as well as to a violation of the right to life.⁴³ 'Driftbacks', defined as 'abandoning migrants adrift in unseaworthy rafts', are incompatible with SAR and human rights obligations and 'greatly increase the chance of a maritime disaster resulting in loss of life'.⁴⁴

³² Article 98(1) UNCLOS, Regulation 33 of the SOLAS Convention. On the SAR coordination obligation, see SOLAS regulation V/7.

³³ OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#), **Error! Hyperlink reference not valid.** pp. 21, 23.

³⁴ [UNHCR, Rescue at Sea. A Guide to Principles and Practice as Applied to Refugees and Migrants](#), January 2015 **Error! Hyperlink reference not valid.**; [UNHCR, General legal considerations: search-and-rescue operations involving refugees and migrants at sea](#), November 2017. See also, ExCom Conclusion No. 97 (LIV) 2003, para. (a) (ii): 'All intercepted persons should be treated, at all times, in a humane manner respectful of their human rights. State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and protect the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted.'

³⁵ [UN HRC, General comment no. 36, Article 6 \(Right to Life\)](#), September 2019: para. 63.

³⁶ *Ibid.*, para. 8.3.

³⁷ HRC, [Communications N° 3043/2017, S.A. et al. v Malta](#), and [Communication N° 3042/2017, S.A. et al. v Italy](#), both 27 January 2021.

³⁸ *Ibid.*, S.A. et al v Malta, para. 6.7.

³⁹ HRC, General Comment No. 36, note 35 above, para. 7.

⁴⁰ *Ibid.*, para. 54.

⁴¹ Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, *Unlawful death of refugees and migrants*, 15 August 2017, A/72/335: www.refworld.org/docid/59b923524.html, paras 33 and 51.

⁴² Report of the Special Rapporteur on the human rights of migrants, 12 May 2021, Human Rights Council, 47th session, 21 June–9 July 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement>, para. 39.

⁴³ *Ibid.*, paras 44-45, 51.

⁴⁴ *Ibid.*, para. 52. Although the term 'driftbacks' is not a legal term of art, the term as defined by the Special Rapporteur on the human rights of migrants it is increasing in usage and acceptance.

3.1.4. The right to life is also protected under Article 2 ECHR. Any use of force must be strictly proportionate to the aims set out in Article 2(2) ECHR.⁴⁵ In the specific context of border control, this Court has emphasised that while States may use the force necessary to prevent unauthorised entries, this cannot justify practices that are incompatible with the ECHR.⁴⁶ In making this determination, the Court considers whether a law enforcement operation has been planned and controlled so as to ‘minimise to the greatest extent possible recourse to lethal force or incidental loss of life’.⁴⁷ The ‘sole concern’ of the Court is to evaluate whether the authorities had taken ‘appropriate care to ensure that any risk to [the applicant’s] life had been minimised and that they were not negligent in their choice of action.’⁴⁸

3.1.5. This Court has accepted that, in exceptional circumstances, the right to life under Article 2 ECHR may be violated even where a State’s actions did not result in the applicant’s death. For example, in *Makaratzis v. Greece* the Court found a violation of Article 2 ECHR, based *inter alia* on the fact that the State’s conduct, ‘by its very nature’ put the applicant’s life at risk, and that the applicant’s survival was merely ‘fortuitous’.⁴⁹

3.1.6. Finally, it is settled case law that in situations that are exclusively controlled by the State, such as where persons are deprived of their liberty, strong presumptions of fact arise, and the burden of proof rests on the State to provide a satisfactory and convincing explanation regarding any injuries or death that have occurred during these situations. Given the vulnerable position detainees are in, the authorities are under a special duty to protect them, and the burden of proof therefore lies on the State.⁵⁰

3.2. *Non-refoulement* under international refugee law and Article 3 ECHR

Non refoulement under international refugee law

3.2.1. Under international law, States have the sovereign power to regulate the entry of foreigners. However, international law also provides that measures to this effect may not prevent foreigners from seeking and enjoying asylum.⁵¹ The right to asylum is affirmed in the Charter of Fundamental Rights of the European Union and is articulated in part by States’ obligations to provide international protection to refugees in accordance with the *1951 Convention relating to the Status of Refugees* (‘1951 Convention’) and its 1967 Protocol.⁵² Central to the right to asylum is the principle of *non-refoulement*. The obligation of States not to expel or return a person to territories where their life or freedom would be threatened is the cornerstone of international refugee law, most prominently expressed in Article 33(1) of the 1951 Convention.⁵³ It is a norm of customary international law⁵⁴ that is binding for all States, whether or not they are parties to the 1951 Convention or its 1967 Protocol.⁵⁵

3.2.2. The prohibition of *refoulement* applies to any form of forcible removal, including deportation, expulsion, informal transfers, pushback practices and non-admission at the border.⁵⁶ The prohibition of *refoulement* applies not only with respect to return to the individual’s country of origin but also to forcible removal to any other – third – country where a person has reason to fear persecution, serious human rights violations or other serious harm, or from where he or she risks being sent to his or her country of origin (indirect or chain *refoulement*).⁵⁷

⁴⁵ ECtHR, [McCann and Others v. the United Kingdom \[GC\]](#), Appl. No. 18984/91, 27 September 1995, para. 149.

⁴⁶ ECtHR, [Bisar Ayhan v. Turkey](#), Appl. Nos. 42329/11 and 47319/11, 18 May 2021, para. 65.

⁴⁷ ECtHR, [Bubbins v. the United Kingdom](#), Appl. No. 50196/99, 17 March 2005, para. 136.

⁴⁸ *Ibid.*, para. 141.

⁴⁹ ECtHR, [Makaratzis v. Greece \[GC\]](#), Appl. No. 50385/99, 20 December 2004, paras 54-55.

⁵⁰ ECtHR, [Salman v. Turkey \[GC\]](#), Appl. No. 21986/93, 27 June 2000, **Error! Hyperlink reference not valid.** paras 99-100.

⁵¹ Article 14 of the *Universal Declaration of Human Rights* provides that ‘[e]veryone has the right to seek and to enjoy in other countries asylum from persecution’.

⁵² [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02. Article 18, referring to the right to asylum to be guaranteed with due respect to the 1951 Convention and EU law.

⁵³ ‘No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of 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.’

⁵⁴ [UNHCR, Note on the Principle of Non-Refoulement](#), November 1997; Elihu Lauterpacht and Daniel Bethlehem, [The Scope and Content of the Principle of Non-Refoulement: Opinion](#), June 2003, p. 140-163 **Error! Hyperlink reference not valid.** See also, Concurring Opinion of Judge Pinto de Albuquerque in ECtHR, [Hirsi Jamaa and Others v. Italy \[GC\]](#), 23 February 2012 **Error! Hyperlink reference not valid.** This principle has also been confirmed by the Inter-American Court of Human Rights in [Advisory Opinion OC-21/14](#), 19 August 2014, para. 211; and [Advisory Opinion OC-25/18](#), 30 May 2018, para. 181.

⁵⁵ *Ibid.*, IACtHR, [Advisory Opinion OC-21/14](#), para. 211.

⁵⁶ UNHCR, [Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations](#), 26 January 2007, para. 7.

⁵⁷ For a recent restatement of the Court’s general principle that ‘chain *refoulement*’ is prohibited, see, ECtHR, [M.K. and Others v. Poland](#), 23 July 2020, para. 171, and sources cited there. See also [Submission by UNHCR in R.A. and Others v. Poland](#), February 2022, para. 3.1.2.

UNHCR underlines that States must admit asylum-seekers to their territory at least on a temporary basis as the right to seek asylum and the principle of *non-refoulement* would otherwise be rendered meaningless.⁵⁸

3.2.3. The principle of *non-refoulement* applies wherever a State exercises jurisdiction, including in the context of SAR operations. States must not summarily turn back or otherwise return rescued or intercepted persons to a country of departure, where doing so would deny them a fair opportunity to seek asylum or subject them to a risk of serious harm.⁵⁹ As UNHCR's ExCom has highlighted, 'interception measures should not result in asylum-seekers and refugees being denied access to international protection or result in [*refoulement*]'.⁶⁰

3.2.4. UNHCR considers it important to recall that *non-refoulement* cannot be derogated from even in times of emergency.⁶¹ Neither the 1951 Convention nor EU asylum law provide a legal basis for the suspension of the reception of asylum applications. While States have a sovereign right to manage and control their borders, this prerogative is subject to international legal obligations which States are required to respect in good faith. Under the ECHR, while Article 15 allows derogations from certain rights in exceptional circumstances, it explicitly precludes derogations from Articles 2 and 3 ECHR, including the principle of *non-refoulement*.

Non refoulement under Article 3 ECHR

3.2.5. The jurisprudence of this Court has held that *non-refoulement* is an inherent obligation under Article 3 ECHR, which 'prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim's conduct'.⁶² In the SAR context, this obligation applies both to a State's removal measures⁶³ as well as to the conditions that individuals are subjected to on board rescue vessels. Regarding the latter, while conditions on board a ship must attain a minimum level of severity to fall within Article 3 ECHR, the Court has taken into account the particularly vulnerable situation of SAR survivors who were 'weakened physically and psychologically because they had just made a dangerous crossing of the Mediterranean.'⁶⁴ Violence as a means of deterrence or enforcing border control may equally amount to ill-treatment under Article 3 ECHR.⁶⁵

3.2.6. Where a State has exclusive knowledge over the circumstances at issue, such as in situations of detention, it is incumbent on the State to provide a plausible explanation as to how any injuries, including those resulting from cruel, degrading or inhuman treatment were caused, failing which a clear question arises under Article 3 ECHR.⁶⁶ The burden of proof shifts to the State given that persons in the hands of the police or similar authority are in a vulnerable position and the State is under a duty to protect them.⁶⁷

3.3. Right to liberty

3.3.1. In UNHCR's view, the practice of arbitrarily detaining asylum-seekers for hours on SAR vessels or in unidentified facilities guarded by police, coast guard, or masked unidentified individuals on islands or the

⁵⁸ This includes notably a duty to conduct an individualised assessment on whether a person would face a real risk of being subjected to treatment contrary to Article 3 ECHR before conducting any return procedures, see ECtHR, *Hirsi Jamaa and Others v. Italy*, note 54 above, para. 146 and *M.K. and Others v. Poland*, note 57 above, para. 168, among many others.

⁵⁹ UNHCR, *Submission by the UNHCR in the case of S.S. and Others. v. Italy (Appl. No. 21660/18) before the European Court of Human Rights*, 14 November 2019, <https://www.refworld.org/docid/5dcebff54.html>, para. 4.1. with references quoted there.

⁶⁰ UNHCR ExCom, *Conclusion on Protection Safeguards in Interception Measures No. 97 (LIV) – 2003*, para. (a) (iv).

⁶¹ Article 42(1) of the 1951 Convention and Article VII(1) of the 1967 Protocol, list Article 33 as one of the provisions of the Convention to which no reservations are permitted. See, UNHCR, *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, para. 4; UNHCR, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020.

⁶² ECtHR, *M.S.S. v. Belgium and Greece* [GC], Appl. No. 30696/09, 21 January 2011, para. 286, <http://www.refworld.org/docid/4d39bc7f2.html>. See also, *Hirsi Jamaa and Others v. Italy*, note 54 above, para. 114.

⁶³ For relevant principles, see *Hirsi Jamaa and Others v. Italy* [GC], note 54 above, paras 114 ff.

⁶⁴ ECtHR, *Khlaifia and Others v. Italy* [GC], Appl. No. 16483/12, 15 December 2016, para. 194.

⁶⁵ *UNHCR warns of increasing violence and human rights violations at European borders*, 21 February 2022. See also 2021 Report of the Special Rapporteur on the human rights of migrants, note 42 above, para. 45.

⁶⁶ Among many other cases, see ECtHR, *Gäfgen v. Germany* [GC], Appl. No. 22978/05, 1 June 2010, <https://hudoc.echr.coe.int/Eng?i=001-99015>, para. 92; ECtHR, *Ribitsch v. Austria*, App. No. 42/1994/489/571, 21 November 1995, www.refworld.org/cases,ECHR,3ae6b7010.html, para. 34.

⁶⁷ *Salman v. Turkey*, note 50 above, paras 99-100.

mainland, without providing information on the reasons or duration of their detention amounts to a violation of Article 5 ECHR.⁶⁸

3.3.2. UNHCR submits that confinement on a SAR vessel is a *de facto* deprivation of liberty which may amount to unlawful detention under Article 5 ECHR. As this Court has held, deprivation of liberty is not confined to the classic case of detention following arrest or conviction, but may take ‘numerous other forms’.⁶⁹ As such, Article 5 ECHR has also been applied to, and found to be violated in, situations of detention on board of vessels.⁷⁰ The Court undertakes an autonomous assessment on whether a situation amounts to detention, without being bound by the legal conclusions of the domestic authorities.⁷¹ For the purpose of this assessment, the Court takes into account a whole range of criteria such as ‘the type, duration, effects and manner of implementation of the measure in question’.⁷² The difference between deprivation and restriction of liberty is one of degree or intensity and not one of nature or substance.⁷³ In the specific context of asylum-seekers, the Court has taken into consideration, *inter alia*, the applicants’ individual situation and their choices, the duration and procedural protection enjoyed during the situation, and the nature and degree of the restrictions imposed on, or experienced by, the applicants.⁷⁴

3.3.3. The Court has emphasized ‘the serious nature and consequences of the detention’ and recalled that ‘where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion’.⁷⁵ As the Court held in *Krupko and Others v. Russia*, this protection ‘applies to deprivation of liberty of any duration, however short it may have been’, citing previous caselaw in which apprehensions of forty-five minutes in a police station; a stop and search for thirty minutes; transportation to the police station, search and confinement of under one hour; or detention lasting about two hours, had all been considered to trigger the protection against arbitrary detention.⁷⁶

3.3.4. No deprivation of liberty will be lawful unless it falls within one of the grounds specified in Articles 5(1)(a)-(f).⁷⁷ While these grounds include detention for immigration control purposes, such detention will still be unlawful if it is not ‘in accordance with a procedure prescribed by law’. This requires not only compliance with domestic law but also with the ECHR, in particular its principles of rule of law, legal certainty, proportionality and protection against arbitrariness.⁷⁸ Detention under Article 5(1)(f) ECHR is arbitrary where there is bad faith or deception on the part of the authorities; where detention was disproportionate or its length unreasonable; or where the place and conditions of detention are inappropriate, ‘bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country’.⁷⁹

3.3.5. People have the right to be informed promptly of the reasons for detention under Article 5(2) ECHR. In a case involving detention of rescued asylum-seekers on a ship, the Court found a violation of this provision as the applicants had been provided with refusal-of-entry orders which did not refer to the legal and factual reasons for their detention and which were issued only after they were brought to the airport for their removal.⁸⁰

⁶⁸ UNHCR’s positions on immigration detention, including under Article 5(1)(f) ECHR, have been set out in numerous interventions before this Court. See, in particular, *Submission by UNHCR in the case of Ilias and Ahmed v. Hungary* (Application No. 47287/15), 8 January 2018; *Submission by UNHCR in the case of Khasan Mohamad YASIEEN v. Russia* (Application no. 3028/16), 1 June 2016; *Submission by UNHCR in the case of R.R. and Others v. Hungary* (Application No. 36037/17), 3 November 2017; and *Submission by UNHCR in the case of I.A. v. Hungary* (Application No. 38297/17), 22 January 2018. For relevant standards, including the right to access a lawyer and to notify a person of one’s choice about the detention, which is greatly facilitated if persons are allowed to keep their mobile phones, see European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Factsheet on Immigration Detention*, March 2017, <https://rm.coe.int/16806fbf12>.

⁶⁹ ECtHR, *Guzzardi v. Italy*, 6 November 1980, para. 95.

⁷⁰ *Khlaifia and Others v. Italy* [GC], note 64 above, para. 72.

⁷¹ *Ibid.*, para. 71; ECtHR, *Abdolkhani and Karimnia v. Turkey*, 22 September 2009, para. 127, where the Court rejected the government’s claim that the situation amounted to accommodation, rather than detention.

⁷² See, ECtHR, *Medvedyev and Others v. France* [GC], 29 March 2010, para. 73, citing ECtHR, *Amuur v. France*, 25 June 1996, para. 42.

⁷³ ECtHR, *Z.A. and Others v. Russia* [GC], 21 November 2019, para. 134.

⁷⁴ *Ibid.*, para. 138; ECtHR, *Ilias and Ahmed v. Hungary* [GC], 21 November 2019, para. 217; ECtHR, *R.R. and Others v. Hungary*, 2 March 2021, para. 74.

⁷⁵ ECtHR, *Rantsev v. Cyprus and Russia*, 7 January 2010, para. 317.

⁷⁶ ECtHR, *Krupko and Others v. Russia*, 26 June 2014, para. 35, with relevant cases quoted there.

⁷⁷ *Khlaifia and Others v. Italy* [GC], note 64 above, para. 88.

⁷⁸ On legal certainty, see *Khlaifia and Others v. Italy* [GC], note 64 above, para. 92; See also *Medvedyev v. France* [GC], note 72 above, paras 79-80, where the Court found a violation of Art 5(1) due to the confinement to ship of crew of foreign vessel arrested on high seas.

⁷⁹ ECtHR, *Saadi v. UK* [GC], 29 January 2008, paras 68-74, quoting *inter alia Amuur v. France*, note 72 above, para. 43.

⁸⁰ *Khlaifia and Others v. Italy* [GC], note 64 above, paras 119-122.

3.3.6. UNHCR also recalls that detention which does not fulfil the above requirements cannot be justified by referring to exceptional circumstances. Where a government had invoked a ‘state of emergency’ due to the arrival of a large number of asylum-seekers, this Court has nonetheless ruled that the aim of Article 5 ECHR is ‘to ensure that no one should be deprived of his or her liberty in an arbitrary fashion’, and that such principle applies ‘even in the context of a migration crisis’.⁸¹

3.4. Effective remedies

3.4.1. UNHCR’s view is that a practice of arbitrary rejections at the border, without any effective remedy to challenge them, is a violation of the right to an effective remedy under Article 13 ECHR. In cases raising Article 3 ECHR risks, the case law is well settled: the prohibition of *refoulement* under Article 3 in conjunction with Article 13 ECHR requires a State to provide effective guarantees against direct or indirect *refoulement*.⁸² This Court has repeatedly held that, ‘in view of the importance that the Court attaches to Article 3 of the Convention and the irreversible nature of the damage that may result if a risk of torture or ill-treatment materialises’, the effectiveness of a remedy ‘imperatively requires’ an independent and rigorous scrutiny.⁸³ In particular, the Court has repeatedly confirmed that in the context of an Article 3 claim, ‘a remedy will only be effective if it has automatic suspensive effect’.⁸⁴

3.4.2. While the Article 13 guarantees are only applicable to those with an arguable claim under the relevant ECHR provision, a person must have an effective opportunity to make such a claim, for Article 13 to be respected. This notably requires the necessary material conditions, access to information, legal assistance and interpretation.⁸⁵ Such safeguards are even more important when asylum is requested at the border given the particular vulnerability of asylum-seekers in this context, where procedures take place outside public scrutiny and in often rudimentary conditions (such as in this case, after applicants have just survived a dangerous sea crossing).⁸⁶

3.4.3. Similarly, not providing an effective remedy to complain about the lawfulness of detention may amount to a violation of Article 5(4) ECHR. Applicants have the right, under this provision, to speedy judicial review and to have their release ordered if detention is found to be unlawful. In *Khlaifia and Others v. Italy*, the Court ruled that since the applicants had never been informed of the reasons for their detention, their right to appeal against such detention was deprived of all effective substance.⁸⁷

4. Conclusion

4.1.1. UNHCR considers that intercepting asylum-seekers, forcing them onto inflatable life rafts and abandoning them at sea without water, food, life jackets or any means to call for help, as well as practices at the land border where asylum-seekers are forced onto inflatable life rafts to cross the river under extreme weather conditions or abandoned on islets, rocky or mountainous areas for days, show unacceptable disregard for human life. These practices violate obligations under international and European law. Such practices expose refugees and asylum-seekers to grave human rights risks, including potential violations of the right to life and the principle of *non-refoulement*, contrary to obligations under Articles 2 and 3 ECHR. Further, arbitrary detention, both on SAR vessels and in unidentified detention facilities on land, without information as to the reasons or duration of detention, is at variance with individuals’ rights under Article 5 ECHR. Finally, at Greek land and sea borders, effective remedies are currently not guaranteed, against threats to the right to life, the principle of *non-refoulement*, or the prohibition of ill-treatment and unlawful detention. This situation is contrary to Article 13 in conjunction with Articles 2 and 3, as well as Article 5(4) ECHR.

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⁸¹ *Ibid.*, para. 106.

⁸² See, among many others, *M.S.S. v. Belgium and Greece* [GC], note 62 above, and *Hirsi Jamaa v. Italy* [GC], note 584, paras 197 ff.

⁸³ *M.K. and Others v. Poland*, note 57 above, para. 143, among many others.

⁸⁴ ECtHR, *D.A. and Others v. Poland*, 8 July 2021, para. 38, and ECtHR, *M.K. and Others v. Poland*, note 57 above, para. 143. The CJEU has also clarified that under EU law, in respect of return and removal decisions, the right to an effective remedy and the principle of *non-refoulement* require automatic suspensory effect before at least one judicial body. See CJEU, *Gnandi*, C-181/16, 19 June 2018, para. 58.

⁸⁵ See *M.S.S. v. Belgium and Greece* [GC], note 62 above, paras 290, 304; ECtHR, *LM. c. France*, 2 February 2012, para. 130; ECtHR, *Rahimi c. Grèce*, 5 April 2011, para. 79. Under EU law, the right to an effective remedy in this context is guaranteed by Article 47 Charter and, enshrining more specific obligations, Article 13 Return Directive.

⁸⁶ See UNHCR intervention in *R.A. and Others v. Poland*, note 57 above, para. 3.4.2. and sources quoted there.

⁸⁷ *Khlaifia and Others v. Italy* [GC], note 64 above, paras 131-132.

ANNEX – UNHCR’s record on the reported incident of informal enforced return at sea from the area of Crete on 20-21 October 2020

1. Summary of events and UNHCR’s actions

1.1. On **20 October 2020, at 14.22 pm**, UNHCR received an email by the NGO ‘Watch the Med (WtM) – Alarm Phone’, which was also addressed to the Hellenic Coast Guard (HCG), copying also Frontex, NATO, the Turkish Coast Guard and the Greek Ombudsman, informing all parties of a boat in distress off Crete. According to the communication, WtM had also informed the Maritime Rescue Co-ordination Centre in Piraeus about a boat in distress on its way from Turkey to Italy. Due to the bad weather conditions (rain) they were taking a course towards Crete, some 12 miles from the coast. They were 180 persons on board (100 women and children included) and their position at the time of the communication was *N 34.797587, E 25.589709 (13:02 CEST 20 Oct)*. WtM further informed that the group did not have enough life vests for the adults and were asking for help. The coordinates shared by WtM directed to the following location:

<https://www.google.com/maps/place/34%C2%B047'51.3%22N+25%C2%B035'23.0%22E/@35.0106321,24.8248346,9.33z/data=!4m5!3m4!1s0x0:0x818476f86fa73c01!8m2!3d34.797587!4d25.589709>.

1.2. UNHCR also became aware of local media reports (flashnews.gr, ekriti.gr, cretapost.gr) which had been published earlier on 20 October 2020, at 12:42 local time, and were referring to a boat in distress south of Crete, close to the small island Chryssi, and reporting: *‘great mobilization of the local authorities in Ierapetra as there is information about a boat sailing off the island of Chrissi. Coast guard vessels have rushed to the sea area to investigate what exactly is going on and find out if there is indeed a boat or not. So far, the Coast Guard vessels have not located any vessels. The Civil Protection of the Municipality of Ierapetra is also informed about the possible existence of a boat and is on standby, but it does not confirm whether it is a boat with immigrants. According to the information of the Flashnews.gr, about 30 nautical miles south of Ierapetra, a boat with 180 people on board has been located and has been located by the Port Authority, which however has no information about the sos signal emission.’*

1.3. UNHCR protection staff contacted by phone the Press Office of the HCG on **20, 21 and 22 October**. In all communications, it was stated that no boat in distress had been located despite the search in the area by the HCG.

2. Direct Account by Syrian male, Mr. Hadi Assam

On 1 November 2020, UNHCR was contacted by a Syrian man who referred to the incident. He provided the following direct account to UNHCR protection staff, as well as audiovisual footage (three videos) which is also publicly available.⁸⁸ Mr Assam has provided to UNHCR his consent for the disclosure of his account. The full account reads as follows:

Place where incident has taken place: off Crete

Date when incident has taken place: 19-20 October 2020

Number, nationality, gender of group members affected by the incident: Approx. 180-200 persons, approx. 160 adults and many children, some 20 children of them between 3 months to 3 years old. Many were Syrians (Kurds, Arabs), Iraqis (Kurds), Afghan nationals and some 4 women from Somalia. Approx. 40% of the group were families, there were many women and children.

Detailed account of events: On Monday 19 October 2020, early morning we started our journey from Turkey towards Italy. We boarded a fishing boat. We were about 200 people on board, many families, women, and small children. The conditions on the fishing boat were horrible. We did not dare to complain to the smugglers out of fear. They had not told us anything about the trip and how we would travel. They did not tell us the truth. Some 80 people, men, and women were put in a small ‘room’ on a deck, like a cabin. This ‘room’ was overcrowded, with people being one on top of the other.

We spent some two days in the water in total before our rescue. While we were off Crete Island in Greek waters, we were caught in a fierce storm, with rain, hail, strong winds and high waves of 5 meters height as I remember. It was horrifying. The children were screaming. We called the Alarm Phone and the Hellenic Coast Guard asking for help and rescue. The Coast Guard, I think it was the Coast Guard on Kos, initially told us to continue because our engine was working and there was no need for a rescue.

In the meantime, on the boat, the situation was stressful due to different opinions on what to do and whether they should continue the journey to Italy. We saw drones flying above us twice. We then shared our coordinates with the Coast Guard on the phone number they had contacted us from. Their number was 6936847692. The connection was bad, but we understood that they would come to help us, and the captain started navigating towards Crete’s shore. People were scared. Many women and children were crying. There was no food left, it was still raining, and it was cold. Some were afraid that

⁸⁸ Videos available at the following links: <https://www.youtube.com/watch?v=py4KEgB9iMc>, <https://www.youtube.com/watch?v=Koa0GCQW0M8>, https://twitter.com/alarm_phone/status/1319252282551291906.

the Greeks would return us to Turkey and the tension among some passengers were continuing. Some 5 km before reaching the shore on Crete, we saw a boat in a distance, it appeared to be orange. The communication with the Coast Guard on the phone had been interrupted since some time. As the boat approached us, we saw some 5 people on board. They appeared to be Coast Guard staff wearing very dark clothes and had handguns, as I remember. The boat was more than 15 meters long and orange. It was approx. 16.00 hrs when these events took place. They told us that a big vessel would come to the spot at about 21.00 hrs to transport us to Italy. We could not trust them, but we had no other choice. We asked them to let us go to Italy with our boat, but they refused. Someone expressed fears that they would send us to Turkey, but one of the five persons on the boat made a cross sign and asked us to not worry.

Amidst this situation, some people on the boat were asking to continue their journey towards Italy, and the captain attempted to turn the boat to leave the area. However, another small vessel came after them and the captain of the fishing boat changed route again towards Crete. We were some 3 miles off Crete Island. Then a light coloured, army-like -vessel arrived also in the area with persons looking like soldiers on board. They were preventing us from reaching the nearby shores of Crete. The weather had improved by then.

At 9 pm, an inflatable boat arrived in the area, with at least four masked persons on board. They were shouting: '*down-down-down*', they had weapons and torches. They started hitting people with batons and they were asking for the captain. They hit me as well and they broke my glasses. They hit another man on the hands and legs, there is a video available. They also hit another man who revealed who was the captain; the latter disappeared since then. The masked men broke the windows. They were violent and nothing stopped them; neither the cries of the children nor the requests by some people to have access to medicines and care. They simply ignored us.

After that, they forcibly separated us in small groups, and we embarked two vessels that looked like Navy vessels or similar. It was dark. They did not even let us take our things and shoes. They were hitting us during boarding to go faster. The transfer from the fishing boat to the two vessels took place with the inflatable boat.

Those that boarded the first vessel said that the authorities took everything away from them: documents and mobile phones. The group that boarded the second vessel consisted mainly of women and children and the mobile phones were taken from them.

We were wet and had no idea where they were taking us. It was still raining, and we were freezing the whole night on the deck. They gave us a nylon-like blanket. I asked for help and some of us were taken to the back side which was a bit more protected. There were no toilets. We were given no food and water the whole night. Only in the morning, they gave us 5 litres of water.

We were sitting on the deck. I remember a Greek flag on the vessel and a yellow flag. At the back side of the vessel there was an inflatable boat. The vessel looked as of grey colour. I do not remember seeing any weapons or a radar on the vessel. It looked like an army boat, but no radar or artillery was visible.

Some members of the crew on the vessels were dressed in white uniforms like at the hospital, most probably to protect themselves from Coronavirus. Some others were dressed in ordinary clothes, not uniforms, without wearing masks. I remember I saw some 4-6 of them, all men, with dark characteristics. On the other vessel they were all masked.

We were on the vessels many hours in the freezing cold. We saw land. Later, we realised that the vessel I was on, was close to the Turkish shores, opposite of Dada. We waited for more than one hour and then they forced us with guns to stand up and board on four inflatable small boats with capacity approx. 15 persons each. The second vessel stopped close to Marmaris in Turkey and people were also forced to board 2 small inflatable boats and 2 big inflatable boats with capacity 30-40 persons each, as I heard.

They left us alone in the sea and they were looking at us from afar. Some women had hidden their mobile phones and we managed to call the Turkish Coast Guard to ask for help. We had nothing that could help us navigate the inflatable boats. They were like tents in the water, and we were far too many on board. We were afraid. A video is available on how they had forced us into the life rafts. The Coast Guard from Dada arrived at some point. They rescued us and took us to Dada.