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# **VIOLATION OF REFUGEES' HUMAN RIGHTS: EVALUATING CRITICALLY MIDDLE EAST RECENT MIGRATION CRISIS AT THE EXTERNAL SCHENGEN BORDER**

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## **Introduction**

### ***Background***

On September 2, Poland introduced a state of emergency in regions at the border with Belarus. According to International Law, a state of emergency is an occurrence that threatens the nation's life. Nonetheless, migration to Poland does not meet the threshold to declare a state of emergency. Besides, International Human Rights Law strictly outlines the conditions that a state must adhere to before imposing a state of emergency that limits human rights, such as notifying significant international bodies. Accordingly, Amnesty International outlines in their findings that the Polish government did not comply with the International Human Rights Law requirements (Amnesty International, 2021) and the European Court of Human Rights decisions concerning recent events at the borders of Poland and Latvia with Belarus (R.A. and Others, 2021; Ahmed and Others, 2021).

Poland's parliament passed a newest law that allow border forces to immediately pushback refugees and asylum seekers who cross the border illegally which contradicts the provisions of Human Rights Laws and Geneva Conventions Agreements which states that anyone who require international protection must be accorded access to the asylum process, even if they enter the territory illegally (BBC News, 2021). Accordingly, there is no country that has established laws the also give power to border forces to refuse the application for international asylum without examination (Baynes, 2021). While human rights bodies continue to accuse Poland of wanting to legalize migrant's pushbacks, Poland and EU throws the towel on President Alexander Lukashenko for promoting an influx of asylum seekers and refugees. According to EU, President Alexander Lukashenko's aim is to destabilize neighboring member states due to retaliation against imposed sanctions.

Similarly, on August 20, 2021, before the imposition of the state of emergency, the Polish government issued a ministerial decree limiting the movement of people at the border. It established that "except for people falling under a specific category, those intercepted in the border are must leave Poland and be returned to the state borderline" (Al Jazeera, 2021). An evaluation of this decree demonstrates that it contradicts with Polish government's obligation under the refugee law since it limits asylum-seekers access to Polish territory. Furthermore, according to Amnesty International in their research findings, this ministerial decree also conflicts with the principle of non-penalization of asylum-seekers that states that people seeking protection should not be subjected to penalties for their irregular entry into a country. Also, by permitting polish forces to return people without assessing their circumstances and without reasonable opportunity for them to defend the pushback action, the ministerial decree conflicts with the principle of non-refoulment (Office of the United Nations High Commissioner for Human Rights, n.d.). Which leads to collective expulsions prohibited under International Human Rights Law (Neier, 2012).

Also, Lithuania, which neighbours Belarus, has witnessed a comparable influx in the number of refugees arriving at its border, and surprisingly have introduced measures similar to the Polish government. On August 17, the Polish government proposed numerous dangerous amendments to the returns and international protection legislation. Interestingly, these amendments propose facilitating returns that could lead to collective expulsions that allow asylum authorities to discard asylum-seeker applications made by people intercepted at an irregular crossing, unless given conditions apply, and enhance penalties for irregular border crossings. UNHR strongly criticised these amendments (United Nations High Commissioner for Refugees, 2021) at the time of writing. Consequentially, on August 25, Buchinger et al. reported in their findings that the European Court of Human Rights (R.A. and Others, 2021) ordered Poland to provide humanitarian aid to asylum-seekers at their borders (Buchinger & Steinkellner, 2010). Nonetheless, Webber reports that the Polish government has failed to comply with the Court's order prompting UNHCR and IOM (United Nations High Commissioner for Refugees, 2021) to make public calls to be granted immediate access to people in need at the border (Webber, 2006).

It is absolutely tragic that six people have already died; not one more person must be allowed to die as a result of this political dispute," they said. "Belarus reportedly has encouraged refugees and other migrants from as far away as Iraq

and Afghanistan to cross its borders into the European Union, while Poland and other EU countries have declared 'states of emergency' in an attempt to deny asylum-seekers access to protection in their countries, but now they must work together to save the lives of all those stranded at their common border. (Office of the United Nations High Commissioner for Human Rights, 2021, p. 1)

This research study critically evaluates refugees' violation rights at the Polish border (Poland<Lithuania<Belarus) in the recent concerning crisis. Concerning the political theory of Arendt, this study investigates whether the fundamental human rights of refugees and asylum seekers were compromised during the period where 32 Afghans, including four women, 27 men, and one 15-year-old girl, were trapped on the border between Poland and Belarus without basic needs such as food, water, shelter, and medicine. It is clear that the E.U. and Poland, Lithuania, and Belarus Agreement on refugees failed to guarantee fundamental human rights or refugees since Poland and Belarus' institutional and legal structures could not accommodate and treat refugees as outlined in the Agreement.

Furthermore, according to the satellite imagery and photographs, Amnesty International found that the groups' position on the border shifted overnight from Poland to Belarus, described as a forced return. Besides, according to Grabbe, 32 refugees who had entered Poland from Belarus were held on the Polish side of the border, surrounded by Polish border forces (Amnesty International, 2021). Grabbe states in his findings that one day later, the refugees were back on the Belarusian side of the border, in what appears as unlawful pushback since the movement happened as armed Polish border forces surrounded the refugee's makeshift camp (Grabbe, 2000). Poland is not a safe country for refugees since the country cannot offer an effective and efficient required shield to refugees (Ciobanu, 2021). This research study suggests that the action by the Polish government to deny refugees basic needs and apply unlawful pushback (Oxfam et al., 2017) is a form of violence against refugees and acts as an obstacle to claiming and exercising their human rights.

Nonetheless, there has been no EU country that has passed inhumane laws than Poland. This has prompted the commissioner for Human Rights and other several human rights bodies to call for Poland to respect the rights of asylum seekers and refugees. According to (x), a group of 21 doctors on September 24, appealed to the Polish government to be allowed to access the emergency zones to provide basic health necessities to asylum seekers and refugees, a request that government denied (Office of the United Nations High Commissioner for Human Rights,

2008). As provided in the 1966 International Covenant on Economic, Social and Cultural Rights (Office of the United Nations High Commissioner for Human Rights, n.d.), international human rights treaties have agreed to recognize or refer to the right to health or to elements of it, such as the right to medical care. Therefore, denying the asylum seekers and refugees the right to medical care is a clear breach of 1966 International Covenant on Economic, Social and Cultural Rights.

### ***Research Question***

This research study aims to answer the question, "how does the implementation of government decree permitting security forces to return asylum-seekers without assessing their circumstances and without proper opportunity for them to defend the pushback action affect the human rights of asylum-seekers and refugees and specifically the principle of non-refoulment?"

The first sub-question in what ways are rights, as codified in international law, the product of postwar world order, and how are they challenged—or supported by—neoliberal economic norms, policies, and modes of governance? Today this question has become more prevalent since despite refugees having their rights protected, every day, the experiences of refugees and asylum-seekers, especially in the Polish, Lithuania, and Belarus borders, are very different. Regardless of the efforts and the development at the international level, regionals, and national levels, states have continued to develop numerous obstacles to prevent asylum-seekers and refugees from accessing their territories. Consequentially, this sub-question will help investigate the background of the contemporary refugee protection crisis and the continuing conflict between human rights and sovereignty.

### ***Literature Review***

#### ***Introduction***

According to Woollard (2018), refugee protection is in a deep crisis (Crisp, 2003). While human rights abuses, political violence, economic instability, wars force numerous people to flee their home countries, Poland and Lithuania are unwilling to live up to their responsibility for refugees and asylum-seekers and instead develop ways to stem refugee flows (Ciobanu, 2021). The refugee and asylum-seekers dilemma result from the continuing conflict between the international humanitarian responsibility of states to aid citizens who are in dire

need of shielding and the sovereign power of those countries (Martin, 1988). This disagreement is based upon the logic of the international human rights and refugee law regime.

### ***Pushbacks***

When BIRN visited the Polish Border with Belarus on August 24, they reported that one asylum seeker had a severe kidney issue, some had colds, and all were in bad psychological condition. The asylum seekers lacked clean water, drank from a nearby river, and had only received bread from Belarusians. These 32 asylum seekers are part of the migrant crisis being fermented by Aleksandr Lukashenko concerning the E.U. imposing sanctions on his reign for the rigged presidential election in 2020.

Since July, Aleksandr Lukashenko has been motivating people from the Middle East to travel to Belarus to send them over its western borders into the E.U. (Ciobanu, 2021). Accordingly, it is reported that the 32 migrants are not the only ones whose human rights have been violated on the Polish border. According to Polish Interior Ministry, between August 1 and 18, about 2100 asylum seekers tried to access Poland vs. Belarus territory, out of whom 1,342 were forcefully prevented from entering the territory, which contradicts E.U. agreements. There are numerous pieces of shreds of evidence showing how the Polish Government is executing pushbacks against numerous refugees and asylum-seekers. Many refugees and asylum-seekers claim that they have been sent back several occasions into Belarus by the Polish borders guard.

“Above all, the human rights of all these individuals must be respected,” the Special Rapporteurs said. “No matter how they have travelled and arrived at international borders, all migrants, regardless of status, have the right to seek and enjoy protection,” the Special Rapporteurs said. “The rights of migrants to a prompt, individual examination of their circumstances must also be respected. We remind countries that international law prohibits arbitrary or collective expulsions and refoulement.” (Office of the United Nations High Commissioner for Human Rights, 2021, p. 1)

By publishing an implementing act which is not a good law but an act amending a previous coronavirus pandemic related law, which allows the Polish government to return to the border any refugees and asylum-seekers caught in the vicinity of the border insider demonstrated a low-level piece of legislation to overrule international law such as the Geneva

Convention (United Nations, 1950). Pushing anyone back is an unlawful act under the Geneva Convention 2, under the common E.U. asylum system and under the European Convention on Human Rights 3.

### ***Relationships Between Political and Economic Power***

Accordingly, Arendt's political theory outlines that refugee and asylum-seekers protection is made "permanent and insurmountable by the comprehensiveness of the nation-states system" (Casas Klausen, 2010). Since refugees and asylum-seekers cannot migrate elsewhere to establish a new community, the political theory relates that only a country has the power to offer the basic needs of individuals and protect them from harm. Therefore, without a membership status, the refugees and asylum-seekers find themselves excluded from humanity altogether. Furthermore, Jimmy outlines in his research that the political theory upholds and affirms the principle of state sovereignty and cannot solve the issues of refugees and asylum-seekers (401). Other contemporary scholars explain that refugees and asylum-seekers are usually left outside of any membership status and forced to spend their life as refugees since state-centered international and human rights laws do not establish for the provision of their citizenship in other countries. Furthermore, Kibreab states that refugees and asylum-seekers are usually stuck in the "murky domain between legality and illegality" (Whittaker, 2006).

Riley Brooke outlines in their report that the continuing conflicts between human rights and state sovereignty impact the fundamentals human rights of refugees and asylum-seekers (Brooke, 2017). The conflict impacts the fundamental human right of refugees and asylum-seekers to seek asylum, which is outlined in Article 14 of the Universal Declaration of Human Rights (UDHR) (National Commissions for UNESCO of France and Germany, 2008). As outlined in the Arendt political theory, the fundamental rights of refugees and asylum-seekers have never become a law of nations and have shadowy existence. While emigration is considered a matter of human rights, immigration continues to be a thorn in state sovereignty. This move contradicts universalistic human rights since an individual loses membership in their state. While international bodies assume that all individual belongs to a state, this seems irony since no nation is offering membership to refugees and asylum-seekers within their jurisdiction to rectify the current circumstance of refugees and asylum-seekers. Today, refugees and asylum-seekers are denied the fundamental rights to asylum and naturalisation, and international laws have no power to force states to comply due to the existence of the principle of state sovereignty. For this reason, Çarıkçioğlu argues that refugees and asylum-seekers have

been forced to stay as refugees with a "modicum of rights that form a sub-category of rights generally available to individuals via the institution of citizenship" (Amnesty International, 2021). Consequentially, refugees and asylum-seekers may never attain membership status as they are to remain as quasi-citizens. It is no surprise that 32 asylum-seekers from Afghan faced a pushback force in the Polish borders. While refugees and asylum-seekers flee their states due to states failures, no states are willing to take responsibility for refugees and asylum-seekers and correct their mistakes.

Secondly, the negative consequence experienced by refugees and asylum-seekers due to the continuing conflict between state sovereignty and human rights laws is the lack of the proper allocation of refugees and asylum-seekers responsibilities between contracting states, for example, Poland and Belarus. The loopholes in the 1952 Refugee Convention (United Nations High Commissioner for Refugees, n.d.) which only triggers the responsibility of nations when asylum seekers reach their territories. It has provided the states with an opportunity to forcefully push back asylum-seekers from seeking refuge on their territory. For this reason, numerous states such as Poland and Lithuania emphasise the containment of refugees and asylum-seekers in areas of origin.

Phuong notes in their findings that the 1951 Refugee Convention makes it difficult for states to share refugees and asylum-seekers responsibilities somewhat since no standardized structures are making the process largely discretionary (Phuong, 2005). Numerous states prefer to benefit from free-riding opportunities as there are no binding institutional structures and norms for burden-sharing. Therefore, Phuong further argues that collective action failure by the 1951 Refugee Convention is the cause of refugees and asylum-seekers protection backlash. While many nations know the essence of providing refugees and asylum-seekers with protection for security and humanitarian, nations' primary strategy today is to free-ride on the effort and resources of other states. If one country admits refugees and asylum-seekers, other countries benefit from the more outstanding international order without risking and using resources to admit refugees, and asylum-seekers have discouraged numerous countries such as Poland and Lithuania.

Moreover, the third factor leading to violation of fundamental human rights of refugees and asylum-seekers is that despite the global applicability of the 1951 Refugee Convention, the protection and humanitarian of refugees and asylum-seekers depends on the individual sovereign states. Accordingly, although refugees and asylum-seekers are theoretically

endowed with natural fundamental human rights, they have no power to exploit the rights of refugees and asylum-seekers (Byrne, 2015). They are fixed between the possession paradox of human rights. The 1951 Refugee Convention does not provide refugees and asylum-seekers any membership status, thus lacking the power to claim their human rights associated with membership in a given political discourse. For this reason, nations have the power to exercise their powers and prescribe conditions under which rights of asylum are to be exercised. Therefore, nations can permit or deny work and confine refugees and asylum-seekers to a given area. Furthermore, the states have the discretion to subject refugees and asylum-seekers to strict detention, as demonstrated by the Polish and Lithuanian governments (Marquardt, 2021). The digital evidence demonstrates that the Lithuanian government deliberately provides less attractive reception conditions to prevent asylum seekers from coming to their territory (Amnesty International, 2021).

Moreover, Schattle et al. argue in their findings that fundamental human rights provided to refugees and asylum-seekers vary depending on the social and economic condition of the host country (International Federation of Red Cross and Red Crescent Societies, 2001). Usually, countries with less economic and social power provide low-quality protection to refugees and asylum-seekers, thus creating a situation of formal protection but lower certainty and level of rights. For this reason, refugees and asylum-seekers are not provided with the necessities of life efficiently and effectively (Schattle & McCann, 2014). Goodwin-Gill outlines in his findings that ineffective and inefficient protection is simply not protection (219). Looking at restrictive policies that countries such as Poland advance towards refugees and asylum-seekers and the low uncertainty protection they offer, it is easy to conclude that refugees and asylum-seekers law are both directly and indirectly targeted at reducing the overall cost of displacement by restricting the definition of refugees and asylum-seekers and applying the concept to limited numbers.

Interestingly, in the scope of the state-centred and burden-shifting issues arising between the states and the international level, the E.U., when developing refugees and asylum-seekers policy to help externalise its refugees and asylum-seekers protection, followed the same path as the 1951 Refugee Convention. Despite establishing the right-based approach for assessing protection claims of refugees and asylum-seekers within their jurisdiction, the E.U. established obstacles that bars refugees and asylum-seekers from entering E.U. territory and triggering its protection obligations. Furthermore, the E.U. adopted a new proactive regime



essential in preventing irregular migration and refugees and asylum-seekers flows (European Parliament, 2017). This regime emphasised populations instead of individuals and externalised migrations policies under two primary components. First, the regime encourages the exportation of classical migration control instruments to third countries outside the E.U. territory by employing strict border measures to mitigate illegal migration and trafficking. Second, the component aimed to enhance the return of irregular migrant and rejected refugees and asylum-seekers to their states of origin.

The Poland refugees and the asylum-seekers crisis has added a different dimension to the continuing cooperation between the E.U. and Poland in managing the refugees and asylum-seekers flows. After experiencing an influx of refugees and asylum-seekers flow into its territory, the E.U. and international bodies offered Poland a new cooperation model. Poland's government is required to readmit all returning refugees and asylum-seekers and provide them with basic needs and proper protection, something that Poland is yet to implement (United Nations High Commissioner for Refugees, n.d.). Evidence continues to demonstrate that refugees and asylum-seekers are still suffering at the borders of Poland (Klaus et al., 2018). Now more than six months since the incidence occurred, there is little evidence of the alleged positive reaction from the Polish government. At the same time, the refugees and asylum-seekers continue to suffer at the border (Szetela et al., 2019).

There are numerous criticisms by human rights organisations and scholars that Poland and Lithuania have undermined the principle of non-refoulement and the right to seek asylum. Poland and Lithuania cannot provide access to fair and effective asylum procedures due to their institutional deficiencies. Asylum-seekers have waited for at least six months in the border without asylum procedures, basic needs, or dignified conditions (Szczepanik, 2018). The digital evidence demonstrates that refugees and asylum-seekers are stranded at the borders and that the Polish government cannot claim that they respect refugees' fundamental rights.

#### The Paradox of Human Rights...

Numerous refugees and asylum-seekers studies in the field have aimed to demonstrate refugees and asylum-seekers as an anomaly established by illiberal governance in contrast to the regular rooted citizens. However, Arendt contradicts this common philosophy arguing that refugees and asylum-seekers are the most symptomatic in contemporary politics. She argues that refugees and asylum-seekers are the by-products of the international state system. Schuster

outlines that although international bodies assume that nations are exercising liberal democracies and protecting their citizens, states have failed to oblige and thus produce refugees and asylum-seekers (Schuster, 2011). Therefore, the existence of refugees and asylum-seekers is due to failure in the international states system. For this reason, Zembylas outlines in her research studies that as long as political borders develop separate nation-states and highlight a definition of insiders and outsiders exist, there will always be refugees and asylum-seekers (Zembylas, 2010).

### ***Conclusions***

Under E.U.4 and international refugee law (United Nations High Commissioner for Refugees, 2001), the Polish government is obliged to ensure an individual assessment of all refugees and asylum seekers' claims and refrain from unlawful returns such as pushbacks and collective expulsions 5. Therefore, Amnesty International needs to call on the Polish government to urge refugees and asylum seekers to access territory and provide them with the required protection as outlined in the Geneva Convention. Furthermore, the Polish government must adhere to European Human Rights Court orders to end pushbacks and urgently provide refugees and asylum seekers with adequate shelter, food, water, and medical care stranded in the Poland, Lithuania, and Belarus border. Finally, the Polish government should also repeal the state of emergency and provide untampered access to journalists, activists, NGOs, and lawyers to continue exercising critical human rights tasks.

## Notes

1 Article 3(1) of the CAT specifies as follows: "No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

2 See ART. 16. 2

3 Article 3(1) of the CAT specifies as follows: "No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

4 See Article 14(1) of the UDHR, Article 3 of the European Convention on Human Rights (ECHR), and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

5 Article 3 of the ECHR stipulates, "No one shall be subjected to torture or inhuman or degrading treatment or punishment"

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