



NHSMUN

National High School Model United Nations

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A Note on the NHSMUN Difference

Esteemed Faculty and Delegates,

Welcome to NHSMUN 2027! We are Armen Bagdassarian and Sabeeh Mirza, and we are elated to serve as this year's Secretaries-General. Thank you for choosing to attend NHSMUN, the world's largest and most diverse high school Model United Nations conference. As a space for collaboration, consensus, and compromise, NHSMUN strives to transform today's brightest thinkers, speakers, and collaborators into tomorrow's leaders. We believe that an emphasis on education through simulation is paramount to the Model UN experience.

Realism and Accuracy: Although a perfect simulation of the UN is never possible, we believe that one of the core educational responsibilities of MUN conferences is to educate students about how the UN System works. We strive to invite real UN, NGO, and field experts into each committee through our committee speakers program. Moreover, we arrange meetings between students and the actual UN Permanent Mission of the country they are representing. These exclusive resources are only available due to IMUNA's formal association with the United Nations Department of Global Communications and consultative status with the Economic and Social Council. No other conference goes so far to deeply immerse students into the UN System.

Educational Emphasis: At the heart of NHSMUN lies education and compromise. Part of what makes NHSMUN special is its diverse delegate base. As such, when NHSMUN distributes awards, we strongly de-emphasize their importance in comparison to the educational value of Model UN. In particular, our daises look for and promote constructive leadership and diplomacy that strive toward consensus, as real ambassadors do in the United Nations.

Research and a Dedicated Staff: Our staffers care deeply about delegates' experiences and what they take away from their time at NHSMUN. Our Directors spend over six months preparing Background Guides, in addition to Update Briefs written to reflect the rapidly changing nature of the topics to be discussed. Our staffers are trained rigorously to provide the best conference experience possible. Our daises provide thoughtful comments on submitted position papers. Our staff aims to tailor the committee experience to delegates' reflections and research, but also to facilitate an environment where all delegates' thoughts can be heard.

Empowering Participation: The UN relies on the voices of all of its member states to create resolutions. This is our philosophy at NHSMUN too. Our Rules of Procedure and our staff focus on making every voice in the committee heard, regardless of country assignment or skill level. Additionally, unlike many other conferences, we also emphasize delegate participation after the conference. Delegates spend countless hours researching topics critical to the UN and broader international sphere.

Delegates, it is our sincerest hope that your time at NHSMUN will be thought-provoking and stimulating. NHSMUN is an incredible time to learn, grow, and embrace new opportunities. We look forward to seeing you work both as students and global citizens at the conference.

Best,

Armen Bagdassarian
Secretary-General

Sabeeh Mirza
Secretary-General

Position Paper Requirements

Delegate research and preparation is a critical element of attending NHSMUN and enjoying the debate experience. We have provided this Background Guide to introduce the topics that will be discussed in your committee. We encourage and expect each of you to critically explore the selected topics and be able to identify and analyze their intricacies upon arrival to the conference.

The task of preparing for the conference can be challenging. To assist delegates, we have updated our [Beginner Delegate Guide](#) and [Advanced Delegate Guide](#). These guides contain more detailed instructions on how to prepare a position paper and excellent sources that delegates can use for research. Use these resources to your advantage. They can help transform a sometimes overwhelming task into what it should be: an engaging, interesting, and rewarding experience.

To accurately represent a judge, delegates must be able to articulate legal perspectives succinctly. Accordingly, NHSMUN requires each delegation (the one or two delegates representing a country in a committee) to write a position paper for each topic on the committee's agenda. More information about how to write and format position papers can be found in the [Research Guide](#). To summarize, position papers should be structured into three sections.

I: Facts of the Case – This section should describe the facts of the topic as the judge interprets them. Delegates do not need to give an exhaustive account of the topic, but rather focus on the details that are most contentious and likely to be debated in committee.

II: Legal Analysis – This section should discuss the judge's interpretation of the relevant laws as they apply to the topic. This guide will focus on the most important laws, but delegates are encouraged to expand their research. Comparisons with other cases are also appropriate here.

III. Proposed Outcomes – This section should detail the judge's proposed outcome to the case, how it might be resolved, and what precedents might be set. Delegates need not side with one "extreme" in the case; middle grounds and compromises are absolutely allowed. Each idea should clearly connect to one of the laws analyzed in the previous section.

Each topic's position paper should be **no more than 10 pages long** double-spaced with standard margins and 12 point font size. This is a maximum; **3–5 pages per topic is often a suitable length**. The paper must be written from your perspective and should articulate the legal analyses you will espouse at the conference.

Each judge is responsible for submitting position papers on or before **February 26, 2027**. If a delegate wishes to receive detailed feedback from the committee's dais, their position paper must be submitted on or before **February 5, 2027**. The papers received by this earlier deadline will be reviewed by the committee dais and returned before February 26. Instructions on how to submit position papers will be shared directly with faculty advisors.

Submission instructions for position papers will be sent to faculty advisors via email. If delegations are unable to submit their position papers on time, please contact us at nhsmun@imuna.org.

Delegations that do not submit position papers will be ineligible for awards.

Committee History

Established in 1945 with the primary objective of settling legal disputes between states and issuing advisory opinions on public international law, the International Court of Justice (ICJ) serves as the primary judicial organ of the United Nations (UN). Over time, the scope of its mandate has evolved to encompass a broader range of international issues. The ICJ finds its origins in the Permanent Court of International Justice, an extension of the League of Nations created in 1920. At the end of World War II, and with the creation of the UN in 1945, the ICJ was formed as a replacement to establish a more efficient global judicial system.¹

The Court, based in the Peace Palace of The Hague, Netherlands, is composed of 15 judges of different nationalities, each elected for 9-year terms.² All 193 UN member states are parties to the ICJ's Statute (its "constitution"), meaning that they can bring a case before the Court, and non-UN members can become parties to specific situations set out by the General Assembly (Article 93, UN Charter).³ One way that cases can be brought to the ICJ is through states signing a special agreement that allows the Court to hear the case. This agreement will outline the international conflict and stipulations.

Additionally, a case can be called to the Court through treaties that use the ICJ to resolve disputes related to the treaty. Party states can also submit to the Court's compulsory jurisdiction per Article 36(2) of its Statute, meaning that they will automatically recognize without special agreement the Court's jurisdiction.⁴ Furthermore, the ICJ exercises two types of jurisdictions: contentious and advisory. For the former, the Court can only act if the party states have accepted its authority through the above-mentioned ways (special agreement or compulsory jurisdiction). In its advisory capacity, the ICJ delivers non-binding opinions on questions of international law as called for by the General Assembly that, despite not being obligatory, often set precedents for future cases.⁵

Each case is guided by Article 38 of the ICJ Statute. The main contributors to ICJ decisions are international conventions and treaties that have been largely accepted by states. These are crucial since they represent binding rules that states have accepted. Next are international customs, which are general state practices that have grown into binding international laws through general acceptance and application. Finally, there are general principles of international law and expert publications. Once states consent to the Court hearing the dispute in a contentious case, written arguments are submitted, followed by live arguments before the judges. Afterward, the judges issue a binding majority opinion. Dissenting opinions can also be attached with the approval of the majority of judges.⁶

The Court lacks its own mechanism to ensure enforcement, relying on the UN Security Council to address failed obligations (Article 94, UN Charter).⁷ This restricts its ability to engage in complex contentions and hold the Security Council's permanent members accountable. Still, ICJ's major accomplishments include resolving territorial disputes, interpreting international treaties, and fostering peaceful settlement of conflicts.

¹ "The Court," ICJ, 2017–2024, accessed September 20, 2024, <https://www.icj-cij.org/court>.

² S. Gozie Ogbodo, "An Overview of the Challenges Facing the International Court of Justice in the 21st Century," *Annual Survey of International & Comparative Law* 18, no. 1 (2012): Article 7, <http://digitalcommons.law.ggu.edu/annlsurvey/vol18/iss1/7>.

³ International Court of Justice, "The Court."

⁴ International Court of Justice, "The Court."

⁵ United Nations General Assembly, United Nations Charter, 1 UNTS XV, 17 (June 26, 1945), <https://www.un.org/en/about-us/un-charter/chapter-14>.

⁶ United Nations General Assembly, International Court of Justice Statute, 33 UNTS 993, 26 (June 26, 1945), <https://www.icj-cij.org/statute>.

⁷ United Nations General Assembly, International Court of Justice Statute.

TOPIC A

Egypt v. Greece

ICJ | NHSMUN 2027



Egypt's Memorial

Chapter I: Introduction

1.1 The present case concerns a series of maritime interceptions carried out by Greek authorities in the Mediterranean during 2024. The intercepted vessels were traveling from North Africa and carried migrants seeking safety and opportunity in Europe. Egypt places one encounter in nearby international waters and alleges that the other occurred within Greek territorial waters.

1.2 Egypt alleges that Greek authorities stopped these vessels and redirected them away from Greece without granting them access to asylum procedures. Egypt further argues that Greek officers directed the vessels toward unsafe conditions without assessing whether the passengers needed international protection.

1.3 Pursuant to Article 49 of the Rules of Court, this Memorial contains the following:

1.3.1 A statement of the relevant facts outlined in Chapter II;

1.3.2 A statement of law in Chapter III;

1.3.3 The Arab Republic of Egypt's submissions to the Court in Chapter IV, which set out its formal requests for relief.¹

1.4 In this Memorial:

1.4.1 The International Court of Justice will be referred to either as the Court or the ICJ;

1.4.2 The Arab Republic of Egypt will be referred to as Egypt;

1.4.3 The Hellenic Republic will be referred to as Greece;

1.4.4 The operations in which Greek authorities stopped migrant vessels during 2024 will be referred to collectively as the maritime interceptions;

1.4.5 The rule prohibiting the return of individuals to places where they may face persecution or serious harm will be referred to as the principle of non-refoulement.

1.5 At the center of this case is the question of how international law applies when migration, maritime security, and humanitarian concerns overlap. The Court must consider the extent of state obligations under refugee law, human rights law, and the law of the sea. This is important where state action takes place beyond territorial waters.

1.6 This Memorial will establish that Greece's conduct during the alleged interceptions violated the principle of non-refoulement. It will argue that directing passengers away without assessing their protection needs or giving them a meaningful opportunity to seek asylum was inconsistent with the protections claimed by Egypt under international refugee and human rights law. This Memorial will also demonstrate that measures intended to prevent irregular migration, disrupt human trafficking networks, and secure maritime borders must be applied consistently with the legal duties owed to persons intercepted at sea.

Egypt maintains that it has standing, or the right to be heard by the ICJ, because Greece's actions directly implicate and affect Egypt. According to Egypt, Greek authorities intercepted vessels bound for Greece and redirected them towards Egyptian waters. Egypt further alleges that the resulting burden constitutes a direct injury, rather than a general concern or complaint about Greece's actions.

Article 36(1) of the ICJ Statute identifies that the ICJ receives jurisdiction over disputes from states when both parties agree to submit a "special agreement" or *compromis*.²

Chapter II: Statement of Facts

GREEK INTERCEPTIONS OF MIGRANT VESSELS FROM NORTH AFRICA:

The Eastern Mediterranean is a major route for migrants, refugees, and asylum seekers toward Europe.³ People reach the region by sea or travel overland through Türkiye, entering the EU through countries including Greece, Cyprus, and Bulgaria. Greece is a major point of entry into the EU.⁴ In 2023, the International Organization for Migration (IOM) recorded 47,930 migrant registrations in Greece. Sea arrivals accounted for 87 percent of migration.⁵

Migrants use a variety of routes. Some migrants pass through Türkiye. Others travel through North Africa and the wider Mediterranean to get to Europe.⁶ IOM data shows that many arrivals in Greece crossed through one or more other countries before reaching Greek territory.⁷ These journeys carry high risks. The IOM recorded at least 3,105 casualties and disappearances across the three aforementioned Mediterranean routes in 2023.⁸ Moreover, medical reports from around 22,000 persons rescued in this route documented severe injuries, and 287 consultations related to sexual and gender-based violence.⁹

Egypt alleges that Greek authorities encountered multiple migrant vessels traveling from North Africa toward Greece in 2024. This Memorial describes two disputed encounters: one south of Crete, supported by the maritime assistance call record discussed below, and one allegedly within Greek territorial waters, described in passengers' accounts. Egypt says Greek officers directed the vessels away from Greece before assessing whether anyone needed protection. Egypt relies on the September call, passenger accounts, and patrol record to argue that Greek officers directed the first boat south. It alleges that officers also directed the October boat away from Crete, although the recording does not

establish that boat's eventual destination.

Egypt presents an operator's record of a maritime assistance call that was relayed to Greece's Joint Rescue Coordination Center in Piraeus that it associates with one of the alleged 2024 encounters south of Crete. The caller on September 18 reported that a vessel had left North Africa, its engine was failing, and some passengers wanted to seek asylum. The caller then said that a patrol vessel marked with Greek letters had approached, blocked their route north, and ordered them to turn south. Egypt argues that this account supports its claim that Greek officers attempted to control the vessel's movement before assessing the passengers' protection needs.

Excerpt from the operator's notes:

03:12 — Caller says the vessel left North Africa and is carrying "around thirty" people. The engine is failing, and several passengers are exhausted. The caller reads approximately 34°35'N, 25°20'E from a phone. The operator asks the caller to repeat the position.

03:13 — Caller says, "We need help. Two passengers fled the war in Sudan and are afraid of being sent back there. They want to ask for asylum. Please do not send us back." The operator asks whether anyone is injured and whether another vessel is nearby.

03:14 — Caller reports that a patrol vessel marked with Greek letters has approached and is blocking their route north. Caller says someone aboard it ordered their vessel to turn south. The operator hears a distant voice but cannot make out its words or identify its source.

03:15 — The connection ends while the operator is asking the caller to repeat the position. The operator records the call as unresolved.

03:16 — The operator sends the reported position, engine problem, and request for asylum to the Greek rescue coordination center. The available record shows that the center received the message; it does not show whether the information was passed to the patrol vessel.

On 21 September 2024, Egyptian authorities rescued a boat carrying 28 people north of Egypt

and brought the passengers ashore. According to a rescue report prepared for this case, an Egyptian patrol located the crowded boat after receiving a report of a small vessel moving slowly toward the Egyptian coast. Its engine was running intermittently, and the crew reported that the passengers had limited drinking water. Egyptian officers brought all 28 passengers aboard, supplied water and basic medical assistance, and recorded the boat's position before taking them to shore.

A phone collected among the passengers' belongings was later identified as the device used for the September 18 assistance call. Several passengers also described the encounter reported by the caller. They said the engine continued to work intermittently during the journey south. Egypt relies on the phone data and the passengers' accounts to identify the rescued boat as the one described in the call. Egypt says the patrol's instruction caused the change of course.

Excerpt from Egyptian rescue report, 21 September 2024:

Patrol located a small vessel north of the Egyptian coast carrying 28 people. Engine operating intermittently;

passengers reported limited drinking water. All 28 transferred to the Egyptian patrol vessel and brought ashore. The report does not document the vessel's movements before Egyptian visual contact.

INTERCEPTIONS IN GREEK TERRITORIAL WATERS AND NEARBY INTERNATIONAL WATERS:

Egypt places the September encounter outside Greek territorial waters and the October encounter approximately four nautical miles from Crete, though the recorded locations remain disputed. In the September encounter, the caller gave coordinates that, if accurate, would place the vessel outside Greek territorial waters. The caller said a vessel marked with Greek letters blocked the route north and ordered the boat to turn south.

The operator could not verify the coordinates or identify the other vessel, and the call ended before the operator could learn whether the order was followed. Egypt argues that the caller's account, the patrol record showing a boat moving south, and the passengers' later rescue by Egypt point to a Greek instruction that changed the boat's route.

Map of the Aegean Sea region

Credit: Central Intelligence Agency



Egypt places a second encounter on 16 October 2024, south of Crete. Passengers say that Greek officers came alongside their boat and directed it away from the coast. One passenger said a phone showed the boat about four nautical miles from Crete, within Greek territorial waters, but an available cellphone recording contains no reliable location data.

In the October encounter, a cellphone recording shows a Greek patrol vessel alongside a migrant boat for approximately 25 seconds. Egypt argues that this corroborates the reported contact between Greek officers and the passengers. If other evidence confirms that the boat was approximately four nautical miles from Crete, the encounter took place within Greek territorial waters. The recording ends before it shows whether officers directed the boat's movement or where the passengers later disembarked. The passenger who filmed the encounter sent the cellphone recording to a relative, who later provided it to Egyptian authorities. Investigators have not independently identified the passengers or established where the boat went after the recording ended.

REQUESTS FOR PROTECTION DURING THE SEPTEMBER ENCOUNTER

After the rescue on 21 September, Egyptian officials interviewed several passengers about the boat's journey. In a summary of those interviews, two passengers said they had fled Sudan and feared being sent back there. One said that when the patrol vessel approached on 18 September, they asked another passenger

to tell its crew that they wanted asylum. That passenger recalled calling toward the patrol vessel but could not say whether its crew heard or understood the request.

The separate assistance call provides a clearer record of what was reported to authorities. At 03:13, the caller told the operator that two passengers feared returning to Sudan and wanted to seek asylum. At 03:16, the operator transmitted the reported position, engine problem, and asylum request to Greece's rescue coordination center. The center received the message, but the available communications do not show whether it passed the asylum request to the patrol vessel. The patrol's available record describes contact with a small boat at 03:14, two minutes before the center received that message.

Egypt relies on their accounts and the call record to argue that a request for protection was raised but never assessed during the encounter. The interviews do not establish that the patrol officers heard the shouted request, and the patrol record does not show what happened after visual contact ended at 03:19.

The October encounter presents a different evidentiary question. The 25-second cellphone recording shows a patrol vessel beside the passengers' boat, but engine noise obscures most of the exchange. No asylum request can be clearly heard on the recording. The record does not establish whether anyone raised a protection concern before or after the clip, or where the passengers later disembarked.

The passengers interviewed in Egypt said they were not taken aboard the Greek vessel and did not speak individually with its officers.

CONDITIONS IN EGYPT AND THE PASSENGERS' REPORTED FEAR OF SUDAN

Egypt and the wider North African region have received large numbers of refugees and asylum seekers in recent years. As of March 2025, UNHCR reported 942,000 refugees and asylum seekers registered with UNHCR Egypt.¹⁰ Of these, Sudanese nationals formed the largest group. This was followed by Syrians. UNHCR has also described Egypt as both a transit and destination country for refugees and asylum seekers. It also noted the pressure created by the crises in Sudan, Gaza, and Syria, as well as domestic economic challenges and gaps in humanitarian funding.¹¹

The increase in arrivals placed pressure on reception and assistance services in Egypt. In June 2024, UNHCR reported that more than 617,000 people who had fled Sudan since April 2023 had approached its office in Egypt.¹² UNHCR was expanding registration and cash assistance for new arrivals. It also described refugees struggling to cover rent, food, and health expenses as needs outpaced available assistance. Egypt was therefore a place where people fleeing Sudan could seek registration and

support, but many still faced financial hardship and delays in accessing help. In April 2024, UNHCR reported that about 300,000 Sudanese refugees were registered in Egypt and another 250,000 were awaiting registration.¹³

Two passengers on the September boat reportedly told the caller that they had fled the war in Sudan and feared being sent back there. Millions of people had fled their homes in Sudan since the war began, amid violence, disrupted services, and worsening food insecurity. Egyptian authorities brought the 28 passengers ashore on September 21, 2024, into Egypt's strained reception conditions.

PATTERN OF MARITIME RETURNS AND STATE CONDUCT AT SEA

Before the two disputed 2024 encounters, reports described alleged maritime returns in the Aegean Sea. The Aegean Sea is the body of water between Greece and Türkiye that forms a central route for migration toward the Greek islands and the EU.¹⁴ People have been stopped at sea or after reaching Greek territory. These people were then moved onto rafts and sent back toward Türkiye.

Sudanese refugees

Credit: Henry Wilkins/VOA



Forensic Architecture reviewed reports covering the three-year period from 28 February 2020 to 28 February 2023.¹⁵ Its platform recorded 2,010 alleged drift-back incidents involving 55,445 people, including 24 casualties and at least 17 disappearances. The investigation identified incidents near Lesbos, Samos, Kos, Chios, and Rhodes, located along routes commonly used by migrants seeking entry into Greece.¹⁶

A June 2024 BBC investigation examined 15 earlier incidents in which witnesses and other sources alleged that Greek Coast Guard actions contributed to 43 deaths between 2020 and 2023. The BBC reported that it corroborated eyewitness accounts in four of those incidents. The Greek Coast Guard rejected the accusations of illegal activity.¹⁷ These reported incidents add context to the allegations about maritime returns.

The reported practice followed recurring operational features. Migrants were allegedly intercepted at sea or after reaching Greek territory and then transferred onto engine-less life rafts. Afterward, they were abandoned in the Aegean until they drifted toward Türkiye. Forensic Architecture also described “deep drift-backs,” in which persons were allegedly intercepted inside Greek waters, transported toward the maritime

boundary, and then left adrift.¹⁸ Egypt argues that the reports show a repeated practice, that Greek authorities allegedly turned people back at sea before they could come ashore, be registered, or seek asylum.

A later memorandum by the Council of Europe Commissioner for Human Rights raised similar concerns about the period closest to this dispute. UNHCR received information on 248 reported returns during the first half of 2024. It reviewed those reports and treated 166 as proven through facts. Of that total, 128 incidents took place at sea. They affected at least 4,229 people. This included children and pregnant women. They also involved single-parent families and people with medical needs.¹⁹

Reports concerning the Greek islands also describe alleged returns involving engineless rafts. One account came from an unaccompanied Afghan child who said that, after seeking asylum on Samos, Greek authorities placed him on a raft and left him to drift toward Türkiye. Other reports described similar alleged practices.²⁰

A separate investigation reconstructed the June 2023 voyage and shipwreck of the *Adriana* near Pylos using vessel tracking, satellite imagery,



Greek coastguard

Credit: Tsui

photographs, and official records. Survivors reported that Greek Coast Guard officers instructed their vessel to follow a patrol boat toward Italian waters; the Coast Guard disputes accounts of its conduct.²¹ Egypt cites this earlier incident to show why the Court should examine whether Greek officers also directed vessels away from Greece in the alleged 2024 interceptions.

Chapter III: Statement of Law

GREECE'S VIOLATION OF THE PRINCIPLE OF NON-REFOULEMENT

Egypt argues that Greece violated the principle of non-refoulement, a core rule of refugee law and international human rights law. In simple terms, non-refoulement means that a state must not send a person back to a place where they may face persecution, torture, inhuman treatment, or other serious harm.²²

Article 33 of the 1951 Refugee Convention provides that no state may expel or return a refugee “in any manner whatsoever” to a territory where that person’s life or freedom would be threatened because of race, religion, nationality, membership in a particular social group, or political opinion. This language is important for Egypt’s case because it is broad. It does not only prohibit formal deportations from inside a state’s territory. It also covers any form of return that has the same practical effect: sending a protected person back toward danger.²³

The United Nations Convention Against Torture gives a second and independent basis for Egypt’s argument. Article 3 provides that no state party may expel, return, or extradite a person to another state where there are substantial grounds for believing that the person would be in danger of torture.²⁴ It also requires authorities to consider all relevant circumstances, including

whether there is a consistent pattern of gross, flagrant, or mass human rights violations in the receiving state. This matters because Egypt does not need to prove that every migrant had already suffered harm. The relevant question is whether Greece had enough reason to believe that return would expose them to a real risk of serious harm.²⁵

International human rights law further strengthens this protection. The OHCHR explains that non-refoulement applies to all migrants, regardless of their migration status. It also prohibits states from removing persons from their jurisdiction or effective control when there are substantial grounds to believe they would face irreparable harm, including persecution, torture, or other serious human rights violations.²⁶ Separately, directing an unsafe boat away from assistance may create a foreseeable risk to the passengers’ lives at sea, even if their eventual destination is unknown.

GREECE'S OBLIGATIONS BEYOND ITS TERRITORIAL WATERS

Greece’s obligations did not end simply because some interceptions occurred outside Greek territorial waters. International waters are not a legal gap where state agents could act without human rights duties. Under international human rights law, the decisive question was not only where the conduct occurred, but whether Greek officials exercised authority or effective control over the individuals affected.

This point is central to the idea of jurisdiction. In this context, jurisdiction means the legal link that makes a state responsible for protecting a person’s rights. Jurisdiction is usually based on territory, but it can also arise outside a state’s borders when state agents place people under their power or effective control.²⁷ The UN Human Rights Committee explains that states must respect Covenant rights for anyone within their power or effective control, even if that person is not located within the state’s territory. It also

states that this rule applies to people controlled by state forces acting abroad.²⁸

UNHCR's 2007 Advisory Opinion explains that non-refoulement applies outside a state's territory wherever it exercises jurisdiction over the people concerned.²⁹ Egypt argues that, if Greek officers controlled the passengers' movement or destination, Greece could not avoid that duty merely because an encounter occurred outside its territorial waters.³⁰

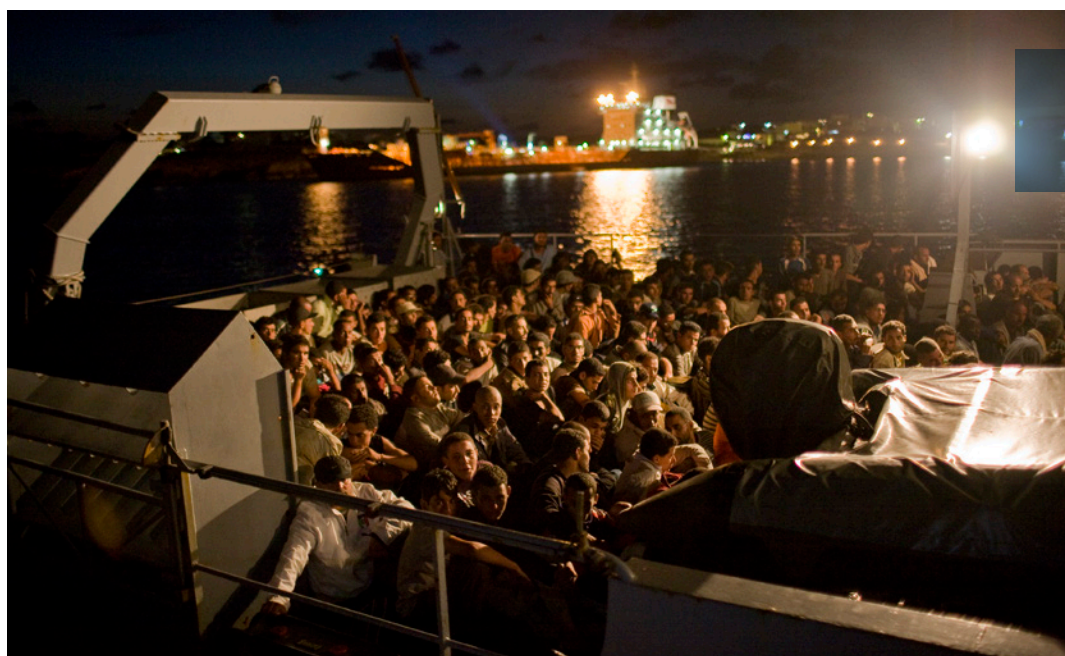
International Court of Justice jurisprudence follows the same principle. In *Armed Activities on the Territory of the Congo*, the Court held that Uganda remained bound by applicable international human rights law for acts carried out by its armed forces on Congolese territory. It further found that, as the occupying Power in Ituri, Uganda had a duty to secure respect for human rights and humanitarian law in the area under its authority. Although the case concerned military operations and occupation rather than maritime interception, it confirms that a state's human rights obligations may apply when its agents exercise authority beyond its national territory.³¹

Hirsi Jamaa and Others v. Italy is especially important for Egypt's claim because it also concerned

migrants intercepted at sea.³² In that case, migrants were intercepted south of Lampedusa, transferred onto Italian military ships, and returned to Tripoli. The Court held that, from the moment the migrants boarded the Italian military ships until they were handed over to Libyan authorities, they were under Italy's continuous and exclusive control. For that reason, the events fell within Italy's jurisdiction. The Court also rejected the idea that Italy could avoid responsibility by calling the operation a rescue mission on the high seas.³³

A similar approach appears in *Medvedyev and Others v. France*.³⁴ French forces intercepted a vessel on the high seas and maintained control over its crew until it reached France; the European Court found that the crew fell within French jurisdiction. Although the case did not concern asylum seekers, it reinforces that a state may exercise jurisdiction at sea through sustained control over a vessel and its occupants. The ICJ's *Wall* Advisory Opinion likewise recognized that human rights obligations can apply beyond a state's territory when it exercises jurisdiction there.³⁵

Egypt argues that these decisions apply if Greek officers exercised comparable authority over



Migrants arriving on the Island of Lampedusa

Credit: European Commission

the passengers. If Greek officials decided where the vessels could go, prevented them from reaching Greek territory, or directed them back toward unsafe conditions, the migrants were not simply “outside Greece.” They were under Greek authority for the purposes of the legal acts carried out against them.³⁶

In *Corfu Channel (United Kingdom v. Albania)*, the ICJ recognized that indirect evidence can help establish facts that one state cannot observe or prove directly, particularly when several facts point logically to the same conclusion.³⁷ Egypt asks the Court to consider the September caller’s account, the Greek patrol record, and the passengers’ later rescue together when determining whether Greek officers directed that boat south. The earlier reports provide context, but they do not by themselves establish what happened to either disputed vessel.

Thus, Egypt argues that Greece cannot avoid its obligations simply by claiming that the interceptions occurred in nearby international waters. If Greek authorities exercised effective control over the migrants or their vessels, Greece remained bound by its duties under refugee law and human rights law. Egypt therefore asks the Court to examine whether Greece’s conduct at sea was sufficient to establish jurisdiction and, if so, whether Greece complied with the legal protections that applied once that control existed.

DENIAL OF ACCESS TO ASYLUM PROCEDURES

Greece’s alleged failure to provide access to asylum procedures should be treated as more than a procedural defect. Egypt submits that access to protection is one of the safeguards that makes the principle of *non-refoulement* effective in practice. A state cannot reliably determine whether return would expose a person to persecution or serious harm if that person is never given a meaningful opportunity to explain why protection may be needed. UNHCR therefore states that post-rescue arrangements

must not prevent persons who may need international protection from seeking it through a fair and efficient procedure.³⁸

This obligation becomes especially important when authorities know, or reasonably should know, that persons under their control may require international protection. UNHCR explains that non-refoulement duties may arise even when an individual has not clearly or formally requested asylum. Before taking steps that could expose a person to prohibited harm, the state must conduct an independent inquiry into possible protection needs. For Egypt, this means that Greece could not rely solely on the absence of a formal asylum request if the circumstances of the maritime interceptions gave Greek authorities reason to believe that persons on board might require protection.³⁹

The September call illustrates why an inquiry mattered. The caller reported that two passengers had fled Sudan, feared being sent back there, and wanted to seek asylum. Their later arrival in Egypt did not itself return them to Sudan, and the available communications do not establish whether Greek patrol officers received the asylum message. Egypt nevertheless argues that, if Greek officers directed the boat away, they needed to provide an opportunity to identify the passengers’ specific fears and assess any risk of onward removal before determining its course.

Access to asylum must also be effective rather than merely theoretical. In *M.S.S. v. Belgium and Greece*, the European Court of Human Rights (ECtHR) examined serious shortcomings affecting access to Greece’s asylum procedure, including insufficient information, difficulties communicating with authorities, shortages of interpreters, and obstacles affecting the examination of individual claims. The Court emphasized that lack of information about the procedure could itself become a major obstacle to accessing protection. This reasoning is relevant to the present case because Egypt alleges that the intercepted migrants were

returned before receiving a genuine opportunity to seek asylum. The issue is therefore not simply whether an asylum system formally existed in Greece, but whether the individuals affected by the maritime interceptions could actually access protection before Greece determined their immediate fate.⁴⁰

The need for effective access is closely connected to the consequences of an erroneous return. In *M.S.S.*, the Court held that where removal could expose an individual to treatment contrary to Article 3 of the European Convention on Human Rights, the available remedy must permit close, independent, and rigorous examination of the alleged risk and must operate quickly enough to prevent irreversible harm. The Court found a violation because Greece's asylum process could allow the applicant to be sent to a country where he faced harm without properly reviewing his claim or giving him a meaningful way to challenge the decision. The significance of the case for Egypt is therefore procedural as well as substantive: protection against refoulement depends on safeguards capable of identifying danger before removal occurs.⁴¹

This reasoning applies directly to this particular case of maritime interception. UNHCR recognizes that a complete asylum determination will normally be better conducted on land after safe disembarkation. It does not require coast guard officers to decide refugee status aboard a vessel. However, this does not permit authorities to return or redirect persons first and determine their protection needs later. Where a state exercises jurisdiction or effective control, it must ensure that its conduct does not prevent persons

who may need protection from accessing a fair procedure. UNHCR specifically warns that persons cannot be summarily turned back where doing so would deny them a fair opportunity to seek asylum.⁴²

Egypt therefore asks whether the passengers had a genuine opportunity to raise protection concerns before any Greek-directed return or redirection. If they did not, Greece could not reliably assess the risk of harm before determining their destination.

RESCUE AT SEA AND THE REQUIREMENT OF A PLACE OF SAFETY

If Greece characterizes the 2024 interceptions as rescue or maritime-safety operations, it must still show that the individuals were taken to a genuine place of safety. Under the law of the sea, states have duties to render assistance to persons in distress at sea, and the rescue process is not complete merely because the immediate danger at sea has ended.⁴³

The International Maritime Organization (IMO) defines a place of safety as a location where the rescue operation ends, the survivors' lives are no longer threatened, and their basic needs, including food, shelter, and medical care, can be met. For asylum seekers and refugees, the IMO further states that authorities must consider the danger of disembarking them in a territory where their lives or freedoms may be threatened.⁴⁴

Greece may rely on the urgency and difficulty of maritime operations. Those conditions can affect how officials organize a rescue, but they do not

The Court must determine whether Greece complied with its maritime rescue duties while also respecting non-refoulement and access to protection.

remove the duty to avoid refoulement. Maritime rules themselves allow operational flexibility while still requiring delivery to a place of safety and consideration of the particular circumstances of each case. Egypt argues that any rescue or redirection Greece controlled had to lead to a place where passengers' immediate safety and possible protection needs could be addressed.⁴⁵

MISUSE OF MARITIME BORDER CONTROL TO AVOID PROTECTION OBLIGATIONS

Greece may argue that its conduct was necessary to prevent irregular migration and disrupt human trafficking networks. Egypt accepts that states have a legitimate interest in securing their borders and combating criminal smuggling. However, Egypt argues that these interests do not create an exception to non-refoulement. Border control is lawful only when it is exercised within the limits of refugee law, human rights law, and the law of the sea.

The legal issue is therefore not whether Greece may monitor its maritime borders. It clearly may. The issue is whether Greece used maritime border control in a way that denied migrants the protection that international law requires.⁴⁶ A state cannot transform a protection duty into a security problem simply by describing migrants as "irregular" or by linking their journey to smuggling networks. Even when migration occurs through unlawful routes, the people on board may still include refugees, asylum seekers, children, victims of trafficking, or persons at risk of torture or inhuman treatment.⁴⁷

The Protocol against the Smuggling of Migrants supports this distinction. Its purpose is to prevent and combat the smuggling of migrants and to promote cooperation among states. Yet the Protocol does not erase other duties under international law. Its saving clause preserves obligations under international humanitarian law, international human rights law, the Refugee Convention, the 1967 Protocol, and the principle of non-refoulement. Egypt argues that anti-

smuggling measures must not expose migrants to unsafe return.⁴⁸

EU Regulation 656/2014 sets out safeguards for sea-border operations coordinated by Frontex.⁴⁹ Its Article 4 prohibits transferring a person to a third country where there is a serious risk of persecution, torture, or other prohibited harm, including onward removal to such a place. It also requires participating units to assess individuals' circumstances and give them an opportunity to explain why a proposed destination may be unsafe.⁵⁰ The record does not establish that the disputed Greek patrols were part of a Frontex-coordinated operation, so Egypt does not claim that this regulation directly governed them. Egypt cites it as an example of how EU sea-border rules address protection risks during maritime enforcement.

Egypt further argues that security concerns cannot justify collective or automatic returns. OHCHR states that border governance measures, including those aimed at irregular migration and transnational organized crime, must comply with non-refoulement and the prohibition of arbitrary or collective expulsion. A collective expulsion occurs when people are removed as a group without a real examination of each person's situation. Egypt argues that, if Greek authorities redirected or returned vessels without individual screening, they denied passengers an opportunity to raise protection claims.⁵¹

Egypt argues that Greece could enforce its maritime border, but could not use that authority to return people toward danger without assessing their protection needs.

Chapter IV: Submissions

4.1 For the foregoing reasons, the Arab Republic of Egypt respectfully requests the following relief from the International Court of Justice.

4.2 May it please the Court to adjudge and

declare that:

4.2.1 The Hellenic Republic violated the principle of *non-refoulement* by returning or redirecting passengers away without assessing their protection needs and the foreseeable consequences of that direction;

4.2.2 The Hellenic Republic's international obligations were not limited to its territorial waters and applied where Greek authorities exercised authority or effective control over migrants intercepted in nearby international waters;

4.2.3 The Hellenic Republic violated its international obligations by returning individuals without providing meaningful access to asylum procedures or an individualized opportunity to seek protection;

4.2.4 The Hellenic Republic could not rely on the prevention of irregular migration, the disruption of human trafficking networks, or the protection of its maritime borders to justify conduct inconsistent with its obligations under international refugee law, international human rights law, and the law of the sea;

4.2.5 The Hellenic Republic shall cease any continuing conduct inconsistent with those obligations and ensure that future maritime interceptions are carried out in accordance with the principle of *non-refoulement* and the protections applicable to persons under its authority or control;⁵²

4.2.6 The Hellenic Republic shall provide appropriate assurances and guarantees of non-repetition, to the extent required by the circumstances.⁵³

4.3 The Arab Republic of Egypt respectfully reserves the right to amend or supplement these submissions in accordance with the proceedings before the Court.

Greece's Counter-Memorial

Chapter I: Introduction

1.1 The present case concerns two disputed encounters between Greek patrol vessels and migrant boats south of Crete in 2024. Greece accepts that its officers approached boats at sea but disputes Egypt's account of their locations, the instructions given, and what happened after contact ended.

1.2 Egypt alleges that the encounters were unlawful returns carried out without access to asylum. Greece maintains that its officers approached the boats in response to maritime safety and border concerns, and that the available record does not establish an order to leave Greek waters or a Greek decision about either boat's destination.

1.3 Pursuant to Article 49 of the Rules of Court, this Memorial contains the following:

1.3.1 A statement of the relevant facts outlined in Chapter II;

1.3.2 A statement of law in Chapter III;

1.3.3 The Hellenic Republic's submissions to the Court in Chapter IV, which set out its formal requests for relief.⁵⁴

1.4 In this Memorial:

1.4.1 The International Court of Justice will be referred to either as the Court or the ICJ;

1.4.2 The Hellenic Republic will be referred to as Greece;

1.4.3 The Arab Republic of Egypt will be referred to as Egypt;

1.4.4 The two disputed contacts between Greek patrol vessels and migrant boats in 2024 will be referred to as the maritime encounters;

1.4.5 The rule prohibiting the return of individuals to places where they may face persecution or serious harm will be referred to as the principle of *non-refoulement*.

1.5 At the center of this case is the question of how international law applies when migration, maritime security, and humanitarian concerns overlap. The Court must consider the extent of state obligations under refugee law, human rights law, and the law of the sea, particularly where state action takes place beyond territorial waters.

1.6 This Counter-Memorial will show that the maritime encounters must be assessed separately. Greece maintains that its officers could approach vessels for safety and border purposes, while Egypt must establish that they exercised control, directed a return, or denied access to protection in either encounter.

Chapter II: Statement of Facts

THE MEDITERRANEAN AS A ROUTE FOR IRREGULAR MIGRATION AND HUMAN TRAFFICKING NETWORKS

The alleged 2024 operations took place in a Mediterranean region shaped by irregular migration, dangerous sea crossings, and organized smuggling. People using the same routes do not all have the same legal status or reason for travel. Frontex, the EU's border and coast guard agency, counts irregular border crossings. A person counted in those figures may still intend to seek asylum; the count does not determine whether they need protection. This matters for Greece because officers at sea may encounter both suspected smuggling and people who need protection.⁵⁵

Frontex data show how quickly these routes shifted around the year of the alleged encounters. In 2024, detections of irregular crossings at the EU's external borders fell by 38 percent to just over 239,000. The Central Mediterranean route fell by 59 percent but still

Frontex

Credit: Francesco Placco



recorded about 67,000 detections. By contrast, the Eastern Mediterranean route (which includes Greece, Cyprus, and Bulgaria) rose by 14 percent to 69,400, driven in part by new corridors from eastern Libya, with Syrians, Afghans, and Egyptians among the main nationalities recorded there. Frontex also cautions that these figures count detection events, so the same person may be recorded more than once.⁵⁶

The scale of smuggling from North Africa is also documented by UNODC. Its 2024 update estimated that 254,422 people departed the North African coast on the Central Mediterranean route in 2023, while 150,653 were registered as reaching Italy or Malta. UNODC estimated that smugglers facilitated the journeys of about 175,000 to 228,000 people and generated between USD 290 million and USD 370 million. This shows that departures from North Africa were connected to active and adaptable smuggling networks operating across more than one Mediterranean route. Greece therefore places the encounters within a setting where maritime authorities had concrete reasons to consider smuggling activity as part of the operational risk.⁵⁷

Smuggling and trafficking must also be distinguished, even though the two can overlap in practice. A study by Bish, Cockbain, Walsh, and Borrión examined 71 interviews with people who travelled the Central Mediterranean route in 2018 and 2019. It found links between smuggling, forced labor, debt bondage, extortion, kidnapping, and trafficking. Some people who first relied on smugglers later faced coercion or exploitation during transit, especially in Libya. This evidence

helps explain why a maritime encounter may involve both border-control concerns and people who need protection.⁵⁸

The same routes also carry a severe human cost. Frontex stated that sea crossings are usually organized by criminal networks and continue to place migrants in extreme danger.⁵⁹ Using IOM estimates available in January 2025, Frontex reported that about 2,300 people lost their lives at sea during 2024. IOM later recorded at least 8,938 deaths on migration routes worldwide that year, the highest annual total in its records.⁶⁰ These figures do not describe the people in the disputed cases, but they show the risks surrounding maritime movements in 2024.

GREECE'S MARITIME PATROL AND RESCUE OPERATIONS

The Hellenic Coast Guard vessels can approach boats to determine their position, assess whether people need assistance, and communicate with those aboard. Greece's Joint Rescue Coordination Center in Piraeus receives and coordinates reports concerning possible emergencies at sea.⁶¹

A patrol's approach to a boat can therefore begin with a report about its condition, its location, or both. Greece has used a shore-based maritime operations center to handle emergencies at sea since 1968; a search and rescue coordination center replaced it in 1989.⁶² The center's coordinating role is distinct from the work of a patrol crew approaching a vessel.

A later review of 2024 recorded 54,417 arrivals

The Hellenic Coast Guard carries out maritime border surveillance and search and rescue.

in Greece by sea, an increase of 30.9 percent from 2023.⁶³ It also reported that at least 125 people attempting the sea crossing were dead or missing. These figures describe the volume and danger of maritime movements that year; they do not establish the purpose or conduct of the patrol in either disputed encounter.

The Coast Guard describes its Piraeus rescue center as operating around the clock and coordinating with the Hellenic Air Force, Hellenic Navy, and other rescue authorities.⁶⁴ Its security branch also oversees maritime border surveillance and the readiness of vessels used for search and rescue. This structure means that a report can reach a coordination center while a separate crew investigates conditions at sea.

The waters south of Crete were part of the Coast Guard's operational setting in 2024. In an October incident unrelated to this case, the Coast Guard reported locating 52 people approximately 50 nautical miles south of Crete.⁶⁵ Approaching a boat in that area could therefore involve checking its position and condition as well as responding to a possible border crossing.

A later UNHCR-IOM review found that arrivals in Greece from eastern Libya rose from 817 in 2023 to 4,897 in 2024, while arrivals in Italy and Malta through the Central Mediterranean fell by 58 percent.⁶⁶ These figures illustrate the increased maritime traffic near Greece; they do not establish what motivated the officers in either disputed encounter. The September patrol record offers a more specific account of Greece's stated reason for approaching a small boat; its incomplete entries are addressed in the next section.

UNCERTAIN OPERATIONAL CONDITIONS IN GREEK TERRITORIAL WATERS AND NEARBY INTERNATIONAL WATERS

Egypt places the September encounter south of Crete and the October encounter within Greek territorial waters. Greece disputes whether the available evidence establishes the precise

location of either vessel.

Greece submits a partially redacted patrol record that it associates with the night of the call described in Egypt's Memorial. The record notes a report of a small vessel with possible engine trouble, an approach by a Greek patrol vessel, and a communication concerning the vessel's course. Greece points to the 03:11 engine-trouble report as its officers' stated reason for approaching the small boat. The patrol excerpt records visual contact three minutes later, but its incomplete wording leaves the content of the exchange disputed.

Egypt argues that the reference to a change of course supports the caller's account of an order to turn south. The record does not identify the caller's vessel with certainty, explain the exact words spoken, or show where the migrant vessel went afterward.

Excerpt from a partially redacted Greek patrol record, disputed 2024 encounter south of Crete:

03:11 — Patrol receives an initial report of a small vessel with possible engine trouble south of Crete. The source of this report is not identified in the available excerpt; the recorded position's final digits are illegible.

03:14 — Visual contact with small vessel near reported position. Course: south. Radio entry: "Advised course [illegible] south [illegible]."

03:17 — Vessel continuing south.

03:19 — Visual contact lost.

The first recorded observation places the boat on a southerly course, but the excerpt does not show its course before 03:14 or establish whether the patrol's communication affected its movement. No boarding or transfer is recorded in the available excerpt. Greece accepts that Egyptian authorities rescued the 28 passengers on 21 September. It does not accept that its patrol determined their destination. Greece accepts that a phone recovered from the rescued passengers was later identified as the device used for the September assistance

call. It maintains that this link identifies the callers' boat but does not show that the patrol's communication caused its subsequent journey south.

Greece argues that the patrol entry describes advice given during a possible engine problem, records no boarding or transfer, and ends three days before the Egyptian rescue. Egypt responds that the caller reported an order to turn south and that the patrol record shows a boat moving south soon afterward. Greece acknowledges that its rescue coordination center received the asylum message at 03:16, two minutes after the patrol's recorded contact with a small boat. The available communications do not show whether or when the center passed that message to the patrol. The center's surviving message log contains no acknowledgment from the patrol crew of the asylum report before visual contact ended at 03:19.

Greece also addresses a short cellphone recording on 16 October 2024 that passengers associate with the separate encounter they place in Greek territorial waters. The recording shows a patrol vessel alongside the migrant boat and captures a brief exchange, but the words are difficult to hear. Greece accepts that officers approached the boat. It disputes that the clip shows an order to leave Greek waters. The recording does not show what happened before the approach, whether the boat changed course afterward, or where its passengers disembarked.

Description of a passenger's cellphone recording from the October 2024 encounter:

Approximately 25 seconds in duration. A patrol vessel appears alongside a small boat. A voice from the patrol vessel is audible, but engine noise obscures most of the words. Someone on the small boat points toward the coast. The recording ends while the two vessels are still alongside one another. The image contains no reliable location data.

The clip supports that an encounter occurred. By itself, it does not establish that the encounter took place within Greek territorial waters,

that officers ordered the boat away, or what happened afterward.⁶⁷

For the September encounter, the parties dispute whether Greek officers caused the boat's journey to Egypt and whether the patrol received the passengers' asylum request. For October, the recording establishes contact with a patrol but does not establish the boat's location, any subsequent change of course, or where its passengers disembarked.

PASSENGERS' DESTINATION AND RISKS:

In the September encounter, the caller said that two passengers had fled the war in Sudan and feared being sent back there. A February 2024 UN human rights report described thousands of civilians killed, millions displaced, and widespread violations and abuses during the conflict in Sudan.⁶⁸ The caller did not describe what had happened to them in Sudan or explain why they believed they would be sent there from Egypt. Egypt was receiving a large number of people fleeing Sudan that year: by September 2024, its government reported approximately 1.2 million Sudanese arrivals since April 2023.⁶⁹

At 03:16, the Greek rescue coordination center received the assistance-call operator's message reporting the passengers' request for asylum. The center was separate from the patrol vessel, which had recorded contact with a small boat at 03:14 and lost visual contact at 03:19. The available communications do not show whether the center relayed the asylum request to the patrol during that interval.

Egyptian authorities brought 28 passengers ashore on 21 September. At the time, UNHCR handled refugee and asylum-seeker registration in Egypt under an agreement with the Egyptian government. Its June 2024 Egypt fact sheet described registration appointments, counseling in several languages, and support for people with specific needs.⁷⁰

Their arrival in Egypt did not itself return the

two passengers to Sudan. The available record does not establish whether either passenger was later sent to Sudan or what happened to their protection requests after arrival. Greece disputes that its patrol chose Egypt as the boat's destination.

For the separate October encounter, the cellphone recording does not establish where the boat went after contact with the Greek patrol. It also does not capture a clear statement about any passenger's nationality, feared harm, or intended destination. Greece therefore disputes both that its officers returned those passengers and that the recording identifies a place to which they were returned.

EARLIER REPORTS AND THE TWO DISPUTED ENCOUNTERS

Reports cited by Egypt describe alleged pushbacks and drift-backs elsewhere along Greece's maritime borders. Some describe people being transferred onto engineless rafts in the Aegean Sea and left to drift toward Türkiye. This practice is often called a "drift-back," when people are allegedly left on a vessel without a working engine so that it drifts toward another

country.⁷¹ Forensic Architecture's investigation recorded 2,010 alleged Aegean drift-backs involving 55,445 people between February 2020 and February 2023. Those figures concern reported incidents in the Aegean Sea, primarily near the Greek islands and Türkiye. The two disputed encounters took place south of Crete.

Crete was also a destination for crossings from North Africa: UNHCR reported that 817 people reached the island from eastern Libya in 2023.⁷² This establishes that the route existed before the disputed 2024 encounters, but it does not establish where either boat departed or what Greek officers did. Neither the available September patrol excerpt nor the October cellphone recording documents a transfer onto a raft.

In September, Egyptian authorities rescued 28 passengers three days after the reported patrol encounter. Several passengers said their boat's engine worked intermittently during the journey south. The patrol record notes a small boat moving south, but it does not identify that boat with certainty as the one later rescued or show its route after visual contact ended.

The October cellphone recording shows a

*Protests against migrants
deported back to Turkey from
Greece*

Credit: Mark Lowen



patrol vessel alongside a migrant boat for approximately 25 seconds. It does not show whether the boat changed course afterward or where its passengers disembarked. The earlier reports do not identify either boat involved in the disputed 2024 encounters.

Chapter III: Statement of Law

JURISDICTION BASED ON EFFECTIVE CONTROL, NOT PROXIMITY TO GREEK WATERS

International law does not create jurisdiction just because a vessel is near Greek waters. For Greece, the rule beyond its territorial sea is more exact. Greek officers must exercise real authority or effective control over the people concerned. The European Court of Human Rights has said that state jurisdiction is mainly territorial. It has also rejected a simple cause-and-effect test for acts abroad. Harm caused by a state does not alone place the victim under that state's authority.⁷³ The key issue is control, not distance.

In *Banković and Others v. Belgium and Others*, the European Court of Human Rights rejected a broad effects-based approach. North Atlantic Treaty Organization states had carried out an air strike outside their territories. The ECtHR did not accept that everyone harmed by the strike therefore came within those states' jurisdiction. The case did not concern migrants or maritime encounters, and later cases recognize other forms of jurisdiction abroad. Its useful point here is narrower: an effect on a person does not, by itself, prove state authority over that person.⁷⁴

In *Al-Skeini and Others v. the United Kingdom*, the ECtHR recognized that jurisdiction can arise outside a state's territory when its agents exercise authority and control over individuals.⁷⁵ Whether that occurred depends on the facts. Greece therefore submits that the Court must

identify what authority its officers actually exercised over the passengers, rather than infer jurisdiction from a patrol vessel's presence nearby.

The maritime setting calls for a more specific test. In its intervention in *Hirsi*, UNHCR addressed state control on the high seas. It explained that de facto jurisdiction exists when a state exercises effective control over persons. Whether that control exists depends on the facts of each case. UNHCR also treated transfer onto a state vessel as a strong form of control.⁷⁶ Once people are taken aboard, they come under the state's direct authority. This helps separate contact with a vessel from legal control over its passengers.

In *Medvedyev and Others v. France*, French forces took control of a ship on the high seas and maintained full, exclusive control over the vessel and crew until they reached France.⁷⁷ The ECtHR found that the crew fell within French jurisdiction. In *Hirsi Jamaa and Others v. Italy*, migrants transferred onto Italian military vessels remained under Italian control until they were handed over to Libya.⁷⁸ Greece argues that those documented acts of custody differ from the limited contact shown in the available records of the disputed encounters.

The ICJ's *Wall Advisory Opinion* supports the same basic distinction. The Court held that the ICCPR can apply to acts done outside a state's territory when the state acts through an exercise of its jurisdiction. The case involved occupied territory and extensive state authority, not simple contact near a border. It did not establish that proximity alone was enough. Greece therefore relies on a narrow point: duties abroad require a real jurisdictional link, and the facts must establish that link.⁷⁹

This position does not deny that Greece may have other duties at sea. Rules on rescue, navigation, and safety can apply because of the maritime setting itself. The question here is different. It asks whether Greek conduct also placed specific migrants under Greek authority.

That matters for the human-rights and refugee-law duties invoked by Egypt. The answer must rest on actual control over the people, rather than mere knowledge of a vessel or contact with it.

The ICJ should therefore examine each alleged incident on its own facts. Did Greek officers board the vessel? Did they transfer or detain passengers? Did they control its course or issue binding orders? Did Greece decide where the people would be taken? Those acts point toward direct authority over the persons aboard.⁸⁰ By contrast, monitoring, warnings, radio contact, and rescue coordination show a weaker form of involvement. The Court must determine which kind of conduct actually occurred.

Greece submits that reports of other maritime returns may provide context, but they do not establish what its officers did in either disputed 2024 encounter. In *Military and Paramilitary Activities in and against Nicaragua*, the ICJ treated press reports cautiously: they could corroborate other evidence but could not, by themselves, prove the reported facts.⁸¹ Egypt must therefore connect its broader reports to evidence concerning these boats, the officers' conduct, and the passengers' destinations.

For the September encounter, the call and patrol records must be assessed together with the passengers' later accounts; the broader reports cannot establish whether the patrol gave a binding order or caused the boat's journey to Egypt. For the October instance, reports about other pushbacks cannot establish where the recorded boat went after the clip ended.

LAWFUL STATE AUTHORITY TO PREVENT IRREGULAR MIGRATION AND SECURE MARITIME BORDERS

UNCLOS recognizes Greece's sovereignty over its territorial sea and permits coastal states to regulate certain aspects of ships' passage, including immigration matters.⁸² It also permits limited immigration-related control in the contiguous zone.⁸³ Under UNCLOS, a territorial sea may extend up to 12 nautical miles from a state's baselines, while a contiguous zone may extend up to 24 nautical miles; the coastal state's powers in the latter zone are narrower.⁸⁴ That authority did not give Greece an unlimited power to remove passengers or override its refugee and human rights obligations.⁸⁵

The Migrant Smuggling Protocol adds a distinct international framework. Article 7 calls for cooperation to prevent and suppress smuggling by sea. Article 8 permits a state to request help when it reasonably suspects that a vessel is engaged in smuggling. The measures available depend on the vessel's nationality, evidence of smuggling, and any authorization given by the flag state. Suspicion may justify inquiry or cooperation, but it does not itself prove that every person on the vessel committed an offense.

The fight against migrant smuggling forms part of that responsibility. The European Commission describes smuggling as a cross-border criminal activity that requires cooperation, law enforcement, and efforts to disrupt organized networks. It also recognizes that the people who rely on smugglers may later face exploitation or

Greece had authority to monitor vessels near its coast and, where the applicable conditions were met, to take measures within those maritime zones.

abuse. These concerns can exist at the same time. Greece may have reason to investigate suspected smuggling while also protecting the people being transported. An anti-smuggling operation is therefore not, by its nature, evidence of an unlawful attempt to deny protection.⁸⁶

The maritime setting can make that distinction especially important. Criminal networks may use unsafe or poorly equipped vessels, creating risks that can become serious very quickly at sea.⁸⁷ An encounter may therefore begin because officers identify unsafe navigation, possible smuggling, irregular entry, or a threat to human life. Greece submits that the ICJ must first determine why officers acted and what conditions they faced. It should not infer an unlawful purpose simply from the fact that a vessel was encountered.

Article 98 of UNCLOS also requires states to promote effective search and rescue services and requires shipmasters to assist persons in danger at sea, subject to its stated conditions.⁸⁸ The International Convention on Maritime Search and Rescue also supports the idea that coastal states have organized responsibilities at sea. The SAR Convention was adopted to develop an international search-and-rescue system so that rescue efforts would be coordinated, no matter where an accident occurs. It requires states to create basic search-and-rescue structures, including legal frameworks, responsible authorities, communication systems, coordination functions, and rescue coordination centers.⁸⁹

This does not mean that search-and-rescue law gives Greece unlimited power. It means that maritime governance requires states to act quickly, coordinate with others, and make operational judgments in difficult conditions. When a vessel is in distress, or when authorities have reason to believe that a crossing is unsafe, Greece may take measures to protect life and maintain order at sea. Those measures should be judged in their full operational context.

Greece also recognizes that border control powers do not erase humanitarian obligations.

Regulation (EU) 2019/1896 itself states that border management must be carried out with full respect for fundamental rights. It also confirms that EU border operations do not affect Member states' obligations under instruments such as the Law of the Sea, SOLAS, the SAR Convention, the Refugee Convention, and the European Convention on Human Rights.

For that reason, Greece asks the Court to distinguish lawful maritime control from unlawful return rather than treating the two as equivalent. Greece had recognized responsibilities to secure its external border, respond to suspected smuggling, and protect life at sea. Those responsibilities did not remove humanitarian limits, but neither did those limits erase Greece's authority to act. The decisive question is whether the measures used in each alleged 2024 incident remained within those legal boundaries.

NON-REFOULEMENT AND THE NEED TO PROVE INDIVIDUALIZED RISK

Greece accepts that non-refoulement is a basic rule of refugee and human rights law. The Refugee Convention bars return when a refugee's life or freedom would be threatened for a protected reason.⁹⁰ The Convention against Torture also bars removal when there are substantial grounds to believe that a person would face torture.⁹¹ These rules are strict, but each still requires a clear link between the return and the danger said to follow.

That link is central to Greece's position. Unsafe conditions in a country matter, but they do not always prove that every person sent there faced the same legal risk.⁹² The Committee against Torture says that even a serious pattern of abuse may not be enough on its own. There must also be grounds showing that the person faced a foreseeable, personal, present, and real danger. The European Court of Human Rights uses a similar test, while allowing group-based proof when a group is exposed to a known pattern of ill-treatment.⁹³

Greece therefore submits that Egypt must connect each alleged return to the specific danger said to exist at that time. The Court should identify the destination, the person or group affected, the harm alleged, the facts supporting that harm, and the information available to Greek authorities before the return. This is not a test based on hindsight. The question is whether the circumstances then known gave Greece a reasonable basis to foresee prohibited harm.⁹⁴

Greece's argument is therefore about proof, not about weakening non-refoulement. Egypt must show either a known risk that Greece had to assess, or facts linking the person or group to a real danger. Broad reports about difficult conditions are not enough on their own. The Court must still identify why the alleged return put the people concerned at a foreseeable risk of serious harm.

ASYLUM ACCESS IN MARITIME OPERATIONS AND OPERATIONAL CIRCUMSTANCES

Access to asylum must remain effective during maritime operations, but the procedure required at sea depends on the stage and conditions of the encounter. The EU Agency for Asylum (EUAA) guidance assigns border and coast guard officers an important first-contact role: they must recognize possible protection needs, provide relevant information, and connect applicants with the asylum procedure. This does not mean that a complete refugee-status determination must occur aboard the vessel. Rather, the initial obligation is to preserve access to protection so that the claim can be properly examined once the person reaches the appropriate procedure.⁹⁵

Sea conditions can affect how access to asylum is organized in practice. The IMO addresses the administrative steps that follow the rescue and disembarkation of persons at sea. The International Chamber of Shipping, drawing on experience from large-scale migrant rescues in

the Mediterranean, explains that such operations may involve urgent medical needs, limited space, sanitation problems, communication barriers, and risks to the safety of both rescued persons and the crew.⁹⁶ Its guidance also states that a ship's master should not be expected to determine whether rescued persons qualify for asylum or another legal status. These operational limits do not remove access to protection.⁹⁷ They explain why immediate rescue and stabilization may come first, while identification, referral, and the formal examination of an asylum claim can follow through the proper authorities.

For that reason, a delay is not always the same as a denial of asylum. In September, the patrol recorded contact at 03:14, while the rescue coordination center received the operator's asylum message at 03:16. The available communications do not establish that the patrol received that message before contact ended at 03:19. Greece therefore disputes that the record proves its officers knowingly disregarded the reported request.

That distinction is important for the 2024 operations. If Greek authorities took custody of the migrants or controlled where they would be sent, operational difficulty could not justify closing access to protection. But if officers were still dealing with an urgent safety problem, they were not required to complete the whole asylum process on the vessel. What mattered was whether Greece preserved a real chance for screening, referral, and later review of any protection claim.

Greece submits that rescue conditions may affect when screening occurs, but cannot eliminate it.⁹⁸ The Court should determine whether Greek officers exercised control over the passengers and, if so, whether they preserved access to protection before any transfer or return exposed them to harm.⁹⁹

Chapter IV: Submissions

4.1 For the foregoing reasons, and in accordance with the sources of international law applicable before the Court, the Hellenic Republic respectfully requests the following relief from the International Court of Justice.¹⁰⁰

4.2 May it please the Court to adjudge and declare that:

4.2.1 The Arab Republic of Egypt has not established that the Hellenic Republic exercised authority or effective control over the persons concerned in the September encounter outside its territorial waters;¹⁰¹

4.2.2 Maritime surveillance and encounters are not unlawful in themselves, and the Hellenic Republic is entitled to monitor and secure its maritime borders, prevent irregular migration, respond to dangerous conditions at sea, and combat migrant smuggling, provided that such measures are exercised consistently with its international obligations;

4.2.3 The Arab Republic of Egypt has not established that the Hellenic Republic violated the principle of *non-refoulement*, because it has not demonstrated, with respect to the alleged incidents, that identifiable persons were returned to places where they faced a real and foreseeable risk of persecution, torture, or other serious harm known, or reasonably knowable, to Greek authorities;

4.2.4 General reports concerning pushbacks, drift-backs, or other maritime practices do not, without evidence connected to the specific 2024 incidents, establish that the Hellenic Republic carried out the conduct alleged by the Arab Republic of Egypt;

4.2.5 The Arab Republic of Egypt has not established that the Hellenic Republic unlawfully denied access to asylum procedures, as the nature and timing of the safeguards required during maritime operations depend on the circumstances of each incident, including the

degree of Greek control and the operational conditions at sea;

4.2.6 The Hellenic Republic's responsibilities to secure its maritime borders and combat irregular migration and migrant smuggling are compatible with its obligations under international law, and the exercise of those responsibilities does not, by itself, establish a violation of refugee law, human rights law, or the law of the sea;

4.2.7 Accordingly, the claims advanced by the Arab Republic of Egypt should be dismissed to the extent that they have not been established on the facts and law before the Court.

4.3 The Hellenic Republic respectfully reserves the right to amend or supplement these submissions in accordance with the proceedings before the Court.

TOPIC B

Right to Strike under ILO Convention No. 87

ICJ | NHSMUN 2027



Introduction

On November 10, 2023, the Governing Body of the International Labor Office (ILO) adopted a resolution deciding to request the International Court of Justice (the ICJ or the Court) to deliver an advisory opinion concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), specifically with respect to the existence of the right to strike under that Convention.¹⁰² The Freedom of Association and Protection of the Right to Organise Convention document is one of the ILO's core conventions.

Fundamentally, Convention No. 87 “guarantees workers and employers the right to freely form and join organizations without prior authorization.”¹⁰³ This has most directly applied to allow workers the right to unionize, or participate in a worker’s union. A union is a group of workers that come together to negotiate (collective bargaining) with employers for various rights including higher wages, specific working conditions, or certain benefits. Countries and other organizations have debated whether this convention also includes the right to strike. A strike is when workers refuse to work until demands are met.¹⁰⁴

The ILO’s decision to submit a request to the ICJ was taken in accordance with Article 37, paragraph 1, of the Constitution of the ILO and Article IX, paragraph 2, of the Agreement between the ILO and the United Nations.¹⁰⁵ This report is prepared according to Article 65(2) of the Statute of the Court. Article 65(1) states that the ICJ may “give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.” This document contains treaties, fundamentals of international law, and other context which will help prepare opinions for the questions before the Court. In addition to this introduction, the file is split up into the following sections:

Chapter II provides the text of the ILO Governing Body’s request for an advisory opinion.

Chapter III contains the resolution adopted by the ILO Governing Body formally requesting the advisory opinion of the Court.

Chapter IV guides the Court with a historical summary of the most relevant events and the institutional developments that ultimately led to the present request.

Chapter V includes all the relevant matters for legal consideration. These will allow the Court to evaluate its jurisdiction and determine a reliable opinion with the utmost consideration of international law.

The ICJ decided on May 21, 2026, in a 10-4 judgement that Convention No. 87 protected the right to strike. The Court held that Convention No. 87 protects the right to strike, but did not determine the precise content, scope, or conditions for exercising that right. Those who dissented argued that the right to strike goes beyond the text and intention of Convention No. 87. While a decision has already been provided, **the judges in this body are instructed to make their own decisions off of their own basis. While the ICJ ruled in favor, this body could rule against the inclusion of the right to strike in Convention No. 87.**

Chapter II: Request for Advisory Opinion

On November 10, 2023, the ILO formally

requested an advisory opinion from the International Court of Justice pursuant to Article 96(2) of the Charter of the United Nations and Article 65 of the Statute of the Court. The ILO Governing Body requested the Court to answer the following question:

“Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?”¹⁰⁶

Chapter III: ILO Governing Body Resolution Requesting an Advisory Opinion

TEXT OF THE RESOLUTION

Further, the Workers' group and 36 governments requested that the ILO urgently refer the dispute on Convention No. 87 to the ICJ, in relation to the right to strike. In accordance with article 37(1) of the Constitution, the Governing Body of the ILO decided to adopt the following resolution:

The Governing Body,

Conscious that there is serious and persistent disagreement within the tripartite constituency of the International Labour Organization (ILO) on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with respect to the right to strike,

Recalling that at the origin of the dispute is a disagreement among the Organization's tripartite constituents concerning whether the right to strike is protected under Convention No. 87,

Noting that ILO supervisory bodies have consistently observed that the right to strike is a corollary to the fundamental right to freedom of association,

Seriously concerned about the implications that this

dispute has on the functioning of the ILO and the credibility of its system of standards,

Affirming the necessity of resolving the dispute consistent with the Constitution of the ILO,

Recalling that under article 37, paragraph 1, of the ILO Constitution, “[a]ny question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice”,

Recalling the consensual decision of the 320th Governing Body in March 2014, welcoming “the clear statement by the Committee of Experts of its mandate as expressed in the Committee's 2014 report”:

“The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member states. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member states, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions”.

Noting that, despite protracted attempts, no consensus has been reached through tripartite dialogue,

Emphasising that Article 37.1 of the Constitution establishes that any referral to the International Court of Justice is for decision on the question or dispute referred,

Expressing the hope that, in view of the ILO's unique tripartite structure, not only the governments of ILO Member states but also the international employers' and workers' organizations enjoying general consultative status in the ILO would be invited to participate directly and on an equal footing in the written proceedings and any oral proceedings before the Court,

Decides, in accordance with article 37, paragraph 1, of the Constitution of the International Labour Organization,

1. To request the International Court of Justice to render urgently an advisory opinion under Article 65, paragraph 1, of the Statute of the Court, and under Article 103 of the Rules of Court, on the following question:

Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?

2. Instructs the Director-General to:

(a) transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw

light upon the question, in accordance with article 65, paragraph 2, of the Statute of the Court;

(b) respectfully request that the International Court of Justice allow for the participation in the advisory proceedings of the employers' and workers' organizations that enjoy general consultative status with the ILO;

(c) respectfully request that the International Court of Justice consider possible steps to accelerate the procedure, in accordance with Article 103 of the Rules of Court, so as to render an urgent answer to this request;

(d) inform the United Nations Economic and Social Council of this request, as required under article IX, paragraph 4, of the Agreement between the United Nations and the International Labour Organization, 1946.¹⁰⁷

RELEVANT CONTEXT

The Freedom of Association and Protection of the Right to Organise Convention No 87 (Convention No. 87) is an ILO convention, and one of the ILO's fundamental conventions. According to the ILO, all member states, even if they have not joined all of its core conventions, have an obligation, due to their membership in



ILO Building

Credit: Henk Monster

the ILO, to “respect, promote and realize the principles concerning the fundamental rights which are the subject of those conventions.”

Convention No 87 requires states to protect the right of both employers and employees to join an organization of their choice, such as labor unions and employers’ associations.¹⁰⁸ They should be free to make this decision without needing permission from the government or being pressured or influenced by others. The main source of the dispute comes from the fact that the Convention declares that such unions “shall have the right to (...) organize their administration and activities and to formulate their programmes,” and that “public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.”¹⁰⁹ The analysis of the Convention relies on the term “activities.”

The request explicitly states that the Court must analyze the right to strike within Convention No 87, not the general existence of a right to strike under international law or other treaties and conventions. This means that states cannot make a decision based solely on the decision rendered for Convention No. 87, unless that had been the only basis for the right to strike. However, the meaning of a treaty is not determined solely by the ordinary meaning of its text. The process of interpretation may also take into account later practice of the parties, relevant rules of international law, as well as the treaty’s negotiating history and the context of its conclusion.¹¹⁰ Accordingly, although the Court’s task is limited to interpreting Convention No. 87, it may also consider a broader range of materials, including the ILO’s practices and relevant developments in international law, including other treaties, to determine whether the Convention protects a right to strike.

Chapter IV: Facts and Background

FUNDAMENTALS OF INTERNATIONAL LAW

International law does not have a centralized lawmaking organ or judicial system charged with establishing or enforcing rules. As a result, international law was largely formed by the decentralized practice of states.¹¹¹ The decentralized nature of international laws created the need for a framework through which different parties can agree on what counts as law during a dispute.¹¹² Article 38 of the Statute of the ICJ, for example, lists the following as sources of international law: treaties between states, customary international law derived from the practice of states, general principles of law, and judicial decisions and the writings of “the most highly qualified publicists.”¹¹³

One source of international law is international customs, known as customary law. They are unwritten rules that are created naturally from the global conduct of states over time, and, as they reflect international customs, they must come from a general, widespread, and consistent pattern of behavior among states.¹¹⁴ For a rule to be considered customary in international law, in addition to consistent state practice, there must also be what is known as *opinio juris*, which is the belief in legal obligation. That means that customary international law is a result of consistent practice by states who take part in such practice because they believe they have a legal duty to do so. As a result, customary international law is mandatory (or binding, as commonly used in international law) for all states, since it is a result of unwritten, global and general convention.

Another source of international law are treaties, written agreements made between parties governed by international law (such as states and international organizations) where they consent to be bound to certain obligations.¹¹⁵ Contrary to

customary international law, treaty obligations apply only to the states that have signed on to be a part of it. The exception is when a treaty has become so widespread and accepted that it becomes customary law. A treaty may have different names depending on its goal, but they still follow the rules of treaties. A convention, for example, is a treaty open to many states and intends to establish broadly applicable legal rules, such as Convention No 87, which aim to establish general rules to protect the right to organize and freedom of association.¹¹⁶

While treaties and customs are the most commonly used sources of international law, there is a third source recognized as capable of creating international law. Mentioned in Article 38 of the ICJ Statute as “general principles of law recognized by civilised nations,” they are national concepts of law widely accepted in several legal systems. These general principles of law usually have a gap filling role in international law, being used when there is an unregulated issue in international law that can be solved by a principle that is similarly recognized in a wide range of national legal systems.¹¹⁷

Finally, judicial decisions and writings from influential scholars are recognized, by the Statute itself, as subsidiary sources of law. They serve as a persuasive guide to the content of international law but cannot themselves create law.¹¹⁸ In terms of judicial decisions, findings from international courts are not binding international law, and only create obligations to the parties of the specific case being decided. Nonetheless, international courts frequently cite their own past decisions and make use of past cases, even from different international courts, as a guide to the content of international law and to maintain uniformity.¹¹⁹

TREATY INTERPRETATION

Just like other sources of laws or obligations, such as contracts or national legal codes, there may be disputes between parties as to how to correctly interpret a treaty's obligations. In response, international law has developed a

method to apply during such disputes, which has been solidified by the 1969 Vienna Convention on the Law of Treaties (VCLT). The VCLT establishes guidelines and rules governing treaties between states, including interpretation rules, and is widely regarded to have achieved customary international law status, meaning its customary interpretation rules can guide the interpretation of treaties, including Convention No. 87.¹²⁰

Articles 31 to 33 of the VCLT set out the applicable treaty interpretation rules.¹²¹ The general rule of treaty interpretation is set out in Article 31, which provides that a “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose.” Article 31 considers that text, context, and purpose must be considered together as part of interpretative work. Consequently, treaty interpretation under international law seeks to identify the meaning that best reflects the agreement reached by the parties while preserving the treaty's effectiveness and consistency.¹²²

The starting point of this analysis is the ordinary meaning of the treaty's words, which are generally considered to carry their natural and common meaning. However, one part of a treaty cannot be interpreted in isolation. Article 31(2) defines the context of a treaty as including not only the text itself, in its entirety, but also other documents accepted by the parties as related to the treaty.¹²³

Equally important is the requirement that interpretation considers the treaty's object and purpose. This principle understands that treaties are negotiated to achieve particular goals, and they should be interpreted in a way that helps achieve these goals, rather than in a way that works against them. International courts have frequently relied on this idea to resolve ambiguities when a purely textual reading would produce unreasonable or ineffective results. At the same time, the object and purpose cannot

be used to ignore the treaty's text or create obligations that the parties did not accept. Instead, it serves as a guide for choosing among possible interpretations that are consistent with the treaty's language.¹²⁴

Additionally, Article 31(3) requires interpreters to consider developments that happen after the treaty is signed. This includes how countries apply the treaty over time and whether their actions show a shared understanding of what such treaty means. Interpreters may also look at other relevant rules of international law that help explain the treaty. These factors recognize that the meaning of a treaty can become clearer as countries put it into practice and as it interacts with the wider international legal system. In particular, when countries consistently follow the same approach, it can be strong evidence of how they understand the obligations they accepted under the treaty.¹²⁵

Even after using the rules of Article 31 the meaning is still unclear, Article 32 of the VCLT provides additional means of interpretation. These include, most notably, the treaty's preparatory work and the circumstances in which it was created. In these cases, the Court may use information such as records of negotiations and discussions during the preparation of the treaty to clarify its reasoning or other contextual evidence that informs the intention of the parties when drafting specific provisions.¹²⁶ Finally, Article 33 governs how a treaty should be interpreted when it is written in two or more official languages.

These rules are particularly relevant to this

advisory opinion. The question before the Court is not simply whether the words "right to strike" appear in the Convention, as they do not, but rather if by applying the rules of treaty interpretation, the Convention should be understood as protecting such a right. To answer this question, the Court must look beyond the words of the Convention and also consider its context, purpose, and how it has been applied over time, both within the ILO and in international law more broadly. This is the key legal issue at the heart of the advisory opinion.

THE INTERNATIONAL LABOR ORGANIZATION: ORIGINS AND STRUCTURE

The ILO is a United Nations agency founded in 1919 to advance social and economic justice by setting international labor standards and improving working conditions. Rather than being composed exclusively of states, it gives formal decision-making roles to employers and workers in addition to government representatives.¹²⁷ It is made up of three main organs: the International Labor Conference, the Governing Body and the International Labor Office.¹²⁸

The Governing Body is the executive body of the ILO, and the International Labor Office serves as the secretariat of the organization.

Meanwhile, the International Labor Conference (ILC) is the ILO's highest decision-making body, being responsible for the drafting, adoption and revision of labor standards, which are translated into conventions, declarations, recommendations

The ILO is unique among international organizations because of its tripartite structure.

and other instruments. It is composed of delegates representing governments, employers and workers.¹²⁹

In order to avoid that workers or employers, on their own, adopt a labor standard without the support of governments, a draft needs two-thirds of the votes in the ILC to be adopted. Historically, the ILC seeks support from all three groups before adopting international labor standards, although in some cases representatives of one of the groups (in most cases, the employer's group) have voted against standards that were ultimately adopted.¹³⁰

Furthermore, many of the ILO supervisory mechanisms are tripartite in nature or involve tripartite decision-making, with independent experts appointed by each of its represented groups. Such are the cases of the Committee of Experts on the Application of Conventions and Recommendations (hereinafter Committee of Experts) and the Conference Committee on the Application of Standards (hereinafter Committee on Standards), which work together examining reports of violations to adopted conventions, and the Committee on Freedom of Association (CFA), which deals specifically with violations of the principles of freedom of association.¹³¹

The ILO's tripartite model is particularly relevant to the interpretation of its conventions since their adoption, implementation, and supervision of labor standards result from the interaction of governments, employers, and workers, rather than from governments alone. Consequently, the views expressed through their discussions and the ILO's supervisory mechanisms' opinions are often regarded as carrying significant interpretative authority.

THE DISAGREEMENT REGARDING CONVENTION NO. 87

The first time that a right to strike was mentioned by the ILO's supervisory mechanism was in 1952, when the CFA, when discussing another treaty, declared that the right to strike was

an essential part of trade union rights. Over time, the Committee of Experts and the CFA ultimately reached the conclusion that Article 3 of Convention No 87 protects a right to strike, and, as a result, a prohibition on strikes would go against a right protected by the Convention.

Since 1989, however, the employers' representatives within the Committee on Standards have disagreed with the interpretation that Convention No 87 protects the right to strike and have challenged the Committee of Experts' authority to interpret the Convention.¹³² The workers' representatives, on the other hand, have supported the views of the Committee of Experts and its role in interpreting Convention No. 87. The disagreement between the two groups led to what the ILO has referred to as an "institutional crisis" at the 101st Session of the International Labor Conference in 2012.¹³³

The employers' group insisted that a disclaimer be added to the Committee of Experts's annual report indicating that its work was not an agreed or definitive text of the ILO constituents and therefore would not be legally authoritative nor legally binding for states party to the Convention. They also refused to include any case that dealt with the right to strike in the list of labor standard violation cases discussed each year within the Committee on Standards if such a disclaimer were not added.¹³⁴

As the workers' group refused to negotiate a list under such conditions, the Committee on Standards did not study any cases of violations in 2012. Since 2012, the Committee on Standards has not addressed the right to strike in its conclusions on individual cases concerning the application of Convention No. 87. Following various unsuccessful attempts to resolve the disagreement over the interpretation through negotiations within the ILO, in 2023 the Governing Body decided to submit the question to the Court.¹³⁵

Chapter V: Matters for Legal Consideration

HISTORY OF FREEDOM OF ASSOCIATION IN INTERNATIONAL LABOR LAW

The modern idea of freedom of association in labor law emerged alongside the social and economic transformations brought about by the Industrial Revolution.¹³⁶ During the 18th and 19th centuries, rapid industrialization produced large concentrations of workers who often worked under harsh conditions, including long working hours, low wages, and unsafe workplaces. In many states, the gathering of workers was initially regarded as unlawful and laws such as the British Combination Acts prohibited collective organization and bargaining amid fears of political unrest following the French Revolution.¹³⁷ Despite these legal restrictions, workers increasingly organized informal associations, mutual aid, and strikes to improve working conditions, laying the foundations of the modern trade union movement.

Throughout the 19th century, the gradual recognition that industrial peace required legal processes for collective representation led many states to repeal prohibitions on workers' organizations. In the United Kingdom, the repeal of the Combination Acts in 1824 marked an important turning point, while the Trade Union Act of 1871 granted legal recognition to trade unions.¹³⁸ Similar developments occurred across continental Europe and the Americas over time. By the early twentieth century, collective

organization had become an increasingly accepted feature of industrial relations, driven not only by workers' demands but also by the realization that stable labor relations contributed to economic development and social stability.

The development of increasingly effective means of communication during the late 19th century also made possible the establishment of international trade union organizations, known as International Trade Secretariats.¹³⁹ Although the ILO's Constitution briefly recognized, in a preamble, the principle of freedom of association, the principle was gradually strengthened by practical application. It was elevated to codified status by the Declaration of Philadelphia, ILO's cornerstone instrument.

This commitment was later given concrete legal protection in Convention No 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which remain the main international treaties governing trade union rights and collective bargaining.¹⁴⁰ Following the adoption of these ILO conventions, mainly Convention No. 87, freedom of association became firmly embedded in the broader international human rights framework. The Universal Declaration of Human Rights, influenced by Convention No 87, recognizes in Article 20 the general right to freedom of peaceful assembly and association, while Article 23(4) expressly provides that everyone has the right to form and join trade unions for the protection of their interests.¹⁴¹

These guarantees were later transformed into binding treaty obligations through Article 22 of

The expanding list of countries willing to discuss international agreements on conditions of work created the conditions for the establishment of the ILO in 1919.

the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which recognize trade union freedoms while permitting only narrow restrictions. Relevantly, both contain relevant rules of international law that concern the right to strike while also making explicit reference to Convention No. 87.¹⁴²

The ICESCR, in Article 8, paragraph 1 (d), expressly protects the right to strike.¹⁴³ It also provides that nothing in the provision may be interpreted as permitting states parties to Convention No. 87 to adopt measures that would undermine the guarantees established by that Convention. Similarly, Article 22, paragraph 1 of the ICCPR guarantees the right to freedom of association, while paragraph 3 provides that it cannot be interpreted as authorizing states parties to Convention No. 87 to enact legislation that prejudices the rights protected under it.¹⁴⁴ Although Article 22 of the ICCPR does not expressly mention the right to strike, its supervisory body has consistently interpreted its mention of freedom of association as including protection for the right to strike.¹⁴⁵

Although the question before the Court revolves around the existence of a right to strike recognized strictly within Convention No 87, context and practices observed before and after the adoption of the Convention can be used to aid its interpretation. Overlap in treaty membership may help the Court consider relevant rules of international law, but it does not by itself prove that states agreed on the meaning of Convention No. 87. The Court must assess what weight those other treaties and states' conduct deserve in interpreting this Convention.¹⁴⁶

DERIVATIVE RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW

International human rights treaties frequently protect rights that are not expressly mentioned

in their texts but are understood to arise as a necessary consequence of rights that are explicitly guaranteed. These are commonly referred to as derivative or implicit rights.¹⁴⁷ They are based on the principle that the effective protection of a guaranteed right may require recognition of secondary rights that are indispensable for its meaningful exercise. A classic example of a derivative right is the right to a free press. Rather than being an end in itself, a free press is a derivative right entirely justified by its importance in securing the right to freedom of expression and access to information.¹⁴⁸ Consequently, international courts and treaty bodies have often interpreted broadly worded human rights provisions as including related rights that, while not explicitly mentioned, are needed to achieve the object and purpose of the treaty.¹⁴⁹

This approach of interpreting treaties has been especially important in past decisions made by human rights bodies. For example, the Human Rights Committee has interpreted the right to freedom of association under Article 22 of the International Covenant on Civil and Political Rights as extending to the protection of trade union activities, including some forms of collective action such as the right to strike.¹⁵⁰ Rather than treating these as newly created rights, these bodies have argued that they are necessary parts of the broader right to freedom of association and therefore are already protected by the treaty.

The idea of derivative rights is closely linked to the general principles of treaty interpretation reflected in the VCLT. Interpreting a treaty solely according to its exact words risks missing its broader purpose, especially in human rights treaties, which are often written in general terms.¹⁵¹ This approach does not, however, allow the Court to create entirely new obligations. Instead, it seeks to identify rights that are already implied by the rights that countries agreed to protect when they accepted the treaty.

The dispute related to the interpretation of

Convention No 87 is not necessarily a case of derivative rights. The Court, through its interpretation, may understand the right to strike to be a guaranteed right under the Convention, or that is not protected at all. However, the Court may understand that a right to strike is implied in Convention No 87.

ARGUMENTS BY THE EMPLOYER'S GROUP

The main argument made by the employer's group, represented by the International Organization of Employers (IOE), relies on Convention No 87's preparatory works. The employers claim that there was an express choice by all three groups for the Convention's text not to expressly include an affirmative right to strike.¹⁵² Indeed, according to the ILO's submission to the Court, as well as testimonies and historical records, the organization's tripartite members could not reach an agreement on the matter of a right to strike during Convention No. 87's drafting and excluded it from the Convention's text.¹⁵³

According to the employer's group, the negotiating history behind the Convention

shows that the tripartite members agreed that Convention No. 87 would not include the right to strike at the time of its adoption. Furthermore, the 1948 preparatory ILO report states that "the proposed convention relates only to freedom of association and not to the right to strike."¹⁵⁴ This report could be interpreted by the Court as an instrument or an agreement relating to the treaty and may be taken into account according to the VCLT.

Arguments against the interpretation of the existence of a right to strike under Convention No 87 claim that it would go against ILO's structure. New binding obligations can only be created when governments, employers, and workers reach broad agreement through the organization's voting process, needing at least a two thirds consensus.¹⁵⁵ In light of this structure, supervisory bodies should not be able to change the original agreement made by member states, as doing so could weaken the ILO's Constitution and the way the organization makes decisions.

Although the Committee of Experts has a mandate to determine the legal scope and meaning of ILO conventions when carrying out its supervisory role, employers argue its ability to interpret a convention should not extend

Harvard University campus
security workers strike

Credit: stand4security



to the point of introducing a new obligation. Such understanding would go against the basic notion of international law that countries are only bound by obligations that they have clearly accepted.¹⁵⁶ From this perspective, the fact that the ILO has never adopted a convention that explicitly guarantees the right to strike, according to the employer's group, reflects a consistent agreement that must be upheld.

Other than the Convention's preparatory works, employers also argue that the Court should focus only on Convention No. 87 itself. Even if other ILO documents or later treaties recognize a right to strike, that does not mean that there was an agreement that Convention No. 87 does as well.¹⁵⁷ Other instruments, even within ILO's framework, do not indicate any agreement regarding Convention No 87, which must be interpreted on its own terms.¹⁵⁸ Similarly, the employer's group claims that recommendations by supervisory groups are non-binding interpretations of ILO standards, and cannot be treated as proof of state parties' consensus or of compulsory interpretation.

The IOE also argues that only the actual and consistent practice of countries that are parties to Convention No. 87 can show that the treaty should now be understood as protecting the right to strike. According to the IOE, this has not happened.¹⁵⁹ According to IOE's responses, other treaties allegedly recognizing a right to strike, such as the ICCPR and ICESCR, cannot constitute widespread state practice because they do not have exactly the same member states as Convention No. 87. Additionally, countries can accept different obligations under different treaties, and recognizing a right in one treaty does not automatically mean they understand that the same right exists in another. For the employers, a different rule, drawn from a different treaty, cannot be used to interpret the Convention, as every international treaty, unless stated otherwise, is independent.¹⁶⁰

Finally, employers argue that the wording of Convention No. 87 itself does not support a

right to strike. The employers' group argues that the term "activities" in Article 3 of Convention No 87 does not appear in isolation, but alongside a list of other actions that indicate internal matters, such as the drawing up of constitutions, the election of representatives, and other administrative acts.¹⁶¹ The context within the Article itself would indicate that the "activities" protected are uniformly internal and administrative in character, meaning that the treaty is concerned not with an all encompassing catalogue of "activities", but with the internal organization of associations. The Convention, therefore, has the purpose and objective to protect unions' ability to form and to self-govern, not their external activities.

ARGUMENTS BY THE WORKER'S GROUP

The workers' group's (represented by the International Trade Union Confederation - ITUC) key arguments stated that governments, workers, and employers have long shared the understanding that the right to strike is part of the ILO's fundamental principle of freedom of association, as set out by the ILO's constitution.¹⁶² According to the ITUC, if ILO's framework as a whole recognizes the right to strike as necessary to protect freedom of association, the agency's Convention to protect freedom of association must logically also protect a right to strike. The workers' argument is that a convention cannot express a core principle if it does not, at a minimum, contain the principle's necessary features.

The ITUC also argues that the wording and overall purpose of Convention No. 87 support this interpretation. According to them, the absence of an express provision directly mentioning the right to strike does not mean that such a right is excluded. An absence would only implicate exclusion of the right if the entire text of the Convention, as well as its context, object and purpose pointed to it.¹⁶³ In the specific case, it would be impossible to list all of the activities that a union or other workers' organization is able to

engage in, therefore it would be logical to use a broad term such as “activities”.

Furthermore, the workers’ group claims that the Convention’s main purpose is to guarantee freedom of association as a means of improving labor conditions. Naturally, a strike is one of the main tools used by workers to promote their interests and improve conditions of labor. Workers associate to increase their collective power and use strikes as tools to fight for their interest and achieve better bargaining power.¹⁶⁴ For the workers’ group, reading the Convention in light of its goals of protecting the right to form and join trade unions also means protecting the ability of those unions to organize activities, including strikes, to achieve their goals.

The ITUC also responded that records of the Convention’s preparatory works do not indicate an agreement not to include a right to strike in the convention. Instead, the discussions mentioned by the employer’s group would have originated from questions to signing states on their position regarding the right to strike of public officials, not regarding a wider right to strike.¹⁶⁵ The ITUC further stated that responses were neither universally positive nor negative, and that the ILO preferred not to include provisions

concerning the right to strike because it believed that the right to strike of public officials was not relevant to the proposed Convention.

The workers’ group also claims that the evidence sufficiently shows that state practice has consistently interpreted their obligations under Convention No. 87 to include the right to strike. According to Article 31, paragraph 3 (c), of the VCLT, any relevant rules of international law applicable between the parties shall be taken into account when interpreting a treaty.¹⁶⁶ A high degree of overlap between the states bound by Convention No 87 and those bound by relevant rules of international law may indicate the existence of a common understanding regarding it.¹⁶⁷

In that sense, there is great overlap between states bound by Convention No 87 and those bound by the ICCPR and ICESCR, which protect the right to strike while mentioning the Convention. Additionally, most states parties to Convention No 87 are also parties to various regional human rights treaties, courts or organizations that recognize the protection of the right to strike and its relation with the protection of freedom of association.¹⁶⁸

Movistar+ workers' strike

Credit: Malopez 21



Finally, the ITUC noted that ILO supervisory bodies have progressively recognized the right to strike as being protected under Convention No. 87, a position that they now have maintained for decades.¹⁶⁹ Although the decisions and recommendations of these bodies are not legally binding, the workers' group argues that they are important sources that can help explain the meaning of the Convention under Article 32 of the VCLT. According to the ITUC, these bodies did not create a new right. Instead, they carried out their role of interpreting the Convention, and their long-standing and consistent interpretation provides strong evidence of how Convention No. 87 should be understood.¹⁷⁰

Conclusion

The request for an advisory opinion asks the Court to decide whether the right to strike is protected under ILO Convention No. 87, even though the Convention does not explicitly mention it. To answer this question, the Court must apply the rules of treaty interpretation found in the VCLT and determine whether the Convention supports the existence of such a right.

The employers' group argues that Convention No. 87 does not protect the right to strike because states never expressly agreed to include it. In their view, recognizing such a right through interpretation would create a new legal obligation and undermine the ILO's tripartite system. The workers' group, on the other hand, argues that the right to strike is an essential part of freedom of association and is therefore already protected by the Convention. They rely on the Convention's purpose, the practice of states, other international human rights treaties, and the consistent interpretation of ILO supervisory bodies.

The Court's task is not to decide whether the right to strike is desirable as a matter of policy, but whether it can be legally derived

from Convention No. 87 using the accepted principles of international law. In doing so, the Court will have to consider the weight that should be given to the Convention's text, its drafting history, subsequent state practice, and the interpretations developed by the ILO's supervisory bodies.

Whatever conclusion the Court reaches will have important consequences for the interpretation of Convention No. 87 and for the role of treaty interpretation in international law more generally. The advisory opinion will clarify not only the scope of freedom of association under the Convention, but also the extent to which international courts and supervisory bodies may recognize rights or obligations that are not expressly stated in a treaty but are argued to be implied by its broader purpose.

Research and Preparation Questions

Your dais has prepared the following research and preparation questions as a means of providing guidance for your research process. These questions should be carefully considered, as they embody some of the main critical thought and learning objectives surrounding your topic.

TOPIC A

- 1 Under what circumstances can a state exercise jurisdiction or effective control over migrants intercepted outside its territorial waters, and what legal obligations arise once such control is established?
- 2 How should the principle of non-refoulement be applied during maritime encounters, and what evidence is necessary to establish that an individual or group faced a real risk of persecution, torture, or other serious harm upon return?
- 3 What procedural safeguards should states provide to migrants encountered at sea to ensure meaningful access to asylum, and how may emergency or operational conditions affect when and where those safeguards must be provided?
- 4 How should states balance their authority to secure maritime borders, combat migrant smuggling, and conduct search-and-rescue operations with their obligations under refugee law, human rights law, and the law of the sea?
- 5 What types of evidence should the Court consider when determining whether alleged maritime pushbacks or unlawful returns occurred, and to what extent can reports of previous or systematic practices be used to prove specific incidents?

TOPIC B

- 1 How should the Court balance the Convention's wording, purpose, drafting history, and later application by states?
- 2 Why was the right to strike not directly included in Convention No. 87, and what does its drafting history reveal about this decision?
- 3 How do countries protect or restrict strikes in their national laws? Do these laws show a shared understanding of Convention No. 87?
- 4 Can the right to strike be protected as a necessary part of freedom of association even though Convention No. 87 does not directly mention it?
- 5 How should treaties such as the ICCPR and ICESCR, as well as regional human rights agreements, affect the Court's interpretation of Convention No. 87?
- 6 If Convention No. 87 protects the right to strike, when may governments legally limit that right, such as for essential workers, public employees, national security, or public safety?

Important Documents

TOPIC A

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Edited by Adam Allibhoy, Armen Bagdassarian, Ashley Block, Ana Margarita Gil, Marlon Hoffrogge, Sabeeh Mirza, Althea Turley, and Olivia Woodard

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