## **Statement on human rights violations at international borders: trends, prevention and accountability**

Channel Rescue, United Kingdom

**Background**

Channel Rescue is responding to the Special Rapporteur on the human rights of migrants’ invitation for evidence on human rights violations at international borders.

Channel Rescue gives evidence to share our expertise on asylum and the insights we gain while monitoring the safeguarding of human rights in the English Channel/la Manche.

**Objectives**

This statement will address: (1) recent domestic UK legislation, including the “Borders and Nationality Bill” but also the less publicly debated “Operation Isotrope”; (2) current border management strategies, specifically the new ‘pushback’ policy; (3) the new interpretation of the "safe third country" concept in British law and policy; (4) Channel Rescue’s progress in developing independent non-governmental border and human rights monitoring mechanisms.

**Key questions and types of input/comments sought**

1. **Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021.**

The British government has proposed a ‘[Nationality and Borders Bill’](https://bills.parliament.uk/bills/3023), which is awaiting approval by the House of Lords. Channel Rescue is concerned about the Bill’s implications for the rights of globally displaced people. For instance, the Bill renders arrival via official resettlement programmes as the only legal route into the UK and asylum seekers may be prosecuted for arriving via ‘illegal’ routes. The Bill provides immunity to military and border force personnel involved in ‘push-back’ practices (see section 2 for further details). Furthermore, the Bill introduces offshore detention procedures and denies protection to refugees who have a connection to a safe third country (see section 3 for further details). Various non-governmental organisations, including Channel Rescue, are concerned that these new regulations undermine key principles of the [right to asylum as defined by the 1951 Refugee Convention.](https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/07/nationality-and)

The British government has recently announced its intent to deploy the Royal Navy as an additional deterrent in the English Channel, which has become known as “Operation Isotrope”.

Channel Rescue is concerned about the role of the Royal Navy in countering migrant crossings, which we have expressed in a submission of written evidence to the Defence Committee on January 26th 2022. The committee has published our written evidence [here](https://committees.parliament.uk/work/6463/the-role-of-the-military-in-countering-migrant-crossings-operation-isotrope/publications/).

Operation Isotrope is hard to define, as there appears to be an inconsistency to statements provided by various Members of British Parliament. James Heappey MP said “the Royal Navy will not be directly involved in the interception of ships…that is to do with the suitability of the vessel”, while Baroness Goldie said “the modus operandi will be one of interception and escort; the Navy will be responsible for bringing migrants to UK shores in a safe and controlled manner”. While the purpose is currently unclear, an intent to ‘protect the channel’ insufficiently accounts for the primacy of [the need to protect human lives](https://commonslibrary.parliament.uk/is-turning-back-migrants-at-sea-compatible-with-international-law/):

1. The increase of numbers of vessels in the channel is unlikely to heighten the safety of small boats.
2. A higher number of non-Search-and-Rescue (SAR) assets can in fact reduce the efficiency of

SAR-operations. Maritime Law, however, includes a duty to rescue and requires the UK Government to protect the lives of those in distress at sea.

While the Navy could co-ordinate operations, what is required is a humanitarian response not a military response. Channel Rescue do not believe that the continued militarisation and securitisation of border is a long-term or sustainable policy solution. Channel Rescue believe that military assets should not be used on civilians; it is unlawful to use military means to repel refugees. We were concerned about reports that the use of sonic weapons may be permitted against civilians - especially when are no clear the rules of engagement.

It is the position of Channel Rescue that the coastguard should retain command and control over operations in the Channel. Navy deployment would not a good use of the nation’s defence force, which should be deployed for more appropriate duties. There is also need for investment in safe routes for those living in Europe to reach the UK.

1. **Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.**

[Recent reports](https://www.thetimes.co.uk/article/priti-patels-anti-migrant-jet-skis-on-standby-lnpp0p0jm) suggest that the Secretary of State for the Home Department and Border Force are now prepared to implement a novel ‘Pushback Policy’ – whereby Border Force vessels collide with small boats in order to turn them around in the English Channel. Channel Rescue is concerned about plans to implement a “Pushbacks Policy” because we believe it will pose serious danger and risk to human lives, violate the rights of those making the crossing and breach international law. We therefore believe the proposed “Pushbacks Policy” is life-threatening, inhumane and unlawful.

On 13 September 2021, Channel Rescue volunteers [witnessed](https://www.independent.co.uk/news/uk/home-news/pushback-jetski-migrants-home-office-b1919348.html) the UK Border Force training its staff to use jet skis to employ ‘pushback’ tactics at sea. The Secretary of State and government officials have [confirmed](https://www.bbc.co.uk/iplayer/episodes/b006mk25/newsnight) there is a policy designed to govern these tactics and that they were [ready to deploy](https://www.thetimes.co.uk/article/priti-patels-anti-migrant-jet-skis-on-standby-lnpp0p0jm) these tactics last year. On the 13th of January, while monitoring the channel, we were able to collect evidence that suggests Border Force will implement [pushbacks in the Dover Strait Transport Separation Zone](https://twitter.com/ChannelRescue/status/1481743094164996100?s=20&t=LXjuppnv0_9iu_2wk0JggQ).

Channel Rescue have issued judicial review proceedings against the Secretary of State to ensure that this inhumane and life-threatening policy is never put into action. Reed Smith LLP, solicitors, are representing Channel Rescue in this claim.

The Channel Rescue claim challenges the Pushbacks Policy on three main grounds: (1) The policy is internally inconsistent and therefore irrational, and incompatible with international maritime law. (2) The policy is contrary to the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996 (SB/420). (3) The policy is contrary to the ordinary practice of seamen and so is contrary to the implied limitations to the Immigration Act 1971 and/or the common law.

Channel Rescue’s claim focuses on the dangerous tactics permitted by the policy and the risk of life they entail. We say these tactics are incompatible with maritime law. We have provided our own witness statement that covers the practices we witnessed on 13 September 2021. A maritime shipping expert has provided further witness evidence as part of our claim. We want the judicial review to result in an order quashing the “Pushback Policy”, as well as a declaration that it is unlawful.

1. **Please provide information on how the "safe third country" concept is applied and if there is any "safe third country" list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.**

In the United Kingdom, the "safe third country" concept is applied in order to reduce the number of people who are able to seek sanctuary. [The new Nationality and Borders Bill](https://www.gov.uk/government/publications/nationality-and-borders-bill-overseas-asylum-processing/nationality-and-borders-bill-overseas-asylum-processing) renders an asylum claim inadmissible where a person has a connection to or has arrived via a ‘safe third country’. [At a Lords home affairs and justice committee last year](https://www.theguardian.com/politics/2021/nov/02/priti-patel-urged-to-justify-claim-most-boat-migrants-not-real-refugees), Home Secretary Priti Patel was questioned about her new policy of deeming any person who arrives in the UK to claim asylum after passing through a “safe” country as “inadmissible” – meaning their claim will not be considered. Last year, a Home Office spokesperson said: “France is a safe country; people should claim asylum in the first safe country they reach rather than making dangerous and illegal crossings.” The Home Secretary said that a genuine refugee would claim asylum in the first safe country they reach. The Home Secretary therefore claims to deduce that those traveling from France to the UK are not genuine refugees.

However, there is no obligation in the Refugee Convention, either explicit or implicit, to claim asylum in the first safe country reached by a refugees. Whether that person travelled through several countries before claiming asylum simply has no bearing on fear of persecution at home. Additionally, Article 31 of the Convention protects refugees against prosecution for illegal entry to a receiving country: *The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

This has been recognised by the courts in England and Wales. In the landmark case landmark case of *R v Uxbridge Magistrates Court (ex parte Adimi)* [[1999] Imm AR 560](http://www.bailii.org/ew/cases/EWHC/Admin/1999/765.html) Lord Justice Simon Brown held that refugees did not have to claim asylum in countries through which they pass to reach safety in order to be protected by Article 31: *… I am persuaded by the applicants’ contrary submission, drawing as it does on the travaux préparatoires, various Conclusions adopted by UNHCR’s Executive Committee, and the writings of well-respected academics and commentators, that some element of choice is indeed open to refugees as to where they may properly claim asylum*.

Protection from prosecution was incorporated into UK law with [section 31](http://www.legislation.gov.uk/ukpga/1999/33/section/31) of the Immigration and Asylum Act 1999. This provides a defence based on Article 31 against charges based on illegal entry and various documents offences. This hasn’t prevented [wrongful prosecutions](https://www.freemovement.org.uk/channel-tunnel-man-refugees-should-not-be-prosecuted-for-irregular-entry/) of refugees.

There is no legal duty or obligation on the asylum seeker to claim and remain in the first safe country and an asylum seeker who moves on is not breaking the law by doing so or disqualifying themselves from refugee status.

1. **Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.**

Channel Rescue is a grassroots, human rights monitoring organisation set up in response to government calls for increased securitisation and militarisation of the English Channel. Channel Rescue was officially launched in October 2020. Its objectives are to hold the authorities to account in their duty to uphold the human rights of those crossing the Channel, and to advocate for safe passage and progressive legislation around refugees and migrants making journeys across it.

Channel Rescue aims to fact find, document landings, act as legal observers, and provide immediate support to those making the crossing and recently arrived people. Channel Rescue is in the process of drafting a constitution to be ratified by its members, which will formalise these aims and objectives.

Channel Rescue does not currently rescue people from the sea. Instead, we act as witnesses to seek to ensure that any operations carried out by Border Force when they intercept boats before they reach the shore are compliant with international law.

Channel Rescue monitors the Channel from the English coastline, in order to: (a) identify refugees or migrants who might be in distress and, if necessary, notify the appropriate authorities; and (b) record the activities of Border Force and document any search and rescue operations, to ensure there are no violations of maritime, human rights or refugee law.

Channel Rescue organises on-shore teams to conduct this monitoring and we cover an approximately 33-mile stretch of coastline from Deal to Dungeness. Everything that Channel Rescue observes during this monitoring is recorded by video, as a form of witnessing. The intention of the video documenting is to protect the refugees and migrants, and also the Channel Rescue volunteers.

We also carry out training of volunteers in the basics of spotting small vessels at sea and what to do if they notice a vessel in distress. The training is carried out by those who have worked in crisis situations before.

**Authors**

Steven Martin

Aleksandra Lewicki