

EUROmad + 2026 - International Court of Justice

**Case Concerning the Respect of International
Obligations in the Protection of Migrants and in
Maritime Border Control Operations**



**“To what extent can the European Union and its agency
Frontex strike a balance between safeguarding borders and
complying with international law and the fundamental rights
of migrants?”**

Commissioners : Jan COUSQUER, Valeria MARTINEZ, Rafael CALLEJA

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International Court of Justice



Case Concerning the Respect of International Obligations in the Protection of Migrants and in Maritime Border Control Operations

Applicant States: Republic of Senegal, Republic of The Gambia

Respondent States: EU members states and Türkiye

I) GENERAL PRESENTATION OF THE CASE

By an application filed with the Registry, several Southern States (referred to as “the Applicant States”) have brought before the International Court of Justice a dispute concerning the European regime for the control of its external borders, including operations conducted in the Mediterranean Sea, the Atlantic Ocean, and along terrestrial routes, as well as the policies commonly referred to as the externalization of border management.

The Applicant States claim to act on behalf of the protection of their nationals migrating towards Europe, who, in their view, are exposed to repeated violations of international maritime law, international human rights law, the law of asylum, and international refugee law.

They invoke the 1951 Geneva Convention relating to the Status of Refugees, the European Convention on Human Rights, the United Nations Conventions on the Law of the Sea (UNCLOS), and customary international law, including the principle of non-refoulement.

This dispute does not concern Frontex alone; rather, it constitutes a broader challenge to the entire European framework for border management, including:

- joint maritime and aerial operations,
- interceptions on the high seas or within Search and Rescue (SAR) zones,
- cooperation with transit States,
- readmission agreements,
- “hotspots” and accelerated asylum procedures,
- collective expulsions and forced returns,
- the outsourcing of border control functions to authorities that do not guarantee fundamental rights,
- constraints imposed on sea-rescue NGOs such as Ocean Viking or Open Arms.

The European Union, like other major hubs of globalization, is the destination of both legal and illegal international migration from other regions of the world whose levels of development are lower. In studying the flows directed towards it, the court also noted that there are internal migration flows within Europe, originating from Eastern European countries, that are at least as significant as those coming from the Global South. But European countries tend to single out migration flows coming from the Global South as particularly problematic. This case deals only with North–South migration flows.

This issue touches on several areas: humanitarian, political, economic, security, and even diplomatic. Every year, thousands of people try to cross Europe's external borders, particularly via the Mediterranean, the Atlantic Ocean, the Spanish enclaves of Ceuta and Melilla and other ground ways of access to the EU. Armed conflicts, political instability, economic disparities, the consequences of climate change, and sometimes a lack of hope for African youth are the root causes of these migrations.

Faced with this situation, the European Union has intensified its common migration policy over the decades, particularly through the Frontex agency. Founded in 2004, this agency has seen a significant expansion in its budget and capabilities, becoming one of the most influential entities in the European Union. Its mission is to oversee the security of external borders, but its actions have provoked a flood of criticism.

The European Union is accused by African nations of favoring a one-sided approach focused on security, carrying out illegal returns, and neglecting the right to asylum and other fundamental international agreements. The complaint brought before the International Court of Justice therefore raises an essential question:

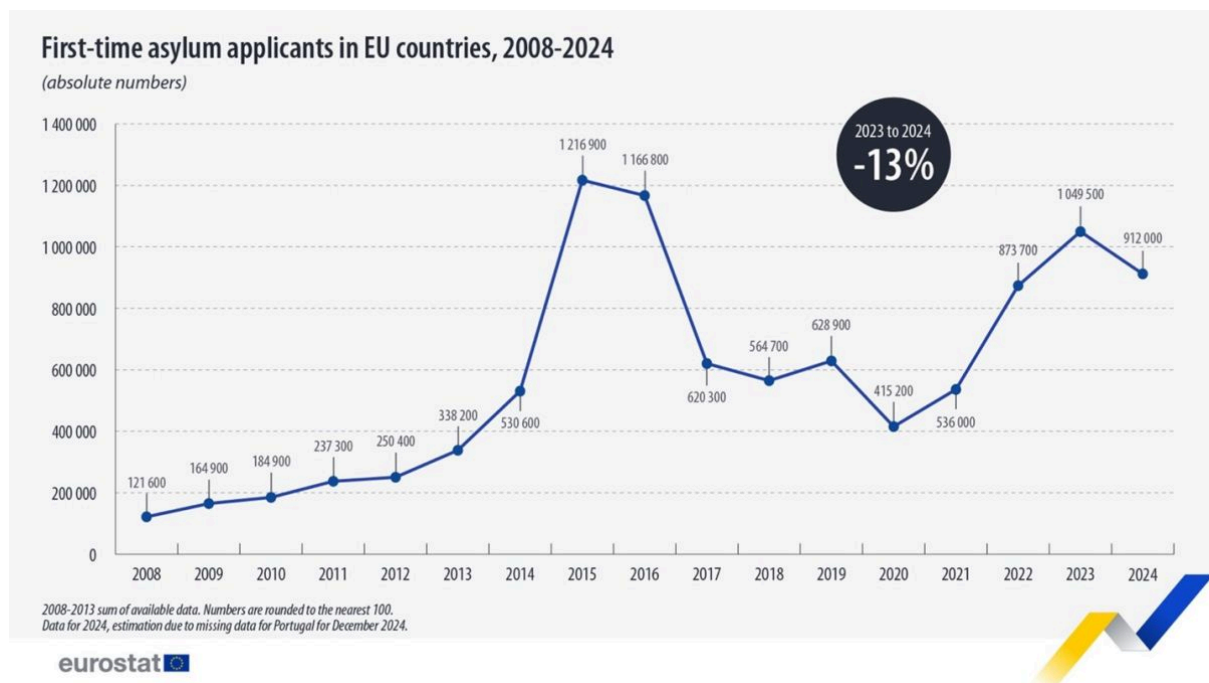
To what extent can the European Union and its agency Frontex strike a balance between safeguarding borders and complying with international law and the fundamental rights of migrants?

This issue involves the legal responsibility of the European Union, as well as its global reputation and its ties with its partners in Africa.

II) HISTORICAL OVERVIEW OF EUROPEAN UNION MIGRATION POLICIES

A. From freedom of movement to the securitization of borders

The history of the European Union's migration policies has been marked by a constant conflict between two ideas: one focused on welcoming and protecting refugees, while the other emphasizes strict border control. The 1999 Treaty of Amsterdam paved the way for a common policy concerning migration and asylum provision. In 2004, the creation of Frontex marked a major turning point. For the first time, a European agency was tasked with coordinating the surveillance of external borders.



B. The impact of the 2015 refugee crisis and externalization policies

The 2010s exposed the weaknesses of this system. The Arab Spring of 2011 led to an increase in arrivals, particularly in Lampedusa, Ceuta, and Melilla. The EU split into two camps: frontline host countries such as Italy and Spain, which were in favor of welcoming migrants, and more distant countries such as Poland and Hungary, which were unfavorable to any form of solidarity and opposed relocation mechanisms.

The 2015 refugee crisis changed everything. More than a million people, mainly from Syria, entered Europe. The EU then concluded agreements with countries such as Turkey and Libya to manage these flows. These bilateral agreements have been criticized: as responsibility shifts from migrants to local jurisdictions, the fundamental rights of the former are not always guaranteed.

This period also marked the consolidation of opposition from the Visegrad Group (Hungary, Poland, Czech Republic, and Slovakia). This historical alliance collectively rejected mandatory relocation quotas and framed migration as a threat to national identity and internal security.

Since 2020, attention has turned to Frontex. Several investigations from the European Parliament itself have revealed that the agency allegedly concealed or participated in pushbacks in the Aegean Sea and in Spanish enclaves. Therefore, leading to the resignation of the agency's executive director in 2022. Frontex is now perceived as lacking transparency and oversight.

III) LEGAL ISSUES AND THE ROLE OF FRONTEX

A. International legal framework applicable to migration

International law establishes clear rules. The most important is the principle of non-refoulement, protected by the 1951 Geneva Convention. The latter prohibits the return of an individual to a country where they risk persecution. It is considered a fundamental norm of international law.

Non-refoulement has been reaffirmed by the European Court of Human Rights and is closely linked to the prohibition of collective expulsions and inhuman or degrading treatment.

B. The mandate and operational role of Frontex

The right of asylum is recognized in the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights, allowing everyone the opportunity to seek asylum and have their case examined individually.

However, Frontex is accused of failing to meet these obligations. Its actions have allegedly led to collective expulsions without assessment of individual circumstances. NGOs such as Amnesty International and Human Rights Watch criticize the excessive use of force and the lack of accountability measures.

Investigations conducted by the European Parliament and independent journalists have alleged involvement in pushbacks in the Aegean Sea and at the borders of Spain, raising questions regarding institutional transparency. These accusations resulted in Frontex's Executive Director Fabrice Leggeri's resignation in 2022.

C. Issues of attribution, responsibility and accountability

The issue of legal responsibility is complex. Frontex is a European agency, but its work often relies on cooperation with national border guards. Does responsibility lie within the agency, the member states, or the EU as a whole? A complaint filed with the International Court of Justice seeks to clarify this issue.

The application of the Articles on the Responsibility of International Organizations (ARIO) may be decisive in determining whether wrongful acts committed during joint operations can be attributed to the European Union.

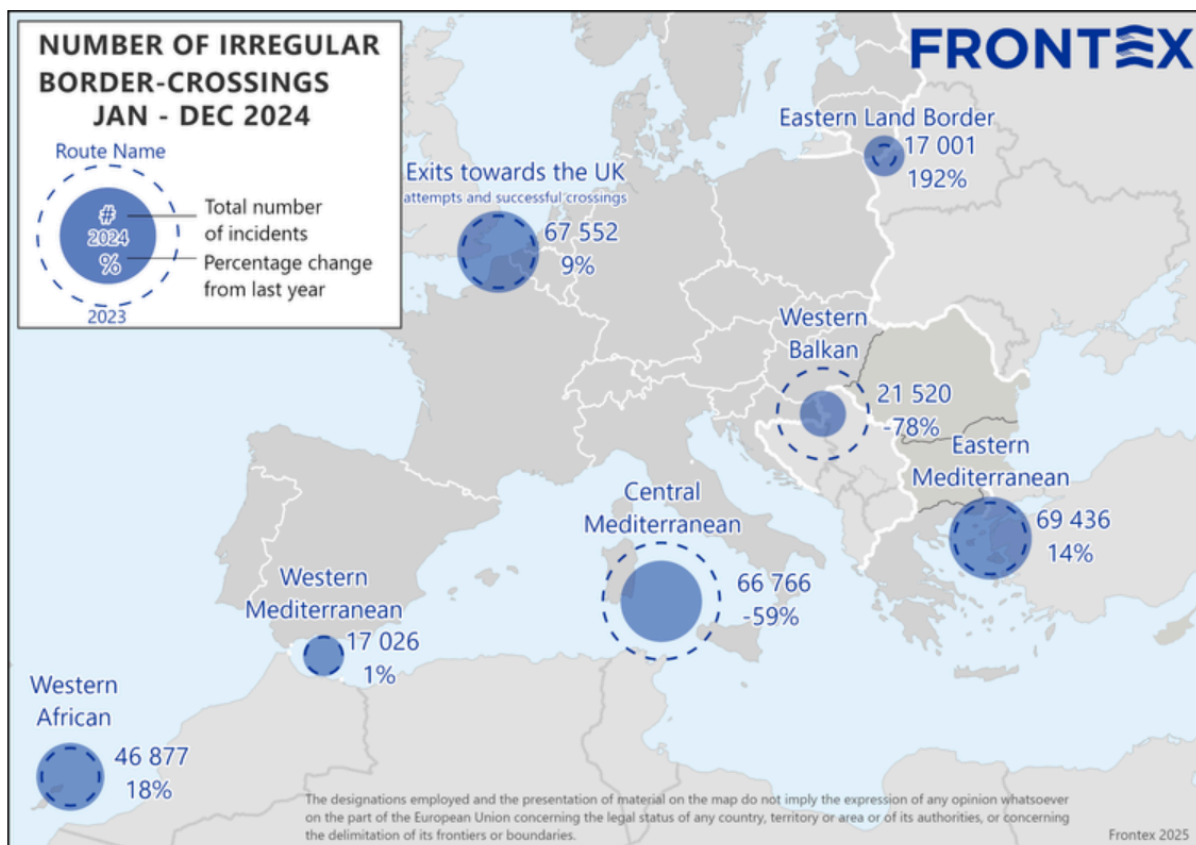


IV) POLITICAL POSITIONS OF EU MEMBER STATES AND REACTIONS FROM AFRICAN AND NORTH-AFRICAN COUNTRIES

A. Diverging approaches among the Respondent States

There are deep divisions within the European Union. Southern States such as **Spain**, **Italy**, **Greece**, and **Malta**, the frontline countries, are requesting more support. They argue that the responsibility for receiving migrants should not fall solely on the countries of arrival.

Italy and **Greece**, in particular, have repeatedly called for compulsory relocation mechanisms and greater EU involvement in SAR operations.



Spain highlights the constant pressure on Ceuta and Melilla and calls for increased assistance from other Member States. **Italy** emphasizes the burden of arrivals in the central Mediterranean and criticizes the uneven distribution of migrants. **Greece** warns against pushbacks in the Aegean Sea and the disproportionate humanitarian

burden they entail. Additionally, **Malta** advocates for European rescue and resettlement systems.

Conversely, Central and Eastern European countries, notably **Hungary** and **Poland** (supported by the other States of the Visegrad group), oppose this idea. They assert their right to refuse migrants in order to protect their national sovereignty. On the one hand, **Hungary** supports a strict, security-focused approach and rejects any mandatory relocation system. On the other, **Poland** favors a policy of closure and emphasizes the protection of national identity. Overall, the Visegrad group has consistently opposed burden-sharing and promoted a security-based approach to migration.

Larger countries such as **Germany** and **France** occupy a middle ground. **Germany**, which took in one million refugees in 2015, supports the right of asylum but calls for a sustainable reform of the distribution system, whereas **France** wishes to maintain the right of asylum but is increasingly advocating stricter controls and greater cooperation with countries of origin and transit.

B. Positions, claims and criticisms of African and North-African States

African and North-African countries have also voiced their criticism. They consider the readmission agreements imposed by the EU to be unfair. These agreements oblige certain Member States to accept the return of migrants without adequate compensation.

Morocco condemns the violence at the borders of Ceuta and Melilla while also calling for fair cooperation that respects basic human rights. Similarly, **Algeria** criticizes the readmission agreements and defends its right to manage migration flows. **Tunisia**, on its part, highlights economic and security pressure and denounces the lack of European support during mass influxes. Finally, **Senegal** and **Nigeria** stress the need for cooperation focused on economic development while condemning European agricultural dumping, which they argue, contributes to migration.

These diplomatic tensions are exacerbated by contemporary issues such as climate-induced migration, economic instability, and geopolitical crisis in the Sahel. These countries call for more balanced cooperation that takes their interests into account and goes beyond simple security concerns.

V) DATA AND STATISTICS

A. Migration flows and humanitarian impact

The figures illustrate the scale of the problem. Frontex reported nearly 330,000 irregular crossings at the EU's external borders in 2022, an increase of 64% compared to 2021. In 2022, approximately 31,219 immigrants arrived illegally in Spain by sea and land, with a 24% increase via Ceuta and Melilla.

In addition, the UNHCR found that more than 2,500 migrants died or disappeared in the Mediterranean between 2021 and 2022. According to the Missing Migrants Project, between 2014 and 2025, the number of migrants who drowned in Mediterranean waters is estimated to be 30,142. These statistics reveal the heavy human cost of current migration policies.

B. Frontex budgetary growth and operational capacity

The Frontex budget is another key indicator: it has risen from €19 million in 2006 to €754 million in 2022. The agency now employs thousands of agents and uses state-of-the-art equipment such as drones and surveillance systems. This increase in capacity raises concerns about how the European migration policy is framed within security matters.

VI) TENSIONS BETWEEN SOVEREIGNTY, SECURITY AND HUMAN RIGHTS

A. Border control versus international legal obligations

A deep conflict is revealed by these cases. On the one hand, EU Member States claim the right to control their borders. On the other hand, they have made international commitments that require respect for the fundamental rights of migrants.

Recent legislative initiatives, including the New Pact on Migration and Asylum, (the EU approved in 2024 the Pact with Hungary and Poland voting against it) illustrate attempts to reconcile these imperatives, though they remain highly controversial.

B. Democratic oversight, transparency and legitimacy concerns

This dilemma is exacerbated by the growing role of Frontex. As a key player, the agency prompts inquiry of democratic control: who oversees its actions? What safeguards are in place to ensure compliance with international law?

Current issues such as the criminalization of NGO rescue operations (cf. Oxford Academical article), the use of advanced surveillance technologies (Earth Observation technologies, and the impact of artificial intelligence on border management further complexify this debate.

For African and North-African countries, this issue transcends legal obligations; it touches on dignity and the balance of international relations. They therefore criticize the imbalance of power, with Europe imposing rules without engaging in genuine dialogue.

These tensions are at the heart of this commission's work. They should be addressed without pretending to resolve them entirely, leaving it to the delegates to find a balanced solution.

CONCLUSION

The complaint lodged by African and North-African countries against the European Union and Frontex highlights several issues: legal responsibility, human rights, international solidarity and the dynamic between Europe and Africa. More precisely, how States and international organisations

This report does not aim to provide definitive answers. It should inform the commission's discussions, allowing delegates to consider different options: reforms to Frontex, independent monitoring systems, better cooperation between the EU and its African partners, or the creation of solidarity funds.

The central question remains: how can we develop a European migration policy that respects both fundamental individual rights and state security?

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