Safe for Return?
The Implications of the Safe Country of Origin Designation for Syria

Policy Paper

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Executive Summary

European Union policy around Safe Countries of Origin (SCO) was created with the intent of maximizing efficiency around asylum claims and status applications by distinguishing applications from countries that are generally safe for most citizens from those that are not. Creating this distinction was intended to facilitate asylum applications for people who have a high likelihood of obtaining protection status because of the issues in their country, thereby saving time and resources on individual interviews, case reviews and processing, while still ensuring that those coming from designated "safe countries" are afforded the right to make an asylum claim based on individual threat of persecution.

This policy has greatly benefited the over 1 million Syrian refugees who have fled to Europe since the start of the Syrian conflict in 2011. However, as anti-refugee sentiment has risen in Europe, member states have been increasingly pushing for Syria to be designated as an SCO, although the situation in Syria is still highly volatile and could pose a danger to many returnees. This has been especially the case after the fall of the Assad Regime on December 8th of last year. While the new Syrian government has exemplified some positive steps towards transitional justice and peacebuilding, the country is still facing serious outbreaks of violence in several regions that have cost over 3,000 lives in the past year alone.

To ensure respect for refugee rights and international protection standards globally, European Union member states must lead by example, ensuring that states are adhering to their international obligations around refugee rights as well as regional and domestic legal standards. This includes recognizing that, while Syria may be on the path towards becoming an SCO, it does not meet the criteria for such a designation under the current circumstances.

Introduction

The European Union has set out to establish common rules and procedures as applied to asylum in an effort to ensure respect for the EU's human rights obligations, while also maximizing processing efficiency and fairness across duty bearers. To this end, in 2013, the European Parliament passed the recast ***Asylum Procedures Directive*** (APD), in addition to amending several other regulatory frameworks, towards the harmonization of asylum law across EU states. In 2019, the ***Common European Asylum System*** was established to further guarantee uniform standards across EU member states, noting the "shared responsibility to process applicants for international protection in a dignified manner, ensuring fair treatment and similar procedures in examining cases, irrelevant of the country where the application is lodged."

These efforts have seen some success, such as building uniform definitions for asylum designations, such as the definition of a "safe country of origin" (SCO) and increasing the standardization of procedures and data for the processing of asylum claims. However, European policy on asylum is complex and multi-faceted; it is governed through several pieces of legislation and regulations, which are frequently amended, making understanding the rights and procedures difficult for migration experts, much less asylum seekers and refugees. Additionally, the European Council on Refugees and Exiles has noted that the recast APD leaves states with a great deal of "room to manoeuvre" in how these rules are implemented domestically, while the "extreme complexity of its provisions risks undermining the effectiveness of the procedural safeguards and consequently complicates its proper implementation."

Examples of the complexities of EU laws on asylum:

Back and forth around the creation of a common list of SCO countries:

- The original APD envisioned the creation of a ***common list*** of safe countries to be applied across EU member states. However, this was contested by the European Parliament on the basis that there was no body empowered to ensure this uniform implementation, and the Court of Justice of the European Union agreed.
- This means that, until now, there has been no common list of safe countries across European member states, leaving asylum seekers with a lack of clarity on their situation depending on what country they seek asylum in.
- This policy is expected to change again in the coming year as the European Commission has now adopted a ***proposal to amend*** the Regulation on a Common Asylum Procedure to include the creation of a joint EU list of SCOs.

Declaring parts of a country as safe:

- The original APD allowed for the designation of part of a territory as safe, or the declaration of a country as safe with exceptions for part of it's territory. This is ***no longer allowed*** under the recast APD.
- However, it may still be possible to declare a country as safe, ***except for certain demographics***, such as religious minorities or members of the LGBTQ+ community. An upcoming case at the European Court of Justice will clarify whether such exceptions will be permitted.

Such "maneuvering" or excessive discretion in the application of asylum rights has been the focus of much debate around the regression of refugee protection and adherence with rights obligations. This example has been especially stark in terms of discussions around Syria, where some EU member states were arguing for the possibility of returns even before the fall of the Assad Regime, despite the widespread and harrowing abuses the population was experiencing. Since the fall of the Assad Regime, an increasing number of EU and other regional refugee hosting states have been advocating for the country to be declared safe, again, in contrast to the facts on the ground, which indicate high levels of instability and insecurity – from revenge attacks on the Alawite minority resulting in thousands of casualties, sectarian violence between Druze and Bedouin armed groups and attacks on Druze civilians and mass displacement, and ongoing Israeli bombardments, incursions and kidnappings, to name a few examples.

In this context, arguments that Syria is safe for return would constitute a misapplication of the SCO designation and may also violate international law. Critics have argued that the push for returns to Syria is a response to local political dynamics and rising anti-refugee sentiment in Europe, rather than a neutral application of European law and domestic legal obligations for refugee protection. However, neglecting neutral application of the law in favor of populist politics sets a dangerous precedent, not only for refugee rights, but for the gamut of human rights obligations; if states are given the overly broad discretion in the interpretation of legal standards and the application of human rights obligations, it is only a matter of time before legal rules become guidelines, and rights become privileges.

Safe Country of Origin Concept

Under the Asylum Procedures Directive, Safe Country of Origin is defined as follows:

> A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution… no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. (COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005)[1]

The Directive also lists some of the factors that may be considered to determine whether a country has ***sufficient protections*** against mistreatment and persecution, including: observance of human rights, especially those that are non-derogable, such as the prohibition against torture, persecution and inhuman or degrading treatment; respect for the principle of non-refoulement, and; the ability of persons to access justice in the country for violations of rights and freedoms.

The definition and criteria for identifying SCOs are objective on their face and, if properly applied, contribute greatly to the efficient processing of asylum claims. However, the application of this concept has often been aimed at reducing asylum numbers to the greatest extent possible rather than for amplifying efficiency. For instance, the ***European Parliament*** has proffered that this concept can be interpreted as an "automatic exclusion from refugee status of nationals originating from SCOs, or it can raise a presumption of safety that those nationals must rebut," while former European Commission president, Jean-Claude Juncker ***stated in a 2015 speech*** that the SCO designation helps "separate better those who are in clear need of international protection and are therefore very likely to apply for asylum successfully; and those who are leaving their country for other reasons which do not fall under the right of asylum."

As per UNHCR, such framing ***contradicts*** the spirit of the 1951 Refugee Convention for several reasons; first, it creates a distinction between asylum seekers from different countries and places a higher burden of proof on applicants from SCO countries, which constitutes discrimination under the Refugee Convention. ***UNHCR has advised*** that applications must be examined fully based on their individual merits, that applicants must have a real opportunity to rebut the presumption of safety in their country of origin, and the right to an effective remedy in case of a negative decision (an appeal). Such ***an appeal*** should be reviewed by an authority that is independent from the one making the initial decision, and it "should have suspensive effect allowing the applicant to remain in the country pending the review of his or her case." As such, the SCO designation should only be applied to ensure that applications from countries that are not safe are processed more quickly and efficiently to reduce possible backlogs, while those arriving from countries that are generally safe may undergo individual assessments before a determination is made in their case.

[1] The definition remains the same in the recast Asylum Procedure Directive, https://www.refworld.org/reference/research/ecre/2015/en/107279?prevDestination=search&prevPath=/search?keywords=safe+country+of+origin&sort=score&order=desc&result=result-107279-en

The right to appeal:

- Under international law, asylum seekers must have ***the right to appeal*** their status decision before an impartial, independent and regularly constituted court.
- Unfortunately, the recast APD does not require states to give asylum seekers leave to remain in the country pending the appeal of their case. This policy could result in serious harm if asylum seekers are mistakenly deemed safe to return, only to then face persecution upon their return, resulting in violations of the principle of non-refoulement. Such cases will also be unable to complete their appeal, thereby denying them an effective appeal and possible violations of the principle of non-refoulement.

Discriminatory burdens of proof:

- Per the ***decision*** of the European Court of Justice in A. v. Migrationsverket, an application can only be deemed manifestly unfounded where the individual is both, from a designated SCO, and is provided with the opportunity to rebut this designation. It has been noted that this creates a higher burden of proof on asylum seekers from designated SCOs, which could amount to ***discrimination*** under Article 3 of the Refugee convention.
- Further, UNHCR ***has advised*** that many states are placing the entire burden of proof on the applicant for asylum, whereas this should be "a shared duty between the applicant and the determining authority to ascertain the facts".

Situation in Syria and the International Response to Refugees

Syrians have endured decades of repression, systematic rights violations, and crimes against humanity under the former Assad Regime, including widespread arbitrary arrests and unprecedented levels of torture, inhuman treatment and degradation, and persecution. In 2011, mass uprisings erupted in the hopes of ending this repression, only to be met with more violence, the breakout of several armed groups and a horrific conflict that lasted 13 years. While the international community initially welcomed Syrian refugees, states began facing more pressure and anti-refugee sentiment, especially as right wing politics has been on the rise. Over the past few years, refugee hosting countries in the region as well as European states have routinely engaged in pushbacks of Syrian refugees at land and sea borders, with many arguing that these were "illegal" asylum seekers as they did not enter the country through regular migration pathways. However, the ***Refugee Convention*** states that irregular entry should not be penalized, because "the seeking of asylum can require refugees to breach immigration rules."

While the circumstances in Syria grew increasingly dire over the course of 13 years of conflict, division, and economic sanctions, several countries in Europe and the Middle East had begun discussing the possibility of declaring Syria, or parts of Syria, as safe for return. Denmark was among the first European states to prematurely push for refugee returns by declaring that Damascus was safe for returns. The country revoked the protected status of thousands of Syrian refugees, but when these revocations were challenged before the Refugee Appeals board, 77% of the cases ***were overturned***, with many receiving even higher protected status than they had previously. The Danish decision was later rejected by the ***European Court of Justice***, which found that it was not possible to find part of a territory safe for returns.

Since the government takeover in December of 2024, the situation in Syria is still far from being safe and stable. There have been several grave attacks on minorities, while the interim government response has been slow and weak, failing to adequately ensure protection against perse-

cution. Since the takeover of the new government, there have been positive steps towards diplomacy and guarantees of protection for minorities, however, the country still has a long way to go before it is able to meet the SCO designation criteria.

March of 2025 saw large scale revenge ***attacks on Alawites*** in the coastal region that resulted in the killing of over 1,400 civilians, in addition to other abuses, including reports of targeted abductions, looting, and displacement. The UN Commission of Inquiry (COI) on Syria reported that these violations were committed by forces of the current government in addition to private actors. The COI further found that the attacks were systematic and widespread, likely amounting to war crimes, and noted that while roughly a dozen arrests have taken place, the scale of the violations requires a much more serious response.

Months later, in July, ***fighting broke out in Suwayda*** between Bedouin tribes aligned with the new government and armed Druze, resulting in the deaths of an estimated ***1,600 people***, hundreds of injuries, and over 90,000 people displaced from Suwayda. The government was again slow to intervene and has yet to properly investigate and punish abuses, whether by Bedouin or Druze fighters. President Al Sharaa further demonstrated ***discriminatory sentiments*** towards the Druze as he praised the Bedouin fighters while calling the Druze fighters "outlawed groups."

Israel has been sporadically bombarding Syria since the government takeover, killing dozens of Syrians over the past year, and committing countless illegal incursions into the country, including kidnapping several Syrians, stating that they posed a threat to Israel. This took place again in late November with an incursion into ***Beit Jinn, Damascus***, where Israeli forces attempted to arrest 3 people but were met with resistance by locals, leading to the injury of six soldiers. Israel retaliated by launching airstrikes on the area that killed 13 people and injured dozens of others. Israel has also intervened in Suwayda claiming to act in protection of the Druze, creating further division between Syrian communities and leading to fracturing even within the Druze community itself, as some have rejected Israeli interference while others have supported it. Several ***Druze sheikhs*** were recently detained by the National Guard – the armed forces aligned with Druze leader, Hikmat al Hijri, under accusations of aligning with the government to replace al Hijri. On December 2nd, the bodies of two sheikhs were released from detention with indications that they died under torture.

There have been many other smaller-scale instances of conflict or sectarian tensions, such as the recent outbreak of violence in ***Homs*** resulting in at least two deaths and 10 injuries, or the terrorist attack that took place on June 22nd on a ***Church*** in Damascus that killed 20 people. Additionally, there have been tensions around the domestic measures towards transitional justice since the fall of the Assad Regime; the new government ***issued a decree*** establishing a national committee tasked with uncovering the violations caused by the Assad regime. The decree fails to make mention of the tens of thousands of victims who also suffered harrowing crimes at the hands of other armed factions across the country. This unequal treatment of victims under the law has received polarized responses from Syrian civil society – while some are beginning to trust in the promises of justice and peace, others have ardently defended the new government against criticism, at times accusing the critics of being Assad supporters. If peace and stability for all is the ultimate goal, these tensions and inequalities must be addressed and rectified.

These facts demonstrate the fragile situation in Syria and make clear that Syria fails to meet several elements of the SCO criteria:

1. **No threat of indiscriminate violence or conflict:** the outbreaks of attacks and conflict across different parts of Syria over the course of the past year demonstrate the very real threat of indiscriminate violence and conflict.
2. **Generally and consistently no persecution, torture or inhuman and degrading treatment:** the attacks on the Alawite and Druze minority communities, as well as the slow government response to put an end to these attacks, indicate the possibility of a continued context of persecution. Additionally, there continue to be reports of torture and inhuman treatment of detainees, whether under the control of government forces or other armed factions, as demonstrated by the recent deaths in Suwayda.
3. **Access to justice for victims of rights violations:** The government decree on Transitional Justice in Syria focuses only on crimes committed by the Assad Regime, meaning victims of crimes by other groups are unlikely to see justice for the harms they suffered. This indicates potential for discriminatory application of the law. These conditions contravene the required criteria for declaring Syria a safe country of origin.

Policy Implications and Recommendations

The European Union and its member states are widely viewed as leaders in human rights and international law by the global community. Europe has played a fundamental role in creating and developing international law and human rights regimes and conventions, as well as in setting the standards for their application. However, European states have been increasingly misapplying these rules and standards to the detriment of refugee rights and protections.

The dilution of the definition of SCOs for the benefit of populist anti-refugee politics is the most recent example of harmful policy against a backdrop of violations, including violent pushbacks of migrants at land and sea borders, resulting in thousands of casualties and increased externalization of refugee-hosting obligations to third countries despite their abuses of migrants and refugees. Such policies and practices are likely to amount to rights violations, including the rights to life, the right to seek asylum, and the principle of nonrefoulment. They have also given license to Europe's counterparts everywhere, and especially in countries of the Global South, to follow suit, leading to further erosions of refugee protections

Attempts to declare Syria as safe considering the current context could lead to dangerous consequences, including the possibility of returnees facing persecution, increased tensions between communities, and even the possible renewal of generalized conflict or violence, especially under a government that has yet to demonstrate its capacity and willingness to enforce security and oversight across the country. Pushing forward with this designation risks further diluting the standards for refugee rights and protections globally.

Based on these facts and the European Union's commitment to advancing human rights, as well as state obligations and duties towards asylum seekers and refugees, the following recommendations should be implemented by the European Union and its member states, beginning with the **top policy priorities:**

- Help restore global respect for refugee rights and protections by returning to a leadership role in the application of the Refugee Convention, EU laws on asylum, and the highest refugee protection standards, including by adhering to UNHCR guidelines and recommendations;
- Investigate thoroughly the context of countries being considered for designation as Safe Countries of Origin, with input from human rights defenders and civil society organizations being especially considered;
- Apply the Safe Country of Origin designation only to those countries that meet the requisite criteria of being generally safe, free of persecution, torture, or other widespread human rights abuses, and where victims of abuses have access to justice;

Secondary and specific policy recommendations:

- Amend the recast Asylum Procedures Directive to ensure that asylum seekers are permitted to remain in the country in which they are seeking asylum while an appeal is pending, to ensure respect for the right to appeal and prevent any potential cases of refoulement;
- Ensure that the right to seek asylum is respected by allowing asylum seekers to make safe passage to Europe and plead their case for asylum before the authorized body;
- Acknowledge and end rights violations against asylum seekers and refugees at Europe's borders, and demonstrate opposition to impunity by holding state agents accountable for abuses or violations of human rights;
- End reliance on externalization agreements with states that are violating asylum and refugee rights;

And, finally, as applied to Syria:

- Refrain from acts that could further jeopardize Syria's transition towards peace and stability, including engaging in premature, large-scale returns of refugees;
- Condemn rights violations and war crimes by all parties in Syria, including the new Government, the armed groups committing abuses, and Israel's acts of aggression and violations of sovereignty;
- Ensure that Syria is not designated as an SCO until the conditions in the country meet the necessary definition and criteria set out in EU law.

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