



CDDH-PTS(2026)01
09/01/2026

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**DRAFTING GROUP ON THE SAFE THIRD COUNTRY CONCEPT
(CDDH-PTS)**

**Summary of the exchange of views
held on 20 November 2025
at the third CDDH-PTS meeting**

1. Introduction

At its third meeting on 20 November 2025, the CDDH-PTS held an [exchange of views](#) on the issue of safe third country concept with:

- Professor Vincent CHETAIL, Professor of International law and Director of the Global Migration Centre, Advisory Faculty, Global Governance Centre, Geneva Graduate Institute, Switzerland; and
- Professor Dr Daniel THYM, Professor of Public, European and International Law, Director of the Research Centre Immigration & Asylum Law, University of Konstanz, Germany.

2. Summary of discussions

Key points made by Professor Vincent CHETAIL

- Professor Vincent Chetail gave a presentation on “Clarifying the Safe Third Country Concept in the Broader Context of Migration and Asylum Law, Practices and Policies.”
- Professor Chetail began by noting the inherent difficulty of clarifying the safe third country (STC) concept, which remains ambiguous from multiple perspectives. The concept is controversial not only because of its varied and evolving state practice, but also because its legal basis is uncertain: the 1951 Geneva Convention relating to the Status of Refugees (the Refugee Convention) neither authorises nor prohibits the concept. As a result, the STC concept is effectively constructed on the silence of the Refugee Convention.
- Although Article 31 of the Refugee Convention is often cited as a possible legal basis – on the grounds that it refers to non-penalisation for irregular entry only when the asylum-seeker comes directly from a country of persecution – Professor Chetail stressed that this provision was drafted for penalisation purposes, not to regulate the submission of asylum claims. No provision of the Refugee Convention obliges asylum-seekers to request protection in the first safe country they reach, nor does the principle of non-*refoulement* explicitly prohibit removals to a safe third state. There is therefore a legal grey zone, with a concept built on the silence of the Refugee Convention and operating as an admissibility ground, meaning rejection without examination of the claim, accompanied by a transfer of responsibility to a third country.
- There is a broad variety of practices associated with the STC concept and of definitions. The STC concept emerged in the 1980s as a predominantly Western legal innovation, although some states in the Global South have used it. Within the European Union (EU), many EU member States have incorporated the concept into national legislation under the Asylum Procedures Directive, but several – including France, Cyprus, Czechia, Romania and Slovenia – do not apply it. The lack of a clear legal basis under the Refugee Convention and the diversity of national approaches contributes to the difficulty of defining the concept’s contours.
- In outlining what he considers the core elements of any definition of a STC, Professor Chetail identified four requirements generally mentioned when it comes to the STC concept:
 1. The absence of persecution, torture, or other serious harm in the receiving state, as otherwise removal would violate the prohibition of *refoulement*;
 2. Respect for the Refugee Convention, particularly the prohibition of chain *refoulement*, requiring an assessment of whether the third state is safe and making sure the third state may not in turn send the person to a country of persecution;
 3. Access to a full and fair asylum procedure in the receiving state; and

4. Consent of the third state to ensure that the asylum-seeker would be admitted since, under international law, a country cannot be unilaterally obliged to accept non-nationals.
- Professor Chetail explained that the STC concept is often confused with, but must be distinguished from, related notions in asylum law:
 - First country of asylum, which applies when protection has already been granted in another state. It is an inadmissibility ground based on prior protection elsewhere, fundamentally different from the STC concept.
 - Safe country of origin, which presumes the absence of persecution in the applicant's country of origin. This is not a ground for inadmissibility but for an accelerated procedure. It operates as a rebuttable presumption since the asylum-seeker can demonstrate that his or her country of origin is not safe.
 - These three concepts – STC, first country of asylum, and safe country of origin – serve different purposes and have distinct consequences for applicants, even though all aim to facilitate or accelerate asylum procedures. However, the STC concept is the most contested of the three, because it involves rejecting applications without examining the merits, thereby raising acute concerns about the safety of the third country and the risk that the person may be sent back to his or her country of origin.
 - STC removals must be distinguished from pushback and interception practices, which are *per se* unlawful:
 - Pushbacks, as recently defined by the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on the human rights of migrants, amount to summary rejection of asylum-seekers without individual assessment and therefore violate the prohibition of *refoulement*.
 - Interception, whether at sea or land borders, is similarly unlawful when it results in the return of asylum-seekers without any form of assessment of their protection needs.
 By contrast, the application of the STC concept requires an individualised assessment of the safety of the receiving state.
 - Professor Chetail then situated the STC concept within the broader and increasingly prominent phenomenon of externalisation. Externalisation, although not a legal term, refers to the transfer of responsibilities for migration control, border management, or asylum processing to third countries. Drawing on recent analyses by the Council of Europe Commissioner for Human Rights and by the UN Special Rapporteur, he highlighted that there is a growing concern that externalisation strategies may engage the responsibility of states for violations of the right to life, the prohibition of torture, the principle of non-*refoulement*, the prohibition of collective expulsion and of arbitrary detention, and the right to an effective remedy. Externalisation does not permit states to escape their international obligations; rather, transferring responsibilities implies that both the transferring and the receiving states assume corresponding duties. Externalisation is a broader phenomenon encompassing various practices, of which the STC concept represents only one element. Three main forms of externalisation have been identified: external processing of asylum claims, extraterritorial implementation of return procedures, and externalisation of border control or management to prevent irregular arrivals. This is however a highly evolving field.
 - Professor Chetail reviewed recent international examples illustrating the range of externalisation experiments. He described some practices, such as Australia's offshore processing on Nauru and Papua New Guinea or the long-standing US interdiction of Haitian vessels and transfer to Guantánamo, as inherently unlawful because they involve systematic detention, denial of remedies, and extraterritorial legal fictions contrary to international law. In Europe, the UK-Rwanda Agreement and the Italy-Albania Protocol represent two different models of attempted externalisation. The UK arrangement envisaged full outsourcing of asylum processing to Rwanda and was ultimately abandoned following judicial findings. The Italy-Albania Protocol is different, as originally

it contemplated extraterritorial asylum processing, but has since evolved following legal challenges into a mechanism used primarily as a return centre.

- Professor Chetail concluded that practices are diverse, experimental and often legally contested. This highlights the need for a principled, rule-of-law-based approach and a narrow, carefully circumscribed use of the STC concept, accompanied by robust safeguards, in order to minimise the risk of unlawful *refoulement* where the safety of the receiving country is not clearly established.

Key points made by Professor Dr Daniel THYM

- Professor Dr Daniel Thym explained that his intervention would focus on EU legislation and international human rights law, drawing on the findings of his recent expert study entitled “Expert Opinion on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options.”
- Starting with the broader picture, he first outlined two non-legal hurdles that any STC scheme must overcome:
 - The first hurdle is diplomatic: governments must convince a third state to cooperate, which is challenging given the high legal standards that apply in Europe. Very few countries in the Global South have reliable asylum systems capable of meeting European standards as laid down in EU legislation and the European Court of Human Rights (the Court)’s case-law, which go beyond minimum international standards.
 - The second hurdle concerns the factual impact of such schemes. STC arrangements are often premised on the idea that transferring a relatively small number of asylum-seekers will have a significant deterrent effect on arrivals. In practice, however, the numbers envisaged have been very limited, as illustrated by Italy’s plans for the Albania centre, the UK who intended to send only a few hundred people to Rwanda, and the “one in, one out” UK-France mechanism. There is no empirical evidence that European-style STC schemes, with low transfer numbers, produce a significant deterrent effect on arrivals comparable to Australia. For Professor Thym, such schemes should not be viewed as “magic solutions,” although they can function as highly visible add-ons that may have a symbolic impact when combined with other measures, such as those accompanying the EU-Türkiye Statement, whose STC component itself proved largely inefficient in practice.
- Professor Thym stressed that STC schemes cannot realistically replace territorial asylum in Europe. It is neither politically nor logistically feasible to transfer all asylum-seekers to third countries. Any such arrangements will remain supplementary instruments whose political visibility contrasts with their limited practical effect on the ground.
- Turning to the procedural and legal dimensions, Professor Thym underlined that, as soon as a person enters the Schengen area and applies for asylum, EU law and recent Court’s case-law require a preliminary examination on European territory to determine whether the third country can be considered sufficiently safe, both *in abstracto* and with regard to each individual applicant. This admissibility procedure can quickly become an administrative bottleneck, as seen on the Greek islands under the EU-Türkiye Statement where slow procedures and judicial review meant that only a few hundred Syrians were returned between 2016 and 2019. A similar pattern can be observed in Dublin cases, where preliminary examinations and appeals may last several months. Outside border procedures, he warned, the existence of such steps – combined with free movement within the Schengen area – may encourage asylum-seekers to move to neighbouring states that are not participating in the SCT schemes, such as France.
- While examining the 1997 Recommendation, Professor Thym notes that the Recommendation simply states that states should adopt modalities to inform the asylum-

seekers about the transfer, which was the state of law at the time. At the time of its adoption, there was neither EU asylum legislation nor Court's case-law requiring the transferring state to conduct individual assessments or provide remedies in STC contexts. All this changed radically as a result of case-law which culminated in *Ilias and Ahmed*, in which the Court required an individual assessment and an administrative decision for each person before removal to a third country, albeit with a narrowly framed "evident safety" exception. The Court's judgments essentially elevated certain procedural requirements to the level of human rights, and once procedures become embedded in human rights jurisprudence, they can no longer be easily modified by the legislator.

- Professor Thym then addressed the ongoing debate about the connection criterion, according to which states cannot transfer asylum-seekers to a state where he or she has no meaningful links to. He pointed out that there is ample evidence that such a criterion is not required under international law, so it could, from a legal perspective, be abolished. Retaining it is primarily a political choice, not a legal necessity. He suggested that the Group may wish to reflect carefully on whether – or how far – to mirror the contentious debates currently taking place in Brussels.
- He next turned to the prohibition of *refoulement*, which the 1997 Recommendation rightly places at the heart of the STC concept. According to Professor Thym, it is crystal clear that STC schemes must respect the prohibition of *refoulement*. While this prohibition is universal in nature, its scope has evolved significantly in Europe since 1997. Under Article 3 of the European Convention on Human Rights (the Convention), the Court has expanded protection beyond the classic Refugee Convention context to include persecution by non-state actors and for gender-based reasons, situations of generalised violence or civil war, and in certain cases, basic humanitarian needs, including medical care. This broader European interpretation of *refoulement* has direct consequences for STC schemes: European states must foresee exceptions for particular categories of persons (e.g. LGBTIQ+ persons, survivors of domestic violence) whenever the receiving third country does not interpret the prohibition of *refoulement* in similarly expansive terms.
- This raises the question of how European states can verify compliance with the prohibition of *refoulement* in the receiving state. According to Professor Thym, what matters is not just ratification of relevant treaties, but the existence of a functioning asylum system in law and practice, with a credible track record or, at the very least, robust guarantees for future performance. The UK Supreme Court's judgment on the Rwanda scheme illustrates this point: it relied on numerous international reports to conclude that Rwanda's asylum system had not consistently afforded protection in cases similar to those involving Syrians and Afghans, largely because its own understanding of *refoulement* did not cover certain conflict-related situations. In his view, Rwanda is emblematic of many Global South countries that have ratified the Refugee Convention and human rights treaties but lack fully developed administrative asylum systems, meaning that any STC scheme involving them would require substantial financial and administrative support to raise their procedures to European standards.
- On adequate living conditions, Professor Thym highlighted the ambiguity of international law. There is no single authoritative court with the final word on the interpretation of the Refugee Convention or related instruments, and even UNHCR's guidance, though highly influential, is not binding and is sometimes contested by national courts. The European legal landscape is further complicated by the introduction in EU law of the notion of "effective protection," when describing the legal status and socio-economic guarantees during the asylum procedure and after the protection is granted. Issues such as access to welfare, health care, and the labour market, can have significant practical implications for STC schemes. The 1997 Recommendation is silent on these matters, reflecting the practice of countries like the US, Canada, and Australia, which consider that international

law does not say anything about living conditions, apart from general human rights and socio-economic rights provisions. In Europe, however, EU legislation, as well as UNHCR's interpretation of the Refugee Convention, tend towards a more demanding standard. Any revision of the 1997 Recommendation would thus need to decide whether – and how – to address these contested questions.

- Finally, Professor Thym reflected on the added value of updating the 1997 Recommendation. He noted that the legal environment has changed dramatically since 1997: whereas the Recommendation once stood out as one of the few instruments on the subject, it now sits alongside hundreds of pages of EU legislation, extensive Court's case-law and detailed UNHCR guidance. Any updated Recommendation would necessarily be longer and would have to enter into politically sensitive and legally controversial areas. In practical terms, its direct impact on EU member States might be very limited, given the primacy and level of detail of EU Law. That said, he recognised that it could still be useful for Council of Europe member States that are not part of the EU and for capturing developments in a coherent, analytical manner.
- Professor Thym suggested that the Group might find greater added value in situating the STC concept within a broader, "route-based" approach. Rather than focusing narrowly on individual schemes or single destination countries, such an approach would consider the entire migration route, aiming to strengthen asylum systems and improve living conditions along the route, while offering meaningful legal pathways for refugees and skilled workers. In his view, this broader perspective could help move beyond some of the more polarised debates around the STC concept and allow the Council of Europe to contribute something genuinely new and forward-looking.

Discussions

- Germany asked how point 1.d. of the 1997 Recommendation should be interpreted and whether it implies a connection criterion. Professor Chetail explained that the notion of connection is highly contested, particularly in light of the European Commission's recent proposal. He stressed that what ultimately matters under international law is the consent of the third state, as unilateral transfers are not permitted. While neither UNHCR nor the European Commission treats a connection as strictly required, international law provides no clear guidance and state practice remains inconsistent. Traditionally, connections were understood through lawful status, permission to remain, family links or similar ties. Even if not legally mandatory, such elements remain relevant for coherence and for facilitating consent in practice. Professor Thym added that the original rationale was to prevent situations of "refugees in orbit" in the 1980s and 1990s, when claims were declared inadmissible without cooperation frameworks. He noted that where STC schemes are embedded in cooperation arrangements ensuring admission by the third state (as in the logic of the Dublin system), this concern becomes less central. He further observed that UNHCR's recent guidance on international transfer arrangements frames the connection criterion more in terms of sustainability (ensuring the person can remain and integrate), whereas the 1997 Recommendation reflects earlier protection-focused concerns.
- Greece expressed concerns about the perceived ineffectiveness by many European states of existing migration responses and the tension between protecting national borders and fundamental rights, asking whether states should enjoy greater margin of appreciation and legal/political space to develop responses, including elaborating more or stricter standards. Professor Thym replied that Court's judgments must be respected unconditionally and recalled that many constraints derive from prior political choices made by states themselves in EU legislation, later reinforced by the Court. He cautioned that reversing jurisprudence would require formal legal change, such as constitutional

amendments at the national level or an additional protocol at the European level. However, states would still need to respect international law. Professor Chetail added that the Court's case-law has evolved in response to restrictive practices and that the margin of appreciation cannot undermine rights. He also stressed that Europe's situation is not primarily numerical, as most refugees are hosted in the Global South, and suggested that political choices and underinvestment in asylum systems are often at the root of current difficulties.

- Finland asked Professor Chetail whether he would agree with Professor Thym's view that, despite it being silent on several points, updating the 1997 Recommendation would be difficult to negotiate and of limited added value. Professor Chetail cautioned against such a conclusion, noting that the value of an update depends on the Group's objectives. He suggested that Council of Europe guidance could be useful in codifying and reflecting extensive Court case-law and clarifying guiding principles in light of subsequent practice, while acknowledging that the evolving EU legal framework at this moment makes timing for an update complex.
- Finland further asked Professor Thym whether the 1997 Recommendation can still be applied meaningfully despite its unclear wording, and whether an updated text reflecting current Court's case-law could bring added value and enhance consistency. Professor Thym noted that the 1997 Recommendation plays only a limited role in legal practice and does not feature prominently in recent jurisprudence. He suggested that a new Recommendation could add value mainly by explicitly endorsing existing Court jurisprudence (such as *Ilias and Ahmed*) or politically supporting UNHCR guidance, but that it would be difficult to go beyond EU law and UNHCR standards. He reiterated that a route-based approach and discussion of legal pathways could be an area where the Council of Europe might add more innovative value.
- Norway asked about the relevance of the current geopolitical context, including instrumentalisation, for the application of the STC concept. Professor Chetail described instrumentalisation as a relatively new concept in EU law and highlighted the tension between political pressures and legal obligations. He stressed that instrumentalisation cannot justify suspending asylum procedures or procedural guarantees and suggested that, where the third country is genuinely safe, applying the STC concept would be more compatible with international law than suspending asylum altogether. Professor Thym distinguished instrumentalisation from STC schemes, noting that instrumentalisation arguments are more radical as they question compliance with non-*refoulement*, whereas STC schemes are premised on respect for that principle. He referred to the limited security exceptions under Article 33(2) of the Refugee Convention, while noting that Article 3 of the Convention has been interpreted more strictly. Added value could be found in focusing on a route-based approach, taking into account Europe's democratic problems and the need of qualified workers.
- Amnesty International raised concerns that instrumentalisation could affect assessments of third country safety and risk sanctioning individuals who are themselves victims. Professor Chetail expressed discomfort with the concept of instrumentalisation, noting that it often concerns numerically marginal situations and reflects political dynamics rather than legal necessity. He reiterated that asylum-seekers should not be penalised and that asylum law is not designed to address instrumentalisation, which should instead be tackled through inter-state mechanisms and accountability avenues. Professor Thym similarly underlined that instrumentalisation is a distinct debate and that STC schemes do not involve unsafe countries. Professor Chetail concluded that international law provides tools to address state-driven instrumentalisation, including litigation before international courts and accountability, while asylum-seekers remain victims and should not be the target of restrictive measures.