

# Refugee Compliance with Political and Legal Systems

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## ABSTRACT

In this article, we argue that building a stronger empirical understanding of the politics of domestic refugee law and policy making is essential for refugee law scholars to better advocate for protection-orientated reforms. While much of the legal scholarship is aimed at promoting policy change, the best way to achieve this goal has rarely been examined. We identify three key areas of interdisciplinary empirical research that can create a stronger evidence-base for improving domestic policy reform efforts. This includes understanding the institutions and actors involved in policy formulation, measuring the impact of refugee laws and policies in practice, and identifying how to influence public opinion and build support for progressive law and policy change. We showcase existing interdisciplinary research in each of these areas, and highlight topics ripe for further empirical inquiry. realities, I have concluded that in order to embrace the refugee's political commitment, which is based on gratitude, one must also know how easily the responsibility can be broken. Adherence to accountability is notably contingent on refugees being treated with compassion and common sense that recognizes their inherent worth as persons.

**Keywords:** refugee; political obligation; gratitude; fairness; Simmons; Nozick; Rawls; Hart; Card

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## INTRODUCTION

The Civil liberties of their own inhabitants must be respected. Because of the gravity of the dangers, residents may be forced to depart their country and seek safety elsewhere if governments are unable or unable to achieve this. If this were to happen, another country would have to step in to preserve the refugees' fundamental rights . This degree of protection is known as “international protection”. The 1951 Refugee Convention and its 1967 Protocol form the foundation of the worldwide protection system. This framework is used in conjunction with regional accords and declarations that address refugee rights. International refugee law, on the other hand, does not exist in a vacuum. It is best understood in connection with international humanitarian law (the law of war), which extends back to the 1948 Universal Declaration of Human Rights.<sup>1</sup>

The work of the United Nations High Commissioner for Refugees is based on this broader corpus of international law (UNHCR). Following World War II, the United Nations General Assembly established the UNHCR to provide international protection for refugees and to work with states to develop long-term solutions to refugee challenges.

## LITERATURE REVIEW

I conducted a desk-based search using several databases, including Lexis, Westlaw, Brill, Cambridge, Oxford, and He in Online, to find the most important works on refugee law and how it is applied to determine a person's status. This was done to assess the state of refugee law application and research at the time. The second step was to conduct a Google Scholar search. I chose these materials because they can be used to identify the most critical regional, national, and worldwide protection challenges that asylum seekers face, as well as the need for additional research and/or development.

As a result, I divided the primary security concerns into two categories: (1) entering the nation and (2) accessing the asylum system. These two subjects are intended to depict the transnational travels of asylum seekers, including

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<sup>1</sup>J.Fitzpatrick, “Revitalising the 1951 Refugee Convention”, *Harvard Human Rights Journal*, vol. 9 (1996), pp.229-53.

their arrival, exit, and care received in the country of sanctuary. According to various legal studies, the most significant difficulties for refugees seeking asylum are the difficulty to enter the country and access to asylum processes for instance, Terlouw 2017: 247; 2013 Guild and Moreno-Lax; 2000 Legomsky . Furthermore, the majority of social science studies either focus on the experiences that migrants have while traveling to the country where they will seek asylum or on the experiences that migrants have once they arrive in the country where they will seek asylum for examples of social science studies that examine migrants' experiences while traveling, see Townsend and Oomen 2015; 2008, Khachani. The concerns at stake, as well as the rights of migrants and asylum seekers, differ greatly in these two circumstances, as this essay will demonstrate: Even fundamental rights, such as the right to life and the right to physical integrity, are jeopardized while traveling . However, once in the asylum country, formal entitlements such as legal status and social rights are the most pressing issues.

According to Derluyn (2012), an increasing number of studies have begun to emphasize the numerous risks and mistreatments that migrants may face when traveling (Derluyn 2012: 2; 2006, van Liempt and Doomernik; 2013: Gerard and Pickering 341–342; 2015 Pursey; 2018 Stranges and Wolff; 2018 Kleist; 2019 Ansems de Vries and Guild Martin and co. 2014). These studies have also begun to establish (Brian and Laczko, 2014). Those “whose involvement may range from simple misinformation in the hope of increasing their own profits to extreme cases of physical violence, armed robbery, or enslavement”, according to Collyer (2010), “whose involvement may range from simple misinformation in the hope of increasing their own profits”. This risk occurs from natural barriers that must be crossed to avoid patrolled sections of the border, such as oceans, deserts, or mountains.

There are various bodies of international law that outline the fundamental rights that all migrants enjoy over the world. International humanitarian law and human rights law are two examples of such laws. Both establish universal rights as well as protection for specific communities, such as children. However, some specialized restrictions are likely to apply exclusively to a specific subset of migrants. Examples include stateless persons, asylum seekers, and victims of human trafficking (Frelick et al.). 2016: 197– 198). Migrants' rights may be abused in a variety of ways during their dangerous journeys to the European Union. Violations of the rights to life, liberty, security, and freedom from torture and other cruel treatment are a few examples (ibid.: 198; Articles 7, 9, and 10 of the International Covenant on Civil and Political Rights).

### Research questions

- 1-what are the national and international obligations of the state toward refugees?
- 2-Are the refugees accorded the status of a citizen?
- 3-What are the laws governing the status of refugees in India?
- 4--Are the laws made for the rehabilitation of refugees in accordance with international humanitarian law?

### Research objectives

- 1-The present study analyses the laws and conventions with respect to the refugee rehabilitation process.
- 2-The study also aims at analyzing the factors which are responsible for the limitations of these conventions and protocols.
- 3-The findings of the study may be useful for the development of future laws in India with respect to refugees.

### International refugee law and standards

1951 Convention relating to the Status of Refugees

Refugees are governed by international law, which is based on the 1951 Convention on the Status of Refugees. It states that refugees should not be returned to a country where they risk losing their lives or their freedom (see box below: Who is included in the 1951 Convention's definition of a refugee? There is a definition of the term “refugee”? Who is included in the 1951 Convention's definition of a refugee? as well as the obligations that both states and refugees have to one another. The authors of the Convention focused on the numerous issues that refugees faced at the time it was created, which was not long after World War II.

The 1951 Convention refers to “refugees” as those who become refugees as a result of conditions that existed prior to January 1, 1951. States were required to specify whether they intended to apply this definition to all events or only those that occurred in Europe. The need to widen the historical and geographical scope of the 1951 Convention was made abundantly clear in the 1950s and early 1960s by new refugee crises unfolding all over the world. Between 1951 and 1961, several problems began. The 1967 Protocol to the Convention was transformed into a legal document to do this.<sup>2</sup>

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<sup>2</sup>Goodwin Gill, note 1; PirkkoKourula, *Broadening the Edges : Refugee Definition and International Protection Revisited (Hague, 1997)*.

### 1967 Protocol

Despite its close relationship to the 1951 Convention, the 1967 Protocol may be viewed as existing independently of it. The Protocol changes the Convention's time and place restrictions. The Protocol's parties agree to apply, without regard to space or time constraints, the main provisions of the 1951 Convention (Articles 2-34) to all persons falling within the Protocol's definition of refugee. The majority of countries have expressed a wish to sign both the Protocol and the Convention. They achieved this by underlining the significance of both agreements as critical foundations of the global system for refugee protection. The universality and inclusion of their message, as well as the basic challenges they confront, contribute to their persuasiveness. The 1951 Convention and the 1967 Protocol are modernized versions of the old asylum system.

### The Convention: Features, Scope, and Limits

Despite being written under the supervision of the United Nations, the wording of the Convention refers to events that occurred in Europe before to 1951, demonstrating that its rules were not generally applicable (UN). During the Convention-making process, this limiting language, which limited the Convention's applicability to mainly European migrants, garnered strong criticism. As a result, the Convention incorporated a geographic restriction as well as a time constraint. Millions of people were uprooted and a humanitarian catastrophe erupted on the Indian subcontinent following the post-colonial independence of India, Pakistan, and Bangladesh in 1947, 1971, and 1971, respectively. None of these three countries, for example, have accepted the Treaty's Convention. The geographic scope of the Convention had to be expanded due to Africa's independence, the emergence of new independent states, and the outbreak of civil wars. This prohibition was addressed in the 1967 Protocol.<sup>3</sup>

The Convention outlines the legal definition of a refugee, as well as their legal rights and the state's duty to protect them. It also specifies the refugee's responsibilities to the host country. The development of a unified definition of "refugee" is one of the Convention's most essential characteristics. People who are "unable or unwilling to return to their place of origin" and "have a well-founded fear of being persecuted on account of their race, religion, nationality, membership in a specific social group, or political attitude" are classified as refugees. This definition is a critical component of the Convention. This notion may have sufficed for the requirements of prior decades, but it ignores the people who are currently suffering as a result of lengthy wars and conflicts. If the asylum seeker has "a widespread fear of persecution," they may be in urgent danger. Because the term "persecuted" is not defined, the Convention does not apply to persons fleeing persecution as a result of war, armed conflict, human rights violations, non-state actor threats, food insecurity, or natural disasters. The omission of women from international protection against oppressors in the Convention has also been criticized. This is one of the criticisms leveled against it. Because the concept of protection is central to humanitarianism, the Convention's success must be reassessed in light of present realities.

The "non-refoulement" principle, which is regarded as the convention's essential tenet, is detailed in Article 33 of the 1951 Agreement. States that have ratified the Convention on the Status of Refugees are not permitted to deport or return refugees whose lives or freedoms would be jeopardized if they returned to their country of origin. This item applies to nations that have not ratified the treaty because it serves as the framework for customary international law. As a result, regardless of whether the country receiving them has ratified or joined the Convention, the principle of non-refoulement protects every refugee.<sup>4</sup>

As a result, the precarious situation of the Rohingya merits attention because it has recently sparked major concerns. This is especially critical considering the current political scenario. According to the UN, the Rohingya are the most persecuted ethnic group in the world. Because they are not considered citizens, the Rohingya are routinely targeted in Myanmar. Even though Bangladesh and India, where they fled for safety, have not formally granted them refugee protection, the UNHCR has recognized that they are refugees. Given that both citizenship and nationality are sovereign prerogatives, the following case raises an important question: Given that neither India nor Bangladesh have formally joined any of the international refugee agreements, how much protection do the laws now in existence in this region of the world provide asylum seekers?

The 1951 Convention on the Status of Refugees is just one of many international treaties, regional agreements, national laws, and judicial judgements that comprise the global refugee protection system. The Convention on Specific Aspects of Refugee Problems in Africa and the Cartagena Convention, both of which deal with Latin America and Mexico, are two of them. These two accords cover issues with refugees in the aforementioned regions. Diverse agreements broaden the scope of protection available to refugees in diverse countries by defining the term refugee broadly and incorporating the convention's guiding principles into national policy frame works.

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<sup>3</sup>A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), 170179.

<sup>4</sup> Claudia Card, "Gratitude and Obligation," *American Philosophical Quarterly* 25:2 (1988): 124.

### **International humanitarian law**

Prior to human rights and refugee law, there was international humanitarian law, sometimes known as the laws of war or armed conflict. It seeks to minimize combat techniques and consequences, as well as the impact of armed conflict on those who are either not involved in it or have stopped participating. International humanitarian law is comprised of two Additional Protocols from 1977 and four Geneva Conventions from 1949. These treaties were all ratified in 1977. Civilians who do not take part in hostilities must be treated with respect, protected from the ravages of conflict, and offered unbiased relief, according to international humanitarian law. This should be the case regardless of whether the individuals in question have been relocated. Because many refugees and displaced people are caught up in internal or external armed conflict, the concepts presented in this article can also help to protect them. When engaged in armed conflict, both government forces and non-state armed organizations must follow international humanitarian law. War crimes, often known as crimes against humanity, are the most serious violations of international humanitarian law. According to Article 1F of the 1951 Convention, anyone who is suspected of committing "war crimes" must be denied refugee status. This decision must take into account both international criminal law and international humanitarian law.<sup>5</sup>

### **The roles and responsibilities of States**

The state's first role is to address the underlying causes of forced relocation. People must have access to security, justice, and equal opportunity in order to break the violence, abuse, and prejudice that can lead to eviction. Furthermore, the rule of law must be strengthened. States that ratify the 1951 Convention or the 1967 Protocol commit to protecting refugees on their territory and under their jurisdiction in accordance with the principles outlined in these international legal treaties. Furthermore, states believe that refugees should be granted the rights guaranteed by international human rights treaties. The norm of non-refoulement is a requirement of international customary law and, as such, is binding on all governments, including those that are not parties to the Convention or the Protocol. This is due to the fact that the concept is regarded as a standard in international customary law. When it comes to providing refugee protection and long-term solutions, as well as establishing and maintaining national asylum systems based on the rule of law, the executive, legislative, and judicial branches of government complement one another in their roles and responsibilities. Municipal and regional governments play an important role in the overall picture; the federal government is not the only one with these obligations.

When governments, particularly those in developing countries, are forced to accommodate a large number of refugees for a lengthy period of time without having adequate resources, international coordination is critical. This is one of the situations in which international cooperation is critical. Large refugee influxes and lengthy refugee crises place significant strain on governments that welcome refugees. Other nations can make a significant contribution by participating in refugee resettlement projects and providing assistance, including financial and technical assistance.

### **India's stand on the refugee crisis**

Since its independence in 1947, India has accepted migrants from neighboring countries. Among those who fled the partition from the former British Indian territories that are now Pakistan and Bangladesh were those who fled Tibet in 1959, the Chakma in the early 1960s, others from Bangladesh in 1965 and 1971, the Sri Lankan Tamils in the 1980s, and, most recently, the Rohingya in Myanmar. India is accused of accepting 400 000 refugees from eight different nations in 1992. According to the Union Ministry of Home Affairs, there were 58,843 Sri Lankan refugees living in 108 camps in Tamil Nadu and 54 camps in Odisha as of January 1, 2021, and 72,312 Tibetan refugees in India.

Despite the lack of a national refugee statute, Jawaharlal Nehru's 1959 principles have long governed India's reception of refugees from neighboring countries: Because the refugee issue is a bilateral one, refugees should return to their country of origin once conditions have returned to normal. We will welcome refugees with kindness. Despite the lack of a formal statute, the Indian Supreme Court upheld the government's obligation to protect refugees by citing Articles 14 and 13 of the International Covenant on Civil and Political Rights.

India has neither ratified the 1951 Refugee Convention nor its 1967 Protocol nor has it enacted comprehensive refugee legislation. Instead, it focuses on refugees primarily at the political and

## **CONCLUSION**

The challenges posed by the modern-day refugee crisis demand a collaborative approach of the international community. In today's contemporary era, where the majority of countries have adopted the democratic form of governance, the

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<sup>5</sup>*Roberta Cohen and Francis Deng, Masses in Flight: The Global Crisis of Internal Displacement (Washington, 1998); Wendy Davies, Rights Have no Borders: Internal Displacement Worldwide (Oslo, 1998).*

achievement of democratic principles of equality and brotherhood is still not achieved, which is evident from the treatment of refugees by these democratic nations. Merely signing the international protocols has never led to their adherence. The need of the hour is to strike a balance between the interests of the nation and the fundamental human rights of the refugees. The United Nations Global Compact on Refugees (GCR) provides a comprehensive framework calling for international cooperation, burden sharing, and

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