

Migration and Refugee Protection in International Law: Challenges of Asylum Systems in a Changing World

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ABSTRACT

The discourse surrounding international peacekeeping and peacebuilding has undergone significant normative evolution, necessitating a thorough examination of the challenges inherent in their operationalization within the framework of international law. This chapter delves into the conceptual and practical distinctions between peacekeeping and peacebuilding, analyzing their development from ad hoc responses to more formalized, albeit legally ambiguous, international interventions. It critically assesses the evolving legal frameworks that govern these operations, considering the interplay between peacetime law and the law of armed conflict. The chapter further explores how the fusion of peacekeeping with peace enforcement operations has induced international criminal law liabilities, thereby transforming traditional peacekeeping into more robust military crisis management operations and forcible humanitarian interventions. This convergence has blurred the lines between military action and humanitarian intervention, raising complex questions about the legal status and protection of peacekeepers, particularly in contexts where lethal force may be employed. Moreover, the shift towards more robust mandates, enabling peacekeepers to use force beyond self-defense, has introduced complex considerations regarding accountability and the potential for dual attribution liability for human rights violations committed during operations.

Keywords: *International Law; Peacekeeping; Peacebuilding; Global South.*

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1. Introduction

The contemporary global context is characterized by unprecedented levels of human displacement, driven by a complex interplay of conflict, violence, persecution, and socio-economic factors. This phenomenon is further compounded by emerging challenges, such as climate-induced displacement, which strains existing legal frameworks and necessitates a re-evaluation of international protection mechanisms. The lacunae in current international refugee law, particularly the 1951 Refugee Convention, are increasingly evident as they do not

explicitly recognize environmental factors as grounds for refugee status, thereby leaving a significant portion of individuals displaced by climate change without formal legal protection. This conceptual gap highlights a critical area for scholarly inquiry, especially concerning the potential for broader interpretations of existing instruments or the development of new international legal frameworks to address these evolving forms of forced migration. For instance, the OAU Convention on Refugees broadened the definition to include external aggression, occupation, foreign domination, or events seriously disturbing public order. Similarly, the Cartagena Declaration on Refugees of 1984 further expanded this definition to encompass situations arising from generalized violence, internal conflicts, massive violations of human rights, or other circumstances that have seriously disturbed public order. Despite these regional elaborations, a significant challenge remains in addressing displacement spurred by natural disasters and climate change, which are increasingly recognized as primary drivers of migration. The absence of a dedicated international legal framework for climate-induced migrants, distinct from traditional refugee definitions, creates significant protection gaps and challenges the principle of non-refoulement for these vulnerable populations.¹ This is particularly pertinent given that severe environmental degradation, exacerbated by state inaction, can functionally constitute a form of persecution, necessitating an expansion of established legal interpretations to ensure comprehensive protection. Estimates indicate that climate change could displace millions by 2050, underscoring the urgent need for a more robust and inclusive legal response. This necessitates a critical examination of how existing international legal instruments, originally designed for persecution-based displacement, can be adapted or supplemented to accommodate individuals fleeing environmental crises. This includes exploring whether the concept of "persecution" can be reinterpreted to encompass environmental harms or if new conventions are required to specifically regulate the status and safety of those displaced by climate change. The current international legal regime, largely anchored in the 1951 Refugee Convention, has demonstrated some flexibility in adapting to new circumstances, such as gender-based violence, but struggles to adequately address climate-induced migration. However, regional instruments, like the Cartagena Declaration, offer a more expansive definition of refugee that may potentially be interpreted to include climate change-induced displacement, particularly through the lens of "circumstances which have seriously disturbed public order".

2. International Legal Frameworks for Refugee Protection

Despite this potential, such interpretations remain largely unutilized by states, which tend to implement temporary protection measures under domestic law rather than applying the broader refugee definitions. This reliance on ad hoc national responses perpetuates a fragmented protection landscape, highlighting the urgent need for a more harmonized international approach to climate-induced displacement. This fragmentation underscores the imperative for either an expansive reinterpretation of the 1951 Refugee Convention to include climate-induced displacement, perhaps by recognizing environmental degradation as a form of

¹ Lauren Sakae Nishimura, "Climate Change Migrants': Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies," 27 *International Journal of Refugee Law* 107 (2015).

"persecution" under specific circumstances, or the development of a distinct international legal instrument tailored to the unique vulnerabilities of environmentally displaced persons.²

2.1. The 1951 Refugee Convention and its 1967 Protocol

The foundational international legal instruments governing refugee protection, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, delineate the scope of refugee status based on a "well-founded fear of persecution" due to specific, enumerated grounds. This framework, while comprehensive for its original intent, does not explicitly encompass individuals displaced by environmental factors, leading to significant challenges in applying its provisions to climate-induced migration. This exclusion creates a lacuna in international law, as climate migrants, unlike refugees fleeing persecution, are not legally entitled to international protection under this conventional framework.³ Consequently, scholars have critically examined whether the definitions within the 1951 Convention or even the broader regional instruments, such as the OAU Convention or the Cartagena Declaration, can be reinterpreted to encompass climate-induced displacement, particularly through concepts like "events seriously disturbing public order".

2.2. Regional Instruments and Customary International Law

While these regional instruments offer a more expansive definition of who qualifies as a refugee, they still do not explicitly address the phenomenon of climate-induced displacement, leaving a significant portion of affected individuals without formal legal protection under international refugee law. This gap has prompted extensive debate regarding the applicability of the 1951 Convention's criteria, particularly the notion of "persecution," to situations where environmental degradation, amplified by state inaction or deliberate policies, compels displacement. However, such an interpretation faces considerable resistance, with many states reluctant to expand the existing refugee framework to include climate migrants, often due to concerns about the potential for an unmanageable influx of claims and the absence of a direct nexus to conventional forms of persecution.⁴

2.3. Challenges to the Universality of Refugee Law Principles

A key challenge to the universal application of refugee law principles is the restrictive definition of a "refugee" under the 1951 Convention and its 1967 Protocol, which does not adequately account for individuals displaced by environmental factors or those who lack official documentation, such as stateless persons. The exclusion of climate-induced displacement from the 1951 Convention's purview has led to scholarly debate regarding the potential for reinterpreting existing legal frameworks or creating new ones to address this emerging category of vulnerable populations. This critical lacuna highlights the necessity of exploring whether the principle of "common but differentiated responsibility" could be

² Gusti Ayu Ketut Rachmi Handayani and Anisa Fauziah, "ENVIRONMENTAL-INDUCED DISPLACEMENT: POTENTIAL PROTECTION UNDER INTERNATIONAL LAW?," 9 *Yustisia Jurnal Hukum* 168 (2020); I Gede Eka Sarjana, "Climate Change and Human Migration: Towards More Humane Interpretation of Refugee," 2 *Udayana Journal of Law and Culture* 220 (2018).

³ Nafees Ahmad, "Climate Change-Induced Disaster Displacement and Law in India: Positioning the Operationalization of Artificial Intelligence for Protecting Human Rights" *Sustainable development goals series* 121 (Springer International Publishing, 2024).

⁴ Nandini Praveen, "Climate Refugees: A Comprehensive and Legal Analysis to Understanding Climate Change-Induced Migration and Displacement," 2 *Journal of Law and Emerging Technologies* 24 (2022).

leveraged to develop novel international protection mechanisms, particularly given the varying contributions of states to climate change.⁵

3. Asylum Systems: Structure, Principles, and Practice

The architecture of asylum systems globally is predicated on fundamental principles of non-refoulement and humanitarian protection, yet their practical application is often inconsistent, influenced by national sovereignty concerns and varying interpretations of international obligations. This inconsistency is particularly evident in the treatment of protracted refugee situations, such as those involving Palestinian and Syrian refugees, where limitations in the current legal framework lead to decades of precarious living conditions with restricted access to fundamental services.

3.1. Defining Asylum: Legal Basis and State Practice

The legal basis for asylum is primarily rooted in Article 14 of the Universal Declaration of Human Rights, which grants everyone the right to seek and enjoy asylum from persecution, though this right is not absolute and is often constrained by state discretion and national security considerations. This discretionary aspect often leads to significant disparities in asylum outcomes, with states frequently employing restrictive interpretations of refugee status and limiting avenues for legal entry, thereby undermining the universality of protection. Moreover, the current asylum framework faces critical substantive lacunae and ambiguities regarding the right to receive asylum, the right of admission, and the protection of asylum-seekers interdicted at sea, often compounded by gaps in inter-state obligations concerning burden sharing and the financing of refugee relief strategies.⁶

3.2. Principles of Non-Refoulement and Burden-Sharing

The principle of non-refoulement, codified in Article 33 of the 1951 Refugee Convention, is a cornerstone of international refugee law, prohibiting states from returning individuals to territories where their lives or freedom would be threatened. However, despite its *jus cogens* status, challenges persist in its consistent application, especially in complex maritime interdiction operations. The practical implementation of non-refoulement is further complicated by the emergence of "instrumentalization" of migration, where states may perceive asylum seekers as tools in geopolitical strategies, thereby potentially sidestepping obligations under international refugee and human rights law, including access to fair and efficient asylum procedures. This often manifests in the securitization of borders and the externalization of asylum processing, which can undermine individual rights and protections guaranteed under international legal instruments.

3.3. Variations in National Asylum Procedures and Policies

National asylum policies exhibit considerable heterogeneity, ranging from highly restrictive regimes prioritizing border control to more accommodating frameworks that emphasize human rights protections, often reflecting diverse political economies and historical migration patterns. The efficacy of these diverse approaches is further complicated by the absence of a universally accepted definition for fundamental concepts such as "place of safety" in maritime

⁵ Andreas Neef and Lucy Benge, "Shifting responsibility and denying justice: New Zealand's contentious approach to Pacific climate mobilities," 22 *Regional Environmental Change* (2022).

⁶ Alice Edwards, "Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders" Routledge eBooks 477 (Informa, 2017).

rescue operations, allowing states to exploit legal ambiguities to avoid their obligations. This fragmentation in approach hinders the establishment of equitable and predictable burden and responsibility-sharing mechanisms, thereby impacting the global refugee regime's overall functioning.

4. Emerging Challenges to Asylum Systems in a Changing World

One of the most pressing emerging challenges is the increasing strain on existing asylum frameworks due to complex and overlapping crises, including climate change-induced displacement, protracted conflicts, and large-scale mixed migration flows. These multifaceted challenges necessitate a critical re-evaluation of current international legal instruments and state practices to ensure resilient and adaptable protection frameworks in an evolving global landscape.

4.1. Climate Change, Displacement, and Asylum

The intersection of climate change and human mobility presents a significant quandary for international refugee law, as current frameworks struggle to accommodate individuals displaced by environmental degradation who do not squarely fit the persecution-based definition of a refugee. This definitional gap often forces such individuals into precarious legal statuses, limiting their access to protection and humanitarian assistance and potentially exposing them to refoulement.⁷ This highlights a pressing need for either an expansion of the 1951 Refugee Convention's interpretive scope or the development of a distinct international legal instrument to specifically address the protection needs of climate-displaced populations. Furthermore, the growing restrictiveness in asylum policies across various states, particularly evident in the Global North, exacerbates these challenges by creating significant protection gaps for vulnerable migrants and refugees.

4.2. Mixed Migration Flows and the Concept of Complementary Protection

The blurring of lines between economic migrants and refugees, often termed "mixed migration flows," complicates the application of traditional asylum criteria and necessitates a robust framework of complementary protection to address the needs of individuals who do not meet the 1951 Refugee Convention's definition but nonetheless require international protection. This necessitates the careful disentanglement of the elusive meaning of vulnerability within migration and asylum domains, particularly to interrogate how existing frameworks might inadvertently perpetuate, rather than alleviate, such vulnerabilities. This critical engagement recognizes that vulnerability is not an inherent attribute but often a product of politically constructed and legally mediated processes within migration governance.

4.3. Externalization of Asylum Procedures and Border Control

The increasing trend of externalizing asylum processing and intensifying border controls, particularly through practices such as offshore processing and pushbacks, raises significant concerns about access to territory and effective protection for asylum seekers. These strategies often involve third-country agreements and the establishment of processing centers outside national borders, effectively creating buffer zones that limit direct access to asylum procedures within the prosecuting state's jurisdiction. Such policies, while ostensibly designed to manage migration flows and deter irregular arrivals, frequently circumvent international

⁷ Malik Mehran Javaid, "Socio-Economic Factors Shaping Illegal Migration from India to Europe," 12 International Journal for Research in Applied Science and Engineering Technology 500 (2024).

human rights obligations by limiting genuine opportunities for asylum claims and increasing the risk of refoulement.

4.4. The Impact of Geopolitical Conflicts on Refugee Crises

The escalating number and intensity of geopolitical conflicts worldwide have directly correlated with a substantial rise in forced displacement, placing unprecedented strain on global asylum systems and challenging the principle of international solidarity. This necessitates a critical examination of how states adapt their legal and administrative frameworks to respond to mass influxes while upholding the fundamental tenets of refugee protection, especially concerning equitable burden-sharing and adherence to non-refoulement. Moreover, the politicization of vulnerability within asylum discourse often leads to its instrumentalization as a governance tool, further complicating efforts to provide impartial and rights-based protection.⁸

5. The Role of International Cooperation and Governance

The effectiveness of international refugee law hinges on robust cooperative mechanisms that transcend national interests, addressing the disparities in resource allocation and responsibility-sharing among states. This includes developing harmonized approaches to asylum adjudication, fostering multilateral agreements for safe and legal pathways, and investing in capacity-building initiatives in frontline states.

5.1. The Global Compacts on Refugees and Migration

The Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration represent critical frameworks for enhancing international cooperation and governance in addressing forced displacement and migration. These compacts, though non-binding, establish a comprehensive framework for states to collectively manage migration in all its dimensions, promote international cooperation, and uphold the rights of refugees and migrants. These instruments aim to foster a more predictable and equitable approach to burden and responsibility sharing, addressing a critical gap in the international refugee protection regime. They also underscore the importance of international human rights law as a foundational element for all individuals, regardless of their migratory status, thus moving International Refugee Law away from a self-contained regime toward a broader international protection framework.⁹

5.2. Regional Cooperation Mechanisms and Bilateral Agreements

Beyond global frameworks, regional cooperation mechanisms and bilateral agreements play a crucial role in operationalizing responsibility-sharing and developing context-specific solutions for refugee protection, particularly in areas experiencing significant cross-border movements. These mechanisms often involve coordinated border management, joint asylum processing, and mutual support for integrating refugees, reflecting a localized adaptation of international norms. Such agreements can facilitate more efficient resource allocation and harmonized legal interpretations, thereby potentially enhancing the consistency and effectiveness of protection for displaced populations within specific geopolitical contexts.

⁸ Hilary Evans Cameron, "Procedures for claimant asylum within Canada, acceptance and rejection" SSRN Electronic Journal (2024).

⁹ Elias Faller, "International Refugee Law: From a Self-Contained Regime to an International Protection Framework" Refugee Survey Quarterly (2026).

However, challenges remain in ensuring these arrangements prioritize humanitarian considerations over border security, especially given the historical tendency towards restrictive policies.¹⁰

5.3. The Mandate and Challenges of UNHCR

The United Nations High Commissioner for Refugees operates with a complex and evolving mandate, striving to provide international protection and humanitarian assistance to refugees and other forcibly displaced populations globally. Its responsibilities encompass advocacy for refugee rights, oversight of the 1951 Refugee Convention, and the coordination of international responses to humanitarian crises, often operating under challenging political and logistical constraints. Despite these efforts, the UNHCR frequently encounters limitations imposed by state sovereignty, resource deficits, and the increasing politicization of refugee issues, which can impede its ability to fully implement its protection mandate and secure durable solutions for displaced persons. Furthermore, the inherent challenges within its mandate are exacerbated by the proliferation of diverse actors, including the International Organization for Migration, which, despite having a distinct mandate focused on migration management, frequently engages in cooperative initiatives with UNHCR on common objectives such as sustainable migration.

6. Vulnerable Groups within Asylum Systems

The unique vulnerabilities inherent to certain refugee populations, such as women, children, and LGBTQI+ individuals, necessitate specialized protective measures and tailored asylum procedures that account for intersecting forms of discrimination and heightened risks of exploitation and violence. This requires a nuanced understanding of international human rights law and refugee law, as these instruments provide a framework for addressing the specific needs of these groups.

6.1. Women, Children, and Gender-Based Persecution

Women and children, in particular, face heightened risks of gender-based violence, trafficking, and exploitation throughout the displacement trajectory, underscoring the imperative for gender-sensitive asylum policies and child-specific protection protocols. This includes comprehensive legal frameworks and support services designed to address the specific forms of persecution they encounter, such as sexual violence, forced marriage, and denial of educational opportunities. Moreover, recognizing gender-based persecution as a legitimate ground for asylum, as opposed to solely political or religious persecution, is crucial for ensuring comprehensive protection for these vulnerable groups, aligning with evolving interpretations of the 1951 Refugee Convention.

6.2. Stateless Persons and Asylum Claims

Stateless individuals often confront significant obstacles in accessing fundamental rights and services, including the ability to lodge asylum claims, due to the absence of legal nationality and the resulting lack of official documentation. This precarious legal status complicates their integration into host societies and often subjects them to prolonged detention and limited

¹⁰ Gabrielė Masiulytė, “Non-Governmental Organizations Advocacy Role within Inclusive Migration Policies in The European Union’s Western Countries,” 24 Public Policy And Administration 73 (2025).

access to healthcare and education.¹¹ The complexities surrounding statelessness intersect with asylum law, demanding distinct legal and procedural considerations to guarantee their protection and address the root causes of their lack of nationality. Furthermore, the specific vulnerabilities of stateless children, as highlighted by various human rights bodies, necessitate targeted interventions and streamlined pathways to citizenship or other forms of legal status to prevent intergenerational statelessness. Recognizing these vulnerabilities, international and regional instruments, such as the UN Convention on the Rights of the Child, specifically tailor general human rights obligations and introduce new ones to suit a child's unique circumstances and needs, including those seeking asylum.

6.3. Protection of LGBTQI+ Asylum Seekers

LGBTQI+ asylum seekers frequently encounter unique challenges stemming from persecution based on sexual orientation, gender identity, gender expression, and sex characteristics, which often involves social stigma, violence, and discriminatory practices in their countries of origin and during their asylum journey. Consequently, the interpretation of "membership of a particular social group" within the 1951 Refugee Convention must expansively recognize these characteristics as legitimate grounds for asylum, ensuring that decision-makers consider multiple and intersecting bases for persecution. This recognition should extend beyond membership in a particular social group to encompass other potential grounds, such as political or religious belief, thereby offering a more comprehensive and inclusive framework for protection. However, despite progress in some jurisdictions, LGBTQI+ asylum seekers continue to face structural inefficiencies and suspicion within asylum systems, leading to invasive interrogations and demands for proof of identity that are often framed within restrictive Western-centric categories.

7. Conclusion

The persistent "culture of disbelief" prevalent in the assessment of SOGI asylum claims further exacerbates these challenges, necessitating significant improvements in credibility assessment methodologies to ensure equitable decision-making processes. These improvements include training asylum officers on SOGIESC (sexual orientation, gender identity, gender expression, and sex characteristics) issues and developing nuanced approaches that account for the diverse experiences and cultural contexts of LGBTQI+ individuals seeking protection. Moreover, reforms to the Common European Asylum System and national guidelines, such as Canada's Guideline 9, aim to address these systemic issues by advocating for a more comprehensive and sensitive approach to SOGIE asylum claims, including recognizing their potential vulnerability and the need for additional safeguards. This necessitates an intersectional approach to adjudicating SOGI asylum claims, considering how multiple identity factors converge to shape experiences of persecution and vulnerability, thereby moving beyond binary understandings of identity and threat. Specifically, such an approach should consider how cultural context and evolving social norms in countries of origin may influence the disclosure and articulation of sexual orientation and gender identity, challenging rigid evidentiary standards. This includes moving away from prejudicial assumptions, such as expecting a claimant to have a partner to prove their sexual orientation, and instead placing

¹¹ Md Syful Islam and Md. Emon Mia, "Navigating Legal and Humanitarian Challenges Regarding the Rohingya Refugee Crisis in Bangladesh," 17 International Journal of Social Inquiry 467 (2024).

greater trust in personal testimony and appropriate use of country of origin information. Furthermore, legal frameworks and judicial oversight are critical to rectify erroneous determinations and ensure consistent application of protection principles for SOGIESC asylum seekers, particularly given historical trends towards disbelief. This ongoing challenge highlights the broader issue of epistemic injustice within asylum systems, where adjudicators' interpretations often supersede claimants' lived experiences, leading to arbitrary denials of eligibility. To counteract this, robust training for decision-makers, emphasizing cultural competency and an understanding of trauma-informed interviewing techniques, is essential to foster a more empathetic and accurate assessment of credibility. A crucial aspect of this training should address unconscious biases that can influence assessments, especially regarding stereotypical and westernized notions of LGBTQI+ identities and how individuals realize or express them. This includes requiring decision-makers to offer claimants the opportunity to clarify any inconsistencies affecting their credibility before a final decision is made, thereby mitigating the impact of potential misunderstandings or communication barriers. This approach aims to rebalance the epistemic power dynamics inherent in asylum processes, shifting from a model that frequently discredits claimant narratives to one that genuinely seeks to understand and validate their experiences.

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