
HUMANITARIAN AND REFUGEE LAW: INTERNATIONAL LEGAL TOOL TO DEAL WITH FORCED MIGRATION

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ABSTRACT

In light of the massive influx of refugees from Eastern Europe during World War II, the concept of a "displaced person" emerged. It initially referred to those who had been taken against their will from their country of origin and included captives, slaves, and refugees. As an outcome of the surge in asylum seekers, the problem of forced international migration has reached concerning proportions and is a major threat to the international community.

According to a report of the United Nations High Commissioner for Refugees, by the end of 2022, there were over 108.4 million people that had been forcibly displaced globally as a result of a wide range of factors, such as violence, conflict, persecution, violations of human rights, or major public upheaval. Additionally, one of the major hazards of the 21st century remains the effects of climate change. Global warming has led to temperatures and sea levels to go up, which confronts governments with a risk of mass relocation for which there are insufficient procedures for resolution in the existing international legal frameworks. Notably, conflicts and extreme weather occurrences are the main causes, forcing over 30 million people from their homes.

Keywords: Refugee, forced migrant, climate.

INTRODUCTION

According to international law, a refugee is a person who is outside of their place of origin and needs international protection because there are grave risks to their life, physical safety, or freedom there.¹ The incapacity to seek safety within their own country is the main reason of this interest for protection², which often results from circumstances such as widespread persecution-the expulsion of Jews from Spain in the late 15th century³being one such instance. Mass refugee flows are usually the result of major events such as wars, natural catastrophes, or blatant breaches of human rights.⁴

Numerous treaties, customary international law, general legal concepts, and national laws all contribute to the framework of international refugee law. The 1951 Convention associated to the Status of Refugees and its 1967 Protocol are important foundational agreements that served as the basis for the creation of subsequent regional legislation. The worldwide refugee protection regime, which is the foundation for the UNHCR's operations, is bolstered by international Human rights law.⁵

RESEARCH METHODOLOGY

The research paper i.e Humanitarian and Refugee Law- International legal tool to deal with forced migration is purely based on Secondary source of data such as Articles, data, Previous research papers, modules, Internet searches, Electronic statistics, Journal paper, websites, Published sources as well as unpublished sources, Preferrable sections/ acts under law relating to refugee and forced migrants are used to analyze and emphasize on the face value of refugees, forced migrants with respect to legal context.

¹ The refugee concept under international law Global compact for safe, orderly and regular migration, UNHCR, 1, (2018), <https://www.unhcr.org/sites/default/files/legacy-pdf/5aa290937.pdf>.

² *Id* at 1.

³ Eman Amad, 'International Refugee Law and International Humanitarian Law: Regime Interaction and Overlap', DLP Forum, (March 9, 2023), <https://www.dlpforum.org/2023/03/09/internationalrefugee-law-and-international-humanitarian-law-regime-interaction-and-overlap/>.

⁴ UNHCR, [https://www.jointdatacenter.org/literature_review/global-trends-forced-displacement-in2019/#:~:text=The%20number%20of%20forcibly%20displaced,and%203.6%20million%20Venezuela ns%20displaced,\(last visited Feb, 1, 2024\)](https://www.jointdatacenter.org/literature_review/global-trends-forced-displacement-in2019/#:~:text=The%20number%20of%20forcibly%20displaced,and%203.6%20million%20Venezuela ns%20displaced,(last%20visited%20Feb,1,2024)).

⁵ UNHCR, *supra* note 1.

A. Who are Refugee?

According to the 1951 Refugee Convention, a "refugee" is an individual who has a legitimate fear of being persecuted because of their race, religion, nationality, membership in a specific social group, or political opinion, and who seek safety outside of their country of origin.⁶ States have no obligation to offer assistance or protection in such situations and the Convention also does not extend its safeguards to people who are escaping sweeping violence or internal unrest in their native countries.⁷

Refugee Protection under International Law: Legal Consideration

A two-tiered safety net is available to refugees escaping armed conflict under the auspices of international humanitarian law.

- i. They must first abstain from direct combat since they are the only ones who can be protected under the law.
- ii. Additionally, in recognition of refugees' position as foreigners and the unique vulnerabilities associated with their circumstances, international humanitarian law grants them certain rights and protections.⁸

General Protection

When followed, international humanitarian law seeks to avert civilian displacement and ensure their safety while displaced.

a. Explicit Prohibition of Displacement

In keeping with the general goal of reducing civilian exposure to the effects of hostilities, the Fourth Geneva Convention expressly restricts parties engaged in a war from displacing individual outside or inside of occupied regions. This includes relocations into the occupying

⁶ UNHCR, <https://emergency.unhcr.org/protection/legal-framework/refugee-definition> , (last visited Feb, 1,2024)

⁷ Kay Hailbronner, Non-Refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking? , 26, Va. J. Int'l L, 859, (1986), <https://heinonline.org/HOL/P?h=hein.journals/vajint26&i=869>.

⁸ Humanitarian Law, Human Rights and Refugee Law– Three Pillars, International committee of the Red Cross, APRIL, 23, 2005, <https://www.icrc.org/en/doc/resources/documents/statement/6t7g86.htm>.

power's territory or, more typically, into states that are not parties to the agreement. The restriction has a limited exception that allows an occupying force to "evacuate" inhabitants from a particular region in the event that it is believed to be necessary for urgent military requirements or civilian security. Also, after hostilities in the region of concern ceased, the displaced individuals must be repatriated back as promptly as practicable.

b. Protection from Hostility Effects to Prevent Displacement

As violations of these laws frequently serve as the foundation for displacements in scenarios involving armed conflict, rules within international humanitarian law designed to protect civilians from the effects of hostilities serve a crucial part in preventing displacement. Particularly pertinent regulations are listed as follows:

- i. Prohibition of indiscriminate strikes and the targeting of civilians and civilian assets.
- ii. Duty to exercise prudence when conducting strikes in order to protect civilian casualties.
- iii. Prohibition of destroying essential resources required for civilian existence and of employing famine as an instrument of war.
- iv. Ban on waging retaliation on civilian populations and their possessions.
- v. Prohibitions against collective punishments which often take the form of home destruction that results in displacement—as well as regulations requiring all states and parties involved in a conflict to permit the free flow of relief supplies and other necessities that are crucial for civilian survival are also relevant.

Protection During Displacement

Individuals who are evacuated or relocated are entitled to safeguards and benefits due to the necessity of civilian displacement. As a result, guidelines control the manner in which evacuations are carried out, with an eye on transfers that are conducted in a manner that ensures adequate nourishment, safety, health, and hygiene. Individuals must be provided suitable accommodations throughout their displacement, and measures must be taken to keep family members close. These standards ought to be extended to situations of unlawful displacement,

even if they primarily pertain to scenarios during legal evacuations carried out for security or military necessity reasons.⁹

Particular Protection of Refugees

In international armed conflicts, refugees are protected by laws of foreign nationals on a party's territory in addition to additional safeguards targeted to protect them because of their position as refugees.

a. Protection on the territory of a conflicting party as foreigners

Within the territorial boundaries of a conflict party, refugees enjoy the safeguards provided by the Fourth Geneva Convention, which include:

- i. They can go from the area they are residing, else this would hamper the right of asylum state's interest.
- ii. The ongoing right to essential protections and privileges granted to non-citizens before hostilities broke out.
- iii. Guarantees about means of subsistence if the conflict party's control measures hinder them from being self-sufficient.

The Convention states that these are the strictest types of control that are allowed for foreign nationals, even if it acknowledges that the governing conflict party may intern or assign residency to the refugees if it is absolutely essential for security reasons.

In addition, a belligerent's ability to transfer aliens is restricted under the Fourth Convention. The clause that forbids sending a protected person to a country where they might be persecuted because of their political or religious views is especially important because it is a core expression of the non-refoulement concept.

b. Additional safeguards for refugees

Two additional specific regulations pertaining to the welfare of refugees are set forth in the

⁹ *Supra* note 8.

Fourth Geneva Convention.

- i. The initial provision stipulates that refugees shouldn't be regarded as hostile aliens, indicating that they ought not to be subject to control measures solely due to their nationality only. This recognition is based on the understanding that migrants sever their allegiance to their homeland and are not a threat to the nation they have moved to by default.
- ii. The second specified clause pertains to the precarious situation that refugees might find themselves in if the state from which they fled invades the state in which they sought refuge. In such instances, the occupying force can solely deport, arrest, prosecute, and find the refugees guilty of crimes committed after hostilities began. Alternatively, provided the rules of the now-occupied asylum state would have required their extradition during peacetime, they could be subjected to such measures for crimes unconnected to the conflict that were committed prior to the start of hostilities.

In accordance with Additional Protocol I of the Geneva Convention, those who were granted refugee status prior to the commencement of hostilities, either by means of internationally recognized agreements that the involved parties have accepted or by virtue of national laws of the host or residence country, are designated as "protected persons."¹⁰

B. What is Forced Migration?

International refugee law has developed through a variety of channels, including multilateral treaties, the activities of international organizations, and state practices, in reaction to the massive migrations of people that occurred during and after World War II. Non-refoulement is but one facet of this legal structure. A refugee has the right to be free from being forced to return to a country where their life or freedom would be in danger, according to Article 33 of the Refugee Convention. With the stature of customary international law, this principle serves as the foundation for refugee protection and is legally enforceable even for nations that have not ratified the Convention.¹¹

¹⁰ *Supra* note at 8.

¹¹ *Supra* note 7.

The current refugee system has a serious flaw in that it does not handle domestically displaced people, or those who have been uprooted but have not crossed international borders. One further shortcoming is that it does not include those who have been forcibly relocated abroad for reasons other than personal persecution, like forced migration brought on by military conflict, civil disturbances, or discriminatory acts.¹²

International legal framework for forced migrants: Principles and Application

The Commonwealth of Independent States (CIS) - This Charter directs attention to a significant international agreement that was approved in 1993 and that deals with matters pertaining to forced migration. The "recognized rules of international law and humanism" are specifically mentioned in the preamble of the CIS Treaty, which also underlines the "mandatory duty associated with international agreement in reference. to safeguarding human rights".

According to the treaty, a forced migrant is an individual who, even though they are a resident of the nation offering asylum, are compelled to exit the country where they are permanently residing because of violence directed at them or their family members, persecution in different forms, or actual risk of persecution due to their ethnicity or race, political beliefs, language, religion or membership in a certain social group, in the context of armed conflicts and inter ethnic tensions.

The CIS Treaty stipulates that "states of exit" must make it easier for people to flee areas where there are violent conflicts and tensions between ethnic groups. This entails making certain that refugees and forced migrants can easily leave and enter the territory of one of the parties. In addition to working to create a ceasefire and preserve public order during the evacuation process, these states also have a responsibility to guarantee the personal safety of evacuees and their belongings.

In addition, as per the terms of the CIS Treaty, the "party providing asylum" bears specific obligations, such as furnishing refugees and forced migrants with essential social and material

¹² Arthur C. Helton, Forced International Migration: A need for new approaches by the International community, 18, Fordham Int. Law J., 1625, (1995), <https://heinonline.org/HOL/P?h=hein.journals/frdint18&i=1645>.

support as well as assisting them find employment opportunities in compliance with the employment laws of each respective party.¹³

The 1951 International Refugee Convention- In this, contracting states are required by Article 33 of the convention to abstain from expelling or returning ("carefuller") refugees to areas in which their life or freedom would be in jeopardy due to factors like nationality, religion, or political opinion or membership in a specific social group. Also, the provisions of the convention have been expanded upon by a number of international instruments that specifically include the refusal of entry at borders as a fundamental component of the non-refoulement principle.¹⁴

Resolution 67(14) of the Council of Europe- It recommends that states guarantee that people are not subjected to measures such as denial of entry at borders, rejection,expulsion, or any other action that would compel them to return to or stay in a territory where they are subjected to persecution because of their nationality, religion, or political opinion or membership in a specific social group.¹⁵

In a similar vein, The 1967 United Nations Declaration on Territorial Asylum states that no one shall be subjected to actions such as border rejection, deportation from the territory where they are seeking asylum, or forced return to any state in which they may face persecution.¹⁶

The United Nations High Commissioner for Refugees (UNHCR)- It has worked to establish the non-refoulement concept as a preeminent standard of customary international law, notwithstanding nations' unwillingness to make commitments through treaties.¹⁷

Climate induced Forced migration

It is widely acknowledged that human activity is the primary driver of climate change, which poses possibly the greatest threat to future generations. Nonetheless, persons displaced by climate change or other environmental disasters have no legal protection under current

¹³ Helton, supra note 12, at1633-1635..

¹⁴ Helton, supra note 12, at 1624.

¹⁵ Hailbronner, supra note 7 ,at 863.

¹⁶ Hailbronner, supra note 7, at 864.

¹⁷ Hailbronner, supra note 7, at 867.

international law.¹⁸

The Intergovernmental Panel on Climate Change identified two different types of forced migration that are expected to occur in its most recent report on adaptation to climate change:

i. Migration in reaction to extreme weather events, which climate change is predicted to make more common.

iii. Migration brought on by "longer-term climate variability and change," with rising sea levels particularly affecting small island states.¹⁹

Climate induced forced migration: Legislative framework and challenges

a. Introduction to the 1951 Refugee Convention: Migrants Affected by Climate Change Have Limited Coverage

While some people who are displaced due to climate change may travel across international borders, most of them won't be eligible for protection under the laws that are in place right now.²⁰

Under international law, the great majority of migrants forced to migrate due to climate change will not be entitled for legal protection. As to the 1951 Convention's Article 1(2)(A), refugees are required to exhibit a "well-founded fear" of facing persecution from their home government due to several characteristics such nationality, religion, or political opinion or membership in a specific social group. This is problematic because, irrespective of these traits, all of a country's population are impacted by climate change.²¹

Additionally, because the nations most at risk from sea level rise are frequently not the main producers of the emissions causing climate change, climate migrants from less developed nations may find it difficult to demonstrate that they were persecuted within their own country. Furthermore, internal displacement-which is anticipated to account for the majority of early

¹⁸ Phillip Dane Warren, Forced Migration after Paris cop21: evaluating the "climate change displacement coordination facility" ,116, Colum. L. Rev., 2103-2104,(2016)
<https://heinonline.org/HOL/P?h=hein.journals/clr116&i=2195>.

¹⁹ Id 18, at 2108.

²⁰ Id at 18, at 2114..

²¹ Id at 18, at 2116.

climate-induced migration--is not adequately addressed by the 1951 Convention, which focuses particularly on refugees escaping one nation for another.²²

b. Relevant UN Agencies and Their Purposes

A number of UN agencies possess the capacity to tackle forced migration due to climate change; but, to effectively accomplish this, considerable modifications to the existing legal structures would be required. An outline of various UN bodies' mandates can be found in this section.

- i. The General Assembly:** The UN Charter's narrow mandate places restrictions on the General Assembly's authority, despite it being the primary democratic body within the organization. Operationally, the General Assembly is often limited to making recommendations and initiating inquiries.
- ii. The UNHCR, or Office of the High Commissioner for Refugees:** Although some people who are displaced due to climate change may travel across international borders, the UNHCR has a limited ability to assist them. As per The 1951 Refugee Convention, the UNHCR's main responsibility is to offer refugees international protection.

Those displaced by climate change would have to achieve the requirements for refugee status under the Refugee Convention, which is exceedingly uncertain, for the UNHCR to effectively handle climate-induced migration.

- iii. UNFCCC or United Nations Framework Convention on Climate Change:** The UNFCCC, which is overseen by the Conference of the Parties (COP), is the main international legislative framework for addressing climate change. The UNFCCC acts as a framework convention, establishing the foundation for further accords. The agreement mentions displacement in passing, but it postpones discussion of the specific coordinating mechanisms until later.
- iv. United Nations Security Council:** The council's main responsibility is to uphold world peace and security, which may include addressing migration brought on by climate change. The Security Council's actions must align with the goals and tenets of the UN, as

²² Warren, *supra* note 18, at 2116-2117.

stipulated by the Charter. Even though it is generally agreed upon that the Security Council has a great deal of latitude in applying Article 39, it may continue to employ Chapter VII powers, such as economic sanctions (under Article 41) and possibly the use of military force (under Article 42), if it were to conclude that migration caused by climate change poses a threat to peace, violates peace, or is an act of aggression.²³

FINAL REFLECTION AND SUGGESTION FOR FUTURE ACTION

The issue of forced migration brought on by hazards from the environment, armed conflict, and persecution represents a serious threat to human existence. But current legal frameworks, such the principle of non-refoulement and codified refugee law, are insufficient to adequately protect people escaping widespread violence. In fact, they provide protection to a restricted group of people who are at risk of being tortured. Rather than being seen as merely a duty, the principle of non-refoulement ought to be acknowledged as a basic international rule that is necessary to protect humanity.

As a result, it is critical to strengthen protections for forced migrants since a large number of people without houses may be at risk of maltreatment, prejudice, and willful human rights breaches. It is imperative to fortify these safeguards to guarantee that compelled migrants do not face capricious and unfair treatment.

²³ Warren, *supra* note 18, 2117-2120.