

## THE TRANSFORMATION OF THE REFUGEE CONCEPT IN INTERNATIONAL LAW

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### ABSTRACT

This article examines the historical development and transformation of the refugee concept in international law. Using a doctrinal legal research methodology supported by historical analysis, it explores the evolution of refugee protection from early international arrangements to the contemporary refugee regime established by the 1951 Convention and the 1967 Protocol.

The study demonstrates that refugee protection has progressively expanded through regional instruments, evolving interpretations and complementary protection mechanisms. At the same time, increasing migration-control measures, restrictive asylum policies and the securitization of migration have created significant barriers to access to protection.

The article argues that contemporary refugee law is characterized by a continuing paradox: while the legal scope of protection has broadened considerably, access to that protection has become increasingly contested in practice. It concludes that the effectiveness of the international refugee regime depends not only on the development of legal norms but also on ensuring meaningful access to existing protection mechanisms.

**Keywords:** Refugee law, international protection, forced displacement, asylum, migration control, refugee protection.

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## **1. INTRODUCTION**

Few concepts have shaped contemporary international protection regimes as profoundly as the concept of the refugee. Although forced displacement has accompanied human history for centuries, the legal recognition of refugees as a distinct category entitled to international protection is a relatively recent development. The modern refugee regime emerged in response to the large-scale displacement crises of the twentieth century and gradually developed into one of the most important branches of international human rights and humanitarian protection (Skran & Easton-Calabria, 2024).

The adoption of the 1951 Convention Relating to the Status of Refugees marked a turning point in this process (1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, 1951). For the first time, international law provided a common definition of a refugee and established a framework of rights and obligations intended to protect individuals who could no longer rely on the protection of their own states. The 1967 Protocol subsequently removed the Convention's temporal and geographical limitations, transforming what had originally been a response to post-war European displacement into a universal legal regime (Ballinger, 2025).

More than seventy years after the adoption of the Convention, however, the realities of forced displacement have changed significantly. Contemporary refugee movements are increasingly linked to internal armed conflicts, generalized violence, state fragility, protracted humanitarian crises and environmental pressures. Many of these situations do not fit neatly within the assumptions that shaped the refugee regime in the aftermath of the Second World War. As a result, international and regional actors have sought to adapt existing protection frameworks through broader interpretations, regional instruments and complementary protection mechanisms.

At the same time, the development of refugee law has not followed a simple path of continuous progress. While the scope of protection has expanded in many respects, access to protection has become increasingly contested. States have adopted stricter migration controls, reinforced border management policies and introduced various procedural restrictions that affect access to asylum. Consequently, contemporary refugee law is shaped by two parallel developments: the gradual

expansion of protection standards and the growing difficulty of accessing those protections in practice.

Against this background, this article examines the transformation of the refugee concept in international law from its early group-based origins to contemporary protection frameworks. It argues that the evolution of refugee law has been characterized by a continuing expansion of legal protection while, at the same time, access to protection has become increasingly restricted. To demonstrate this argument, the article first traces the historical development of the refugee concept and the emergence of a universal refugee regime. It then examines the expansion of refugee protection beyond the 1951 Convention before analyzing the principal challenges that continue to shape refugee protection in the twenty-first century (Barnett, 2002).

This article argues that the evolution of refugee law has been marked by a paradoxical development: while legal categories of protection have continuously expanded, practical access to protection has become increasingly contested.

## **2. LITERATURE REVIEW**

The evolution of the refugee concept has been widely examined in international refugee law scholarship. Since the adoption of the 1951 Convention Relating to the Status of Refugees, scholars have sought to explain both the legal foundations of refugee protection and the capacity of the refugee regime to respond to changing patterns of forced displacement (McAdam, 2006). While there is broad agreement regarding the central role of the Convention in the development of international refugee law, significant debate remains concerning the adequacy of existing protection frameworks in addressing contemporary displacement realities (Barnett, 2002).

One of the most influential contributions to the field comes from James C. Hathaway (Hathaway, 1984), whose work situates refugee protection within the broader framework of international human rights law. Hathaway argues that refugee law should not be viewed as an isolated legal regime but rather as part of a wider system of international protection designed to safeguard individuals whose fundamental rights can no longer be secured by their states of origin. His scholarship has significantly shaped contemporary understandings of refugee status determination and the normative foundations of refugee protection.

Similarly, Guy S. Goodwin-Gill (Goodwin-Gill, 2020; Goodwin-Gill, 2013) and Jane McAdam (McAdam, 2017; McAdam, 2018) emphasize the enduring importance of the 1951 Convention and the 1967 Protocol as the cornerstone of the international refugee regime. At the same time, they recognize that refugee law has developed through state practice, judicial interpretation and the growing influence of international and regional institutions. Their work highlights the dynamic nature of refugee law and the need to interpret protection standards considering evolving displacement realities.

A second strand of scholarship has focused on the limitations of the 1951 Convention framework and the subsequent expansion of refugee protection through regional and complementary mechanisms. While the Convention established the foundation of the contemporary refugee regime, scholars have increasingly recognized that many forms of forced displacement cannot be adequately captured by its individualized persecution model. In particular, regional developments in Africa and Latin America have attracted considerable academic attention. The 1969 OAU Convention and the 1984 Cartagena Declaration are frequently cited as examples of efforts to adapt refugee protection to realities characterized by generalized violence, armed conflict and large-scale population movements (1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, ("OAU Convention"), 1969) and the 1984 Cartagena Declaration (1984 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 1984). Rather than replacing the Convention framework, these instruments broadened its protective reach and demonstrated the capacity of refugee law to respond to diverse regional experiences (Skran & Easton-Calabria, 2024) (Goodwin-Gill, 2013).

This expansion of protection has also been examined through the emergence of complementary and alternative forms of protection. McAdam (2006) argues that international protection cannot be understood solely through the narrow lens of Convention refugee status and emphasizes the importance of broader human rights guarantees in addressing contemporary protection needs. Similarly, scholars have highlighted the growing significance of mechanisms such as *prima facie* recognition, subsidiary protection and refugee *sur place* status as responses to displacement situations that do not always fit neatly within the traditional refugee definition. These developments illustrate an

important shift in refugee law from a relatively rigid status-based approach toward a more flexible protection-oriented framework.

More recently, academic debate has increasingly concentrated on emerging forms of displacement and the challenges they pose to existing legal categories. McAdam's scholarship on climate-related displacement has drawn attention to the limitations of the traditional refugee definition in addressing environmental drivers of migration and the growing gap between contemporary displacement realities and existing legal frameworks (McAdam, 2018). Likewise, Betts has argued that the complexity of modern forced migration requires a broader understanding of international protection that extends beyond the strict boundaries of Convention refugee status. His concept of "survival migration" highlights situations in which individuals are compelled to leave their countries because of serious threats to their basic rights and security, even when those threats do not fall squarely within the Convention grounds for refugee recognition (Betts, 2016).

At the same time, another important body of scholarship has shifted attention from the expansion of legal protection to the growing obstacles that affect access to that protection. Scholars such as Costello have emphasized that contemporary refugee law cannot be assessed solely by examining the evolution of legal norms. Increasing restrictions on asylum procedures, border externalization policies and migration-control measures have fundamentally shaped the implementation of refugee protection in recent decades (Costello, 2018). This perspective has encouraged a broader understanding of refugee law as a field characterized not only by legal development but also by a continuing tension between humanitarian obligations and state sovereignty.

Although the existing literature provides extensive analysis of the historical development of refugee law, the expansion of refugee protection mechanisms and the emergence of new displacement challenges, these themes are frequently examined in isolation from one another. Much of the scholarship focuses either on the progressive broadening of legal protection or on the practical and political challenges affecting its implementation. Consequently, relatively limited attention has been devoted to examining the relationship between these two developments and the extent to which they have evolved simultaneously.

This article seeks to address that gap by analyzing the transformation of the refugee concept through both dimensions. Rather than treating legal development and implementation challenges as separate phenomena, it

examines how the expansion of refugee protection has occurred alongside the emergence of increasingly restrictive practices affecting access to protection. It argues that contemporary refugee law is characterized by a continuing paradox: while the scope of legal protection has expanded considerably since 1951, access to that protection has become increasingly contested in practice.

### **3. METHODOLOGY**

This study adopts a doctrinal legal research methodology to examine the historical development and transformation of the refugee concept in international law. Doctrinal legal research focuses on the systematic analysis and interpretation of legal norms, principles and institutional frameworks derived from primary and secondary legal sources (Smits, 2017). This methodological approach is particularly suitable for the present study because the evolution of refugee protection has largely been shaped through the development of international legal instruments, regional protection regimes, state practice and the interpretation of legal standards by international institutions. Since the article seeks to analyse how the legal understanding of refugeehood has evolved over time, doctrinal analysis provides an appropriate framework for identifying both continuity and change within international refugee law.

The research is based on a qualitative analysis of the principal international and regional legal instruments governing refugee protection. The study focuses on the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, which constitute the foundation of the contemporary refugee regime. In addition, the study considers the contribution of regional instruments, including the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration, to assess how refugee protection has evolved beyond the original Convention framework.

The study also employs a historical legal approach. The development of the refugee concept is examined within its historical context, beginning with the early refugee arrangements established under the League of Nations and continuing through the emergence of contemporary protection mechanisms. This approach allows the study to identify the legal and political factors that contributed to the gradual expansion of refugee protection over time.

Furthermore, relevant academic literature, reports of international organizations and leading scholarly contributions in the field of refugee law are reviewed to contextualize the legal developments examined in this article. Through the combination of doctrinal analysis and historical examination, the study seeks to evaluate how the refugee concept has evolved and to identify the principal challenges affecting refugee protection in the twenty-first century.

The central analytical focus of the study is the relationship between the expansion of legal protection and the practical accessibility of that protection. While much of the existing scholarship examines either the development of refugee protection norms or the challenges associated with their implementation, this study seeks to analyse these developments together. Accordingly, the findings are assessed not only from the perspective of legal evolution but also in light of the political and institutional factors that continue to influence access to protection in practice. This analytical framework allows the study to evaluate both the achievements and the limitations of the contemporary refugee protection regime.

## **4. FINDINGS**

### **4.1. From Group-Based Protection to a Universal Refugee Regime**

The contemporary refugee regime did not emerge as a fully developed legal system. Its foundations were laid gradually in response to a series of political crises that exposed the inability of existing legal structures to protect displaced populations. In its earliest form, refugee protection was neither universal nor based on a general legal definition. Instead, it was directed toward specific groups whose circumstances attracted international attention.

The aftermath of the First World War illustrates this point clearly. The collapse of empires, the redrawing of political borders and the emergence of new nation-states generated unprecedented levels of displacement across Europe and beyond. Large groups of individuals found themselves outside the protection of any effective state authority, creating a humanitarian and legal challenge that existing international mechanisms were unable to address (Hathaway, 1984; Goodwin-Gill, 2020).

Russian refugees fleeing the Bolshevik Revolution and Armenians displaced by persecution became among the first groups to receive

organized international attention. In response, the League of Nations established a series of refugee arrangements under the leadership of Fridtjof Nansen. One of the most significant innovations of this period was the introduction of the Nansen Passport, a travel document that enabled stateless and displaced persons to cross borders, obtain legal recognition and access a limited degree of international protection. Although modest by contemporary standards, the Nansen system represented the first institutional attempt to address refugee protection through international cooperation rather than purely domestic measures (Filipovski & Hoca, 2024; Hathaway, 1984).

At the same time, the early refugee regime remained fundamentally limited. Protection was granted to specific groups identified by nationality or political circumstances rather than through the application of a universal legal definition. As a result, refugee protection was selective, fragmented and heavily dependent on the political priorities of states. Individuals facing comparable risks could receive different treatment depending on whether they belonged to a recognized refugee category. This absence of a general legal framework exposed the weaknesses of the interwar protection system and demonstrated the need for a more coherent and universal approach to refugee protection (Ballinger, 2025; Skran & Easton-Calabria, 2024). The shortcomings of this system became increasingly evident during and after the Second World War. The scale of displacement across Europe far exceeded anything previously experienced. Millions of people were uprooted by war, persecution and shifting political borders. Existing arrangements proved inadequate to address a crisis of such magnitude. Under these circumstances, the international community recognized the need for a more coherent and permanent legal framework.

The establishment of the International Refugee Organization (IRO) and, subsequently, the Office of the United Nations High Commissioner for Refugees (UNHCR) reflected this changing understanding (İbraimi & Hoca, 2024). Refugee protection was no longer viewed solely as a humanitarian concern or an exceptional response to specific crises. It increasingly came to be regarded as a matter of international legal responsibility (Hoca, 2020).

A decisive step in this transition was the adoption of the 1951 Convention Relating to the Status of Refugees. Unlike earlier arrangements, the Convention introduced a general legal definition capable of identifying

refugees regardless of their nationality. At the same time, it established a framework of rights and obligations intended to provide a minimum standard of protection across participating states. For the first time, refugee protection was anchored in a comprehensive legal instrument rather than a collection of ad hoc responses to crises (McAdam, 2006). Nevertheless, the Convention remained shaped by the historical circumstances in which it was drafted. Its temporal and geographical limitations reflected the post-war European context. As refugee movements increasingly emerged in other regions of the world, these restrictions became difficult to justify.

The adoption of the 1967 Protocol marked the final stage in the transition from a limited post-war arrangement to a universal refugee regime (1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, 1951). By removing the Convention's temporal and geographical restrictions, the Protocol extended the applicability of refugee protection beyond Europe and beyond the immediate aftermath of the Second World War. Together, the Convention and the Protocol established the legal foundation upon which contemporary international refugee law continues to rest.

The development from group-based protection to a universal legal regime represents one of the most significant transformations in the history of international refugee law. Yet, as subsequent developments demonstrate, the universalization of refugee protection did not bring an end to debates concerning the scope of protection or the categories of people entitled to benefit from it.

#### **4.2. Expanding the Refugee Concept Beyond the 1951 Convention**

The adoption of the 1951 Convention and the 1967 Protocol established the foundation of the contemporary refugee protection regime. Yet neither instrument brought an end to debates concerning who should qualify for international protection. As new displacement crises emerged in different parts of the world, it became increasingly apparent that many people were being forced to flee circumstances that did not fit neatly within the Convention's framework. This reality encouraged the gradual expansion of refugee protection through regional instruments, evolving interpretations and new protection mechanisms.

One of the earliest examples of this development can be found in Africa. Following decolonization, many African states experienced armed conflicts, external intervention and large-scale population movements that

differed significantly from the post-war European refugee situations that had shaped the 1951 Convention. In response, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa adopted a broader understanding of refugeehood. In addition to people facing persecution, protection was extended to individuals compelled to leave their countries because of external aggression, occupation, foreign domination or events seriously disturbing public order. This represented an important departure from the strictly individualized approach reflected in the Convention definition.

A similar development occurred in Latin America. During the 1970s and 1980s, the region experienced internal conflicts, political violence and authoritarian rule that generated significant refugee movements. These realities influenced the adoption of the Cartagena Declaration of 1984. Although not legally binding, the Declaration introduced a broader refugee definition that included people fleeing generalized violence, internal conflicts, massive violations of human rights and other circumstances that seriously disturbed public order. Over time, its influence extended well beyond its original regional context and contributed to wider discussions concerning the scope of refugee protection.

The expansion of refugee protection was not limited to regional instruments. Practical challenges also encouraged the development of more flexible approaches to refugee status determination. One example is the concept of prima facie refugee recognition. In situations involving mass influxes, conducting individual refugee status determinations for every applicant may be neither realistic nor immediately possible. Prima facie recognition emerged as a pragmatic response to such circumstances (Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, 2019). Rather than assessing each case separately, protection may be granted based on objective conditions affecting a particular group. This approach reflects the understanding that, in certain situations, the need for protection can be evident from the broader context itself.

Another important development concerns refugees sur place. The traditional image of a refugee often assumes that the individual was already at risk before leaving the country of origin. In practice, however, this is not always the case. Political changes, armed conflicts or personal

activities undertaken abroad may create a risk of persecution after departure. The recognition of refugees sur place demonstrates that refugee status is not determined solely by the circumstances existing at the time of departure. It also depends on developments that may occur subsequently, both within and outside the country of origin (Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, 2019).

More recently, discussions surrounding climate-induced displacement have further exposed the limitations of the traditional refugee framework. Rising sea levels, desertification, environmental degradation and extreme weather events are increasingly forcing individuals and communities to leave their homes. However, people displaced solely by environmental factors generally fall outside the scope of the 1951 Convention because climate change is not recognized as an independent ground for refugee status. This has generated an extensive academic debate concerning whether existing refugee law is capable of responding to contemporary forms of displacement or whether new protection frameworks are required (McAdam, The enduring relevance of the 1951 Refugee Convention, 2017) (McAdam, The Refugee Convention as a rights blueprint for persons in need of international protection (Research Paper No. 125), 2006).

The significance of this debate extends beyond environmental migration itself. It raises broader questions regarding the adaptability of international refugee law and its capacity to respond to emerging protection needs. McAdam argues that many contemporary displacement scenarios challenge assumptions that shaped the Convention framework in the aftermath of the Second World War. As patterns of forced migration become increasingly complex, the distinction between traditional refugee movements and other forms of compelled mobility has become more difficult to sustain in practice (McAdam, 2018).

These concerns have also been reflected in judicial and policy discussions. The widely discussed *Teitota* case drew international attention to the possibility that environmental degradation may, under certain circumstances, create conditions incompatible with fundamental human rights protections. Although international law has not yet recognized a separate category of “climate refugees,” the growing number of environmentally displaced persons continues to place pressure on existing protection mechanisms and highlights the need for ongoing legal

adaptation. In this respect, climate-related displacement represents not only a humanitarian challenge but also a test of the future resilience and relevance of the international refugee regime..

Taken together, these developments demonstrate that the refugee concept has never remained static. The legal categories and protection mechanisms that exist today extend well beyond those originally envisaged by the drafters of the 1951 Convention. Regional initiatives, evolving state practice and new displacement realities have all contributed to a broader understanding of who may require international protection. At the same time, these developments raise important questions concerning the limits of refugee law and the capacity of existing institutions to respond to emerging protection needs (Grahl-Madsen, 1982).

## **5. DISCUSSION**

### **5.1. Between Expanding Protection and Restricting Access: Contemporary Challenges**

At first glance, the development of international refugee law appears to be a story of continuous expansion. Since the adoption of the 1951 Convention, the scope of protection has broadened through regional instruments, evolving interpretations and complementary protection mechanisms. Categories of people entitled to protection have expanded, and the legal framework governing refugee rights has become increasingly sophisticated. Viewed solely from a normative perspective, refugee protection today is considerably broader than it was in the middle of the twentieth century (Filipovski & Hoca, 2024; Goodwin-Gill, *The Dynamic of International Refugee Law*, 2013).

Yet this development tells only part of the story.

While legal standards have expanded, access to protection has become increasingly contested. Over the past three decades, many states have adopted policies aimed at limiting the arrival of asylum seekers and reducing the number of individuals able to access refugee status determination procedures. As a result, a growing gap has emerged between the formal expansion of protection and the practical realities faced by displaced people (McAdam, 2018; Pestrova, 1995).

One reason for this development is the changing relationship between refugee protection and state sovereignty. Refugee law is founded upon the

idea that individuals may require protection beyond that offered by their own states. At the same time, states continue to regard the control of borders and migration as a core aspect of sovereign authority. These two principles have always existed in tension. However, the increase in global migration movements since the end of the Cold War has intensified this tension and placed refugee protection under greater political pressure (Gil-Bazo, 2015; McAdam, 2006).

The growing securitization of migration has further complicated the implementation of refugee protection. In many states, refugee movements are no longer framed solely as humanitarian or human rights concerns. Instead, they are increasingly associated with questions of national security, border management and social stability. This shift has transformed the political environment in which refugee protection operates and has contributed to the perception of asylum seekers not only as individuals in need of protection but also as subjects of migration control (Barnett, 2002). As a result, asylum systems are frequently expected to perform two functions simultaneously: protecting individuals fleeing persecution while also limiting irregular migration. This dual role has generated growing tensions within contemporary refugee regimes and has reinforced the gap between the formal recognition of protection rights and the practical ability to exercise them (McAdam, 2018).

At the operational level, restrictive practices have become increasingly common. States have introduced stricter admissibility requirements, accelerated procedures and various forms of externalized border control. In many cases, individuals seeking protection encounter obstacles before they are even able to access asylum procedures. Consequently, the effectiveness of refugee protection cannot be assessed solely by examining legal standards. It must also be evaluated in light of the practical ability of individuals to benefit from those standards (Gil-Bazo, 2015) (Petrova, 1995).

A similar tension can be observed in relation to emerging forms of displacement. Climate-related mobility, mixed migration movements and protracted refugee situations continue to challenge existing legal categories. Large-scale humanitarian crises and mass displacement situations, such as those experienced during the Kosovo conflict, have demonstrated that contemporary forced migration movements frequently extend beyond the assumptions underlying the traditional refugee framework and often require flexible and complementary forms of protection (Körbayram & Hoca, 2024). Although refugee law has

demonstrated a considerable capacity for adaptation, many contemporary displacement scenarios remain only partially addressed by current legal frameworks. The result is a protection landscape that is broader than before yet still marked by significant gaps and uncertainties (McAdam, 2018).

## **6. CONCLUSION**

The history of refugee protection demonstrates that the refugee concept has never been fixed. It has evolved in response to changing forms of displacement, political transformations and humanitarian crises. What began as a limited system designed to address the needs of groups gradually developed into a broader framework of international protection. The adoption of the 1951 Convention and the 1967 Protocol laid the foundations of this regime, while subsequent regional instruments and emerging protection mechanisms expanded its scope beyond what was originally envisaged by their drafters.

At the same time, the evolution of refugee law has revealed an important reality. New forms of displacement rarely fit perfectly within existing legal categories. Armed conflicts, generalized violence, state collapse, protracted refugee situations and, more recently, climate-related displacement have repeatedly tested the limits of the traditional refugee framework. In many respects, the history of refugee law can be read as a continuous effort to adapt legal norms to changing human realities.

Yet the expansion of legal protection has not automatically translated into broader access to protection. One of the central findings of this study is that the development of refugee law has been accompanied by an equally persistent tendency toward restriction. While legal definitions have expanded and protection mechanisms have multiplied, states have increasingly sought to control access to asylum through stricter border policies, procedural barriers and externalized migration controls. As a result, the contemporary refugee regime is shaped by two parallel and often competing dynamics: the expansion of protection in law and the restriction of protection in practice (Filipovski & Hoca, 2024).

This tension is unlikely to disappear in the foreseeable future. Ongoing armed conflicts, political instability, environmental pressures and large-scale human mobility will continue to challenge existing legal frameworks. In this context, the future of refugee protection does not

depend solely on the creation of new legal categories. Equally important is the ability of states and international institutions to ensure meaningful access to the protections that already exist.

Ultimately, the strength of the international refugee regime should not be measured by the breadth of its legal definitions alone. A protection system cannot be considered effective merely because it recognizes more categories of vulnerable persons. Its legitimacy and effectiveness depend on whether those in need of protection can actually access and benefit from the rights guaranteed by international law. The history of refugee law demonstrates a remarkable capacity for adaptation. The central challenge for the twenty-first century is not whether refugee law can continue to evolve, but whether the gap between legal protection and practical protection can be narrowed.

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