



UNITED NATIONS HUMAN RIGHTS COUNCIL

Study Guide

Agenda: Reviewing Refuge Law with special enforcement on the Principle of Non-Refoulement

ANNUAL WORLD SUMMIT 2024

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Letter from the Executive Board

Dear Delegates,

During the committee, we encourage delegates to actively engage in discussions, contribute constructively to debates, and seek common ground to address the complex issues before us. We value diversity in perspective and encourage delegates to approach us.

We, the Executive Board of the United Nations Human Rights Council (UNHRC), are committed to foster an inclusive and dynamic committee environment that promotes meaningful dialogue and collaborative problem-solving. We hope that committee sessions are a testament to mutual respect and inclusiveness.

We encourage discussions with open minds, fostering an atmosphere where all voices are heard and respected.

Kindly do not limit your research to the areas highlighted herein but ensure that you logically deduce and push your research to areas associated with and in addition to the issues mentioned. This guide shall primarily deal with a skeletal overview of the agenda.

Furthermore, we welcome discussions on the interpretation and application of existing laws, as well as exploration of potential legal frameworks to address emerging human rights challenges. In addition to the topics outlined in the study guide, we invite delegates to propose additional legal aspects, laws, and treaties for discussion during committee sessions.



Letter from the Executive Board

Our goal is to explore a wide range of legal perspectives and consider innovative approaches to uphold human rights standards while promoting accountability.

The content mentioned in the study guide is to make you understand the agenda better and not the agenda itself, and I hope you can make use of the provided study guide to the best of your abilities. Wishing you the very best.

Best regards,

UNHRC Executive Board

Chairperson: Vedant Naik

Vice-Chairperson: Ditya Sinha

Moderator: Tria Ann Drego

Rapporteur: Koel Adepalli



Introduction to the Committee

The Human Rights Council is the main intergovernmental body within the United Nations responsible for human rights. Established in 2006 by the General Assembly under its resolution 60/251; it is responsible for strengthening the promotion and protection of human rights around the globe.

The Council, composed of 47 Member States, provides a multilateral forum to address human rights violations and country situations. It responds to human rights emergencies and makes recommendations on how to better implement human rights on the ground.

The Council serves as an international forum for dialogue on human rights issues with UN officials and mandated experts, states, civil societies, and other participants; adopts resolutions or decisions during regular sessions that express the will of the international community on given human rights issues or situations. Adopting a resolution sends a strong political signal which can prompt governments to take action to remedy those situations.

Among the Council's subsidiary bodies are the Universal Periodic Review mechanism (UPR), the Special Procedures, the Advisory Committee and the Complaint Procedure. The Council can also establish international commissions of inquiry and fact-finding missions investigating and responding to human rights violations, to help expose violators and bring them to justice. The Human Rights Council can also establish international commissions of inquiries, fact-finding missions and investigations to respond to serious violations of international human rights and humanitarian law, whether protracted or resulting from sudden events, and to promote accountability for such violations and counter impunity.

Introduction to the Committee

The commissions of inquiries and fact-finding missions produce hard-hitting evidence on war crimes and crimes against humanity, feeding into formal justice processes to hold violators accountable.

The Human Rights Council, consisting of State representatives and reporting directly to the General Assembly, is a political body with a comprehensive human rights mandate and a distinct entity from the OHCHR. The Council addresses violations, promotes human rights assistance and education, reviews states' human rights records, works to prevent human rights abuses, responds to emergencies, and serves as an international forum for human rights dialogue.

The Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights laws and treaties established those rights

UN Human Rights is mandated:

- Promote and protect all human rights for all
- Recommend that bodies of the UN system improve the promotion and protection of all human rights
- Promote and protect the right to development
- Provide technical assistance to States for human rights activities
- Coordinate UN human rights education and public information programmes
- Work actively to remove obstacles to the realisation of human rights and to prevent the continuation of human rights violations
- Engage in dialogue with Governments in order to secure respect for all human rights
- Enhance international cooperation for the promotion and protection of all human rights
- Coordinate human rights promotion and protection activities throughout the United Nations system
- Rationalise, adapt, strengthen and streamline the UN human rights machinery



Introduction to the Agenda

Humanity has witnessed the unrelenting rise and fall of migration throughout history, driven by a variety of causes including economic hardship, the desire for a better life, and military war and persecution. In the midst of this worldwide upheaval, the UNHCR announces an astounding number: by the end of 2020, 82.4 million people had been forcibly displaced, forced to leave their homes because of persecution, conflict, violence, and abuses of their human rights. Of these displaced people, 26.4 million are categorised as refugees, with more than 20 million falling under the UNHCR's protective mandate. With the world's population migrating at such historic rates, strong legal frameworks are vital to protect the rights and dignity of individuals escaping dangerous situations.

The 1951 Convention relating to the Status of Refugees, a landmark piece of legislation that has been a guide for countries attempting to navigate the intricacies of forced migration, is essential to the conversation about refugee protection. The Convention, which upholds the core principles of asylum and non-refoulement, is a pillar of international refugee law, providing a framework for the protection of those escaping persecution and making sure they are not sent back to circumstances in which their lives or well-being could be jeopardised.

This topic aims to explore the subtleties of legal conventions, legislation, and interpretations that influence the refugee protection environment while analysing the complex field of refugee law. With a focus on the fundamental principle of non-refoulement, which forbids sending people back to face danger or persecution, the agenda aims to clarify the legal frameworks and responsibilities that states have when it comes to protecting the rights and dignity of refugees around the globe.



Proof/Evidence in the Committee

Evidence or proof from the following sources will be accepted as credible by the committee:

1. **UN Reports:** All UN Reports are considered credible information or evidence for the Executive Board of the UNGA – 1 (DISEC).
2. **UN Bodies** like the UNSC (<http://www.un.org/Docs/sc/>) or UNGA (<http://www.un.org/en/ga/>).
3. **UNAffiliated bodies** like the World Bank (<http://www.worldbank.org/>), International Monetary Fund (<http://www.imf.org/external/index.htm>), International Committee of the Red Cross (<http://www.icrc.org/eng/index.jsp>), etc.

NOTE: Under no circumstances will sources like Wikipedia (<http://www.wikipedia.org/>), Amnesty International (<http://www.amnesty.org/>), Human Rights Watch (<http://www.hrw.org/>) or newspapers like the Guardian, Times of India, etc. be accepted as proof or evidence. However, they can be used for better understanding of any issue or even be brought up in debate if the information given in such sources is in line with the beliefs of a Government.

2. Government Reports: These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a nuance is that a report that is being denied by a certain country can still be accepted by the Executive Board as credible information. Some examples are, government websites like the State Department of the United States of America <http://www.state.gov/index.htm> or the Ministry of Defense of the Russian Federation <http://www.eng.mil.ru/en/index.htm>



Proof/Evidence in the Committee

1. Ministry of Foreign Affairs of various nations like India (<http://www.mea.gov.in/>) or People's Republic of China (<http://www.fmprc.gov.cn/eng/>).

2. Permanent Representatives to the United Nations Reports <http://www.un.org/en/members/> (Click on any country to get the website of the Office of its Permanent Representative.)

3. News Sources

1. REUTERS – Any Reuters' article which makes mention of the fact stated or is in contradiction of the fact being stated by another delegate in council can be used to substantiate arguments in the committee. (<http://www.reuters.com/>)

2. State-operated News Agencies – These reports can be used in support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any country as such but in that situation, they can be denied by any other country in the council. Some examples are

3. RIA Novosti (Russia) <http://en.rian.ru/>

4. IRNA (Iran) <http://www.irna.ir/ENIndex.htm>

Xinhua News Agency and CCTV (People's Republic of China) <http://cctvnews.cntv.cn/>



Historical Context

International refugee law dates back to the Refugee Convention of 1951 but regional laws regarding refugees have been prevailing centuries before that. One of the most draconian laws was the Alien Act of 1793. The 1793 Act required all resident aliens and those arriving in Great Britain after January 1793 to give their names, ranks, occupations, and addresses to a local Justice of the Peace. The Home Secretary sent around a circular in March 1797 asking for details of those who had arrived since May 1792.

An alien, in national and international law, is a foreign-born resident who is not a citizen by virtue of parentage or naturalisation and who is still a citizen or subject of another country.

In 1917, the Russian Empire fell following the Bolshevik Revolution, leaving over a million people displaced across Europe. The League of Nations was compelled by the International Committee of the Red Cross to address the refugee issue and institute a framework for recognising their rights. The Office of the High Commissioner for Refugees was constituted to aid refugees, help them find work, provide protections, and form legal solutions. At the end of the First World War, the borders of imperial states disappeared, and new political and social structures based on democratic ideals took shape across Europe. The creation of nation-states on ethnically and culturally homogenous grounds created a new wave of refugees in Europe.

The beginning of refugee law is inseparably linked with the name of the Norwegian Fridtjof Nansen, the great Arctic explorer, statesman, and philanthropist who, in 1921, was appointed High Commissioner for Russian Refugees of the League of Nations. His competence was later extended to other categories of refugees.



Historical Context

The World War

The period spanning the World Wars saw the creation of the highest number of refugees the world had ever seen, in part because the end of free movement across borders brought with it compulsory passports, visas and other travel documents. During hostilities, individuals were forced from their homes as invading armies made the land uninhabitable.

The collapse of the Ottoman, Russian, German and Austro-Hungarian empires as a result of the First World War created ethnic, political and religious refugees and stateless persons. This prompted the League of Nations to create the High Commission for Refugees, a forerunner of the UNHCR and subsequently the Nansen passport for stateless persons. The institutional and legal frameworks of the refugee protection regime can be traced back to these travel documents.

The rise of fascism in Europe, and the actions of Franco's Spain and Nazi Germany saw political dissidents, as well as Jewish and other persecuted minorities, fleeing across and out of Europe. Forty million people were displaced by the Second World War, and newly created refugee organisations – the United Nations Relief and Rehabilitation Administration.

In the following years, temporary pacts and conventions related to refugees were agreed upon. The instruments determined the legal status of a refugee and created categories of refugees based on their country of origin.



Historical Context

Among the international agreements relating to refugees that deal exclusively with travel documents, the agreement relating to the issue of travel documents to refugees, signed in London on October 15, 1946. It provides for the issue of travel documents to refugees not benefiting from earlier agreements. This travel document is in booklet form, similar to a passport (the Nansen certificate was a simple sheet of paper), and entitles the holder to return to the issuing country during the document's period of validity (one or two years). Subsequent agreements regulated the legal status of refugees in general.

The task of the High Commissioner in the legal field was described in later resolutions of the League of Nations as "the legal and political protection of refugees." In this category of instruments belong a series of agreements dealing with the rights of refugees to work and to receive welfare and relief payments, the personal status of refugees, freedom from expulsion, rights to education, the fiscal regime of refugees, and exemptions from reciprocity provisions. Unfortunately, the agreements applied only to specific categories of refugees and were ratified, frequently with reservations, by only a few states.

World War II had created such large-scale displacement that the United Nations felt the need to create international guidelines relating to the protection and acceptance of refugees.

26 States were represented at the conference in Geneva in July 1951. At this time, the convention defined a refugee as any person fleeing events that had taken place before 1st January 1951 'owing to a well-founded fear of being persecuted'.



Historical Context

Refugee Convention

In the aftermath of the First World War (1914-1918), millions of people fled their homelands in search of refuge. In response, the international community steadily assembled a set of guidelines, laws and conventions aimed at protecting the basic human rights and treatment of people forced to flee conflict and persecution.

The process, which began under the League of Nations in 1921, culminated in the 1951 Convention which consolidated and expanded on previous international instruments relating to refugees and continues to provide the most comprehensive codification of the rights of refugees at the international level.

The 1951 Convention relating to the Status of Refugees was the first comprehensive attempt to define refugees and charted a detailed guideline for host countries to ensure the adequate protection and preservation of the rights of all refugees. The document was initially limited in its temporal and spatial scope as it covered the period before 1 January 1951 and confined its mandate to European refugees. The 1967 Protocol expanded the Convention's scope.

The Convention and its related Protocol obligated states to standards of treatment and protection of asylum seekers and refugees, including the principle of non-refoulement, which precludes states from returning people to a place where they risk persecution. Since 1951, 50 million people have been protected under the Convention's umbrella.



Historical Context

Post 1950s

The 1951 Convention was just the foundation and it basically contained fundamentals to the International Refugee Law only. UNHCR'S activities extended beyond Europe and entered the African sub-continent, which was under the impact of decolonisation. In regard with the foundations laid in the 1951 Convention, UNHCR began the process which led to the Protocol in 1967. In the year 1969, OUA Convention on the Specific Aspects of Refugee Problems in Africa emerged.

While the OAU Convention specifically incorporated the definition of refugee, it added that the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. In other words, the notion of refugee was broadened beyond victims of persecution to include the increasingly prevalent "new" category of victims of generalised conflict and violence. The end of the 1960s used 2/3rd of the UNHCR'S budget used in operations existing just in Africa.

In the 1970s, millions of refugees returned home to countries like Angola, Mozambique, Guinea-Bissau, and Bangladesh. In the year 1979, Geneva witnessed a conference called International Conference on Refugees and Displaced Persons in Southeast Asia. This conference was indefinitely a landmark in the development of the refugee law. This conference came concurrently to the time when the Vietnamese were fleeing from their country, tackling the risks of the sea and pirates only to be pushed back as they reached the shores of neighbouring countries.



Historical Context

The term “Vietnamese Boat People” is often used generically to refer to all the Vietnamese (about 2 million) who left their country by any means or method between 1975 and 1995. A three-way agreement emerged from the Conference: ASEAN countries promised to provide temporary asylum; Vietnam undertook the promotion of orderly departures in place of illegal exits, and developing countries agreed to accelerate the rate of resettlement. Important burden-sharing schemes subsequently were put in place to ensure the continuing rescue at sea of the Vietnamese “boat people.”

The Comprehensive Plan of Action (CPA) for Indo-Chinese refugees was the first attempt to implicate all concerned parties- countries of asylum, of origin, and of resettlement as well as the donor community in a coordinated, solution-oriented set of arrangements for the sharing of responsibilities for the refugee population. UNHCR refugee operations continued to spread around the globe, with the mass exodus of East Pakistanis to India shortly before the birth of Bangladesh. Adding to the woes in Asia was the Vietnam war, with millions fleeing the war-torn country.



Who are Refugees?

The cornerstone of refugee law is the 1951 Convention and its 1967 Protocol relating to the Status of Refugees. International refugee law, international human rights law, and international humanitarian law complement each other.

The term “refugee” has been defined under article 1 of the Protocol. A refugee has been defined as a person who “owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

A refugee is someone who has been compelled to leave their country and cannot return because of a serious threat to their life, physical integrity or freedom

Refugees v/s Asylum Seekers

According to the United Nations High Commissioner for Refugees (UNHCR) ‘an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated’. An asylum-seeker is someone who intends to seek or is awaiting a decision on their request for international protection. In some countries, it is used as a legal term for a person who has applied for refugee status and has not yet received a final decision on their claim.



Who are Refugees?

When someone crosses an international border seeking safety, they often need to apply to be legally recognized as a refugee.

While they seek asylum and await the outcome of their application, they are referred to as asylum-seekers and should be protected. Not all asylum-seekers will be found to be refugees, but all refugees were once asylum-seekers.

In the case of mass refugee movements (usually a result of conflict), the reasons for fleeing are evident and there is no capacity to conduct individual interviews, such groups are often declared prima facie refugees.

It is a legal status that provides an individual with certain rights and protections. An asylum-seeker is someone who has or intends to apply to be recognized as a refugee, but their application has yet to be processed. Governments will usually assess asylum applications to determine if an individual's circumstances make them a refugee.

People who are not refugees under law

The interpretation of the term refugee is often misunderstood with a person who voluntarily moves to a different country for work or economic reasons and persecuted groups who remain within their own country and do not cross an international border (internally displaced persons).

A migrant is best understood as someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons. Unlike refugees, migrants do not have a fear of persecution or serious harm in their home countries. Migrants continue to enjoy the protection of their own governments even when abroad and can return home.



Documents and Treaties

UN Charter:

The Charter of the United Nations was signed on 26 June, 1945 at San Francisco by the nations represented at the United Nations Conference on International Organisation, most of them earlier allies in the Second World War. The allies began being referred to as the 'United Nations' towards the end of that war. The Charter came into force on October 24 1945. Since that time all members joining have had to declare themselves bound by both documents.

<https://www.un.org/en/about-us/un-charter>

Geneva Conventions:

The Geneva Conventions comprise four treaties, and three additional protocols, that establish the standards of international law for the humanitarian treatment of war. The singular term Geneva Convention usually denotes the agreements of 1949, negotiated in the aftermath of the Second World War (1939–45), which updated the terms of the first three treaties (1864, 1906, 1929), and added a fourth treaty. The Geneva Conventions extensively defined the basic, wartime rights of prisoners (civil and military); established protections for the wounded; and established protections for the civilians in and around a war-zone.

Customary International Law / Customary International Humanitarian Law:

Customary international law consists of rules that come from "a general practice accepted as law" and exist independent of treaty law. Customary IHL is of crucial importance in today's armed conflicts because it fills gaps left by treaty law and so strengthens the protection offered to victims.

<https://www.icrc.org/customary-ihl/eng/docs/Home>



Documents and Treaties

Relevant Treaties and Conventions:

International and regional instruments relating to refugees include:

- 1951 Convention relating to the Status of Refugees (Refugee Convention)
- 1954 Convention on The Status of Stateless Persons
- 1967 Optional Protocol relating to the Status of Refugees
- Universal Declaration of Human Rights (art. 14)
- American Declaration on the Rights and Duties of Man (art. 27)
- American Convention on Human Rights (art. 22)
- Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena Declaration)
- African [Banjul] Charter on Human and Peoples' Rights (art. 12)
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa
- Arab Charter on Human Rights (art. 28)
- Cairo Declaration on Human Rights in Islam (art. 12)
- European Convention on Human Rights (arts. 2, 3, and 5)
- Council Regulation EC No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted



Documents and Treaties

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- Dublin Convention (1990)
- Convention on the Reduction of Statelessness
- 1967 United Nations Declaration on Territorial Asylum
- European Agreement on the Abolition of Visas for Refugees (1959);
- Resolution 14 (1967) on Asylum to Persons in Danger of Persecution;
- European Agreement on Transfer of Responsibility for Refugees (1980)
- Recommendation on the Harmonization of National Procedures Relating to Asylum (1981);
- Recommendation on the Protection of Persons Satisfying the criteria in the Geneva Convention who are not Formally Refugees 1984);
- Convention on the Rights of the Child (art. 22)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- Dublin Convention (1990)
- Convention on the Reduction of Statelessness
- 1967 United Nations Declaration on Territorial Asylum
- European Agreement on the Abolition of Visas for Refugees (1959);
- Resolution 14 (1967) on Asylum to Persons in Danger of Persecution;
- European Agreement on Transfer of Responsibility for Refugees (1980)
- Recommendation on the Harmonization of National Procedures Relating to Asylum (1981);



Non-Refoulement

Throughout history, high numbers of persons have left, or have been forced to leave, their countries of origin. In order to protect migrants or refugees against being returned to places in which their fundamental rights are in danger, States have developed the principle of non-refoulement. This principle, reflected in different bodies of international law, protects any person from being transferred (returned, expelled, extradited) from one authority to another when there are substantial grounds for believing that the person would be in danger of being subjected to violations of certain fundamental rights. The principle is multi-faceted and its scope and application vary from context to context in accordance with the applicable law.

The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, illtreatment or other serious human rights violations.

The Geneva Convention does not guarantee asylum-seekers the right to be granted refugee status, even if they fulfil the conditions to be considered refugees; this remains at state discretion. States have, however, to refrain from actions that would endanger asylum-seekers, especially from returning them to their country of origin.



Non-Refoulement

Definition of “non-refoulement”

Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Article 3) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (article 16).

It is defined under article 33 of the 1951 Convention stating that “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

In other instruments, the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. Human rights treaty bodies regularly receive individual petitions concerning non-refoulement, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child.

Similar conclusions were drawn by regional human rights courts, in particular the European Court of Human Rights (Soering v. The United Kingdom, para. 88). Interestingly, already in 1949, the principle of non-refoulement was also included in the 1949 Geneva Conventions, primarily with regard to detainee transfers, but also to protect the civilian population. At its core, the principle of non-refoulement is considered to form part of customary international law.



Non-Refoulement

Under refugee law, the principle of non-refoulement applies to both refugees and asylum seekers. In addition to being protected against refoulement, refugees are entitled to a number of other rights provided under that body of law. In contrast, protection against refoulement under human rights law means a person cannot be returned, but will not automatically mean that the person has to be granted refugee status and be afforded all of the rights that refugees are entitled to. In all circumstances, however, a State must respect, protect and fulfil the human rights of all persons under its jurisdiction.

The main difference between the principle of non-refoulement under its different codifications is the question of who falls under its protection and for what reasons. Under refugee law (1951 Convention), it protects refugees against return to places of persecution, while under IHL (International Humanitarian Law) it only applies to certain categories of persons that are affected by armed conflicts. Under human rights law, the principle of non-refoulement can protect any person under a State's jurisdiction, provided a pertinent danger exists in the State to which the person shall be transferred.

Depending on the applicable human rights treaties, the principle protects individuals against different dangers that may not be covered by other bodies of law, such as a risk of death penalty, cruel punishment, or child recruitment and participation in hostilities, regardless of whether the danger to the person is based on a discriminatory ground or not. While refugee law recognizes certain narrowly defined exceptions to the principle of non-refoulement, the principle is absolute under other bodies of law.



Non-Refoulement

Application of principle of non refoulement:

The principle of non-refoulement applies regardless of whether a person flees from a country that enjoys peace or a country involved in an armed conflict: if there are substantial grounds for believing that the individual in question would be in danger of being subjected to violations of certain fundamental rights, the person cannot be returned. This would be the case, for instance, for a leader of an opposition group who would in all likelihood be tortured or summarily executed upon return.

The principle of non-refoulement prohibits not only the direct forcible return of persons in the above-described situations, but also indirect measures that have the same effect.

It is generally agreed that the principle protects persons from being transferred to a State which may not itself threaten the individual, but which would not effectively protect the person against onward transfer in violation of the principle of non-refoulement (called indirect, chain or secondary refoulement).

Jurisprudence and expert opinions and Committee against Torture also support the view that the principle of non-refoulement prohibits States not only from directly transferring a person to a place of danger (return decision enforced by the State), but also from taking certain disguised or indirect measures that create circumstances leaving an individual with no real alternative other than returning to a place of danger.

The principle of non-refoulement as jus cogens

Within the international legal system, jus cogens is defined as a peremptory norm of general international law (jus cogens) that is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. The concept of Jus Cogens was internationally accepted and institutionalised in the Vienna Convention of Law of Treaties, 1960.



Non-Refoulement

In order for the principle of non-refoulement to be applied as Jus Cogens, article 53 of the Vienna Convention on the Law of Treaties must be exercised. According to article 53, certain requirements of Jus cogens to be satisfied; firstly, that the principle is accepted and recognised by the international community as a whole; secondly, as a norm from which no derogation is permitted.

The principle of non-refoulement has evolved into customary international law, predating its formal codification. Numerous countries have practised it for an extended period, emphasising its universal recognition beyond specific treaty obligations like the Geneva Convention of 1951 or the New York Protocol of 1967. Even states not party to these treaties have consistently respected and implemented non-refoulement, solidifying its status as a customary norm in international law.

Violations of the Principle of Non-Refoulement:

- 1.1979: Thailand forced Cambodian refugees back across a minefield, resulting in many deaths.
- 2.1994: Tanzania closed its borders to Rwandan refugees fleeing genocide.
- 3.2014: Australia returned refugees to Sri Lanka, despite concerns about their safety.
- 4.2021: Refugees returned from Tanzania to Mozambique despite risk to their life.
- 5.2023: Pakistan Forced Deportation of Afghan Refugees.
- 6.2024: Rohingya Refugees in India
- 7.2023: Deportation of hundreds of Burkinabe citizens from Ghana



Case Studies

Haiti refugee crisis:

The complex roots of Haitian emigration have often left the field open to fluctuating and ambivalent migration policies in the countries of destination, considering Haitian migrants alternately as economic migrants or as refugees. Any reflection on the Haitian refugee issue needs to consider the relation between the multidimensional (economic, ecological, political) vulnerability of local populations in the country of origin, the definition of migration policies in the countries of settlement, and the diversification of migrant destinations abroad. During their migration, individuals may be assigned to several categories, depending on the settlement context, changes in migration policies, and other factors. In the history of Haitian migration, the line has often remained blurred and oscillating between legal and illegal statuses. On two occasions, this situation has led to the invention of “hybrid” legal categories: the Cuban Haitian Entrant status (1980) was created in the US, in response to the massive influx of boats of people onto Florida shores, and a humanitarian migrant status was especially designed for recent Haitian migrants coming to Brazil (2012), to address the complex causes of post-earthquake migration from Haiti.

Haiti and Haitians have been part of many forms of transnational processes of migration, including forced migration flows. Between 1973-1991, more than 80,000 Haitian asylum-seekers came to the shores of the United States. The first detected Haitian boat with refugees arrived in 1963. Their request for asylum was denied, and they were deported. Interestingly, this was the period of massive flows of temporary visitors who overstayed their visa.



Case Studies

Between 1961-71 around 25,000 legal Haitian immigrants were admitted, and the number of non-immigrants who received a temporary visa amounted to 112,000. During that same period, Haiti lost between 60 and 75 percent of its highly skilled workers. The second boatload of Haitian refugees came ten years later, in 1972. Sixty-five Haitian refugees claiming refugee status were denied asylum. This did not stop the arrival of more refugees. Between 1971 and 1977, an estimated 3,500 arrived on American shores, and a network of refugees was created, reinforced by the big business of smugglers that included Haitian government agents and some U.S. officials. 7 For these refugees, no federal resettlements and no special status were awarded. It was really during the Carter administration that the refugee flows began to increase. Between 1977 and 1981, around 50,000 to 70,000 Haitians arrived by boat in South Florida. Parallel to the arrival of these refugees were also scenes of bloated bodies that did not make it.8 Although during the period of 1986-90 there were fewer refugee boats, yet around 20,000 Haitians were still intercepted at sea.

The uprooting of the Duvalier regime in February 1987 and the coming to power of the first democratically elected government in February 1991, with the The Lavalas movement and its leader, Jean-Bertrand Aristide, did not fully stop the flow of refugees. Nine months later, a bloody military coup against the Aristide government triggered a resumption of the flows. The military seizure of power brought massive killings and the disruption of socio-political life. The creation of internally displaced people and a spike in the numbers of refugees fleeing to the United States.

On September 30, 1991, Jean Bertrand Aristide, Haiti's first democratically elected President, was overthrown in a military coup. The following three years saw the spectacle of boatloads of refugees trying to make it to the United States and uneven and ineffective reaction by the OAS and UN, including the imposition of sanctions.



Case Studies

The OAS was the first international body to take action in the wake of the coup. The OAS called on Aristide to be returned to power, declared that the military government would not be recognized, and recommended sanctions. Less than two weeks after the coup, the UN General Assembly passed resolution 46/7 condemning the military takeover. Throughout 1992, the OAS continued to be the focus of international activity aimed at returning Aristide to power.

By the early 1990s, around 34,000 Haitian refugees were intercepted at sea. This was a second wave of forced migration. The issue of the plight of Haitian refugees became again a national event in the United States with the arrival on December 3, 2001, of a boat load of 187 refugees on Miami shores. Of that total, 167 were rescued and placed in INS custody. The remaining twenty had jumped into the water, with only eighteen of them reaching the shore. They were immediately placed in an expedited removal process, although sixteen of them had met the criteria for claiming a credible fear of persecution.

Again, in October 2002, around two hundred Haitian refugees jumped from a boat and swam

the final five hundred yards to shore. Many in their testimonies claimed that they came to the United States for economic and political reasons. Some admitted that poverty was clearly a factor for their migration but they also testified against the political situation of fear, repression, violence, and insecurity that prevailed under the second Aristide government. From January 2 to October 26, 2002, the national immigration office in Haiti recorded more than 19,778 cases of forced repatriation of Haitians by U.S., Bahamian, Cuban, and Dominican authorities. Their arrival and return would re-ignite the old debate over differing treatment for asylum seekers and refugees from Haiti.



Case Studies

It found that the Haitian crisis defines a unique and exceptional situation warranting extraordinary measures by the Security Council and the continuation of this situation threatens international peace and security. And, it implemented sanctions against Haiti under Chapter VII of the UN Charter. On August 27, resolution 861 suspended the sanctions when it seemed that the coup leaders were implementing the Governor's Island agreement which was to restore Aristide to power. After a recently authorised peacekeeping mission, the United Nations Mission in Haiti (UNMIH), was prevented from arriving in Haiti by the military and it was clear that the de facto authorities were not implementing the agreement in good faith, resolution 872 of October 13, 1993 reinstated sanctions. On May 6, 1994, just two days before President Clinton announced the policy of shipboard processing of refugee claims rhetoric regarding its will to intervene over the ensuing month and a half and US military ships were moved into position off the Haitian coast. Finally, a settlement was reached with US representatives on September 18 after the military leadership found out that a US invasion force was on its way and paratroopers would land in a few hours.¹¹ Aristide returned to Haiti on October 15, 1994.¹²

Haiti is one of the clearest cases to date of refugee flows leading to eventual intervention. Michael J. Glennon argues that in resolution 940 the "Security Council dealt with the refugee problem not as a potential cross-border threat but, rather, in the context of humanitarian considerations."¹³ It is true that the resolution talked about "the desperate plight of Haitian refugees," whereas resolution 688 regarding Iraq mentioned the "massive flow of refugee towards and across international frontiers and ... cross-border incursions, which threaten international peace and security in the region ..." Even in their role as helpless victims rather than a national security threat, the very fact of the existence of the refugees can be seen as constituting a basis for intervention.

Case Studies

However, placing resolution 940 within the context of the previous three years makes it very clear that it was the perception of refugees as direct threats to international peace and security that was behind the eventual US-led intervention. Certainly resolution 841 made the direct connection between refugees and security.

In addition, it was the US which ultimately undertook the intervention, so it is its motives which are particularly relevant. Between the September 1991 coup and August 1994, 67,493 Haitians were interdicted at sea, most of these were forcibly repatriated. In August, there were also approximately 14,000 Haitians at Guantánamo Bay. The US obviously had little concern for them as refugees. Rather, they were seen as a security threat, a mass of humanity to be kept out of the country.

Currently, Haiti has been plunged into a serious humanitarian, political and security crisis following the assassination of president Jovenel Moïse in 2021, and the subsequent strengthening of criminal gangs that now dominate a significant part of the territory and have access to key infrastructures, such as ports and airports. In early March, one of these gangs orchestrated the escape of more than 3,600 prison inmates and unleashed a wave of terror in several areas of the country, leading to the resignation of prime minister Ariel Henry. The recent escalation of violence has reached alarming levels, with reports of dozens of deaths, kidnappings, sexual violence against women and girls, and the forced displacement of more than 35,000 people since the beginning of 2024.

Prevention of future violence, and sustained support for the most vulnerable- especially children- should be our guiding principles to ensure the next generation does not pursue violence as its only option. The potentially violent actors of tomorrow are the children of today. Therefore, it is most important that their rights to education, good health, and protection are fulfilled; and right now that is just not happening.



Suggested Moderated Caucus Topics

- 1. Implementing Culturally Sensitive Integration Programs for Refugees.**
- 2. Safeguarding Against Arbitrary Detention and Deportation of Refugees.**
- 3. Addressing Mental Health and Psychosocial Needs of Refugees Through Community-Based Interventions.**
- 4. Enhancing Access to Education and Employment Opportunities for Refugees Through Targeted Programs.**
- 5. Ensuring Adequate Legal Aid and Representation for Refugees in Asylum Procedures.**
- 6. Addressing Language and Communication Barriers Through Multilingual Support Services.**
- 7. Promoting Regional Collaboration and Cooperation in Refugee Protection Efforts.**
- 8. Ensuring Comprehensive Healthcare and Mental Health Services for Refugees Through Integrated Approaches.**



QARMA

(Questions A Resolution Must Answer)

- 1. Discussing the need for establishing a framework to Safeguarding Against Arbitrary Detention and Deportation of Refugees**
- 2. Right to seek asylum**
- 3. What strategies can be implemented to ensure refugees can safely return home, resettle in**
- 4. another country, or integrate locally?**
- 5. Ensuring Adequate Legal Aid and Representation for Refugees in Asylum Procedures**
- 6. Deliberating on the issue of Climate Refugees: A Call for Inclusion and Compassion**



Conclusion

In conclusion, the examination of refugee law, with an emphasis on the principle of non-refoulement, sheds light on the important ethical and legal requirements associated with offering protection to individuals escaping illegal activity. The historical development, legal foundations, and practical ramifications of non-refoulement have all been covered in this thesis, demonstrating its critical role in defending the fundamental rights and dignity of vulnerable people around the globe.

The concept of non-refoulement is not only a legal doctrine; rather, it is a fundamental aspect of our humanity, a reflection of our common duty to preserve justice and compassion in the face of hardship, as we work through the complexity of refugee protection. Nevertheless, even with the advancements, ongoing implementation difficulties highlight the critical need for coordinated action and systemic changes to ensure the effective application of non-refoulement principles.

Policymakers, attorneys, and other international players must work together to address these issues and promote laws that preserve the essence of refugee protection. By doing this, we pay tribute to the tenacity of refugees and reaffirm our dedication to constructing a more just and inclusive society in which everyone's rights are respected and protected.

Let us, in closing, take the lessons learned from studying refugee law and apply the principle of non-refoulement to steer us towards a future in which empathy prevails over callousness and where everyone, no matter what their situation, finds comfort and community in the promise of sanctuary.

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