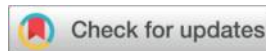


## Protection of Refugees in International Law Between Legal Obligations and State

Policies



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### Abstract:

The phenomenon of asylum has witnessed a continuous increase at the present time in a world in which people are displaced in different contexts due to internal and international armed conflicts, as well as serious violations of human rights, whether directed at groups on an ethnic, religious, or political basis, or directed at opponents of an unjust governing system or political orientation. This has driven many individuals to flee to other countries in search of protection and to avoid persecution.

The right to asylum in international law is not limited to merely allowing entry into the territory of another state; rather, it goes beyond that to include an integrated system of legal guarantees, foremost among them the principle of non-refoulement, which is considered the cornerstone of refugee protection. It reflects a fundamental international obligation not to expose individuals to the risk of persecution and affirms that humanitarian considerations prevail over political or security considerations of states. Moreover, the enshrinement of this principle in numerous international instruments reflects its customary nature and grants it an advanced status within the international legal system.

**Keywords:** asylum, persecution, human rights, human dignity, armed conflicts.

### Introduction:

Asylum has become in the contemporary era a phenomenon that reflects the depth of the crises experienced by the modern international system. The movement of individuals across borders in search of protection is no longer an exceptional event; rather, it is considered an inevitable result of structural imbalances affecting state stability and societal security. The escalation of armed conflicts and the disintegration of state institutions in an increasing number of countries have contributed to forcing millions of individuals to leave their homelands forcibly, fleeing

violence, persecution, human rights violations, and the absence of basic guarantees for a dignified life. In this context, asylum emerges as a humanitarian and legal response to an international reality characterized by growing political and security fragility.

This has coincided with the rise of security discourse in international relations, accompanied by the tightening of migration and asylum policies and the establishment of legal and material barriers before protection seekers. Considerations of national security, counterterrorism, and irregular migration have become justifications for restricting the right to asylum, which has contributed to weakening the humanitarian nature of this right and widening the gap between the international obligations established in theory and the practical practices of states. From here, we pose the following main problem:

**Does international law provide adequate protection for refugees in light of the increasing armed conflicts?**

To answer this main problem, the subject under study is addressed in two sections: the first examines the definition of the refugee and the reasons for the aggravation of the asylum phenomenon, while the second addresses the rights enjoyed by refugees under international law, as well as the possible means to limit the spread of the asylum phenomenon.

### **Chapter One: The Concept of the Refugee in International Law**

International refugee law encompasses a wide segment of civilians whom circumstances force to move to places other than those in which they were accustomed to living. The phenomenon of displacement constitutes one of the most important problems facing the international community. International and regional bodies adopt an approach known as the dual action approach, which is based on providing support to states that receive refugees on the one hand and to states where resettlement occurs on the other, that is, the return of refugees to their countries of origin. The United Nations High Commissioner for Refugees also supports the return of refugees to their homelands and their reintegration therein once again. Accordingly, in the first requirement we address the definition of the refugee in international law, and in the second requirement we address the reasons for seeking asylum in foreign states.

### **Section One: Definition of the Refugee in International Law**

The 1951 Convention and its 1967 Protocol, as a permanent instrument for refugee protection, occupy a central position in the international system for the protection of refugees. Article 1 of the 1951 Convention defined refugee status as any person who, as a result of events occurring before 1 January 1951, has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and is outside the country of his nationality; or any person who, being stateless and outside the country of his

former habitual residence, is unable or, owing to such fear, unwilling to return to it. In this regard, it should be noted that the 1967 Protocol, which came to amend and supplement the 1951 Convention relating to the Status of Refugees, contained the same definition as in the Convention but without specifying the temporal limitation.

Article 1 of the Arab Convention on Regulating the Status of Refugees in the Arab States of 1994 also defined a refugee as any person who is outside the country of his nationality or outside his habitual residence if he is stateless, and who has reasonable fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and who is unable or unwilling, owing to such fear, to avail himself of the protection of that country or to return to it. It also includes any person who is compelled to seek refuge in a country other than his country of origin or habitual residence due to aggression against that country, foreign domination over it, or the occurrence of natural disasters or serious events resulting in a disturbance of public order in the whole country or part thereof. There is a fundamental difference between refugees and migrants. Refugees are persons fleeing armed conflict or persecution, and their situation is often extremely dangerous, living in intolerable conditions that drive them to cross national borders in search of safety in neighboring countries. Accordingly, they are internationally recognized as refugees and receive assistance from states, the Commissioner, and other organizations. They are recognized as refugees in particular because their return to their homeland is extremely dangerous and because they need safe haven elsewhere, and denying these persons asylum may lead to fatal consequences.

Migrants, on the other hand, are persons who choose to move not because of a direct threat of persecution or death, but primarily to improve their lives by finding work, or in some cases for education, family reunification, or other reasons. Unlike refugees who cannot safely return to their homeland, migrants do not face such obstacles to return. If they choose to return home, they will continue to receive protection from their government. While migration remains a sovereign right of states to determine their national migration policies, the issue of criminalizing migrants does not concern only irregular migrants or asylum seekers, but also judicial prosecutions that do not distinguish between women, children, and persons with special needs, nor do they consider the reasons and circumstances of their movement. This logic entrenches double standards by failing to provide mechanisms that enable the protection of migrants' basic rights under the pretext of sovereignty. In this regard, the Global Compact for Migration 2018 provides a framework that enhances policies to ensure the entry of skilled migrants into these states, which may not serve the interests of developing countries. In addition, these policies

strengthen migrants' desire to reach these territories through illegal means and constitute one of the factors that encourage the activity of smuggling and human trafficking networks. Distinguishing between migrants and refugees is important for individual governments, as states deal with migrants under their own immigration laws and procedures, and with refugees under the rules of refugee protection and asylum set forth in both national legislation and international law. States bear specific responsibilities toward any person who seeks asylum on their territory or at their borders, and the Commissioner assists states in dealing with their responsibilities in protecting asylum seekers and refugees.

## **Section Two: Reasons for Seeking Asylum in Foreign States**

The primary reason for asylum lies in acts related to human rights violations that usually occur during conflicts, rendering national authorities unable or unwilling to provide protection and assistance to their citizens. Here, the relationship between refugee assistance and human rights emerges, as international refugee protection is based on human rights concepts, given that the primary goal is to assist those who have fled their homelands due to persecution and whose rights have been violated. Customary and treaty-based human rights law has prohibited the expulsion of persons to territories where they would be subjected to ill-treatment such as humiliation, torture, inhuman treatment, and threats to life and bodily integrity. Although asylum is a right for every natural person whose rights and freedoms have been flagrantly violated within his state of origin or within the state of residence to seek safe refuge to ensure his protection and that of his family and to preserve his dignity—as affirmed by Article 14 of the 1948 Universal Declaration of Human Rights—it cannot be denied that refugees in other states face other threats affecting their security in the host state. They may be exposed to the risk of starvation and direct assault, whether by the original population of the host states or by fellow citizens. The matter becomes more complicated by the difficulty refugees face in obtaining work permits in the host state, which forces them to resort to the black market or illegal market to earn their livelihood. This leads to other problems such as low wages, arbitrary dismissal from work, and the exploitation of children in hard labor. Consequently, if they do not obtain regular employment, they remain exposed to the deadly pit of poverty. Moreover, large-scale displacement leads to a massive influx of refugees into the territory of the host state relative to the number of the original population, which poses a threat to its political, economic, and social stability. The receiving state is thus compelled to establish a set of barriers to hinder the arrival of persons wishing to seek asylum, such as closing borders—especially since most asylum seekers are forced to enter the asylum state illegally—or pushing refugees back to danger zones out of fear for its security and the safety of its

population. It is evident that the conditions of some refugees in camps and settlements are miserable, and they pay the price with their lives, property, efforts, their children's future, and their psychological state due to leaving their homelands for no fault of their own.

## **Chapter Two: The Status of the Refugee in the Host State**

There is no doubt that the phenomenon of asylum is one of the oldest human phenomena, considered a social phenomenon with a humanitarian dimension, due to the close relationship between the status of refugees and the necessity of respecting human rights. Asylum is linked to persecution and despotism; wherever persecution exists, asylum exists. Despite the longstanding nature of the asylum crisis, it has intensified in recent times due to the increase in internal armed conflicts, which have been among the most significant causes of the refugee crisis in the international community. New challenges have emerged that have made it difficult to address this crisis at the global level, despite the awareness of the international community to confront it. Accordingly, in the first requirement we address the rights of refugees in the host state, and in the second requirement the means of limiting the exacerbation of the asylum crisis.

### **Section One: Rights of Refugees in the Host State**

It cannot be denied that the 1951 Convention constitutes a fundamental effort in understanding the right to asylum and dealing with it; however, it linked the determination of refugee status to events that occurred in Europe before 1951 and did not refer to all the reasons on the basis of which the right to asylum may be granted. Rather, it confined it to a single idea based on persecution, which it did not define, raising several questions regarding which rights violations may be considered persecution, the extent to which protection associated with refugee status extends to family members, or the identity of the persecutor in order to determine the beneficiaries of protection afforded by refugee status in light of the increasing number of victims of gender-based violence as a justified reason for granting refugee status. It should be noted here that migrants crossing the sea, upon reaching the shore, do not have refugee status unless they meet the conditions set forth in Article 1 of the 1951 Convention. If their sea crossing is for fishing to earn their livelihood, they are considered economic migrants, not refugees, and their deportation to their state remains possible. Hence, it is required to establish a specific definition of refugees so that the matter does not remain discretionary for states to determine according to their whims, interests, and policies—especially since most states that grant asylum still consider it an unfriendly act, sometimes interpreted as a hostile act, as they regard the granting of asylum as a sovereign act that does not concern the international community.

Refugees in the host state enjoy a set of rights that should not be less than those enjoyed by its

citizens, except for certain rights that cannot be granted to refugees because they do not hold the nationality of the asylum state, such as exercising the right to vote or holding senior state positions. Accordingly, refugees enjoy public freedoms, public facilities, and essential services to meet their needs by virtue of their presence on the territory of the host state, given that public freedoms are inherent to the human person and are linked to him from birth. All human beings are equal in dignity and rights, and thus every person has the right to enjoy all rights and freedoms without discrimination based on religion, race, gender, or the country whose nationality they hold. However, reality has proven otherwise, as there is bias toward certain groups over others for political or religious reasons. Refugees also have the right to own movable and immovable property and other related rights, and to conclude contracts related to movable or immovable property. They are also granted the right to belong to non-political, non-profit associations and professional unions, in addition to the right of free access to the courts, to benefit from legal aid, and exemption from the payment of adjudicated fees.

The presence of refugees on the territory of the host state, as foreigners, entitles them to enjoy specific rights, primarily personal status rights, especially those related to marriage. They also enjoy the right not to be expelled or returned to the borders of territories where their lives or freedoms would be at risk. Asylum states are required to facilitate naturalization procedures and reduce the fees of these procedures to a minimum. Refugees are granted the freedom to practice their religious rites and the freedom to provide education for their children in accordance with the principles of their faith. Since refugees enjoy a set of rights, they are also subject to a set of obligations, which focus mainly on respecting the laws of the host state and refraining from acts of rioting or committing crimes such as incitement against authority or falsification of its currency, meaning refraining from committing crimes that infringe upon the sovereignty of the state and undermine its political stability and security. It should be noted that these rights are enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and most of these rights derive their source from customary law. They are binding on all states that accept asylum on their territory regardless of their accession to the 1951 Convention, as they rise to the level of peremptory legal norms that apply *erga omnes* and cannot be violated or agreed upon contrary to them. The rights enjoyed by refugees in the host state are matched by duties incumbent upon them toward the host state. These obligations include, in particular, compliance with the laws and regulations of the country of asylum, including lawful measures taken to maintain public order, and refraining from any activity that would undermine the exclusively civilian and humanitarian character of camps and settlements.

Asylum ends in the event of the refugee's return to his state once the reasons that led to his asylum have ceased, or when the refugee acquires the nationality of the asylum state. Refugee status also lapses in the event of the expulsion of the refugee from the host state for two reasons specified in the 1951 Convention. The first reason relates to the legal expulsion of the refugee for reasons of national security and public order, while the second reason relates to the refugee obtaining authorization to enter the territory of another state.

### **Section Two: Means of Limiting the Exacerbation of the Asylum Crisis:**

The international community faces numerous obstacles in ensuring the right to asylum, including financial funding, the refusal of some states to accept or receive refugees, problems related to their expulsion or removal, and issues related to the time limits imposed on the work of the United Nations High Commissioner for Refugees, especially in cases of prolonged stay or situations of internal displacement. Even after the return of displaced persons or refugees, the work of the Commission continues under what is known as safety, dignity, and durable solutions to ensure that asylum situations do not recur. In addition, there is the continuous increase in the number of refugees and displaced persons and the aggravation of environmental problems. The role of the international community lies in providing guarantees to ensure the protection of all human rights so that violations do not occur that may push some individuals to seek asylum in another country in search of security, thus falling within the scope of protecting the rights and freedoms of individuals vis-à-vis the state.

The dire conditions of refugees at the present time require the international community to adopt a preventive approach in order to reach a strategy to revitalize the existing international protection system to confront the asylum phenomenon. This should be achieved through a legal framework whose role is present before and during the occurrence of serious violations that constitute the basis for granting asylum, in order to address the causes that lead to asylum and to limit the number of refugees. This would ensure effective action to contain the crisis before and during its occurrence, at a time to which the statement of Mr. António Guterres, former head of the United Nations High Commissioner for Refugees, applies: that the world is causing displacement faster than it is producing solutions. It is also required of non-governmental organizations working in the humanitarian field to draw a brighter picture based primarily on stimulating the global conscience, by exposing the locations where human rights violations occur with the aim of influencing the international community to push it to establish international standards for the protection of human rights. To activate the regulation of the right to asylum as one of the indicators of democracy in political systems, states—especially Arab states—must establish an independent body entrusted with the task of receiving asylum

applications, verifying the availability of the conditions stipulated by law in the submitted application, and referring the application to the governmental authorities to decide whether to grant the right to asylum or not.

### **Conclusion**

Asylum in international law represents the embodiment of an authentic humanitarian principle based on protecting human beings from persecution and danger, before being merely a legal regulation of relations between states. The rules of international law, particularly international human rights law and international refugee law, have enshrined a set of fundamental principles aimed at ensuring a minimum level of protection for refugees, foremost among them the principle of non-refoulement, the right to seek asylum, and the guarantee of humane treatment without discrimination. This is intended to protect refugees from violations of their rights and to provide them with the necessary protection in the host state. Accordingly, a set of results and proposals has been reached.

### **First: Results:**

- The primary burden with regard to refugees is borne mainly by states, as they are the ones who receive them and seek to protect and assist them and provide all forms of care to them, which may cause economic problems for these states, especially if they experience strong displacement movements toward them.
- The 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol, and other international and regional instruments are incapable of establishing a legal system with political dimensions for the protection of refugees because they lack effectiveness in the preventive aspect. Their role should be present before and during the occurrence of violations that are expected to lead to asylum situations, in order to address the causes that drive asylum and ensure a reduction in the number of refugees, thereby ensuring effective action to contain the crisis before or during its initial occurrence.
- The temporal limitation in the Convention weakened its standing at the global level, as it defines the refugee as any person who is present as a result of events that occurred before 1 January 1951. The definition of the refugee was formulated to be consistent with the general situation after the Second World War, especially in countries that witnessed waves of asylum and displacement in Europe.

### **Second: Proposals:**

- Developing the international protection system in a manner consistent with the complexity of the phenomenon and the multiplicity of its causes; however, evaluating



these recommendations reveals that their effectiveness remains contingent on their practical implementability and the availability of political will among states, more than on their legal or humanitarian value. Repeated recommendations to enhance respect for the right to asylum and the principle of non-refoulement, despite their normative importance, in practice clash with traditional national policies that prioritize security and sovereignty considerations, which empties these recommendations of their practical content and limits their preventive impact.

- Harmonizing national legislation with international standards for refugee rights, which remain uneven depending on the differing political and legal contexts of states. In many cases, international rules are incorporated into domestic legislation in a partial or formal manner, without providing the procedural guarantees necessary for their effective application, such as ensuring the right to appeal, legal assistance, and access to fair and effective asylum procedures.
- Strengthening the role of international and regional organizations, especially the United Nations High Commissioner for Refugees, by expanding their supervisory powers and granting them more effective means to monitor states' compliance with their international commitments. It is also advisable to support cooperation between these organizations and national judicial systems, allowing for the harmonization of legal standards and the exchange of best practices in the field of refugee protection.

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