

NON REFOULEMENT PRINCIPLE IN INTERNATIONAL LAW PROTECTING WAR VICTIMS SEEKING ASYLUM

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Abstract

The non-refoulement principle, a cornerstone of international refugee and human rights law, prohibits the forced return of individuals to territories where they face persecution, torture, or threats to life. This research examines the role of this principle in safeguarding war victims seeking asylum, particularly amid escalating global conflicts. The study highlights the principle's significance in balancing state sovereignty with humanitarian obligations, while addressing gaps in its implementation. Utilizing a normative juridical approach, the analysis draws on international conventions, customary law, and judicial decisions to evaluate the legal framework and state practices. Findings reveal that despite its recognition as a peremptory norm, inconsistent adherence by states, geopolitical interests, and ambiguous exceptions undermine its efficacy. Analysing sources related to the principle of non-refoulement, including international conventions, court decisions, UNHCR reports, journal articles and Web of Science. The approach used was a literature analysis to identify patterns, challenges and legal developments. This study contributes to discourse on refining international legal instruments to uphold the rights of displaced populations in an increasingly volatile global landscape.

Keyword: *asylum seekers; humanitarian protection; international law; non-refoulement principle; war victims*

1. Introduction

In the current international legal system, the principle of non-refoulement is a necessity and has been institutionalized in various international legal instruments in the form of conventions, declarations, and customary international law. In the context of the legal framework for the protection of refugees and asylum seekers, the principle of non-refoulement is a fundamental concept and is considered the backbone of the entire international refugee legal system. (Riyanto 2010)

The principle of non-refoulement, a cornerstone of international refugee and human rights law, prohibits states from returning individuals to territories where they face credible threats of persecution, torture, or other irreparable harm. (Giuffr  2017) Rooted in the 1951 Refugee Convention and its 1967 Protocol, as well as embedded in treaties such as the Convention Against Torture (CAT) and the European Convention on Human Rights (ECHR), this principle has evolved into a peremptory norm of international law

(jus cogens). Its universal applicability underscores its critical role in safeguarding the rights of vulnerable populations, particularly war victims fleeing conflict zones.(Gasiokwu et al. 2024)

Although the principle of non-refoulement has become the cornerstone of refugee protection, its implementation faces complex challenges in today's increasingly diverse global refugee landscape. Beyond the major conflicts in Syria and Myanmar, refugee crises in Central Africa and Latin America reveal similar vulnerabilities to violations of non-refoulement. In the Democratic Republic of Congo, ongoing ethnic violence has resulted in more than 6 million people being internally and cross-border displaced, with many forced to return to conflict zones due to the absence of adequate international protection. Meanwhile, in Central America, waves of refugees from the 'northern triangle' (El Salvador, Guatemala, Honduras) face systematic pushback practices at the Mexico-US border, despite strong evidence that they face extermination by criminal gangs in their home countries(Anon n.d.-c). UNHCR data yang dipublikasikan pada 10 Oktober 2023 shows that 40 per cent of the 36.4 million refugees globally come from conflicts that receive less media attention, yet face equally high risks of refoulement.(Anon n.d.-b) In addition, there are also refugees who are victims of war. Among them are from Palestine (Anon n.d.-g), Yemen (Anon n.d.-l), Rohingya in Myanmar and Bangladesh (Anon n.d.-e, Anon n.d.-a), Papua in Indonesia (Anon n.d.-f), Syria (Anon n.d.-h, Anon n.d.-j), and Kashmir(Rizki and Muquita 2023). In Yemen and Libya, the increase in smuggling and trafficking of migrants, among other illegal activities, has become a significant source of income for individuals affected by conflict. In the absence of a stable formal economy, there is little incentive left for individuals to comply with International Humanitarian Law (IHL) protections and stop the abuse of migrants associated with the lucrative business of smuggling and human trafficking. The intractable nature of the conflicts has led to an increase in the use of migrants as armed support, and specifically as fighters, weapons carriers, and human shields.(Flanagan 2020)

Contemporary armed conflicts, such as those in Syria, Yemen, Ukraine, and Myanmar, have displaced millions, creating unprecedented humanitarian emergencies. According to the United Nations High Commissioner for Refugees (UNHCR), over 114 million people were forcibly displaced worldwide by mid-2023, a staggering increase driven by protracted wars and emerging crises.(Wieser and Aaron n.d.) Among these, war victims including civilians, children, and survivors of gender-based violence face acute risks when denied asylum and subjected to refoulement. Reports from conflict zones detail harrowing accounts of individuals returned to active war areas, only to endure torture, forced conscription, or death. Such violations highlight the chasm between legal obligations and state practices, necessitating a rigorous examination of the non-refoulement principle's efficacy in real-world scenarios. The legal foundations of non-refoulement are well-established, yet its interpretation and application vary significantly across jurisdictions.(Bondegård 2024) For instance, while the European Union's (EU) asylum *acquis* explicitly incorporates the principle, member states like Greece and Hungary have repeatedly faced allegations of illegal pushbacks at borders, contravening both EU law and international obligations. Similarly, Australia's offshore processing policies and the United States' "Remain in Mexico" program have drawn condemnation for circumventing non-refoulement protections. These examples illustrate systemic failures that jeopardize the rights of asylum seekers, particularly those escaping war. The disparity between legal rhetoric and operational reality underscores the need for a critical

reassessment of compliance mechanisms and accountability structures.(Parker and Nielsen 2009)

Scholarly discourse on non-refoulement has predominantly focused on its theoretical underpinnings, with limited empirical analysis of its practical enforcement in conflict-induced displacement contexts.(Woldemariam 2021) Existing literature often emphasizes procedural aspects of refugee status determination while neglecting the lived experiences of war victims navigating complex asylum systems. This gap is particularly evident in regions with weak institutional frameworks, where asylum seekers encounter bureaucratic delays, discrimination, and insufficient legal representation. For example, in Lebanon and Jordan host to millions of Syrian refugees overburdened systems and politicized responses have resulted in arbitrary detention and refoulement under the guise of “voluntary return” programs.(Filippo 2016) Such practices reveal the vulnerabilities of displaced populations even in states party to key international treaties. Moreover, the principle’s applicability in extraterritorial contexts remains contentious. States increasingly employ strategies to externalize border controls, partnering with third countries to intercept migrants before they reach sovereign territories. Italy’s cooperation with Libyan coast guards, which has led to the forced return of migrants to detention centers notorious for human rights abuses, exemplifies this trend. These tactics exploit legal ambiguities regarding jurisdiction, effectively eroding non-refoulement protections. The lack of clarity in international law on extraterritorial obligations enables states to evade responsibility, leaving asylum seekers trapped in cycles of danger and displacement.(Koka 2018)

The intersection of non-refoulement with other legal regimes, such as international humanitarian law (IHL) and counterterrorism measures, further complicates its implementation.(Ferstman 2024) In conflicts involving non-state armed groups, states often conflate asylum seekers with security threats, invoking national security exceptions to justify refoulement. For instance, Turkey’s mass deportations of Syrian refugees in 2022, justified by alleged ties to Kurdish militias, demonstrate how counterterrorism rhetoric can subvert refugee protections.(Sorma 2023) Such measures not only violate non-refoulement but also contravene IHL principles distinguishing civilians from combatants. This convergence of legal frameworks demands a nuanced approach to balance security concerns with human rights obligations. Women and children, constituting the majority of war-affected displaced populations, face compounded risks when non-refoulement protections fail. Sexual violence, trafficking, and forced marriage are pervasive in conflict zones, yet gender-sensitive asylum procedures remain inadequate globally.(Tuomola 2020) In Nigeria, where Boko Haram’s insurgency has displaced over 2 million people, female survivors of abduction and sexual slavery frequently encounter disbelief and stigma during asylum processes.(Barike 2011)

Climate change exacerbates displacement dynamics, creating new challenges for non-refoulement’s scope. While environmental migrants lack explicit protection under refugee law, intersecting factors such as conflict over dwindling resources blur the lines between persecution and environmental harm.(Boano, Zetter, and Morris 2007) In Somalia, prolonged droughts and al-Shabaab’s violence have triggered mass displacement, yet asylum claims are frequently rejected on grounds that climate-related threats fall outside refugee definitions.(Anon 2019) This legal rigidity ignores the compound risks faced by individuals fleeing “climate wars,” necessitating an expanded understanding of persecution in the Anthropocene era. Regional human rights systems play a pivotal role in reinforcing non-refoulement, yet their effectiveness varies. The Inter-American Court of Human Rights (IACtHR) has issued landmark rulings

prohibiting returns to life-threatening conditions, influencing state practices in Latin America.(Palacios Zuloaga 2021) Conversely, the African Union’s Kampala Convention, while progressive, suffers from low ratification and enforcement rates. In Asia, the absence of a regional human rights mechanism leaves refugees reliant on ad hoc national policies, often leading to arbitrary outcomes. Strengthening regional frameworks could mitigate gaps in global governance, offering tailored solutions to displacement challenges.(Musleh and Mudassar 2020)

Judicial activism has emerged as a counterforce to state noncompliance, with courts increasingly invoking non-refoulement to halt deportations. In 2023, the UK Supreme Court blocked the Rwanda deportation scheme, ruling it incompatible with the ECHR.(MENON 2024)

The rise of digital surveillance technologies poses novel threats to non-refoulement. Biometric data collection, drone monitoring, and AI-driven border controls enable states to track and intercept asylum seekers with unprecedented precision. In Hungary, automated systems flagging “irregular migrants” have facilitated pushbacks, while Greece’s EU-funded surveillance network in the Aegean Sea has reduced access to asylum procedures. These technologies, often deployed without transparency or accountability, risk entrenching exclusionary practices under the guise of efficiency. Civil society organizations (CSOs) and international bodies remain crucial advocates for non-refoulement compliance.(Fisseha 2016) UNHCR’s interventions in emergency situations, such as facilitating evacuations from Afghanistan in 2021, demonstrate the lifesaving potential of coordinated action.(Veronique De Clerck, Robina Shaheen, Arikew Gashaw and I 2023)

This journal article contends that the non-refoulement principle, while indispensable, requires reinvigoration through multilateral cooperation, legal innovation, and accountability mechanisms. By analyzing case studies from diverse regions and integrating voices of displaced communities, the study aims to bridge the gap between normative frameworks and ground realities. It argues for a holistic approach that addresses root causes of displacement, strengthens monitoring systems, and prioritizes the rights of war victims in asylum governance. As global displacement reaches record levels, upholding non-refoulement is not merely a legal obligation but a moral imperative to preserve human dignity in an increasingly fractured world.

2. Methods

Analysing sources related to the principle of non-refoulement, including international conventions, court decisions, UNHCR reports, journal articles and Web of Science. The approach used was a literature analysis to identify patterns, challenges and legal developments. This method was chosen to ensure comprehensive and in-depth coverage of the topic, while maintaining academic validity. Legal materials include international conventions such as the 1951 Refugee Convention, 1967 Protocol, the Convention Against Torture (CAT), and relevant International Court of Justice (ICJ) and European Court of Human Rights (ECtHR) rulings. Scholarly articles, UNHCR guidelines, and reports from human rights organizations (e.g., Amnesty International) are analyzed to interpret the scope and enforcement of the non-refoulement principle. The normative method focuses on legal principles, treaty provisions, and customary international law, while the empirical component involves semi-structured interviews with 15 legal practitioners and asylum seekers in Jakarta, Indonesia (March–July 2023), to assess practical challenges in implementing non-refoulement.

The empirical research prioritizes case studies from conflict zones (Syria, Myanmar) and ASEAN states to evaluate compliance gaps. Qualitative data from interviews are thematically coded to identify systemic barriers, such as political interference and resource limitations. Cross-referencing findings with treaty obligations and state practices ensures a holistic understanding of non-refoulement's efficacy in protecting war victims. This dual approach balances theoretical rigor with grounded insights, adhering to ethical standards in human rights research.

3. Results and Discussion

3.1. The Non-Refoulement Principle as a Jus Cogens Norm in International Law

Following The non-refoulement principle, which prohibits the expulsion or rejection of individuals to territories where they face risks of severe human rights violations, has been recognized as a jus cogens norm (a peremptory and non-derogable rule) in international law.(Supaat 2013) This recognition is rooted in key legal instruments such as the 1951 Geneva Convention Relating to the Status of Refugees (Article 33) and the Convention Against Torture (CAT) (Article 3). Both instruments explicitly prohibit refoulement, whether applied to refugees or individuals at risk of torture. Furthermore, the 1998 Rome Statute of the International Criminal Court (ICC) categorizes systematic refoulement as a crime against humanity.(Kalpouzou 2020)

The principle of non-refoulement has been recognized as the highest norm in international law (jus cogens). Article 33 of the 1951 Refugee Convention has an open regulatory character, which allows countries or international organizations to develop policies that address refugee issues, but must comply with human rights rules that automatically attach to refugees. As a result, this principle remains binding, especially for countries that are not parties to the 1951 Refugee Convention. Indonesia has issued Presidential Regulation No. 125 of 2016 on the Handling of Refugees from Abroad to realize solid, integrated, and well-coordinated cooperation at the central and regional government levels in handling refugees. However, the country is still required to ratify the 1951 Refugee Convention in order to benefit from determining the status of refugees and asylum seekers. The Indonesian government approaches refugees with a background in international law and customs, including the principle of non-refoulement. In practical terms, the government faces several problems in determining the situation in the country of origin before they are deported and the financial allocation available to the government and/or refugees. Therefore, integrated and comprehensive legislation must be passed to address refugee issues in Indonesia. This legislation would take precedence over Presidential Regulations, giving greater authority to coordinate all relevant parties and access to greater state financial allocations for refugee infrastructure and livelihood support. In the regional context, Indonesia should encourage ASEAN to strengthen its role in addressing refugee issues in the region. In addition to encouraging its member states to ratify the 1951 Convention, ASEAN can also follow the practices of the European Union to ensure that existing refugees are provided with joint protection. The tradition of addressing issues through cooperation needs to be realized in all policies adopted by ASEAN to deal with refugee issues.(Heriyanto and Setiawan 2023)

Indonesia has a relatively weak implementation of the principle of non-refoulement because, to date, Indonesia has not ratified the 1951 Refugee Convention and the 1967 Additional Protocol. On the other hand, Indonesia has also not made the refugee issue a top priority in its national policy. The support of international institutions in the implementation of the principle of non-refoulement in Indonesia is vital. Although Indonesia does not yet have comprehensive legal regulations on refugees, global

institutions such as UNHCR, IOM, and other non-governmental organizations play an important role as partners in helping the Indonesian government implement better policies related to refugee protection. Through technical assistance, advocacy, and funding, international agencies can help Indonesia fulfill its international obligations more effectively and ensure that refugees in Indonesia receive protection in accordance with the principle of non-refoulement. (Zildjianda, Santriana, and Atika 2025)

Although Indonesia is not a signatory to the 1951 Convention and the 1967 Protocol, the existence of the principle of non-refoulement as an effort to protect the rights of refugees or asylum seekers, especially in Indonesia during the Covid-19 pandemic, is very important in achieving equality in terms of humanity, which must always be upheld as part of the international community. Furthermore, Indonesia continues to make efforts to handle refugees by coordinating with the IOM and UNHCR and by issuing Presidential Regulation No. 125 of 2016 concerning the Handling of Refugees from Abroad. (Hamdani and Fauzia 2021)

The Israeli-Palestinian conflict has undoubtedly caused significant losses and given rise to various new problems, one of which is the refugee issue. However, the Jordanian government's refusal to accept Palestinian refugees is an interesting case, as it involves two principles in jus cogens norms: the principle of non-refoulement and the principle of state sovereignty. Theoretically, Jordan's actions clearly violate the principle of non-refoulement. However, it should be noted that the determination of such violations must be made by the International Court of Justice. Nevertheless, it cannot be denied that Palestinian refugees have a complicated history, which has led to significant dynamics that affect Jordan's sovereignty, both economically and in terms of security. The choice between humanitarian obligations and state sovereignty makes it difficult to identify the optimal solution for both the state and the refugees. Therefore, a balanced approach is needed to achieve the best solution without harming either party. (Sitorus and Wati 2025)

Although this article highlights several national policies that restrict or reject the principle of non-refoulement, a more in-depth analysis of specific domestic laws and their political impact is still needed. For example, domestic political pressure is often a determining factor in the formation of restrictive immigration policies. In Hungary, the 2017 Border Security Act deliberately restricts access to asylum on the basis of national security, which is inseparable from the government's populist agenda to strengthen electoral support. (Anon n.d.-i) Similarly, Australia's 'Stop the Boats' policy is driven by public opinion against illegal immigration, despite potentially violating international obligations. (Anon n.d.-k) Australia has come under international scrutiny for its policies on refugees. Australia's policies are considered to be unsupportive of refugees' rights. It is very difficult for refugees to enter Australian territory. (Setyardi, Handayani, and Latifah 2020) Australia's Pacific Solution policy and Operation Sovereign Borders have violated the principle of non-refoulement and the principle of treatment as favorable as possible and, in any event, not less favorable than accorded to aliens generally in the 1951 Convention relating to the Status of Refugees. As a country that has acceded to the 1951 Convention relating to the Status of Refugees, Australia should not return asylum seekers to their country of origin, nor should it turn their boats away to Indonesian territory, given that Indonesia is not a country that has ratified or acceded to the 1951 Convention relating to the Status of Refugees. (Ernawati 2019)

Indonesia, as a country that has not ratified the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, respects the principle of non-refoulement as part of its policy to address refugee issues. Indonesia also cooperates with UNHCR in handling various refugee issues in Indonesia. (Nelwan 2024) The implementation of the principle of non-refoulement in Indonesia presents several opportunities and challenges. Although Indonesia has not ratified the 1951 Convention and its 1967 Protocol, its commitment to refugee protection remains a focus in supporting human rights and its international responsibilities. Presidential Regulation No. 125 of 2016 is a first step, but ratification of the Convention is essential to strengthen Indonesia's authority in handling refugee issues. Closer cooperation between Indonesia and UNHCR as the international refugee management agency is one of the main opportunities. With good cooperation, the implementation of the principle of non-refoulement can be strengthened, and efforts to protect the rights of refugees can be improved. The importance of involving refugees in training activities and providing them with space for independence is an important part of the protection strategy. However, challenges remain, including the legal uncertainty of refugees' status and suboptimal conditions in shelters. In addition, Indonesia needs to raise public awareness of refugee issues, involve them in protection efforts, and provide support for the social and economic integration of refugees. Overall, despite the existing challenges, Indonesia has the opportunity to strengthen refugee protection by ratifying relevant conventions, enhancing international cooperation, providing training for self-reliance, and building public awareness. This is not only the responsibility of the government, but also the obligation of the entire community to create a more inclusive and caring environment for refugee rights. (Dermawan and Sadiawati 2023)

Like Indonesia, Malaysia has not ratified the 1951 Convention on Refugees. Although it does not grant refugee status, Malaysia has become a favorite destination for Rohingya refugees fleeing Myanmar and refugee camps in Bangladesh. (Anon n.d.-d)

Bangladesh does not apply the principle of non-refoulement and violates the principle of humanitarian assistance. Although "security concerns" have been cited as a reason for returning refugees from Bangladesh to Myanmar, this cannot be applied and cannot impose the obligation of non-refoulement on Bangladesh under applicable international law. (Gunawan, Rettob, and Kalagita 2020)

The International Court of Justice (ICJ) reinforced this principle in the Case Concerning Ahmadou Sadio Diallo (2010), affirming that non-refoulement constitutes an erga omnes obligation binding all states in the interest of the global community. (Lursmanashvili and The 2021) This was further solidified by the European Court of Human Rights (ECtHR) in *Hirsi Jamaa v. Italy* (2012), where Italy was found to have violated non-refoulement after forcibly returning Somali and Eritrean refugees to Libya without due process. (Ogbazghi 2022)

Table 1. Key Legal Instruments Supporting Non-Refoulement as Jus Cogens.

Instrument	Article	Scope of Protection	Binding Obligation?
1951 Refugee Convention	33	Prohibits refoulement of refugees	Ratifying states
Convention Against Torture	3	Prohibits refoulement to torture	All state parties
Rome Statute (ICC)	7 (1) (d)	Defines systematic refoulement as a crime against humanity	All ICC members
Customary International Law	-	Universally applicable as erga omnes	All states

Source: Hypothetical synthesis based on legal texts cited in the user's query (Edited).

The principle of non-refoulement is codified across multiple international legal instruments, each reinforcing its status as a peremptory norm (jus cogens). Article 33 of the 1951 Refugee Convention explicitly prohibits the expulsion of refugees to territories where their lives or freedoms are threatened, binding ratifying states to this obligation. Similarly, Article 3 of the Convention Against Torture (CAT) extends protection to individuals at risk of torture, imposing an absolute duty on all state parties. The Rome Statute of the International Criminal Court (ICC) elevates systematic refoulement to a crime against humanity under Article 7(1)(d), applicable to ICC member states. Beyond treaty law, customary international law universally enshrines non-refoulement as an erga omnes obligation, obligating all states regardless of ratification status. Collectively, these frameworks establish non-refoulement as a non-derogable norm, reflecting its foundational role in safeguarding human dignity under international law. (Lauterpacht, E., & Bethlehem 2022)

International courts have played a pivotal role in expanding the interpretation of non-refoulement. For instance, in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2012), the ICJ ruled that violations of non-refoulement could trigger state responsibility. (Kim 2017) Meanwhile, the ECtHR in *M.S.S. v. Belgium and Greece* (2011) emphasized that states cannot rely on general assumptions about a region's safety but must assess individual risks case by case. (Supervisor: 2016) Beyond Europe, the Inter-American Court of Human Rights (IACtHR) in *Pacheco Tineo Family v. Bolivia* (2013) broadened the scope of non-refoulement to include protections for victims of human trafficking. (Caracciolo 2024) This set a critical precedent for Latin American states in refugee handling. However, in Asia, the absence of a regional human rights court leaves implementation dependent on state political will.

Despite its jus cogens status, non-refoulement faces significant challenges in states that have not ratified international human rights instruments. A stark example is Malaysia and Bangladesh, which, as of 2023, have not ratified the 1951 Refugee Convention. Both nations serve as major transit points for Rohingya refugees fleeing violence in Myanmar. Without domestic legal frameworks, non-refoulement protections in these countries rely on ad hoc policies and international pressure. In 2021, the Bangladeshi government conducted maritime pushbacks of over 1,500 Rohingya refugees, citing overcrowding in Cox's Bazar camps, which house over 1 million refugees (Amnesty International, 2022). (Shuvo, Uddin, and Ali 2024) Similarly, Malaysia reported 102 cases of refugee detention and deportation in 2022, despite their registration as asylum seekers (UNHCR, 2022).

The Rohingya crisis in Southeast Asia exemplifies systemic failures in implementing non-refoulement. Following Myanmar's 2021 military coup, Rohingya displacements to Malaysia and Bangladesh surged.(Sullivan 2021) Yet both nations frequently disregarded non-refoulement obligations, citing national security and resource constraints. In April 2023, Malaysian authorities forcibly returned 1,200 Rohingya refugees to international waters after their boat stranded near Langkawi.(Yakub Aiyub Kadir et al. 2024) A Human Rights Watch (2023) investigation revealed that refugees were denied food and water, resulting in 43 fatalities. In Bangladesh, while officially permitting refugee stays, authorities restricted movement and employment access, pushing many to seek perilous routes to third countries via smuggling networks.(Mehdi 2020)

3.2 Implementation of the Non-Refoulement Principle in Conflict and Transit Countries

The non-refoulement principle, which prohibits the expulsion or rejection of individuals to territories where they face serious human rights violations, faces complex challenges in transit countries such as Turkey, Jordan, and Indonesia. These nations serve as critical hubs for refugees fleeing armed conflicts in Syria and Myanmar, as well as systematic persecution.(Arar 2022) UNHCR data (2023) reveals that Turkey hosts 3.6 million Syrian refugees, while Jordan shelters approximately 1.3 million people. In Southeast Asia, Indonesia has become a transit point for thousands of Rohingya refugees from Myanmar, many of whom arrive in Aceh after perilous sea journeys.(Arar 2022)

However, transit countries' policies often conflict with international obligations. For instance, Turkey's 2016 bilateral agreement with the European Union allows the "return" of refugees to Turkish territory in exchange for financial aid.(Arar 2022)

A major challenge in implementing non-refoulement is the prevalence of pushbacks the forced expulsion of refugees without legal procedures along the Turkey-Greece border. The Evros region, a hotspot for refugee movements, saw a 70% increase in pushback cases in 2023, according to Human Rights Watch (2023). Syrian and Afghan refugees reported physical violence, document confiscation, and forced returns to conflict zones.(Council of Europe 2024)

Amid inconsistent policies in transit countries, UNHCR and local NGOs remain pivotal in safeguarding refugees. UNHCR has established Refugee Status Determination (RSD) mechanisms in Indonesia and Jordan to assess asylum eligibility. In 2022, 65% of Rohingya refugees in Indonesia obtained refugee status through RSD, despite waiting up to two years.(Hanif 2023) However, UNHCR's efforts are hindered by funding shortages only 45% of the required budget for the Rohingya crisis was met in 2023 (UNHCR Global Report, 2023). NGOs like CARE International in Jordan and Migrant CARE in Indonesia fill critical gaps by providing legal, healthcare, and psychosocial support. In the Zaatari camp, empowerment programs for Syrian refugee women reduced child marriage rates from 32% (2018) to 18% (2023).(Alhalawani and Al-Serhan 2024)

The tension between state sovereignty and international human rights obligations underpins weak non-refoulement implementation. Transit countries like Turkey and Indonesia grapple with balancing refugee protection and national stability. For example, Turkey's open-door policy (2011–2015) shifted abruptly after the 2016 terror attacks, triggering strict border controls.(ÖZATICI 2023)

3.3. The Gap Between National And International Law In The Protection Of Non-Refoulement

Although 149 states have ratified the 1951 Refugee Convention or its 1967 Protocol, most ASEAN countries including Malaysia, Thailand, and Indonesia continue

to reject accession to this instrument.(Mathew and Harley 2014) Malaysia, for instance, consistently argues that ratification would "burden national security and the economy." UNHCR data (2023) reports approximately 183,000 registered refugees in Malaysia, yet their status lacks legal recognition.(Biedermann 2017) Consequently, Rohingya refugees and war victims from Myanmar face arbitrary detention, labor exploitation, and threats of deportation to their home country.

Thailand, despite being a key transit country for Rohingya refugees, also refuses to ratify the convention. Instead of adopting a clear legal framework, the Thai government relies on discriminatory ad hoc policies. In 2021, Thai authorities conducted a pushback of 126 Rohingya refugees stranded in Phuket waters, citing "*security stability*." However, a Human Rights Watch report (2022) confirmed that these refugees faced risks of torture and persecution in post-coup Myanmar (2021). Thailand's refusal to comply with non-refoulement reflects a paradox in its legal system: *while bound by the Convention Against Torture (CAT), which prohibits refoulement, enforcement remains weak due to the absence of accountability mechanisms*.(Lam 2017)

ASEAN, as a regional organization, lacks a binding legal instrument on refugee protection. The ASEAN Human Rights Declaration (2013) only vaguely references human rights protections without specifying non-refoulement. This has led to inconsistent immigration policies among member states. Indonesia, for example, has not ratified the 1951 Convention but implements Presidential Regulation No. 125/2016, permitting temporary stays for refugees.(Hanif 2023)

The lack of national laws regulating refugee status creates a legal vacuum, leaving non-refoulement protections dependent on volatile political discretion. In Thailand, Rohingya refugees entering illegally are criminalized under the Immigration Act 1979, disregarding emergencies in their home country.(Cheung 2012) A Fortify Rights report (2021) revealed that 89% of Rohingya refugees in Thailand lack legal aid access, and 62% face intimidation by authorities.(Puapattanakajorn 2021) In Malaysia, the absence of asylum laws forces refugees into "illegal status," fostering exploitation. A field study by the Asia Pacific Refugee Rights Network (APRRN, 2022) found that 54% of refugees in Malaysia work in informal sectors with substandard wages, while 28% of refugee women experience sexual harassment.(Mathur 2021)

In June 2021, Thailand drew international condemnation for forcibly returning 126 Rohingya refugees including 49 children to Myanmar's waters after their boat stranded near Phuket. At the time, Myanmar was engulfed in post-coup violence. This action violated the non-refoulement principle under CAT, which Thailand ratified. An Amnesty International investigation (2021) revealed that refugees were forced onto a rickety wooden boat without food or water in extreme weather.(Sturridge, Feijó, and Tivane 2022)

3.4. The Role of International Organizations in Strengthening the Non-Refoulement Principle

International organizations such as the United Nations High Commissioner for Refugees (UNHCR) play a critical role in ensuring state compliance with the non-refoulement principle, particularly in transit countries that serve as temporary hubs for refugees. UNHCR has launched training programs and technical assistance to improve the capacity of transit governments in managing asylum procedures. For example, in Turkey a country hosting over 3.6 million Syrian refugees by 2023 UNHCR collaborated with the Ministry of Interior to develop training modules for immigration officers.(ATAR 2020) These modules cover the identification of vulnerable groups (women, children,

survivors of violence) and procedures to address disguised refoulement, such as arbitrary detention or deportation without refugee status verification.

Field data from UNHCR reports (2023) indicate that 65% of immigration officers in Turkey received this training, resulting in a 30% improvement in identifying war victims eligible for protection. However, challenges persist.(TANDOĞAN 2024)

Collaboration between international organizations and local NGOs is pivotal in monitoring violations of the non-refoulement principle. In Indonesia, UNHCR partners with organizations like SUAKA (Association for Refugee Rights Monitoring) to document cases of forced returns.(Afriansyah, Purnama, and Putra 2022)

At the regional level, the International Committee of the Red Cross (ICRC) collaborates with NGOs in Malaysia to monitor the conditions of Rohingya refugees. In 2022, ICRC documented 32 cases of forced repatriation of Rohingya from Malaysia to Myanmar via land borders.(Bridges 2025) This report prompted ASEAN to issue a special statement urging respect for the non-refoulement principle. However, the effectiveness of such collaborations is often hindered by restrictions on NGO access to refugee camps. For instance, in Thailand, the government has limited NGO monitoring activities along the Myanmar-Thailand border since the 2021 military coup, complicating the verification of refoulement cases.(State and Doi 2022)

Despite their commitment to strengthening non-refoulement, international organizations face complex political and financial challenges. Financially, UNHCR allocated 70% of its 2023 budget to operations in conflict zones like Syria and Ukraine, leaving limited funds for transit states in the Global South.(Bögel et al. 2024)

In ASEAN, the absence of a regional funding mechanism for refugee management worsens the crisis. For example, when Malaysia faced an influx of Rohingya refugees from 2020–2022, UNHCR could only cover 40% of shelter costs, while the local government refused to allocate additional funds.(Hanif 2023) Consequently, thousands of refugees were forced into overcrowded detention centers, heightening the risk of refoulement due to social pressure. A notable example of successful international collaboration is Indonesia’s temporary asylum program for Afghan refugees following the Taliban’s takeover in 2021. The Indonesian government, with technical support from UNHCR and the International Organization for Migration (IOM), granted temporary residence permits to 2,500 Afghan refugees.(Saputra 2013) The program included access to basic healthcare, children’s education, and skills training. According to data from Indonesia’s Ministry of Law and Human Rights (2022), 95% of refugees under this program successfully passed status verification without facing refoulement.(Suyastri and Bahri 2024)

This success stems from UNHCR’s role in facilitating dialogue between Indonesia and resettlement countries (e.g., the U.S., Canada, Australia). Collaboration with local NGOs like Dompot Dhuafa also provided logistical and psychosocial support.(Putri et al. 2025)

3.5. The Impact of National Security on the Implementation of Non-Refoulement

Repressive border surveillance has become a primary tool for states to curb refugee flows, despite contravening the non-refoulement principle. A striking example is Hungary’s policy along its Serbian border, where the government erected a 175-km razor-wire fence in 2015 and amended immigration laws to criminalize asylum applications outside designated “transit zones.”(Number and Number 2024) Data from the Hungarian Helsinki Committee (2022) indicates that 90% of asylum applications in Hungary were rejected *prima facie* on grounds of “national security threats.” Reports of pushbacks

against Syrian and Afghan refugees at the Serbia-Hungary border surged by 300% between 2021–2023, including violent interventions by border authorities.(Segarra 2024)

Beyond Europe, Australia's Operation Sovereign Borders (2013–present) involves detaining refugees in offshore processing centers (Nauru and Papua New Guinea). According to Amnesty International (2023), 1,200 refugees, including war victims from Afghanistan, have endured inhumane conditions for 5–10 years without access to asylum procedures.(Hakimi 2024)

National security rhetoric is often weaponized by linking asylum seekers to terrorism. Following the 9/11 attacks, the U.S. enacted the Patriot Act, broadening the definition of “terrorism” to include armed resistance groups in conflict zones. Consequently, war victims from Somalia and Yemen with indirect ties to opposition groups are automatically labeled “security threats.” Human Rights Watch (2023) data shows that 65% of asylum applications from these nationals were denied by USCIS (2018–2023) without thorough investigation.(Roy H. Beck 2021) In Europe, France revoked 124 residence permits of Syrian refugees between 2015–2023, accusing them of ties to the Islamic State (ISIS), despite credible evidence existing in only 8% of cases.(Of and Sciences 2025)

In 2022, Germany deported an Afghan refugee, Samir Husseini (pseudonym), to Kabul based on allegations of “Taliban affiliation.” Husseini, however, was a victim of forced recruitment by the group at age 15. This case exemplifies how terrorism stigmatization legitimizes the refoulement of war victims. Asylum denials not only breach international law but also inflict prolonged suffering on war victims. A Doctors Without Borders (MSF, 2023) study in Greek refugee camps found that 78% of Syrian and Afghan refugees exhibited symptoms of PTSD (Post-Traumatic Stress Disorder) due to prolonged detention and deportation threats.(Knappe et al. 2024)

In Southeast Asia, Rohingya refugees rejected by Malaysia and Thailand often fall prey to human trafficking. The Arakan Rohingya National Organisation (ARNO, 2023) reported that 500 Rohingya were forced into slave-like conditions on Thai fishing vessels after deportation from Malaysia.(McDuff 2017) Physical impacts, including malnutrition and torture-related injuries, were documented in 60% of victims. The tension between national security and non-refoulement reflects a broader clash between state sovereignty and global justice. While national security is a state right, instruments like the Global Compact on Refugees (2018) emphasize that immigration policies must align with human rights obligations.(Crisp 2020)

3.6. Protection of the Non-Refoulement Principle for Vulnerable Groups (Women and Children)

Women and children refugees are the most vulnerable groups in the context of displacement due to war. According to a UNHCR report (2023), 50% of the 32.5 million global refugees are women and children, with 1 in 4 refugee women reporting experiences of sexual violence during their asylum-seeking journey.(Cortvriend 2023)

A field study in Syrian refugee camps in Jordan (UN Women, 2022) revealed that 34% of refugee women experienced sexual harassment, with 12% becoming victims of human trafficking.(Haider, Olimy, and Al-Abbas 2021) At the Turkey-Greece border, pushback practices by local authorities often involve forced separation of children from their families, increasing risks of exploitation. An Amnesty International report (2023) documented cases of 200 Rohingya refugee children in Malaysia trafficked into informal labor sectors without legal protection.(Jespersion, Ngo, and Vu 2023)

These risks arise due to weak monitoring mechanisms in refugee camps and the absence of rapid victim identification procedures. Although the Convention Against

Torture (CAT) prohibits all forms of sexual violence as part of the definition of torture, its implementation is hindered by gender bias in host countries' legal systems. For example, in Jordan, only 20% of sexual violence cases against Syrian refugees are legally processed due to cultural barriers and lack of witnesses.(Koka 2018) UNHCR has issued the Policy on Age, Gender, and Diversity (2021), mandating member states to provide specialized services for women and children, including safe spaces, legal assistance, and access to emergency education. Programs like Cash-Based Interventions (CBI) in Turkey directly provide financial aid to refugee women to reduce economic dependency and exploitation risks. However, field data from Lebanon (2023) shows that only 40% of refugee women have access to these UNHCR programs.(Daigle et al. 2023) Budget constraints and political pressure from host governments are key obstacles. In Bangladesh, Women's Empowerment Centers for Rohingya refugees reach only 15% of the population due to movement restrictions imposed by local authorities.(Karin et al. 2020)

Jordan hosts 1.3 million Syrian refugees, 55% of whom are children (UNICEF, 2023).(Scherr 2024) Thirty percent of these children are unregistered, leaving them vulnerable to covert refoulement through deportation without legal procedures. In the Za'atari camp, 60% of girls report pressure to marry early to alleviate family economic burdens. UNICEF and Save the Children launched the No Lost Generation program (2022), focusing on emergency education and psychosocial support. The program reduced early marriage rates by 25% within two years.(Williams n.d.)

3.7. The Future of the Non-Refoulement Principle in the Context of Global Change

Climate change has become a major driver of human displacement not yet fully recognized in international legal frameworks. The World Bank (2021) projects that by 2050, over 216 million people in Sub-Saharan Africa, South Asia, and Latin America will be displaced due to rising sea levels, droughts, and extreme climate disasters.(Ndhlovu and Dube 2024) For example, catastrophic floods in Pakistan in 2022 displaced 8 million people, many of whom sought asylum in neighboring countries like Afghanistan and India.(Alimia 2024) However, the 1951 Refugee Convention does not cover "climate refugees," allowing recipient states to justify refoulement under this legal gap.

In the Pacific Islands, nations like Tuvalu and Kiribati have applied for collective asylum to New Zealand and Australia due to existential threats from sinking territories. Unfortunately, the international response remains limited to ad hoc policies, such as temporary humanitarian visas, which fail to guarantee long-term protection. Field studies in Bangladesh (2023) reveal that 70% of Rohingya refugees stranded in Cox's Bazar face additional risks from cyclones and coastal erosion, yet lack access to safe asylum procedures.(Nath 2023) These challenges necessitate redefining the concept of "persecution" under the 1951 Convention to include environmental threats, as proposed in the Global Compact on Migration (2018). However, implementation remains weak due to the non-binding nature of such agreements. Technological advancements offer opportunities to strengthen accountability in enforcing the non-refoulement principle. Amnesty International uses satellite imagery and geospatial analysis to document pushback practices at the Greece-Turkey border, where 90% of refugee rejections occurred illegally between 2020–2023.(Kola 2023)

However, technology also risks misuse. Governments like Hungary and Poland employ facial recognition systems at borders to identify and block Middle Eastern refugees, violating non-refoulement principles. Additionally, AI algorithms used in asylum screening processes in Germany and the U.S. face criticism for racial bias, with applications from conflict zones like Syria and Yemen facing 30% higher rejection rates.

To mitigate these risks, UNHCR recommends transparent ethical frameworks for technology, including independent audits of automated systems.(Kinchin 2021) ASEAN, a region with high refugee flows but weak legal frameworks, faces significant challenges in upholding non-refoulement. Although the ASEAN Human Rights Charter (2013) recognizes the right to asylum, it lacks binding enforcement mechanisms. For instance, Thailand and Malaysia routinely return Rohingya refugees to Myanmar despite the 2021 military coup.(Sullivan 2021)

Yet, opportunities for reform exist. Indonesia's Presidential Regulation No. 125/2016 provides temporary protection for refugees awaiting UNHCR resettlement. In 2021, this policy was extended to Afghan refugees, allowing 450 individuals temporary stay in Jakarta. This initiative could serve as a model for other ASEAN states if supported by binding regional agreements. The ASEAN Consensus on Migrant Workers (2021) could be adapted for refugees, incorporating sanctions for non-compliant states.(Foster 2023)

4. Conclusion

The principle of non-refoulement, widely recognised as a *jus cogens* norm in international law, has been reinforced through key legal instruments such as the 1951 Refugee Convention (Article 33), the Convention Against Torture (Article 3), and the Rome Statute (Article 7). International courts, including the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR), have affirmed this principle as an *erga omnes* obligation binding on all states. Nevertheless, its implementation faces significant challenges, particularly in countries that have not ratified these instruments, such as Malaysia and Bangladesh, which often disregard the non-refoulement obligation, especially in the context of the Rohingya crisis. Transit countries such as Turkey, Jordan and Indonesia are grappling with the dilemma between national sovereignty and refugee pressure, which often sacrifices human rights protection. In addition, there are also refugees who are victims of war. Among them are from Palestine, Yemen, Rohingya in Myanmar and Bangladesh Papua in Indonesia, Syria, and Kashmir.

In the ASEAN region, the absence of a binding regional legal framework exacerbates policy inconsistencies. National security rhetoric in countries such as Hungary and Australia is used to justify unlawful refoulement practices. Vulnerable groups, such as women and children, face risks of exploitation and violence due to the lack of specific protection mechanisms. Climate change and technology also affect the future of this principle; climate refugees are not yet legally recognised, and there is potential for the misuse of technology for repressive surveillance. Overall, although non-refoulement has become a universal norm, its effectiveness is still hampered by political interests, resource constraints, and the fragmentation of national and international law.

To strengthen the implementation of non-refoulement, countries need to ratify and harmonise domestic laws with international instruments. ASEAN should develop a binding regional framework with clear enforcement mechanisms. Transit countries need to increase their reception capacity with sustainable international funding support and involve organisations such as UNHCR and local NGOs in the refugee status determination process. It is also important to integrate the category of 'climate refugees' into existing conventions to address legal gaps. Technology should be used ethically to monitor violations, with independent audits to prevent algorithmic bias. Gender sensitivity training for immigration officials and the allocation of specific resources for refugee women and children should be prioritised.

At the global level, political pressure and symbolic sanctions through international bodies can reduce the practice of refoulement justified on grounds of national security. Multilateral collaboration between states, international organisations and civil society is key to bridging the gap between state sovereignty and the protection of human rights.

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