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INTERNATIONAL LAW & INTERNATIONAL LEGAL THOUGHT

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BOFAXE

Hiding in Plain Sight (Part 1)

Where Is Refugee Law in 2025?

Continuing an ongoing trend, 2025 has so far been a challenging year for international refugee law. In the United States, the new administration began what it promised to become the "largest deportation operation in history," suspending the country's refugee admissions and other subsidiary protection programs. In Europe, while irregular border crossings have dropped by 31 percent, the European Commission and several member states are increasing deportations and border enforcement efforts. For instance, Italy is trying to process asylum-seekers in Albania, while the United Kingdom attempted a similar scheme in Rwanda. Even states welcoming refugees in the past—like Canada, Türkiye, or Lebanon—are now reversing course. This global crackdown on asylum comes while UNHCR reports record numbers of displacement.

Of course, hostility toward refugees is nothing new, and this is not the first time scholars have investigated the purported "end" of refugee law (see, e.g., here, here, here, here). However, the public discourse has seemingly shifted in 2025. While past discussions were often grounded in arguments about the 1951 Refugee Convention (Convention), this year, the Convention started to fade into the background. To be sure, no state has called for outright withdrawal, but the Convention, purportedly one of the fundamental pillars of international migration governance, is often absent when public officials discuss refugee policy these days. In this post, I investigate how international refugee law lost its influence, and I propose some triage to keep it relevant in times of deep skepticism towards asylum.

Today's Refugee Law: A Band-Aid of the Past

Modern international refugee law—the Refugee Convention and its attendant 1967 Protocol—emerged after the Second World War. Western states negotiated the 1951 Refugee Convention to deal with the refugee population remaining in Europe after WWII that had not been repatriated or resettled by the International Refugee Organization (IRO) (Zimmermann & Herrmann, pp. 393-395). Article 1(B)(1)(a) made clear that the Convention was centrally focused on refugees resulting from "events occurring *in Europe before 1 January 1951*" (emphasis added)—the date that the IRO's mandate expired. While the Convention's signatories expressed "the hope that the Convention [...] will have value as an example exceeding its contractual scope," the drafters never intended it to become a universal framework for refugee protection. However, when the 1967 Protocol removed the Convention's temporal and geographical limitations, a treaty primarily designed to deal with a small group of Eastern and Central European refugees became universal. Tragically, this meant that all the Convention's peculiarities, flaws, and omissions—which are the subject of the rest of this blog—were now applied worldwide. We can observe the consequences today.

One of the Convention's biggest omissions is the absence of a clear path to durable solutions (Aleinikoff & Zamore, p. 19). Sure, Article 34 encourages states "as far as possible [to] facilitate the assimilation and naturalization of refugees," but this aspiration has mostly rung hollow. Before 1950, the IRO (and before that, the League of Nations High Commissioner for Refugees) routinely negotiated ad hoc repatriation and resettlement agreements with potential host states, incorporating long-term perspectives for the respective refugee populations. This gave host states the agency to shape their immigration policy while also providing accepted refugees with a clear, long-term path to integration and, eventually, naturalization. The 1951 Convention, in contrast, prohibits states from deporting refugees (Article 33(1)) without, however, providing for any long-term perspective. This has resulted in a record number of refugees in protracted situations, either in permanently impermanent refugee camps or in host societies that are just waiting for ever-illusive repatriation (Milner, pp. 151-162).

A second grand omission is the absence of any meaningful burden-sharing or liability mechanism (Aleinikoff & Zamore, p. 19). The way the Convention is set up, most refugees live in states of first arrival or a select few states of the Global North. Unsurprisingly, host states soured over the unequal distribution of responsibility, often perceived as detracting from their own citizens' welfare. This picture would arguably look different if all states had to contribute equally, either through resettlement or financial compensation.

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Hiding in Plain Sight (Part 2)

Where Is Refugee Law in 2025?

However, the Convention provides no avenue for holding origin states (financially) liable. The idea of a "right to compensation" for an influx of refugees is not new. However, scholars who floated it in the past deemed it unrealistic without an international analog to civil liability (Garry, Lee, and Jennings, p. 112). Arguably, the advent of the Draft Articles on State Responsibility (ASR) in 2001 provided us with that analog. Under the ASR, host states could either invoke sending states' responsibility for causing "transboundary harm" (Garvey, pp. 494-499), thus arguing that the country of origin violated an international obligation owed to the host state by causing the influx of refugees. Alternatively, and bearing in mind that in most cases, the country of origin will be responsible for violating the refugee's fundamental human rights, host states could assert responsibility as "specially affected states" under Article 42(b)(i) ASR for these violations of *erga omnes partes* obligations (Dadhania, pp. 769-800). While the idea of using state responsibility to extract reparations from origin states has recently resurfaced (Dadhania), more conceptual work is needed.

A third tension is the Convention's mandate to treat "refugees without discrimination as to race, religion or country of origin" (Article 3). This fundamental principle of non-discrimination is one of the Convention's distinctive humanitarian achievements, but it clashes with the reality of how states (want to) manage immigration. Empirical research clearly shows that states discriminate, explicitly or implicitly, against refugees from different ethnocultural backgrounds while favoring culturally similar refugees (Katsoni, Abdelaaty, pp. 7-13). Thus, in a world that increasingly favors selective refugee admission, non-discrimination has become the Convention's Achilles heel. If states must choose between admitting *all* refugees or *none*, they might prefer to admit none. Thus, I fear if we continue to ignore the tension between the Convention's strict non-discrimination principle and states' turn toward selective admission, we risk losing the Convention altogether. A respectful discussion of how to square both opposing paradigms is needed.

One last flaw is the Convention's disregard for the Global South. States from this region were largely absent from the Convention's drafting, and its ratification and acceptance remain spotty there. Consequently, many states in the Global South view the Convention as a set of uniquely Western standards used by the Global North to excoriate their refugee protection efforts (Hamlin, pp. 102-105). This is aggravated by the fact that the Global South hosts approximately 80 percent of the world's refugee population while it observes the Global North's effort to wall itself off from any Third World migration.

Refugee Law's Expansion: A Superstructure on a Wobbly Foundation

Over the last seventy years, these original defects were supplemented with additional obstructions. First comes refugee lawyers' blind focus on expanding the refugee definition instead of refugee rights. The refugee category of today is much broader than that of 1951. This redefinition was mainly achieved through legislative and judicial expansion, mission creep of UNHCR and academia, and an alliance with human rights law—a discipline under immense stress itself. Second, at least in the Global North, the Convention has been translated into an unintelligible administrative thicket that is inefficient, expensive, and unpredictable (see also Hamlin, pp. 179-194).

The result of all these trends is universal alienation from international refugee law as embodied in the 1951 Convention. States in the Global North feel alienated as they fear a loss of control over their borders and a loss of agency over their immigration policy. States in the Global South feel alienated from a regime that they did not create but are expected to adhere to and for being blamed for the existence of refugees in the first place. And most importantly, refugees are alienated by a legal system that does not provide them with long-term solutions but leaves them in constant limbo. How can international refugee law stay relevant if it fails to deliver to its main constituents?

Where Do We Go from Here?

As Tom Pollack is said to have remarked, "[i]t's never as good as it looks and it's never as bad as it seems." This certainly holds true here. The 1951 Convention still provides the central frame of reference for how we think about refugeehood, and there still seems to be general support for protecting persons fleeing from persecution. However, the lack of durable solutions, unequal burden-sharing, and an ever-expanding refugee definition have led to states' perception that they have lost control.

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Hiding in Plain Sight (Part 3)

Where Is Refugee Law in 2025?

International refugee law, its institutions, and scholars need to address these challenges if they want to stay relevant. Big-picture ideas and innovation are needed. How about reconsidering the *ad hoc* treaty regime of the interwar period or re-examining the IRO's role in resettling millions of refugees after WWII? What could an effective burden-sharing mechanism look like, and how could origin states be held liable for instigating persecution? What kind of refugee regime would be palatable to which states, and what role can local communities play? All these fundamental questions need re-thinking.

After all, the global refugee population amounts to a "mere" 43.4 million, which pales in comparison to a world population of more than eight billion. Viewed this way, the challenge seems patently manageable. If we want international refugee law to stay relevant post-2025, we need to think of new, realistic ways to address the refugee challenge, ways that bridge states' political preferences with refugees' desire for security and permanence.

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