JOURNAL FOR SOCIAL SCIENCE STUDIES
An International Peer-Reviewed Open Access Journal

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 5 • September 2026

FROM HUMANITARIAN RESPONSE TO LEGAL PROTECTION: THE FOUNDATIONS AND EVOLUTION OF INTERNATIONAL REFUGEE LAW

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DOI: https://doi.org/10.5281/zenodo.23077493

Keywords
refugee law; League of Nations; UNHCR; 1951 Refugee Convention; non-refoulement; customary international law.

Article History
Received: 01 June 2026
Accepted: 23 August 2026
Published: 08 September 2026

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Abstract
International refugee law is an atypical area of law in the relationship between the state and international protection of persons. It is intended to balance the sovereign rights of States over their territory and their duty to defend those who no longer themselves can rely on a safe haven in their countries of origin. The history of refugee law reflects the development from ad hoc to institutionalized refugee law system. It traces the history and development of international refugee law from the initial refugee protection regime under the League of Nations to the current system of refugee protection under the United Nations High Commissioner for Refugees (UNHCR), Convention Relating to the Status of Refugees 1951 and the Protocol 1967. It also looks at the complimentary and different nature of refugee law and international human rights law and international humanitarian law as international protection regimes. The paper also examines the sources of refugee law as provided in Article 38(1) of the Statute of the International Court of Justice, focusing on customary international law and the principle of non-refoulement in particular. It asserts that refugee law as a whole is dynamic and interdependent, and is based on treaties, customary international law, and the principles of international human rights protection. general principof international human rights protection

1. INTRODUCTION
While the movement of people in response to persecution, violence, and conflict is not unique to the twenty-first century, the idea that such movements should be governed by binding rules of international law is relatively recent. Contemporary international refugee law is the product of a particular twentieth-century history and a series of institutional developments that began with the displacement caused by the First World War and the collapse of the Ottoman, Russian, and Austro-Hungarian Empires.

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Following the devastation of the Second World War, these developments culminated in a permanent, treaty-based system centred on the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Convention Relating to the Status of Refugees (1951) (United Nations, 1951).

The purpose of this paper is to achieve five goals. First, it outlines the conceptual underpinnings of refugee protection, by providing a definition of the term "refugee" in international law and the rationale behind the granting of refugee status. Second, it examines the change in the refugee protection regime from the ad hoc group approach of the 1920s and 1930s to the rights-based, individualised approach of the United Nations since 1945. Third, it places refugee law in the context of international protection by examining its similarities with international human rights law and international humanitarian law, which are both areas of international law, but not identical. Fourth, it singles out the formal sources of international refugee law in the context defined by Article 38(1) of the Statute of the International Court of Justice (ICJ). Finally, it explores the specific role of customary international law, particularly the principle of non-refoulement, in protecting refugees outside the treaty framework (Goodwin-Gill & McAdam, 2007; Costello & Foster, 2016).

The analysis relies on the premise that refugee law should be analysed in its historical context, which is a position widely followed in the scholarship of refugee law. Goodwin-Gill and McAdam (2007) note that refugee status and the protection rights that flow from it are not ahistorical or a natural part of the law. It is thus crucial to grasp the history in order to understand the current state of the law and the ongoing evolution of refugee protection under customary international law and soft-law mechanisms such as the Global Compact on Refugees (GCR) adopted by the United Nations General Assembly in 2018.

2. Conceptual background of International Refugee Law

Modern international refugee law is based on the concept of the "refugee" as defined in Article 1A(2) of the Convention Relating to the Status of Refugees. A person is considered refugee if, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, he is outside the country of his nationality, and is unable or, owing to that fear, unwilling to return to it, or to obtain from that country's authorities, either by reason of that fear or for any other reason, the ability to return to his own country (United Nations, 1951). The Convention was first drafted with temporal and geographical restrictions, which were later eliminated by the 1967 Protocol, taking the Convention's scope beyond the scope of the post-Second World War environment in which it was adopted (United Nations, 1967).

The key elements of the refugee definition (a well-founded fear, a persecution, the five refugee grounds of race, religion, nationality, membership of a particular social group and political opinion) raise issues of legal interpretation and state practice. "Well-founded fear" has both a subjective element, that of the person's fear of persecution, and an objective element, that of the existence of a sufficiently firm basis for fear. The Convention does not expressly define persecution, nor does it provide any indication of what constitutes it in general. Persecution has therefore been elaborated on through state practice, UNHCR guidance and domestic and international jurisprudence (Goodwin-Gill & McAdam, 2007; United Nations High Commissioner for Refugees [UNHCR], 2019). The grounds are further specific in relation to the refugee definition and types of persecution based on specific characteristics or beliefs, and not on issues of displacement, hardship or danger in general.

This restriction is a significant aspect of the Convention system. The international refugee

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law does not grant automatic refugee status to all those who are forced to flee danger. But the Convention does not refer to all those who are outside their country of origin or their country of nationality, but instead to those who are outside their country of origin or nationality and are subject to a fear of persecution linked to one or more of the Convention grounds (Goodwin-Gill & McAdam, 2007). People who leave their countries because of widespread violence, disaster or economic crises, may therefore lack the necessary link to a Convention ground unless the situation they are fleeing also creates the required connection. This restriction has helped foster the evolution of more comprehensive regional refugee definitions and alternative modes of international protection (Hathaway, 2021).

The concept of "surrogate protection" is a second conceptual dimension, and is linked, in particular, to Hathaway's refugee status analysis. The surrogate protection rationale is that international refugee protection only applies when the state of origin is not able, or unwilling, to afford the sort of protection an individual would normally assume in a relationship with the state (Hathaway, 2021). In this light, refugee law cannot only be used to alleviate human suffering or hardship; it is a system of international protection which fails to protect where national protection has failed. This is conducive to understanding some key aspects of the international refugee regime. It clarifies, for instance, that a person must be outside their country of nationality for the Convention to apply, that internally displaced persons (IDPs) are generally not covered by the Convention definition of a refugee, and that the Convention rules on termination of refugee status are linked to the return of effective national protection after a fundamental and durable change of circumstances (United Nations, 1951; Hathaway, 2021).

A third and related idea is that of asylum, in a broad sense a protection and dwelling afforded by a state to someone who seeks to escape persecution. However, it is important to draw a line from the right to seek asylum and enjoy asylum to a right to be granted asylum by a specific state from a doctrinal perspective. Article 14 of the Universal Declaration of Human Rights states that "everyone has the right to seek and to enjoy asylum from persecution" (United Nations, 1948); however, it does not state that all states have an unlimited duty to provide asylum in all cases. International refugee law, however, creates an important restriction on the authority of States to send persons back to situations of persecution. In 1951, the United Nations (UN) adopted the Refugee Convention, which includes Article 33 - No One Shall Be Refouled - with its conditions and exceptions (United Nations, 1951). The principle has since gained a wider meaning in international protection, not least in the field of customary international law and in international human rights law (Costello & Foster, 2016; Goodwin-Gill & McAdam, 2007).

3. Historical Evolution-1: The League of Nations Era

The basic story of international protection of refugees is found in 1921 in Geneva, when the League of Nations appointed Dr. Fridtjof Nansen of Norway as the first High Commissioner for Refugees. His initial assignment was to work with the displaced population of some two million Russians as a result of the Russian Revolution and ensuing civil war (United Nations High Commissioner for Refugees [UNHCR], 2026).

The League's strategy at this point was not comprehensive nor was it rights-based, in the modern sense. Rather, it used a variety of narrowly drawn, population-based solutions that targeted specific communities of displaced persons, typically based on nationality or place of origin rather than a legal definition of "refugee." The Nansen Passport was one of the most important innovations of this era, as it was designed to solve a problem that grew more and more pressing for displaced and stateless people – they were denied an internationally recognised

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identity or travel documents, making it difficult for them to cross borders, to find work or to regularise their status in the countries in which they found themselves. One of the earliest international documents aimed at legal recognition and practical protection of refugees and displaced persons and at the movement and resettlement of mass numbers of refugees was the Nansen Passport (UNHCR, 2026).

The system was expanded over the years in the 1920s and 1930s to include other refugee groups like the Armenians, Assyrians and refugees from the collapse of the Ottoman Empire known as the Turks. In addition to the Nansen Passport, a number of ad hoc international arrangements and instruments were implemented during the interwar period such as the 1926 Arrangement, the 1928 Arrangement, the 1933 Convention, and the 1938 Convention. They granted specific groups of refugees specific types of protection, such as protection from expulsion and access to legal and travel documents (Goodwin-Gill & McAdam, 2007).

It was a classification system appropriate to the nature of refugee protection during the interwar years: humanitarian, narrow, and reliant on the political and institutional strengths of the League of Nations. It was particularly made visible during the 30s when with the advent of fascism and the intolerance towards the Jews in Nazi Germany, more and more refugees started streaming in. Following Germany's Kristallnacht in 1933 and the overall refugee situation in Europe prior to the Second World War, the current international refugee regimes were found to be ineffective and inadequate in terms of their scope (Goodwin-Gill & McAdam, 2007). The interwar refugee regime by the end of the 1930s was unable to cope with the magnitude of displacement. Not only were there institutional constraints in the League, but also the unwillingness of states, especially the major powers, to enter into binding obligations on the admission and protection of refugees.

4. Historical evolution-II: The second world war to the present day UN system

Since the Second World War, which produced an unprecedented number of displaced persons in Europe and other areas, the shortcomings of the arrangements of the interwar period were sorely tested. The international community, in turn, created a new refugee protection institutional model. The International Refugee Organization (IRO) was formed in 1946 as a temporary, special and transitional body within the fledgling United Nations system. It was responsible for registration, protection, repatriation, and resettlement of DP and refugees, especially in Europe, until the early 1950s (United Nations, 1946).

Another major institutional development was the creation of the Office of the United Nations High Commissioner for Refugees (UNHCR). In December 1950, the United Nations General Assembly adopted the Statute of the Office of the United Nations High Commissioner for Refugees, which created UNHCR as a subsidiary organ of the General Assembly with a humanitarian and non-political mandate (United Nations, 1950). The Statute defined UNHCR's international protection mandate without being linked to the refugee definition which later became part of the 1951 Convention, but which was closely related to it. The Convention Relating to the Status of Refugees was adopted at a conference of The United Nations in Geneva on 28 July 1951. It unified and strengthened existing international measures and paved the way for a more holistic legal structure for refugee protection. The Convention set out a series of rights and protections, including the right to access courts, the right to employment, the right to an identity document, the right to no discrimination, and, most importantly, the right to not be returned to any territory where life or freedom would be threatened (United Nations, 1951). The Convention marked a significant step from the patchwork and population orientated system of international refugee protection of the

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interwar years to a more uniform, treaty-based system of international refugee protection.

The Convention of 1951, however, showed the peculiar circumstances of its time of adoption and had two important shortcomings at first. First of all, since it was time-limited it could only be applied to people who were "refugees" because of events that had happened prior to 1 January 1951. Second, the Convention allowed for a geographical limitation, which meant that it was not applicable beyond refugees from events in Europe (United Nations, 1951). The restrictions were related to the primary concern of the Convention, that of the refugee situation following the Second World War and its aftermath in Europe. The restrictions became harder to maintain as new and large-scale refugee movements arose during the 1950s and 1960s in the context of decolonization and wars in Africa, Asia and Latin America. The problem was eliminated by the 1967 Protocol Relating to the Status of Refugees, which lifted the Convention's time and place restrictions. This led to the substantive protection framework of the Convention of 1951 being extended beyond the specific historical context of post-war European refugees to cover refugees who could be seen as falling within the Convention definition (United Nations, 1967).

International refugee protection was then supplemented by regional systems that addressed specific patterns of migration. These regional instruments were not intended to be a substitute for the universal regime of refugee protection, defined in the 1951 Convention and the 1967 Protocol, but rather to enhance and complement protection in specific regional settings. Significant examples include the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, which each took a broader approach to refugee protection, responding to regional trends of conflict, violence and displacement (Organization of African Unity, 1969; Cartagena Declaration on Refugees, 1984).

The General Assembly of the United Nations (UN) reaffirmed the Global Compact on Refugees in 2018, more recently. The Compact aims to implement the existing international refugee protection system in a more predictable, fair and sustainable way on how to share international responsibility.The Compact is meant to put the existing international protection regime into action that is more predictable, equitable and sustainable in terms of sharing international responsibility. Importantly, it is not a replacement or modification of the binding commitments laid down by the Convention of 1951 and the Protocol of 1967 on the Refugee Convention; it is an addition to the framework for more effective international cooperation and for supporting the implementation of existing obligations regarding refugee protection (United Nations General Assembly, 2018).

5. The Refugee law, International Human Rights Law and the International Humanitarian Law are intimately intertwined

Refugee law is closely linked to International Human Rights Law and International Humanitarian Law. International refugee law is situated within other facets of international law and is part of a wider framework of international protection. International law in the field of the protection of persons in vulnerable situations is one of three closely related and, in some aspects, overlapping branches of international law, besides international human rights law and international humanitarian law. Much modern academic and judicial writing has thus turned to the analysis of interaction, complementation, and in some cases, conflict between the three legal systems in certain situations, concerning different or overlapping protection concerns (Goodwin-Gill & McAdam, 2007).

The relationship between refugee law and international human rights law is particularly

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close. Refugee law can be seen as an integral part of the international human rights regime, focused on persons who have fled to another country and who are unable or unwilling to assert the protection of the country of origin. The Convention Relating to the Status of Refugees (1951) was also part of the post-war international human rights regime and embodies the principles underlying the Universal Declaration of Human Rights (1948, 1951).

Since the adoption of the Refugee Convention, later international human rights treaties have granted further rights to refugees and asylum-seekers, including in states which are not parties to the Convention of 1951. The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) make provisions for the protection against removal where it would be likely that the person would be subjected to torture or to other serious forms of ill-treatment (United Nations, 1966, 1984). Such changes have given rise to the so-called "complementary protection." Complementary protection can take the form of such other measures as may be taken by the State pursuant to its obligations under international human rights law which are not based on recognition as a refugee under the 1951 Convention (Goodwin-Gill & McAdam, 2007).

Human rights law thus has a double function in the protection system established internationally. While on the one hand, it offers a normative basis for refugee protection, on the other hand it may see the protection extended to persons who do not meet the Convention's definition of refugee based on persecution. This is especially important for those who are at risk of human rights abuses that are not explicitly covered by the grounds or requirements of Article 1A(2) of the Convention. Protection under international law is therefore not just a matter of refugee status, but may also be invoked without it (Goodwin-Gill & McAdam, 2007).

Another important connection between refugee law and international humanitarian law (IHL) is that it is not the same, but it is also important. International humanitarian law is used mainly in situations of armed conflict, and provides rules to protect persons who are not or are no longer participating in hostilities. It is based on the four Geneva Conventions of 1949 and the Additional Protocols to the Conventions of 1949. Normative provisions on the protection and treatment of civilians, particularly those with regard to refugees and other protected persons during an armed conflict, are contained in the Fourth Geneva Convention (International Committee of the Red Cross [ICRC] 1949).

In situations of conflict-induced displacement, refugee law and international humanitarian law are often used interchangeably, but they have different goals, conditions of application and institutional architecture. The law of war governs the conduct of the parties to the conflict and the protection of persons affected by the conflict when an armed conflict exists, and is primarily applicable during such circumstances. International refugee law, on the other hand, does not depend on whether the persecution or other harm that an individual fears is associated with an armed conflict. The implementation of refugee protection is primarily done through the national asylum system and international institutions like the ICRC and UNHCR, while implementation of IHL is done through states, the ICRC and other relevant international mechanisms (Goodwin-Gill & McAdam, 2007; ICRC, 1949).

The two regimes can, however, coexist and complement each other in practice. The person displaced by armed conflict can receive protection under international humanitarian law during the armed conflict, and also may receive protection under international refugee law after crossing an international border if the conditions for the applicable definition of a refugee are met. Refugee status is not automatically granted because of armed conflict, as refugee status is

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based on the legal definition and the particular circumstances of each individual (United Nations, 1951; Goodwin-Gill & McAdam, 2007). The relationship between these three aspects of international law is thus more like a multi-layered layer of protection, rather than three entirely distinct legal systems. Refugees are granted a refugee status and a refugee benefits package under the refugee law. Human rights law offers a more comprehensive and universal framework of rights for everyone, including refugees, and can offer protection where the refugee definition is found to be too narrow. International humanitarian law, on the other hand, focuses on protection issues that occur during armed conflict, and on those affected by armed conflict but who are not in a combatant position, it offers certain protections for civilians (Goodwin-Gill & McAdam, 2007; ICRC, 1949).

This multi-layered approach is especially significant because situations might not fit into an exclusive framework of one type of law. No single treaty or branch of international law can cover all aspects of the protection requirements of forced displacement. The combination of refugee law, international human rights law and international humanitarian law is thus one of the hallmarks of the current international refugee protection system (Goodwin-Gill & McAdam, 2007).

International refugee law is rooted in a variety of sources. Like in other aspects of international law, the sources of international refugee law are traditionally distinguished by the reference to Article 38(1) of the Statute of the International Court of Justice (ICJ) which defines the main sources of international law: international conventions, international custom, the general principles of law recognised by civilized peoples, and as subsidiary means for the determination of rules of law, judicial decisions and the teachings of publicists of the highest qualification (ICJ, 1945). They are the sources that set the legal framework in which the rules and principles of international refugee protection have emerged.

One of the main sources of international refugee law is treaty law. The core of the international refugee protection today consists of the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967) (United Nations, 1967, 1951). International human rights treaties are also important sources of complementary protection. The International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the various regional human rights conventions are particularly important. These instruments offer protections that could apply to a refugee, even when they are not specifically for refugees, for example, when an individual would face a real risk of torture or other serious breaches of fundamental rights if they were removed (United Nations, 1966, 1984).

Customary international law constitutes another important source of refugee protection. Customary rules may bind states independently of their participation in particular treaties and may also contribute to addressing gaps in treaty-based protection. The formation of customary international law traditionally requires evidence of general and consistent state practice accompanied by a sense of legal obligation, or *opinio juris* (ICJ, 1969). Its significance in refugee law is particularly evident in relation to the principle of non-refoulement, although the precise scope and customary status of different aspects of refugee protection remain matters of legal scholarship and debate (Costello & Foster, 2016).

General principles of law, although not as prominent in refugee law as treaty and customary rules, have also contributed to the development of refugee protection. They have informed procedural principles applicable to refugee status determination, including considerations relating to the burden and standard of proof, due process, and fair procedures. Domestic courts and international and regional tribunals have

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developed and applied such principles in interpreting and administering asylum procedures, particularly where the 1951 Convention does not expressly address specific procedural questions (Goodwin-Gill & McAdam, 2007).

Judicial and quasi-judicial decisions have likewise played an important role in clarifying concepts that are not expressly defined or exhaustively regulated by the 1951 Convention. Decisions of domestic courts, regional human rights bodies, and other relevant international tribunals have contributed to the interpretation and development of concepts such as persecution, membership of a particular social group, and the requirement of a well-founded fear of persecution (Goodwin-Gill & McAdam, 2007; Hathaway, 2021). Although judicial decisions constitute subsidiary means for the determination of rules of law under Article 38(1)(d) of the ICJ Statute, their interpretive contribution has become particularly significant in the development of contemporary refugee law.

Scholarly writings also constitute a subsidiary means for determining rules of international law. The work of leading scholars has contributed substantially to the interpretation and systematic understanding of refugee law, particularly in relation to the refugee definition, the rights of refugees, customary international law, and non-refoulement (Goodwin-Gill & McAdam, 2007; Hathaway, 2021).

Alongside these formal and subsidiary sources, soft-law instruments have acquired considerable practical and interpretive significance. Although such instruments do not, in themselves, generally create binding treaty obligations, UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status and the Conclusions on International Protection adopted by the UNHCR Executive Committee have frequently been used by courts, administrative authorities, and refugee-status decision-makers as important sources of guidance in interpreting the Convention framework (UNHCR, 2019). Likewise, the Global Compact on Refugees, which was agreed to in the United Nations General Assembly in 2018, aims to enhance international cooperation and responsibility-sharing without introducing new legally binding commitments or changing or replacing the current framework of treaties (United Nations General Assembly, 2018). Such instruments can help to build a consensus on interpretation and, in suitable cases, can serve as evidence in the process of forming or identifying customary international law.

6. The part of Customary International Law in refugee protection

Customary international law is specifically relevant to refugee protection due to the fact that some refugee-hosting states do not adhere to the 1951 Convention and/or the 1967 Protocol. Customary international law, therefore, may be an independent source of legal obligation, independent of formal participation in treaty obligations. Under the traditional view of customary international law, the engagement of a customary rule will require the existence of a "sufficiently general and consistent" state practice, with "opinio juris" (as the International Court of Justice did in the North Sea Continental Shelf Cases, 1969).

The most widely discussed example of customary protection in refugee law is the principle of non-refoulement. Article 33(1) of the 1951 Convention provides that a refugee should not be returned to a territory where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion (United Nations, 1951). The principle has subsequently become the subject of extensive international legal scholarship concerning its customary status and scope. A significant body of scholarship supports the view that non-refoulement has acquired customary international-law status and therefore may bind states independently of their status as parties to

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the Refugee Convention (Costello & Foster, 2016).

The customary character of non-refoulement has been supported by arguments concerning widespread and consistent state practice and the expression of *opinio juris* through state statements, international resolutions, and the broad acceptance of the refugee protection framework (Costello & Foster, 2016). However, the further proposition that refugee-law non-refoulement constitutes a peremptory norm (*jus cogens*) remains more contested. Some scholars have argued that the evidence may support such a characterization, while others have questioned whether the necessary legal criteria for *jus cogens* status have been conclusively established (Costello & Foster, 2016). Accordingly, the customary status of non-refoulement and the separate question of its possible *jus cogens* character should be analytically distinguished.

The recognition of non-refoulement as a customary rule has potentially significant implications for the international refugee protection system. First, the core obligation of the rule might be applicable without regard to a state's participation in the 1951 Convention and 1967 Protocol. Inevitably, a non-ratifying state may have an international legal responsibility to not return a person to a situation in which the relevant conditions for non-refoulement exist (Costello & Foster, 2016). Second, the principle can be applied in conjunction with, and to strengthen, other obligations contained in the non-refoulement provisions of IHRL related to the principle. In particular, the removal may be prohibited under human rights treaties, on the basis of the presence of a real risk of torture or other serious form of ill-treatment, which is an additional and independent basis of protection (United Nations, 1966, 1984).

It will also be important to keep in mind the connection between refugee-law non-refoulement and Article 33(2) of the 1951 Convention. There are some exceptions to the Convention's non-refoulement protection under Article 33(2) concerning some refugees who "threaten the public order or the security of the country of their asylum" or who "after having been convicted of a particularly serious crime, pose a danger to the community upon whose protection the refugee sought asylum" (United Nations, 1951). But human rights obligations relating to the prohibition of torture and other ill-treatment still place independent limitations on removal. The legal consequences of non-refoulement are thus not to be determined by Article 33 of the Refugee Convention alone, but in the broader context of international human rights law (Costello & Foster, 2016).

However, care must be taken when assuming that all the other provisions of the 1951 Convention have the same customary nature as the non-refoulement provision. The status of many individual refugee rights is not as clearly defined. For instance, the scope of employment, social security and administrative provisions are primarily treaty obligations between the state parties to the Convention and should not be automatically deemed to be universally binding customary rules (Goodwin-Gill & McAdam, 2007; Hathaway, 2021). This distinction is important because as it indicates, customary international law is a very limited part of the refugee protection regime.

It is, therefore, important to recognize that the function of customary international law in refugee protection is not to supplant the treaty system, but to neither render all the rights contained in the Convention "universal obligations" under customary law. Instead, customary law exists in parallel to treaty law and other sources of international protection of refugees; the most important and most discussed examples of the latter are those involving non-refoulement. The multi-level interconnection of treaty commitments, customary international law and human rights law and other sources of international norms will continue to shape and extend the scope and application of modern international refugee protection.

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7. Research Gap

This paper identifies the need for such an integrated analysis of the scope of modern refugee protection that treaty law, customary international law, human rights law, humanitarian law, and soft-law mechanisms are examined in a combined manner. Although the 1951 Refugee Convention and the refugee definition have been the subject of a vast amount of scholarship, and the principle of non-refoulement has been explored as an independent legal issue, much of this work has dealt with these principles individually rather than as parts of a holistic regime of refugee protection. Particularly, less consideration has been devoted to the interaction between treaty-based refugee protection, customary international law and complementary human rights and humanitarian protection where such protection is not available due to non-ratification or reservations or due to the exclusion of those who do not meet the Convention definition. The paper thus takes a very specific analytical approach: how much do the combination of various sources and different branches of international law add to and/or replace the protection of the 1951 Convention.

8. Methodology

The research method used in this study is qualitative with a doctrinal legal approach, because the researchers are interested in the development, conceptual base and current system of international refugee law. The analysis is centered on the development of refugee protection, the definition of refugee, the principle of non-refoulement and refugee law in relation to international human rights law and international humanitarian law. The study utilizes mostly documentary and legal sources such as the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol, human rights and humanitarian law instruments, UN and UNHCR documents, international and regional judicial decisions and customary international law sources. Relevant books, peer reviewed journal articles, and legal commentaries are examined as well for scholarly interpretations and giving historical context. Doctoral analysis, textual analysis, historical analysis, and comparative analysis is used to analyze data. Refugee, human rights and humanitarian law are analysed using treaty provisions and judicial decisions to highlight what legal principles are applicable and how they have been interpreted; and to analyse the relationship between refugee law, human rights and humanitarian law through comparative analysis. Close attention is paid to the evolution and application of the non-refoulement principle as well as its relevance in modern international protection. The study will be based on the international legal framework and will not include interviews, surveys or other empirical study work. If the legal status of certain principles is problematic the study makes a distinction between those principles that have been incorporated into treaties, those principles that have come about as a part of customary international law and those principles which are still subject of ongoing, legal debate.

9. Conclusion

In this paper I have shown that international refugee law is not one coherent system of law; it is a changing and complex field of law in the process of institutional and legal evolution for almost one hundred years. It had a conceptual genesis in the early, group-oriented, arrangements of the League of Nations in the 1930s and 1920s and was later brought together under the United Nations system after the Second World War. The main treaty framework in current international refugee protection was laid down with the creation of UNHCR, the adoption of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. The heart of this approach is the legal definition of a refugee, namely someone who is outside their country who is unable, or unwilling, to seek refuge within that country due to a well-founded fear of

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
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persecution on certain grounds. But the concept of refugee protection is more than the 1951 Convention. International human rights law and international humanitarian law offer complementary protection measures, including protection against torture and other serious forms of ill-treatment under the former and protection of persons affected by an armed conflict under the latter. The intertwinement of these legal frameworks shows that the modern international protection cannot be analyzed within the framework of refugee law. The study has also revealed that international refugee law is derived from various sources such as international treaties, customary international law, general principles, judicial decisions, academic publications, and various soft-law documents. Among these, the principle of non-refoulement occupies a central position. It has been recognized in the Convention of 1951, and has evolved through the framework of international human rights law and customary international law, to become a sine qua non of international protection. However, special refugee rights must be evaluated on a case-by-case basis instead of being granted on a blanket basis in respect of all the Convention provisions. In general, the current refugee protection system is based on the interplay of a durable treaty system and the general evolution of customary law, human rights law, and humanitarian law, as well as the evolution of soft-law practice. Existing international obligations must be interpreted and realised in response to new protection needs and the continued effectiveness of international refugee protection will rely on the ability of international institutions and legal systems to do so.

REFERENCES

Cartagena Declaration on Refugees. (1984, November 22). *Cartagena Declaration on Refugees*. Colloquium on the International Protection of Refugees in Central America, Mexico and Panama.

Costello, C., & Foster, M. (2016). Non-refoulement as custom and jus cogens? Putting the prohibition to the test. *Netherlands Yearbook of International Law, 46*, 273–327.

Goodwin-Gill, G. S., & McAdam, J. (2007). *The refugee in international law* (3rd ed.). Oxford University Press.

Hathaway, J. C. (2021). *The rights of refugees under international law* (2nd ed.). Cambridge University Press.

International Court of Justice. (1945). *Statute of the International Court of Justice*.

International Court of Justice. (1969). *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands). I.C.J. Reports*, 3.

Organization of African Unity. (1969). *OAU Convention governing the specific aspects of refugee problems in Africa*. 1001 U.N.T.S. 45.

United Nations General Assembly. (2018). *Global Compact on refugees* (Resolution 73/151).

United Nations High Commissioner for Refugees. (1977). *Conclusion on international protection No. 6 (XXVIII)*.

United Nations High Commissioner for Refugees. (2019). *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees*.

United Nations High Commissioner for Refugees. (2026). *History of UNHCR*. https://www.unhcr.org/history-unhcr

United Nations. (1948). *Universal Declaration of Human Rights* (General Assembly Resolution 217 A (III)).

United Nations. (1950). *Statute of the Office of the United Nations High Commissioner for Refugees* (General Assembly Resolution 428 (V)).

United Nations. (1951). *Convention relating to the status of refugees*. 189 U.N.T.S. 137.

ISSN (Online): 3006-2071 | ISSN (Print): 3006-2063
Volume 4 • Issue 5 • September 2026

United Nations. (1966). *International Covenant on Civil and Political Rights*. 999 U.N.T.S. 171.

United Nations. (1967). *Protocol relating to the status of refugees*. 606 U.N.T.S. 267.

United Nations. (1969). *Vienna Convention on the Law of Treaties*. 1155 U.N.T.S. 331.