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“RIGHT TO ASYLUM - REFUGEE PROTECTION AND INTERNATIONAL LAW ”

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DECLARATION

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Abstract

This research examines the right to asylum as a fundamental component of international human rights and humanitarian law, focusing on the gap between its legal recognition and practical implementation. The core problem addressed is the inconsistency in state practices, restrictive asylum policies, and emerging protection gaps, particularly in the context of modern displacement caused by conflict, political instability, and climate change.

The study adopts a doctrinal and analytical methodology, relying on secondary sources such as international conventions (notably the 1951 Refugee Convention and 1967 Protocol), judicial decisions, academic literature, and reports of international organizations like UNHCR. A comparative approach is also employed to evaluate national asylum systems and identify best practices.

The findings reveal that despite a robust international legal framework, implementation remains uneven due to tensions between state sovereignty and humanitarian obligations, inadequate burden-sharing among states, and practices such as detention and deportation that undermine refugee rights. Additionally, the narrow legal definition of refugees fails to address contemporary forms of displacement, creating significant protection gaps.

The research concludes that while the right to asylum remains a crucial safeguard for human dignity, its effectiveness depends on stronger international cooperation, expansion of legal frameworks, and reforms in national asylum procedures. Addressing these challenges is essential to ensure a more equitable and humane global refugee protection regime.

Keywords: Right to Asylum; Refugee Protection; International Law; Non-Refoulement; UNHCR; Human Rights

CHAPTER 1: INTRODUCTION

1.1 Right to Asylum as a Humanitarian and Legal Imperative

Asylum is one of core components of international humanitarian and human rights law. It reflects both moral and legal obligation of states to ensure safety for persons fleeing their countries as a result of persecution, war, violence or other risks to their well being and life. The roots of asylum can be found in ancient civilizations that used places of worship and sanctuaries as safe havens for people being persecuted for various reasons. In turn this moral practice turned into an international law concept in wake of atrocities of World War II and mass migrations from Europe and other regions¹.

The right to seek asylum in modern international law is often intertwined with right of human dignity and protection of basic rights. There is no international treaty providing an unconditioned guarantee for seeking asylum however right to seek and enjoy asylum is stated in Article 14 of the UDHR². The recognition of this right in international legislation shows awareness that people who flee their homes should have some guarantees for their lives. With development of refugee law definition of a refugee was provided in 1951 Refugee Convention which states basic rights of refugees³

From a humanitarian perspective issue of asylum becomes extremely topical when one considers statistics concerning global displacement. According to UNHCR estimates number of individuals who experience forcible displacement because of armed conflicts, human rights abuses, environmental disasters and political instability reaches mark of millions of people.⁴

1.2 Research Problem and Rationale

However despite presence of a robust system of international laws regulating refugee status there exists a large discrepancy between recognition of right to seek asylum and its implementation on ground. Amongst core issues highlighted in this study is lack of harmonization of state practices towards asylum seekers and refugees. Although international

¹ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007).

² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 14.

³ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁴ UNHCR, *Global Trends: Forced Displacement Report* (UNHCR 2023).

conventions set out specific requirements most states have introduced strict measures that restrict access to asylum process, prolong deliberation and deny asylum altogether⁵

The issue becomes especially relevant when discussing mass influxes of refugees in which states tend to focus more on their own national and economic interests than their humanitarian responsibilities. The rising politicization of migration processes has worsened situation by encouraging states to implement deterrent measures such as closing borders, outsourcing asylum procedures and detaining asylum seekers.⁶

Additionally legal definition of refugees according to 1951 convention has been subjected to criticism because of its narrow scope which does not capture modern day displacement issues such as climate displacement, generalized violence and economic instability.⁷ Consequently there will always be individuals whose needs go unmet thereby leading to a protection gap in protection of refugees.

The main motivation for conducting this research is need for critical analysis of some of challenges facing the international asylum system and identification of measures that could be taken to enhance it. Through analysis of legal regime and state practices in this area study hopes to make some contribution to literature.

1.3 Objectives of the Study

The first and foremost goal of this research is to review concept of right to asylum under international law and identify its ability to offer protection to refugees. In this context this research will aim to fulfill following goals:

The first goal is to study theoretical basis of right to asylum and its emergence as an international law doctrine. This goal also includes a review of origin of this right and its mention in international human rights law conventions.

⁵ Violeta Moreno-Lax, *Accessing Asylum in Europe* (Oxford University Press 2017).

⁶ Thomas Gammeltoft-Hansen, *Access to Asylum* (Cambridge University Press 2011).

⁷ Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press 2012).

The second goal is to critically assess international legal regime surrounding protection of refugees and study treaties and customary international laws as well as international organizations role in this regard.

Finally research aims at putting forward some suggestions for improving asylum system and international cooperation in refugee protection.

1.4 Research Questions

The research will be based on the following questions:

- What are legal grounds and theoretical premises of right to asylum in international law?
- What is effectiveness of present international law system in ensuring protection of refugees and asylum seekers?
- What are main difficulties in application of asylum regime in practice both at national level and globally?

These questions are designed to give insight into topic and form core of this research.

1.5 Scope of the Study

The scope of this research will be limited to discussion of right to asylum under international law. The researcher will study several major international instruments like 1951 Refugee Convention and its protocol of 1967 as well as different human rights conventions and international custom.

The study will cover position on asylum in both developed and developing countries from a global perspective. Nevertheless more attention will be paid to developing countries which are home to majority of refugees worldwide.

Though issue of refugees and asylum seekers will be considered in all its facets problem of internal displacement will not be addressed. In addition topic of economic migrants will not be touched upon in absence of direct relation to asylum seekers.

1.6 Research Methodology

The research employs the doctrinal and comparative methodologies. Under the doctrine, there will be analysis of primary legal materials such as the Refugee Convention of 1951, 1967

Protocol to the Convention, Universal Declaration of Human Rights, and pertinent provisions of the International Covenant on Civil and Political Rights. Decisions of cases such as *Soering v United Kingdom* and *M.S.S. v Belgium and Greece* are also analyzed.

Under the comparative analysis, comparison will be made between EU states, selected African regional bodies, and selected developing countries as regards their practices regarding asylum seekers. Academic materials, UNHCR documents, and the World Bank will form the secondary materials.

Data will be collected from published sources while secondary legal material will be based on doctrinal analysis. Field research will not be done. Comparisons will be done based on selected jurisdictions within regions.



CHAPTER 2: CONCEPTUAL AND LEGAL FOUNDATIONS OF THE RIGHT TO ASYLUM

2.1 Meaning and Evolution of the Right to Asylum

Asylum has undergone considerable changes in its definition throughout centuries from practice of religion and morality it has transformed into a right granted by law. In past asylum involved use of religious establishments such as temples and churches for offering protection to persecuted individuals seeking refuge.⁸ The early notion of asylum is therefore an illustration of humanitarianism rather than legal duties because there existed no obligations to provide asylum.

The rise of states in international community and creation of international laws led to adoption of some legality into concept of asylum. Nonetheless before twentieth century asylum was essentially a discretionary power that belonged to sovereign states who were free to either grant or not to grant asylum without having any obligations towards any international law.⁹

The war crimes committed during Second World War constituted a critical stage in development of asylum law. The displacement of large masses of people as well as failure of governments to offer adequate protection for persecuted demonstrated pressing need for international law. Consequently creation of United Nations and adoption of various human rights declarations and covenants such as Universal Declaration of Human Rights (UDHR) ensured that right to asylum was recognized officially¹⁰

Another important document concerning legal foundation of asylum is 1951 Refugee Convention. It offers an official definition of a refugee as well as defines rights and responsibilities related to protection of refugees.¹¹ Despite absence of provisions that directly grant right to asylum Convention outlines a set of rules according to which States should ensure that refugees will not be returned to dangerous conditions.

⁸ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007).

⁹ James Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005).

¹⁰ Convention Relating to the Status of Refugees (n 3).

¹¹ *ibid* art 1A(2).

2.2 Distinction between Refugees, Asylum Seekers, and Migrants

It is crucial to distinguish between refugees, asylum seekers and migrants to understand meaning of right to asylum since these groups are subject to different laws and levels of protection.

According to 1951 Refugee Convention a refugee refers to a person who has well grounded fears of being persecuted based on race, religion, nationality, particular social group and political opinions and cannot or does not want to leave country they are in.¹² Refugees enjoy many legal rights including right not to be returned to countries that would cause risks to their safety and lives, access to social security, employment and education.

Asylum seekers are people who have applied for international protection and whose claims have not been processed yet. They will become refugees in case their claims meet all legal requirements but they can be denied protection as well. However in any case international human rights law provides for right to receive protection during process of determination.¹³

Migration is a more comprehensive term that encompasses people who have moved across borders for different purposes including for economic reasons, family reunification or education. Migrants are not seeking asylum due to persecution or a life threatening situation and thus cannot claim international protection as refugees¹⁴. Despite this migrants retain certain basic human rights under international law.

It is important to distinguish between migrants and other categories since it influences duties of state and rights of individual. Nevertheless in reality it becomes difficult to draw a clear line between these groups as many migrants migrate due to both economic reasons and forced migration. It has resulted in idea of “mixed migration flows.”¹⁵

2.3 Right to Asylum as a Human Right under International Law

The acknowledgment of right to asylum as a human right is tied to general international framework for human rights. Despite absence of an international treaty recognizing right to

¹² *ibid.*

¹³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR 2019).

¹⁴ International Organization for Migration, *World Migration Report* (IOM 2022).

¹⁵ Alexander Betts, *Survival Migration* (Cambridge University Press 2013).

asylum, right to seek asylum and benefit from it is clearly stipulated in Article 14 of UDHR.¹⁶ Such a formulation recognizes need to afford those being persecuted with appropriate measures of protection.

The right to asylum is related to various human rights including right to life, liberty and security of person. Equality and non discrimination also play a role since refugees and asylum seekers must not be discriminated against or subjected to any form of discrimination. From this perspective right to asylum is instrumental in realizing other human rights.

There are several international human rights bodies and courts that have enhanced legal standing of asylum through their judicial rulings. The judicial approach has widened scope of asylum through its interpretation of non refoulement principle in matters related to torture arbitrary detention and denial of due process¹⁷. These trends clearly show how international law governing asylum is flexible in accommodating changes in human rights norms.

Regional instruments have also been instrumental in recognition of asylum as a human right. Examples include African Charter on Human and Peoples Rights and European Union laws on asylum.¹⁸ The region specific instruments have adopted wider criteria to determine who qualifies as a refugee.

In end right to seek asylum is a reflection of international solidarity and willingness to help those who are vulnerable. The fulfillment of this right is important if principles of justice, equality and humanity are to be preserved in today's interdependent world.

¹⁶ Universal Declaration of Human Rights (n 2), art 14.

¹⁷ *Soering v United Kingdom* (1989) 11 EHRR 439 (European Court of Human Rights).

¹⁸ African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).

CHAPTER 3: INTERNATIONAL LEGAL FRAMEWORK FOR REFUGEE PROTECTION

3.1 The 1951 Refugee Convention and 1967 Protocol

The key pillar of international law of refugees is Convention relating to Status of Refugees, 1951 together with its 1967 Protocol. All these together define refugee as per international law provide rights to displaced people and impose obligations on states towards them. The 1951 convention came after second world war and was primarily intended to deal with refugee crisis in Europe¹⁹. The convention had temporal and geographic limits it only covered incidents taking place prior to 1 January 1951 and even within Europe.

According to convention a refugee is an individual who as a result of persecution due to any of five specific reasons of race, religion, nationality member of a certain social group or political opinion and being unable to gain the protection of his/her home state feels compelled to leave that state.²⁰ This provision serves as basis of all refugee status determinations internationally. Nevertheless this individual centered approach to persecution and exclusion of generalized threats have been considered some shortcomings of convention³.

The Protocol of 1967 eliminated time constraints and geographical scope of Convention thus making it universal⁴. Such a broadening was necessary to modify framework of refugee laws to meet newly emerged forms of refugee displacement. The Protocol and Convention together form basic foundations of international refugee law which is binding upon states party to these agreements.

Refugees enjoy certain fundamental rights under Convention such as protection against discrimination, access to judicial system, gainful employment, education and public welfare²¹. The obligations of refugees include respect for laws and regulations of state of refuge. Above all most significant provision of Convention is that of non refoulement refugees cannot be returned to areas where their life or freedom is at risk.²²

¹⁹ Convention Relating to the Status of Refugees (n 3).

²⁰ *ibid* art 1A(2).

²¹ *ibid* arts 3–34.

²² *ibid* art 33.

3.2 Role of United Nations High Commissioner for Refugees (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) acts as a crucial body within international system of refugee protection. Founded in 1950 main mission of UNHCR was to offer temporary help to refugees in Europe. However later its mandate became broader as UNHCR now is entrusted not only with protecting refugees but also providing help to asylum seekers stateless persons and internally displaced persons²³.

First of all UNHCR must make sure that international protection of refugees is provided along with finding long term solutions to their situations. These measures include encouraging voluntary repatriation, facilitating local integration and helping refugees resettle to other countries.³ In addition UNHCR oversees international refugee law and cooperation between states regarding asylum procedures and policies based on Convention.

Finally it should be mentioned that an important contribution of UNHCR includes refugee status determination in countries where domestic procedures are either insufficient or absent. As a result UNHCR issues interpretative guidelines and handbooks on process providing technical help to national agencies.²⁴ These documents have become widely acknowledged in field of refugee law.

3.3 Regional Frameworks: European, African and Inter-American Systems

Apart from global structure that has been created under the 1951 Convention there are also several regional legal instruments that have been created to cater to unique refugee problems in specific regions. In general these regional approaches tend to build upon existing international law provisions.

Within European system most notable aspect of refugee legal framework is its sophistication. The Common European Asylum System (CEAS) seeks to promote consistency among asylum practices of EU member states. There are various directives dealing with matters such as asylum procedures, reception conditions and criteria for qualifying as refugees²⁵. Furthermore

²³ UNHCR Statute (1950) UNGA Res 428(V).

²⁴ UNHCR (n 13).

²⁵ European Union, *Common European Asylum System Directives*.

European Court of Human Rights (ECtHR) plays a significant role in defining rights of asylum seekers and their protection²⁶.

The Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems (1969) defines a refugee more expansively than under 1951 Convention. The OAU convention considers individuals who flee their countries due to external aggression, foreign occupation, foreign domination or circumstances that have caused a serious disturbance in public order as refugees²⁷.

Despite being less structured than others Inter American System has also played a role in evolution of refugee law. The “Cartagena Declaration on Refugees” (1984) by including within scope of refugees people that have fled from generalized violence, internal strife and massive human rights violations has further extended concept of a refugee.²⁸

3.4 India’s Position on Refugee Law

India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol. However, it has developed a robust judicial approach toward refugee protection grounded in constitutional guarantees under Articles 14 and 21.

In *NHRC v State of Arunachal Pradesh*²⁹, the Supreme Court held that the State is bound to protect the life and liberty of refugees, thereby reinforcing the principle of non-refoulement within Indian jurisprudence.

India’s refugee policy remains ad hoc, relying on executive discretion and selective cooperation with UNHCR, highlighting the need for a comprehensive domestic refugee law.

²⁶ *Soering v United Kingdom* (1989) 11 EHRR 439.

²⁷ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).

²⁸ Cartagena Declaration on Refugees (1984).

²⁹ *NHRC v State of Arunachal Pradesh* (AIR 1996 SC 1234)

CHAPTER 4: CHALLENGES IN IMPLEMENTATION OF ASYLUM AND REFUGEE RIGHTS

4.1 State Sovereignty vs. Humanitarian Obligations

One of the biggest problems associated with implementation of the right to seek asylum and refugee status involves an intrinsic conflict between the sovereignty of a state and its humanitarian duties. International laws accord state sovereign power of controlling entry into its territory and regulating immigration³⁰. However, international law imposes a duty on the state to provide protection to people who have escaped persecution and respect fundamental human rights.

This makes the legal and political situation very complicated. Although states have entered into international obligations by joining various international laws like the 1951 Refugee Convention, their readiness to honor those responsibilities changes depending on their own internal politics. Governments justify restrictions to asylum claims for reasons such as national security and social and economic stability³¹.

The securitization of migration has further exacerbated this conflict. Sometimes refugees and asylum seekers are viewed as threats and not as people who require protection. In turn, there have been stricter controls on borders and other forms of surveillance in order to reduce illegal immigration. These actions not only obstruct access to asylum processes but also contradict the prohibition against refoulement.

On the other hand, judicial forums have made efforts to find an equilibrium between sovereignty and humanitarianism. Courts have stressed that although countries have flexibility in handling their immigration policy, this power is limited in scope. Countries should ensure that immigration policies do not contravene human rights principles.³² However, implementation of these rules has been erratic and patchy.

4.2 Refugee Crisis and Burden-Sharing Issues

In addition, the global refugee crisis has highlighted deficiencies in the current international protection regime in terms of sharing of burdens among states. Although international law promotes

³⁰ Hathaway (n 9).

³¹ Goodwin-Gill and McAdam (n 1).

³² *Soering v United Kingdom* (n 17).

cooperation and solidarity among states distribution of burden in relation to hosting refugees is far from equitable. Developing countries which tend to be neighbors to areas of conflict shoulder a greater burden even though they have insufficient resources³³.

The burden of hosting refugees disproportionately lies on developing nations, despite their lack of resources and infrastructure to deal with such challenges, as shown by the UNHCR Global Trends Report indicating that low- and middle-income nations host close to 75% of all refugees worldwide.³⁴ Developed countries on other hand employ stringent measures that prevent large numbers of refugees from entering their territories. Such a scenario is detrimental to international spirit of solidarity and overwhelms hosting country.

Moreover there is no effective mechanism for sharing burden of hosting refugees. Contrary to most issues of international law international refugee protection does not provide an effective means of enforcing its provisions in order to achieve a fair distribution of burden of hosting refugees among states.

4.3 Detention, Deportation and Human Rights Violations

Detention and deportation as means of migration regulation impose certain problems with protection of asylum seekers and refugees. States have right to detain immigrants but this should be consistent with international human rights law and criteria of necessity proportionality and non discrimination.³⁵

Unfortunately detention practices often go beyond reasonability and are arbitrary. Many asylum seekers spend time in detention facilities for a long period without legal guarantees.³⁶ The conditions of such institutions are not satisfactory they may be associated with infringement of right to respect for dignity and freedom from torture or inhumane treatment. As far as deportation practices are concerned it poses particular dangers to individuals who are persecuted or exposed to torture in their home country. It infringes upon principle of non refoulement³⁷ and makes it impossible to ensure an efficient functioning of asylum procedure.

³³ UNHCR, *Global Trends Report* (UNHCR 2023).

³⁴ UNHCR, *Global Trends: Forced Displacement Report* (2023).

³⁵ International Covenant on Civil and Political Rights (1966), art 9.

³⁶ UNHCR, *Detention Guidelines* (2012).

³⁷ Convention Relating to the Status of Refugees (1951), art 33.

Sometimes states employ indirect refoulement when transferring asylum seekers to third countries.

Judicial involvement has been significant in tackling such concerns. The courts have stressed importance of having proper mechanisms among which are legal counsel, judicial oversight and fair hearings procedures³⁸. However despite all this progress there is still a considerable implementation gap.

The criminalization of irregular migration makes things even worse. When asylum seekers come into a new state without being legally permitted to do so they are considered offenders as opposed to those exercising their right to asylum³⁹

³⁸ *M.S.S. v Belgium and Greece* (2011) ECHR.

³⁹ *Gammeltoft-Hansen* (n 6).

CHAPTER 5: CONCLUSION AND SUGGESTIONS

5.1 Conclusion

This present research has sought to conduct an extensive study of right to asylum in terms of international law with emphasis being placed on understanding nature of this right its legal architecture and practical difficulties that are involved in realizing it. This study has demonstrated that although right to asylum has a sound humanitarian basis and foundation in international law its practice remains inconsistent and problematic.⁴⁰

Firstly right to asylum constitutes a humanitarian principle that seeks to provide protection to those seeking asylum from persecution, violence and other forms of grave violations of their basic human rights. This right can be traced back to post war period and international community's recognition of necessity to avoid similar human tragedies⁴¹. The signing of 1951 Refugee Convention and 1967 Refugee Protocol constituted an important step in this respect⁴²

Another important concern in this regard pertains to problem with burden sharing. It becomes apparent that developing nations have to bear a huge share of burden due to inequitable nature

of global refugee regime.⁴³ While there are constant appeals made in favor of international cooperation there is still no agreement as such that would compel states to take up their responsibilities equally.

Detention and deportation of refugees as well as criminalization of irregular migration are among other problems discussed in research paper. This kind of treatment inevitably leads to violations of basic human rights thus undermining one of core tenets of refugee protection non refoulement. As for implementation of commitments made by states it should be acknowledged that some serious problems persist in this regard as well.⁴⁴

Despite these difficulties however right to seek asylum is a necessary part of international human rights law. It is safety net that protects asylum seekers from persecution and helps

⁴⁰ Goodwin-Gill and McAdam (n 1).

⁴¹ Hathaway (n 9).

⁴² Convention Relating to the Status of Refugees (1951); Protocol Relating to the Status of Refugees (1967).

⁴³ UNHCR (n 32).

⁴⁴ Gammeltoft-Hansen (n 6).

guarantee them security and dignity. Its continuing importance highlights necessity of maintaining a commitment to improve and enhance international asylum regime.

5.2 Suggestions

Taking into account results of this research some recommendations may be made to improve efficacy of asylum procedure and increase safety of refugees and asylum seekers.

a. Strengthening International Legal Framework

Another key requirement is revision and development of current international legal system. The UN Refugee Convention is foundation of international refugee law but this system must be expanded in order to meet present day demands. These include acknowledgment of novel groups of displaced persons namely climate refugees and those displaced by generalized

violence.⁴⁵

b. Enhancing Burden-Sharing and International Cooperation

Burden sharing must be transformed into binding obligations. Countries need to put systems in place to facilitate equal sharing of responsibilities which include monetary support, resettlement numbers and technical expertise⁴⁶

c. Reforming National Asylum Systems

On a national level states need to reform themselves in order to make sure that system of providing asylum is effective and does not lead to any discrimination. In particular efforts need to be made for improving efficiency and accessibility of procedures⁴⁷

d. Strengthening Institutional Capacity

Capacity building in institutions is crucial to successful enforcement of asylum laws. Governments need to focus on training officials, upgrading administrative infrastructures and coordinating agencies involved in refugee protection.⁴⁸

⁴⁵ McAdam (n 7).

⁴⁶ Betts (n 15).

⁴⁷ UNHCR, *Handbook on Refugee Protection* (2019).

⁴⁸ UNHCR, *Global Trends Report* (2023).

e. Leveraging Technology and Innovation

In addition technology can be used as an important way to improve asylum process. Digital platforms can help to facilitate application procedures, manage information more efficiently and improve communications between officials and refugees⁴⁹

⁴⁹ World Bank, *Digital Development and Migration* (2021).

REFERENCES

Books

- Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cambridge University Press 2013).
- Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge University Press 2011).
- Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007).
- James Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005).
- Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press 2012).
- Violeta Moreno-Lax, *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law* (Oxford University Press 2017).

International Instruments

- International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171.
- African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).
- Cartagena Declaration on Refugees (1984).
- UNHCR Statute (1950) UNGA Res 428 (V).
- European Union, *Common European Asylum System Directives*.
- Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).
- Protocol Relating to the Status of Refugees (adopted 31 January 1967) 606 UNTS 267.
- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

Reports and Institutional Publications

- International Organization for Migration, *World Migration Report* (2022).
- UNHCR, *Detention Guidelines* (2012).
- UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (2019).

- UNHCR, *Handbook on Refugee Protection* (2019).
- United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement Report* (2023).
- World Bank, *Digital Development and Migration* (2021).

Cases

- *M.S.S. v Belgium and Greece* (2011) European Court of Human Rights.
- *Soering v United Kingdom* (1989) 11 EHRR 439.

Other Legal References

- International Covenant on Civil and Political Rights (1966), art 9.
- Universal Declaration of Human Rights (1948), art 14.

