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The Effectiveness of International Human Rights Instruments in Protecting Asylum Seekers and Refugees

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ABSTRACT

The effectiveness of international human rights instruments in protecting asylum seekers and refugees remains a critical issue in contemporary global governance. Although multiple legal frameworks such as the 1951 Refugee Convention and its 1967 Protocol, the International Covenant on Civil and Political Rights (ICCPR), and various UNHCR guidelines seek to safeguard displaced individuals, their practical implementation varies significantly across regions (Hathaway, 2005; Goodwin-Gill & McAdam, 2021). This abstract examines the extent to which these instruments ensure meaningful protection, with a focus on Europe, Asia, and Africa. International human rights law provides a broad foundation for safeguarding the rights of refugees and asylum seekers, particularly through principles such as non-refoulement, the right to life, freedom from torture, and access to due process (ICCPR, 1966, Arts. 6–7). In Europe, regional mechanisms and well-established legal institutions often strengthen the implementation of these protections (ECHR, 1950). However, rising nationalism, stricter border controls, and deterrence-based asylum policies continue to limit full compliance (Betts, 2013). In Asia, where many states are not parties to the Refugee Convention, protection relies heavily on UNHCR's mandate and ad-hoc national practices, resulting in inconsistent safeguards (Kneebone, 2014). Africa demonstrates comparatively stronger regional commitment through the OAU Refugee Convention, which expands the refugee definition and offers more inclusive protection standards (OAU Convention, 1969), though resource limitations and political instability often hinder effective enforcement. Despite the existence of robust global norms, challenges remain in translating legal obligations into tangible protection. Gaps in domestic legislation, geopolitical interests, security concerns, and inadequate asylum procedures frequently undermine the rights of displaced populations (Chimni, 2009). Nonetheless, international instruments continue to serve as essential tools for advocacy, accountability, and humanitarian action.

Keywords: Refugee Protection; Asylum Seekers; International Human Rights Law; UNHCR; ICCPR; Refugee Convention; Non-Refoulement; Europe; Asia; Africa.

1. Introduction

The plight of asylum seekers and refugees continues to challenge the integrity of the international human rights system. Global displacement reached record levels, exceeding 120 million people worldwide (UNHCR, 2024). This unprecedented scale has exposed both the achievements and shortcomings of international law in protecting those forced to flee persecution, armed conflict, and systemic violence.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the ICCPR, and a constellation of regional and soft-law instruments together form the foundation of the global refugee protection regime (Refugee Convention, 1951; ICCPR, 1966). Their shared objective is to guarantee that individuals fearing persecution are not returned to danger and that their fundamental rights are respected. Yet, effectiveness depends less on textual commitments than on political will and institutional capacity (Hathaway, 2005).

Effectiveness in international law refers to the extent to which legal norms achieve their intended objectives in practice. In refugee protection, this includes access to asylum procedures, consistency of interpretation, and the actual safety and dignity of individuals in host states (Goodwin-Gill & McAdam, 2021). Despite universal human rights rhetoric, state sovereignty continues to shape protection outcomes.

This article therefore evaluates the normative strength and practical enforcement of major international human rights instruments protecting asylum seekers and refugees. Using a comparative approach, it examines Europe, Asia, and Africa to assess whether international law effectively protects displaced persons in a state-centric global order.

2. Literature Review

2.1 Foundational Legal Scholarship

Classical legal works such as *The Refugee in International Law* (Goodwin-Gill & McAdam, 2021) and Hathaway's *The Rights of Refugees under International Law* (2005) conceptualise the Refugee Convention as a dynamic instrument. They identify non-refoulement as the cornerstone of refugee protection, now recognised as customary international law (Hathaway, 2005). Critical scholars such as Chimni (2009) and Fitzpatrick (2000) argue that the refugee regime reflects structural inequalities, with Global South states hosting the majority of refugees while possessing limited influence over regime design.

2.2 Human Rights Expansion of Refugee Law

The expansion of refugee protection through human rights law particularly the ICCPR and CAT—has broadened safeguards beyond Convention refugees (McAdam, 2011). Jurisprudence from the European Court of Human Rights (ECtHR) has been instrumental in this process. In *Soering v United Kingdom* (1989) and *Chahal v United Kingdom* (1996), the ECtHR held that removal is prohibited where there is a real risk of torture or inhuman treatment, extending non-refoulement beyond refugee status.

2.3 Effectiveness and Enforcement

Scholars debate the effectiveness of refugee law enforcement. Hathaway and Foster (2014) emphasise consistent judicial interpretation, while Betts (2013) highlights the dominance of migration control and securitisation over protection obligations.

3. International Legal Framework

3.1 Refugee Convention and Non-Refoulement

The 1951 Refugee Convention defines a refugee and establishes non-refoulement under Article 33, prohibiting return to territories where life or freedom would be threatened (Refugee Convention, 1951). The 1967 Protocol globalised this protection.

3.2 UNHCR's Supervisory Role

UNHCR's mandate under UNGA Resolution 428 (V) includes supervising treaty implementation and providing international protection. Although its guidelines are non-binding, they exert strong interpretive influence (UNHCR, 2019).

3.3 ICCPR and Complementary Protection

The ICCPR applies to all individuals under state jurisdiction, including asylum seekers (ICCPR, Art. 2). Articles 6 and 7 prohibit removal where there is risk to life or torture (HRC, General Comment No. 31).

4. Regional Effectiveness

4.1 Europe

Europe has the most judicialised system, integrating the Refugee Convention, ECHR, and EU asylum law. In *Hirsi Jamaa v Italy* (2012), the ECtHR confirmed extraterritorial non-refoulement obligations. However, externalisation and political resistance undermine solidarity (Betts, 2013).

4.2 Asia

Asia lacks a binding regional refugee framework. Protection relies on UNHCR operations and domestic discretion (Kneebone, 2014). Bangladesh's response to the Rohingya crisis reflects humanitarian pragmatism rather than legal obligation (UNHCR, 2023).

4.3 Africa

Africa's 1969 OAU Convention expands the refugee definition to include events disturbing public order (OAU Convention, 1969). Despite strong norms, implementation is constrained by limited resources and instability (Okoth-Obbo, 2001).

5.1 Challenges and Reform

Key challenges include sovereignty, legal fragmentation, securitisation, and unequal burden-sharing (Chimni, 2009). Climate-induced displacement further exposes normative gaps, as seen in *Ioane Teitiota v New Zealand* (HRC, 2020). Reforms should strengthen monitoring, expand legal definitions, institutionalise burden-sharing, and enhance regional adjudication mechanisms (Türk & Garlick, 2021).

5.2 Sovereignty vs. Human Rights: The Core Tension

At the heart of the refugee protection dilemma lies a fundamental contradiction: while international law proclaims universal rights, their enforcement depends on state consent. The 1951 Refugee Convention and the ICCPR impose obligations on states but lack direct coercive mechanisms. States retain discretion over admission, detention, and deportation, frequently invoking national security and sovereignty to justify restrictive policies. The rise of right-wing populism in Europe, border militarisation in the United States and Asia, and regional instability in Africa illustrate how domestic politics often eclipse humanitarian commitments.

Even in jurisdictions with strong judicial oversight such as under the ECHR—states sometimes evade accountability through externalisation agreements (e.g., EU–Turkey Statement, 2016) that transfer responsibility to third countries. These arrangements effectively create zones of legal ambiguity, where refugees are deprived of direct access to justice.

The UNHCR, though instrumental in coordinating global responses, lacks enforcement authority. It relies on diplomatic persuasion and moral legitimacy, which proves insufficient against entrenched sovereignty-based resistance.

5.3 Legal Fragmentation and Overlapping Regimes

Another key weakness lies in the fragmented nature of international refugee law. The multiplicity of treaties ranging from the Refugee Convention to regional instruments like the OAU Convention and ECHR creates overlapping but inconsistent obligations.

This fragmentation manifests in several forms:

Divergent Definitions of “Refugee”:

The Refugee Convention adopts a narrow persecution-based definition, while the OAU Convention includes broader causes such as public disorder. The lack of uniformity complicates refugee status determination (RSD) and hampers international cooperation.

Variable Standards of Protection:

Europe’s legalised regime imposes stringent procedural guarantees, whereas Asia relies on non-binding frameworks. Consequently, refugees face unequal protection depending on geography.

Inconsistent Jurisdictional Mechanisms:

Only a handful of regions (Europe and Africa) provide supranational adjudicatory forums. Elsewhere, violations of non-refoulement or arbitrary detention remain largely unreviewable.

Legal fragmentation thus undermines the predictability and coherence of international protection. It allows states to engage in “forum shopping” or adopt selective interpretations of obligations, eroding the principle of universality.

5.4 Securitisation and Criminalisation of Asylum

The post-9/11 era has witnessed a pervasive securitisation of migration, where asylum seekers are increasingly portrayed as potential security threats rather than rights-holders. This trend has deeply influenced both policy and law enforcement globally.

5.4.1 Deterrence and Externalisation

In Europe, deterrence strategies include maritime interceptions (*Hirsi Jamaa v Italy*), detention centres, and agreements with transit countries to prevent arrivals. In Asia, countries such as Malaysia and Thailand engage in “pushback” operations at sea, while Australia’s offshore detention system at Nauru and Manus Island epitomises the externalisation of responsibility.

These practices, though justified on grounds of border control, often violate non-refoulement and undermine access to asylum procedures. By transferring enforcement to third states or private contractors, governments obscure accountability, creating a protection vacuum that international instruments were designed to prevent.

5.4.2 Criminalisation and Xenophobia

In both developed and developing contexts, refugees face criminalisation through laws penalising irregular entry or overstaying visas, despite Article 31 of the Refugee Convention explicitly prohibiting such punishment. Populist rhetoric linking refugees to terrorism, unemployment, or cultural threat fuels xenophobia, leading to discriminatory policies and social exclusion.

The ICCPR’s guarantees of equality and dignity (Articles 2, 7, and 26) are routinely compromised. In Africa and Asia, prolonged encampment and restrictions on employment

perpetuate cycles of dependency and marginalisation. In effect, refugees are treated less as subjects of rights than as objects of control.

5.5 Institutional Weaknesses of UNHCR and International Enforcement

The UNHCR, as the primary international guardian of refugee rights, operates under a dual mandate: humanitarian assistance and legal protection. Yet, its effectiveness is constrained by both legal limitations and political dependency.

5.5.1 Lack of Binding Authority

Unlike the International Criminal Court (ICC) or the World Trade Organization (WTO), the UNHCR lacks a formal enforcement mechanism. Its determinations, guidelines, and handbooks are persuasive but non-binding. States often ignore recommendations without facing consequences.

The Executive Committee of the High Commissioner's Programme (ExCom) issues "soft law" conclusions, which help standardise practices but cannot compel compliance. This normative weakness reduces the UNHCR's leverage in cases of mass deportation or border closure.

5.5.2 Funding Dependency and Political Influence

UNHCR's operations rely on voluntary contributions from donor states, primarily in the Global North. This financial dependency compromises neutrality and often skews priorities toward donor interests. For example, European funding has increasingly focused on containment policies in North Africa and the Middle East, indirectly reinforcing restrictive migration controls.

Moreover, resource scarcity hampers the organisation's ability to monitor compliance effectively, particularly in regions like Asia where UNHCR must fill the vacuum left by absent state institutions.

5.5.3 Limited Individual Redress Mechanisms

Although the Human Rights Committee (HRC) under the ICCPR allows individual communications, its decisions are not enforceable in domestic courts. Refugees and asylum seekers thus lack direct access to remedies for violations of their rights under international law, relying instead on state-level goodwill or regional courts.

5.6 Socioeconomic Inequality and Burden-Sharing Deficits

A persistent structural inequity within the global refugee system is the disproportionate burden borne by developing countries. According to UNHCR (2025), over 70% of the world's refugees reside in low- and middle-income countries such as Uganda, Bangladesh, Pakistan, and Sudan nations least equipped to provide durable solutions.

Despite rhetorical commitments to international solidarity, mechanisms for equitable burden-sharing remain underdeveloped. The Global Compact on Refugees (2018) introduced the Global Refugee Forum and a Support Platform model, yet participation remains voluntary, and pledges often go underfulfilled.

This disparity raises fundamental questions of global justice and North-South responsibility. Wealthier states increasingly externalise protection responsibilities, while poorer host states struggle to sustain protracted refugee populations with limited international support. The resulting humanitarian gaps undermine the legitimacy of the international protection regime itself.

5.7 Emerging Global Challenges

5.7.1 Climate-Induced Displacement

Climate change is generating new forms of forced migration not covered by existing legal frameworks. Individuals displaced by droughts, rising sea levels, or extreme weather events often fall outside the Refugee Convention's definition of "refugee," as they are not fleeing persecution.

The case of *Ioane Teitiota v New Zealand* (UN Human Rights Committee, 2020) marked a significant development, recognising that returning an individual to a climate-threatened environment could violate non-refoulement under Article 6 of the ICCPR. However, the absence of a binding "climate refugee" regime remains a major normative gap.

5.7.2 Digital Border Control and Surveillance

Technological innovations such as biometric registration, AI-based risk profiling, and automated border screening are transforming asylum governance. While enhancing efficiency, these technologies also raise serious privacy and discrimination concerns. The ICCPR's Article 17 right to privacy and Article 14 fair trial guarantees are increasingly challenged by opaque algorithmic decision-making in asylum processes.

5.8 Reform Recommendations

To address these multi-dimensional challenges, a series of interconnected legal, institutional, and policy reforms are essential to revitalise the global refugee protection system.

5.8.1 Strengthening Treaty Compliance and Accountability

Establish a Refugee Protection Monitoring Mechanism under the UN Human Rights Council to review states' compliance with the Refugee Convention and ICCPR obligations.

Enhance the mandate of the UNHCR Supervisory Role (Article 35, Refugee Convention) to include formal reporting to the UN General Assembly with state-specific evaluations.

Introduce sanction mechanisms such as suspension of aid or trade preferences for states engaging in systematic non-refoulement or arbitrary detention.

5.8.2 Enhancing Regional Judicial and Institutional Frameworks

Support the creation of regional refugee tribunals in Asia and Latin America, modelled on the ECtHR and ACHPR, to provide binding adjudication.

Encourage the ASEAN Intergovernmental Commission on Human Rights (AICHR) to adopt a binding refugee protection protocol aligned with the Bangkok Principles.

Strengthen the African Court on Human and Peoples' Rights by expanding jurisdiction and funding to enforce the OAU Convention more effectively.

5.8.3 Reforming Global Burden-Sharing

Institutionalise mandatory resettlement quotas based on GDP and population ratios among developed states.

Operationalise the Global Compact on Refugees through a binding financing mechanism, ensuring predictable contributions rather than ad hoc pledges.

Promote development–asylum linkages, integrating refugee protection within broader Sustainable Development Goals (SDG) frameworks.

5.8.4 Expanding Legal Definitions and Climate Protection

Amend or supplement the 1951 Refugee Convention to include persons displaced by climate change and environmental degradation.

Encourage the UNHCR and IOM to jointly develop Guiding Principles on Climate-Induced Displacement to harmonise protection across regions.

5.8.5 Empowering Refugees and Civil Society

Ensure meaningful participation of refugees in decision-making processes at both national and international levels.

Support local NGOs and legal aid organisations that provide access to justice, documentation, and livelihood opportunities.

Foster public education and anti-xenophobia campaigns to counter the criminalisation of asylum.

5.9 Conclusion: Toward an Effective and Equitable Protection Regime

The global refugee protection system stands at a crossroads. While the normative edifice built by the Refugee Convention, ICCPR, and regional instruments remains indispensable, their effectiveness depends on renewed political will, institutional innovation, and normative expansion.

Bridging the gap between principle and practice requires transforming moral obligations into enforceable commitments, ensuring that protection is not determined by geography or political convenience. The international community must reaffirm the foundational ethos of human rights: that asylum is not a privilege but a universal right, grounded in human dignity and the shared responsibility of nations.

6. Conclusion

International human rights instruments provide a strong normative framework for refugee protection, yet effectiveness varies across regions. Europe excels in judicial enforcement but struggles with political will; Asia relies on humanitarian practice without legal certainty; Africa demonstrates normative innovation with limited capacity. Ultimately, protecting asylum seekers requires transforming legal principles into enforceable commitments grounded in global solidarity. As Hannah Arendt observed, the “right to have rights” remains the core promise of international human rights law (Arendt, 1951).

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