

## Ratified but Resisted: Refugees, the Right to Asylum in International Law, and Western State Practice

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### ABSTRACT

*The refugee problem has become one of the most pressing global challenges in contemporary international relations. Armed conflict, persecution, insecurity, and humanitarian crises have compelled millions to flee their countries of origin in search of safety and survival. In response, the international community, under the auspices of the United Nations, has established a legal framework for refugee protection, most notably through the 1951 Refugee Convention, its 1967 Protocol, and the institutional role of the United Nations High Commissioner for Refugees (UNHCR). Despite widespread ratification of international refugee law, implementation varies significantly among states. Many Western countries, while formally committed to international instruments, increasingly adopt restrictive asylum policies and practices such as narrow interpretations of refugee status, procedural barriers, externalization of responsibilities, and securitized approaches to protection. This study uses a qualitative doctrinal and analytical legal approach. It relies on secondary sources including international legal instruments, UNHCR documents, and peer-reviewed literature. The analysis reveals a growing gap between legal commitments and state behavior. Western asylum governance demonstrates selective and minimalist compliance with international refugee law, reflecting restrictive interpretations and practices that undermine the spirit of asylum protection. Contemporary refugee governance in the West does not represent a wholesale rejection of international law but rather a pattern of limited compliance that weakens the normative foundations of asylum rights.*

**Keywords** : *Refugee Crisis; International Law; Asylum Rights; Non-refoulement; Western State Practices*

### ABSTRAK

Masalah pengungsi telah menjadi salah satu tantangan global paling mendesak dalam hubungan internasional kontemporer. Konflik bersenjata, penganiayaan, ketidakamanan, dan krisis kemanusiaan telah memaksa jutaan orang meninggalkan negara asal mereka demi mencari keselamatan dan kelangsungan hidup. Sebagai respons, komunitas internasional di bawah naungan Perserikatan Bangsa-Bangsa telah membentuk kerangka hukum perlindungan pengungsi, terutama melalui Konvensi Pengungsi 1951, Protokol 1967, serta peran kelembagaan Komisioner Tinggi PBB untuk Pengungsi (UNHCR). Meskipun hukum pengungsi internasional telah diratifikasi secara luas, implementasinya sangat bervariasi antarnegara. Banyak negara Barat, meskipun secara formal berkomitmen pada instrumen internasional, semakin mengadopsi kebijakan dan praktik suaka yang restriktif seperti penafsiran sempit terhadap status pengungsi, hambatan prosedural, eksternalisasi tanggung jawab, serta pendekatan yang menekankan aspek keamanan. Penelitian ini menggunakan pendekatan kualitatif dengan analisis hukum doktrinal dan analitis. Sumber data sekunder meliputi instrumen hukum internasional, dokumen UNHCR, serta literatur akademik yang ditinjau sejawat. Analisis menunjukkan adanya kesenjangan yang semakin besar antara komitmen hukum dan perilaku negara. Tata kelola suaka di negara-negara Barat memperlihatkan kepatuhan yang selektif dan minimalis terhadap hukum pengungsi internasional, dengan praktik restriktif yang melemahkan semangat perlindungan suaka. Tata kelola pengungsi kontemporer di Barat tidak mencerminkan penolakan total terhadap hukum internasional, melainkan pola kepatuhan terbatas yang melemahkan fondasi normatif hak atas suaka.

**Kata Kunci** : *Krisis Pengungsi; Hukum Internasional; Hak Suaka; Non-refoulement; Praktik Negara Barat*

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## INTRODUCTION

The global refugee situation represents one of the most pressing humanitarian and legal challenges of the contemporary international system. Armed conflict, political persecution, ethnic and religious violence, environmental degradation, and generalized insecurity continue to force millions of individuals to flee their countries of origin in search of safety and survival. According to international law, such individuals are entitled to protection when their fundamental rights and security can no longer be guaranteed by their home states. As a result, refugee protection has become a central concern of international law, human rights law, and international institutions. Recent studies highlight that displacement has reached unprecedented levels, with UNHCR reporting over 114 million forcibly displaced persons worldwide in 2023, underscoring the urgent need for stronger international cooperation and legal safeguards (EUAA, 2024; UNHCR, 2024).

In response to large-scale displacement, particularly following the First and Second World Wars, the international community sought to establish a comprehensive legal framework to protect refugees. These efforts culminated in the adoption of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which together form the cornerstone of international refugee law. The Convention provides a universal definition of a refugee, outlines the rights owed to refugees, and sets out the obligations of states, most notably the principle of non-refoulement, which prohibits the return of individuals to territories where they face threats to life or freedom (Goodwin-Gill & McAdam, 2007; Worster, 2012). To oversee the implementation of these legal protections, the United Nations established the Office of the United Nations High Commissioner for Refugees (UNHCR), mandating it to provide international protection and to seek durable solutions for displaced populations.

The primary objective of international refugee law is to ensure that individuals who are forcibly displaced are granted access to protection through asylum and are treated in accordance with minimum international standards. The right to seek asylum, although not explicitly guaranteeing admission, has become a widely recognized principle of international practice and is closely linked to broader human rights protections (Hathaway, 2005). International law thus positions refugees as a distinct legal category requiring special consideration due to the involuntary nature of their displacement and the risks they face upon return to their countries of origin (Goldenziel, 2015).

Despite the near-universal ratification of the 1951 Convention and the 1967 Protocol, the implementation of refugee protection remains uneven across states. While international law establishes common standards, states retain significant discretion in determining asylum procedures, refugee status determination, and admission policies. This discretion has resulted in divergent national practices and varying interpretations of refugee protection obligations (Worster, 2012). Many states have developed domestic laws and institutional mechanisms to assess asylum claims, often tailoring international definitions to fit national security, migration control, and political considerations (Gil-Bazo, 2015).

In recent years, this divergence has become particularly evident among Western states, which have historically portrayed themselves as champions of human rights and international legal order. Although Western countries, including members of the European Union, the United Kingdom, and other signatories, have formally ratified the 1951 Refugee Convention and its 1967 Protocol, many have increasingly adopted restrictive asylum policies aimed at limiting access to their territories and reducing refugee admissions.

Examples of such restrictive approaches can be seen in Poland, which has implemented pushbacks at the Belarus border and limited access to asylum procedures (ECRE, 2024). Denmark has pursued a “zero asylum policy,” aiming to receive no new asylum seekers and

externalizing asylum processing to third countries such as Rwanda (House of Commons Library, 2023; Sandberg, 2025). Hungary has erected border fences and introduced legislation requiring asylum applications to be lodged through embassies abroad, effectively blocking access to protection (ECRE, 2024; Hungarian Helsinki Committee, 2023). Other European countries, including Austria, Italy, and Greece, have also adopted restrictive measures such as accelerated asylum procedures, “safe third country” designations, and externalization of asylum responsibilities (ECRE, 2023; European Migration Network, 2024).

These practices illustrate a growing tension between formal legal commitment and practical implementation, revealing a pattern in which asylum is legally recognized yet substantively constrained.

This gap between international legal norms and state practice raises fundamental questions about the effectiveness of international refugee law and the contemporary meaning of the right to asylum. While Western states continue to affirm their adherence to international law, their asylum policies increasingly reflect securitization and deterrence logics rather than humanitarian protection. Modern refugee governance often prioritizes state interests over refugee rights, resulting in systems that comply with the letter of international law while undermining its protective purpose (Betts & Collier, 2017).

This article examines the concept of refugees and the right to asylum within the framework of international law, with particular attention to the role of the UNHCR and the legal principles established by the 1951 Convention and its 1967 Protocol (Loescher, 2001). It further analyzes how Western state practices complicate and, in some cases, resist the realization of asylum rights despite formal ratification of international refugee instruments. By highlighting this disjunction between law and practice, the article seeks to demonstrate that contemporary refugee protection in the West is characterized not by outright rejection of international law, but by selective and minimalist compliance that challenges the integrity of the international asylum regime.

## RESEARCH METHOD

This study employs a qualitative research method based on doctrinal and analytical legal analysis. The approach is appropriate for examining the normative foundations of refugee protection and the right to asylum under international law, as well as their implementation in state practice.

The research relies on secondary qualitative data, including primary international legal instruments such as the 1951 Refugee Convention, the 1967 Protocol, and relevant UNHCR documents, alongside peer-reviewed academic literature and legal commentaries. These sources are analyzed to identify core legal principles, particularly the right to asylum and the principle of *non-refoulement*.

Analysis is conducted through document analysis and interpretive comparison, assessing the relationship between international legal obligations and Western state asylum practices. The study focuses on patterns of selective and restrictive implementation rather than quantitative measurement. No fieldwork or statistical analysis is undertaken; the scope is limited to legal and institutional interpretations reflected in authoritative sources.

## RESULTS AND DISCUSSION

### A. Restrictive Interpretation of Refugee Status

A central finding of this study is that Western states increasingly rely on restrictive interpretations of the refugee definition as a primary mechanism for limiting access to asylum. Although Article 1A (2) of the 1951 Refugee Convention establishes a clear and internationally

accepted definition of a refugee, its application in domestic asylum systems has become progressively narrower. Article 1A (2) of the 1951 Refugee Convention defines a refugee as:

“Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (Convention Relating to the Status of Refugees, 1951, Art. 1A (2)).

This narrowing does not stem from formal amendments to the Convention, but from interpretive practices adopted by national authorities in refugee status determination procedures.

At the same time, new phenomena in the refugee crisis have emerged, particularly the dual impact of armed conflict and climate change. War and political violence remain the most significant drivers of displacement worldwide. A major study by Vine, Coffman, Khoury, Lovasz, Bush, Leduc, and Walkup (2020) conservatively estimate that at least 37 million people have fled their homes in the eight most violent wars the United States has launched or participated in since 2001, including conflicts in Afghanistan, Iraq, Syria, Libya, and Yemen. These findings highlight how contemporary armed conflicts continue to generate mass refugee flows, reshaping global displacement patterns.

In parallel, climate change and environmental degradation are increasingly forcing populations to migrate. Rising sea levels, desertification, and extreme weather events create displacement that often falls outside the strict legal definition of “refugee.” Scholars argue that climate-induced migration challenges traditional refugee law, as international protection frameworks remain limited in addressing these emerging forms of displacement. Best, Ober, and McLeman (2025) emphasize the importance of contextual mechanisms in shaping climate-related mobility, while Huckstep and Clemens (2023) provide policy-oriented insights into how governments can respond to climate-driven migration. Similarly, Garip and Reed (2025) highlight the selectivity and mechanisms of climate-induced mobility, showing how environmental pressures interact with social and political contexts to produce complex migration outcomes.

Together, these developments illustrate how restrictive interpretations of refugee law intersect with both conflict-driven displacement and climate-induced migration, revealing a widening gap between formal legal commitments and the realities of forced migration in the 21st century.

One prominent aspect of this restrictive interpretation concerns the assessment of persecution. While international refugee law recognizes persecution as a serious violation of fundamental human rights, many Western asylum authorities require applicants to meet increasingly stringent evidentiary thresholds. Asylum seekers are often expected to provide detailed documentation or corroborating evidence to substantiate claims of persecution, despite the fact that individuals fleeing conflict or repression frequently lack access to such proof. This evidentiary burden disproportionately disadvantages genuine refugees and shifts the focus of asylum adjudication from protection to credibility skepticism (Hathaway and Foster, 2014).

In addition, Western states have tended to adopt narrow interpretations of the grounds of persecution, particularly in cases involving non-state actors, generalized violence, or gender-based persecution. Although contemporary international jurisprudence recognizes that persecution may arise from non-state actors where the home state is unable or unwilling to provide protection, domestic asylum authorities often apply inconsistent or restrictive standards. Such interpretive practices effectively exclude individuals fleeing internal armed

conflict, gang violence, or systemic discrimination, even when these threats clearly endanger life and freedom (Worster, 2012).

Another restrictive trend relates to the interpretation of nexus, namely the requirement that persecution be linked to one of the five Convention grounds: race, religion, nationality, membership of a particular social group, or political opinion. Western asylum systems increasingly apply rigid interpretations of “particular social group,” limiting recognition to narrowly defined categories. This has had significant implications for women and other vulnerable groups whose persecution does not always align neatly with traditional categories. According to UNHCR (2019), such restrictive interpretations are inconsistent with the object and purpose of the Refugee Convention, which is to provide protection to those facing serious harm.

Furthermore, the expansive use of exclusion clauses has contributed to the restrictive application of refugee status. While international law permits the exclusion of individuals involved in serious crimes, some Western states have broadened the scope of exclusion to encompass relatively minor offenses or indirect associations. This expansion reflects a securitized approach to asylum, where protection concerns are subordinated to domestic security and migration control priorities (Goldenziel, 2015).

Taken together, these practices demonstrate that restrictive interpretation functions as a legally sophisticated tool for limiting asylum without openly violating international obligations. By maintaining formal adherence to the Refugee Convention while interpreting its key concepts narrowly, Western states are able to reduce recognition rates and control refugee admissions. This approach exemplifies what has been described as selective compliance with international refugee law, where legal obligations are acknowledged in principle but constrained in practice (Hathaway, 2005; Goodwin-Gill & McAdam, 2007).

The implications of this trend are significant. Restrictive interpretation undermines the protective purpose of the Refugee Convention and contributes to unequal access to asylum across states. It also weakens the normative authority of international refugee law by normalizing practices that prioritize state discretion over refugee protection. As a result, the right to asylum increasingly exists as a formal legal entitlement that is difficult to realize in practice within many Western asylum systems.

## **B. Procedural Barriers and Deterrence Mechanisms**

The findings indicate that Western states increasingly rely on procedural barriers and deterrence-oriented mechanisms to manage and restrict access to asylum. Rather than directly contravening international refugee law, these measures operate within asylum systems to make the process of seeking protection more difficult, lengthy, and uncertain. As a result, the right to seek asylum remains formally available but substantively constrained.

One key procedural barrier is the widespread use of accelerated asylum procedures, particularly for applicants arriving from countries designated as “safe.” While international law permits states to adopt efficient asylum procedures, accelerated processes often limit the ability of asylum seekers to adequately present their claims. Shortened interview timelines, reduced access to legal counsel, and expedited decisions increase the risk of erroneous rejections, especially for applicants with complex protection needs. The UNHCR (2010) has cautioned that such procedures, when applied broadly, may undermine procedural fairness and the effective assessment of protection claims.

Another significant deterrence mechanism is the detention of asylum seekers, which has become a routine feature of asylum governance in several Western countries. Detention is frequently justified on grounds of identity verification, risk of absconding, or national security. However, empirical and legal analyses demonstrate that detention often functions as a deterrent

rather than a necessity. According to the United Nations Working Group on Arbitrary Detention (2025), prolonged or mandatory detention of asylum seekers raises serious human rights concerns and may violate the principles of necessity and proportionality under international law. Detention also has well-documented negative psychological effects, particularly for vulnerable individuals such as children and survivors of trauma.

Western asylum systems also impose strict admissibility and procedural requirements, including short deadlines for submitting asylum applications, limited opportunities for appeal, and complex documentation demands. These requirements disproportionately affect asylum seekers who lack legal knowledge, language proficiency, or access to legal assistance. Such procedural constraints reflect a broader shift toward bureaucratic gatekeeping, where access to asylum is filtered through administrative hurdles rather than assessed primarily on protection needs (Worster, 2012).

In addition, deterrence is reinforced through the practice of designating “safe third countries” or “first countries of asylum.” Under these doctrines, asylum applications may be declared inadmissible if the applicant passed through or could be transferred to another country deemed safe. While not prohibited by international law, the application of these concepts often fails to ensure that the receiving country provides effective protection equivalent to Convention standards. The European Court of Human Rights has repeatedly emphasized that states must assess the actual conditions in the receiving country, rather than relying on presumptions of safety (ECtHR, *M.S.S. v. Belgium and Greece*, 2011).

Furthermore, procedural deterrence is amplified by limited access to legal representation and information. Legal assistance is essential for navigating complex asylum procedures, yet many Western states restrict publicly funded legal aid or provide it only at later stages of the process. The absence of legal support significantly reduces the likelihood of successful asylum claims and undermines the principle of equality before the law (UNHCR, 2010).

Collectively, these procedural barriers and deterrence mechanisms illustrate how Western states manage asylum through administrative control rather than substantive denial. By emphasizing speed, admissibility, and deterrence, states create asylum systems that discourage claims and reduce recognition rates while maintaining formal compliance with international refugee law. This approach exemplifies a shift from protection-oriented asylum to governance-driven migration control, raising serious concerns about the effective realization of the right to asylum in practice.

### C. Externalization of Asylum Responsibilities

One of the most significant developments in contemporary Western asylum governance is the externalization of asylum responsibilities. Externalization refers to a set of policies through which states prevent asylum seekers from reaching their territory or transfer responsibility for refugee protection to third countries. While not explicitly prohibited under international refugee law, these practices fundamentally alter how and where the right to seek asylum can be exercised.

Externalization operates on the premise that states’ legal obligations are territorially bounded. By stopping asylum seekers before they arrive at national borders, Western states seek to limit the activation of asylum procedures and the protections attached to them. This strategy has been increasingly employed through bilateral agreements, regional arrangements, offshore processing, and migration-control cooperation with transit countries. As a result, asylum responsibility is shifted away from destination states to countries that often lack adequate legal, institutional, or humanitarian capacity to provide effective protection (Hathaway, 2005).

A key mechanism of externalization is the use of “safe third country” and “first country of asylum” doctrines. Under these concepts, asylum seekers may be denied access to asylum procedures if they transited through or could be transferred to another country deemed safe. Although international law permits such transfers in principle, they are lawful only if the receiving state guarantees protection consistent with the 1951 Convention, including access to fair asylum procedures and respect for non-refoulement. In practice, however, Western states often rely on presumptions of safety without conducting individualized assessments. The European Court of Human Rights, in *M.S.S. v. Belgium and Greece* (2011), ruled that such presumptions can lead to serious violations of human rights when actual conditions in the receiving country fall below acceptable standards.

Another prominent form of externalization is offshore or extraterritorial asylum processing. Through these arrangements, asylum seekers are transferred to facilities outside the territory of the destination state for processing or long-term containment. While states argue that such measures fall outside their legal responsibility, international jurisprudence increasingly recognizes that jurisdiction may extend beyond territorial borders when a state exercises effective control. Externalization does not absolve states of their international obligations when their actions directly affect asylum seekers’ rights (Hathaway, 2005).

Western states have also expanded migration-control partnerships with transit countries, particularly in regions bordering Europe and North America. These partnerships often involve financial assistance, training, and logistical support to enable third countries to prevent onward movement. Such arrangements represent a structural transformation of refugee protection, shifting responsibility from rights-based protection toward containment (Goldenziel, 2017). While framed as cooperative migration management, these agreements frequently lack accountability mechanisms and expose refugees to unsafe conditions, detention, or refoulement.

Externalization practices also raise serious concerns regarding access to asylum procedures. By intercepting asylum seekers at sea, conducting pushbacks at borders, or delegating border control to third states, Western governments effectively deny individuals the opportunity to lodge asylum claims. UNHCR (2025) has repeatedly stressed that the right to seek asylum requires genuine access to territory or procedures and cannot be replaced by indirect or outsourced protection.

The cumulative effect of externalization is the erosion of the universality of refugee protection. While Western states remain formally committed to international refugee law, the practical burden of hosting and protecting refugees is disproportionately shifted to less-developed countries. This undermines the principle of international cooperation and responsibility-sharing that underpins the global refugee regime (UNHCR, 2023). Moreover, it creates a fragmented asylum system in which protection depends more on geography than legal entitlement.

In sum, externalization exemplifies how Western states reconcile formal adherence to refugee law with restrictive asylum outcomes. By relocating protection obligations beyond their borders, states avoid direct legal confrontation while substantially limiting access to asylum. This practice reflects a broader trend of selective compliance, where international legal norms are preserved in form but hollowed out in practice, posing a fundamental challenge to the integrity and effectiveness of the international asylum regime.

#### **D. Securitization of Refugee Protection**

A further key finding of this study is the increasing securitization of refugee protection within Western asylum policies. Securitization refers to the process by which refugees and asylum seekers are framed as threats to national security, public order, or social cohesion, thereby

justifying extraordinary measures that would otherwise be incompatible with humanitarian protection norms. Rather than being treated primarily as rights-holders entitled to international protection, refugees are increasingly governed through security-oriented logics and practices.

The securitization of asylum has intensified particularly in the post–Cold War and post–9/11 periods, during which migration and border control became closely linked to counterterrorism and internal security agendas. Western states have expanded surveillance, intelligence screening, and security vetting within asylum procedures, often invoking the potential risks posed by irregular migration. While international refugee law allows states to take measures to protect national security, scholars emphasize that securitized narratives tend to exaggerate risk and obscure the humanitarian character of refugee movements (Buzan, Wæver, & de Wilde, 1998; Huysmans, 2006).

One manifestation of securitization is the conflation of asylum seekers with irregular migrants and criminal actors. Political discourse and policy frameworks in several Western states increasingly treat refugee flows as part of broader “migration crises,” thereby shifting the focus from protection to control. This conflation legitimizes restrictive border practices, including pushbacks, enhanced policing, and the militarization of borders. Such practices transform asylum into an issue of internal security governance rather than international protection (Huysmans, 2006).

Securitization is also evident in the expanded application of exclusion clauses and security-based inadmissibility rules. While Article 1F of the 1951 Refugee Convention permits exclusion of individuals involved in serious crimes, Western states have broadened the interpretation of security threats to include indirect associations or speculative risks. This expansive use of security exclusions undermines the individualized assessment required by international law and increases the risk of wrongful denial of protection (Hathaway, 2005).

Moreover, securitized asylum governance has been accompanied by the militarization of borders and maritime control operations. Joint military and law-enforcement missions aimed at preventing irregular entry often operate under security mandates rather than humanitarian ones. Although framed as life-saving or anti-smuggling initiatives, such operations frequently prioritize interdiction and deterrence over access to asylum procedures. The UNHCR (2025) has expressed concern that security-driven interception practices may result in refoulement or denial of access to protection.

The securitization of refugee protection also reshapes public perception and political legitimacy. By framing refugees as security threats, states mobilize public support for restrictive asylum policies while marginalizing humanitarian and legal arguments. This dynamic reinforces a cycle in which restrictive measures become normalized and politically necessary, even in the absence of empirical evidence linking refugees to increased security risks. Studies consistently show that refugees are not more likely than host populations to engage in criminal or terrorist activity (OECD, 2018).

From a legal perspective, securitization creates tension between state sovereignty and international protection obligations. While international law recognizes the right of states to safeguard security, it does not permit the wholesale suspension of refugee rights. The growing dominance of security discourse risks eroding core principles such as non-refoulement and access to asylum procedures. Excessive reliance on security justifications can hollow out international legal commitments without formal withdrawal from treaty obligations (Hathaway, 2005; Goodwin-Gill & McAdam, 2007).

In sum, the securitization of refugee protection represents a profound shift in Western asylum governance. By reframing refugees as security concerns, states justify restrictive and deterrent measures that limit access to asylum while maintaining formal adherence to



international law. This transformation illustrates how legal compliance can coexist with substantive erosion of protection, posing a significant challenge to the normative foundations of the international refugee regime.

### **E. Selective Compliance with International Law**

The cumulative effect of restrictive interpretation, procedural deterrence, externalization, and securitization reveals a broader pattern in Western asylum governance best described as selective compliance with international refugee law. Selective compliance refers to a situation in which states formally accept and ratify international legal obligations but implement them in ways that minimize substantive constraints on state sovereignty and policy discretion. Rather than openly violating or withdrawing from international refugee instruments, Western states comply with international law in form while narrowing its practical impact.

This pattern is particularly evident in the continued rhetorical and legal affirmation of core refugee law principles, such as non-refoulement and the right to seek asylum, alongside policies that significantly limit access to these protections. International law often allows states a margin of discretion in implementation; however, when such discretion is exercised systematically to undermine the protective purpose of legal norms, compliance becomes largely symbolic. In the context of asylum, this has resulted in legal frameworks that appear consistent with international standards but operate restrictively in practice (Hathaway, 2005; Goodwin-Gill & McAdam, 2007).

One manifestation of selective compliance is the fragmentation of international refugee obligations through domestic legal interpretation. While Western states incorporate the 1951 Refugee Convention into national law, they frequently introduce procedural rules, admissibility criteria, and evidentiary standards that exceed what international law requires. This fragmentation allows states to claim adherence to international norms while effectively recalibrating protection thresholds to align with domestic political priorities (Worster, 2012; Gil-Bazo, 2015). As a result, refugees' access to protection becomes contingent on national legal engineering rather than universal legal principles.

Selective compliance is also reinforced by the absence of strong enforcement mechanisms in international refugee law. Unlike other areas of international law, refugee protection relies heavily on state cooperation and good faith implementation. The UNHCR plays a supervisory role, but it lacks binding enforcement authority. This structural limitation enables states to adopt compliance strategies that satisfy formal legal requirements without fully realizing substantive obligations (Betts, & Collier, 2017; Hathaway, 2005). Consequently, international refugee law functions more as a normative framework than as a coercive legal regime.

Moreover, Western states often justify selective compliance through legalistic narratives of sovereignty, security, and capacity. By framing restrictive asylum measures as necessary for national security or administrative efficiency, states present compliance trade-offs as legitimate exercises of sovereign authority. Such justifications allow states to reconcile international legal commitments with domestic political pressures, particularly in contexts where refugee protection is portrayed as politically costly (Huysmans, 2006; Goldenziel, 2017).

The European experience illustrates how selective compliance can become institutionalized at the regional level. While the European Union has developed a comprehensive Common European Asylum System, member states continue to diverge significantly in recognition rates, reception conditions, and procedural safeguards. This divergence reflects not legal non-compliance per se, but uneven and strategic implementation. As a result, asylum seekers experience vastly different protection outcomes despite the existence of shared legal standards (Hathaway, 2005; Goodwin-Gill & McAdam, 2007; FRA, 2014; UNHCR, 2023).

The implications of selective compliance are profound. At the normative level, it weakens the authority and credibility of international refugee law by normalizing minimalistic interpretations of protection obligations. At the practical level, it contributes to global responsibility-shifting, whereby Western states limit their exposure to refugee protection while less-resourced states shoulder a disproportionate burden. This dynamic undermines the principle of international solidarity that underpins the global refugee regime.

In sum, selective compliance represents a defining characteristic of contemporary Western engagement with international refugee law. It enables states to maintain formal commitment to legal norms while systematically constraining their humanitarian reach. This mode of compliance does not signal the collapse of international refugee law, but it does expose its vulnerabilities, particularly in the absence of stronger accountability mechanisms. Without renewed commitment to substantive implementation, the right to asylum risks becoming an increasingly formalized yet inaccessible legal entitlement.

## **F. Implications for the Right to Asylum**

The cumulative practices identified in this study, restrictive interpretation of refugee status, procedural deterrence, externalization of asylum responsibilities, securitization, and selective compliance, have significant implications for the contemporary meaning and effectiveness of the right to asylum. While international law continues to recognize asylum as a fundamental protection mechanism for refugees, its practical realization has become increasingly constrained, particularly within Western asylum systems.

One major implication is the erosion of effective access to asylum procedures. Although the 1951 Refugee Convention does not impose a general obligation on states to grant asylum, it does require states to provide access to procedures that allow individuals to seek protection and to respect the principle of non-refoulement. When procedural barriers, border controls, and externalization practices prevent individuals from reaching a state's territory or accessing asylum mechanisms, the right to seek asylum is effectively undermined. UNHCR (2025) emphasizes that asylum cannot be considered meaningful if access to protection is systematically obstructed through indirect or pre-territorial measures.

A further implication concerns the dilution of the humanitarian purpose of asylum. International refugee law was developed as a response to humanitarian crises and is grounded in principles of protection and solidarity. However, the increasing dominance of security and migration-control rationales has transformed asylum into a discretionary and conditional privilege rather than a protection-oriented right. This shift risks redefining asylum as an instrument of state policy rather than an expression of international responsibility toward vulnerable populations (Hathaway, 2005).

The fragmentation of asylum practices also has implications for legal certainty and equality before the law. Divergent interpretations and uneven implementation of refugee law across Western states result in markedly different protection outcomes for individuals with similar claims. This inconsistency undermines the universality of international refugee protection and erodes trust in the legal system. When protection depends more on the state of arrival than on the merits of a claim, the legal coherence of the refugee regime is fundamentally weakened (Worster, 2012).

At the international level, restrictive Western asylum practices contribute to the disproportionate distribution of responsibility for refugee protection. By limiting access to asylum and externalizing obligations, Western states shift the burden of hosting and protecting refugees to neighboring and less-resourced countries. UNHCR (2023) data consistently show that the majority of refugees are hosted in developing regions, raising concerns about fairness, sustainability, and the long-term viability of the global refugee protection system.

The legitimacy and authority of international refugee law are also affected. Selective compliance and minimalist implementation risk normalizing practices that technically adhere to treaty obligations while undermining their protective intent. Over time, this may weaken the normative force of international law itself, as states increasingly view compliance as a matter of legal form rather than substantive commitment. Such practices can hollow out international legal norms, reducing them to symbolic frameworks with limited practical impact (Goodwin-Gill & McAdamm, 2007; Hathaway, 2005).

Finally, the implications extend to the future of the right to asylum as a global legal norm. If current trends continue, asylum may persist as a formally recognized right but one that is increasingly difficult to access in practice. This development poses a serious challenge to the international community's ability to respond effectively to displacement crises and undermines the moral and legal foundations upon which refugee protection was established. Without renewed commitment to genuine access, responsibility-sharing, and substantive implementation, the right to asylum risks becoming an increasingly constrained and unevenly applied component of international law.

## CONCLUSION

This study has examined the tension between the legal architecture of international refugee protection and contemporary Western asylum practices, revealing a widening gap between formal legal commitment and substantive implementation. While Western states remain among the strongest supporters of the international refugee regime in terms of treaty ratification and institutional participation, their asylum policies increasingly reflect strategies of restriction, deterrence, and responsibility-shifting. This paradox lies at the heart of the modern asylum system: the right to asylum is affirmed in law yet constrained in practice.

The mechanisms through which restriction is enacted are subtle but powerful. Western states rarely reject international refugee law outright; instead, they employ indirect strategies that erode its protective function. These include restrictive interpretations of refugee status that narrow the scope of Article 1A(2) of the 1951 Refugee Convention, procedural barriers and deterrence mechanisms that complicate access to fair asylum procedures, externalization of asylum responsibilities that shift obligations onto transit and third countries, securitization of refugee protection that frames asylum seekers as threats to national security rather than rights-holders, and selective compliance with international law that maintains formal adherence while undermining substantive protection. Collectively, these practices transform asylum from a humanitarian obligation into a conditional entitlement, subordinated to domestic political priorities.

At the normative level, such restrictive and selective practices weaken the integrity and coherence of international refugee law. They erode the principle of universality that underpins the global asylum regime and contribute to unequal protection outcomes based on geography rather than legal merit. Historically, the 1951 Refugee Convention was drafted in the aftermath of World War II with a primary focus on protecting European refugees. Although the 1967 Protocol expanded its scope to achieve universality, the persistence of restrictive and selective practices today risks reinforcing perceptions that Western states continue to privilege "Western refugees" while marginalizing others. This dynamic not only undermines the universality of refugee protection but also risks being interpreted globally as a continuation of colonial hierarchies and racialized exclusion. In this sense, restrictive asylum governance in the West cannot be divorced from broader historical legacies of colonialism and racism, which shape global perceptions of inequality in refugee protection.

The findings suggest that the challenge facing international refugee law is not one of legal absence, but of political will and normative commitment. Western countries must comply

with the 1951 Refugee Convention and its 1967 Protocol without resorting to restrictive measures that serve as tools to reject refugees under manufactured pretexts. Addressing this gap requires renewed emphasis on substantive implementation, equitable responsibility-sharing, and accountability mechanisms capable of aligning state practice with the protective purpose of international law.

Ultimately, the future of the right to asylum depends on whether international refugee law is treated as a genuine constraint on state power or merely as a flexible framework adaptable to domestic priorities. Reasserting the humanitarian and rights-based foundations of asylum is therefore not only a legal imperative but also a necessary condition for preserving the credibility, universality, and moral authority of the international refugee protection regime.

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