

Critical Examination of Emerging Issues in Refugee Protection: A Transnational Legal Perspective

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Abstract

This research critically examines contemporary challenges in protecting the rights of refugees, focusing on climate-induced displacement and the impact of technology on migration patterns. It identifies significant gaps in current legal frameworks, particularly in their ability to address the transboundary nature of modern displacement. The research highlights the limitations of existing conventions and the need for a more adaptable, transnational legal approach. Key recommendations include expanding the definition of persecution, integrating technology safeguards, and fostering global responsibility-sharing mechanisms. These proposals aim to enhance refugee protection and ensure that legal frameworks remain responsive to the evolving challenges of the 21st century.

Keywords: *Climate-induced Displacement; Global Displacement; Migration Patterns; Refugee Protection; Transnational Perspective.*

1. INTRODUCTION

The global landscape of refugee protection is undergoing significant transformations in response to unprecedented challenges.¹ The research delves into this dynamic terrain to offer a comprehensive understanding of the evolving complexities surrounding the rights and welfare of refugees on an international scale. The foundation for the current discourse is laid by the historical roots of refugee protection, which became clear in the wake of World War II with the creation of organizations like the United Nations High Commissioner for Refugees (UNHCR) and the drafting of important international conventions.² These conventions, particularly the 1951 Refugee Convention, initially focused on addressing the needs of European refugees, reflecting a Eurocentric perspective that later evolved to encompass a global scope as new waves of displacement emerged from conflicts and persecution worldwide. However, the Eurocentric origins of these legal frameworks have influenced their global application, often leading to challenges in addressing the diverse and complex nature of contemporary displacement. As Jaeger notes, the historical development of refugee protection mechanisms has shaped their

1 Gil Loescher, Alexander Betts, and James Milner, *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection into the 21st Century* (New York: Routledge, 2012).

2 James C Simeon, *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press, 2013), 1, 6, 315.

current limitations, necessitating a critical reassessment to address the modern realities of forced displacement.³ The establishment of institutions like the UNHCR was a direct acknowledgment of the need for a coordinated and organized effort to address the immense humanitarian challenges posed by mass displacement. However, the trajectory of forced displacement has undergone a dramatic metamorphosis since then, compelling a critical reassessment of the existing legal frameworks to ensure they remain relevant and effective in today's context.

This research argues that to adequately address the current issues that refugees face, a transnational approach is essential. Unlike traditional refugee law, which is often rooted in national boundaries and state-centric models, a transnational approach emphasizes the necessity of cross-border cooperation and coordination among states, international organizations, and non-state actors.⁴ This approach recognizes that the factors driving displacement and the experiences of refugees transcend political and geographical confines, requiring solutions that go beyond the jurisdiction of any single nation. By adopting a transnational perspective, the analysis acknowledges the interconnected and interdependent nature of global challenges, which demand collaborative efforts and shared responsibilities across borders. Effective refugee protection in today's interconnected world requires a shift from isolated national responses to a more holistic and cooperative framework that addresses the complexities of modern displacement.⁵ This paper sets the stage for a nuanced analysis that goes beyond conventional, state-centric approaches, advocating for legal frameworks that are adaptable to the globalized nature of contemporary refugee issues.

Against this backdrop, the research focuses on two pivotal and interconnected emerging issues in refugee protection: climate-induced displacement and the impact of technology on migration patterns.⁶ Climate-induced displacement presents significant legal challenges, as traditional refugee frameworks, such as the 1951 Refugee Convention, do not recognize environmental factors as a basis for refugee status. This legal gap leaves millions of people displaced by climate-related events, such as rising sea levels, droughts, and extreme weather, without adequate protection. For instance, the urgent need for a new legal instrument or an expansion of the current refugee definition to encompass those displaced by climate change, proposing a Convention on Climate Change Refugees as a potential solution.⁷ The absence of such frameworks underscores the necessity for updated legal mechanisms that can address these emerging forms of displacement.

Similarly, the impact of technology on migration patterns introduces new complexities into refugee protection. While digital tools can empower refugees by providing access to critical information and resources, they also pose significant risks. For example, governments increasingly utilize surveillance technologies and biometric data to monitor and control migration, raising concerns about privacy and the potential misuse of personal information. These technological advancements create new vulnerabilities for displaced populations, who may face increased scrutiny and barriers to protection

³ Gilbert Jaeger, "On the History of the International Protection of Refugees," *Revue Internationale de La Croix-Rouge/International Review of the Red Cross* 83, no. 843 (September 2001): 727–38, <https://doi.org/10.1017/S1560775500119285>.

⁴ G. S. Goodwin-Gill, "The Politics of Refugee Protection," *Refugee Survey Quarterly* 27, no. 1 (January 1, 2008): 8–23.

⁵ Loescher, Betts, and Milner, *The United Nations High Commissioner for Refugees*, 2012.

⁶ Zahide Erdoğan and Safure Cantürk, "Understanding the Climate-Conflict-Migration Nexus: Immigration from Climate-Conflict Zones to Turkey," *Siyasal: Journal of Political Sciences* 31, no. 1 (April 15, 2022): 137–55, <https://dergipark.org.tr/en/pub/siyasal/issue/69445/994670>.

⁷ Bonnie Docherty and Tyler Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harv. Envtl. L. Rep.* 33 (2009): 349

due to the digitalization of migration management. The interplay between these environmental, technological, and legal elements not only shapes the experiences of displaced populations but also emphasizes the need for a comprehensive, transnational legal framework that can effectively address these contemporary challenges.

The central problem addressed in this article revolves around the inadequacy of current legal frameworks for refugee protection, particularly the 1951 Refugee Convention. Rooted in traditional, state-centric approaches, these frameworks struggle to address the complexities arising from modern challenges. A critical examination of specific articles within the 1951 Convention reveals several limitations that hinder its effectiveness in the contemporary context. For instance, Article 1 of the Convention defines a refugee as someone who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.” This definition is narrow and does not account for individuals displaced by environmental factors, such as climate change, or those fleeing generalized violence not linked to specific persecution. The exclusion of these groups from the Convention’s protection highlights a significant gap in international refugee law.

Moreover, Article 33, which enshrines the principle of non-refoulement, prohibits the return of refugees to a country where they face serious threats to their life or freedom. While this is a cornerstone of refugee protection, its implementation is increasingly challenged by states invoking security concerns and the rise of digital surveillance technologies. As Behrman asserts that the control aspects within refugee law have led to restrictive practices that undermine the non-refoulement principle, as states prioritize border security over humanitarian obligations.⁸

To address these limitations, this research proposes concrete reforms. First, the definition of a refugee under Article 1 should be expanded to include those displaced by environmental and other non-traditional factors. This could be achieved through an additional protocol to the Convention or by developing new international legal instruments specifically addressing these forms of displacement. Second, the principle of non-refoulement under Article 33 should be strengthened by incorporating safeguards against the misuse of surveillance and data-sharing technologies. International standards should be established to ensure that the use of such technologies does not infringe upon the rights of refugees or lead to their unjustified return to dangerous situations.

Recent statistics from the UNHCR, reveal that the global number of displaced people has surpassed 100 million,⁹ more than doubling the figure from a decade ago. This alarming increase is driven by a combination of factors, including protracted conflicts, climate-induced displacement, and political instability, which are exacerbated by gaps in the existing legal frameworks. The rapid rise in displacement underscores the pressing need for this research, as it highlights the inability of current legal structures to adequately address the complexities of modern refugee crises. The dramatic increase in displacement figures points to the limitations of the 1951 Refugee Convention, which was designed in a post-World War II context and is increasingly ill-equipped to handle the multifaceted nature of contemporary displacement.

These statistics not only emphasize the urgency of re-evaluating and updating legal frameworks but also illustrate the global scale of the challenge, which transcends national borders and requires a coordinated, transnational response. The study, therefore, adopts

⁸ Simon Behrman, “Refugee Law as a Means of Control,” *Journal of Refugee Studies* 32, no. 1 (2018): 42–62, <https://doi.org/10.1093/jrs/fev016>.

⁹ UNHCR, “Refugee Statistics,” UNHCR (UNHCR, October 27, 2022), <https://www.unhcr.org/refugee-statistics/>.

a proactive stance, aiming to tackle this problem head-on by subjecting the existing legal structures to critical assessment and proposing actionable recommendations for adapting them to the transnational realities of the 21st century. The overarching goal is not just to dissect existing challenges but to contribute invaluable insights that will serve as a compass guiding the evolution of legal frameworks, ensuring their sustained relevance and effectiveness in addressing the ever-evolving landscape of emerging issues in refugee protection. By integrating data from UNHCR reports, this research seeks to provide a comprehensive understanding of the scope and implications of the current displacement crisis, thereby reinforcing the necessity for legal reforms.

This paper applies a doctrinal research method to explore the contemporary challenges and opportunities for refugee protection from a transnational legal perspective. The doctrinal approach is appropriate for this study, as it allows for a thorough examination of legal principles, statutes, and case law, which are essential in assessing the adequacy of existing legal frameworks. The selection of sources for this study was guided by specific criteria to ensure relevance, authority, and comprehensiveness. Legal documents, such as international conventions, treaties, and case law, were selected based on their direct relevance to the issues of climate-induced displacement, technological impacts on migration, and the broader context of refugee protection. Academic literature, including journal articles, books, and reports, was included if it provided critical insights or contributed to the ongoing discourse on the limitations and challenges of the 1951 Refugee Convention and its applicability to contemporary issues. The analytical framework for this research is a comprehensive approach to analysing refugee rights under international law. The selected sources were subjected to a critical analysis that involved identifying existing gaps in the legal frameworks, evaluating the effectiveness of current provisions, and proposing necessary reforms. This process involved a systematic review of the sources, categorizing them based on their contributions to the understanding of specific legal challenges, and synthesizing the findings to draw conclusions that are both well-founded and applicable to current global contexts.

2. ANALYSIS AND DISCUSSION

2.1 Evolution of Refugee Protection

The concept of providing refuge to those fleeing persecution or violence can be traced back to ancient times, when they sought asylum in various regions or societies. The concept of safeguarding refugees originated during the period following World War I, when a significant number of individuals were uprooted due to the disintegration of empires, ethnic tensions, and political turmoil. In 1921, the League of Nations, which later became the United Nations, designated Dr. Fridtjof Nansen as the inaugural High Commissioner for Refugees.¹⁰ The organization then implemented a framework of global collaboration and support to aid refugees, mostly those originating from Russia and Turkey. These early efforts laid the groundwork for the development of more structured and formalized international refugee protection mechanisms. The experiences and challenges faced during this period informed the creation of the 1951 Refugee Convention, which established the foundational legal framework for modern refugee protection. As

¹⁰ J. Olaf Kleist, "The History of Refugee Protection: Conceptual and Methodological Challenges," *Journal of Refugee Studies* 30, no. 2 (June 2017): 161–69, <https://doi.org/10.1093/jrs/fex018>.

Holzer¹¹ highlighted, the historical evolution of international refugee law, particularly in the context of armed conflict, reflects a continuity of principles aimed at protecting displaced populations while also adapting to the changing nature of global displacement. This continuity underscores the importance of understanding the roots of current legal frameworks in the early 20th century efforts, as it highlights both the progress made and the enduring challenges in the field of refugee protection.

The refugee crisis escalated following the conclusion of World War II, resulting in the displacement of over 40 million individuals due to the war and its subsequent consequences. In response, the United Nations, established in 1945, created the International Refugee Organization (IRO) in 1946 to offer assistance and facilitate the relocation of refugees and displaced individuals.¹² The IRO was instrumental in addressing the immediate needs of the post-war refugee population, but its mandate was limited in scope and time. Recognizing the need for a more permanent and comprehensive solution, the United Nations established the United Nations High Commissioner for Refugees (UNHCR) in 1950, which took over the role of the IRO and became the primary UN body responsible for safeguarding and aiding refugees on a global scale.¹³ The creation of the UNHCR marked a significant evolution in the international refugee protection regime, as it introduced a more structured and enduring framework for addressing refugee issues. As Feller¹⁴ notes, the establishment of the UNHCR was a pivotal moment that shaped the modern refugee protection framework, embedding the principle of international cooperation and responsibility-sharing at the core of the regime. However, the UNHCR's role has not been without challenges. The organization has had to navigate the complexities of state sovereignty, political interests, and limited resources while striving to uphold the rights of refugees. The UNHCR's mandate, initially intended as a temporary solution, has been repeatedly extended, reflecting the persistent and evolving nature of global displacement crises. This critical analysis underscores the dual role of the UNHCR in both advancing and being constrained by the international refugee regime, highlighting the ongoing tension between humanitarian objectives and geopolitical realities.

The 1951 Convention Relating to the Status of Refugees serves as the fundamental basis for the international refugee protection system. It establishes the criteria for determining refugee status, outlines the rights and duties of refugees, and delineates the responsibilities of nations towards them.¹⁵ The Convention was initially limited in scope, applying only to refugees from Europe prior to 1951, reflecting its Eurocentric origins. This Eurocentric focus shaped the framework in a way that primarily addressed the displacement issues arising from World War II in Europe, neglecting the complexities and diverse contexts of refugee crises in other regions of the world. The 1967 Protocol Relating to the Status of Refugees expanded the Convention's applicability by eliminating its chronological and geographical limitations, thereby strengthening the universal nature

11 Vanessa Holzer, "The Historical Evolution of International Refugee Law in Light of Armed Conflict," in *Refugees from Armed Conflict: The 1951 Refugee Convention and International Humanitarian Law* (Intersentia, 2015), 27–40, <https://doi.org/10.1017/9781780685342.002>.

12 Hafrida Hafrida, Nelli Herlina, and Zulham Adamy, "The Protection of Women and Children as Victims of Human Trafficking in Jambi Province," *Jambe Law Journal* 1, no. 2 (July 12, 2019): 207–30, <https://doi.org/10.22437/jlj.1.2.207-230>.

13 Erika Feller, "The Evolution of the International Refugee Protection Regime," *Washington University Journal of Law & Policy* 5, no. 1 (January 1, 2001): 129–39.

14 Erika Feller,

15 Elfirda Ade Putri et al., "Legal Protection of Rohingya Citizens Related to the Conflict in Myanmar," *Jambura Law Review* 5, no. 1 (January 16, 2023): 60–75, <https://doi.org/10.33756/jlr.v5i1.16722>.

of refugee protection.¹⁶ However, despite this expansion, the Eurocentric foundations of the 1951 Convention continued to influence its global application. As Sabel¹⁷ recognised the principles established in the Convention were often interpreted and applied through a European lens, which sometimes led to challenges in addressing the specific needs and circumstances of refugees in non-European regions, particularly during conflicts in Southeast Asia and Africa. The political factors influencing the execution of the Convention's principles in these regions underscore the need for a more nuanced and inclusive approach to refugee protection, one that recognizes and accommodates the diverse realities faced by displaced populations around the world.

The 1951 Convention and its 1967 Protocol are founded upon the concept of non-refoulement, which forbids the repatriation of refugees to a nation where their life or liberty would be endangered. Nevertheless, the Convention acknowledges that certain refugees may be ineligible for safeguarding, including individuals who have perpetrated grave offenses or present a risk to the security of the nation.¹⁸ Additionally, the Convention permits governments to submit reservations or declarations regarding certain clauses, which can potentially restrict the extent of refugee protection in practical terms.¹⁹ In recent years, the principle of non-refoulement has faced significant challenges, particularly due to technological advancements in refugee management. The increasing use of biometric data and digital surveillance by states has introduced new complexities into the application of non-refoulement. While these technologies can enhance the efficiency of refugee processing and security, they also raise concerns about privacy and the potential for misuse. For example, the sharing of biometric data between states can lead to situations where refugees are at risk of being returned to countries where they face persecution, either through data breaches or deliberate information-sharing that prioritizes state security over refugee protection. As Goodwin-Gill²⁰ posits, the politics of refugee protection are increasingly influenced by state interests, which can undermine the humanitarian objectives of non-refoulement. This shift highlights the need for a more robust legal framework that not only addresses the technological challenges but also reinforces the commitment to protecting refugees from refoulement in an era of rapid technological change.

The late 20th century witnessed an expansion of refugee protection mechanisms. The 1980 Refugee Act in the United States and the establishment of subsidiary protection in Europe reflected a growing recognition of the need for a broader definition of refugees beyond the confines of the 1951 Convention.²¹ Humanitarian crises in the Balkans and Africa underscored the challenges of forced displacement and prompted international efforts to enhance coordination and response mechanisms. Building on these earlier frameworks, more recent developments, such as the Global Compact on Refugees, have further expanded the scope and approach to refugee protection. Adopted by the United Nations General Assembly in 2018, the Global Compact on Refugees seeks to provide a

16 Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime," *International Journal of Refugee Law* 14, no. 2 and 3 (April 1, 2002): 238–62, https://doi.org/10.1093/ijrl/14.2_and_3.238.

17 Robbie Sabel, "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary" Edited by Andreas Zimmermann. Oxford University Press, 2011, 1799 *Israel Law Review* 45, no. 3 (2012): 555-566, <https://doi.org/10.1017/S0021223712000210>.

18 M. Yakub Aiyub Kadir et al., "The Interplay of Human Trafficking and the Rohingya Refugee Crisis in Aceh Province, Indonesia: Exploring the Complexities of Criminality and Humanitarian Concerns," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 29, 2024): 127, <https://doi.org/10.29303/ius.v12i1.1355>.

19 Olaf Kleist, "The History of Refugee Protection," 166.

20 Goodwin-Gill, "The Politics of Refugee Protection," 8-23.

21 James C Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511614859>.

more comprehensive and coordinated response to displacement crises.²² It emphasizes burden-sharing, international cooperation, and the inclusion of host communities in refugee protection efforts, marking a significant evolution from the more state-centric approaches of the past. The Global Compact builds on the foundations laid by earlier mechanisms but also diverges by promoting a more holistic, inclusive, and globally coordinated approach to managing refugee crises. As the UNHCR in 2019 outlines this development reflects a growing recognition of the interconnected nature of displacement issues in the 21st century and the need for a collective global response.

In the 21st century, the landscape of refugee protection has been shaped by unprecedented displacement crises, notably the Syrian conflict. The limitations of existing legal frameworks were starkly evident as the sheer scale and complexity of the Syrian refugee situation strained the capacity of host countries and international organizations.²³ This crisis not only highlighted the inadequacies of the 1951 Refugee Convention but also exposed broader issues within international refugee law, such as its inability to address large-scale, protracted displacement in a timely and effective manner. The Syrian conflict serves as a case study that underscores the need for a more adaptable and responsive legal regime, one that can better accommodate the realities of modern displacement. International law has struggled to keep pace with new forms of displacement, such as those driven by prolonged conflicts, climate change, and other emerging global challenges.²⁴ The Syrian refugee crisis, therefore, prompted a critical re-evaluation of the adequacy of the current legal regime, setting the stage for a transnational legal analysis that seeks to address these evolving challenges and propose more robust solutions for the future.

The international refugee protection regime encounters numerous challenges and deficiencies in its execution and efficacy. Key obstacles include the absence of political determination and collaboration among nations, insufficient financial support and resources for humanitarian aid, and the infringement upon the rights and dignity of refugees. For example, differing asylum recognition rates across Europe highlight the lack of a unified approach to refugee protection within the European Union, leading to significant disparities in how refugees are treated depending on the country where they seek asylum. In addition, the prolonged duration of certain refugee predicaments, such as those in refugee camps in Africa, exacerbates the suffering of displaced individuals and underscores the inadequacy of current solutions. The absence of sustainable remedies, such as voluntary repatriation, local integration, or resettlement, further complicates these situations. Moreover, the emergence of novel forms and causes of displacement, such as climate-induced migration, poses challenges that the current legal structure struggles to address.²⁵ These regional disparities and protracted situations reflect deeper systemic issues within the international refugee protection regime, necessitating a more cohesive and adaptable approach.²⁶

22 Volker Türk, "The Promise and Potential of the Global Compact on Refugees," *Int J Refugee Law* 30, no. 4 (May 18, 2019): 575–83, <https://doi.org/10.1093/ijrl/ey068>.

23 Doris Carrion, "Jordan and Syrian Refugees: Avoiding the Worst Case Scenario," *Middle East Law and Governance* 7, no. 3 (2015): 319–35, <https://doi.org/10.1163/1876337500703004>.

24 Jane Mcadam, *Climate Change, Forced Migration, and International Law* (Oxford ; New York: Oxford University Press, 2012)

25 Vanessa Holzer, "The Historical Evolution of International Refugee Law in Light of Armed Conflict," in *Refugees from Armed Conflict: The 1951 Refugee Convention and International Humanitarian Law* (Intersentia, 2015), 27–40, <https://doi.org/10.1017/9781780685342.002>.

26 Marjoleine Zieck, "The European Refugee Crisis," 3–9

The evolution of refugee protection reflects not only legal advancements but also the changing nature of conflicts, geopolitics, and global interconnectivity. From the early frameworks established in the aftermath of World War II to the present day, these legal structures were shaped by specific historical contexts, often with a Eurocentric focus. However, as Loescher, Betts, and Milner argue,²⁷ the increasingly complex and interconnected nature of global displacement requires a shift from these historically state-centric approaches to more transnational frameworks. Recent years have seen a surge in forced displacement driven by factors such as climate change, protracted conflicts, and human rights abuses, which transcend national borders and challenge the adequacy of existing legal regimes.²⁸ This dynamic landscape necessitates a re-examination of legal frameworks to ensure they remain adaptive and responsive to the evolving needs of refugees. The subsequent sections of this research will delve deeper into the transnational dimensions of these contemporary challenges, building on the historical foundation outlined here and advocating for a more globally coordinated response.

2.2 Transnational Perspectives on Refugee Law

The concept of “refugeehood” transcends national borders,²⁹ and as the world becomes increasingly interconnected, the need for transnational perspectives in refugee law becomes paramount. This section explores the evolving nature of transnational perspectives on refugee law, emphasizing the complexities and challenges posed by the globalized nature of contemporary displacement. For example, cross-border refugee movements in regions like Africa, where refugees often flee from conflict zones such as South Sudan into neighbouring countries like Uganda and Kenya, highlight the inherently transnational nature of refugeehood. Similarly, in Europe, the movement of refugees across the Mediterranean and through various European states underscores the limitations of national frameworks in addressing large-scale displacement. These examples demonstrate the need for a more cohesive and coordinated international response. The global refugee regime must evolve to accommodate these transnational realities, recognizing that effective refugee protection requires collaboration across borders and a departure from state-centric models.³⁰

Historically, refugee law has been predominantly approached from a state-centric standpoint, with legal frameworks often designed to address the needs of refugees within the confines of individual nations.³¹ However, the interconnectedness of modern societies and the cross-border nature of displacement demand a shift towards transnational perspectives. Such perspectives acknowledge that the challenges faced by refugees, including persecution, conflict, and human rights abuses, extend beyond national boundaries.³² Concrete examples of transnational approaches in practice include regional agreements like the 1969 OAU Convention in Africa,³³ which expands the

27 Loescher, Betts, and Milner, *The United Nations High Commissioner for Refugees*, 2012.

28 UNHCR, “Global Displacement Hits Another Record, Capping Decade-Long Rising Trend,” UNHCR (UNHCR, June 16, 2022), <https://www.unhcr.org/news/unhcr-global-displacement-hits-another-record-capping-decade-long-rising-trend>.

29 Alice Edwards, “Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders,” in *International Refugee Law*, ed. Hélène Lambert (London: Routledge, 2010), 45.

30 Loescher, Betts, and Milner, *The United Nations High Commissioner for Refugees*, 2012.

31 E Mavropoulou, “Responsibility Sharing in International Refugee Law: Towards Differentiated Legal Obligations” (PhD thesis, 2021), <https://doi.org/10.34737/v4wy1>.

32 Loescher, Betts, and Milner, *The United Nations High Commissioner for Refugees*, 2012.

33 Organization of African Unity. *Convention Governing the Specific Aspects of Refugee Problems in Africa*, September 10, 1969.

definition of a refugee to include those fleeing generalized violence, external aggression, occupation, and events seriously disturbing public order. This broader definition, found in Article I(2) of the OAU Convention, allows for a more inclusive and collaborative regional response to displacement, recognizing the collective responsibility of African states to protect refugees. Similarly, the Dublin Regulation in Europe represents a form of transnational collaboration where EU member states cooperate to determine which country is responsible for processing asylum claims, as outlined in Article 3(1) of the Dublin III Regulation.³⁴ This provision ensures that asylum seekers have their claims processed in a timely manner, while also preventing them from being moved between multiple states without resolution. These examples illustrate how transnational perspectives can be implemented in practice, moving beyond the limitations of state-centric models. Such approaches are essential for effectively addressing the complexities of contemporary displacement, where no single nation can adequately manage the challenges posed by large-scale refugee movements.

One crucial aspect of transnational perspectives on refugee law is the recognition of the extraterritorial reach of protection. Refugees often traverse multiple countries before finding a place of safety, and their experiences are shaped by the legal regimes of each transit and destination state. This raises questions about the consistency and adequacy of protection across different jurisdictions. For instance, the principle of extraterritorial protection has been applied in the context of Mediterranean Sea rescues, where refugees and migrants are intercepted in international waters and brought to safety in European countries.³⁵ However, the application of this principle has been inconsistent, with some states refusing to allow disembarkation or failing to provide adequate protection to those rescued, leading to significant gaps in protection.³⁶ The controversy surrounding the rescue operations of NGOs like the *Aquarius* and *Sea-Watch* vessels in Malta highlights the challenges of ensuring consistent extraterritorial protection.³⁷ This example illustrates the varying degrees of success in applying extraterritorial protection and the need for a harmonized approach that ensures refugees receive consistent and effective protection throughout their journey.³⁸ The UNHCR plays a crucial role in supervising international refugee law and advocating for the consistent application of extraterritorial protection principles across different jurisdictions.³⁹

One of these arguments is the use of ethnographic methods to enrich the study of international refugee law by delving into the experiences and perspectives of refugees and stakeholders involved in its creation and implementation. According to Janmyr,⁴⁰ this approach allows for a nuanced exploration of how refugees interpret and navigate international refugee law across different regions, shedding light on the diverse ways in

34 European Union. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (recast). Official Journal of the European Union L 180/31, June 29, 2013.

35 Vassilis P. Tzevelekos and Elena Katselli Proukaki, "Migrants at Sea: A Duty of Plural States to Protect (Extraterritorially)?," *Nordic Journal of International Law* 86, no. 4 (November 8, 2017): 427–69, <https://doi.org/10.1163/15718107-08604003>.

36 Silvia Dimitrova, "Rethinking 'Jurisdiction' in International Human Rights Law in Rescue Operations at Sea in the Light of *as and Others v Italy* and *as and Others v Malta*: A New Right to Be Rescued at Sea?," *Israel Law Review* 56, no. 1 (2023): 120139, <https://doi.org/10.1017/S0021223722000140>.

37 Silvia Dimitrova.

38 François Crépeau and Bethany Hastie, "The Case for 'Firewall' Protections for Irregular Migrants," *European Journal of Migration and Law* 17, no. 2-3 (June 24, 2015): 157–83, <https://doi.org/10.1163/15718166-12342076>.

39 Simeon, *The UNHCR and the Supervision of International Refugee Law*, 1, 6, 315.

40 Maja Janmyr, "Ethnographic Approaches and International Refugee Law," *Journal of Refugee Studies*, August 2, 2022, feac042, <https://doi.org/10.1093/jrs/feac042>.

which legal norms, values, and practices manifest in various localities. Ethnography can uncover transnational power dynamics and inequalities that influence the development and application of refugee law, offering insights into the complexities of harmonizing legal systems and fostering dialogue among diverse stakeholders on a global scale.⁴¹ By capturing the lived experiences of refugees and the real-world implications of legal frameworks, ethnographic research can inform legal reforms by highlighting gaps in protection and areas where current laws may be failing those they are designed to protect. Additionally, these insights can contribute to the development of transnational legal norms that are more responsive to the realities on the ground, ensuring that legal systems are better aligned with the needs and challenges faced by displaced populations. In essence, ethnography not only contributes to a richer understanding of transnational perspectives on refugee law but also plays a crucial role in shaping more effective and equitable legal reforms.

The role of international organizations, particularly the United Nations High Commissioner for Refugees (UNHCR), becomes pivotal in transnational refugee law. The UNHCR operates across borders, providing assistance and protection to refugees in various regions. Its mandate involves cooperation with multiple states and non-state actors, illustrating the inherently transnational nature of refugee protection. However, the UNHCR faces significant challenges in implementing its mandate, especially in complex geopolitical contexts. These challenges include limited resources, political interference from host and donor states, and difficulties in maintaining neutrality while advocating for refugee rights. The organization often struggles to coordinate responses in regions where state interests conflict with humanitarian goals, leading to inconsistent protection standards and gaps in refugee assistance. As Feller⁴² asserts that the evolution of the international refugee protection regime has been shaped by these challenges, highlighting the need for a more harmonized and collaborative transnational approach. The limitations faced by the UNHCR underscore the importance of strengthening international cooperation and ensuring that global refugee protection mechanisms are adequately supported and empowered to fulfil their mandates effectively.

Legal scholars and practitioners advocate for the development of transnational legal norms that go beyond the traditional understanding of territorial sovereignty. The emergence of soft law instruments, such as the Guiding Principles on Internal Displacement, reflects an acknowledgment of the need for flexible and adaptable legal frameworks that can address the transboundary nature of displacement.⁴³ These principles recognize the rights of internally displaced persons and underscore the importance of a transnational legal perspective in protecting vulnerable populations. For instance, the Guiding Principles have been applied in various contexts, including disaster-induced displacement, where they have provided a framework for protecting the rights of individuals displaced by natural disasters. In the case of climate change-induced displacement, soft law instruments like the “Nansen Initiative” have been instrumental in guiding states on how to address cross-border displacement due to climate impacts, even though these instruments are not legally binding.⁴⁴ As McAdam posited that the

41 Janmyr.

42 Feller, “The Evolution of the International Refugee Protection Regime,” 129-39.

43 Thomas Alexander Aleinikoff and Leah Zamore, *The Arc of Protection: Reforming the International Refugee Regime* (Stanford, California: Stanford Briefs, An Imprint Of Stanford University Press, 2019).

44 Federica Cristani, Elisa Fornalé, and Sandra Lavenex, “Environmental Migration Governance at the Regional Level,” in *Environmental Conflicts, Migration and Governance*, ed. Tim Krieger, Diana Panke, and Michael Pregernig (Bristol, UK: Bristol University Press, 2020), 137–56.

application of these soft law frameworks in contexts such as climate change has shown their potential to fill gaps in international law, offering protection where traditional legal instruments may fall short.⁴⁵ These examples illustrate how soft law can be effectively utilized to address the complex and evolving challenges of displacement in a globalized world.

In the context of transnational refugee law, regional approaches also play a significant role. Regional instruments, like the 1969 OAU Convention and the European Union's Common European Asylum System (CEAS), contribute to the development of transnational norms by fostering cooperation among neighbouring states.⁴⁶ The 1969 OAU Convention, for instance, has been hailed as a successful regional approach, expanding the definition of a refugee to include individuals fleeing from external aggression, occupation, and events seriously disturbing public order. This broader definition has allowed African states to respond more effectively to the unique challenges of displacement on the continent, fostering solidarity and collective responsibility among member states. However, challenges persist, particularly in ensuring consistent standards and practices across diverse regions. In the European Union, the CEAS has faced significant difficulties in harmonizing asylum procedures and standards among member states. Disparities in asylum recognition rates, differences in the treatment of asylum seekers, and varying levels of commitment to burden-sharing have all highlighted the limitations of regional cooperation within the EU. Zieck⁴⁷ also identified these regional disparities can undermine the effectiveness of a unified approach to refugee protection, leading to uneven implementation and gaps in protection. These examples illustrate both the successes and the ongoing challenges of regional approaches in transnational refugee law, underscoring the need for continued efforts to achieve greater consistency and cooperation among states.

The digital age further complicates the transnational dimensions of refugee law. Technology facilitates the rapid movement of information, connecting displaced populations with global audiences and resources, thereby empowering migrants by providing access to vital information, support networks, and services that can significantly improve their chances of survival and integration. For example, mobile applications and social media platforms enable refugees to navigate migration routes, find legal assistance, and communicate with family members, offering a level of autonomy and agency that was previously unattainable. However, the use of technology in migration management also raises significant challenges. Issues such as data protection, digital rights, and the use of technology in border control introduce new layers of complexity to transnational refugee law. The increasing reliance on biometric data and digital surveillance for border control and refugee registration can lead to potential breaches of privacy and security, placing refugees at risk of exploitation or persecution if their data is mishandled or shared without their consent. Yüksel⁴⁸ argued that while digital tools can empower migrants, they also pose substantial challenges in terms of maintaining privacy and ensuring the security of sensitive information. This duality emphasises the need for

45 McAdam, *Climate Change, Forced Migration, and International Law*, 2012.

46 Marjoleine Zieck, "The European Refugee Crisis from a Vantage Point of View," *Netherlands Journal of Legal Philosophy* 45, no. 1 (May 2016): 3–9, <https://doi.org/10.5553/njlp/.000047>.

47 Marjoleine Zieck, "The European Refugee Crisis from a Vantage Point of View," *Netherlands Journal of Legal Philosophy* 45, no. 1 (May 2016): 3–9, <https://doi.org/10.5553/njlp/.000047>.

48 Şanlıer Yüksel, İlke, "Empowering Experiences of Digitally Mediated Flows of Information for Connected Migrants on the Move," *Journal of Ethnic and Migration Studies* 48, no. 8 (2022): 1838–55.

a balanced approach that leverages the benefits of technology while safeguarding the rights and dignity of displaced populations.

2.3 Contemporary Challenges in Refugee Protection

Refugee protection faces unprecedented challenges in the 21st century, marked by the intersection of traditional vulnerabilities with emerging global phenomena. This section scrutinizes two critical contemporary challenges: climate-induced displacement and the impact of technology on migration patterns.

2.3.1 Climate-induced Displacement

The role of climate change in causing displacement is becoming more widely acknowledged, exacerbating pre-existing vulnerabilities and giving rise to new groups of refugees.⁴⁹ Climate-induced displacement poses a unique challenge to the traditional refugee protection framework, as it challenges the conventional understanding of persecution and the “well-founded fear of persecution.” These legal frameworks define a refugee as someone who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”⁵⁰ However, a significant number of individuals compelled to abandon their homes due to climate change impacts—such as rising sea levels, droughts, floods, storms, desertification, and environmental degradation—do not fit into this definition. They may not face persecution in the conventional sense, but rather a generalized threat to their life, health, livelihood, or human dignity. Moreover, they may not cross an international border, instead remaining within their own country as internally displaced persons (IDPs), and therefore may not be eligible for international protection and assistance as refugees, leaving them in a legal gap.

This legal gap reveals significant deficiencies in the current frameworks, which were not designed to address displacement caused by environmental factors. There is an urgent need for legal reforms or the creation of new legal instruments to protect those displaced by climate change. For instance, Docherty and Giannini⁵¹ proposed the development of a convention specifically for climate change refugees, which would expand the existing definitions to include individuals displaced by environmental factors and provide them with necessary protection and assistance. Such reforms could involve broadening the criteria for refugee status under the 1951 Refugee Convention or establishing a new international treaty that explicitly addresses climate-induced displacement. These measures would ensure that those displaced by climate change do not fall through the cracks of the current international protection system and are afforded the legal rights and protections they desperately need.

This phenomenon necessitates a re-evaluation of legal definitions and protections. Scholars and advocates have proposed various ways to address the legal gap and enhance the protection of climate refugees. Some suggest expanding the definition of refugee to include those displaced by environmental factors or creating a new category of protection for environmentally displaced persons.⁵² Others advocate for strengthening the human rights-based approach to climate-induced displacement, applying existing

49 Asif Ali, “Climate Change Displacement: More Serious Threat than Climate Change,” *Pakistan Horizon* 72, no. 2 (April 1, 2019): 73–90.

50 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

51 Docherty and Giannini, “Confronting a Rising Tide,” 349.

52 Satchit Balsari, Caleb Dresser, and Jennifer Leaning, “Climate Change, Migration, and Civil Strife,” *Current Environmental Health Reports* 7 (October 13, 2020): 410–11, <https://doi.org/10.1007/s40572-020-00291-4>.

human rights norms and mechanisms to protect the rights of climate refugees.⁵³ For example, the UN Human Rights Committee recently recognized that states have a duty to protect the right to life of people who face life-threatening conditions due to climate change and that deporting them to their home countries may violate this right.⁵⁴ To illustrate how expanded legal definitions might be applied in practice, we can look at case studies of countries that have begun to recognize climate change as a basis for asylum. For instance, in 2020, New Zealand became one of the first countries to consider granting asylum to individuals displaced by climate change, setting a precedent for how expanded definitions can be operationalized.⁵⁵ Similarly, in 2016, a man from Kiribati, who sought asylum in New Zealand due to the impacts of climate change, brought international attention to the limitations of the current refugee definition.⁵⁶ Although his claim was ultimately unsuccessful, the case highlighted the growing recognition of climate change as a serious threat that could warrant protection under international law. Benhabib⁵⁷ discusses the limitations of the 1951 Refugee Convention's definition of persecution, noting its exclusion of significant forms of harm like extreme poverty and environmental disasters. She advocates for an expanded interpretation to better address the complex realities of modern displacement and align with evolving human rights norms.

The international community has taken some steps to address the issue of climate-induced displacement, such as the adoption of the 2015 Paris Agreement on climate change, which recognizes the need to avert, minimize, and address displacement related to the adverse impacts of climate change.⁵⁸ Similarly, the 2018 Global Compact on Refugees acknowledges the link between climate change and displacement and calls for cooperation and solidarity with states and regions affected by it.⁵⁹ However, despite these efforts, both instruments have significant limitations. The Paris Agreement, while symbolically important, lacks specific provisions or mechanisms to protect individuals displaced by climate impacts, relying instead on voluntary commitments from states, which are often not fulfilled. Likewise, the Global Compact on Refugees, although acknowledging climate displacement, is non-binding and does not impose any concrete obligations on states to protect climate refugees or provide specific pathways for their protection. Critically, these responses fail to provide a clear and comprehensive framework for the protection of climate refugees, leaving a significant legal gap.⁶⁰ The lack of enforceable measures and the reliance on state goodwill result in inconsistent and often inadequate protection for those displaced by climate change. Therefore, there is a pressing need for more concerted and coordinated action at global, regional,

53 Matthew Scott and Albert Salamanca, "A Human Rightsbased Approach to Internal Displacement in the Context of Disasters and Climate Change," *Refugee Survey Quarterly* 39, no. 4 (December 1, 2020): 564–71, <https://doi.org/10.1093/rsq/hdaa024>.

54 "Climate Change and Disaster Displacement" (UNHCR) < <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and> > Accessed 26 November, 2023.

55 Helen Dempster and Kayly Ober, "New Zealand's 'Climate Refugee' Visas: Lessons for the Rest of the World - World," ReliefWeb, January 10, 2020, <https://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world>.

56 Amnesty International, "UN Landmark Case for People Displaced by Climate Change," www.amnesty.org, January 20, 2020, <https://www.amnesty.org/en/latest/news/2020/01/un-landmark-case-for-people-displaced-by-climate-change/>.

57 Seyla Benhabib, "The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights," *Jus Cogens* 2, no. 1 (2020): 75–100, <https://doi.org/10.1007/s42439020000221>.

58 Sara Pirri, "Climate Change-Induced Displacement: Can Refugee Law Be an Answer?," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3601762>.

59 UNHCR, "The Global Compact on Refugees," UNHCR (UNHCR), accessed November 26, 2023, <https://www.unhcr.org/about-unhcr/who-we-are/global-compact-refugees>.

60 McAdam, *Climate Change, Forced Migration, and International Law*, 2012.

and national levels to address the rights and needs of climate refugees, requiring a transnational legal response that transcends traditional boundaries and moves beyond symbolic commitments to concrete, enforceable protections.

Humanitarian responses to climate-induced displacement further underscore the need for a coordinated, transnational approach. The absence of legal instruments specifically designed for climate refugees highlights the gap in international law. To address this gap, several proposals have been suggested to enhance coordination and provide a more robust legal framework for climate-induced displacement. One proposal is the creation of an international agency specifically dedicated to addressing climate-induced displacement, which could work under the auspices of the United Nations. This agency would be responsible for developing standardized protocols, coordinating international relief efforts, and ensuring that displaced individuals receive adequate protection and assistance. Another approach could involve the establishment of a binding international legal framework or convention that explicitly addresses the rights and protections of climate refugees, building on existing soft law instruments like the Nansen Initiative. McAdam⁶¹ suggests, such a framework could include clear definitions, obligations for state parties, and mechanisms for enforcement to ensure that climate refugees are not left without legal recourse or assistance. These proposals aim to foster greater international cooperation and ensure a more consistent and effective response to climate-induced displacement, bridging the current gaps in international law and providing a comprehensive, coordinated approach that transcends traditional national boundaries.

2.3.2 Impact of Technology on Migration Patterns

The integration of technology into migration patterns has transformed the landscape of displacement, introducing both opportunities and risks. On the positive side, the use of social media, mobile applications, and digital communication tools has greatly facilitated information-sharing among migrants, enabling them to navigate routes, access critical resources, and connect with support networks.⁶² These digital tools empower refugees by providing real-time information on safe routes, available services, and legal rights, which can significantly enhance their ability to make informed decisions and access assistance during their journey. For example, apps designed to help migrants find safe shelters or legal advice can be invaluable in ensuring their safety and well-being. However, the use of technology in migration also presents significant risks, particularly concerning privacy, surveillance, and the securitization of borders.⁶³ The increased reliance on digital platforms and biometric data for tracking and managing refugee movements raises concerns about the potential misuse of personal information, surveillance, and the erosion of digital rights. Governments and border control agencies often employ advanced surveillance technologies, such as facial recognition and geolocation tracking, which can infringe on the privacy of refugees and potentially expose them to additional risks if their data is shared or compromised. As Yüksel points out, digital tools offer both opportunities and challenges for migrants.⁶⁴ While they can enhance empowerment, they also introduce privacy and security concerns.

61 UNHCR.

62 IOM, "World Migration Report 2022," Iom.int, 2022, <https://worldmigrationreport.iom.int/wmr-2022-interactive/>.

63 European Migration Network, "The Use of Digitalisation and Artificial Intelligence in Migration Management: Joint EMN-OECD Inform" (Brussels: European Migration Network, February 2022), <https://www.oecd.org/migration/mig/EMN-OECD-INFORM-FEB-2022-The-use-of-Digitalisation-and-AI-in-Migration-Management.pdf>.

64 Yüksel, "Empowering Experiences of Digitally Mediated Flows of Information," 1838-55.

A balanced approach is crucial to harness technology's benefits while safeguarding the rights and dignity of displaced populations.

2.4 Analysing Existing Legal Frameworks

The examination of existing legal frameworks for refugee protection is essential to understand their efficacy and identify areas in need of adaptation to address contemporary challenges. This critical analysis assesses the strengths and limitations of established legal instruments, particularly the 1951 Refugee Convention and its subsequent protocols, in navigating the complexities of the modern refugee landscape.

The 1951 Refugee Convention, defines who qualifies as a refugee and outlines their rights and the legal obligations of states. While this instrument has provided a foundational framework for refugee protection, its limitations have become increasingly apparent in the face of evolving global challenges.⁶⁵ One significant limitation is its narrow and restrictive definition of persecution, which may not encompass the diverse forms of harm experienced by contemporary displaced populations, such as those driven by climate change, economic instability, or generalized violence.⁶⁶ This narrow focus on persecution based on race, religion, nationality, membership in a particular social group, or political opinion excludes many who suffer serious threats to their safety and well-being but do not fit these specific categories. The definition of a refugee under the 1951 Convention is also subject to different interpretations and applications by states and courts, resulting in inconsistent and arbitrary decisions and outcomes for refugees.⁶⁷ This issue is particularly problematic when considering new forms of displacement that do not neatly fit into the Convention's criteria. For example, individuals displaced by climate change or environmental degradation often do not cross international borders and may not face persecution in the traditional sense. As a result, they fall outside the protection framework of the 1951 Convention, highlighting the need for updated legal instruments or expanded definitions to address these emerging challenges effectively.

Another critical aspect of the 1951 Convention is the principle of non-refoulement as articulated in Article 33(1), which prohibits states from returning refugees to a country where they face serious threats to their life or freedom. While this principle is a fundamental protection under international law, its application can be inconsistent due to varying interpretations by states. Some states have imposed restrictions or exceptions to non-refoulement, citing national security concerns or public safety, which can undermine the effectiveness of this protection. Additionally, the increased use of digital surveillance and biometric data for border control, as discussed earlier, further complicates the enforcement of non-refoulement, raising ethical and legal concerns about privacy and data protection.⁶⁸ This technological landscape introduces a heightened risk for refugees, as the increased sharing of sensitive information may jeopardize their safety and well-being. To mitigate these risks, specific legal safeguards could be implemented, such as stringent data protection regulations that limit the collection, storage, and sharing of refugees' biometric data. Additionally, international

65 G. S. Goodwin-Gill, "The Politics of Refugee Protection," 8–23.

66 Bonnie Docherty and Tyler Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harv. Envtl. L. Rep.* 33 (2009): 349.

67 Simon Behrman, "Refugee Law as a Means of Control," *Journal of Refugee Studies* 32, no. 1 (2018): 42–62, <https://doi.org/10.1093/jrs/fey016>.

68 Eleni Giannakou et al., "Migrants' Human Rights Facing Surveillance Technologies in Immigration Enforcement" (Jean Monnet European Center of Excellence, 2021), <https://jmce.gr/portal/wp-content/uploads/2021/11/Giannakou-Migrants.pdf>.

agreements could be established to ensure that data shared between states is used solely for the purpose of protecting refugees and not for compromising their safety.

Moreover, the ethical use of technology in migration management should be guided by principles that prioritize the privacy and security of refugees, with oversight mechanisms to ensure compliance with international human rights standards. The European Migration Network⁶⁹ emphasizes the importance of transparency and accountability in the use of technology, advocating for the development of legal frameworks that clearly define the limits of digital surveillance in the context of refugee protection. The evolving nature of technology requires a critical examination of how it intersects with the principles of refugee protection, emphasizing the need for updated legal frameworks that address these emerging challenges and safeguard the fundamental rights of those seeking refuge in an era of rapid technological progress.

The temporal and geographic limitations of the 1951 Convention and its 1967 Protocol are also subjects of critique. The Convention was crafted in response to post-World War II displacement dynamics, and its relevance to the intricacies of modern displacement, characterized by protracted conflicts and climate-induced migration, is questioned.⁷⁰ The absence of a time-relevant mechanism to address evolving forms of persecution poses a challenge in effectively safeguarding the rights of refugees in today's rapidly changing world. For example, climate-induced migrants, such as those from Pacific Island nations threatened by rising sea levels, fall outside the Convention's protection framework because their displacement is not due to persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Similarly, refugees from protracted conflicts, like those in Syria and South Sudan, face prolonged displacement that the Convention's provisions were not designed to address, leaving gaps in long-term protection and support. Moreover, modern threats and challenges, such as the impact of climate change and the global COVID-19 pandemic, further highlight the need for a more dynamic and adaptable legal framework for refugee protection. The pandemic exposed additional vulnerabilities among displaced populations, who often lack access to adequate healthcare and other essential services, yet current international legal instruments do not adequately address these emerging needs. This calls for the urgent need for international law to adapt and include measures that can better address the shortcomings of current protections, ensuring comprehensive safeguards for all displaced individuals, regardless of their reason for displacement.⁷¹

Regional instruments, such as the 1969 OAU Convention and the European Union's Common European Asylum System (CEAS), supplement the 1951 Convention by fostering regional cooperation and providing additional frameworks tailored to specific regional contexts. However, their effectiveness is heavily contingent on the willingness of member states to harmonize policies and uphold shared standards. As discussed earlier, the 1969 OAU Convention, broadens the definition of a refugee to include individuals fleeing generalized violence and external aggression, reflecting the unique displacement challenges in Africa. While this inclusivity is a strength, its implementation has been inconsistent across African states, with varying degrees of commitment to the principles outlined in the convention.

69 European Migration Network, "The Use of Digitalisation and Artificial Intelligence in Migration Management: Joint EMN-OECD Inform."

70 Sabel, "The 1951 Convention Relating to the Status of Refugees," 555.

71 McAdam, *Climate Change, Forced Migration, and International Law*, 2012

The European Union's asylum system has faced even more pronounced challenges in achieving uniform implementation.⁷² Disparities in asylum procedures, recognition rates, and reception conditions among EU member states have led to a fragmented approach to refugee protection. Countries on the EU's external borders, such as Greece and Italy, often face disproportionate pressure and have been criticized for inadequate reception conditions and procedural fairness.⁷³ Meanwhile, states like Hungary and Poland have adopted increasingly restrictive asylum policies, diverging from EU standards and principles.⁷⁴ These inconsistencies not only undermine the credibility of the CEAS but also exacerbate the unequal burden-sharing among member states, as some countries become overwhelmed by the influx of asylum seekers while others contribute minimally. Such challenges highlight the inherent tension between regional collaboration and national sovereignty, where individual states prioritize their domestic interests over collective regional goals, undermining the potential for a cohesive and effective asylum system within the EU.

In addition to legal instruments, the role of national asylum systems is crucial in the effective implementation of refugee protection. Disparities in asylum recognition rates, access to legal representation, and procedural fairness underscore the need for a more harmonized approach within and between states.⁷⁵ For example, within the European Union, asylum recognition rates vary significantly between countries; while Germany and Sweden have relatively high recognition rates for certain nationalities, countries like Hungary and Poland often have much lower rates, reflecting inconsistent application of international protection standards.⁷⁶ Similarly, access to legal representation varies widely, with some countries providing comprehensive legal aid to asylum seekers, while others offer limited or no assistance, impacting the ability of refugees to effectively navigate complex asylum processes. The uneven distribution of responsibility among states to provide protection further exacerbates the challenges faced by refugees, as some countries become overburdened while others fail to share the load equitably.

The evolving nature of displacement also necessitates a re-evaluation of the criteria for refugee status determination. Scholars argue for a more flexible and inclusive approach that accounts for the diverse forms of harm experienced by displaced populations, including those driven by environmental factors.⁷⁷ For instance, to make the existing frameworks more inclusive, specific amendments could be proposed to the 1951 Refugee Convention. One suggestion is to explicitly include environmental degradation and climate change as recognized forms of persecution, expanding the grounds for asylum to cover those displaced by environmental disasters and degradation. This could be modeled after the proposal by Docherty and Giannini⁷⁸ for a convention specifically addressing climate change refugees, which calls for a broader interpretation of persecution that encompasses threats to life and livelihood caused by environmental factors. Additionally, there is a need to explicitly address gender-based persecution, sexual orientation, and gender identity within the refugee protection framework, potentially through amendments that define these as specific grounds for persecution,

72 Marjoleine Zieck, "The European Refugee Crisis," 3–9.

73 European Union Agency for Asylum (EUAA), "ASYLUM REPORT 2023" (Luxembourg: EUAA, 2023).

74 European Union Agency for Asylum (EUAA).

75 Bill Frelick, Ian M Kysel, and Jennifer Podkul, "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants," *Journal on Migration and Human Security* 4, no. 4 (2016): 190–220, <https://doi.org/10.1177/233150241600400402>.

76 EUAA, *Asylum Report 2023*.

77 McAdam, *Climate Change, Forced Migration, and International Law*, 2012.

78 Docherty and Giannini, "Confronting a Rising Tide," 349.

ensuring that individuals facing such threats receive appropriate protection.⁷⁹ These actionable recommendations aim to make the refugee protection system more responsive to contemporary displacement challenges and provide comprehensive protection to all affected individuals.

2.5 Recommendations for Enhancing Refugee Protection

Building upon the critical analysis of existing legal frameworks, this section puts forth recommendations aimed at enhancing refugee protection in response to the evolving challenges of the 21st century. These proposals address both the shortcomings identified in the current legal landscape and the emerging issues in refugee protection, such as climate-induced displacement and the impact of technology on migration patterns. Key recommendations include expanding the definition of persecution within the 1951 Refugee Convention to encompass environmental degradation and other non-traditional forms of harm, integrating robust technology safeguards to protect refugees' privacy and security in the digital age, and harmonizing regional asylum practices to ensure consistent standards of protection. Additionally, the recommendations advocate for the establishment of international legal instruments dedicated to climate-induced displacement and the development of comprehensive, coordinated responses to these emerging challenges.

a. Expanding the Definition of Persecution:

To better capture the diverse forms of harm faced by displaced populations, a re-evaluation of the definition of persecution is essential. The 1951 Refugee Convention should be amended or supplemented to explicitly include harm resulting from climate change, environmental degradation, and other non-traditional forms of persecution.⁸⁰ This expansion ensures that the legal framework is inclusive and responsive to the multifaceted challenges faced by contemporary refugees. For example, consider a hypothetical scenario where residents of a Pacific island nation are forced to flee due to rising sea levels and the destruction of their homes and livelihoods. Under the current definition of persecution, these individuals would not qualify as refugees since they are not fleeing persecution based on race, religion, nationality, membership in a particular social group, or political opinion. However, an expanded definition that includes environmental degradation would allow these individuals to seek asylum and receive international protection.

b. Temporal and Geographical Flexibility:

Acknowledging the protracted nature of many modern conflicts and the long-term impacts of climate change, a more flexible temporal and geographical framework is needed. Legal instruments should be adapted to consider evolving circumstances, allowing for the inclusion of individuals displaced over extended periods and across multiple jurisdictions. For instance, the Temporary Protection Directive in the European Union, implemented in response to the Balkan Wars, offers an example of temporal flexibility, granting temporary protection to displaced persons during emergencies without requiring individual asylum claims. A similar approach could be adopted globally to address protracted crises, ensuring legal protection remains relevant and effective. Furthermore, instruments like the Kampala Convention, which addresses displacement within Africa, illustrate geographical flexibility by acknowledging cross-

⁷⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (GENEVA: UN High Commissioner for Refugees, 2019), 166–84.

⁸⁰ Benhabib, "The End of the 1951 Refugee Convention?" 75–100.

border impacts of displacement. Expanding these frameworks could provide a blueprint for more adaptable global refugee protection policies.

c. Integration of Technology Safeguards:

Given the increasing role of technology in migration patterns, legal frameworks must incorporate safeguards to protect refugees from the risks associated with digital surveillance and data exploitation. This includes the establishment of international standards for the ethical use of technology in migration management, ensuring that refugees' rights to privacy and security are upheld. Specific proposals could include the adoption of international guidelines akin to the General Data Protection Regulation (GDPR) of the European Union, which regulates data protection and privacy for individuals. Additionally, the European Migration Network⁸¹ suggests creating an oversight body to monitor the use of technology in migration management and enforce compliance with ethical standards. These measures would help mitigate the risks associated with digital surveillance and protect refugees' fundamental rights.

d. Harmonization of Regional Approaches:

Regional collaborations, such as the CEAS, should prioritize harmonization to ensure consistent standards and practices across member states. For example, the Schengen Information System (SIS) has successfully harmonized border control and security measures among Schengen Area countries. However, challenges remain, such as the lack of uniform asylum recognition rates across the EU, leading to disparities in refugee treatment. To overcome these challenges, regional agreements could include binding commitments to uphold uniform standards and procedures, supported by a centralized monitoring mechanism that ensures compliance and accountability.

e. Strengthening National Asylum Systems:

National asylum systems should be strengthened to ensure procedural fairness, access to legal representation, and uniform implementation of refugee protection measures. Disparities are evident in the differing asylum recognition rates across countries, such as the higher rates in countries like Germany compared to lower rates in countries like Greece. To address these disparities, national policies could standardize asylum procedures, enhance legal aid provisions, and establish independent oversight bodies to monitor fairness and transparency in asylum processes. These measures would help harmonize asylum practices and ensure equitable treatment for all refugees.

f. Global Responsibility-sharing Mechanisms:

A paradigm shift towards global responsibility-sharing is crucial to address the uneven distribution of refugee burdens among states. The creation of a more equitable and cooperative system, where nations collectively bear the responsibility of protecting refugees, can mitigate the challenges posed by disparate national capacities and resources. Mavropoulou⁸² suggests a model for differentiated legal obligations based on states' capacities and resources, akin to the "common but differentiated responsibilities" principle used in international environmental law. Implementing such a model could involve establishing quotas for refugee intake based on each country's GDP and population size, coupled with financial support mechanisms for countries hosting large numbers of refugees.

g. Capacity Building for Environmental Displacement:

⁸¹ European Migration Network, "The Use of Digitalisation and Artificial Intelligence in Migration Management."

⁸² Mavropoulou, "Responsibility Sharing in International Refugee Law."

In response to climate-induced displacement, international cooperation should focus on capacity-building measures for states and communities to address specific challenges posed by environmental factors. Successful initiatives, such as the Platform on Disaster Displacement, provide frameworks for states to enhance preparedness and response to climate-related displacement. New initiatives could include creating a dedicated international agency to oversee climate refugees' rights and well-being, with guidelines developed in collaboration with affected communities and stakeholders.⁸³

h. Inclusive Gender and Identity Protections:

To address gaps in existing frameworks, comprehensive protections for gender-based persecution, sexual orientation, and gender identity should be explicitly incorporated. For example, Canada's gender-based guidelines for refugee status determination provide a model for how to address specific vulnerabilities and needs of women and LGBTQ+ individuals in the asylum process. Expanding similar protections within international instruments, such as the 1951 Convention, would ensure a more inclusive approach.⁸⁴

3. CONCLUSION

This research critically examines the complexities of refugee protection, highlighting the interplay between historical and contemporary legal frameworks and their impact on refugee rights. It underscores the foundational role of the 1951 Refugee Convention while recognizing the urgent need for adaptation to address modern challenges, such as climate-induced displacement and the influence of technology on migration. Significant gaps within current legal instruments, like the narrow definition of persecution and limitations in temporal and geographical applicability, are identified. The research advocates for expanding the definition of persecution, incorporating flexibility in legal frameworks, and introducing safeguards against technological risks to create a more inclusive, adaptable, and humane system. These findings emphasize the necessity for international dialogue on revising the 1951 Convention, to ensure that refugee protection evolves in line with contemporary realities, thereby calling for a concerted effort to reform and strengthen international refugee law.

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⁸³ McAdam, *Climate Change, Forced Migration, and International Law*, 2012.

⁸⁴ Benhabib, "The End of the 1951 Refugee Convention?" 75-100

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