مبدأ عدم إعادة اللاجئين قسراً في إطار القانون الدولي مع التطبيق على الحرب في غزة.

The principle of non-refoulement of refugees within the framework of international law, with application on the war in Gaza.

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تاريخ الاستلام:2025-09-08 تاريخ القبول: 2025-12-03 تاريخ النشر: 2025-06-28

Introduction:

The basic meaning of Evacuation is "The necessary movement of persons – both within the combat zone, and from the combat zone towards territory controlled by a Party to the conflict – of persons protected by IHL. The aim of evacuation is to protect persons from the effects of ongoing hostilities". Evacuation comprises:

Wounded, sick and shipwrecked, who the military medical services must collect and to whom they must give first aid in dressing stations. They must be classified into three grades of urgency, sorted out, transported and cared for in medical establishment able to give them suitable treatment. All these operations are carried out by medical personnel, medical units and medical transports, and must take place under the protection of the emblem of the red cross and red crescent, with due respect for the rules established by international law;

Prisoners of war, who must be collected by specialized units and sent to internment camps conforming to legal standards;

The civilian population, which must be moved in a coordinated manner from the rear area by military commanders in accordance with the rules of international law.

Linguistic definitions :

According to Cambridge dictionary "refoulement is a noun means :The practice of sending refugees or asylum seekers (= people trying to escape war, danger, threats, etc. In their own country) back to their country or to another country where they are likely to suffer bad treatment:

Protection from refoulement is a basic right of asylum seekers and refugees".

And according to Oxford:"the practice of forcing refugees to return to a country in which they are at risk of harm

Such deportations of asylum seekers amount to refoulement and constitute a serious violation of the 1951 Refugee Convention.

OPPOSITE non-refoulement"

According to Merriam Webster: "the act of forcing a refugee or asylum seeker to return to a country or territory where he or she is likely to face persecution".

Though Collins consider it as an uncountable noun which means " is the practice of sending refugees back to a place they have left and where they could be in danger".

Cambridge defines the Refugee as :

"A person who has escaped from their own country for political, religious, or economic reasons or because of a war".

The relationship between forced evacuation and Human rights according to the United Nations:

According to the United Nations "Every year, millions of people around the world are forcibly evicted from their homes and their land, often leaving them living in extreme poverty and destitution. Forced evictions can be severely traumatic. They set back even further the lives

of those that are already marginalized or vulnerable in society. Moreover, forced evictions violate a wide range of internationally recognized human rights, including the rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of movement".

Forced eviction is "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (Committee on Economic, Social and Cultural Rights, general comment No. 7).

The impacts of forced evictions go far beyond material losses, leading to greater inequality, marginalization and social conflicts.

According to the Guide of International Humanitarian Law :

Evacuation

The term evacuation describes the act of transferring populations or individuals. In situations of conflict, humanitarian law prohibits the forced displacement of populations. Military or medical evacuations are permitted, but only in exceptional circumstances and respecting strict and precise conditions.

Military Evacuations

Military forces may impose certain kinds of evacuations on non-combatants.

The Rule

International humanitarian law insists on the principle according to which "the displacement of the civilian population shall not be ordered for reasons related to the conflict" (GCIV Art. 49, APII Art. 17). The transfer of a population, as well as the use of terror to force its displacement, is forbidden as a method of warfare. This rule is applicable to both international and internal conflicts, when the drive to

control territory and population might incite belligerents to adopt such methods (e.g., the practice of population displacement contributes to ethnic cleansing).

Furthermore, regardless of the motive, humanitarian law prohibits individual or mass forcible transfer or deportation of protected persons, from the occupied territory to the territory of the occupying power or of any other country, occupied or not (GCIV Art. 49). It also forbids the occupying power from transferring part of its own civilian population to the occupied territory.

Exceptions to the Rule

Military evacuation is possible under strictly limited conditions. These conditions must be interpreted restrictively: the commentaries written on the Additional Protocols to the Geneva Conventions explain that the evacuation of populations may never be used as a combat strategy and may never be carried out simply because of its practical efficiency in attaining a military objective. The term imperative military reason assumes that no military alternative to evacuation exists.

The circumstances in which military evacuations are allowed are the following (GCIV Art. 49):

The evacuation of a given area is possible if the safety of the population or imperative military reasons require it.

Such evacuations must be temporary. Persons thus evacuated must be transferred back to their homes as soon as hostilities in the area in question have ceased.

Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory, except when it is impossible to avoid such displacement for material reasons.

Such evacuations must be carried out with respect for the interests of the civilian population. They may not be evacuated to a region that is

exposed to the dangers of war; the authorities undertaking these evacuations must ensure that the individuals are received in proper accommodation and are transported in satisfactory conditions of hygiene, health, safety, and nutrition; and family members must not be separated. Population displacement

Medical Evacuations

Medical evacuations concern wounded, sick, and shipwrecked individuals who need medical attention. Such evacuations may also concern children and other vulnerable persons who, in certain circumstances, are covered by the same protection offered to the sick and wounded under humanitarian law.

In encircled or besieged areas, the parties to the conflict must "endeavor to conclude local agreements for the removal of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas" (GCIV Art. 17). Such persons are usually evacuated toward hospitals or appropriate medical structures.

If there is no such written agreement, humanitarian law establishes that, as far as military considerations allow, each party to the conflict shall facilitate measures undertaken to search for the dead, sick, and wounded and to evacuate them to a location where they can be cared for (GCIV Arts. 16 and 17).

All of these operations, carried out by medical personnel, units, and transport, must be accomplished under the protective emblem of the Red Cross (or Red Crescent) and with the same guarantees as those provided for military evacuations (GCIV Art. 49). ▸ Distinctive (or protective) emblems, signs and signals ▸ Medical services ▸ Wounded and sick persons

To better protect the medical installations to which the persons are being evacuated, the parties to the conflict may set up hospital and safety zones, at the onset of hostilities, as well as neutralized zones in which to shelter the vulnerable persons (GCIV Arts. 14 and 15).

Evacuations must take place in a way that does not prevent the return home of the evacuees and does not hinder family reunification.

In case of an international conflict, children may not be evacuated to a foreign country unless they are being evacuated by the party to the conflict of which they are nationals.

When children are evacuated, humanitarian law establishes many restrictions. The aim of such regulations is to protect the interests of the children, particularly to facilitate their return to their families and to prevent the development of practices such as illegal adoptions (API Art. 78).

Evacuation of Wounded Combatants

Humanitarian law prohibits any distinction being made between wounded civilians and wounded military personnel. They have the same rights to be collected, evacuated, and cared for.

However, wounded and sick members of a belligerent party who fall into enemy hands are considered prisoners of war (GCI Art. 14). As such, they benefit from the rights established by the Third Geneva Convention and must be evacuated from the combat zone to an internment camp for prisoners of war situated away from the danger zones (GCIII Art. 19). The evacuation must be carried out humanely and in conditions similar to those for the forces of the detaining power in their changes of station. In particular, they must be given food, drinking water, clothing, and any necessary medical attention (GCIII Art. 20).

Prisoners of war who suffer from certain illnesses or wounds may not be kept in captivity or be cared for in the territory of the detaining

power. Humanitarian law establishes that they should be transferred to the hospitals of neutral States or repatriated directly to their own country. The kinds of wounds and diseases to which these conditions apply are enumerated in Article 110 of the Third Geneva Convention and are further detailed in the entry on ▸ Prisoners of war . Annex I of the Third Geneva Convention provides a model agreement concerning the direct repatriation or hospitalization in neutral countries of wounded and sick prisoners of war.

<u>According to Berna GÜNDÜZ NON-REFOULEMENT PRINCIPLE IN THE 1951 REFUGEE CONVENTION AND HUMAN RIGHTS LAW</u> The principle of non-refoulement has acquired a vital importance in international law with the enforcement of the Refugee Convention in particular which provides a protection by prohibiting states to return people to territories where they may be in danger of being subjected to persecution. A great deal of achievement has been secured through the Refugee Convention as it set standards for the treatment of refugees in the host country. However, it needs to be stated that the 1951 Convention does not guarantee non-refoulemet as it permits derogations and exceptions. Since there remains to be disagreement related to jus cogens status of the Convention, people may face the risk to be returned to territories where they may face persecution or to be suspended their rights. Thus, despite its pioneering position, the Convention has attracted some criticism mainly based upon the implementation of the non-refoulement principle. However, it is well established that international human rights instruments have also created some obligations on states related to the status of the refugees beyond the 1951 Refugee Convention. In this article, the protection of refugees with regard to non-refoulement principle will be discussed in relationship with other three human rights instruments namely the European Convention on Human Rights, the Convention against Torture and International Covenant on Civil and Political Rights. The

absolute protection against refoulement in these three instruments will be analysed. For that reason, the human rights law which are perceived as a secondary source of law will be assessed in comparison with the Refugee Convention, and it will be claimed that international human rights law has overtaken the 1951 Geneva Convention as the main source of protection for refugees and asylum-seekers from refoulement.

International Convention for the Protection of All Persons from Enforced Disappearance which is adopted on the 23rd December 2010 by the General Assembly of the United Nations in its resolution 47/133 States the following "

Article 1

1. **No one shall be subjected to enforced disappearance.**
2. **No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.**

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. **Each State Party shall take the necessary measures to hold criminally responsible at least:**

   (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

   (b) A superior who:

   (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

   (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

   (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

Article 7

1. **Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.**

Egyptian Journal of International Law, Vol. (81), No. (1), June 2025
https://ejil.journals.ekb.eg email: info@egsil.org
ISSN: 1687-2290 (Print) ISSN: 2974-4512 (Online)

Article 9

1. **Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:**

Article 10

1. **Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.**

2. **A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.**

3. **Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.**

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to

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assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 24

1. **For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.**

2. **Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.**

3. **Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.**

4. **Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.....**

Article 25

1. **Each State Party shall take the necessary measures to prevent and punish under its criminal law:**

   (a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

   (b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above....."

The position the United Nations was clear from the very beginning of the war on Gaza ,A UN expert demanded that Israel immediately rescind its order for 1.1 million Palestinians to leave northern Gaza within 24 hours, condemning the evacuation order as a crime against humanity and a blatant violation of international humanitarian law.

"Forcible population transfers constitute a crime against humanity, and collective punishment is prohibited under international humanitarian law," said Paula Gaviria Betancur, Special Rapporteur on the human rights of internally displaced persons.

The crime of forced displacement from the perspective of both international and national legal frameworks. The crime of forced displacement is a notion that comes from international law. Indeed, an international legal framework has developed with the instruments and jurisprudence to criminally prosecute forced displacement as a war crime or a crime against humanity, whether the displacement in question is internal or across international borders. When it constitutes a serious crime under international law, forced displacement should be prosecuted for the same reasons as other serious crimes. Failure to prosecute this crime invites impunity, which in contexts of mass displacement undermines the goals of transitional justice, which include accountability for perpetrators and recognition of victims, fostering civic trust, and strengthening the rule of law. However, in contrast to "classic" crimes such as murder and torture, legal traditions do not exist in national systems around the world to tackle the crime of forced displacement. T he nature of this particular crime and its emergence entirely from international law create challenges that must be addressed by lawyers, judges, and investigators. These include legal challenges stemming from inaccurate definitions of forced displacement at the national level as well as difficulties in assessing the unlawfulness of acts of displacement, and political challenges, such as resistance from the wide array of powerful actors that may be implicated in these crimes. At this juncture, there is sufficient international jurisprudence to prosecute the crime of forced

displacement, but it is not as strong as it is for other serious crimes. National criminal justice systems, on the other hand, are generally not familiar with the crime of forced displacement. Often, their focus is on the crimes connected to displacement rather than displacement itself, which is frequently seen as a "natural" consequence of other crimes or as an inherent effect of armed conflict, and so the criminal responsibility of the actors involved in these crimes is not investigated. The International Legal Framework for the Crime of Forced Displacement Forced displacement is recognized as a crime under international customary law; the International Committee of the Red Cross (ICRC) concluded that the prohibition of the deportation, forcible transfer, and forced displacement of civilian populations—unless Research Project Transitional Justice and Displacement From 2010–2012, the International Center for Transitional Justice and the BrookingsLSE Project on Internal Displacement collaborated on a research project to explore the relationship between transitional justice and displacement. It examined the capacity of transitional justice measures to address displacement, engage the justice claims of displaced persons, and support durable solutions, and analyzed the links between transitional justice and the interventions of humanitarian, development, and peacebuilding actors.

Security of the civilians involved or imperative military reasons so demand—is a rule of customary international humanitarian law, applicable to both international and internal armed conflicts. UN bodies including the General Assembly, Security Council, and former Commission on Human Rights have reaffirmed this, and called for alleged perpetrators to be brought to justice. The crime of forced displacement first emerged closely linked wtih the crimes of deportation and transfer of populations; deportation was considered a crime against humanity in agreements as early as the Nuremberg Charter and the IMTFE Charter immediately following World War II, and the Fourth

Geneva Convetion in 1949 prohibited individual or mass forcible transfers, as well as deportations of protected persons from occupied territory regardless of motive. However, the crime of forced displacement was initially limited to international armed conflict. T he treatment of forced displacement—especially internal displacement—as a crime is the result of a long process in which the jurisprudence of international tribunals has played an essential role. Despite the absence of the crime of forced displacement from its statute, the International Criminal Tribunal for Rwanda (ICTR) addressed displacement through the crime against humanity of "inhuman acts," while the International Criminal Tribunal for the former Yugoslavia's (ICTY) statute did include deportation and the transfer of civilians as war crimes, and deportation as a crime against humanity. Additionally, the jurisprudence of the ICTY, the ICTR, and the Special Court for Sierra Leone, the work of the UN International Law Commission on the Draft Code of Crimes against the Peace and Security of Mankind, the travaux préparatoires of the Rome Statute, and the International Committee of the Red Cross (ICRC) Commentaries on the Fourth Convention and its Protocols, all constitute relevant legal sources for the interpretation and understanding of the scope of the crime of forced displacement. However, the development of international jurisprudence on this particular issue is not as rich as it is for other crimes. To date, the International Criminal Court (ICC) has had only a few cases in Sudan and Kenya—all at early stages of proceedings—that refer to the crime of forced displacement. Nevertheless, three approaches for criminalizing the forced displacement of civilian populations have been retained under international law, depending on the context: crimes against humanity, war crimes in the context of an international armed conflict, and war crimes in the context of a non-international armed conflict. In the case of a crime against humanity, the forced displacement has to be committed as part of a widespread or systematic attack directed against a civilian population, regardless of the existence of or connection with an armed

conflict. In the case of a war crime, the displacement has to take place in the context of and be associated with an international or internal armed conflict. However, forced displacement is not necessarily a crime under international law. According to the ICRC, an exception to the prohibition of displacement exists where the security of the civilians involved or evacuation is required for imperative military reasons. Indeed, for forced displacement to be considered a crime at all, it has to be "arbitrary displacement"—that is, it has to have been ordered or committed without grounds permitted under international law. This requires judges, prosecuto

The psychological setbacks:

Children's psychological distress and symptoms after forced evacuation from the Gaza Strip in Israel were studied. Fifty families living in temporary residences 2 weeks post evacuation were assessed for general political and evacuation life events exposure as risk factors and family support and hardiness as protective factors. The hypothesis predicting a positive correlation between forced evacuation events and political life events and symptom levels was confirmed. Perceived family support served as a significant predictor of symptomatology, but not family hardiness, substantiating parents' role in aiding children's coping.

The principle of non-refoulement under international human rights law Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status. What is the principle of non-refoulement? The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when

there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, illtreatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In regional instruments the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union. International human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. Human rights treaty bodies regularly receive individual petitions concerning non-refoulement, including the Committee Against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child. What is the scope of the principle of non-refoulement? The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterised by its absolute nature without any exception. In this respect, the scope of this principle under relevant human rights law treaties is broader than that contained in international refugee law. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State's territory. The

prohibition of refoulement has been interpreted by some courts and international human rights mechanisms to apply to a range of serious human rights violations, including torture, and other cruel, inhuman or degrading treatment, flagrant denial of the right to a fair triali, risks of violations to the rights to lifeii, integrity and/or freedom of the personiii, serious forms of sexual and gender-based violenceiv, death penalty or death rowv, female genital mutilationvi, or prolonged solitary confinementvii, among others. Some courts and some international human rights mechanisms have further interpreted severe violations of economic, social and cultural rights to fall within the scope of the prohibition of non-refoulement because they would represent a severe violation of the right to life or freedom from torture or other cruel, inhuman or degrading treatment or punishment. For example, degrading living conditionsviii, lack of medical treatmentix, or mental illnessx have been found to prevent return of persons. Heightened consideration must also be given to children in the context of non-refoulement, whereby actions of the State must be taken in accordance with the best interests of the child. In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, including if there is a risk of insufficient provision of food or health services.

<u>Tilman Rodenhäuser sees the relationship between Migration and Human Rights as follows:</u>

The current discussions on the Global Compact for Migration and the Global Compact on Refugees have placed migration and refugee policies high on the multilateral agenda. From a humanitarian point of view,

In order to protect the most fundamental human rights of any migrant or refugee, States have developed the principle of non-refoulement. This principle, reflected in different bodies of international law, protects any person from being transferred (returned, expelled,

extradited—whatever term is used) from one authority to another when there are substantial grounds for believing that the person would be in danger of being subjected to violations of certain fundamental rights.

The principle is multi-faceted and its scope and application vary from context to context in accordance with the applicable law. Here are five key points that explain the importance and relevance of the principle of non-refoulement in the wider migration context.

***The principle of non-refoulement is found in different bodies of international law**

The principle of non-refoulement is most often referred to in the context of refugee protection, given its codification in Article 33 of the Convention relating to the Status of Refugees (Refugee Convention) and in regional refugee law instruments. Over the past decades, however, the principle has also been included in human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), the International Convention for the Protection of All Persons from Enforced Disappearance (Article 16) and in regional human rights instruments. Moreover, the UN Human Rights Committee has considered that non-refoulement is an integral component of the protection against torture or other forms of cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life. Similar conclusions were drawn by regional human rights courts, in particular the European Court of Human Rights. Interestingly, already in 1949, the principle of non-refoulement was also included in the 1949 Geneva Conventions, primarily with regard to detainee transfers, but also to protect the civilian population. At its core, the principle of non-refoulement is considered to form part of customary international law.

Under refugee law, the principle of non-refoulement applies to both refugees and asylum seekers. In addition to being protected against refoulement, refugees are entitled to a number of other rights provided

under that body of law. In contrast, protection against refoulementunder human rights law means a person cannot be returned, but will not automatically mean that the person has to be granted refugee status and be afforded all of the rights that refugees are entitled to. In all circumstances, however, a State must respect, protect and fulfil the human rights of all persons under its jurisdiction.

The main difference between the principle of non-refoulement under its different codifications is the question of who falls under its protection and for what reasons. Under refugee law, it protects refugees against return to places of persecution, while under IHL it only applies to certain categories of persons that are affected by armed conflicts. Under human rights law, the principle of non-refoulement can protect any person under a State's jurisdiction, provided a pertinent danger exists in the State to which the person shall be transferred. Depending on the applicable human rights treaties, the principle protects individuals against different dangers that may not be covered by other bodies of law, such as a risk of death penalty, cruel punishment, or child recruitment and participation in hostilities, regardless of whether the danger to the person is based on a discriminatory ground or not. While refugee law recognizes certain narrowly defined exceptions to the principle of non-refoulement, the principle is absolute under other bodies of law.

1. **The principle of non-refoulement is applicable whenever a person falls within the jurisdiction of a State**
2. **The principle of non-refoulement can protect persons fleeing armed conflict.**
3. **The principle of non-refoulement protects against direct and indirect measures that force a person to leave**
4. **The principle of non-refoulement requires procedural safeguards**

Dr. Tamás Molnár is Adjunct Professor at the Institute of International Studies, Corvinus University of Budapest opinion that The principle of non-refoulement under international law: Its inception and evolution in a nutshell Tamás Molnár1 Abstract The article first gives an overview of the formation and the evolution of the principle of non-refoulement under international law. The different meanings of the concept in the asylum and human rights contexts are then discussed and compared, with due regard to the convergences that arose in the course of legal developments. In doing so, this short piece also draws attention to certain controversial issues and blurred lines, which have surfaced through the practical application of the prohibition of refoulement. Identifying the contours of the concept and clarifying its content and its effects may help in appreciating the implications that stem, in the current extraordinary times of migratory movements, from the fundamental humanitarian legal principles of which the imperative of non-refoulement forms part. Keywords: non-refoulement, asylum, refugee law, human rights, judicial practice Historical development: the asylum context The principle of non-refoulement, meaning "forbidding to send back," first appeared as a requirement in history in the work of international societies of international lawyers. At the 1892 Geneva Session of the Institut de Droit International (Institute of International Law) it was formulated that a refugee should not by way of expulsion be delivered up to another State that sought him unless the guarantee conditions set forth with respect to extradition were duly observed (Règles internationales sur l'admission et l'expulsion des étrangers 1892, Article 16). Later on, with a view to the growing international tension in the period between the two World Wars, the principle of non-refoulement explicitly appeared in an increasing number of international conventions, stipulating that refugees must not be returned to their countries of origin [e.g. in the context of Russian and Armenian refugees.

International Agreements in which is Israel signatory:

Israel is a signatory to the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. It is also a signatory to the Final Act of the United Nations Conference on the Status of Stateless Persons, 1954, and the 1961 Convention on the Reduction of Statelessness. Accordingly, Israel recognizes a refugee as a 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Israel is also committed to the principle

That no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The current situation in this regards in the Middle East :

The Department of State on 2022 issued a report on Human Rights situation inside Israel and the occupied territories in which stated and I quote" Significant human rights issues included credible reports of: unlawful or arbitrary killings; arbitrary or unjust detention, including of Palestinians in Israel and the occupied territories; restrictions on Palestinians residing in Jerusalem including arbitrary or unlawful interference with privacy, family, and home; substantial interference with the freedom of peaceful assembly and association; arbitrary or unlawful interference with privacy; punishment of family members for alleged offenses by a relative; restrictions on freedom of expression and

media including censorship; harassment of nongovernmental organizations; violence against asylum seekers and migrants; violence or threats of violence against Palestinians and members of national, racial, or ethnic minority groups; and labor rights abuses against foreign workers and Palestinian workers.

The Israeli military and civilian justice systems have rarely found members of the security forces to have committed abuses. The government took some steps to identify, investigate, prosecute, and punish officials who committed human rights abuses, engaged in corruption, or both within Israel.

This section of the report covers Israel within the 1949 Armistice Agreement lines as well as the Golan Heights and East Jerusalem territories that Israel occupied during the June 1967 war and where it later extended its domestic law, jurisdiction, and administration. The United States recognized Jerusalem as the capital of Israel in 2017 and Israel's sovereignty over the Golan Heights in 2019. Language in this report is not meant to convey a position on any final status issues to be negotiated between the parties to the conflict, including the specific boundaries of Israeli sovereignty in Jerusalem or the borders between Israel and any future Palestinian state".

International refugee law and human rights law are both crystal clear when it comes to protecting people from persecution and other serious harm. People must not be forced back to any place where they face a real risk of being persecuted or subjected to torture, cruel, inhuman, or degrading treatment or punishment, or arbitrary deprivation of life. This is known as the principle of non-refoulement.

The principle of non-refoulement unequivocally encompasses non-rejection at the frontier, because protection begins with the refugee's ability to secure admission to territory. This means that people at a border crossing seeking protection must be allowed to enter to have their needs assessed, a principle recognized by States in successive UN High

Commissioner for Refugees (UNHCR) Executive Committee conclusions over the years. As the European Court of Human Rights has made clear in its own assessment of international law, State practice and UNHCR guidance, "the prohibition of refoulement includes the protection of asylum-seekers in cases of both non-admission and rejection at the border."

This post outlines the bespoke regime of international legal protections applicable to Gaza's Palestinians, and argues that their situation demands not only their recognition as refugees by all States, but also recognition of their right to self-determination and to a solution consistent with international law.

The Situation in Gaza

Gazans remain trapped. The border crossings into Egypt and Israel remain closed to them, and official statements make clear that there is no intention to allow them in. King Abdullah of Jordan, for instance, has spoken about a "red line" if Palestinian refugees are pushed out of Gaza, observing, "No refugees in Jordan, no refugees in Egypt." Egypt's Minister of Foreign Affairs said, "I see no reason why Egypt, which is hosting 9 million refugees—hosting them and providing them integration into our society at considerable burden on our economy—should have to bear solely [the] additional influx of Gazans."

These statements must be understood within a broader political context. Both Egypt and Jordan want an overall solution—ideally a two-State solution—as the UN has promised, that is consistent with international law. From their perspective, admitting refugees could be seen to undermine this goal.

Egypt and Jordan are concerned that Israel may be using the war to effect a mass transfer of Palestinians to Jordan and Egypt, which the Jordanian Foreign Minister has called unacceptable. If Israel refuses to accept a two-State solution or an end of occupation, then "the third

option is to try get rid of as many Palestinians as possible. That is the real concern."

This is notwithstanding the fact that most Gazans are Palestinian refugees normally protected by the UN Relief and Works Agency (UNRWA) under a bespoke legal regime. They are dependent on UNRWA for almost all aspects of daily life. It runs schools, hospitals, relief and social services, with critical support and assistance from Palestinians themselves. The agency has warned that without fuel and other supplies, it will have to cease its operations in Gaza. As it is, it cannot provide adequate medical care or deliver basic supplies and sustenance.

Palestinian refugees were recognized as refugees entitled to special protection prior to the creation of UNHCR and the 1951 Refugee Convention. Article 1D of the Convention is often said to "exclude" Palestinians from status and protection, but it is not so much an "exclusion" clause as a contingent, inclusion clause. It recognises the refugee character of Palestinian refugees as a group but makes their inclusion within the Convention regime contingent upon certain events, particularly the cessation of protection without their situation "being definitively settled in accordance with the relevant resolutions adopted by the General Assembly."

States negotiating the Refugee Convention agreed that Palestine refugees were in need of international protection, but Convention protection was not required while they were receiving protection from UNRWA. During the drafting of the Refugee Convention, the Egyptian delegate stated that if UNRWA protection ceased, "the Palestine refugees should automatically enjoy the benefits of the Convention. The Egyptian Government had no doubt at all that such refugees came under the terms of article 1."

Thus, the "non-applicability" of the 1951 Convention was intended to be temporary and contingent, essentially deferring the incorporation

Egyptian Journal of International Law, Vol. (81), No. (1), June 2025
https://ejil.journals.ekb.eg email: info@egsil.org
ISSN: 1687-2290 (Print) ISSN: 2974-4512 (Online)

of Palestine refugees until certain preconditions were satisfied. A Palestinian registered with UNRWA would be entitled ipso facto to the benefit of the Refugee Convention—without having to demonstrate a well-founded fear of persecution—if it could be shown that their personal safety was at serious risk; UNRWA was unable to guarantee living conditions compatible with its mission; and the refugee was compelled to leave UNRWA's area of operation owing to circumstances beyond their control. This would need to be assessed either individually or on a group basis. Given the scale of Israeli attacks, a group assessment would seem to be called for now.

Palestinian refugees who flee Gaza in search of refuge ought to enjoy the protection and the benefits of the Refugee Convention without being required to establish a well-founded fear of being persecuted. This does not necessarily mean that the individual Palestinian refugee is thereupon entitled to asylum and residence, but it does mean that they should be treated as a refugee, and the receiving State is re-quired to provide protection and to seek an appropriate solution in light of that status, and in cooperation with UNHCR and UNRWA. In practice, many States in the past have resisted providing au-tomatic Convention protection and consider that the key issue is not so much the status of Palestinians as refugees, but whether they are able to return to their (former) State of residence, or as stateless persons, they are claiming to be refugees as against that country.

However, anyone who does wish to leave in the current circumstances must be allowed to do so, and other countries must not refuse them entry given the real risk to their lives. At the same time, the right to non-refoulement must not lead to the root causes being ignored. This means still greater emphasis by the international community on Israel's obligation to recognize and to facilitate Palestinians' right of self-determination, and particularly their right to live in a community that is

not disfigured by settler violence, discriminatory legislation, discriminatory treatment, and de facto annexation.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol form the foundation of the international refugee regime, namely the legal norms and supporting institutions that focus on the protection of refugees. The great majority of the world's nations have signed or ratified the Convention and its Protocol yet many of the world's top refugee-hosting countries have not done so: 149 UN Member States are currently party to the Refugee Convention, its 1967 Protocol or both, while 44 UN Members are not.

We find these non-signatory States mostly in the Middle East and in South and Southeast Asia. In the Middle East region, only Iran, Israel, Egypt and Yemen are party to the Convention, while States such as Iraq, Lebanon and Jordan and most States in the Gulf region are non-signatories. Important non-signatory States in South and Southeast Asia include India, Bangladesh, Pakistan, Sri Lanka, Malaysia and Indonesia. In other regions of the world, non-signatory States include Eritrea, Libya, Mongolia and Cuba. Uzbekistan is the only Commonwealth of Independent States country that is not a party to the Convention, while Guyana is the only non-signatory State in South America.

New accessions to the Convention are rare. In the first ten years of the Convention, 27 states ratified or acceded to the Convention; since 2006, however, only two States – Nauru (2011) and South Sudan (2018) – have become States Parties. The reasons for not acceding to the Convention are varied but the fact of not being a party has long been taken to mean that these States are 'exceptions' to the international refugee regime.

Conclusion

While there is a widespread and entrenched assumption that refugee protection is superior in signatory States when compared with non-signatories, there are no systematic and comparative studies supporting an argument that accession to the 1951 Refugee Convention automatically means better protection. Rather, in many signatory and non-signatory States alike, limiting refugees' access to asylum has arguably become an increasingly common political aim, and in some cases protection may even be better in non-signatory States than in signatory States. We need to challenge the current emphasis only on signatory States in discussions of the international refugee regime. International refugee law also 'happens' in non-signatory States, and non-signatory States also 'do' international refugee law.

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