

# *Fordham International Law Journal*

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*Volume 18, Issue 4*

1994

*Article 1*

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## Refugees and Their Human Rights

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# Refugees and Their Human Rights

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## **Abstract**

This Introduction discusses the state of refugees in international law.

## INTRODUCTION

### REFUGEES AND THEIR HUMAN RIGHTS

*Louis Henkin\**

We live in the age of human rights. In half a century we have moved from acceptance of the idea and commitment to its realization, to universal declaration and definition, to covenants and conventions, to established institutions, even to collective humanitarian intervention in response to gross violations. If the condition of human rights in most countries remains always less than cheering, often deplorable, it is not because the world disclaims responsibility: the human rights of every human being everywhere are now everybody's business.

Ours is also the age of refugees, alas. Refugees require additional rights, and greater respect for their human rights. In fact, refugees enjoy fewer rights and the human rights condition of refugees is deplorable, often horrendous.

The Universal Declaration of Human Rights recognizes: Everyone has the right to seek and to enjoy in other countries asylum from persecution. But everyone's right is only a right to seek asylum, and to enjoy it if it is granted; there is no right to be granted asylum; there is no obligation on any state to grant it.

And the right recognized by the Declaration is only a right to seek asylum from oppression, not a right to seek and enjoy refuge from grinding poverty, from civil war, from natural disasters.

The International Covenant on Civil and Political Rights recognizes the right of everyone to leave any country; there is no recognized right to be admitted to any country (other than one's own).

The victim of repression, then, has only half a right — a right to leave, not a right to be received, to enjoy a haven or to resettle. Of course, the refugee — from oppression, from war, from floods and earthquakes — is human, and the International Covenant requires that every state respect and ensure the

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human rights of all persons subject to its jurisdiction. A state must respect and ensure the human rights of refugees who come within its jurisdiction or whom the state brings within its jurisdiction. States, even states that respect human rights of those permanently within its jurisdiction, have not done well by refugees who sneak or stream into their territory, or who are on ships that their navies interdict.

A bright spot in international refugee law is the Convention on the status of Refugees and its Protocol. The Convention and the Protocol do not promise much. They promise some economic and social benefits to some victims from oppression, and only to those whom states had agreed to admit. They do not promise asylum, or even temporary haven, even to refugees as defined. Only one small section, a kind of postscript, almost an afterthought, promised "non-refoulement," not to return refugees into the hands of their oppressors.

From that little acorn has grown the modern law of asylum for refugees, tended by the heroes of that development, Commissioner Ogata and her predecessors and their colleagues in the U.N. High Commission for Refugees. It is a sturdy growth. But it is not sturdy enough.

The Refugee Convention, even with its *non-refoulement* clause, comes from the time when there was little refugee law, and that little was a small concession by compassionate states addicted to and fearful for their "sovereignty." It is of the time when human rights law itself was in its infancy, and the iota of refugee law was not part of that human rights law. Since then, human rights law has moved from a declaration of principles to binding covenants and conventions, to political concern such as that which brought down *apartheid*, to Security Council sanctions in response to ethnic cleansing and Security Council decisions authorizing the use of force to restore democracy in Haiti.

It is time to bring the international law of refugees and the international law of human rights together. It is time for the international community to respond to the plight of refugees not only from tired compassion but from political responsibility; to recognize that massive flows of refugees result from massive human rights violations. They result from the failure of the international system to prevent, deter, or terminate gross violation; from failure to hold governments that are guilty of gross viola-

tions responsible for the floods of refugees they unleash; from failure to assume political responsibility for refugee situations that threaten international peace and security; from failure to assume political responsibility to prevent violations that unleash refugee floods, and collective responsibility to guarantee remedies, including temporary protection or resettlement.

In sum, and in a few words: Not only compassion but responsibility; not only individual state responsibility but collective responsibility; not only the Refugee Convention but the International Covenants and the U.N. Charter; not only UNHCR but the Human Rights Committee and, if necessary, the U.N. Security Council.