



## The Principle of non- Refoulement and its Role in the Protection of Refugees

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### Abstract

*The protection available to refugees under the principle of non-refoulement is a well-established rule of the customary international law; which means that they can't be shifted against their will to their country where their life is at risk. A person who avails the protection of the principle of non-refoulement and other protections guaranteed under the international refugee instruments is considered a refugee. This principle is well established both under the Refugee Convention 1951 and Convention against Torture (CAT) 1984. This research revolves around the question that if a country is not a signatory to any refugee related instrument at international level nor has any domestic law related to refugees, so then what precludes such a nation from expelling a person or group of persons from their territory? The paper explores the various protections available to refugees in general and under the principle of non-refoulement in particular.*

**Key Words:** Forced return, Nationality, Persecution, Political opinion, and Race.

### Introduction

The obligation of non-refoulement is the backbone for the refugees under the international law. Those people who seek refuge at any other country due to the risks of persecution, inhuman treatment and torture in their own country, the other states have the responsibility to entertain such people by giving them protection. The right of a refugee, to have protection from a shift back against their will to such a place where their life will be in danger, is provided under the customary international law as well as in the 1951 Convention. Under these laws, the states are prohibited to expel a refugee from their territory against their will. to the state, where that individual's life, freedom etc. might be threatened. on the basis of their race, religion, affiliation with a social group, nationality or political opinion. If we elaborate further, the obligation under this principle stops a nation from forcible shift of a person, where the person faces risks of persecution and other inhuman treatments. Non-refoulement is a duty of a country via Article 33(1) of the convention of 1951 on the status of refugees, and refugee protocols of 1967, according to these points a state that has accepted to the said convention can't return or expel by force the refugee from their boundaries to the region where his life or his freedom can be at stake due to racial, religious or social discriminations.

The prohibition against forcible return is widely recognized as a part of the customary international law. By virtue of this, even those states that are not signatories to the 1951 Convention are also bound to respect this principle. Hence, under the customary international law and under this Convention, states are obligated to respect this principle. UNHCR may respond if and when the principle is threatened through intervention with the relevant authorities, and if it deems essential, will inform the public.

Apart from the above, the prohibition is also explicitly provided in other conventions as well, for instance; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Art.3), the Fourth Geneva Convention of 1949 (Art.45, Para 4), the International Covenant on Civil and Political Rights (Art.7), the Declaration on the Protection of All Persons from Enforced Disappearance (Art.8), and the

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Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (Principle 5).

Various regional documents relating to human rights have explicitly or through interpretation prohibited the forceful return of refugees to their home states or such places where they are not secure, such instruments comprises of; the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art.3), the American Convention on Human Rights (Art.22), the Organization of African Union (Art.II), and the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World (Art.2).

In certain situations, individuals confronting refoulement can recourse to the concerned human rights instruments, for instance; the Committee against Torture (CAT). The Cartagena Declaration's definition of a refugee comprises the 1951 Convention's definition plus all those individuals who have fled their homelands due to threats to their life, safety, and freedom by generalised violence, aggression from another state, civil conflicts, excessive violations of human rights, or other conditions, which results in the serious disturbance of public order. Even though the Declaration has no binding effect on the states, but most of the states in Latin America respect the definition and apply as a matter of practice; some states have even incorporated it into its domestic laws. The Organisation of American States (OAS) has also endorsed the Declaration, the United Nations General Assembly, and UNHCR's advisory Executive Committee.

### **The Status of the Principle of Non-Refoulement under the 1951 Convention**

The right of a refugee is to be provided protection under the 1951 Convention:

*"No Contracting State shall expel or return ('refouler') a refugee 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 or political opinion" (Article 33(1)).*

According to Art.33 (1) of the 1951 Convention, a refugee is a person who is in a state of fear to be persecuted on the ground of racial, religious hatred, nationality and other social and demographic or political reason flee from his native country, because he is unable to protect himself in his country of the said fears whatever they may be. The refugee's definition is given in Art.1A (2) in the 1951 Convention and the Principle of non-refoulement seems too similar. Consequently it can be presumed that an individual having the status of refugee should have a personal fear of persecution due to racial, social, political, religious or any other reason. Therefore, he has to be protected under Art.33 (1) of the Convention, and a prohibition of refoulement has been given to him as a refugee without any condition and discrimination\_(Hathaway 2005).

There exists a technical difference in the texts of article 33 (1) and article 1 A (2) of the 1951 Convention. The words mentioned in Art.33 (1) above, whereas article 1A (2) states "well-founded fear of being persecution for reasons of race, religion, nationality membership of a social group or political opinion". This difference of words seems to be out of the scope of our discussion here and therefore its interpretation should be set aside to avoid another barrier for refugees in overcoming protection of refoulement. The aim of the Convention and specially Art.33 (1) lead the whole interpretation\_(Bethlehem 2003).

Now it is clear from the discussion that for an individual to be considered refugee, should have to fulfil the criteria given in Art.1A (2) of the 1951 Convention in order to be entitled to the rights of refugee and get protection from refoulement. Art.33 (1) is explained and determined further by article 1A (2) of the Convention (Grahl-Madsen, Refugees 1966).(Vermeulen 1995).

The obligation of non-refoulement demands that neither a refugee nor an asylum applicant should be sent back ('refouled') in any way whatsoever; to a soil, where their life or freedom would be threatened. It is a basic underpinning of refugee law, which, it is argued, has become a peremptory norm of international human rights law\_(Lambert 1999). However this assessment is problematic as the status of *jus cogens* requires consistent state practice and evidence of *opinion juris sive necessitatis* i.e. an acceptance of its legally binding nature\_(Hurwitz 2009). The lack of uniform state practice and attempts to delimit the obligation means that it is not possible to conclusively establish this status\_(Noll 2000). Further, Hathaway disputes that non-refoulement can be regarded as a customary principle of international law as interstate practice does not demonstrate near-universal respect for the principle\_(Hathaway 2005).

Nevertheless the principle is well-established in many states, having emerged from the 1933 Refugee Convention (Art 3 Convention Relating to the International Status of Refugees 1933 n.d.). Article 33(1) of the Refugee Convention provides:

That no states the under contract should expel or remove a refugee in any way to the country where his freedom, life can be threatened on the grounds of race, nationality, cast or religion.

This is a negative formulation and, as with Art. 14 UDHR, there is no corresponding duty on the state to officially recognise the applicant as a refugee. The 1951 Convention is unclear when it comes to rejection at the border. Indeed it has been suggested that the non-refoulement obligation as originally conceived did not provide protection in such situations. Kälín applies a contextual and teleological construction to the right and argues that an inclusionary reading is demanded\_(Kälín 1982). Davy draws a similar conclusion from her application of the Vienna Convention\_(Davy 1996). She notes that whilst the drafters may have intended to exclude border rejection, the use of the French term ‘refouler’ complicates this position as its ordinary meaning includes rejection at the frontier. A clear interpretation based on the language and context precludes the need to adopt a teleological approach. Noll concurs, ‘the question whether non-rejection at the border is embraced by Article 33 GC must be answered in the affirmative’\_(Noll 2000). Thus there appears to be a legal obligation derived from Article 33 at least to admit the asylum applicant to a fair and effective procedure in order to determine their needs\_(UNHCR 2004).

The non-refoulement obligation is confirmed by the UN ‘Committee Against Torture’ (‘CAT’) 1984:

“No state party shall expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture” (Art.3, 1987).

The ‘Committee Against Torture’ considers this to be an absolute, non-derogable provision which, unlike the Refugee Convention, permits no exceptions. In the case of *Mutombo v Switzerland*, the Committee established that expulsion to Zaire could violate Article 3 if ‘there are substantial grounds for believing’ the applicant would be in danger of being subject to torture and that this consequence was ‘foreseeable and necessary’ taking into account all the relevant circumstances. The Committee has found several violations of Article 3, demonstrating its continued relevance, particularly in cases where states attempt to raise the exceptions under the Convention (Sweden, 2005).

In the case of *Agiza v Sweden*, the utilisation of diplomatic guarantees in the interests of political expediency was condemned by the ‘Committee Against Torture’ (CAT)\_(Guild 2009). The complaint concerned two Egyptian asylum seekers who had been removed from Sweden following diplomatic assurances from the Egyptian authorities. Both men subsequently claimed to have been tortured. The Committee found a violation of Article 3 on the basis that the Swedish authorities should have known that torture of political opponents was widespread and further, that the giving of assurances could not obviate the respondent states obligations. Similar facts occurred in the British case of *Youseff v Home Office* but, in the event, removal was not auctioned as assurances from the Egyptian authorities were not forthcoming. UN rapporteurs have consistently maintained that such assurances cannot be legitimately used to avoid the obligations of humanitarian and refugee law\_(Nowak 2005).

The UN Human Rights Committee has additionally implied non-refoulement into Article 7 of the International Covenant on Civil and Political Rights which extends the obligation to protection from cruel, inhuman and degrading treatment\_(UN General Comment 2004). In *Byahuranga v Denmark* the Human Rights Committee found that a violation of Article 7 would occur if the applicant, a Ugandan national who had been tortured by the Ugandan military, was returned to Uganda following the commission of a drugs related offence (Byahuranga v Denmark 2004). The competence of the Committee to adjudicate in such disputes depends on whether signatory states have signed the first Optional Protocol (UNHRC, 1966).

## Persecution

Article 33(1) provides protection to refugee from fear of losing his life or freedom on the basis race, colour, creed, religion and other social discrimination as laid down in the convention. Contrary to Article 1A (2); states the words that “being persecuted for the reason of”. The drafters intentionally used the words “life and freedom” so to make it broad for interpreters and that risks of any type of persecution can be considered a threat of life and freedom. The terms ‘life and freedom’ cannot be used to delineate the term ‘persecution’; it is the other way

Round\_(Grahl-Madsen 1966). Consequently for understanding of the harms, which a refugee might not be subjected to according to prohibition of refoulement of article 33(1), so a detailed interpretation will be the requirement of the term “persecution”. The term persecution has not been explained in the convention,(Andrysek 1997).

It is evident from the analysis that the drafters intentionally made the concept flexible by avoiding a concrete definition of the terms (p. 310). As persecution is dependent on the circumstances; which may vary from case to case and country-to-country\_(Vermeulen 1995). Such flexible character of “persecution” makes it impossible to provide a specific and concrete definition, as it may be open to continuous changes of ill-treatments, harms and discriminations.

Without having a specific definition, this term seems to require some level of seriousness and severity, and the level variance depends on the type and nature of human rights’ violations. It can be at the lowest when human right is violated and can lead a great deal of severity when the violation leads to persecution. According to the definitions of UNHCR, persecution is a threat to freedom or life or any other severe human rights violations. Contrarily circumstances which on cumulative grounds lead to serious human rights’ violations even though, if these circumstances individually could not be thought of as serious violations. Additionally discrimination can be termed as persecution if they lead to prejudice and hatred which can lead a person’s life at risk (UNHCR para 51-54), as not all discriminations can lead to persecutions. According to the guidelines of UNHCR discrimination can be termed as persecution if it leads to restrictions on one’s life, placing restriction on his religion, access to education or living a fearless life or in other cases where discriminations are not serious but in cumulative grounds can result in serious consequences. Racial discrimination is clearly stated by UNHCR, is the type of discrimination which will often lead to persecution, depends on its severity and seriousness. According to the UNHCR guidelines racial discrimination will lead to persecution if a person’s dignity as a human is affected which is not tolerable according the principles of human rights or it can result in serious consequences\_(UNHCR para. 69.).

Discriminations can be alone or cumulative. Cumulative measures of discriminations are normally followed by torture or other forms of in human treatments that can be counted as persecution. For example rape is a single action and that in most cases can lead to certain amount severity and eventually lead to persecution. Therefore in most cases understanding of combination of events and facts are required\_(UNHCR Handbook 1992). Normally it is very uncertain to measure the exact level of severity that can be called as persecution. Hathaway provided the definition of persecution as “the sustained or systemic violation of basic human rights demonstrative of a failure of state protection”\_(Hathaway 2005).

There should be a clear-cut connection in-between the individual’s apprehension and one of the five grounds mentioned in the 1951 Convention. The grounds of persecution further add a quality to the feared harm by refereeing to the standard of non-discrimination(Hathaway 1991, p. 136 and Goodwin-Gill 1996, pp. 43 – 68).As mentioned by Goodwin-Gill, that these grounds show briefly the features of groups and individuals, which are thought to be given protection on priority bases\_(Goodwin-Gill, *The Limits of Transnational Law: Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union* 2010). Being the threat to make a sufferer of grave injury as stipulated by the 1951 Convention is not sufficient for an individual to consider a refugee status, .persecution includes the likelihood of danger of serious discriminatory injury. For instance, an individual, who is facing the threat of death and is executed who may accept . persecution but may not become a refugee. The individual may become a refugee only if that individual is discriminated .and is being at risk to be sentenced to death on one or more of the grounds mentioned in the global refugee documents. Moreover, mere the danger of discrimination or accidental aggression will not eligible an individual to become a refugee. When the threat is directly towards a specific category of people then the people of that category will be given the status of refugee, as the aggression is discriminatory. The element of discrimination is the deciding factor for the determination of refugee status and to get the right of protection from refoulement. The grounds mentioned under Article 1A (2) and 33 (1) in the 1951 Convention are explained as under:

## **Race**

There is a need to understand the race in its broader sense by considering all sorts of racial or marginal groups in it. The matter may be referred to the International Convention on the Elimination of All Forms of Racial

Discrimination (ICERD) and Article 10 (1) (a) of the European Union Qualification Directive to incorporate reflection of descent, colour, ethnicity and nationality\_\_ (Goodwin-Gill, Introduction to the 1951 Convention/1967 Protocol relating to the Status of Refugees 2009).

### **Religion**

The word religion comprises of not only the famous religions of the world, for example, Islam, Christianity, Judaism, Buddhism and Hinduism but also all types of religious communities, identity, beliefs, or methods of life. Generally speaking, it shows an individual's personal choice, represents a person's liberty of thinking and conscience, which includes their choice to change the religion with free-will, to declare his way of life publically or privately, and to observe their religion through teaching, worshiping and practicing. It even respects an individual's right to have a life without religion\_ (Goodwin-Gill 2010). It has no concern with an individual whether that individual is well aware of their way of life or not; such as an individual who born with a specific religion but has not practised it widely and may not be well versed about it but may yet be persecuted on that ground\_ (UNHCR Handbook 1992).

### **Nationality**

In the strict legal sense, it shows an individual's affiliation with a particular nation but is not limited to it and may be included an association with an ethnicity, religion, linguistic or cultural groups (para 74). A group having a similar geographic background, political ideology or connection with another state's population may also be referred under it.

Obviously, it may be overlapping with the other grounds mentioned under Art.1A (2) of the 1951 Convention. Persecution on nationality's ground may be involving the dominance over a minority by a majority group, or the apprehensions of minority from majority\_ (UNHCR Handbook 1992).

### **Membership of a Specific Social Group**

There are two approaches through which the association with a social group may be defined: the one is that in which all the members have identical features, other than having the danger of persecution, through which they are identified (protected characteristics approach) (Hathaway 1991, p. 160), and the other one is that which the public or authorities distinguish as a distinct group (social perception approach)\_ (Goodwin-Gill 2010). Whatsoever method is selected, the features or perceived features of the group should be natural, consistent or otherwise basic. Another point is that it is not essential for every person associated with the group to be familiar with one another or have voluntary association together. Furthermore, the group's recognition or distinctive visibility for the public at large or community has no relevancy. For instance, although a family might not be eminent or famous to the general community, still it may form a social entity. It is not necessary that all those in the group must be in danger of persecution and the number of those associated with that entity doesn't matter. A specific social group has been defined by the UNHCR in its Handbook as the one that comprises of individuals with. common traditions, status or background\_ (UNHCR Handbook 1992) s. The following factors have been mentioned by the academics in their literature for the definition of a specific social group, which comprises of; the groups classified by permanent natural features, such as, by sex, cultural traditions, linguistic affiliation, family connections, ethnicity or sexual orientation (EXCOM, 2006). Groups identified due to the previous voluntary position, unchangeable by reason of their remarkable permanence, such as their contributions in the educational or economic sectors. Groups created and classified voluntarily, as far as the objective of organization is so basic to their human-dignity that they might not be needed to discard it, such as, due to common values, aspirations etc. (Hathaway 2005)

Relation to a low caste is unchangeable and can be easily identified by both the castes' members themselves and also by the society as a whole; it is not naturally feasible for them to leave or alter. Where the situation is That the unchangeable feature is not visible, or unclear, such as, the situation where the rich or poor are presumed as an economic class. The relevant question is that to what level being poor or rich is unalterable in such societies. The illustrations mentioned above demonstrate the problem of categorisation of a group as a specific social group within the boundaries of the meanings of 1951 Convention (Art.1A (2)). Obviously, one can't ignore a group as

not being a specific social group on legal grounds generally; therefore, it is required to know the situation in the country of origin\_(Goodwin-Gill 2009).

### **Political Opinion**

Another ground mentioned in the Convention upon which a person is qualified for protection from persecution is that where that individual is holding a political view which is different from that individual's persecutors. The word 'political' needs a broad interpretation and may be referred to any sort of opinion related to society, public cause or state\_(Goodwin-Gill 2009) and also includes non-conformist attitude. An individual's fear to be persecuted on the ground of political opinion demands that their opinion has attracted the attention of those involved in persecution due to which the concerned individual has well-established fear. There are a number of methods through which the persecutors may get information about an individual's political opinion, for instance, through speeches, publications, conversations or participation in demonstrations or even through particular clothes wearing. There is also the possibility where the individual may have not given any opinion willingly but due to the severity of their convictions, however, there might be sound grounds to presume that their opinion will find expressions at some stage and that claimant will come in confrontations with the authorities. Where there are reasonable grounds upon this, then the individual may be considered to have well-founded reasons to fear of persecution on this basis. An individual seeking refugee should have a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion. The significance of the expression 'for reason of' demonstrating a connection between the well-founded fear of persecution and the one or more of the mentioned five reasons, will be examined below\_(McAdam, Forced Migration, Human Rights and Security 2008).

It may be argued that one of the five mentioned reasons for persecution in the definition should be the most important reason. However, this is neither supported by the wording of Art.1A (2) of the 1951 Convention nor by the UNHCR. Besides, such an explanation would involve very high criteria for the process to determine the refugee status. Hence, it would be more accurate to presume that a particular reason of Convention should be an appropriate factor which contributes to the well-founded fear of being persecuted; there is no such requirement of sole, basic or even the principal ground for it\_(UNHCR Handbook 1992).

The establishment of a reason without any prejudice is mandatory for persecution. By virtue of this reason, it should be crystal clear that the refugee is facing an enmity, animosity or malignity in their own country; such as, the concerned individual is at danger on the grounds of his political opinion because the individual has criticised openly the policy of the concerned government. The reason might not be clear, but a ground or more may be of such type that due to which the exposure of the refugee to the danger of being persecuted be established. For instance, the concerned individual may belong to such a vulnerable section of the society which can become easily a victim of the condoned ill-treatment. Further illustration can be made in the form of armed conflicts. Individuals leaving the situations of conflicts can become refugees when there is the existence of a reason due to which armed conflict is conducted, therefore in this respect, it is necessary to know the purpose and origin of the violence or armed conflicts\_(Goodwin-Gill 1993). Moreover, there is the possibility in majority of the wars that for the purpose of motivation various factors such as in the form of ethnicity, religious, political etc are involved and on the bases of these factors it may be relevant reason to the well-founded fear of being persecuted. Then there arise the question of motivation or intention on behalf of the persecutor. The persecutor's intention to persecute the individual seeking refuge is a relevant factor if it falls within one or more of the Convention's reasons and may even be a decisive one to qualify as a refugee\_(Foster 2007). For instance, there is an intention of harm on behalf of the persecutor to the concerned individual by reason of their ethnic affiliation or due to their negative political opinion about him/her. Nevertheless, the intention is not an essential condition, in the sense that it should be accompanied by the conscious factor, personalised direction on the persecutor's part\_(McAdam 2008). The individualised condition is not necessary in such situations where there is the involvement of a group persecution, There might be such intent on the persecutor's part. In addition to the above, there may also arise such Circumstances, in which a vulnerable social group merely on statistical grounds is likely to be subjected to persecution, and then those affiliated with that group might have a well-founded fear due to reasons of relation to such a group of being persecuted, irrespective of conscious individualised intention. Situations where women

becoming victim to human trafficking may also be cited as an example; is a heinous crime carried out for the purpose of economic gains, which primarily is not amounting to persecution for reasons of, such as relationship to a specific social group. But the options of existing reasons of Convention can't be ruled-out.

As per UNHCR, situations where the human trafficking may increase coincide with scenarios in which possible sufferers might be susceptible to trafficking merely due to features contained in the refugee definition of 1951 Convention. Situations mentioned above may happen during social unrest, economy passing through transitional period, or during armed conflicts, as a result of such situation there is the likelihood of law and order breakdown due to which their arise opportunities of exploitation of vulnerable section of society for the criminals (UNHCR Handbook 1992). Generally, there might be certain scenarios where the persecutor might have a certain intention, but it may not be directly related to one of the reasons. However, the conduct of persecutor has the effect of individuals being persecuted for, such as, religious reasons\_(Goodwin-Gill 1993).

It may be said that the fear of well-founded reason of being persecuted may originate from the country of origin as a possible protector\_(UNHCR Handbook 1992). An individual might face the casualty of persecution at the hands of private persons having no specific reason for their persecution except than to persecute. During such circumstances, the fear on well-founded reasons of being persecuted due to religion, race, membership of a particular social group, nationality, or political opinion may be searched in the non-existence of effective protection by the state of habitual residence or nationality. For instance, in certain jurisdictions females fear abuse at the hands of their partners or husbands in the shape of domestic violence, without having protection from their states. The relationship in-between the female's well-founded fear of being persecuted and, for instance, membership of a specific social group can't be created by the persecutor. The spouse may face injury without any exact reason.

The establishment of a relationship by the nation of origin as the potential protector can be made by two methods: firstly, while tolerating the domestic violence knowingly by the state or when there is a refusal from it to provide protection because, for instance, it accepts that husbands have this right to hurt their wives\_(UNHCR Handbook 1992),and, the other one is, when the relationship is less clear, for instance, when the country is passive in their handling with such cases of violence at domestic level because it is a part of the culture of a nation and is not deemed as an issue. In such an environment, it may be further difficult to identify the reasons for the danger of being persecuted\_(Rafiqul 2013).

At the end, if anyone of the member is having involvement in the persecution against another one belonging to the same race, religion, particular social group, nationality or political organisation doesn't of itself will prevent the presence of a well-founded fear of being persecuted for one of the mentioned reasons in the refugee definition. Associates have relation to the similar group and working for individual gains is common\_(UNHCR Handbook 1992). It may be concluded that the expression 'for reasons of' in Art.1A (2) of the 1951 Convention, and 'on account of' in Art.33 (1), suggest a connection in-between the danger of being persecuted and one or more of the five mentioned reasons in Art.1A (2) and 33 (1) respectively. This connection may come from the persecutor's intention, or from the incompetency, unwillingness, not essentially intentional, of the state of origin to offer protection, or it may come from the fear or the dilemma of the concerned individual\_(Rafiqul 2013).

## Conclusion

In sum, the picture that emerges from refugee situations, at different times and in different parts of the world, is that a refugee is a person who needs to be recognized, protected and re-established in a community in which he/she has rights simply because he/she is a human being. Regrettably, there does not exist a cohesive international position or solution that guarantees the refugee the protection needed. If anything the various regional definitions cause greater confusion and room for manipulation to the disadvantage of the refugee. For example, what would happen to an African, who flees from civil war into a refugee camp in a neighbouring African state, which also soon suffers a civil war, with imminent threats to kill thousands of locals and refugees? The African finds his way independently to Europe and seeks refugee status. Under the 1951 Convention, this Person is not a refugee, while under the OAU definition, he is. Although this scenario is only illustrative, there are many refugees who experience this in real life. For the most part, many become "orbit refugees," being thrown from one country to another, while countries labour to justice their claims of not being responsible to

provide protection. Having established the above, this work, although concentrating on the protection and rights of forced immigrants outside their countries of origin, takes the view that refugees are person who have left their home, whether or not they have crossed a national boundary, for whatever reason and who no longer enjoy the protection of their country of origin, or are unwilling or unable to avail themselves of that protection.

The obligations of non-refoulement demand that neither a refugee nor an asylum applicant should be sent back ('refouled') in any way whatsoever; to a soil, where their life or freedom would be threatened. It is a basic underpinning of refugee law, which, it is argued, has become a peremptory norm of international human rights law. Refugees are entitled to basic human rights, which, according to Louis Henkin, are defined as claims, which every individual has, or should have upon the society in which he or she lives. All states are bound to observe this principle being part of customary international law.

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