

## Research Article

# Legal and Ethical Framework for International Refugee Law: Adherence to the 1951 Refugee Convention in the Present-Day Setting

Salma Akter<sup>1</sup>, Md Faruque<sup>2,\*</sup>

<sup>1</sup>Department of Law, Stamford University Bangladesh, 51 Siddeswari Road (Ramna), Dhaka-1217

<sup>2</sup>Department of Law, University of Derby, London, Kedleston Road, Derby, Derbyshire, DE22 1GB, England

\*Corresponding Author: [mdfaruque935@gmail.com](mailto:mdfaruque935@gmail.com)

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## ABSTRACT

The idea that refugees or those who have personally experienced being a refugee have not been involved in the creation of international law and policy around refugees is contested in this article. In the formative years of international refugee law and policymaking, between 1921 and 1955, this essay claims that refugees and those who had been through refugee experiences possessed a great deal of power and thought leadership. These contributions to the evolution of international law and policy about refugees are noteworthy not only because they offer a fresh perspective on the methods by which such laws and policies have been crafted and negotiated thus far, but also because they offer a workable model for how refugees can be more effectively involved in the formulation of future laws and policies that will impact them. 149 States were parties to either the 1951 Convention or the 1967 Protocol by the end of 2020. However, neither of these fundamental agreements was ratified by the 44 United Nations members. What impact does the 1951 Refugee Convention have on states that are not signatories? What is the nature of the relationship between non-signatory nations and the international refugee regime, and how did it come about? Based on these inquiries, the purpose of this paper is to develop a new research program that will examine the interaction between States that are not signatories to the 1951 Convention. The report highlights potential conflicts between domestic immigration policy and international refugee obligations, highlighting the need for a more humanitarian and comprehensive approach to balance national security with respect for human rights and international protection standards.

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## 1. Introduction

The goal of boosting refugees' meaningful involvement in the creation and application of international refugee law and policy has given rise to several initiatives in recent years (Harley, 2021). Initiatives led by refugees, including the Global Summit of Refugees and the Global Refugee-led Network, have aimed to provide refugees a voice in the creation of laws and policies that impact them by allowing them to interact directly with governments, non-governmental organizations, civil society, and other stakeholders. The 2016 New York Declaration for Refugees and Migrants and the 2018 Global Compact on Refugees (Türk, 2019), in particular, are two recent legal instruments that have acknowledged the importance of meaningful participation and made non-binding promises from States to allow refugees to participate in specific responses to refugees and displacement. These initiatives represent a

paradigm shift in the way that refugees are seen and their place in law, policy, and governance within the framework of the modern international refugee system. Under international law, no need to demand participation in a specific way. refugees' involvement in decisions that affect them, thus it's amazing how these proactive actions and commitments were made (Harley & Hobbs, 2020). These initiatives aim to address the ethical claims that refugees should be included in decisions that affect their rights, in addition to the instrumental considerations that bolster the notion that increased refugee engagement will increase policy efficiency (Harley, 2021). To successfully fulfill these promises, though, greater thought must be given to how refugees could be more completely included in the processes that result in decisions that impact them. Bringing conceptual clarity to notions of governance, decision-making, and involvement in all dimensions of the global refugee crisis is one aspect of this study. Beyond this, it is also necessary to review

\*Corresponding author: [mdfaruque935@gmail.com](mailto:mdfaruque935@gmail.com) (Md Faruque)

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the historical record to conclude earlier attempts to incorporate refugees into the creation and execution of international law and policy on refugees.

Refugees actively contributed their personal experiences and legal and policy skills to the formulation and discussion of international instruments, even if they were not officially vested with decision-making authority. They also participated in reactions that were organized by global institutions such as the UNHCR and the League of Nations. These people often consulted and worked with organizations run by refugees in addition to holding prominent leadership roles in these organizations (Piccoli & Perna, 2024). A refugee originally put out the concept of drafting a legally enforceable international agreement tailored to the needs of refugees in 1927 (Grossi, 2019). These contributions, meanwhile, have not received much attention in scholarly literature. In line with positivist conceptions of international law, the majority of legal analyses of international refugee law have tended to highlight the role of States as the primary builders. Because objectivity and neutrality are connected with stigma, individual participant experiences—especially those triggered by emotions like fear and trauma—are ignored. This statist orientation is reinforced by the norms of treaty interpretation under international law, which accord non-state actors' contributions little legal weight unless they are included in the final text or documented in official preparatory works (Elie, 2014). It is partially because of the emphasis on governments, international organizations, and civil society groups, as well as a culturally developed tendency to see refugees as helpless, vulnerable people rather than agents of change, that the contributions made by refugees to their protection have received less attention. Important scholars of refugee protection and international law have been compelled to relocate, yet this omission has nonetheless occurred. Although several scholars are starting to address this issue, the majority of studies have concentrated on how refugees contribute to the implementation of programs and services rather than their role in the reform of international law and policy (Pincock et al., 2020).

The 1951 Convention on the Status of Refugees (Convention) and its 1967 Protocol have proven extremely helpful in the study of asylum and refugee concerns (Lambert, 2014). But in recent years, state actors looking to curtail their commitments to refugees have questioned its usefulness and significance. The difficult question of the Convention's significance and effect is at the center of several academic and political discussions as it approaches its 70th anniversary in 2021 (Cantor, 2017). The link between non-signatories to the Convention and the international refugee system is mostly ignored in favor of debates that center on States that are party to the convention. By 2020's end, 149 States were parties to either the 1967 Protocol, the Convention, or both. 44 UN members, however, were not parties to any of these fundamental documents. South and Southeast Asia and the Middle East are home to the majority of these non-signatory states. Only Iran, Israel, Egypt, and Yemen are signatories to the Convention in the Middle East; the majority of Gulf states, as well as leading nations that produce and host refugees, like Iraq, Lebanon, Jordan, and Syria, are not. Bangladesh, Pakistan, India, Malaysia, Indonesia, and Sri Lanka are important South and Southeast Asian non-

signatory nations (Janmyr & Stevens, 2020). Other nations across the world are not signatory states as well, including Cuba, Libya, Mongolia, and Eritrea.

To fully comprehend the significance of the 1951 Convention for worldwide refugee protection, the paper underlines the necessity of having a thorough grasp of the interaction between non-signatory States and the international framework for refugee law (Jones, 2017). It makes the case that signatory and non-signatory states have to be compared side by side and offers a worldwide study agenda that looks at how non-signatory states interact with and support the establishment of the international refugee regime. By adding this perspective to the study of international refugee law, the paper seeks to concentrate the investigation and stimulate interest in how non-signatory States might be included in the discussion of the role and implications of international refugee law in general. There are four primary sections to the article: Part 2 looks at the 1951 Convention's drafting process and its place in current scholarship on international refugee law (Janmyr, 2021a); Part 3 talks about the Convention's state of accession and the reasons behind non-ratification; Part 4 looks into the UNHCR's role in non-signatory states, and Part 5 concentrates on non-signatory states' involvement in global fora and soft law instruments as a means of contributing to the development of international refugee law.

## 2. Literature review

The majority of states who did not join the 1951 Convention were already regarded as "exceptions" at the time the UN General Assembly started drafting the Convention due to their classification as "non-European." The UN Conference of Plenipotentiaries signed the accord on July 28, 1951, bringing Resolution 8(I) of February 12, 1946 to a close (Sabel, 2012). In fact, throughout the composition process, several nations in the global south complained about the projected absence of a general application, and research on this process has consistently demonstrated that in many respects, it and the Convention that followed failed to take into account a world outside of Europe. As Hathaway has emphasized, the Convention was drafted primarily to fulfill Eurocentric purposes, with the interests of powerful States controlling the process, rather than to address global refugee issues (Krause, 2021). As Aleinikoff has argued, in this respect, the 1951 Convention may be viewed as a regional instrument whose universalistic potential and foundations were realized with the admission of several non-European countries and the 1967 procedure (Aleinikoff, 1991). Furthermore, Chimni discusses the "myth of difference" that existed at the time the Convention was being drafted, which held that non-European migrants were fundamentally different from European refugees and hence needed remedies outside of it. The Convention's attempt to exclude non-European, non-white migrants "by design and effect racialized the first international legal definition of a refugee," Achiume claims. However, several current non-signatory States did participate at different points in the Convention's drafting process, including Lebanon, Saudi Arabia, Syria, Iraq, Pakistan, and India, even though several of these states were not yet independent (Janmyr, 2021b). A natural goal for a refugee historian who is interested in non-

signatory States would be to conduct archival research to further examine the positions and strategies adopted by the various States (and their representatives) who took part in the Convention's drafting but ultimately decided not to ratify it. A legal historical study of the conditions surrounding decolonization and State successor to the Convention is also necessary.

International refugee law and policy have been greatly influenced by refugees. The first UNHCR High Commissioner, Gerrit Jan Van Heuven Goedhart, had been forcefully transferred as a result of World War II and Nazism (Harley, 2021). Because he feared being persecuted by German-occupied troops, he was obliged to leave the Netherlands in 1944. During the German occupation, Goedhart co-edited the underground publication *Het Parool*, which was distributed by the Dutch Resistance. Thirty-seven of his newspaper colleagues were put to death during his tenure, while other colleagues were detained and sent to detention camps (Cosemans, 2021). In addition, his brother was put to death, and Goedhart's arrest was rewarded by German soldiers. Goedhart eventually managed to get away and seek safety in London, where he was named the Netherlands' Minister of Justice. Rather than attempting to minimize the impact of this personal experience on his work and thinking about refugee protection, the historical record of Van Heuven Goedhart's time as the first High Commissioner of UNHCR shows made significant interventions often, drawing from his own experience of being forcibly relocated. When Van Heuven Goedhart was considering becoming the first High Commissioner, for instance, on December 13, 1950, the General Assembly received his curriculum vitae, in which he made clear that he had been involved in the Dutch resistance movement and had fled to England in 1944 (Harley, 2021). Apart from his subsequent experience as the Chairman of the Netherlands Delegation to the General Assembly, Van Heuven Goedhart thought that the Member States should consider this information. Whereas J. Donald Kingsley, an American, had been the Director-General of the International Refugee Organization, he had no personal experience with relocation. This was the second candidate that the UN Secretary-General had suggested for consideration.

A draft essay on "Refugees unlawfully in the country of refuge" from 1951 was inspired by Van Heuven Goedhart's own experience of being uprooted. To defend refugees' exemption from punishment when they must go via other nations to receive protection, he talked about his flight to England. Going into hiding for five days in Belgium, Goedhart fled the Netherlands in 1944 because of persecution (Harley, 2021). With fears of persecution, he had to pass through numerous

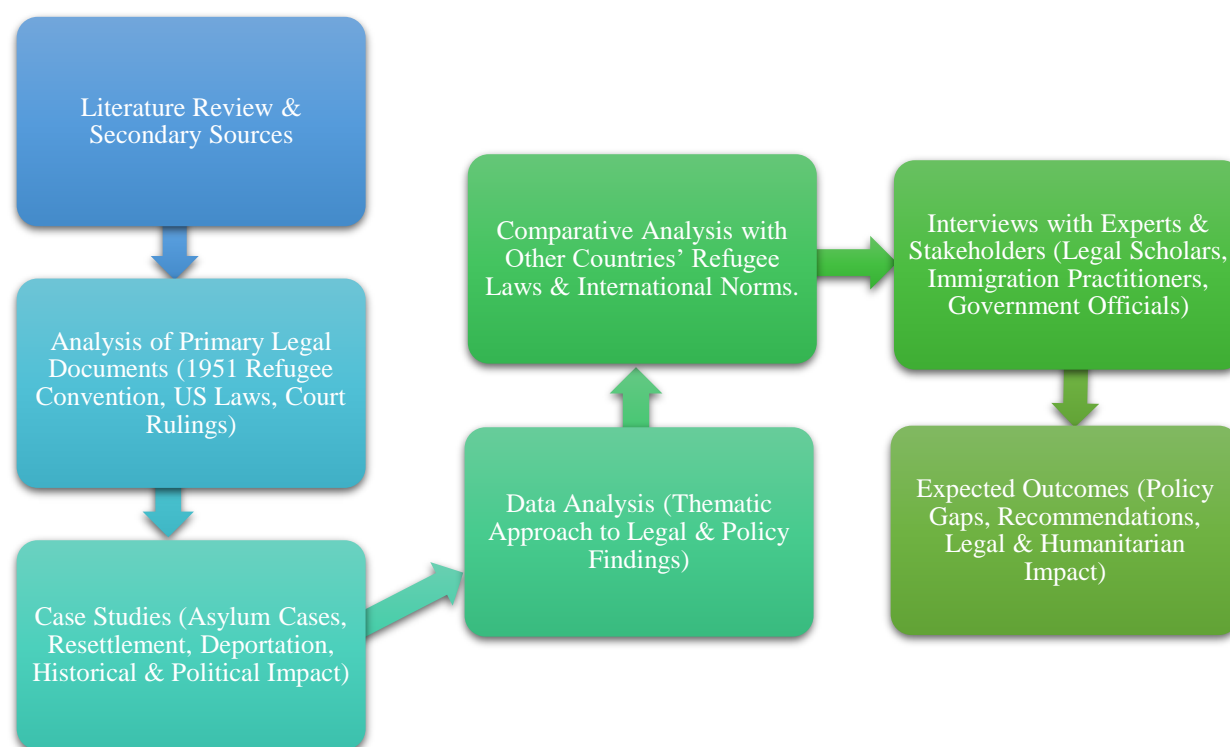
countries until he could enter Gibraltar, where the resistance organization assisted him in doing so. These experiences were documented in the *travaux préparatoires* of the Conference of Plenipotentiaries' fourteenth conference. In his remarks, UNHCR High Commissioner Van Heuven Goedhart stressed the value of direct connection between the agency and refugees. He contended that punishing migrants for not going straight to their nation of asylum would be regrettable. As long as refugees are fleeing directly from a place where their life or freedom is in danger, present themselves immediately, and have a legitimate reason for their illegal entry or presence, States are not allowed to penalize them for it under the adopted version of Article 31(1) (Goodwin-Gill, 2001). When it comes to the significance of involving refugees in choices that impact them, Van Heuven Goedhart's own experiences as a refugee and the leader of an international organization also had an impact on his perspective. He invested a lot of time and effort into setting up and obtaining funds for field offices in Europe, Cairo, Bogotá, and Hong Kong, among other nations where a sizable refugee population resides (Harley, 2021). The UNHCR's mission continues to be fundamentally focused on this field-based approach to protection.

### 3. Methodology

To evaluate the United States' compliance with the principles set out in the 1951 Refugee Convention and its 1967 Protocol, the research technique for the paper will be a multi-step procedure that includes qualitative analysis, case studies, and legal examination. The detailed procedure of this study is depicted in Fig 1. The following essential elements will comprise the methodology:

#### 3.1. Analysis of the US Legal and Policy Framework in a Documentary

This section will look at important US legislation, executive orders, rules, and guidelines that control the asylum and refugee processes. Particularly, the parts that deal with asylum and refugee status, such as the clauses of INA § 207 for refugee status and INA § 208 for asylum. We will look at the Act's applicability and importance in contemporary refugee policy, which brought US law into line with international refugee safeguards. Important executive orders (such as those about border security, travel bans, and refugee admissions) will be examined to see if they are consistent with the 1951 Refugee Convention. To assess how the US interprets and applies the requirements of the Refugee Convention, these will be examined. An analysis of pertinent decisions made by US courts—specifically, the US Supreme Court, Ninth Circuit, and immigration courts—will shed light on how the US legal system interprets international refugee law.



**Fig. 1.** Step-by-step procedure for the 1951 Refugee Convention.

### 3.2. Comparative Analysis

The concepts outlined in the 1951 Refugee Convention and its 1967 Protocol will be compared and contrasted with other US policies. Contrast between the Convention's definition of "refugee" and how it is interpreted in the United States. It is an examination of how the United States complies (or does not comply) with the concept of non-refoulement, which forbids the repatriation of persons to nations where they would be subject to persecution. By international law, this entails determining whether the US offers fair and easily accessible processes for those requesting refugee status. In comparison to international standards, this will examine US detention methods, family separation policies, and how refugees and asylum seekers are treated under current administration policies.

### 3.3. Case Study Analysis

Several case studies will be carried out to illustrate particular examples of US refugee policy in action. With an emphasis on how resettlement numbers have changed over time and how political, security, and humanitarian considerations have impacted these decisions, this case study will examine the development of the US refugee resettlement program. The executive order from 2017 that limited entrance for refugees from several countries with a large Muslim population will be evaluated for compliance with the 1951 Refugee Convention's provisions, namely non-discrimination and non-refoulement. This policy will be examined for conformity with the Convention's provisions on the right to seek asylum and protection from return to persecution. The policy compelled asylum applicants to remain in Mexico while their applications

were processed. We will use the current spike in asylum requests at the southern border as a case study to assess if US policy complies with international commitments on asylum processing and protection.

### 3.4. Interviews and Expert Testimony

Major stakeholders will be interviewed to get a range of viewpoints about US compliance with the 1951 Refugee Convention, including academics with expertise in US immigration law and international refugee law. Specialists who work for think tanks or NGOs that address issues related to asylum and refugees. Activists and lawyers for immigration who deal directly with refugees and asylum seekers. To learn more about the internal decision-making procedures about refugee and asylum rules, interviews with personnel employed by US immigration authorities (such as USCIS or CBP) will be attempted if at all possible. These interviews will shed light on the degree of US compliance with international refugee law from a theoretical and practical standpoint.

### 3.5. Statistical and Data Analysis

The patterns in the admission of refugees to the United States throughout time will also be investigated through a quantitative study. To find patterns in the application of the policy, statistics on the admissions, applications, and approvals of refugees will be examined. We'll also look at comparative data on worldwide refugee patterns and how the US fits into them.

## 4. Results and Discussion

### 4.1. Asylum Applications and Decisions



This section can provide data on the number of asylum seekers arriving at the U.S. border, the number of applications filed, and the approval/rejection rates.

**Table 1.** U.S. Asylum Applications and Grant Rates (2000-2022)

Fiscal Year	Asylum Applications	Asylum Grants	Asylum Denials	Grant Rate (%)
2000	60,300	19,570	23,300	35%
2010	53,000	24,500	21,000	46%
2015	84,000	26,000	28,000	31%
2020	92,000	27,000	55,000	29%
2022	150,000+	40,000+	70,000+	27%

**Source:** U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Justice, Transactional Records Access Clearinghouse (TRAC).

The spike in Central American refugees and migrants in 2015, especially from Honduras, El Salvador, and Guatemala is shown in the Table 1, which shows trends in asylum applications and approval rates. As a result of shifting U.S. policy and judicial interpretations of asylum petitions, the asylum award rate fluctuates every year. Asylum award rates were high under the Obama administration, frequently surpassing 40–50%. Trump's tougher tactics, such as the "Remain in Mexico" policy, which let asylum claimants wait in Mexico while their claims were being processed, caused the rate to drop precipitously. As a result, fewer asylum requests were granted, and more people

were placed in jail and deported more quickly. Higher grant rates suggest a more accepting stance and acknowledgment of the legality of asylum applications, which is another indicator of how the American judicial system handles them. Examining the history of asylum petitions and acceptance rates aids in determining how well the American asylum system protects vulnerable groups and how easily accessible it is. Table 2 shows U.S. refugee resettlement by region (2000-2023).

#### 4.2. Refugee Resettlement Numbers by Region and Country

This data would be useful for comparing the global distribution of refugee resettlements and the U.S.'s role in this process.

**Table 2:** U.S. Refugee Resettlement by Region (2000-2023).

Fiscal Year	Total Refugees Resettled	Europe & Central Asia	East Asia	South Asia	Africa	Near East & South Asia	Latin America & Caribbean
2000	76,000	17,000	14,000	5,000	27,000	8,000	5,000
2005	55,000	9,000	10,000	5,000	15,000	8,000	3,000
2010	74,654	22,000	15,000	6,000	19,000	8,000	4,000
2015	69,933	10,000	19,000	7,000	18,000	12,000	3,000
2020	11,814	2,100	2,300	1,500	3,000	1,500	500
2022	25,465	4,500	7,500	2,500	5,000	4,000	1,000

**Source:** U.S. Department of State, Refugee Processing Center.

Refugees from Africa, Europe, Asia, Latin America, and the Middle East have increased significantly in the United States between 2000 and 2020. Resettlement rates differed by area, with the Middle East emerging as a major source of admissions during the Iraq conflict and the civil conflict in Syria. In the mid-2000s, a significant percentage of U.S. African refugees, particularly those from Sudan and Somalia, were also resettled. Resettlement of refugees displaced by U.S.-related or U.S.-influenced conflicts and humanitarian crises is a common practice in the United States, which is frequently impacted by international conflicts and foreign policy choices. For refugees from the Middle East and Africa, the Trump administration's

2020 cutback in refugee admissions to 18,000 was especially noteworthy. With an emphasis on a more comprehensive resettlement plan and more admissions from Afghanistan and Ukraine, the Biden administration seeks to reestablish the United States' commitment to refugee resettlement.

4.3. Impact of Border and Immigration Policies on Refugees

This Table 3 will help contextualize how changes in U.S. border and asylum policies affect refugee access, protection, and resettlement.

Table 3. Key U.S. Border Policies Impacting Refugee and Asylum Seeker Access (2017-2024)

Policy Name	Date Implemented	Effect on Refugees/Asylum Seekers	Status
Executive Order 13769	Jan 27, 2017	"Muslim Ban" restricting entry from 7 Muslim-majority countries	Suspended, partly overturned
Remain in Mexico	Jan 2019	Asylum seekers are required to wait in Mexico during proceedings	Reinstated, later overturned
Title 42 Expulsions	March 2020	Allowed for immediate expulsion due to COVID-19 public health concerns	Ongoing (until 2024)
Asylum Ban (Transit Rule)	July 2020	Bars asylum applications for migrants passing through third countries	Active, with some exceptions
Biden's Refugee Resettlement Plan	Feb 2021	Raised refugee ceiling and reestablished U.S. commitment to resettlement	Active

**Source:** U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), U.S. State Department, Legal Advocacy Organizations (e.g., ACLU, Human Rights Watch).

This chart examines how important U.S. border policies affect refugees and asylum seekers and identifies barriers they face in their quest for safety. They govern whether refugees can be deported or forced to remain in another country, apply for asylum, or remain in the United States while their case is pending. These policies range from new processes under Biden to Executive Orders under President Trump. When the "Remain in Mexico" policy forced asylum applicants to stay in Mexico while their applications were processed in 2019, it restricted their access to the U.S. asylum system. To stop the spread of the COVID-19 virus, the United States was able to quickly remove asylum seekers under the Title 42 policy. Because of worries that these

measures would violate international law, especially the non-refoulement principle, they have generated controversy. The U.S.'s adherence to international commitments under the Refugee Convention and human rights legislation is evaluated in part by the table.

4.4. U.S. Compliance with Non-Refoulement and International Legal Obligations

Data on the number of refugees who were deported or returned to countries where they face persecution, as well as legal challenges against such deportations, would help assess compliance with the principle of non-refoulement under international law. This table 4 would help to illustrate instances where U.S. practices may have come into conflict with international obligations, particularly the prohibition on refoulement (returning people to countries where they are at risk of persecution).

**Table 4.** Legal Challenges and Deportations Under U.S. Policies (2010-2023).

Fiscal Year	Deportations of Refugees/Asylum Seekers	Legal Challenges Filed	Cases of Non-Refoulement Violations
2010	3,000	450	50
2015	2,200	650	30
2020	4,500	1,200	150
2022	5,000	1,500	200

**Source:** Transactional Records Access Clearinghouse (TRAC), U.S. Department of Justice, ACLU.

The Table 4 displays the quantity of deportation cases the United States courts have heard as well as potential violations of international protection obligations. Many cases were litigated during periods of increased deportations, such as the Trump administration, particularly when the deportation of individuals was truly endangering their lives. Political unrest and gang violence in Guatemala, El Salvador, and Honduras were the main causes of legal problems. Additionally, the graphic highlights the ways that court cases and advocacy groups have impacted outcomes by displaying trends in the legal choices accessible to individuals who are facing deportation. The number of challenges filed shows how well U.S. immigration and asylum courts address any violations of refugee rights.

## 5. Conclusion

A complicated interaction between domestic politics, national security considerations, and international legal duties has influenced U.S. policy regarding refugees and asylum seekers. The information in the tables provides insightful information about the evolution of U.S. asylum and refugee policy throughout time, showing how closely the United States has followed or deviated from its commitments under international law. Refugee resettlement goals are influenced by political leadership, as seen by the varying numbers of admissions throughout time, especially the sharp decline during the Trump administration and the following rise during the Biden administration. These changes reflect the U.S.'s wider involvement in global displacement problems as well as shifting geopolitical factors. The data also

demonstrates the real-world difficulties that asylum seekers have in the American judicial system, including the dramatic drop in asylum acceptance rates during the Trump administration, in conjunction with laws like Title 42 and Remain in Mexico. These stringent practices create significant concerns with the United States' compliance with its commitments under the 1951 Refugee Convention, notably the principle of non-refoulement, in addition to reflecting a trend towards deterrence. The information also emphasizes how U.S. policies have matched global migratory trends and the geographical priorities of U.S. refugee resettlement. The United States, for instance, has been quite active in resettling refugees from Afghanistan after the U.S. exit and from the Middle East, notably after the Syrian crisis. In stark contrast to the Biden administration's greater resettlement pledges, the Trump administration's lower refugee resettlement figures suggest a more limited strategy. In conclusion, the information shows how international refugee duties and domestic immigration policy can clash, with international commitments occasionally clashing with domestic political goals. Asylum and resettlement require a more humane and comprehensive strategy that strikes a balance between national security and adherence to international protection norms and human rights.

## 5.1. FUTURE SCOPE

The availability of primary materials will be a constraint on the research, particularly about government decision-making procedures and official interviews. The results will also be current as of the time of writing, taking into account the fact that US refugee policy is always changing and that legal interpretations and policy may also change over time.

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