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Refugee Protection in Non-Signatory States: Bangladesh, the Rohingya, and the Limits of Consent-Based International Law

ABSTRACT

Most of the world's refugees are hosted by developing States, many of which are not parties to the 1951 Refugee Convention and its 1967 Protocol. This article examines how refugee protection operates in such non-signatory contexts, focusing on Bangladesh as a principal host State for the Rohingya population. It addresses a central legal problem: the absence of formal Convention obligations and the resulting implications for the scope and stability of refugee rights. The study pursues three objectives. First, it explores the legal foundations of refugee protection in States outside the Convention regime. Second, it analyses Bangladesh's obligations under international human rights law and customary international law. Third, it evaluates the structural limitations of contemporary refugee governance, particularly its reliance on State consent and uneven global burden-sharing. Adopting a doctrinal and analytical methodology, the article argues that refugee protection in non-signatory States does not exist in a legal vacuum. Instead, it is sustained through human rights treaties, customary norms such as non-refoulement, and cooperation with international institutions. However, this framework provides only a minimum standard of protection and lacks mechanisms to ensure consistent, rights-based integration. The findings reveal structural weaknesses in the international refugee system that extend beyond Bangladesh and reflect broader challenges within global refugee governance.

KEYWORDS

Refugee Protection; Non-Signatory States; Rohingya Refugees; Bangladesh; International Human Rights Law; Customary International Law; State Consent; Burden-Sharing; Global Refugee Governance; Non-Refoulement.

1. INTRODUCTION

Despite hosting over one million Rohingya refugees, Bangladesh has not acceded to the Convention Relating to the Status of Refugees or its Protocol Relating to the Status of Refugees. This reflects a broader regional pattern: except Afghanistan (which acceded in 2005), no South Asian State is party to the Convention. Governments in the region have frequently argued that the 1951 Convention is historically Eurocentric and inadequately responsive to contemporary displacement realities in the Global South.¹ As B.S. Chimni observes, the refugee protection record of South Asian States “is (in relative terms) no poorer than the current record of the rich North with its formal commitment to the Convention”.²

Although Bangladesh remains a non-signatory, it does not operate in isolation from international refugee norms. The Supreme Court of Bangladesh in *RMMRU v Government of Bangladesh*³ directly referenced the Refugee Convention and suggested that its principles have attained customary international law status, binding irrespective of formal ratification. Bangladesh also permits the United Nations High Commissioner for Refugees (UNHCR) to operate within its territory and has been a member of the Executive Committee (ExCom) of the High Commissioner’s Programme since 1995.⁴ Moreover, Bangladesh participated in global refugee processes, reaffirming the Convention’s continuing relevance, including high-level ministerial engagements. The Rohingya situation, therefore, illustrates a broader tension within international refugee governance where protection in major host States frequently occurs without formal treaty accession, exposing both the flexibility and the structural limits of a consent-based international legal system.

2. THE INTERNATIONAL REFUGEE PROTECTION FRAMEWORK

2.1 *The 1951 Convention System*

According to the 1951 Refugee Convention⁵, a refugee is someone outside their country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. This definition establishes both territorial

¹ Janmyr M, ‘*The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda*’ (2021) 33 *International Journal of Refugee Law* 188.

² CHIMNI BS, ‘*The Geopolitics of Refugee Studies: A View from the South*’ (1998) 11 *Journal of Refugee Studies* 350.

³ Writ petition no. 10504 of 2016, Bangladesh: Supreme Court, 31 May 2017.

⁴ Fresia, G. (2014). The ‘humanitarian’ as a site of citizenship: The example of the UN refugee agency (UNHCR). *Anthropological Theory*, 14(4), 515.

⁵ The 1951 Refugee Convention Relating to the Status of Refugees, Article 1(A)(2).

displacement and individualized persecution as basic elements.

The foundation of the Convention Relating to the Status of Refugees is the principle of non-refoulement⁶, which forbids States from returning a refugee to a territory where their life or freedom would be endangered on account of race, religion, nationality, membership of a particular social group, or political opinion. This principle forms the foundation of international refugee protection and is widely regarded as a norm of customary international law.

The Convention Relating to the Status of Refugees affirms access to fundamental socio-economic rights, including public education (Article 22), wage-earning employment (Article 17), self-employment (Article 18), public relief and assistance (Article 23), housing (Article 21), and freedom of movement (Article 26). These provisions are designed to ensure that refugees can live in dignity and achieve a degree of self-reliance while displaced.

At the same time, the Convention outlines the duties of refugees toward their host country under Article 2, requiring them to abide by national laws and regulations. It also contains exclusion clauses in Article 1F, which deny refugee status to individuals involved in war crimes, crimes against humanity, serious non-political crimes, or acts contrary to the purposes and principles of the United Nations.

2.2 Regional and Complementary Protection

In Africa, Article I (2) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, a binding legal instrument open to all Member States of the African Union, expands the refugee definition beyond the 1951 Convention framework to,

*"Every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality."*⁷

In Latin America, Conclusion III of the Cartagena Declaration on Refugees, a non-binding regional instrument that has nevertheless been incorporated into the domestic laws and policies of several Central and South American States, extends the refugee definition to:

⁶ The 1951 Refugee Convention Relating to the Status of Refugees, Article 33.

⁷ 'Refugee Definition | UNHCR' (UNHCR December 2025)

<<https://emergency.unhcr.org/protection/legal-framework/refugee-definition>>
accessed 21 February 2026.

*"persons who have fled their country because their lives, safety, or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order."*⁸

In Addition, the United Nations High Commissioner for Refugees (UNHCR) uses the term "refugee" broadly to include those needing international protection due to threats to life or security.⁹

In operational terms, refugee protection is primarily governed by national law. In States party to the Convention Relating to the Status of Refugees, the Convention definition is usually incorporated into domestic legislation. Bangladesh, however, is not a party to the Convention and has no specific refugee law; the Rohingya are administratively designated as "Forcibly Displaced Myanmar Nationals" rather than legally recognized refugees.¹⁰

In statistical and legal contexts, the term "refugee" may refer specifically to individuals formally recognized through a status-determination process conducted by a State or the United Nations High Commissioner for Refugees (UNHCR). In Bangladesh, such recognition has largely occurred through coordination with UNHCR rather than a comprehensive national asylum framework.¹¹

3. BANGLADESH AS A NON-SIGNATORY HOST STATE

3.1 *Legal Status of the Rohingya*

The 2017 Rohingya influx into Bangladesh has significantly affected the host communities in Cox's Bazar, leading to various socio-economic, environmental, and stability-related challenges. Beginning on August 25, 2017, a brutal military crackdown in Myanmar's Rakhine State triggered a massive influx of over 700,000 Rohingya refugees into Bangladesh. This humanitarian crisis forced nearly 1 million people into overcrowded, temporary settlements in Cox's Bazar. The rapid influx created immense strain on infrastructure, causing critical shortages of food, shelter, and sanitation, which necessitated a massive, ongoing international response.¹²

Bangladesh does not have any specific domestic legislation, national

⁸ Ibid.

⁹ Ibid.

¹⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

¹¹ UNHCR, *Global Trends: Forced Displacement in 2024* (2025).

¹² Md. Touhidul Islam and others, 'The 2017 Rohingya Influx into Bangladesh and Its Implications for the Host Communities' (2022) 10 *Asian journal of peacebuilding* 487.

refugee law, or comprehensive policy framework governing the status and rights of refugees and asylum seekers. Rohingya in Bangladesh are classified as "Forcibly Displaced Myanmar Nationals" rather than refugees, as Bangladesh is not a party to the 1951 Refugee Convention. They have no legal right to work or freedom of movement, and are restricted to camps, largely dependent on humanitarian aid. Their status is precarious, lacking formal legal recognition, but they receive protection via biometric cards. Their rights are governed by a patchwork of agreements and the Bangladesh Constitution, which provides some protections but remains largely unenforceable.¹³ In the absence of formal laws, refugee situations are managed through ad hoc policies, executive orders, and confidential Memoranda of Understanding (MoUs) between the government and international agencies like the UNHCR.¹⁴

In *RMMRU v. Government of Bangladesh* (2017), the High Court Division of the Supreme Court of Bangladesh held that Article 33 of the 1951 Refugee Convention, prohibiting non-refoulement, is part of customary international law binding on Bangladesh. The landmark ruling protected Rohingya refugees from forced return and affirmed their right to judicial protection.¹⁵

3.2 Policy-Based Protection Model

Bangladesh is one of the world's top ten refugee-host countries, primarily accommodating Rohingya refugees fleeing persecution from Myanmar. The country lacks a formal legal framework for refugee protection, relying instead on a mercy-based approach (i.e., their protection is not 'rights-based', rather it depends on the mercy of the executive).¹⁶ Refugees living in camps are not allowed to move freely or take up formal employment. The government has defended these measures by pointing to the serious economic and social pressures it faces in supporting its own citizens. In recent years, however, some limited access to education has been opened for refugee children, allowing them

¹³ Sanjeeb M, 'The Protracted Rohingya Refugee Situation in Bangladesh towards Reducing Precarity and Increasing Responsibility Sharing' (2024) <<https://www.asileproject.eu/wp-content/uploads/2024/02/ASILE-POLICY-BRIEF-Bangladesh.pdf>>.

¹⁴ Iram Sarver and Sarita Kumari, 'Beyond Ad Hocism: Towards Rights based Refugee protection in India' (2025) 2(1) Synergy: International Journal of Multidisciplinary Studies 105, 106–107 <https://sijmds.com/index.php/pub/article/download/68/51> accessed 21 February 2026.

¹⁵ 'Refugee and Migratory Movements Research Unit (RMMRU) v. Government of Bangladesh, Writ Petition No. 10504 of 2016, Bangladesh: Supreme Court, 31 May 2017 | Rights Mapping and Analysis Platform' (*Unhcr.org*2016) <<https://rimap.unhcr.org/node/42376>> accessed 21 February 2026.

¹⁶ Borhan U and others, 'Country Fiche BANGLADESH' <https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Bangladesh_Final_Pub.pdf>.

a modest opportunity for learning despite broader restrictions.¹⁷ As the refugee conventions are not incorporated into domestic law, protection depends largely on executive discretion and administrative policy rather than enforceable legal entitlements. In such contexts, safeguards can shift with political priorities, resource constraints, or security concerns, leaving refugees reliant on humanitarian practice instead of clearly guaranteed, rights-based legal protection.

4. STRUCTURAL LIMITS OF INTERNATIONAL LAW IN NON-SIGNATORY STATES

4.1 Consent and Sovereignty

International law is often criticized as not being "real law" due to its lack of centralized enforcement and its tendency to favor powerful states. The structural limits of international law in non-signatory states stem from the foundational principle of state consent, which dictates that treaties generally do not create obligations or rights for third-party states without their consent. While international law aims for universality, its application to non-signatories is limited by the lack of centralized enforcement, the voluntarist nature of treaty law, and the requirement of showing that norms have crystallized into Customary International Law (CIL).¹⁸ Sovereignty also functions as a fundamental "structural shield" in international law by defining the limits of legal obligation, particularly for non-signatory states.¹⁹ International law lacks a universal, coercive, or compulsory judiciary, making enforcement against non-signatory states difficult.

4.2 Weak Enforcement Architecture

The international architecture for refugee protection, largely led by the United Nations High Commissioner for Refugees (UNHCR) and based on the 1951 Refugee Convention, faces significant "weak enforcement" challenges due to its dependence on state sovereignty and limited, voluntary, or "soft" compliance mechanisms. This structure often prioritizes state control over the rights of refugees, with UNHCR serving as a "quasi-government" in camps without having formal, binding

¹⁷ Ibid.

¹⁸ Posner EA and Goldsmith JL, 'The Limits of International Law Fifteen Years Later' [2021] SSRN Electronic Journal.

¹⁹ Cassel D, 'A Framework of Norms: International Human- Rights Law and Sovereignty' (2001)

<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1840&context=law_faculty_scholarship>.

authority over host governments.²⁰

4.3 Burden-Sharing Deficit

The global refugee situation is characterized by a significant burden-sharing deficit, where the responsibility for hosting, protecting, and funding assistance for millions of displaced people is not evenly distributed among the international community. Developing countries, despite having fewer resources, host the vast majority of refugees, while wealthier nations often provide limited resettlement places and funding.²¹

4.4 Protection vs. Containment

The tension between refugee protection (ensuring safety and rights) and containment (limiting movement and autonomy) is a defining characteristic of modern humanitarian response, frequently resulting in camp confinement, restricted movement, and severely limited employment opportunities for refugees. While camps are intended to provide temporary safety, they often evolve into long-term "spaces of containment" designed to manage mobility rather than foster integration.²² Refugee camps face criticism for human rights violations, including restrictions on freedom of movement and poor living conditions.

5. COMPARATIVE GLOBAL PERSPECTIVE

Global refugee management shows a stark divide: developed nations use "externalization" to block asylum seekers in transit countries, while many Asian/Middle Eastern non-signatory states manage arrivals through ad-hoc, non-rights-based policies. In contrast, Africa employs regional frameworks that generally prioritize protecting refugees, though challenges remain.²³

²⁰ Davutoglu P, 'The Architecture of Containment: Refugee Protection in a Postliberal Order' (2025) 79 *International Organization* <<https://www.cambridge.org/core/journals/international-organization/article/abs/architecture-of-containment-refugee-protection-in-a-postliberal-order/70C551A933748D3CFF0174CB86351F64>> accessed 21 February 2026.

²¹ 'Resettlement | UNHCR Nordic and Baltic Countries' (*UNHCR Nordic and Baltic Countries* 2026) <<https://www.unhcr.org/nordic-and-baltic/resettlement>> accessed 21 February 2026.

²² 'Kirsten McConnachie Camps of Containment: A Genealogy of the Refugee Camp' <https://ueaeprints.uea.ac.uk/id/eprint/67827/1/Published_manuscript.pdf>.

²³ Rausis F, 'Restrictive North versus Permissive South? Revisiting Dominant Narratives on the Evolution of the Refugee Regime' [2026] *Journal of Immigrant & Refugee Studies* <<https://www.tandfonline.com/doi/full/10.1080/15562948.2023.2266419>> accessed 21 February 2026.

- Externalization practices in developed countries refer to policies designed to shift the responsibility for managing refugee claims, asylum processing, and border control to third countries, international waters, or offshore centers. This strategy, favored by many Global North nations to reduce the number of asylum seekers arriving on their territory, often involves "offshoring" responsibilities to less wealthy, transit, or neighboring countries.²⁴
- Many non-signatory states in Asia and the Middle East manage refugee arrivals through ad-hoc, non-rights-based policies that prioritize national security and social stability over formal refugee rights. Key countries in South/Southeast Asia (India, Bangladesh, Pakistan, Malaysia, Indonesia) and the Middle East (Iraq, Lebanon, Jordan, Gulf States) are not parties to the 1951 Refugee Convention. Consequently, there is no domestic legal, rights-based structure to handle asylum claims.²⁵
- The African Union (AU) features a strong normative framework, including the 1969 OAU Refugee Convention, which often provides wider definitions of refugees and stronger protections than the 1951 Convention. It offers a distinct, rights-based, and proactive contrast to the restrictive "externalization" practices commonly used by Western nations and the ad-hoc, non-signatory approach in parts of Asia and the Middle East.²⁶

6. REFORM PATHWAYS AND NORMATIVE DEVELOPMENTS

In non-signatory States, refugee protection has increasingly evolved through flexible and cooperative mechanisms rather than formal treaty accession. Although such States are not parties to the Convention Relating to the Status of Refugees, they are progressively integrated into the international refugee regime through soft law instruments, institutional participation, and operational partnerships.²⁷

A central development is the Global Compact on Refugees (GCR), adopted by the UN General Assembly in 2018. While non-binding, the GCR establishes a framework for more predictable and equitable burden- and responsibility-sharing, encouraging financial solidarity,

²⁴ Krause U, 'Externalization, the Commodification of Asylum, and Implications for International Refugee Law - Externalizing Asylum' (*Externalizing Asylum* 14 June 2024) <<https://externalizingasylum.info/externalization-the-commodification-of-asylum-and-implications-for-international-refugee-law>> accessed 21 February 2026.

²⁵ Barbour Brian, "Beyond Asian exceptionalism: refugee protection in non-signatory States" www.fmreview.org/issue67.

²⁶ Fact Sheet | UNCHR, 1969 OAU Refugee Convention, May 2019.

²⁷ Maja Janmyr, The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda, *International Journal of Refugee Law*, Volume 33, Issue 2, June 2021, Pages 188–213, <https://doi.org/10.1093/ijrl/eeab043>.

technical cooperation, and inclusion of host communities.²⁸ Even non-signatory States participated in its negotiation and implementation, reflecting a shift from strict treaty obligation to collaborative governance.

Non-signatory States also engage actively with the United Nations High Commissioner for Refugees (UNHCR), including through membership in the Executive Committee of the High Commissioner's Programme. Through memoranda of understanding (MoUs) and operational arrangements, governments often allow UNHCR to conduct refugee status determination and coordinate protection efforts.²⁹ This model creates a form of "shared administration," enabling States to maintain sovereignty while facilitating international protection standards.

Reform pathways further emphasize voluntary repatriation, local integration, and third-country resettlement as negotiated solutions rather than strictly enforceable legal duties. In practice, burden-sharing is strengthened through financial assistance, capacity-building initiatives, and development-oriented support for host communities. These normative and institutional developments illustrate how refugee protection in non-signatory contexts is sustained through cooperation, soft law, and pragmatic engagement rather than formal accession alone.

7. CONCLUSION

This article has examined refugee protection in non-signatory States through the case of Bangladesh and has identified a structural limitation within the consent-based architecture of international refugee law. Where States have not acceded to the 1951 Refugee Convention, protection frameworks tend to rely on executive discretion, administrative practice, and cooperation with international organizations rather than binding domestic incorporation of treaty standards. This reflects a broader structural feature of international law: obligations are strongest where formal consent exists, and more flexible where it does not.

Bangladesh serves as an illustrative example rather than an exceptional case. Its response to the Rohingya displacement shows that substantial humanitarian protection can be extended in the absence of treaty ratification. At the same time, the absence of a comprehensive domestic refugee framework limits the legal certainty, scope of rights, and long-term integration prospects available to displaced populations. Protection

²⁸ Annual report pursuant to General Assembly Resolution 428 (V), 'Report of the United Nations High Commissioner for Refugees' (<https://docs.un.org/en/A/79/122026>) <<https://docs.un.org/en/A/79/12>> accessed 22 February 2026, Page 2.

²⁹ UNHCR Statute (adopted 14 December 1950) UNGA Res 428(V).

is maintained at a basic humanitarian level but does not evolve into a fully rights-based regime grounded in enforceable legal guarantees.

The findings suggest that international law currently provides a minimum humanitarian ground, particularly through principles such as non-refoulement and broader human rights obligations, but does not ensure equitable responsibility-sharing or strong integration pathways in non-signatory contexts. Addressing this gap requires strengthening cooperative mechanisms, enhancing predictable burden-sharing arrangements, and supporting domestic legal development. Structural reform of refugee governance, rather than treaty ratification alone, appears necessary to resolve sovereignty concerns with sustainable protection outcomes.