
THE GREY ZONE OF ASYLUM: BALANCING REFUGEE PROTECTION WITH EXCLUSION FOR INTERNATIONAL CRIMES

Nandita Saha, Symbiosis Law School, Hyderabad (SLSH), Hyderabad, India

ABSTRACT

In this research paper, the interaction between international criminal law and refugee law is reviewed with special focus on how “Article 1F of the 1951 Refugee Convention” works. Although the law on refugees aims at affording protection to persons fleeing persecution on the basis of race, religion, nationality, political opinion, or membership of a specific social group, Article 1F places a major constraint by denying protection to persons who have committed serious international offences like war crimes, crimes against humanity or orchestrated some heinous non-political crimes.

The paper examines how international criminal law principles affect the way asylum is decided and how states decide whether to give asylum seekers protection or not because they were involved in serious criminal activities. It also examines the legal and practical issues that arise before refugee authorities, such as the challenge of obtaining credible evidence, the challenge of discerning the voluntary and involuntary involvement in criminal acts and the fairness in procedures as evaluated in the process of exclusion. Special attention is paid to such complicated cases as child soldiers and people who are forced to engage in military conflict.

Another issue that is addressed in the paper is the role of universal jurisdiction and international cooperation in holding people accountable, given that the non-refoulement principle cannot safely ensure that the excluded individuals are safely returned to their home countries. The paper finds that there should be a fair balance between safeguarding the real refugees and avoiding abuse of the refugee protection system by perpetrators of heinous international crimes.

Keywords: “Refugee law, International Criminal law, War crimes, Crimes Against Humanity, Genocide”.

I. INTRODUCTION

This research paper attempts to look at how the link between international criminal law and migration is complicated and how it raises many important questions, by bringing up issues about the rights of migrants, the duties of countries, and who should be held responsible for abuse of human rights.¹“International Criminal Law and refugee law are connected”² The main focus is on how ideas from International Criminal Law, especially 'war crimes, crimes against humanity', are used when applying 'Article 1F of the 1951 Refugee Convention'³. Normally, what happens is that the people who apply for asylum are protected if they can show they have a well-founded 'fear of persecution because of their religion, race, nationality, political opinion, or membership in a particular group'⁴. Whereas 'Article 1F' makes some exclusions where the protection is not given, and those are when:

If the person has committed crimes against “peace, war crimes, or crimes against humanity”, as these are defined in international treaties, if the person has committed serious crimes that are not political in nature, outside the country of refuge, and before they arrived there ⁵and if the person has committed acts that go against the main principles and goals of the United Nations⁶.

This, however, shows that refugee law is not meant to protect people who are responsible for the most serious crimes under international law. ⁷International Criminal Law is considered a set of rules that is used to punish people who commit the worst crimes, like “genocide, war crimes, crimes against humanity, and aggression”. These crimes are so serious in nature that the whole world cares about them and wants that those criminals who have committed them to escape the punishment⁸. When it comes to migration, international criminal law matters in many ways. Migrants often face problems like abuse, exploitation, violence, or being put in

¹ “CATHRYN COSTELLO, MICHELLE FOSTER & JANE McADAM EDS, THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW (Oxford Univ. Press 2021)”.

² “GUY S. GOODWIN GILL & HANE McADAM, THE REFUGEE IN INTERNATIONAL LAW 233-234 (4th ed. 2021)”.

³ “Convention Relating to the Status of Refugees Convention art. 1F, July 28, 1951, 189 U.N.T.S. 137 (hereinafter Refugee Convention)”.

⁴ “Refugee Convention, *supra* note 3, art.1A (2)”.

⁵ “Refugee Convention, *supra* note 3, art.1F(b)”.

⁶ “*Id.* art. 1F(c)”.

⁷ “UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F* ¶ 2 (Sept. 4, 2003)”.

⁸ “Prosecutor v. Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 97 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995)”.

jail without a fair reason⁹. International Criminal law can help by making sure that both the government and people are held responsible if they cause harm to the migrants.¹⁰ Also, migration itself is very hard for many countries to manage, but international criminal law can give guidance on how to protect human rights while making migration policies and actions.¹¹ Today, many people are forced to leave their homes because of war, violence, or fear of harm, and they seek safety and protection in other countries. Every year, many people apply for asylum, hoping that it will build a safer future, but to get this protection, they must prove that they meet the legal definition of a refugee under international law. This means they have to tell their stories in writing and also speak before an official, who decides if their case matches the rules and their story can be believed. For those who apply, this process is often very painful, and they must go over their past experiences again and again and answer difficult questions. Sometimes, the hearing feels like a criminal trial because officials focus on details that could block them from protection. In this way, criminal law becomes part of what is supposed to be a civil process.

Refugee law emerged during the horror of the Second World War¹², and with the establishment of the Refugee Convention. With an aim it set up a system that gave people escaping persecution a chance to live with safety and dignity, which later, the protocol expanded the protection and covered more people, and according to these rules, “a refugee is someone who is outside their home country and cannot return because of a real fear of being persecuted for reasons such as race, religion, nationality, political opinion, or belonging to a particular social group”¹³. But not everyone who fits this meaning is allowed protection. Whereas some people are excluded if they have taken part in serious core crimes “such as war crimes, crimes against peace, or crimes against humanity”, whereas others are left out if they have committed serious non-political crimes before arriving in the country of refuge, or if they have acted against the values of the United Nations which limits and show how “international criminal law and refugee law” are linked, since both decide who should be protected and who should not be.

The exclusion part of the convention cannot be understood without looking at criminal law;

⁹ “UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants*, U.N. Doc. A/HRC/38/41 (Apr. 24, 2018).”

¹⁰ “*Id.* at 45–48.

¹¹ “VINCENT CHETAIL, *INTERNATIONAL MIGRATION LAW* 176-178 (2019).”

¹² “JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* 77-78 (2nd ed. 2021).”

¹³ “Refugee Convention *supra* note 3, art. 1F(b).”

even though asylum hearings are not criminal trials, the purpose of the convention connects it with the criminal law. The convention has two aims: to protect genuine refugees and to make sure that serious offenders do not escape justice. This is a strain since the asylum seekers are not granted rights that are equal to those given to individuals who are subjected to criminal actions, although the denial of asylum may breed dire consequences. The use of these regulatory provisions has a broad impact, given that a significantly larger population of individuals is not subjected to prosecution in international courts but rather through asylum adjudication. Countries use the exclusionary laws differently. In some countries, including Canada, Australia and the United Kingdom, the language of the convention is written directly into domestic law and therefore, leads to a high dependence of the immigration tribunal¹⁴ in these countries on international criminal law concepts. Practically, these tribunals serve as mini replicas of international courts wherein the jurisprudence of criminal law is incorporated in deciding asylum cases. This has, over the years, created a hybrid set of rules that play out, connecting the two systems.

The situation in the United States is not the same; its domestic law does not exactly follow the wording of the convention. Because of this, the role of international criminal law in United States asylum cases is less clear and sometimes does not match the approach taken in other countries.¹⁵

II. Legal Framework Governing Refugees and War Crimes: An Analysis of International and Domestic Legal Framework.

a. The Refugee Convention and Exclusion Clauses

“The 1951 Refugee Convention” is the main agreement that defines who a refugee is and what rights they get. It says that refugees are people who leave their own country because they feel fear or harm or unfair treatment due to their religion, race, nationality, social group, or political opinion¹⁶. But the convention also has rules called exclusion clauses under Article 1F.¹⁷ These rules stop people from becoming refugees if they have committed very serious crimes, even if

¹⁴ “MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS 311-312 (2007)”.

¹⁵ “DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES 63-65 (2021 ed.)”.

¹⁶ “Refugee Convention, *supra* note 3, art.1A (2)”.

¹⁷ “*Id.* art. 1F”.

they claim they are being persecuted

“Article 33 of the Convention has the rule of non-refoulement”. “This means no one should be sent back to a country where they may face danger, persecution, or serious harm”. But if the person is a war criminal, the exclusion rules can override this principle. In such cases, they are denied refugee protection. This way, real refugees still get safety, but war criminals cannot hide behind refugee law.

In addition to the International Convention, many countries have national laws that follow these rules. For example, South Africa, the United States, and European countries have legal provisions that prevent war criminals from being granted refugee status. These laws show how international rules are applied locally to stop serious criminals from misusing the refugee system.¹⁸

b. International Criminal Law and Its Role In Preventing Misuse of Refugee Protection.

International criminal law, or ICL, is a part of International Law that deals with the most serious crimes, which also lead to exclusion and ensure that the individual who commits those crimes is held accountable for their crimes, unlike classical international law, which mostly governs how states interact¹⁹. International Criminal Law focuses on acts that shock humanity; the main crimes it covers are war crimes, genocide, crimes against humanity, and the crime of aggression. War crimes are acts committed during armed conflict that harm civilians, prisoners, or property, such as killing, torturing, raping, taking hostages, destroying civilian property, ordering mass killings, recruiting children, or ignoring rules of proportionality and military necessity. Genocide is the deliberate attempt to destroy, in whole or in part, a group of people based on nationality, race, ethnicity, or religion, including killing people, causing serious harm, imposing life conditions meant to destroy the group, preventing births, or transferring children out of the group. Crimes against humanity are those in which human rights are violated in a widespread manner or in a systematic way, as perpetrated by a state or authorities. However, these acts do not only occur in the setting of the war, but they are often observed in peacetime due to a formal policy or even the tacit acceptance of the authorities. The crime of aggression,

¹⁸ “MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS 311-312 (2007)”.

¹⁹ “ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 3-5 (2nd ed. 2008)”.

however, involves planning, initiating or committing serious military action upon another state without a justifiable reason being known to exist. It is the crime that is usually plotted by leaders at the top of the state policy, and is considered the most serious one as it may cause a lot of harm, and weaken international peace.

The link between “International Criminal Law and Refugee Law” is very important and crucial. When any person is accused of a war crime or another serious international crime, they apply for refugee protection, the authorities must carefully check whether their fear of persecution is genuine or it's just a way to avoid punishment. The International Criminal Law guides the countries in making these decisions and helps the refugee authorities decide whether the person should be excluded from protection under the Refugee Convention's rule, and without these laws, war criminals could claim to be refugees and misuse the system to escape accountability. The crimes within the jurisdiction of the tribunals of the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda all of the tribunals have jurisdiction over crimes that are genocide, crimes against humanity, and war crimes. These three categories of mass atrocities are the primary drivers of involuntary migration and refugee flows.²⁰

The jurisdiction of international courts is defined by “crimes like genocide, war crimes, and crimes against humanity”, acts of mass violence that do not just violate the law but disturb the peace of the social contract and directly force the civilian population to flee from their homes and to seek safety elsewhere. The International Criminal Court only steps in when a state is “unwilling or is unable” to genuinely prosecute a crime, and a state that is unwilling or unable to prosecute its war criminal is also a state that is unable to guarantee the safety of its citizens, which directly results in a refugee crisis. ²¹The temporary tribunals that were created, the International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, aimed to punish for the crimes classified as the core crimes to deter future crimes by ending impunity, because if people believed that they could commit atrocities without any consequences, then the violence would continue, and for these, the tribunals held an accountability doctrine that reduces the future harms which directly links with refugees to safely return to their home. The jurisdiction is not just about punishment; it also creates a safe

²⁰ “ALEXANDER BETTS, SURVIVAL MIGRATION: FAILED GOVERNANCE AND THE CRISIS OF DISPLACEMENT 267-345”.

²¹ “CARSTEN STAHN, A CRITICAL INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 311-12 (2018).”

space for the refugees to return to their environment, and without justice, it cannot be attained, so these tribunals have a direct impact on the long-term migration solutions. The tribunals and jurisdictions of these courts shape the refugee law by preventing the perpetrators from escaping their own accountability. The International Criminal Law also encourages countries to work together and share information about suspects. If one country knows that a person applying for asylum is accused of serious crimes, it can inform other countries or international tribunals, which helps the refugee authorities to make informed decisions and prevent dangerous people from finding a safe place under the veil of the refugee convention, making sure that those responsible for serious crimes are held accountable and face justice.

III. Exclusion From Refugee Protection: Legal Criteria, Domestic Implementation, and Practical Challenges in Cases of War Crimes.

a. Criteria for Exclusion under Article 1F of the 1951 Refugee Convention.

The rules call exclusion clauses under “Article 1F of the Refugee Convention, 1951 come from the United Nations High Commissioner for Refugees Statute of 1950, the 1951 Refugee Convention, and the 1969 Organisation of African Unity Convention, which explains that some people must be denied refugee status even if they otherwise qualify because of the serious nature of their actions committed. These rules are meant to protect the asylum system from being misused by people who have committed terrible crimes like war crimes, crimes against humanity, or other serious crimes against mankind. The idea is that such people do not deserve international protection and should face the trial, and exclusion can have serious consequences, so the rules have to be applied carefully and only after looking into all the facts in detail and to do this there are only three main reasons that why someone can be refused of refugee status: if they were involved in crimes related to peace, war crimes, or crimes against humanity. To apply these rules, there must be some real proof, like reports, a witness statement, or a document showing that the person seeking asylum actually took part in such crimes. This checking is done carefully so that real refugees who are running away from danger can get help and protection.²²

Many countries follow these international rules. For example, South Africa's Refugee Act states that a person who has been part of war crimes or crimes against humanity cannot be

²² “GUY S. GOODWIN-GILL & JANE MCADAM, THE REFUGEE IN INTERNATIONAL LAW 233–34 (4th ed. 2021).”

given refugee status, even if the person has committed those crimes in another country. Similarly, in the United States, a person who has committed a serious crime cannot get asylum if they have lied about being a part of such crimes. European countries also do background checks to stop war criminals from misusing the refugee system. These measures show how international laws are applied at the national level to protect the integrity of the asylum process, and these rules are not made to punish people but to keep the refugee process fair and trustworthy to make sure that war criminals or serious offenders do not hide among refugees, because that would reduce the public trust and harm the real refugees who need protection²³. By separating innocent victims from those who caused harm, the exclusion rule protects the true purpose of a refugee law by helping those in danger while making sure justice is served for victims of serious crimes.²⁴

b. Challenges in Excluding War Criminals: Evidentiary Gaps, Degree of Responsibility, and Due Process Concerns.

Excluding war criminals from refugee protection is dynamic and challenging, and one of the main difficulties is the lack of reliable evidence, as many war crimes happen in conflict zones where there is little documentation, or in countries where the governments are unstable and unable to investigate properly and also many crimes may have taken place years ago making it hard to collect evidence, witnesses may have moved away, or disappeared or may be afraid to testify. At the same time, individuals who apply for asylum may conceal their past or provide false information about their involvement in crimes, because of which the burden is on the refugee authorities to carefully examine the available information to decide whether a person should be excluded or not, which is a very difficult and time-consuming process.

Another challenge is to determine the seriousness and nature of the crime, because not every person involved in a war of conflict is equally responsible for the crime; some individuals may have been forced to participate in minor crimes under duress or threat of punishment, while others may have planned, organized, or carried out serious atrocities such as massacres, torture, or attacks on civilians. Now, distinguishing between these different levels of involvement is essential because the law aims to exclude those responsible for serious crimes, while protecting

²³ “JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 349–50 (2d ed. 2021).”

²⁴ “MICHELLE FOSTER, INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS 311–12 (2007).”

the innocent people or those people who have limited involvement, which requires legal analysis, understanding the context of the conflict, and sometimes cooperation with international criminal tribunals to assess the responsibility accurately.²⁵

Lastly, the further challenge is ensuring due process and fairness; even if a person is accused of serious crimes, the refugee authorities must respect their legal rights, which include the right to legal representation, the opportunity to respond to allegations, and the ability to appeal decisions, ensuring the protection of principles of natural justice and Due process is important because it protects the rights of genuine refugees who might be wrongly accused, while still allowing the authorities to prevent war criminals from abusing the refugee system.

IV. Balancing Protection and Accountability: Safeguarding Genuine Refugees While Preventing Misuse of the Asylum System.

a. Protecting Genuine Refugees and the Principle of Non-Refoulement.

The Refugee Conventions' primary purpose is to protect the people who are forced to flee their home countries due to persecution, war, or threats to their lives and safety. The genuine refugees often face extreme dangers such as armed conflict, political oppression, ethnic violence, or systematic discrimination, and are forced to leave everything behind their homes, jobs, and sometimes their families to seek safety in another country. The international community recognises the protection of these people as a requirement that is essential and must be assumed by both sovereign nations and international organisations through the use of instruments such as the 1951 Refugee Convention and other related legal structures. Without this type of protection, thousands of vulnerable individuals would continue to be in great danger. As a result, law enforcers need to be careful when carrying out investigations that involve asylum seekers to determine their possible participation in serious crimes to prevent the entry of war criminals. At the same time, it is crucial that there should not be unwarranted punishment or protection of legitimate refugees. This safeguarding of the true refugees²⁶ is not only a moral duty but also a legal duty. Non-refoulement is a principle that states that people should not be sent back to the countries where they are likely to face danger. By the states being loyal to the protection of bona fide refugees, the integrity and credibility of the refugee system

²⁵ "Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment, 86–89 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002)."

²⁶ "ERIKA FELLER, VOLKER TÜRK & FRANCES NICHOLSON, REFUGEE PROTECTION IN INTERNATIONAL LAW 15–16 (2003)."

is maintained. Consistent and fair enforcement of the refugee laws instils confidence both at the domestic and the international stage, hence cultivating co-operation in the work of the intergovernmental organisations and promoting the sharing of the duty of ensuring the safety of refugees.

A fair and reliable system of regulation would both ensure that the abuse of the refugee protections by criminal groups decreases and that those who actually need it still obtain it. This helps in maintaining the resilience and fairness of the global system of refugees.

b. *Ensuring Accountability for War Crimes under Refugee Law.*

The main goal of refugee law is to protect people who are really in danger. But it is also very important to make sure that war criminals do not escape punishment. If people who did terrible crimes like war crimes, genocide, or crimes against humanity are allowed to get refugee status without proper checks, it weakens international law and also it gives the wrong message that such crimes go unpunished, which might make others do the same. That is why government and refugee officers must make sure the refugee system is not used by people trying to run away from justice.

To do this, countries must have strong ways to check the background of people asking for asylum. This includes checking their personal history, looking at official papers, doing interviews and working with international courts, other countries and groups like INTERPOL. The countries by sharing those information and proof, can help the authorities to find people who were involved in serious crimes and take action, like refusing their refugee status or helping them to put them on trial, which will make sure that criminals are punished while real refugees get protection.

Balancing protection and justice is not easy, but it is very important so that the laws stop criminals from misusing the system, but on the other hand, it should not harm innocent people, and when this balance is kept, real refugees get safety, and those who did wrong are brought to justice.

c. *Policy Measures to Prevent Misuse of the Refugee System.*

Countries must stop war criminals from using the refugee system to escape justice.²⁷To do

²⁷ “Refugee Convention, *supra* note 3, art. 1F.”

this, they should check asylum seekers very carefully. This means looking at records, asking questions, and confirming if the answers are true²⁸. If there is clear proof that the person was part of “war crimes, crimes against humanity or other serious crimes, they should not be given refugee status.²⁹ But the process must also be fair so that innocent people are not rejected by mistake.

The cases of refugee applications must be determined through transparent and simple regulatory mechanisms. This would ease the dynamics of the process, reduce the adjudicative errors, and enhance the trust that people have in the institutional apparatus. It is at once assuring that the bona fide refugees are given the necessary support, and yet it drains out those individuals involved in crime. Another requirement is the need to promote the cooperation of states. Many war criminals take advantage of the transnational movement to get away with their wrongdoings; hence, states should be able to share relevant information, track suspects, and carry out thorough investigations. Multilateral organisations include INTERPOL, the United Nations, and international adjudicative bodies that may provide the necessary abilities to verify the evidence and provide constant vigilance³⁰. The refugee system can protect the vulnerable populations and ensure that the criminals are brought to justice through more stringent operative statutes and better cooperation mechanisms³¹.

V. Case Studies of Controversial Asylum Cases

A useful method for clarifying the interdependence of the law on refugees and the law on international criminals is through the study of asylum cases in practice. In many cases, some individuals who have engaged in severe criminal activities have been pursuing the provisions of the refugee law. The cases highlight the predicament that exists between the protection of lawful refugees and ensuring that war criminals do not use the asylum machinery. The main regulatory tool, which is used, is Article 1 F of the Refugee Convention, but there are significant differences in its application to jurisdictions, with dissimilar results.

²⁸ “UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* 196–98 (reissued 2019).”

²⁹ “Refugee Convention, *supra* note 3, art. 1F(a).”

³⁰ “INTERPOL, Fact Sheet on International Notices System (2023); Rome Statute of the International Criminal Court arts. 86–89, July 17, 1998, 2187 U.N.T.S. 90.”

³¹ “ERIKA FELLER, VOLKER TÜRK & FRANCES NICHOLSON, REFUGEE PROTECTION IN INTERNATIONAL LAW 15–16 (2003).”

The most noticeable example is the Rwandan genocide that took place in 1994. After the mass atrocities, several suspected people of complicity ran away to European locales, especially France, Belgium, and the United Kingdom. They made asylum applications based on the fact that they would face torture, persecution and even death in case they were returned to Rwanda. Similar allegations were raised at the conclusion of the wars in the former Yugoslavia in the 1990s when war criminals were also striving to find asylum.

The results of this study underline how perilous the task the authorities of the refugee community are given: they need to offer protection to those who are truly in need but at the same time prevent those who commit serious crimes to take advantage of the system. In Europe, there were numerous courts who denied such applications under Article 1F of the Convention by claiming that actions like genocide and crimes against humanity make claimants ineligible to be considered as refugees. Similar cases occurred after the Yugoslav wars when war participants and militia members seek asylum in Europe and North America. In Canada and the Netherlands, it was Article 1 F which was used to deny eligibility, despite no personal culpability, on the ground that one was simply a member of a war-crimes-guilty group. Opponents have termed this method as collective guilt; however, the courts insisted that such repressive actions had to be taken due to the severity of the crimes. Another complication is the fact that not all these regulations are applied equally. Canada, the United Kingdom and the Netherlands have assumed an unusually strict position on Article 1 F.

In comparison, the United States, which is not entirely bound by the Convention on Refugees, makes decisions that deviate considerably from the frame of normativity. In Belgium and France, jurisprudence of international tribunals like the ICTR and ICTY is mentioned in decisions on a regular basis. Taken altogether, these cases shed light on the dual purpose of the refugee law, not only to protect the real victims but also to ensure that war criminals do not use the asylum system to their advantage.

VI. The Grey Zone: Child Soldiers and Forced Perpetrators.

The case where asylum applicants are both victims and offenders of crime is one of the most difficult questions of refugee law. One example is that of child soldiers, where children are kidnapped, forcibly recruited, or duped into joining military units and forced to engage in violent activities. This is a thorny issue in international criminal law, refugee law, and, in particular, whether such children are to be described as criminals and, therefore, deprived of

protection in Article 1F, or whether they are to be treated chiefly as victims, who require help.

Hiring and using child soldiers is a serious crime under international law³², as it is provided in the Rome Statute and conventions like the Optional Protocol to the Convention on the Rights of the Child. Children who are members of armed forces usually have no actual agency, as they can be threatened with death, brainwashed, or forced to kill. Thereafter, some of these children are charged with committing homicides, torture, or sexually violating another person, and when they apply to seek asylum, the state officials need to know whether such an action is something that makes them ineligible to be offered protection or whether they should still be thought of as victims since they were doing so in conditions of extreme duress.

Traditionally, the laws governing refugees have been strict in applying the exclusionary rules, which have been insensitive to voluntary and forced participation; this has been rigid and may punish people who were already victims. As an illustration, a child who has been forced by a rebel group to commit atrocities might be exposed to twice the harm if he or she is later denied protection as a refugee. The international criminal law also recognizes that children and persons under duress have reduced responsibility and thus refugee law may also be more accommodating, as the problem is not only children but also adults that were also forced to join armed groups at threat or under duress³³. Accordingly, the asylum authorities should carefully examine the scope of the decision made by the individual, the level of pressure and the particular position that was taken. Such cases are often difficult to assess because of the lack of data in conflict zones and the loss of memory over time.

The issue of child soldiers and forced involvement highlights the constraints in a strictly no exceptions regime to the refugee law. A more subtle system would be able to distinguish the people who were willing to commit crimes and those who were forced to commit them. The breakdown of this balance will lead to the possibility of falsely denying aid to people who actually need protection. This issue is still burning in the modern wars in Africa and the Middle East that keep throwing children into violent groups. This is because recognising this grey area will help the refugee law to sanction the individuals who were really guilty and protect those who were forced into it.

³² “MARK A. DRUMBL, REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY 3–5 (2012).”

³³ “Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, 134–36 (Sept. 2, 1998).”

VII. The Conflict between Non-Refoulement and Universal Jurisdiction in Refugee Law.

Another link between refugee law and international law can be seen in the clash between non-refoulement and universal jurisdiction. Article 33 of the Convention says that no person should be sent back to a country where they may face torture, persecution or serious harm. This rule is central to refugee law because it protects people from being returned to danger. But sometimes this rule clashes with the need to punish people accused of crimes such as war crimes, genocide, or crimes against humanity.

The difficulty is that Article 1F blocks such people from refugee status, but it does not explain what should happen to them afterwards. Sending them back to their country might be unsafe if that country has war, torture, or unfair trials. This leaves countries in a difficult position, as to what they should do with suspected war criminals who cannot be deported safely but also cannot be given asylum.

Universal jurisdiction gives one possible answer. This idea means that any country can put people on trial for very serious crimes like genocide, torture, or war crimes, and no matter where the crime happened or who the person is, these crimes are seen as so serious that they affect the whole world, so any country has the right to take action. In Europe, countries like Germany and France have used universal jurisdiction to try Syrian officials and militia members accused of atrocities. This way, suspects can face justice without being sent back to dangerous countries. The universal jurisdiction also creates a bridge between refugee law and international criminal law, which ensures that people who cannot be deported under non-refoulement do not get away with crimes, and that they can be held accountable in the country where they seek asylum. This respects both the humanitarian goal of refugee protection and the need to punish serious crimes.

However, there are still a number of challenges. The trials under universal jurisdiction require significant resources, credible evidence originating in the conflict zones, and cooperation of victims and witnesses, which are hard to obtain, considering that not all countries are willing to use universal jurisdiction, and some express their worries about the possible political or diplomatic consequences. In spite of these shortcomings, universal jurisdiction remains a major achievement in the marriage of refugee law and international criminal law. It shows that not granting asylum to the war criminals is not a way of escaping justice, but the sovereign states

may, at the same time, adhere to the principle of non-refoulement, and simultaneously prosecute serious perpetrators. This two-pronged solution will not only strengthen the protection of refugees but also their responsibility according to international criminal law, which is a feasible solution to dealing with instances of rejected asylum seekers.

VIII. RECOMMENDATION

To strengthen refugee due diligence, countries should consider clouding records, asking specific questions and sharing information with international agencies, including the United Nations and INTERPOL. The criteria that are used to determine the status of refugees must be clearly stated and operational in straightforward terms to reduce flaws and optimise the trust that society has in the adjudicative process. International collaboration by sovereign states is also necessary to avert the international escape routes of war criminals. At the same time, the legislation of refugees should fairly respond to the situation of victims such as child combatants and people who were forced to engage in criminal actions so that they are not exposed to disproportionate punishment.

IX. CONCLUSION

The interconnection between the law of refugees and the international criminal law reminds of the complex nature of the task of balancing between the protection of humanity and accountability mechanisms. The Convention Relating to the Status of Refugees, which took place in 1951, was the invention of a legal shelter for those who escaped persecution. At the same time, Article 1F expressly denies people who committed the most heinous offences under international law the right to use refugee status as a defence against prosecution. Such a two-fold aim put a lot of legal and practical pressure on the states and authorities of refugees.

It states in the discourse that the use of exclusionary measures requires careful examination of pieces of evidence, contextual considerations and personal accountability. A strict enforcement of these provisions will lead to the exclusion of the legitimate refugees, especially in situations that are very complicated, like child soldiers or those who have been forced into armed conflict. On the other hand, a liberal interpretation of the framework could unwillingly protect the culprits of war crimes or crimes against humanity.

In this regard, it is therefore urgent to create a solid balance. States have the duty of

strengthening the processes of investigation, enhancing the quality of international cooperation, and protecting the equitable adjudicatory practices, without breaking the principle of non-refoulement. Through logical harmonisation of the protection of refugees and the persecution of international criminals, the modern legal framework is able to both deliver justice to the victims of serious crimes and ensure the safety of those who flee prosecution within a legitimate and legal framework.