

# CONVENTION-LESS CARE: A COMPARATIVE ANALYSIS OF THE 1951 REFUGEE CONVENTION’S IMPACT ON INDIAN & AMERICAN LAW

TYLER BROOKS

INTRODUCTION .....	1
I. ON THE ORIGINS OF THE 1951 REFUGEE CONVENTION AND THE RESPECTIVE ROLES OF INDIA AND THE U.S. THROUGHOUT ITS DEVELOPMENT.....	4
A. <i>Contextualizing World History at the Time of the Convention’s Drafting</i> .....	4
B. <i>The Drafting of the 1951 Refugee Convention: Problems Solved and Deferred</i> .....	7
C. <i>The Convention’s 1967 Protocol: Converts and Continuing Detractors</i> .....	10
II. THE REFUGEE CONVENTION’S INFLUENCE ON INDIA AND THE U.S. ....	13
A. <i>India and Its Vicarious Acceptance of the Tenets of the Convention</i> .....	13
B. <i>The United States and Its Multifaceted Acquiescence to the Convention</i> .....	18
III. EVALUATING THE IMPACT OF THE REFUGEE CONVENTION THROUGH THE COMPARATIVE EXPERIENCES OF INDIA AND THE U.S. ....	28
A. <i>Historical Forces Shaping India and America’s Relationships to the Convention</i> .	28
B. <i>On India and America’s Differing Levels of Engagement with the UNHCR</i> .....	33
C. <i>What the Experiences of India and the U.S. Reveal About the Refugee Convention’s Influence on State Behavior Overall</i> .....	36
CONCLUSION .....	39

## INTRODUCTION

If international refugee law can be said to have a birth date, that date would likely be determined to be July 28, 1951, the day in which participating states agreed to and adopted the Convention Relating to the Status of Refugees at a conference held by the United Nations (U.N.) in Geneva, Switzerland.<sup>1</sup> Though the Refugee Convention was not the first attempt to establish a body of international laws regulating the world’s ever-increasing number of refugees and other displaced persons,<sup>2</sup> the Convention represented a substantial step forward on the part of an international community that just a decade prior

---

<sup>1</sup> See generally Convention Relating to the Status of Refugees, adopted July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137 [hereinafter Convention Relating to the Status of Refugees].

<sup>2</sup> See Guy S. Goodwin-Gill, *The Lawyer and the Refugee*, 39 BERKELEY J. INT’L L. 1, 3-8 (2021) (documenting many of the early attempts to implement a global refugee regime made by the League of Nations and other international organizations).

had borne direct witness to the ravages of World War II.<sup>3</sup> The principles embodied by the Convention have only continued to grow in their relevance over the seventy years since the treaty was first drafted.<sup>4</sup> Today, in the wake of what appears to be a rapidly developing global refugee crisis impacting nations across the world,<sup>5</sup> 149 states are currently either parties to the 1951 Convention, the Convention's 1967 Protocol, or both.<sup>6</sup> However, such widespread acceptance of the Convention has not always been common within the international community, nor has the Convention ever been unanimously adopted by every country globally.<sup>7</sup> Many nations, including a prevalent number of U.N. member states,<sup>8</sup> have remained steadfast throughout the years in their opposition to the Convention, objecting to the obligations that the treaty would impose on their domestic refugee laws and policy agendas.<sup>9</sup> In contrast, even amongst those countries that have ratified the Convention, not all signatory states have consistently lived up to their duties owed to refugee populations as established by the treaty.<sup>10</sup>

---

<sup>3</sup> See Herre et al., *War and Peace*, OUR WORLD IN DATA (2024), <https://ourworldindata.org/war-and-peace#article>.

<sup>4</sup> See generally Harold Hongju Koh, Senior Advisor, Off. of the Legal Advisor, U.S. Dep't of State, *The Refugee Convention at 70: Achievements and Challenges* (July 27, 2021) (speaking to the continued relevance of the Refugee Convention, delivered early in the Biden-Harris administration in reflection of the Convention's 70th anniversary).

<sup>5</sup> See generally WORLD FOOD PROGRAM USA, *7 of the Largest Refugee Crises Around the World and Their Effects on Hunger* (last updated Aug. 29, 2023), <https://www.wfpusa.org/articles/largest-refugee-crises-around-world-effects-hunger/>.

<sup>6</sup> See Maja Janmyr, *The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda*, 33 INT'L J. REFUGEE L. 188, 189 (2021) [hereinafter Janmyr, *The 1951 Refugee Convention*]; UNHCR ISRAEL, *The 1951 Refugee Convention and Key International Conventions* (last accessed Dec. 5, 2024), <https://shorturl.at/VMWYi>.

<sup>7</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 189; see also Maja Janmyr, *Non-signatory States and the international refugee regime*, 67 FORCED MIGRATION REV. 39, 39 (2021) [hereinafter Janmyr, *Non-signatory States*].

<sup>8</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 189.

<sup>9</sup> See Bonita B. Sharma, *Revisiting the United Nations' 1951 Convention Relating to the Status of Refugees: A Critical Analysis of the International Refugee Law*, 37 SOC. DEV. ISSUES 80, 89-90 (2015) (expressing key reasons why some states have continued to refuse to ratify the Convention and its Protocol).

<sup>10</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 202 (speaking to the ways in which the U.K., a signatory to the Convention, has pursued policies which limit refugees' "access to asylum."); Deborah Anker, *Regional Refugee Regimes: North America*, in THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW, 296, 296, 311, 313 (Oxford University Press, 2021).

For many reasons worthy of renewed attention and analysis, there were a plethora of nations that initially chose not to accede to the Refugee Convention as the treaty was being ratified by other states during the early 1950s.<sup>11</sup> Due in part to domestic or international pressure, some of these non-signatory states did eventually choose to adopt the Convention's 1967 Protocol,<sup>12</sup> which greatly expanded the number of people who qualified as officially recognized refugees as defined and understood by international law.<sup>13</sup> Nevertheless, a number of countries, particularly those residing within the Global South,<sup>14</sup> have chosen to remain non-signatories to the Convention well into the modern era.<sup>15</sup> Exemplifying both of these approaches to the treaty, few nations have had a more layered or multifaceted relationship with the 1951 Refugee Convention and its Protocol than either India or the United States, both of which have consequently shaped the direction that international refugee law has taken in the subsequent decades since the Convention's initial drafting.<sup>16</sup> This paper considers the Refugee Convention's general efficacy in shaping state behavior by examining the comparative historical experiences of India and the U.S.,

---

<sup>11</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 192-93; Sharma, *supra* note 9, at 89-90; Pia Oberoi, *South Asia and the Creation of the International Refugee Regime*, 19 REFUGEE 36, 36-37 (2001) (focusing particularly on India and Pakistan's discontent with the Refugee Convention in its originally promulgated form).

<sup>12</sup> See DREE K. COLLOPY, AILA'S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE 3 (American Immigration Lawyers Association, 2019) (articulating America's pivot from non-signatory to signatory state after it acceded to the Convention's 1967 Protocol in 1968).

<sup>13</sup> See Koh, *supra* note 4 ("Thus, the original Convention was narrowly drawn .... Sixteen years later, the 1967 Protocol eliminated these temporal and optional geographic limitations.").

<sup>14</sup> Erica Hogan & Stewart Patrick, *A Closer Look at the Global South*, CARNEGIE ENDOWMENT FOR INT'L PEACE (May 20, 2024), <https://carnegieendowment.org/research/2024/05/global-south-colonialism-imperialism?lang=en> (arguing that "rather than using the Global South to mean a rigid grouping of nations, it is more helpful to understand it as an organizing principle to guide a reimagining of a more just international economy and world order .... To some in the world, the central divide in the international sphere remains that between the dominant North and the aggrieved South[.]" This paper adopts a similar definition of the term "Global South," using it to connote a general lack of development status rather than any specific geographic location.)

<sup>15</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 192; ASYLUM INSIGHT, *The Refugee Convention* (last updated Nov. 2016), <https://www.asyluminsight.com/refugees-convention>.

<sup>16</sup> See generally Oberoi, *supra* note 11 (Oberoi's work chronicles the drafting of the 1951 Refugee Convention, as well as India and the U.S.'s respective influence over its creation); Nanjala Nyabola, *The End of Asylum*, FOREIGN AFFS. (Oct. 10, 2019), <https://www.foreignaffairs.com/world/end-asylum> (articulating the author's unique perspective on the failings of international refugee law in the decades since the Convention's drafting, focusing specifically on the U.S. under President Donal Trump's first administration).

focusing specifically on the extent to which the Convention's principles have been able to embed themselves within each country's domestic refugee laws and policies.

To that end, this paper will proceed in the following manner: first, Part I will consider the historical context that directly led to the establishment of the 1951 Refugee Convention. Part I will additionally contemplate why it is that the U.S. eventually chose to accede to the Convention's 1967 Protocol, while India generally remained skeptical of the Convention's applicability to its own domestic agenda. Part II will then establish how the Convention has nevertheless been able to leave a substantial mark on the domestic laws and other refugee-related policies of both India and the United States. Part III will more directly compare the history and overall impact of the Convention on both countries, highlighting the unmistakable ways in which Indian and American laws have periodically aligned with—and, at other times, diverged away from—international legal frameworks like the Refugee Convention. In their respective handlings of refugee-related issues, this paper does not purport to paint either India or the U.S. as a saint while smearing the other as a sinner, nor do the pages contained within go quite so far as to suggest that international conventions like the Refugee Convention are merely illusory. Rather, this paper seeks to contribute to a growing body of scholarship suggesting that, while the Refugee Convention retains some normative influence over signatory and non-signatory states alike, a country's status as a signatory state is not a reliable predictor of how that country will treat refugee populations within its borders or beyond.

I. ON THE ORIGINS OF THE 1951 REFUGEE CONVENTION AND THE RESPECTIVE ROLES OF INDIA AND THE U.S. THROUGHOUT ITS DEVELOPMENT

A. *Contextualizing World History at the Time of the Convention's Drafting*

Though the 1951 Refugee Convention is in many ways a direct byproduct of the many humanitarian crises that emerged and developed throughout the 1930s and 1940s, at the time that the Convention was drafted, the idea that there were refugees out in the world in need of intergovernmental assistance was anything but a novel one.<sup>17</sup> For example, hundreds of thousands of Russian nationals fleeing persecution in the wake of the Bolshevik Revolution led the League of Nations to create the post of High Commissioner for Russian Refugees in 1921.<sup>18</sup> However, this position was rigidly constrained regarding the geographical scope of its holder's authority even after it had been expanded several times to encompass refugee crises developing in countries outside of Russia.<sup>19</sup> Multinational coalitions would continue to empower international agencies to address refugee-related crises and events in the decades that followed, but their efforts would almost exclusively be geared toward those issues most acutely impacting Europe and other Western nations.<sup>20</sup> This trend proved itself to be uniquely pervasive as the international community was faced yet again with the prospect of establishing a new world order after the conclusion of the Second World War.<sup>21</sup>

The United Nations formally came into existence on October 24, 1945, not long after the conclusion of World War II in September of that same year.<sup>22</sup> This conglomeration of organized states had sprung onto the international scene in response to many of the atrocities that had been committed against specific populations of persons over the previous

---

<sup>17</sup> See Guy S. Goodwin-Gill, *supra* note 2, at 3 (“Even if not yet on the international agenda, refugees were certainly around.”).

<sup>18</sup> See *id.* at 6.

<sup>19</sup> See *id.* at 6-9.

<sup>20</sup> See Oberoi, *supra* note 11, at 38-41; Janmyr, *Non-signatory States*, *supra* note 7, at 39.

<sup>21</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 192.

<sup>22</sup> See U.S. OFF. OF THE HISTORIAN, *The Formation of the United Nations, 1945* (last accessed Dec. 5, 2024), [https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/great-depression-and-world-war-ii-1929-1945/world-war-ii/](https://history.state.gov/milestones/1937-1945/un#:~:text=The%20Senate%20approved%20the%20UN,nations%20had%20ratified%20the%20Charter; LIBR. OF CONG., <i>World War II</i> (last accessed Dec. 5, 2024), <a href=).

two decades of global history, especially the persecution of European Jews and other marginalized groups by the Nazis during the Holocaust.<sup>23</sup> The significant challenges that European refugees faced in the immediate aftermath of these horrors were of paramount importance to many founding member states of the U.N. (a substantial portion of which were themselves European powers whose lands had been recently ravaged by World War II),<sup>24</sup> and the pressing need for an international body of law to address the unique problems that these populations faced should not be understated.<sup>25</sup> Nevertheless, Holocaust survivors and other European refugees were not the only significant displaced populations weighing on the international community as the foundations for what would become the 1951 Refugee Convention began to take shape.

By the early 1950s, many recently independent countries within the Global South were experiencing tremendous influxes of refugees across their borders.<sup>26</sup> Great Britain's partition of India and Pakistan in 1947 serves as a seminal example of this, coinciding with a critical crossroads in world history when many states were beginning to reevaluate the global need for an overarching set of international laws and norms to protect vulnerable populations of displaced persons.<sup>27</sup> The partition of the Indian subcontinent led to a

---

<sup>23</sup> See UNITED NATIONS, *History of the United Nations* (last accessed Dec. 5, 2024), <https://www.un.org/en/about-us/history-of-the-un>; ILL. HOLOCAUST MUSEUM & EDUC. CTR., *United Nations Universal Declaration of Human Rights* (last accessed Dec. 5, 2024), <https://www.ilholocaustmuseum.org/current-exhibitions/take-a-stand-center/un-universal-declaration-of-human-rights/#:~:text=In%20response%20to%20the%20atrocities,fundamental%20rights%20all%20people%20deserve.>

<sup>24</sup> See ILL. HOLOCAUST MUSEUM & EDUC. CTR., *supra* note 23 (“In response to the atrocities of the Holocaust and World War II, the newly formed United Nations (U.N.) created the Universal Declaration of Human Rights (UDHR).”).

<sup>25</sup> See U.S. HOLOCAUST MEM’L MUSEUM, *United States Immigration and Refugee Law, 1921-1980* (last accessed Dec. 5, 2024), <https://encyclopedia.ushmm.org/content/en/article/united-states-immigration-and-refugee-law-1921-1980#:~:text=After%20World%20War%20II%20and,upon%20duties%20under%20the%20protocol> (“After World War II and the Holocaust, the United States and the international community recognized that refugees and displaced persons merited special consideration and should be dealt with separately from immigrants[.]”).

<sup>26</sup> See Jay Ramasubramanyam, *Regional Refugee Regimes: South Asia*, in THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW 407, 407-410 (Oxford University Press, 2021); Oberoi, *supra* note 11, at 38.

<sup>27</sup> See Ambar Kumar Ghosh, *Understanding India's Refugee Policy and the Need for an Institutionalised Approach*, in REVISITING THE 1951 REFUGEE CONVENTION: EXPLORING GLOBAL PERSPECTIVES 32, 33-34 (ORF and Glob. Pol’y J., 2022).

prolonged period of intense migration between India and Pakistan that would go on to leave roughly fifteen million people displaced and in need of a permanent home.<sup>28</sup> The overwhelming scale and severity of the domestic crises that India, Pakistan, and other non-Western countries in the Global South faced midway through the twentieth century left delegations representing these nations eager to bring their struggles to the attention of an international assembly, which, by 1946, was already actively convening to outline the “blueprints for a new international refugee regime.”<sup>29</sup>

### *B. The Drafting of the 1951 Refugee Convention: Problems Solved and Deferred*

When it came time to address the broad and difficult question of what was to be done about the world’s growing number of refugees and other stateless persons, parties to the discussions held by the recently formed United Nations in Geneva, Switzerland, essentially broke the issue down into three quintessential parts: (1) how the newly established High Commissioner’s Office for Refugees (the UNHCR) was to function; (2) how the U.N. should go about defining the term refugee; and (3) once an acceptable definition had been arrived at, how the U.N. could best assist deserving and qualifying refugees.<sup>30</sup> The international community’s answers to these problems became encapsulated within the Refugee Convention that resulted from these endeavors.<sup>31</sup> The Convention was completed and ratified by twenty-six participating states on July 28, 1951, six years after the founding

---

<sup>28</sup> See STAN. UNIV., *Stanford scholar explains the history of India’s partition, its ongoing effects today* (Mar. 8, 2019), <https://news.stanford.edu/stories/2019/03/partition-1947-continues-haunt-india-pakistan-stanford-scholar->

says#:~:text=Although%20the%20agreement%20required%20no,died%20in%20the%20ensuing%20violence.

<sup>29</sup> Oberoi, *supra* note 11, at 39; see also Terje Einarsen, *Drafting History of the 1951 Convention and the 1967 Protocol*, in *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL* 39, 51 (Andreas Zimmermann et al. eds., 2nd ed. 2024).

<sup>30</sup> See Oberoi, *supra* note 11, at 38.

<sup>31</sup> See generally *Convention Relating to the Status of Refugees*, *supra* note 1.

of the U.N.<sup>32</sup> However, in tandem with many other nations at the time, neither India nor the U.S. acceded to the treaty as it existed in its original form.<sup>33</sup>

As a recently independent India was facing a massive refugee crisis in the wake of its partition, the financial and logistical responsibilities of supporting the refugees now residing within its borders fell predominantly onto India itself, with foreign aid into India being largely negligible throughout this period of the country's early history.<sup>34</sup> Such a surprising lack of intergovernmental support is to some extent attributable to the precise manner in which the term refugee was then understood to apply by the broader international establishment.<sup>35</sup> Under the definition that had been established by the International Refugee Organization (IRO, the U.N.'s short-lived precursor to the UNHCR that was soon after its creation in 1946 disbanded in 1952),<sup>36</sup> a refugee was considered to be a person of European origin who, as a direct result of World War II and other marginally related events such as the Spanish Civil War, had become displaced outside of their country of origin.<sup>37</sup> Hoping that the sheer magnitude of its plight would compel the U.N. to commit relief and support into the text of the Refugee Convention, India backed an effort led by Great Britain that would have greatly expanded the Convention's refugee definition past the Eurocentric approach previously adopted by precedential bodies like the IRO.<sup>38</sup> The

---

<sup>32</sup> See *id.*; ASYLUMACCESS, *What is the 1951 Refugee Convention—and How Does It Support Human Rights?* (July 24, 2021), <https://asylumaccess.org/what-is-the-1951-refugee-convention-and-how-does-it-support-human-rights/#:~:text=The%201951%20Refugee%20Convention%20has,now%20an%20enduring%20global%20institution.>

<sup>33</sup> See Koh, *supra* note 4; Janmyr, *Non-signatory States*, *supra* note 7, at 39.

<sup>34</sup> See Oberoi, *supra* note 11, at 38 (“Apart from relatively minor contributions from foreign charitable organizations, [India and Pakistan] shouldered the entire responsibility for [Partition] refugees, which ranged from provision of emergency transit camps, transport, and supplies, to the construction of permanent housing colonies.”).

<sup>35</sup> See *id.* at 38-39.

<sup>36</sup> See Sebastian Hun, *‘Plausible Enough’: The IRO and the Negotiation of Refugee Status After the Second World War*, 58 J. OF CONTEMP. HIST. 398, 404 (2023).

<sup>37</sup> See UNITED NATIONS, YEARBOOK OF THE UNITED NATIONS 1950 983-84 (Colum. Univ. Press, 1950).

<sup>38</sup> See Oberoi, *supra* note 11, at 39.



Indian delegation and others argued throughout the Convention's drafting that the treaty should not, as a matter of principle, include any temporal or spatial limitations on its refugee definition that would inherently limit the ability of the U.N. to address refugee-related issues implicating non-European countries.<sup>39</sup> Expanding the Convention's refugee definition in this way would have led to a broader, more inclusive understanding of who could receive the designation of refugee that would have compelled signatories to the Convention to take greater ownership over the struggles of refugees outside of the European context, thereby greatly reducing the extreme fiduciary burden on nations such as India to provide for their care.<sup>40</sup>

This position was ultimately not incorporated into the text of the 1951 Refugee Convention, which instead adopted a much more limited, Eurocentric definition of refugee excluding the exact same populations that nations like India were hoping the treaty would explicitly address.<sup>41</sup> India's preferred refugee definition was thwarted not only by European nation-states prioritizing their own domestic interests, but also in substantial part due to the influence over the Convention's drafting held by the United States, which consistently advocated that a narrower definition of the term be adopted.<sup>42</sup> American hostility toward a more inclusive refugee definition appears to have been born out of the nation's broader concern that the Convention at its inception needed to be narrowly tailored towards only

---

<sup>39</sup> *See id.*

<sup>40</sup> *See id.*; Koh, *supra* note 4 (“Thus, the original Convention was narrowly drawn. Under its temporal limits, to be a refugee, an individual had to have been displaced because of “events occurring before January 1, 1951;” under its geographic limits, States parties could, if they wanted, only treat as “refugees” those displaced by events in Europe.”).

<sup>41</sup> *See* Koh, *supra* note 4; Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 199.

<sup>42</sup> *See* Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Summary Record of the Nineteenth Meeting* (Nov. 26, 1951) (“Mr. [Warren, representing the U.S.] said .... that the words “in Europe” should be reinstated in the definition of the term “refugee .... He had listened with great interest to the United Kingdom representative's lucid explanation of the reasons why he supported the more universal definition of the term “refugee”.... [U]nfortunately, the United States delegation could not share it. The United States approach was much more limited.”) [hereinafter Conference of Plenipotentiaries]; Oberoi, *supra* note 11, at 39-41.

those problems that the U.N. was actually equipped and prepared to handle.<sup>43</sup> In a summary report detailing pertinent deliberations during the drafting of the Convention, members of the U.S. delegation are said to have “urged that one constructive step ... be taken at a time, [believing that a] convention drafted to meet European requirements was the first step” on the path forward.<sup>44</sup> The U.S. feared that an unrestricted charter for refugees “would represent a very much larger undertaking, in which the [U.S.] would be only too willing to participate if and when it was clearly understood that such was the objective.”<sup>45</sup> Regarding the plight of Partition refugees, the U.S. additionally interpreted the pursuance of any solutions to the problems then facing the Indian subcontinent as being potentially unpalatable to the American public, with one American official expressing privately to a spokesperson of the Pakistani delegation that the provision of material aid to Partition refugees by the U.N. “would not be regarded favorably by the U.S. since the problem was so enormous.”<sup>46</sup> In summation, the efforts of the U.S. and its European allies within the U.N. won the day on the issue of who should qualify as a refugee under the definition embraced by the 1951 Refugee Convention, a particularly troublesome aspect of the treaty that would not be revisited until the promulgation of the Convention’s 1967 Protocol sixteen years later.<sup>47</sup>

### *C. The Convention’s 1967 Protocol: Converts and Continuing Detractors*

Neither India nor the United States initially chose to accede to the 1951 Refugee Convention, the former believing that the international community had once again turned a

---

<sup>43</sup> See Conference of Plenipotentiaries, *supra* note 42.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Oberoi, *supra* note 11, at 40 (quoting KIM SALOMON, REFUGEES IN THE COLD WAR: TOWARDS A NEW INTERNATIONAL REFUGEE REGIME IN THE EARLY POST-WAR ERA 231 (Lund Univ. Press, 1991)).

<sup>47</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 200; Koh, *supra* note 4.

blind eye to the significant needs of India's hosted refugees and the latter publicly maintaining that it was America alone that should be able to determine which refugees could enter into the country's borders.<sup>48</sup> American attitudes regarding the desirability of acceding to the Convention suddenly shifted during the 1960s,<sup>49</sup> corresponding with a period of time when the U.N. itself began to more critically ponder the inherent limitations of the Refugee Convention as it had originally been conceived in light of the decolonization efforts that were occurring globally around this time.<sup>50</sup> Through the 1967 Protocol, the U.N. effectively eliminated both the temporal and geographic limitations present in the Convention's original refugee definition, leading to a treaty that was more global in its focus and scope than it ever had been previously.<sup>51</sup> The U.S. government officially acceded to the Convention's Protocol in 1968,<sup>52</sup> a reversal of course that some scholars have posited to be a matter of political pragmatism stemming from America's broader strategy of geopolitical gamesmanship during the latter half of the twentieth century.<sup>53</sup> America's ratification of the Convention's Protocol allowed the country to project "the appearance of a fair and non-discriminatory refugee policy[,]” which better enabled the U.S. to win over the

---

<sup>48</sup> See Sara E. Davies, *The Asian Rejection?: International Refugee Law in Asia*, 52 AUSTL. J. OF POL. AND HIST. 562, 566-70 (2006); Peter Gatrell, *10-Minute Talks: The 1951 Refugee Convention: its origins and significance*, THE BRITISH ACAD. (July 28, 2021), <https://shorturl.at/9xjss>.

<sup>49</sup> See Koh, *supra* note 4.

<sup>50</sup> See Einarsen, *supra* note 29, at 72-73; Lydia Walker, *Decolonization in the 1960s: On Legitimate and Illegitimate Nationalist Claims-Making*, 242 PAST AND PRESENT 227, 228 (2019) (“During the 1960s, national self-determination came to be recognized as a norm, driven by the rapidly expanding membership of the United Nations General Assembly. Yet the UN, Cold War political alignments and new nationalist elites only saw claims of self-determination within European empires, and did not consider nationalist claims within post-colonial states as legitimately national. Peoples from these territories, who were deliberately unrecognized by formal international institutions, instead relied on informal networks. These networks comprised a layer of international relations, usually unseen, that took on the question of nationalisms within post-colonial states.”).

<sup>51</sup> See Koh, *supra* note 4 (“[T]he 1967 Protocol eliminated these temporal and optional geographic limitations [inherent to the 1951 Refugee Convention]. Today's Convention is capacious, inclusive and global in focus and scope.”).

<sup>52</sup> See COLLOPY, *supra* note 12, at 5.

<sup>53</sup> See Anker, *supra* note 10, at 303-04.

sympathies of emerging states that the U.S. wished to influence,<sup>54</sup> thereby preventing such countries from falling behind the “Iron Curtain” of Soviet-backed Communism.<sup>55</sup>

In contrast to the U.S., India has remained resolute in its choice not to accede to either the Convention or its Protocol, despite the fact that the 1967 Protocol appears to have incorporated many of the positions that India itself consistently fought for throughout the Convention’s drafting.<sup>56</sup> India’s continued discontent with the Refugee Convention may be attributed to the historical reality that, after being largely ignored by the U.N. during the 1940s and early 1950s, South Asian states such as India were, in effect, forced to “re-examine their role in refugee protection and develop mechanisms that were more aligned with their regional concerns, and practices that were more pertinent to the specific needs of the displaced people they hosted.”<sup>57</sup> In this way, the Indian government has consistently maintained that both the Convention and its Protocol have inadequately addressed the country’s unique concerns and priorities when it comes to the handling of its substantial

---

<sup>54</sup> *Id.* at 304.

<sup>55</sup> See generally THE NATIONAL WWII MUSEUM, *Winston Churchill’s Iron Curtain Speech – March 5, 1946* (Mar. 5, 2021), <https://www.nationalww2museum.org/war/articles/winston-churchills-iron-curtain-speech-march-5-1946> (“[O]n March 5, 1946, at Westminster College in Fulton, Churchill’s famous words “From Stettin in the Baltic, to Trieste in the Adriatic, an iron curtain has descended across the continent,” ushered in the *Cold War* and framed the geo-political landscape for the next 50 years.”).

<sup>56</sup> See Oberoi, *supra* note 11, at 39-40; see also Ghosh, *supra* note 27, at 33 (“Like most other South Asian nations, India is not a signatory to the 1951 Convention the 1967 Protocol due to the Eurocentric bias of the documents, which do not consider the interests of non-Western countries[.]”); cf. Koh, *supra* note 4 (“[T]he 1967 Protocol eliminated these temporal .... geographic limitations. Today’s Convention is capacious, inclusive and global[.]”).

<sup>57</sup> Ramasubramanyam, *supra* note 26, at 411; see also Do Thanh Ha, “*Neighbourhood First Policy*” Under Narendra Modi: India’s Strategic Concerns in South Asia, 9 J. OF LIBERTY AND INT’L AFFS. 384, 384 (2023) (“India’s neighborhood policy encourages it to focus on national security and economic development to strengthen its position as a regional power while motivating it to become a global power. The nation’s geopolitical and geostrategic position has also prompted New Delhi to pursue particular relationships with its neighbors .... Prime Minister (PM) Narendra Modi, after coming to power, embarked on a pragmatic and proactive foreign policy of “neighborhood first[.]”); cf. U.N. Charter art. 52, ¶ 1 (“Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.”).

refugee population.<sup>58</sup> However, India’s choice to remain a non-signatory state has not diminished its longstanding commitment to the ideals and principles that the Convention represents, nor has America’s status as a signatory to the Convention consistently restrained the country’s handling of its own domestic refugee laws and policies.

## II. THE REFUGEE CONVENTION’S INFLUENCE ON INDIA AND THE U.S.

### A. *India and Its Vicarious Acceptance of the Tenets of the Convention*

One of the many fascinating aspects regarding the current state of refugee law in India is that, in a very literal sense, Indian refugee law does not actually exist as its own distinct field.<sup>59</sup> While the Indian Constitution does enshrine within its text certain rights that apply equally to all persons, regardless of their citizenship status—for example, Article 21 of the Indian Constitution states that “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law”<sup>60</sup>—India does not have a specific statute or law governing refugees on which to draw.<sup>61</sup> Even the 1946 Foreigners Act, the primary law dealing with the treatment of all non-citizens operating within Indian

---

<sup>58</sup> See *id.*; Ghosh, *supra* note 27, at 33; see also Ruchi Singh, *Origin of World’s Largest Migrant Population, India Seeks to Leverage Immigration*, MIGRATION POLICY INSTITUTE (Mar. 9, 2022), <https://www.migrationpolicy.org/article/india-migration-country-profile#:~:text=India%20has%20the%20world's%20largest,on%20its%20development%20and%20growth> (“India’s status as the world’s largest migrant-origin country is despite the presence of caste barriers, extended family arrangements, traditional values, low nationwide levels of education, and the predominance of semi-feudal relationships—all of which might suggest a disinclination towards international mobility.”).

<sup>59</sup> See Priyanka Shankar, *India’s stateless babies: How lawless asylum rules leave refugees in limbo*, AL JAZEERA (Jan. 05, 2024), <https://www.aljazeera.com/features/2024/1/5/stateless-babies-in-northeast-india-refugee-mothers-pray-for-nationhood> (“But [India] lacks a national refugee law and is also not a signatory to the United Nations 1951 Refugee Convention – a protocol outlining the international standards of treating and protecting people seeking refuge. This has left many people seeking asylum in India, in limbo.”); Pooja Singh, *India’s Refugee Policy*, INDIAN NATIONAL BAR ASSOCIATION (Aug. 04, 2015), <https://www.indianbarassociation.org/indias-refugee-policy/> (“Even though India has been the home for a large number and variety of refugees throughout the past, it has dealt with the issues on a bilateral basis. It has been observing a ‘**refugee regime**’ which generally conforms to the international instruments on the subject without, however, giving a formal shape to the practices adopted by it in the form of a separate statute.”) [hereinafter Singh, *India’s Refugee Policy*].

<sup>60</sup> CONST. OF INDIA, 1950, art. 21.

<sup>61</sup> See Singh, *India’s Refugee Policy*, *supra* note 59.

territory, does not contain a distinct category delineating rights to refugees as a specific subset of the country's foreign-born population.<sup>62</sup> This has historically compelled the Indian government to handle matters related to refugees under existing laws that have been determined to be applicable to all foreigners, refugee or otherwise.<sup>63</sup> Some critics of the resulting system have posited that doing so systematically allows the Indian government to “deal with refugee groups on an ad hoc and arbitrary basis, governed not by international, humanitarian, or constitutional considerations but by geopolitical and diplomatic incentives, domestic electoral mandates, and local socio-cultural dynamics.”<sup>64</sup>

However, in spite of these significant criticisms, India has nevertheless long been considered a safe haven for refugees coming into the country in pursuit of a better life.<sup>65</sup> This reputation is almost certainly attributable, at least in part, to the country's long-standing relationship with international agencies such as the UNHCR, which has historically been allowed to conduct refugee status determinations (RSD) within the country independent of the Indian government's direct involvement.<sup>66</sup> Setting it apart from other nations, India has adopted a unique dual RSD system that enables its government and the UNHCR to jointly assist one another in identifying deserving individuals to remain

---

<sup>62</sup> See Mahika Khosla, *The Geopolitics of India's Refugee Policy*, STIMSON (last accessed Dec. 5, 2024), <https://www.stimson.org/2022/the-geopolitics-of-indias-refugee-policy/> (“However, [the 1946 Foreigners Act] does not have a distinct ‘refugee’ category delineating specific rights, addressing refugees at the political and administrative, rather than legal and judicial levels, and handling them in the same manner as undocumented migrants, tourists, and foreigners.”).

<sup>63</sup> See Singh, *India's Refugee Policy*, *supra* note 59.

<sup>64</sup> Khosla, *supra* note 62; see also Minaam Shah, *For Afghan Refugees India Is Far From a Safe Haven*, FOREIGNPOLICY (July 6, 2023), <https://foreignpolicy.com/2023/07/06/india-afghan-refugees-unhcr-modi-politics-cao/> (“India is not part of the 1951 U.N. Refugee Convention and thus does not legally recognize refugees—leaving migrants vulnerable to arrest and deportation.”).

<sup>65</sup> See Khosla, *supra* note 62; Roshni Shanker & Hamsa Vijayaraghavan, *Refugee recognition challenges in India*, 65 FORCED MIGRATION REV. 1, 24 (2020) (“In the past, refugees arriving in significant numbers .... were offered temporary protection by the government in camps and settlements, and India has been internationally lauded for its treatment of these refugees.”).

<sup>66</sup> See Ramasubramanyam, *supra* note 26, at 412 (“in India, UNHCR is actively engaged in protection activities including the registration of asylum seekers, RSD, and the provision of documentation facilitating their right to stay in India without the risk of deportation or detention.”); see generally UNHCR INDIA, *India*, (last accessed Dec. 5, 2024), <https://www.unhcr.org/in/countries/india>.

within the country as officially recognized refugees.<sup>67</sup> In practice, refugees from countries and other related areas that share a border with India have generally received direct assistance from the Indian government itself, while the UNHCR has conducted RSD in the cases of those coming into the country from all other places outside of these limited circumstances.<sup>68</sup> Upon the conclusion of RSD, the UNHCR will then share its list of recognized refugees with India's Ministry of Home Affairs (MHA).<sup>69</sup>

Having neither acceded to the Refugee Convention nor its Protocol, the Indian government is under no formal legal obligation to adhere to the procedural mechanisms or principles of the Convention when handling refugee-related matters of its own accord.<sup>70</sup> Where refugees over whom the UNHCR has no designated authority over enter into India, the ultimate status of these individuals falls under the sole purview of the Indian government, which is restricted only by the laws and norms that the country has established for itself or agreed to adhere to under international law.<sup>71</sup> Comparatively, when acting as a “surrogate State” by conducting RSD on behalf of the Indian government, the UNHCR remains obligated to uphold the Convention to which the agency is inextricably linked and bound,<sup>72</sup> going so far as to label itself as the very “guardian” of the treaty.<sup>73</sup> In

---

<sup>67</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24.

<sup>68</sup> See *id.*; Ramasubramanyam, *supra* note 26, at 412.

<sup>69</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24.

<sup>70</sup> See *id.* (“[Refugees entering into India] from neighbouring South Asian countries, with whom the State has sensitive relations, are required to approach the MHA directly. The procedure for doing so and the decision criteria adopted by the MHA in such cases are not publicly available.”); see also Sudha Ramachandran, *India Needs to Enact a Domestic Refugee Law*, THE DIPLOMAT (Sept. 7, 2022), <https://thediplomat.com/2022/09/india-needs-to-enact-a-domestic-refugee-law/> (“India’s support for different refugee groups has been uneven[.]”).

<sup>71</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24.

<sup>72</sup> Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 203; see also Shanker & Vijayaraghavan, *supra* note 65, at 24 (“UNHCR in India conducts RSD for [qualifying applicants for refugee status] in line with the 1951 Refugee Convention[.]”).

<sup>73</sup> UNHCR, *The 1951 Refugee Convention* (last accessed Dec. 5, 2024), <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention#:~:text=The%201951%20Refugee%20Convention%2C%20supplemented,principles%20of%20the%201951%20Convention> (“UNHCR serves as the ‘guardian’ of these documents [the 1951 Refugee Convention and its 1967 Protocol].”) [hereinafter UNHCR, *The 1951 Refugee Convention*].

permitting the UNHCR to operate with a significant degree of autonomy within its borders,<sup>74</sup> the Indian government can be said to have shown a tepid willingness to align itself with the core principles of the Convention and other related international standards of refuge protection more broadly.<sup>75</sup>

In the intervening decades since the country's rejection of the 1951 Refugee Convention and its 1967 Protocol, India has further entwined itself with the UNHCR in several meaningful ways. For instance, Indian courts have shown a consistent willingness to stay the deportation orders of individual non-citizens until after the UNHCR has been able to carry out its own RSD review in their cases.<sup>76</sup> In 1989, the Gauhati High Court (serving the Indian states of Assam, Arunachal Pradesh, Nagaland, and Mizoram)<sup>77</sup> stayed the deportation order of a Burmese national in the case of *Bogyi v. Union of India*, directing the UNHCR to consider the Burmese national's application for political asylum before a final decision would be issued.<sup>78</sup> Similarly, in 1992, the Supreme Court of India stayed the deportation orders of twenty-one foreign nationals in the case of *Malavika Karlekar v. Union of India*, allowing the UNHCR to conduct RSD in each individual applicant's case.<sup>79</sup> Moreover, as an active member of the Executive Committee of the High Commissioner's Programme (ExCom, an agency which meets annually to review and approve the UNHCR's

---

<sup>74</sup> See generally UNHCR INDIA, *supra* note 66.

<sup>75</sup> See UNHCR, *India: Working environment*, in UNHCR GLOBAL APPEAL 2011 UPDATE 202, 202 (2011) ("India is not party to the 1951 Refugee Convention or its 1967 Protocol and does not have a national refugee protection framework. However, it continues to grant asylum to a large number of refugees from neighbouring States and respects UNHCR's mandate for other nationals, mainly from Afghanistan and Myanmar. While the Government of India deals differently with various refugee groups, in general it respects the principle of **non-refoulement** for holders of UNHCR documentation.") [hereinafter UNHCR, *India: Working environment*].

<sup>76</sup> See Ramasubramanyam, *supra* note 26, at 413 ("In yet other cases, UNHCR has undertaken RSD at the insistence of the judiciary.").

<sup>77</sup> See generally GAUHATI HIGH COURT, *The Gauhati High Court* (last accessed Dec. 5, 2024), <https://ghconline.gov.in/>.

<sup>78</sup> See *Bogyi v. Union of India*, Civil Rule No 1847/89, 17 Nov. 1989 (Gauhati High Court, India); see also Ramasubramanyam, *supra* note 26, at 413.

<sup>79</sup> See *Malavika Karlekar v. Union of India*, Writ Petition (Criminal) No. 583 of 1992, 25 Sept. 1992 (Supreme Court of India); see also Ramasubramanyam, *supra* note 26, at 413.



programs and budget, among other related activities),<sup>80</sup> India has further enmeshed itself into the inner deliberations of the UNHCR, an act which some have suggested serves as a means by which the country has attempted to provide a counterbalance to Pakistan's own influence over the agency.<sup>81</sup> Regardless of the country's motives in doing so, India's support of the UNHCR's efforts within its borders at least to some extent implicitly aligns the country with the Refugee Convention, indirectly linking the country to the Convention's core principles and other related governing philosophies.<sup>82</sup>

Little has proven itself to be quite as illustrative of India's vicarious relationship to the Refugee Convention as the country's ongoing commitment to the treaty's key principle of non-refoulement.<sup>83</sup> Often referred to as the very cornerstone of the Convention,<sup>84</sup> the principle of non-refoulement prohibits a signatory state from expelling or returning "a refugee in any manner whatsoever to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion."<sup>85</sup> India has consistently complied with the principle of non-refoulement throughout the years by allowing refugees to remain within the country's borders in situations where returning such persons back to their country of origin would significantly imperil them, all the while establishing a series of internal mechanisms and policies aimed at providing refugees with the material assistance, sanctuary, and means of protection that they need to survive.<sup>86</sup> However, India's adherence

---

<sup>80</sup> See UNHCR, *Executive Committee* (last accessed Dec. 5, 2024), <https://www.unhcr.org/us/executive-committee>.

<sup>81</sup> See Ramasubramanyam, *supra* note 26, at 413 (citing SARBARI SEN, *Paradoxes of the International Regime of Care: The Role of the UNHCR in India*, in REFUGEES AND STATE: PRACTICES OF ASYLUM AND CARE IN INDIA 1947-2000 404 (Ranabir Samaddar ed., 2003)).

<sup>82</sup> See UNHCR, *India: Working environment*, *supra* note 75, at 202; see generally UNHCR INDIA, *supra* note 66.

<sup>83</sup> See Convention Relating to the Status of Refugees, *supra* note 1, at art. 33.

<sup>84</sup> UNHCR, *The 1951 Refugee Convention*, *supra* note 73.

<sup>85</sup> Convention Relating to the Status of Refugees, *supra* note 1, at art. 33.

<sup>86</sup> See Ramasubramanyam, *supra* note 26, at 412 ("South Asian States' responses to mass exodus since the Partition of India show that, in essence, they have adhered to the core principle of non-refoulement set out in

to the principle of non-refoulement is not driven by the country's ideological alignment with the Convention alone—rather, the country's doing so is reflective of non-refoulement's standing as a “norm of customary international law” to which all states are bound, regardless of whether they are signatories to the Convention or not.<sup>87</sup> Nevertheless, India's continued enforcement of the Refugee Convention's core humanitarian principle, coupled with its long-standing acceptance of the UNHCR's operations within its borders, collectively suggest that India's sympathies are largely in line with the Convention's aims, goals, and foundational ethos in spite of its status as a non-signatory state.

*B. The United States and Its Multifaceted Acquiescence to the Convention*

America's storied history with the Refugee Convention differs from India's in several critical and consequential ways. As discussed in Part I, both India and the United States entered the mid-twentieth century as non-signatories to the Convention.<sup>88</sup> However, whereas India has consistently refused to become a signatory to the Convention, the U.S. did eventually accede to the treaty through the Convention's Protocol in 1968.<sup>89</sup> Additionally, while India has often tacitly embraced many of the core principles and ideals of the Convention in spite of its non-signatory status,<sup>90</sup> the United States has routinely implemented domestic legal frameworks and other related policies that directly serve to undermine America's considerable obligations to refugee populations as stipulated by the

---

article 33 of the Convention. A number of ad hoc mechanisms have been formulated to provide sanctuary, material assistance, and protection to refugees.”).

<sup>87</sup> See UNHCR, *Access to territory and non-refoulement* (last accessed Dec. 5, 2024),

<https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement#:~:text=As%20a%20norm%20of%20customary,or%20human%20rights%20law%20instruments>.

<sup>88</sup> See Ghosh, *supra* note 27, at 33; IMMIGRATION HISTORY, *The 1951 Refugee Convention* (last accessed Dec. 5, 2024), <https://immigrationhistory.org/item/the-1951-refugee-convention/>.

<sup>89</sup> See COLLOPY, *supra* note 12, at 3.

<sup>90</sup> See Ramasubramanyam, *supra* note 26, at 412; UNHCR, *India: Working environment*, *supra* note 75, at 202; *see generally* UNHCR INDIA, *supra* note 66.

text of the Convention.<sup>91</sup> These actions have often made it difficult for some onlookers to reconcile America's image as a global advocate of international norms with its frequent and simultaneous bypassing of those very same principles.<sup>92</sup>

The involvement of the U.S. in refugee-related affairs predates the existence of the Refugee Convention by a considerable number of years.<sup>93</sup> Following the Mexican Revolution in 1910, for example, the American government implemented a series of policies permitting many Mexican refugees to enter the country and obtain lawful permanent resident (LPR) status.<sup>94</sup> Subsequently, in 1948, Congress passed the Displaced Persons Act, establishing a more systematic and structured procedure for the admission of refugees into U.S. territory, though this approach remained heavily mired under the considerable constraints of a fairly stringent quota system.<sup>95</sup> Before and after the country had acceded to the Convention in 1968,<sup>96</sup> the U.S. additionally accepted a considerable number of refugees throughout the Cold War, particularly those who were fleeing fledgling Communist regimes in Eastern

---

<sup>91</sup> See Anker, *supra* note 10, at 296 (Anker articulates many of the ways in which the U.S. has pursued policies that can be harmful to refugee populations; “The dynamics of the [North American refugee regime], in particular the hegemonic role of the US, have often led to restrictive policies, reflecting the US’s objective of keeping asylum seekers away from its borders.”).

<sup>92</sup> See Azadeh Erfani & Jesse Franzblau, *Recycling Trump’s Asylum Bans & Expanding Title 42: How Biden’s New Policies Threaten To Undermine Asylum Rights For Generations To Come*, NATIONAL IMMIGRANT JUSTICE CENTER (Jan. 9, 2023), <https://immigrantjustice.org/staff/blog/recycling-trumps-asylum-bans-expanding-title-42-how-bidens-new-policies-threaten> (“On January 5, the Biden administration announced a suite of policies that will severely restrict access to asylum and harm refugees seeking to enter the United States at the southern border.”); Ana Luquerna & Christy Crouse, *Biden’s Proposed Asylum Policy does not Fulfill U.S. Treaty Obligations*, OPINIOJURIS (Mar. 22, 2023), <https://opiniojuris.org/2023/03/22/bidens-proposed-asylum-policy-does-not-fulfill-u-s-treaty-obligations/> (““Look at what you’ve done so far. Poland is hosting more than 1.5 million refugees from this war. God bless you,” declared President Biden to an audience at the Royal Castle in Warsaw, Poland on February 21. Two days later, the Biden Administration back home proposed a new U.S. asylum policy that severely limits migrants’ ability to request asylum.”); Anker, *supra* note 10, at 303 (“This abstention with respect to the Refugee Convention (as well as to other human rights treaties) reflects a deep tension in the US’s national identity, waivering between cosmopolitan ideals and its own brand of populism or nativism.”).

<sup>93</sup> See generally U.S. CITIZENSHIP AND IMMIGR. SERVS., *Refugee Timeline* (last accessed Dec. 5, 2024), <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/refugee-timeline> [hereinafter USCIS, *Refugee Timeline*].

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

<sup>96</sup> See COLLOPY, *supra* note 12, at 3.

Europe, Cuba, and Southeast Asia.<sup>97</sup> However, in more recent history, the overall number of refugees whom America has chosen to admit into the country plummeted in the wake of the September 11th attacks of 2001.<sup>98</sup> Since that time, the number of refugees who have been accepted into the U.S. has oscillated significantly depending on the particular occupant of the White House as well as the political makeup of Congress, reaching an all-time low of just fifteen thousand in 2021 under the first Trump administration.<sup>99</sup>

Under section 101(a)(42) of the Immigration and Nationality Act (INA), U.S. domestic law explicitly categorizes refugees differently from other so-called asylum-seekers,<sup>100</sup> though the two designations are inherently related to one another and are often referred to inconsistently and interchangeably.<sup>101</sup> A refugee in the context of American refugee law refers to individuals “outside of their [countries of origin] who are unable or unwilling to return home because they fear serious harm.”<sup>102</sup> More specifically, a refugee is “any person ... outside any country of such person’s nationality ... unable or unwilling to avail [themselves] of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a

---

<sup>97</sup> See Anker, *supra* note 10, at 303 (“[I]n the decades after [WWII], the US admitted hundreds of thousands of refugees, particularly those fleeing communist governments in Hungary, Cuba, Czechoslovakia, the Soviet Union, and later Indochina.”).

<sup>98</sup> See *id.* at 306-07; Diana Roy et al., *How Does the U.S. Refugee System Work*, COUNCIL ON FOREIGN RELATIONS (Mar. 26, 2024), <https://www.cfr.org/backgroundunder/how-does-us-refugee-system-work-trump-biden-afghanistan> (“Following the 9/11 attacks, President George W. Bush suspended refugee admissions for several months, citing national security concerns. From 2001 to 2015, caps on refugee admissions stayed between seventy thousand and eighty thousand, though both the Bush and Obama administrations regularly admitted fewer people than the ceilings allowed.”).

<sup>99</sup> See Roy et al., *supra* note 98.

<sup>100</sup> See U.S. CITIZENSHIP AND IMMIGR. SERVS., *Refugees and Asylum* (last accessed Dec. 5, 2024) <https://www.uscis.gov/humanitarian/refugees-asylum> [hereinafter USCIS, *Refugees and Asylum*].

<sup>101</sup> See Aline Barros, *Refugee or Asylum-Seeker in the US: What’s the Difference?* VOA (June 20, 2023), <https://www.voanews.com/a/7140402.html> (“Those who leave their home countries seeking safety are known as refugees or asylum-seekers. In the United States, there are notable distinctions between these two statuses. While the terms are often used interchangeably, there are significant differences under U.S. immigration law when pursuing these statuses.”).

<sup>102</sup> See USCIS, *Refugees and Asylum*, *supra* note 100.

particular social group, or political opinion.”<sup>103</sup> This language is directly borrowed from similar wording found in the text of the Convention’s own refugee definition.<sup>104</sup>

Alternatively, the term asylum-seeker connotes “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)[.]”<sup>105</sup>

Refugees and asylum-seekers qualify for admission to the U.S. under the exact same set of criteria, with the sole distinction between the two being that asylum-seekers apply for entry into the U.S. only *after* they have reached an applicable port of entry within American territory.<sup>106</sup> For applicants residing outside of the U.S. at the time of their admission, it is the UNHCR that conducts RSD as previously described to assess whether an individual will qualify for the internationally recognized designation of refugee under the parameters set by the Convention.<sup>107</sup> Once refugee status has been bestowed by the UNHCR, an applicant will subsequently be referred to one of nine U.S. Department of State Resettlement Support Centers (RSC), which will conduct an additional screening of the applicant to ensure that they meet “designated processing priorities” of the U.S. government.<sup>108</sup> Additionally, in a distinct but substantively related process, the U.S. federal government further immerses itself into its own RSD process through the added

---

<sup>103</sup> Immigration and Nationality Act § 101, 8 U.S.C. § 1101(a)(42).

<sup>104</sup> See Convention Relating to the Status of Refugees, *supra* note 1, at art. 1 (“As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”).

<sup>105</sup> Immigration and Nationality Act § 208, 8 U.S.C. § 1158(a)(1).

<sup>106</sup> See Roy et al., *supra* note 98.

<sup>107</sup> See USCIS, *Refugees and Asylum*, *supra* note 100; See AM. IMMIGR. COUNCIL, *An Overview of U.S. Refugee Law and Policy* (Oct. 22, 2022), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.

<sup>108</sup> AM. IMMIGR. COUNCIL, *supra* note 107.

requirements that it imposes onto asylum-seekers, taking place over the course of two major steps: (1) an informal interview led by a U.S. asylum officer, and (2) a subsequent formal hearing held before of an administrative law judge.<sup>109</sup>

In considering how the U.S. interprets its own responsibilities in conjunction with the Refugee Convention to which it has acceded, it is crucial to note that the U.S. typically does not hold treaties that it has ratified to be self-executing.<sup>110</sup> Rather, except in extraordinarily rare circumstances, America's obligations under a particular treaty become judicially enforceable only when applicable and relevant domestic legislation has been enacted that gives a treaty the force of law.<sup>111</sup> Consequently, although the U.S. acceded to the Refugee Convention in 1968,<sup>112</sup> the Convention did not generally become enforceable law until twelve years later when the treaty was formally incorporated by Congress into the Refugee Act of 1980.<sup>113</sup> From its inception, the Refugee Act was passed with the specific intention of implementing several key features of the Convention and its Protocol into domestic law, such as its refugee definition as well as the principle of non-refoulement.<sup>114</sup> However, Congress has never adopted the Refugee Convention in its entirety, instead

---

<sup>109</sup> See Anker, *supra* note 10, at 305.

<sup>110</sup> See COLLOPY, *supra* note 12, at 2.

<sup>111</sup> See *id.* (“In general .... the United States does not consider treaties it has acceded to or ratified to be self-executing; typically the obligations under the instrument will become judicially enforceable through the passing of national legislation. In the absence of legislation, it falls upon the courts to determine whether a treaty is self-executing. A determination that a treaty is not self-executing means that there is no mechanism under which the court can enforce U.S. international obligations under that treaty.”); see also Dana Zartner, *The (un)common law: Legal tradition and the diverging policies of the USA and Australia toward international human rights law*, 34 INT’L POL. SCI. R. 411, 416 (2013) (“The USA is also a dualist state. While the US Constitution appears monist because the language of Article VI(2) indicates that treaties are the ‘supreme law of the land,’ the advice and consent procedure outlined in Article II(2) has resulted in making the USA ‘fundamentally dualist’ ... This means that an international agreement that the USA does ratify is not automatically internalized into US domestic law; rather, such instruments are generally held to be non-self-executing and must be enacted into US law through additional government action[.]”).

<sup>112</sup> See COLLOPY, *supra* note 12, at 3.

<sup>113</sup> See Anker, *supra* note 10, at 304 (“The Refugee Act of 1980 formally incorporated the Convention definition into US domestic law.”).

<sup>114</sup> See *id.*; see also Note, *American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis*, 131 HARV. L. REV. 1399, 1402 (2018) (“The language and history of the Refugee Act make it clear that it was intended to implement the Convention[.]”) [hereinafter *American Courts*].

choosing to selectively integrate seminal provisions of the treaty into domestic law on a piecemeal basis.<sup>115</sup>

The Refugee Act of 1980 exemplifies a broader trend on the part of Congress, which has consistently passed legislation that significantly departs from the Convention's intended framework and the principles embedded within it.<sup>116</sup> For example, as representatives of both major political parties were increasingly seeking to appeal to the American electorate through hardline stances on immigration throughout the 1990s, Congress enacted the controversial Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>117</sup> The IIRIRA, among other harmful measures, placed substantial burdens on applicants for refugee and asylum status by introducing restrictive filing deadlines aimed at limiting overall eligibility for these designations.<sup>118</sup> This undertaking directly contradicts the spirit of Article 33 of the Convention, containing the principle of non-refoulement, as well as Article 34, which obligates signatory states to facilitate the assimilation and naturalization of refugees.<sup>119</sup> Congress would heighten the burdens on persons seeking refugee and asylum status in the U.S. with the passage of the Real ID Act of 2005, which raised the evidentiary threshold for applicants by requiring them to demonstrate a “clear nexus” between the persecution alleged and at least one of the

---

<sup>115</sup> See COLLOPY, *supra* note 12, at 4 (“However, although the refugee definition (Article 1) and the principle of non-refoulement (Article 33) have been legislated into U.S. domestic law, not all articles of the Convention and Protocol have been legislated. This is significant because even though these international treaties are binding on the United States, it can be difficult to enforce the provisions that have not been legislated into domestic law.”).

<sup>116</sup> See Anker, *supra* note 10, at 304 (“The disparate treatment of asylum seekers in the US and Canada prompted civil society actors in the US—including lawyers, NGOs, and a vigorous faith-based ‘sanctuary’ movement—to mobilize in opposition to the US’s restrictive, politicized approach. In legal challenges, they argued that, with the Refugee Act, Congress had excised ideological criteria from the refugee definition.”).

<sup>117</sup> See *id.* at 305.

<sup>118</sup> See Eleanor Acer & Olga Byrne, *How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources*, 5 J. ON MIGRATION AND HUM. SEC. 356, 357-59 (2017).

<sup>119</sup> See Convention Relating to the Status of Refugees, *supra* note 1, at arts. 33-34.

INA's five protected grounds (those being race, religion, nationality, membership in a particular social group, and political opinion).<sup>120</sup>

Actions taken by American presidents of both the Republican and Democratic parties, along with other duly appointed officials within the executive branch, have similarly steered the U.S. further from the obligations set upon it by the Refugee Convention. One of the most notable of these actions in recent years has been Presidential Proclamation 9645, initially signed as an executive order by President Donald Trump in early 2017 during his first term in office.<sup>121</sup> In this order, President Trump temporarily prohibited the entry of refugees into the U.S. from what were predominantly Muslim-majority countries, a move that was widely condemned by organizations such as the American Civil Liberties Union (ACLU), which subsequently filed a class action lawsuit that would eventually reach the Supreme Court in the 2018 case of *Trump v. Hawaii*.<sup>122</sup> More recently, in 2023, the Biden administration issued a final rule barring asylum applicants who traveled through another country en route to America's southern border unless they had either applied for asylum in another country and had been issued a denial of their application, or secured one of the limited appointments to enter at an official port of entry in the U.S.<sup>123</sup> Much like the IIRIRA and the Real ID Act of 2005, these actions largely

---

<sup>120</sup> See IMMIGR. EQUAL., *Real ID Act*, in ASYLUM MANUAL (last accessed Dec. 5, 2024), <https://immigrationequality.org/asylum/asylum-manual/>.

<sup>121</sup> See Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017); see also Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017); Daniel J. Beers, *The End of Resettlement? U.S. Refugee Policy in the Age of Trump*, 9 Soc. Sci. 129, 135-36 (2020) (It should be noted that Presidential Proclamation 9645 has subsequently and widely been referred to as the "Trump travel ban" or "Muslim ban.").

<sup>122</sup> See ACLU WASHINGTON, *Timeline of the Muslim Ban*, <https://www.aclu-wa.org/pages/timeline-muslim-ban> (last accessed Dec. 5, 2024); see generally *Trump v. Hawaii*, 585 U.S. 667 (2018) (in which the Court held that the actions of the Trump administration did not violate the Establishment Clause of the First Amendment).

<sup>123</sup> See HUM. RTS. FIRST, BIDEN ADMINISTRATION ASYLUM BAN: WIDELY OPPOSED MISSTEP VIOLATES LAW AND FUELS WRONGFUL DEPORTATION OF REFUGEES 1 (June 28, 2023).



operate against the principles contained within Articles 33 and 34 of the Refugee Convention.<sup>124</sup>

Alongside the legislative and executive branches of government, the American judiciary—in particular, the Supreme Court—has periodically impeded American adherence to the Refugee Convention by issuing a series of decisions that have generally limited the extent to which the Convention restricts the behaviors of American actors under laws such as the Refugee Act of 1980.<sup>125</sup> Occasionally, the Supreme Court has issued an opinion that tends to indicate the Court’s alignment with the views of some of the Convention’s most fervent adherents (including the UNHCR, which frequently attempts to sway Supreme Court decisions through the filing of amicus briefs).<sup>126</sup> However, when situated in a broader context, the Court’s rulings reveal a far more consistently pronounced willingness to disregard key elements of the Refugee Convention, particularly in cases where genuine ambiguities have arisen regarding the Convention’s relationship with, and subservience to, the Refugee Act of 1980.<sup>127</sup> This pervasive sentiment was conveyed in the Court’s first consequential immigration decision following the passage of the Refugee Act in *INS v. Stevic* (1984).<sup>128</sup> In cases pertaining to the mandatory withholding of deportation, the Supreme Court held in *Stevic* that the Refugee Act required the application of a stricter clear-probability of persecution standard rather than the more lenient well-founded fear of

---

<sup>124</sup> See Convention Relating to the Status of Refugees, *supra* note 1, at arts. 33-34.

<sup>125</sup> See *American Courts*, *supra* note 114, at 1403-10 (analyzing the varying extent to which the U.S. Supreme Court has adhered to the UNHCR’s views regarding how the Convention should be properly implemented in American jurisprudence).

<sup>126</sup> See *id.* at 410 (“In its amicus brief to the Supreme Court [regarding the case of *Negusie v. Holder*], the UNHCR argued that Congress intended for the relevant provision of the Refugee Act to be interpreted in alignment with the Convention’s exclusion from the definition of refugee those who have “committed a crime against peace, a war crime, or a crime against humanity.”); see *generally* *Immigr. and Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

<sup>127</sup> See *American Courts*, *supra* note 114, at 1403, 106-10.

<sup>128</sup> See *generally* *Immigr. and Naturalization Serv. v. Stevic*, 467 U.S. 407 (1984).

persecution standard contained within the text of the Refugee Convention.<sup>129</sup> The Court’s decision faced widespread criticism both domestically and internationally for effectively allowing “prior non-conforming domestic law”—namely, the Refugee Act—“to operate as an unstated reservation to the [Convention.]”<sup>130</sup>

Following its decision in *Stevic*, the Court began to adopt a somewhat more Convention-aligned approach in the case of *INS v. Cardoza-Fonseca* (1987), asserting that the standard of proof applicable in asylum proceedings was indeed the Convention’s well-founded fear of persecution standard.<sup>131</sup> Nevertheless, the Court would soon after begin to limit the general applicability of the Refugee Convention to U.S. law, as is well illustrated by the case of *INS v. Elias Zacarias* (1992).<sup>132</sup> In this decision, the Court imposed substantial restrictions on applicants seeking entry into the U.S. based on a fear of persecution, in effect requiring applicants to provide compelling evidence of an intent by their persecutors to target them specifically—an added burden that is conspicuously absent from the text of the Refugee Convention.<sup>133</sup> The Court addressed the pertinent question of whether America’s obligations to refugees as established by the Convention extended beyond the country’s borders in the case of *Sale v. Haitian Centers Council, Inc.* (1993).<sup>134</sup> In a ruling that significantly undercut America’s obligation to adhere to the Convention’s principle of non-refoulement, the Court held that the Refugee Convention did not extend

---

<sup>129</sup> See *id.* at 412-13.

<sup>130</sup> Joan Fitzpatrick, *The International Dimension of U.S. Refugee Law* 15 Berkely J. Int’l L. 1, 7 (1997); see also *American Courts*, *supra* note 114, at 1404 (“Scholars have widely criticized *Stevic*[.]”).

<sup>131</sup> See *Cardoza-Fonseca*, 480 U.S. at 449-50; see also Arthur C. Helton, *INS v. Cardoza-Fonseca: The Decision and its Implications*, 16 Rev. of L. & Soc. Change 35, 37-39 (1987) (reviewing and interrogating the Court’s holding in this case, as well as the Court’s application of the language contained within the Refugee Act of 1980).

<sup>132</sup> See *generally* *Immigr. and Naturalization Serv. v. Elias-Zacarias* 502 U.S. 478 (1992).

<sup>133</sup> See *id.* at 483-84; see also Shayna S. Cook, *Repairing the Legacy of INS v. Elias-Zacarias*, 23 MICH. J. OF INT’L L. 223, 241-46 (2002) (establishing that the Court’s decision in this case contradicts America’s obligations under the Convention and its Protocol while simultaneously setting out ways in which lower courts can interpret *INS v. Elias-Zacarias* to less harmful ends).

<sup>134</sup> See *Sale v. Haitian Centers Council, Inc.* 509 U.S. 155, 158-59 (1993).

protections to refugees who were intercepted at sea, thereby permitting U.S. officials to return these individuals to their countries of origin regardless of any documented threats to their life or liberty.<sup>135</sup>

Most recently, in the cases of *INS v. Aguirre-Aguirre* (1999) and *Negusie v. Holder* (2009), the Supreme Court invoked the now-defunct Chevron doctrine to uphold restrictive agency interpretations limiting the applicability of the Refugee Convention to U.S. laws and actions, despite vehement opposition stemming from the UNHCR.<sup>136</sup> In both of these cases, the UNHCR submitted amicus briefs arguing that the agencies' interpretations were misguided and imposed unnecessarily stringent restrictions on refugee populations that would cause harm to befall them.<sup>137</sup> In spite of the UNHCR's protestations, the Supreme Court, as well as the broader U.S. legal system, has largely disregarded such arguments, effectively sidelining the UNHCR's perspectives regarding its own foundational document.<sup>138</sup> More broadly, by continuously and systematically prioritizing restrictive interpretations over humanitarian considerations, the United States has undermined its duty of care to refugees and asylum-seekers, thereby weakening its commitments to the core principles of the Convention to which it has acceded.<sup>139</sup>

---

<sup>135</sup> See *id.* at 187-88; see also *American Courts*, *supra* note 114, at 1407 (“[In *Sale*] the UNHCR submitted a strongly worded amicus brief arguing that the plain language of the Convention prohibits interception and repatriation of asylum seekers, even those outside the borders of a signatory country. But the Court agreed with the government’s contrary interpretation of the INA.”).

<sup>136</sup> See *Immigr. and Naturalization Serv. v. Aguirre-Aguirre*, 526 U.S. 415, 425-37 (1999); *Negusie v. Holder*, 555 U.S. 511, 516-17 (2009); see also *Loper Bright Enter. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) (spelling out, in simple terms, that “*Chevron* is overruled.”).

<sup>137</sup> See Brief of the Office of the United Nations High Commissioner for Refugees as Amicus Curiae in Support of Respondent at 25, *Aguirre-Aguirre*, 526 U.S. 415 (No. 97-1754), 1999 WL 33437; Brief Amicus Curiae of the Office of the United Nations High Commissioner for Refugees in Support of Petitioner at 8-9, *Negusie*, 555 U.S. 511 (No. 07-499), 2008 WL 2550609; see also *American Courts*, *supra* note 114, at 1408-10 (2018).

<sup>138</sup> See *American Courts*, *supra* note 114, at 1420 (“An explicitly stated standard presuming that the UNHCR’s interpretation of Convention language transposed into U.S. law is correct would go some way — even if not all the way — toward harmonizing the international refugee regime and clarifying the UNHCR’s role in domestic jurisprudence.”); see also UNHCR, *The 1951 Refugee Convention*, *supra* note 73.

<sup>139</sup> See *Cook*, *supra* note 133, at 243 (“[I]n order to meet U.S. obligations under the Convention, U.S. courts must not apply the nexus requirement differently than other state parties regardless of the distinct statutory

### III. EVALUATING THE IMPACT OF THE REFUGEE CONVENTION THROUGH THE COMPARATIVE EXPERIENCES OF INDIA AND THE U.S.

#### A. *Historical Forces Shaping India and America's Relationships to the Convention*

The divergent ways in which India and the United States have approached international refugee law throughout the twentieth and twenty-first centuries are deeply rooted in each country's respective historical experiences in dealing with the Convention, particularly events that took place between 1946 and 1951 as the treaty was being formally drafted.<sup>140</sup> To contextualize the relationships that these two nations have developed with the Refugee Convention throughout the years, it is first necessary to critically examine the significant power disparity that existed between India and the U.S. at the time of the Convention's drafting.<sup>141</sup> This inherent imbalance arose from the vastly differing capabilities of India and the U.S. to access critical resources and financial capital during the mid-twentieth century, a determinative factor which placed the U.S. in an overall much stronger position than India to influence the direction that the Refugee Convention ultimately ended up taking.<sup>142</sup> The comparative ability, or inability, of the U.S. and India to obtain what they wanted from the U.N. at the time of the Convention's drafting appears to have forever altered both nations' capacity and willingness to engage with the Convention to the extent that the treaty presupposes.<sup>143</sup>

---

language in the Refugee Act. U.S. courts must analyze nexus in a manner consistent with other state parties' application of the original Convention definition.”).

<sup>140</sup> See generally Einarsen, *supra* note 29, at 50-55 (discussing the drafting process which initially led to the 1951 Refugee Convention, emphasizing the importance of the Convention's refugee definition in particular).

<sup>141</sup> See Oberoi, *supra* note 11, at 39-41 (highlighting the ways in which the U.S. was successful, and India ultimately unsuccessful, in influencing the development of the Convention throughout the late 1940s and early 1950s).

<sup>142</sup> See *id.*; see also Conference of Plenipotentiaries, *supra* note 42.

<sup>143</sup> See Ramasubramanyam, *supra* note 26, at 410-11 (articulating India's continued opposition to the global refugee regime exemplified by the 1951 Refugee Convention and its Protocol); cf. Anker, *supra* note 10, at 296-

At the time that the Refugee Convention was nearing its completion in July of 1951, the United States had existed as an established and independent nation for 175 years.<sup>144</sup> At the conclusion of World War II in 1945, the American economy had miraculously rebounded after a decade of prolonged hardship caused by the Great Depression with a renewed vigor that often proved to be quite difficult for the other major economies of the world to replicate as quickly or effectively.<sup>145</sup> By 1951, due in considerable part to the rapid scientific and technological advancements that had been made in support of its war effort,<sup>146</sup> the U.S. had managed to definitively establish itself as one of the world's last true remaining global superpowers.<sup>147</sup> Though its enviable geographic isolation had largely shielded the country from having to deal with the full brunt of the multiple refugee crises that had come to overwhelm war-torn European governments,<sup>148</sup> America's superpower status brought with it an increased ability to substantially influence the development of international affairs, particularly within the field of international refugee law.<sup>149</sup> As the U.S. was actively participating in the initial discussions that would lead to the drafting of the Refugee

---

98, 303-07 (illustrating that, among the regional refugee regimes in North America, it is America's that has often proven to be the most contrary to the Convention's aims and purported goals).

<sup>144</sup> See U.S. DEPT OF STATE OFF. OF THE HISTORIAN, *The Declaration of Independence, 1776*, (last accessed Dec. 5, 2024), <https://history.state.gov/milestones/1776-1783/declaration>.

<sup>145</sup> See Christopher J. Tassava, *The American Economy during World War II*, ECON. HIST. ASS'N (last accessed Dec. 5, 2024), <https://eh.net/encyclopedia/the-american-economy-during-world-war-ii/#:~:text=The%20federal%20government%20emerged%20from,and%20political%20power%20after%201945> (“[T]he war’s global scale severely damaged every major economy in the world except for the United States, which thus enjoyed unprecedented economic and political power after 1945.”).

<sup>146</sup> See *id.* (“As observers during the war and ever since have recognized, scientific and technological innovations were a key aspect in the American war effort and an important economic factor in the Allies’ victory. While all of the major belligerents were able to tap their scientific and technological resources to develop weapons and other tools of war, the American experience was impressive in that scientific and technological change positively affected virtually every facet of the war economy.”).

<sup>147</sup> See generally Max Fisher, *How America became the most powerful country on Earth, in 11 maps*, VOX (May 20, 2015), <https://www.vox.com/2015/5/20/8615345/america-global-power-maps>.

<sup>148</sup> Davi W. Haines, *Making a National Program National: The US Resettlement of Displaced Persons After World War II*, 58 INT’L MIGRATION REV. 1114, 1117-18 (2024) (conveying the significance of the need for resettlement for European refugees after the conclusion of WWII).

<sup>149</sup> See Einarsen, *supra* note 29, at 46-9 (chronicling the history of the IRO, emphasizing America’s outsized importance in its funding and leadership).

Convention,<sup>150</sup> the nation simultaneously served as the principal financier of the aforementioned IRO, backing close to forty percent of the agency's administrative expenses and forty-six percent of its operational budget.<sup>151</sup> Throughout its short-lived history, the IRO was also consistently led by an American serving in the position of Director-General, a fact that signaled to the rest of the international community that the U.S. held considerable expertise in handling refugee-related affairs and that its opinions regarding works such as the Refugee Convention were to be taken seriously.<sup>152</sup>

In direct contrast to the experiences of the U.S., India's status as a sovereign nation during this corresponding period had not even been widely recognized at the time that the U.N. General Assembly convened to deal with the developing global refugee crisis in 1946,<sup>153</sup> with the country securing its independence from Great Britain one year later in August of 1947.<sup>154</sup> Around the time of Britain's partition of the Indian subcontinent, the U.S. Immigration and Naturalization Service (INS) was actively planning to allow 40,000 persons who had become displaced after World War II into the country under an existing quota regulation, allowing for an additional 1,000 refugees to be let into the U.S. as lawful permanent residents.<sup>155</sup> Meanwhile, on the opposite side of the globe, the newly established Indian government had been left without any substantial foreign aid to adequately manage a refugee crisis of unprecedented scale and magnitude that impacted the lives of roughly

---

<sup>150</sup> See generally Conference of Plenipotentiaries, *supra* note 42 (summarizing these discussions).

<sup>151</sup> See Einarsen, *supra* note 29, at 47 ("Most [of the IRO's] costs were covered by the United States."); U.S. HOLOCAUST MEM'L MUSEUM, *supra* note 25.

<sup>152</sup> See U.S. HOLOCAUST MEM'L MUSEUM, *supra* note 25.

<sup>153</sup> See Einarsen, *supra* note 29, at 47; U.S. DEP'T OF STATE OFF. OF THE HISTORIAN, *A Guide to the United States' History Recognition, Diplomatic, and Consular Relations, by County, since 1776: India* (last accessed Dec. 5, 2024), <https://history.state.gov/countries/india>.

<sup>154</sup> See The Editors of Encyclopaedia Britannica, *Independence Day: Indian Holiday*, BRITANNICA (last updated Nov. 15, 2024), <https://www.britannica.com/topic/Independence-Day-Indian-holiday>.

<sup>155</sup> See USCIS, *Refugee Timeline*, *supra* note 93.

fifteen *million* refugees.<sup>156</sup> When it came time for the U.N. to draft its Refugee Convention, the Indian delegation had hoped that its efforts would be enough to cajole the international community into adopting a refugee definition that was unburdened by any significant temporal or geographic restrictions, thereby empowering the U.N. to provide direct assistance to countries like India outside of the European orbit.<sup>157</sup> Juxtaposed to India's efforts on this front was the American delegation, which fought hard to convince member states within the U.N. to adopt a more limited refugee definition, allowing the organization's resources to be consolidated to respond to those refugee-related crises that were exclusively implicating European and Western interests.<sup>158</sup> Of course, the American delegation ultimately won the day on this particular foundational battleground, leading India to perceive itself as having been left without adequate support or acknowledgement within the text of the treaty that resulted.<sup>159</sup>

Pivotal lessons were learned by both India and the United States throughout the drafting of the Refugee Convention that have seemingly proven difficult for either country to fully unlearn, radically shaping the ways in which each respective nation has tended to approach international refugee law in the decades that have followed. For the U.S., the period between 1946 and 1951 provided the country with a strategic opportunity to direct the fledgling global refugee regime toward its own domestic preferences, setting the Convention on a trajectory that would fundamentally align with American interests.<sup>160</sup>

---

<sup>156</sup> See Oberoi, *supra* note 11, at 38 (“Apart from relatively minor contributions from foreign charitable organizations, [India and Pakistan] shouldered the entire responsibility for the [Partition] refugees, which ranged from provision of emergency transit camps, transport, and supplies, to the construction of permanent housing colonies.”); STAN. UNIV., *supra* note 28 (“[A]bout 15 million people moved or were forced to move [as a result of the Partition], and between half a million to 2 million died in the ensuing violence.”).

<sup>157</sup> See Oberoi, *supra* note 11, at 39-41.

<sup>158</sup> See *id.*; see also Conference of Plenipotentiaries, *supra* note 42.

<sup>159</sup> See Ramasubramanyam, *supra* note 26, at 411-12; Ghosh, *supra* note 27, at 33.

<sup>160</sup> See Oberoi, *supra* note 11 at 39-41; Conference of Plenipotentiaries, *supra* note 42; Anker, *supra* note 10, at 303 (“After the Second World War, the US was instrumental in the drafting of the Refugee Convention[.]”).

Despite having initially refused to accede to the Convention, the U.S. was able to leverage its status on the world stage to ensure that its perspectives on refugee-related matters were regarded as authoritative by both its allies and rivals alike.<sup>161</sup> From the time of the Convention's initial drafting and for decades afterward, the U.S. has been empowered to selectively shape and adopt key components of the treaty to suit its own internal ambitions.<sup>162</sup> Doing so has allowed the country not only to benefit from its perceived commitments to the Convention, but has also ensured that American geopolitical aims and aspirations have consistently remained unencumbered by its having acceded to the treaty.<sup>163</sup>

As the 1951 Refugee Convention was nearing its completion, India and a number of other countries throughout the Global South were acutely aware of the looming challenges that they would face resulting from the treaty's failure to provide them with adequate support.<sup>164</sup> As a direct consequence of this lack of material assistance, India learned to approach international treaties such as the Refugee Convention with caution, particularly where becoming a signatory state had potentially intrusive implications for the country's handling of its own domestic affairs.<sup>165</sup> However, India's decision not to accede to the Convention should not necessarily be interpreted as the country having fully rejected the principles of the treaty as a whole, as is clearly demonstrated by India's longstanding

---

<sup>161</sup> See Conference of Plenipotentiaries, *supra* note 42; Anker, *supra* note 10, at 303.

<sup>162</sup> See Anker, *supra* note 10, at 296-98, 303-07.

<sup>163</sup> See *id.*; cf. Koh, *supra* note 4 (establishing ways in which the U.S. has lived up to its commitments under the Convention while outlining other ways in which the country can continue to improve in its treatment of refugee populations).

<sup>164</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 192, 194, 199-200 (explaining the significant failures and overall Eurocentricity of the Convention in its originally conceived form, as well as non-European state reactions to such a perceived snubbing and oversight); Oberoi, *supra* note 11, at 39-41.

<sup>165</sup> See Ramasubramanyam, *supra* note 26, at 411 ("Despite the 1967 Protocol removing the temporal and spatial constraints, South Asian States remained disillusioned with the Refugee Convention's core objectives. Perhaps for this reason, States in the region have instead chosen to regard refugee protection as matters between States and have reasserted their position that the Convention and Protocol fail to capture the experiences of displacement in the region by not ratifying these instruments.").



cooperation with Convention-bound agencies like the UNHCR.<sup>166</sup> In some ways paralleling related efforts by the U.S., India has adopted a rather pragmatic approach to international refugee law, conforming its behavior to the aims and purported goals of the Refugee Convention where doing so has aligned with the country's interests while refraining from formally acceding to the treaty in order to preserve its own autonomy over refugee-related matters.<sup>167</sup>

### *B. On India and America's Differing Levels of Engagement with the UNHCR*

One especially revealing indicator of the Convention's influence on the refugee laws and policies of India and the United States is the extent to which these countries have established a designated role for the Convention's representative agency, the UNHCR.<sup>168</sup> Regardless of whether they have acceded to the Convention, both India and the U.S. have historically exhibited some willingness to grant the UNHCR deference and autonomy in determining which applicants for official refugee status will be allowed to remain and reside within their respective borders.<sup>169</sup> By allowing the agency to conduct RSD on their behalf, this delegation enables the UNHCR to assess refugee applicants according to the parameters of the Convention, thereby ensuring that individual application decisions adhere to internationally recognized standards with only nominal regard for regional preferences.<sup>170</sup> In this way, it could reasonably be surmised that both India and the U.S.

---

<sup>166</sup> See *id.* at 412-13 (documenting India's relationship with the UNHCR, among other South Asian States); see also Shanker & Vijayaraghavan, *supra* note 65, at 24; UNHCR, *The 1951 Refugee Convention*, *supra* note 73.

<sup>167</sup> See Ramasubramanyam, *supra* note 26, at 411-13; cf. Janmyr, *Non-signatory States*, *supra* note 7, at 40 ("UNHCR is often key in the creation of national spaces where State actors are 'socialised' into the international refugee law regime ... [for example,] in India, UNHCR recently formed a research and advocacy initiative with academics working on refugee issues[.]").

<sup>168</sup> See UNHCR, *The 1951 Refugee Convention*, *supra* note 73 (establishing the substantial and consequential link between the Convention and the UNHCR).

<sup>169</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24; USCIS, *Refugees and Asylum*, *supra* note 100.

<sup>170</sup> See Janmyr, *Non-signatory States*, *supra* note 7, at 40 ("UNHCR's mandate permits it – with the host State's consent – to supervise refugees not only in signatory but also in non-signatory States. Indeed, in many of these States, UNHCR has a highly operational presence, often taking on responsibilities typically belonging to

have signaled to the global community their recognition of the UNHCR's considerable wisdom and expertise in evaluating such claims and, in doing so, have more broadly come to accept the authority of the Refugee Convention itself.<sup>171</sup>

However, the deference granted to agencies like the UNHCR by India and the United States has never been determined to be absolute or without its significant impediments.<sup>172</sup> Regarding India, while the country's dual RSD system affords the UNHCR considerable control over specific groups of refugees whose well-being the agency has been made directly responsible,<sup>173</sup> the Indian government has reserved for itself the right to accept or reject any refugees that it considers to fall under its own mandate.<sup>174</sup> On top of this constraint, the extent to which Indian legal authorities have been willing to adhere to the UNHCR's decision-making has recently come into considerable question.<sup>175</sup> Some reports have shown that Indian law enforcement officials have recently taken to rejecting the validity of UNHCR-issued identity cards, possibly due to these officials' limited

---

States, such as refugee status determination.”); *see generally* UNHCR, *The 1951 Refugee Convention*, *supra* note 73.

<sup>171</sup> *See* UNHCR INDIA, *supra* note 66 (providing access and links to the UNHCR's recent accomplishments within the country of India); Koh, *supra* note 27 (touting the groundbreaking nature of the Convention and its Protocol, as well as the good that America's adherence to the treaty has done for refugee populations the world over).

<sup>172</sup> *See* Shanker & Vijayaraghavan, *supra* note 65, at 24 (“Moreover, this process [of the UNHCR's conduction of RSD in India] is further complicated when the asylum seeker is from one of the countries where asylum claims fall under the mandate of the Indian government, since UNHCR has no designated authority to adjudicate on such asylum claims.”); AM. IMMIGR. COUNCIL, *supra* note 107 (“The [UNHCR] conducts an initial screening to determine if an individual seeking refugee status qualifies as a refugee under international law and then ... [refers them] to one of nine U.S. Department of State Resettlement Support Centers (RSCs) around the world where they are screened to ensure they meet U.S.-designated processing priorities.”).

<sup>173</sup> *See* Shanker & Vijayaraghavan, *supra* note 65, at 24; *see also* Janmyr, *Non-signatory States*, *supra* note 7, at 40 (“UNHCR has operated for decades in many non-signatory States, engaging in both international protection of and direct assistance to refugees and asylum seekers. Under UNHCR's Statute, its competence in refugee issues is universal in nature, without any geographical limitation.”).

<sup>174</sup> *See* Shanker & Vijayaraghavan, *supra* note 65, at 24; Ramasubramanyam, *supra* note 26, at 413.

<sup>175</sup> *See* Shanker & Vijayaraghavan, *supra* note 65, at 24 (“Those who are recognised as refugees by UNHCR are issued with an identity card, but these are not widely recognised by State authorities (in contrast with the widely recognised documentation issued by the government to refugees who fall under its mandate). Having UNHCR-awarded refugee status therefore does not provide refugees with sufficient protection.”).

awareness of the UNHCR's officially sanctioned role within the country.<sup>176</sup> A comparable dynamic exists within the context of the U.S., where the UNHCR's delegated authority is also frequently subject to substantial restrictions.<sup>177</sup> As touched upon previously, refugees who have already been recognized by the UNHCR must undergo a series of additional screenings before being allowed into the U.S. to determine whether they align with the government's current designated priorities, providing a significant limitation to the UNHCR's ability to conduct RSD on its own accord.<sup>178</sup> Furthermore, the very fact that the federal government participates in its own conducting of RSD for asylum-seekers additionally curtails the UNHCR's influence on American refugee laws and policies.<sup>179</sup>

One notable area in which India and the United States seem to differ in their regard for the UNHCR pertains to the rulings stemming from each country's respective judiciary. In a series of cases ranging from the country's lower courts to its Supreme Court, the Indian judiciary has, in certain instances, demonstrated an overt and explicit willingness to directly involve the UNHCR in conducting RSD when an applicant's refugee status has been the subject of significant contestation.<sup>180</sup> This cooperation between the judiciary and the UNHCR, however sporadic, suggests that the Indian courts regard the UNHCR's input as a valuable and integral part of the courts' own adjudicative processes in cases

---

<sup>176</sup> See *id.* ("Because of widespread lack of awareness of UNHCR or its role in India, those with UNHCR-issued documentation are often still seen by authorities as illegal residents.").

<sup>177</sup> See generally AM. IMMIGR. COUNCIL, *supra* note 107.

<sup>178</sup> See *id.*

<sup>179</sup> See Anker, *supra* note 10, at 304-06 (articulating the process and mechanisms by which applicants for asylum-status are admitted into the U.S.).

<sup>180</sup> See Ramasubramanyam, *supra* note 26, at 413 (summarizing cases in which the "UNHCR has undertaken RSD at the insistence of the [Indian] judiciary."); Janmyr, *The 1951 Refugee Convention*, *supra* note 6 ("In India, UNHCR Notes on International Protection have similarly been referenced by parties to national court procedures concerning pushbacks of Rohingya refugees and, in some situations of immigration detention, Indian courts have also sought intervention from UNHCR to determine a detainee's asylum claim."); *but see* Shanker & Vijayaraghavan, *supra* note 65, at 24 ("In the absence of dedicated legislation, Indian courts have in certain instances allowed detainees with a prima facie asylum claim to approach UNHCR for RSD. This, however, is the exception rather than the rule, and such interventions are not governed by any set criteria but made on a case-by-case basis.").

implicating the rights of refugees.<sup>181</sup> While the extent to which these rulings can be applied as a guiding principle of Indian jurisprudence has been the subject of some debate,<sup>182</sup> the judiciary's continued reliance on the UNHCR at the very least reflects the significant trust that India has placed in the agency's ability to conduct RSD on the country's behalf.<sup>183</sup> By comparison, the U.S. Supreme Court has spent the last four decades of its modern history issuing decisions that have granted very little deference to the opinions or interpretations of the UNHCR, often limiting the agency's contribution in cases involving refugees or other asylum-seekers to the submission of disregarded amicus curiae briefs and very little more.<sup>184</sup> Rare has been the instance in which the U.S. Supreme Court has explicitly considered the views of the UNHCR in any of its decisions, a factor that some have posited has led to problems of "domestic and international inconsistency" which undermines America's obligations under the Refugee Convention.<sup>185</sup>

*C. What the Experiences of India and the U.S. Reveal About the Refugee Convention's Influence on State Behavior Overall*

The complex and dynamic relationships that both India and the United States have developed with the 1951 Refugee Convention and its Protocol signify that, for all of the treaty's many shortcomings and initial under-inclusiveness, the Convention has maintained a degree of relevance and normative authority within the current international refugee regime that has influenced the behaviors of both signatory and non-signatory states

---

<sup>181</sup> See Ramasubramanyam, *supra* note 26, at 413.

<sup>182</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24.

<sup>183</sup> See Ramasubramanyam, *supra* note 26, at 413; see also Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 203 ("in many of these [non-signatory] States, UNHCR has a highly operational presence, often acting as a 'surrogate State' and taking on responsibilities that typically belong to States, such as refugee status determination.").

<sup>184</sup> See *American Courts*, *supra* note 114, at 1408-10 (writing on specific cases in which the UNHCR's views, conveyed through amicus briefs, were discounted and disregarded by the Supreme Court).

<sup>185</sup> *Id.* at 1412.

alike.<sup>186</sup> This proposition has garnered increased academic attention and support in recent years, culminating in University of Oslo law professor Maja Janmyr’s revelatory article “The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda.”<sup>187</sup> In this work as well as elsewhere, Professor Janmyr has promulgated the general argument that the Refugee Convention continues to play a significant role in “structur[ing] States’ responses to refugees ... not only in States that are party to the Convention, but also in key non-signatory States[,]”<sup>188</sup> a notion that finds considerable support in the comparative historical experiences of India and the U.S.

In India, the Convention’s impact is readily apparent through the national government’s extensive collaboration with U.N. affiliates such as the UNHCR, which is empowered to take on a pivotal and active role within the country by conducting RSD in full compliance with the text of the Convention.<sup>189</sup> Additionally, the country’s “adherence to the spirit of international refugee protection norms” embodied by international frameworks like

---

<sup>186</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 191 (“By examining the practice of, and interaction between, actors on a global, national, and local level more closely, we may gain a deeper and more nuanced understanding of the interplay between international refugee law and non-signatory States.”); Janmyr, *Non-signatory States*, *supra* note 7, at 39 (“The research project BEYOND ... aims to reconsider the impact of international refugee law by analysing the various ways in which non-signatory States relate to the international refugee regime. By examining this interplay more closely, we may in fact discover that many non-signatory States engage with the international refugee regime in a number of ways, and that the Convention plays a substantial role in some of these States.”); Ramasubramanyam, *supra* note 26, at 412 (“South Asian States’ responses to mass exodus since the Partition of India show that, in essence, they have adhered to the core principle of non-refoulement set out in article 33 of the Convention.”); Koh, *supra* note 27 (speaking on the Biden-Harris Administration’s behalf in stating “On this 70th birthday, let me first, celebrate the historic accomplishment of the Convention. As landmark events in international law, the Convention and Protocol were watershed achievements that continue to guide the international community in its approach to refugee crises around the world.”).

<sup>187</sup> See generally Janmyr, *The 1951 Refugee Convention*, *supra* note 6.

<sup>188</sup> Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 612; see also Janmyr, *Non-signatory States*, *supra* note 7, at 39 (contradicting the widely held belief amongst scholars that “the fact of not being a party [to the Refugee Convention] has long been taken to mean that these [non-signatory] States are ‘exceptions’ to the international refugee regime.”).

<sup>189</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24; Ramasubramanyam, *supra* note 26, at 412-13; see also Janmyr, *Non-signatory States*, *supra* note 7, at 40 (“UNHCR is often key in the creation of national spaces where State actors are socialised’ into the international refugee law regime – that is, where such actors are drawn into accepting certain international standards, which in turn influences State behaviour.”); see generally UNHCR INDIA, *supra* note 66.

the Convention is also evident from India's membership in influential organizations such as ExCom.<sup>190</sup> Consequently, India can be said to have significantly aligned itself with many of the Convention's underlying principles despite its continued non-signatory status.

Relatedly, the treaty's normative influence is well reflected in the American context by the very fact that the country was eventually pressured to accede to the Convention's Protocol in order to appeal to the humanitarian aims of potential allies during the height of the Cold War.<sup>191</sup> Additionally, the Convention's continued relevance to U.S. domestic law has been periodically reinforced through its partial incorporation into consequential pieces of legislation such as the Refugee Act of 1980 as well as frequent discussions on the correct application of the treaty held within a series of Supreme Court decisions issued over the past four decades.<sup>192</sup>

However, as has been the subject of repeated emphasis throughout this paper, the breadth of the Convention's influence is crucially not universal in terms of its scope.<sup>193</sup> In India, significant gaps persist in the application of international refugee standards despite the government's frequent and extensive collaboration with Convention-affiliated agencies like the UNHCR and the country's participation in organizations such as ExCom.<sup>194</sup> Indian authorities have seemingly felt free to periodically disregard U.N.-issued documentation,

---

<sup>190</sup> Ramasubramanyam, *supra* note 26, at 413.

<sup>191</sup> See Anker, *supra* note 10, at 304 ("During [the 1960s], the US was competing with the Soviet Union for worldwide influence, and the appearance of a fair and non-discriminatory refugee policy was part of its geopolitical strategy to win over the sympathies of newly emerging States in particular.").

<sup>192</sup> See *id.* at 304-07 (documenting developments in which the U.S. has pursued restrictive policies towards refugees and other asylum-seekers); COLLOPY, *supra* note 12, at 2-4 (conveying information about related pieces of legislation such as the Refugee Act of 1980); *Stevic*, 467 U.S. at 412-14; *Cardoza-Fonseca*, 480 U.S. at 429; *Sale*, 509 U.S. at 179-188.

<sup>193</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 212 (articulating a similar position that the purpose of her work is not to "engage in a normative effort to position the Convention as the *sine qua non* of refugee protection, but rather to disrupt the emphasis on signatory States in contemporary discussions of the relevance and importance of the 1951 Convention[.]" with Janmyr rather seeking to sketch out "a new research agenda on non-signatory States and their relationship with the 1951 Convention.").

<sup>194</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24-25.

leaving refugees vulnerable to arbitrary decision-making by local officials even as the UNHCR has been granted broad authority over their status and right to remain within India.<sup>195</sup> Similarly, in the United States, the partial incorporation of the Refugee Convention into domestic law has not reliably translated into a steadfast commitment by the country to consistently uphold the rights of refugees.<sup>196</sup> Actions taken by all three branches of the federal government have consistently undermined America's obligations to refugee populations, reflecting the country's selective and generally uneven application of the Convention's foundational principles.<sup>197</sup> As such, it can be appropriately derived from the laws and policies of India and the U.S. that a state's formal accession to the Convention is an inherently faulty and unreliable metric for predicting how a country will ultimately treat refugee populations.<sup>198</sup> The comparative historical experiences of these two nations demonstrate well the unfortunate reality that legal obligations arising from international treaties, including the Refugee Convention, do not automatically guarantee that protective measures for refugees will be pursued consistently in practice.<sup>199</sup>

## CONCLUSION

This paper has holistically considered the impact of the 1951 Refugee Convention and its 1967 Protocol on the refugee laws and policies of both India and the United States, contributing to a growing area of scholarship underscoring the Convention's authority even among those

---

<sup>195</sup> See *id.* at 24; Khosla, *supra* note 62 (“[A] standard refugee policy would provide legal pathways to asylum and prevent unjust administrative actions, such as the National Registry of Citizens, from implementation at the national level.”).

<sup>196</sup> See Anker, *supra* note 10, at 296, 304-07.

<sup>197</sup> See *id.*; *American Courts*, *supra* note 114, at 1412.

<sup>198</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 212-13.

<sup>199</sup> See *id.*; Anker, *supra* note 10, at 296, 304-07.

countries that are not themselves signatories to the treaty.<sup>200</sup> In evaluating the Convention's application within these two very distinct nations, it becomes readily apparent that the treaty continues to hold a degree of normative influence over the development of international refugee law.<sup>201</sup> Within India, a non-signatory state, the Convention's principles have often been indirectly integrated through India's engagement with U.N.-affiliated agencies such as the UNHCR.<sup>202</sup> While India's tacit acceptance of the Convention is multifaceted and underscored by historical complexities,<sup>203</sup> the country's continued partnership with the UNHCR has often allowed refugees residing within the country to access critical protections that may not have been as readily available in the agency's absence.<sup>204</sup> In contrast, the United States, a nation that has acceded to the Convention through its 1967 Protocol, has pursued a much more direct yet simultaneously paradoxical approach to the treaty.<sup>205</sup> While the U.S. has incorporated many critical elements of the Convention into its own laws,<sup>206</sup> the country has routinely undermined its commitments to refugee populations through its pursuit of restrictive policies, legislative measures, and judicial interpretations that have systematically prioritized domestic concerns over the country's international obligations.<sup>207</sup>

The contrasting approaches taken toward the Refugee Convention by India and the United States throughout the years are suggestive of the fact that a country's general adherence to the treaty's underlying principles is shaped by factors far more complex than an individual

---

<sup>200</sup> See generally Janmyr, *The 1951 Refugee Convention*, *supra* note 6; Janmyr, *Non-signatory States*, *supra* note 7.

<sup>201</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 212-13; see generally UNHCR INDIA, *supra* note 66; Koh, *supra* note 4.

<sup>202</sup> See Ramasubramanyam, *supra* note 26, at 412-13.

<sup>203</sup> See Shanker & Vijayaraghavan, *supra* note 65, at 24-25; Khosla, *supra* note 62.

<sup>204</sup> See Ramasubramanyam, *supra* note 26, at 412.

<sup>205</sup> See Anker, *supra* note 10, at 296, 304-07.

<sup>206</sup> See COLLOPY, *supra* note 12, at 2-4.

<sup>207</sup> See Anker, *supra* note 10, at 296-98, 304; Beers, *supra* note 121, at 135-36; see also *Stevic* 467 U.S. at 412-13; *Elias-Zacarias* 502 U.S. at 483-84; *Negusie*, 555 U.S. at 516-17.



state's signatory or non-signatory status.<sup>208</sup> India's pragmatic alignment with the Convention's humanitarian ethos and the United States' practice of selective compliance with the treaty raise important and continuing questions regarding the overall efficacy of international treaties in shaping state behavior. Nevertheless, as global refugee crises continue to escalate in their scale and complexity in the twenty-first century,<sup>209</sup> the Convention has proven to be a cornerstone of the international refugee regime holding considerable and enduring normative power.<sup>210</sup>

---

<sup>208</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 202, 208, 212.

<sup>209</sup> See WORLD FOOD PROGRAM USA, *supra* note 5.

<sup>210</sup> See Janmyr, *The 1951 Refugee Convention*, *supra* note 6, at 212.