



Research article

JNL: <https://ijlcw.emnuvens.com.br/revista>

DOI: <https://doi.org/10.54934/ijlcw.v5i1.180>

THE IMPACT OF INTERNATIONAL LAW ON THE PROTECTION OF AFGHAN ASYLUM SEEKERS AND REFUGEES IN PAKISTAN

Ali Ahmad Mowahid

Jami University, Herat, Afghanistan

Fazl Ahmad Ahmadi

Jami University, Herat, Afghanistan

Article Information:

Received

April 8, 2026

Reviewed & Revised

May 21, 2026

Accepted

June 26, 2026

Published

July 30, 2026

Keywords:

Afghan asylum
seekers,
non-refoulement,
refugee rights,
international law,
Pakistan

ABSTRACT | 摘要 | RESUMEN

This article examines the effectiveness of international legal frameworks in protecting Afghan refugees and asylum seekers in Pakistan, analyzing the persistent gap between normative commitments and protection outcomes. Employing a qualitative, descriptive-analytical and doctrinal methodology, the study draws on primary international legal instruments, including the 1951 Refugee Convention, the 1967 Protocol, and the Convention on the Rights of the Child, alongside secondary scholarly sources and Pakistan's domestic legal framework, combined with a longitudinal review of Pakistan's refugee policies across four periods (1979–2024). It argues that international law's failure to protect Afghan refugees stems not solely from Pakistan's non-accession to the 1951 Convention, but from the international refugee regime's structural dependence on host states' political will and domestic legal infrastructure. This deficiency has produced systematic rights violations, including forced deportations. The study contributes by treating international law as an independent variable across distinct historical and political contexts in a non-party state.

FOR CITATION:

Mowahid, A. J., & Ahmadi, F. A. (2026). The Impact of International Law on the Protection of Afghan Asylum Seekers and Refugees in Pakistan. *International Journal of Law in Changing World*, 5 (1), 4-31. DOI: <https://doi.org/10.54934/ijlcw.v5i1.180>

1. INTRODUCTION

Forced human displacement in the contemporary international order is no longer regarded as an exceptional or temporary phenomenon; rather, it has become a persistent feature of the global political and legal reality. The escalation of armed conflicts, state collapse, and the intensification of economic crises have compelled millions of individuals to cross national borders in search of security, livelihood, and survival. Under such circumstances, the international legal system faces a fundamental challenge: whether it is capable of translating its normative commitments into effective protection for refugees, or whether these commitments remain confined to declaratory instruments. According to global data reported by the United Nations Department of Economic and Social Affairs (UNDESA), the number of international migrants worldwide reached 304 million in 2024—almost double the 154 million recorded in 1990. International migrants now constitute approximately 3.7 percent of the world's population, reflecting the unprecedented expansion of cross-border human mobility in recent decades. [35] A substantial proportion of this population consists of refugees and asylum seekers who are forced to flee their countries of origin not by choice, but as a consequence of coercive conditions. These groups, particularly in developing host states, frequently face serious legal and protection gaps.

Afghanistan represents a prominent example of a country in which multidimensional crises have rendered forced migration a structural and enduring phenomenon. Decades of armed conflict, political instability, and institutional collapse have not only impeded sustainable return but have also continuously generated new waves of displacement. According to the United Nations High Commissioner for Refugees (UNHCR), the Afghan displacement crisis ranks among the most protracted and geographically widespread refugee situations worldwide. Within this context, Pakistan has played a central role as one of the primary destinations for Afghan refugees. [12] Despite hosting millions of Afghans over several decades, their legal status in Pakistan remains ambiguous and precarious. The absence of a comprehensive national legal framework for refugee protection, combined with Pakistan's non-accession to the 1951 Refugee Convention, has resulted in a protection regime largely shaped by ad hoc policies and security-driven considerations.

Recent developments—particularly the implementation of large-scale forced deportation policies against Afghan refugees—have further intensified the critical question of the extent to which international

legal norms and standards have influenced the conduct of the host state. From this perspective, the situation of Afghan refugees in Pakistan constitutes not merely a case study, but a broader test of the practical effectiveness of international refugee law in non-party states to the classical refugee protection regime.

Accordingly, the central research question is: To what extent has international law been effective in protecting Afghan refugees in Pakistan, and what legal, political, and structural factors explain the gap between normative commitments and protection outcomes? The hypothesis posits that international law has failed to ensure effective protection not merely due to Pakistan's non-accession to the 1951 Convention, but because the enforcement architecture of international refugee law is structurally dependent on the political will of host states—rendering normative obligations largely aspirational without binding compliance mechanisms. The novelty of this study lies in treating international law as an independent variable across four historical periods (1979–2024), examining how geopolitical shifts, institutional deficiencies, and structural limitations have interacted to produce protection failures in a non-party state.

2. LITERATURE REVIEW

Research on Afghan refugees in Pakistan remains limited, with most studies focusing on social and economic conditions rather than international legal analysis. Existing scholarship provides important insights but lacks a systematic examination of how international law has influenced Pakistan's treatment of Afghan refugees.

Keyhanlou (2021) discusses legal mechanisms such as *prima facie* refugee status and temporary protection in response to Afghan displacement, yet does not explain why these mechanisms have failed to ensure consistent protection in host states like Pakistan. Khuhro et al. (2024) describe Pakistan's relatively accommodating refugee policies despite its non-signatory status to major refugee conventions, but their analysis remains largely descriptive and overlooks the structural causes behind policy shifts between protection and coercion.

Hashimy (2024) highlights the ambiguity of refugee protection obligations in non-signatory states and argues that weak legal safeguards have facilitated forced deportations, though the study lacks a systematic framework connecting international law with domestic practice. Similarly, Masudi and

Mustafa (2022) emphasize the unclear legal status of Afghan refugees and its impact on economic rights, but do not analyze the broader effectiveness of international legal norms on Pakistan's refugee policies.

Recent studies by Nisar et al. (2024), Hamza and Shaukat (2024), and Rahatullah et al. (2024) address forced repatriation, socio-economic rights, and the shortcomings of the Responsibility to Protect (R2P) doctrine. While these studies reveal significant gaps between international legal standards and the lived realities of Afghan refugees, they generally treat international law as a background principle rather than critically assessing its operational effectiveness within Pakistan.

Overall, the existing literature lacks a longitudinal critical legal analysis of international law as an independent variable shaping refugee protection in a non-signatory host state. While prior studies have documented specific rights violations, they have not systematically interrogated why the international legal framework has been structurally incapable of compelling compliance in states outside the core treaty regime. This study addresses that gap by examining how geopolitical imperatives, domestic institutional deficiencies, and structural limitations of international enforcement mechanisms have shaped Pakistan's treatment of Afghan refugees across four distinct historical periods.

3. METHODOLOGY

This study adopts a qualitative descriptive-analytical and doctrinal legal approach, focusing on the interpretation of international legal texts and their application within a specific geopolitical context. The research relies on the analysis of primary sources, including international refugee and human rights instruments, UN resolutions, and UNHCR reports, as well as secondary sources such as academic articles, policy studies, and scholarly books on refugee law and Afghan refugees in Pakistan.

The four-period periodization (1979–1989, post-1989, post-2001, and post-2021) is not an arbitrary chronological device but reflects four documented ruptures in the geopolitical environment shaping Pakistan's refugee policy: the Cold War-era Soviet occupation of Afghanistan, the post-Soviet civil war and the rise of the Taliban, the post-9/11 United States-led intervention, and the Taliban's return to power in 2021. Each rupture corresponds to an identifiable shift in Pakistan's posture toward Afghan refugees, from open-door admission to coercive repatriation, providing a principled rather than purely temporal basis for the periodization.

News sources—including reporting by international wire services, regional outlets, and human rights organizations—are incorporated alongside academic and institutional materials because Pakistan's refugee policy in the most recent period, particularly since 2021, has evolved largely through executive announcements, ministerial directives, and field-level enforcement measures that peer-reviewed scholarship, given its longer publication cycle, has not yet had the opportunity to document. Contemporaneous reporting therefore supplies empirical detail on policy implementation that would otherwise be unavailable for the final period under study.

The analysis is conducted in two stages: first, examining the legal framework governing refugee protection; second, evaluating Pakistan's treatment of Afghan refugees across four historical periods (1979–1989, post-1989, post-2001, and post-2021) in light of these legal standards. This approach allows for a critical assessment of the political, institutional, and structural factors shaping the implementation of international refugee law.

As a doctrinal study, the research does not include empirical methods such as interviews or surveys and is limited primarily to the legal and policy dimensions of refugee protection in Pakistan. Beyond the absence of empirical fieldwork, three further limitations should be noted: reliance on secondary and media sources for the most recent period, which may vary in the precision of reported figures; the unavailability of internal Pakistani governmental deliberations, which confines the analysis to public policy outputs rather than decision-making processes; and the predominance of English-language sources, which may underrepresent perspectives available only in Urdu, Pashto, or Dari.

4. THE LEGAL STATUS OF ASYLUM SEEKERS AND REFUGEES IN INTERNATIONAL LAW

In the contemporary world, the phenomenon of asylum seeking—particularly within the context of protracted crises and armed conflicts—has emerged as one of the most pressing issues in international law and international human rights law. A substantial share of today's cross-border migration is not the result of voluntary choice, but rather stems from direct threats to life, liberty, and human dignity. In this regard, Afghan asylum seekers represent a prominent example of populations that, as a consequence of political and security developments, have been compelled to cross international borders. This situation has placed significant legal, economic, and security pressures on host states, while simultaneously underscoring the growing importance of the international refugee protection regime.

In classical international law, prior to the emergence of modern international institutions, asylum was not recognized as an independent legal right. Instead, it was generally addressed within broader legal frameworks such as extradition law or the legal status of aliens. With the establishment of the League of Nations, the first organized and institutionalized efforts to protect refugees were initiated. Following the Second World War, this process entered a new phase with the creation of specialized institutions within the framework of the United Nations. The establishment of the International Refugee Organization (IRO) in 1946, followed by the creation of the Office of the United Nations High Commissioner for Refugees (UNHCR), marked a critical turning point in the institutionalization of international protection for refugees. [20, p. 125]

4.1. Granting Refugee Status and Collective Approaches in Crisis Situations

One of the fundamental challenges of the international refugee protection regime lies in responding to large-scale and sudden influxes of asylum seekers—situations in which individual status determination becomes practically unfeasible. In such circumstances, the Office of the United Nations High Commissioner for Refugees (UNHCR), through its *Handbook on Procedures and Criteria for Determining Refugee Status* and subsequent guidelines, has recommended the use of prima facie or group-based recognition of refugee status as a temporary and pragmatic solution. This approach is premised on the assumption that members of a particular group are generally exposed to a shared risk and, in the absence of contrary evidence, should be afforded initial protection. [14, pp. 2–3]

The experience of the large-scale displacement of Afghan asylum seekers following the political developments of 2021 demonstrates that while collective approaches may provide an immediate response to humanitarian emergencies, the absence of complementary legal and administrative mechanisms can result in prolonged legal uncertainty and heightened vulnerability for asylum seekers. Consequently, without pathways toward individualized assessment, durable solutions, or secure legal status, group-based protection risks transforming an emergency measure into a source of structural precarity.

4.2. Temporary Protection

In situations where individual refugee status determination is not feasible, the concept of temporary protection emerges as an emergency mechanism. Guidelines issued by the Office of the United Nations High Commissioner for Refugees envisage temporary protection for circumstances such as large-scale cross-border displacement and protracted or unstable crises. [36, pp. 1119–1127] Within this

framework, the admission of asylum seekers must be carried out without discrimination, and the principle of non-refoulement must be fully respected.

Nevertheless, practical experience demonstrates that temporary protection has, in many cases, evolved into a tool for postponing final status determination, thereby restricting refugees' access to durable legal rights and long-term protection. [33; 31]

4.3. Private Rights of Refugees and the Principle of Minimum Equality

Refugees, as foreign nationals, are entitled to a minimum set of private rights grounded in the principle of human dignity. These rights—including ownership of movable and immovable property as well as rights related to personal status—are guaranteed in many legal systems either through domestic legislation, international treaties, or the principle of reciprocity. Nevertheless, the practical enjoyment of these rights remains largely contingent upon domestic state policies and prevailing attitudes toward non-nationals.

In the field of personal status, although the dominant trend in private international law favors the application of the foreigner's national law, the effective exercise of such rights often depends on reciprocal recognition and the discretionary will of the host state. [6, p. 826] This situation poses particular challenges for refugees who lack valid identity documentation, rendering them especially vulnerable to legal uncertainty and restricted access to fundamental private rights.

4.4. The 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol

The 1951 Refugee Convention and its 1967 Protocol form the principal international legal framework for refugee protection. They define the legal status of displaced and stateless persons and guarantee key rights, including protection against discrimination, religious freedom, access to justice, and the rights to employment and education. Central to the Convention is the principle of non-refoulement, which bars States from returning individuals to places where their lives or freedoms would be threatened. It also calls on States to implement humane policies on admission and residence and to cooperate with international organizations in fulfilling these obligations. Some of the most important provisions of the Convention are presented in Table 1.

Table 1. Principal Provisions of the 1951 Refugee Convention

Subject	Explanation
Non-Refoulement	Article 33 establishes that states must refrain from transferring refugees to any country where they would face serious risks to their life or personal liberty on grounds such as race, religion, nationality, social affiliation, or political beliefs. This obligation, often characterised as the central pillar of protection within the 1951 Refugee Convention, is generally recognised as having the status of a rule of customary international law. While some commentators have suggested that this rule may rise to the level of a peremptory norm (<i>jus cogens</i>), scholarly opinion remains divided and no authoritative determination has been made. In addition, the principle is relevant to extradition practices, as several extradition agreements incorporate provisions consistent with the doctrine of non-refoulement. [23]
Public Education	Article 22 obliges state parties to facilitate refugees' enjoyment of educational opportunities, including access to formal schooling, validation of academic credentials obtained abroad, and eligibility for financial assistance such as scholarships. As an illustration of positive practice, Austria waives university tuition fees for refugees. In contrast, Ethiopia has formulated reservations with respect to Articles 17 and 22, thereby interpreting the provision of public education not as a binding duty but rather as a non-mandatory guideline. [2]
Right to Work and Social Security	Articles 7, 18, 19, and 24 of the 1951 Convention collectively emphasize that refugees are entitled to access employment opportunities and social protection mechanisms within host states. A practical illustration can be found in Luxembourg, where pursuant to the Ministerial Decree of 25 May 1955, refugees who become unemployed for reasons beyond their own control are accorded the same legal status as nationals who are unemployed. Accordingly, they may benefit from unemployment allowances, provided that they hold permanent residence in the Grand Duchy and are in possession of a travel document issued by the Ministry of Foreign Affairs in accordance with Article 28 of the Convention. [2]

Expulsion of Refugees	Article 33 affirms that a state party is not permitted to remove a refugee who is lawfully present on its territory unless such action is justified by considerations of national security or public order. Moreover, any measure of expulsion must be carried out in conformity with procedural safeguards and the requirements of due process (Adebayo, 2015).
Naturalization	Article 34 encourages states parties to take appropriate measures, insofar as practicable, to promote the integration and naturalization of refugees lawfully residing within their territories, including by easing procedures and reducing barriers related to nationality acquisition. [2]
Irregular Refugees	Article 31 provides that refugees shall not be subjected to penalties for irregular entry or presence, provided they can demonstrate that they fled from a situation of danger and present themselves to the authorities within a reasonable time. In a number of legal systems, including those of Austria and Belgium, asylum seekers are required to lodge their claims promptly after arrival; failure to do so, such as remaining for extended periods in a third country or delaying without valid justification, may adversely affect their entitlement to residence. [2]
Housing	Article 21 of the 1951 Convention addresses the issue of accommodation by obligating contracting states to provide refugees who are lawfully staying in their territory with appropriate treatment in matters related to housing, in accordance with domestic regulations or the supervision of public authorities. At a minimum, the standard of treatment afforded to refugees must be no less favorable than that granted to other non-nationals in comparable situations. [30]

Despite its significance, the 1951 Refugee Convention was initially subject to important limitations. Most notably, its scope was restricted to refugees who had been displaced prior to January 1951, and States were permitted to limit the application of the Convention exclusively to refugees located within Europe. As a result, refugees outside Europe were effectively excluded from the protections afforded by international refugee law. The emergence of new waves of forced displacement during the 1950s and 1960s exposed the inadequacy of these temporal and geographical limitations. This issue was subsequently addressed in the sessions of the Executive Committee of the United Nations High Commissioner for Refugees in 1964 and 1965. Following these discussions, a conference was convened

in Bellagio, Italy, in 1965, which led to the drafting of a Protocol aimed at removing the temporal and geographical restrictions of the 1951 Convention. This Protocol was approved by the United Nations General Assembly on 16 December 1966. [13, p. 565]

Accordingly, a convention that was originally designed to address the situation of European refugees in the aftermath of the Second World War acquired a significantly broader scope of application with the adoption of the 1967 Protocol.

4.5. Declaration on Territorial Asylum

The Declaration on Territorial Asylum, initiated by the United Nations Commission on Human Rights, was adopted by consensus of the General Assembly on 14 December 1967. General Assembly Resolution 2312 (XXII) related to this Declaration serves as a key instrument and primary source of international refugee law. The Declaration highlights the international community's obligation, through the United Nations, to grant asylum to eligible individuals and ensure their protection and assistance. It also confirms that anyone facing serious threats to life or freedom due to violations of rights recognized in the Universal Declaration of Human Rights has the right to seek and receive asylum. [18, p. 50].

4.6. The UNHCR Statute and Its Role in Refugee Protection

The Statute of the United Nations High Commissioner for Refugees sets out the general framework for international refugee protection and the promotion of durable solutions, and is regarded as a key foundation of international refugee law. It specifies the mandate, functions, and legal authority of the High Commissioner in safeguarding refugees and facilitating lasting solutions. In addition, it regulates the institutional relationship between UNHCR and the main organs of the United Nations, such as the General Assembly, the Economic and Social Council, and other specialized bodies. [20, p. 133] UNHCR (n.d.) was created by the United Nations General Assembly in 1950 in response to the mass displacement following the Second World War. It currently carries out its protection mandate in 122 countries, demonstrating the global reach of its activities.

4.7. The Universal Declaration of Human Rights and the International Covenants

Adopted in 1948, the Universal Declaration of Human Rights established human rights as a universal standard. While it is not legally binding, its broad acceptance makes it a key reference for

evaluating state compliance with human rights norms. Article 13 guarantees the right to freedom of movement and residence within a state, as well as the right to leave any country, including one's own, and to return. This right extends to foreign nationals, although host states may impose lawful restrictions based on security or economic considerations. The International Covenant on Civil and Political Rights reinforces these protections in Article 12, ensuring that all individuals lawfully present in a country can move freely and choose their residence, and can leave any country, including their own. Restrictions are permitted only if established by law and necessary to safeguard national security, public order, public health or morals, or the rights of others, in accordance with the Covenant's provisions. [25, pp. 220–222]

4.8. International Legal Protection of Children: The Convention on the Rights of the Child Framework

Adopted by the United Nations General Assembly in 1989, the Convention on the Rights of the Child (CRC) is widely regarded as a cornerstone of the global system for safeguarding children's rights. Comprising 54 articles, the Convention addresses a broad range of protections, many of which are directly relevant to migrant and refugee children. Several provisions specifically highlight the rights and special safeguards owed to migrant children, the most important of which are summarized in Table 2:

Table 2. Principal Articles of the Convention on the Rights of the Child Relevant to Migrant Children.

Article	Summary of the Provision	Relevance to Migrant and Refugee Children
Article 2	Guarantees all Convention rights to every child without discrimination, including discrimination based on parents' status, and prohibits punitive treatment on that basis.	Extends protection to all children regardless of nationality or migration status, covering migrant, refugee, and stateless children.
Article 7	Requires immediate birth registration and the right to a name, nationality, and parental care, with States obligated to prevent statelessness.	Highlights the urgency of birth registration for migrant children, who face heightened risk of remaining undocumented.
Article 22	Obligates States to provide protection and humanitarian assistance to asylum-seeking and refugee children, and to assist in family tracing for reunification.	Directly secures refugee children's access to education, healthcare, and social services, and supports family reunification.

Article 28	Establishes the right to education, including free primary schooling, accessible secondary/higher education, and measures to reduce drop-out.	Confirms migrant and refugee children's right to education and obliges States to remove access barriers for vulnerable groups.
------------	---	--

Source: UNICEF, 1989

Overall, the Convention on the Rights of the Child establishes that all children, regardless of nationality or migration status, are entitled to fundamental rights, including access to social, educational, and health services. These provisions aim to safeguard the well-being and protection of migrant and refugee children in host countries.

4.9. UN General Assembly Resolutions and UNHCR Executive Committee Decisions

The United Nations General Assembly has significantly influenced the development of refugee and asylum seeker rights. Through multiple resolutions, it has gradually expanded the mandate and responsibilities of the UNHCR without formally altering its Statute, offering new interpretations that broaden the categories of individuals eligible for protection.

During the 1960s and 1970s, these measures notably extended UNHCR's activities beyond refugees to include asylum seekers, stateless persons, and certain national or regional groups. Additionally, the UNHCR Executive Committee issues annual conclusions and decisions on refugee-related matters. While not legally binding, these decisions often reflect international consensus and highlight protection gaps, thereby reinforcing the global framework for refugee protection. [18, p. 50]

4.10. Other International Instruments Concerning Refugees

The instruments discussed so far are primarily focused on refugee protection and can be considered the core of international refugee law. However, in addition to these specialized instruments, a broader set of human rights texts exists which, while not exclusively addressing refugees, establish important principles and standards for their treatment. In this context, particular attention is given to States' responsibilities to uphold the human rights of refugees, as derived from human rights treaties, conventions, and other relevant international instruments.

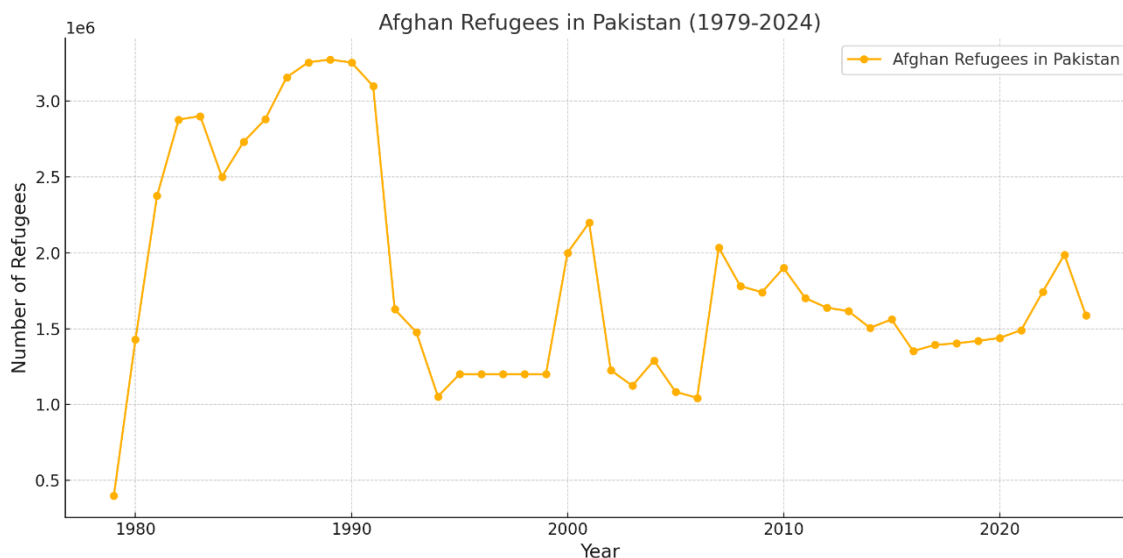
The following section highlights some of these instruments as examples. They include the 1949 Fourth Geneva Convention on the Protection of Civilian Persons in Time of War and its 1977 Additional

Protocols; conventions addressing the status of stateless persons and the prevention of statelessness; the Convention on the Rights of the Child; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Additional Protocols to the 1949 Geneva Conventions on the protection of victims of armed conflicts; the Convention on the Prevention and Punishment of the Crime of Genocide; and the International Convention on the Elimination of All Forms of Racial Discrimination.[13, p. 568]

5. AFGHAN ASYLUM SEEKERS AND THEIR LEGAL STATUS IN PAKISTAN

The history of Afghan asylum seekers in Pakistan dates back to 1979 and 1980, following the rise to power of the communist government in Afghanistan. Since that time, this phenomenon has experienced numerous fluctuations (see Figure 1). Similar to Iran, Pakistan has been one of the most accessible destinations for Afghan asylum seekers and, as a result, has hosted a large number of them over the decades.

Figure 1. The Presence of Afghan Asylum Seekers in Pakistan (1979–2024)



Source: UNHCR, 2024

However, the legal status of Afghan asylum seekers in Pakistan can be examined within the framework of four distinct historical periods.

5.1. The Domestic Statutory and Institutional Framework

In the absence of dedicated refugee legislation, Afghan asylum seekers and refugees in Pakistan are governed by the Foreigners Act, 1946, a colonial-era statute concerned with the entry, residence, and removal of non-citizens rather than with refugee protection as such. Section 3 of the Act empowers the federal government to regulate the entry, presence, and departure of foreigners, while section 14(2) criminalizes unlawful entry or presence, and section 14(B) sets out the procedure for the deportation of foreigners convicted under the Act. [38] Because the Act draws no distinction between a refugee fleeing persecution and an ordinary undocumented migrant, Afghan nationals without valid registration documents are, as a matter of domestic law, treated as illegal aliens subject to removal, irrespective of any protection needs recognized under UNHCR's mandate.

A further layer of policy was added by the National Action Plan, adopted in January 2015 in the aftermath of the Peshawar Army Public School attack, which directed the registration and eventual repatriation of Afghan nationals as part of a broader counter-terrorism strategy. Successive cabinet decisions tied to the Pakistan–Afghanistan–UNHCR Tripartite Commission extended registered refugees' Proof of Registration status into 2017 and beyond, illustrating how refugees' legal standing has been periodically renewed through executive action rather than fixed by statute. The Tripartite Agreement itself, first concluded in 2003 and renewed at successive Commission meetings, commits the three parties to voluntary, safe, and dignified repatriation, but it does not establish enforceable individual rights and has not prevented the coercive returns documented in the post-2021 period.

Pakistani superior courts have, on occasion, supplied protections that the statutory framework withholds. In *Rahil Azizi v. State* [40], the Court quashed proceedings against an Afghan woman threatened with deportation under the Foreigners Act, holding that her circumstances as a person fleeing Taliban persecution required protective treatment. In the *Hamdullah Saboor* case [41], the Court recognized that children born in Pakistan, including to Afghan parents, acquire citizenship by birth under section 4 of the Pakistan Citizenship Act, 1951. More recently, in proceedings before the Supreme Court challenging the 2023 Illegal Foreigners' Repatriation Plan, the federal government assured the Court that holders of Proof of Registration and Afghan Citizen Cards would not be apprehended or deported, an assurance the government has periodically renewed rather than codified. Taken together, this jurisprudence indicates a judiciary willing to extend incremental protection within the existing statutory architecture, but unable, absent legislative reform, to supply the durable legal status that the Foreigners Act does not provide.

5.2. The Period of Initial Reception

Following the overthrow of President Daoud Khan and the subsequent rise of a pro-Soviet communist regime in Afghanistan, widespread political instability triggered the first large-scale wave of Afghan migration. This phase, spanning roughly from 1979–1980 to 1990, witnessed the forced displacement of millions of Afghans to Pakistan (see Figure 2). Due to geographical proximity and relative ease of access, Pakistan—alongside Iran—emerged as one of the principal destinations for Afghan migrants and refugees during this period. Aligned with the U.S.-led bloc during the Cold War, Pakistan adopted an "open-door" policy toward Afghan refugees fleeing the political turmoil and socio-economic disruption that followed the Soviet intervention in Afghanistan. This welcoming approach was largely influenced by extensive support from the United States as a key actor in the proxy war against the Soviet Union, as well as by assistance from international organizations such as the United Nations High Commissioner for Refugees (UNHCR), which supported newly arrived Afghan refugees in Pakistan.

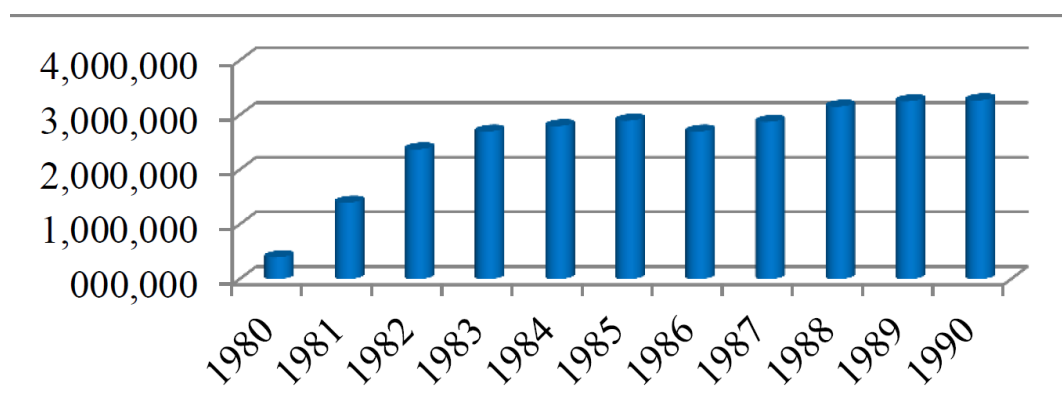
Accordingly, the Pakistani government promptly admitted Afghan refugees and delegated responsibility for their management to provincial authorities in the former border regions, including the North-West Frontier Province (now Khyber Pakhtunkhwa) and Balochistan. According to UNHCR assessments, during this period the standard of living of the majority of refugees was relatively higher than their previous conditions and, in some cases, even higher than that of local populations. [37, pp. 32–33] Afghan refugees were settled in designated areas or settlements commonly referred to as "villages," which facilitated administrative management, identification, and the provision of basic services. Nevertheless, refugees were prohibited from purchasing land or property and from participating in Pakistan's political life; they were only permitted to establish their own political organizations. [1, p. 197] In this context, the *International Herald Tribune* reported that military resistance against the Kabul government was being coordinated from refugee camps in Pakistan and that the country was allegedly using the presence of UNHCR as a protective cover to organize and strengthen resistance groups. [24, pp. 12–13] Although these allegations were officially denied by UNHCR, the presence and organization of Afghan jihadist groups in Pakistan during the years of armed struggle against communism in Afghanistan remain undeniable historical realities.

Nevertheless, notwithstanding political manipulation, Pakistan's approach toward Afghan asylum seekers during the Cold War period was generally generous. The Commissionerate for Afghan Refugees (CAR), established by the Government of Pakistan in each refugee camp, was responsible for registering

and monitoring refugee communities. These commissions issued identification cards, commonly known as *Shanakhti Passes*, to the head of each refugee household. Possession of this card allowed Afghan asylum seekers to move freely and engage in employment within the informal sector. Employment in the informal sector meant that none of the refugees' assets were formally registered or monitored by governmental or non-governmental institutions.

However, holders of these cards were not permitted to own immovable property, vehicles, or other registered assets. From this perspective, it may be argued that although the general policy of the Pakistani government toward Afghan asylum seekers during the Cold War was largely benevolent, their legal status remained ambiguous. This ambiguity was further reinforced by inconsistent and contradictory policies adopted by Pakistani authorities, including police harassment, lack of effective access to courts, and insecurity of businesses and property due to the absence of formal legal registration. [26, pp. 11–13]

Figure 2. Annual Trends of Afghan Refugees in Pakistan (1980–1990)



Source: UNHCR Reports, 1980 ~1990, Khan & Farooq, 2021, p. 72

5.3. The Post-1989 Period

Following the fourteen-year struggle of the Mujahideen and the eventual defeat of the Soviet occupying forces, Soviet troops withdrew from Afghanistan in 1989, and Mujahideen groups came to power. Consequently, the Government of Pakistan began to call for the return of Afghan refugees and asylum seekers to their country of origin. Afghan refugees themselves, having endured prolonged displacement, were also strongly inclined to return home. During this period, according to 1992 statistics, approximately three million registered refugees and around half a million unregistered asylum seekers were present in Pakistan. The Pakistani government showed a greater inclination toward facilitating the return of registered refugees rather than unregistered asylum seekers. [15, pp. 73–74]

Over time, Pakistan's relations with Afghan refugees gradually deteriorated due to geopolitical considerations and the decline of international financial support. Despite the Soviet withdrawal in 1989, ongoing internal conflicts in Afghanistan and the Taliban's seizure of power in 1996 contributed to the continued flow of refugees into Pakistan. Throughout the 1990s, reductions in international assistance—stemming from geopolitical shifts, the collapse of the Soviet Union, and diminished global attention to Afghanistan—created an increasingly negative and hostile environment toward Afghan refugees in Pakistan. In 1999, following General Musharraf's coup, Pakistan closed its borders to new refugees, declaring that it could no longer accommodate such large numbers without sustained international support. Although assistance from non-governmental organizations continued, it proved insufficient to adequately address the challenges faced by Afghan refugees. [17, p. 1280]

Under incentive-based repatriation programs implemented by the United Nations High Commissioner for Refugees (UNHCR)—including the provision of USD 100 in cash and 300 kilograms of wheat per returning household—approximately 1.4 million Afghan refugees were repatriated from various camps in Pakistan to Afghanistan within a relatively short period. However, the outbreak of internal conflicts among Mujahideen factions over control of central power in Kabul from 1992 onward significantly undermined the sustainability of return and rendered repatriation increasingly difficult for many Afghan refugees.

In response, the Government of Pakistan adopted a more coercive approach aimed at reducing the refugee population. This shift was accompanied by mounting pressure on Afghan refugees, including violations of refugee rights, arbitrary detention, harassment, and abuse. As a result, Afghan refugees during this period were subjected to widespread humiliation, extortion, ill-treatment, and forced deportations practices that affected even those holding valid identification cards. [26, pp. 15–17] This deterioration occurred against the backdrop of escalating civil war in Afghanistan, coinciding with the emergence of the Taliban as a critical turning point in the country's internal conflict. Although the Taliban's rise to power brought about a degree of relative stability in certain areas, persistent violence and insecurity prevented large-scale returns. Consequently, only about 270,000 Afghan refugees returned from Pakistan to Afghanistan between 1995 and 1996. During this same period, both UNHCR and the World Food Programme (WFP) suspended food assistance to most camp-based refugees—a decision that appeared to receive tacit approval from the Pakistani authorities. In 2000, amid intensified fighting between the Taliban and the Northern Alliance and one of the most severe droughts in Afghanistan's history, a new influx of approximately 172,000 Afghan refugees entered Pakistan. In contrast, only about 77,000 Afghans returned to their country of origin during the same year. Pakistan's restrictive policies toward Afghan

refugees remained firmly in place until the onset of the United States–led military intervention in October 2001. [15, pp. 76–77]

5.4. The Post-2001 Period

The third phase began with the arrival of hundreds of thousands of Afghan asylum seekers following the United States' military intervention in Afghanistan in 2001. The belief that the terrorist attacks of 11 September 2001 in the United States had been planned and executed from Afghan territory prompted the United States and its allies to intervene militarily in Afghanistan later that year. This intervention, known as *Operation Enduring Freedom* [26, pp. 14–15], triggered a renewed wave of displacement. As a result of intensive aerial bombardments by the U.S.-led coalition forces and widespread uncertainty regarding Afghanistan's future, approximately 1.5 million Afghans fled the country within a matter of weeks, seeking refuge primarily in neighboring states, particularly Pakistan. [3, p. 6]

Following the establishment of a new internationally supported democratic government in Afghanistan backed largely by the United States and the broader international community renewed hopes emerged for reconstruction and political stability. Consequently, in 2002, approximately 1.5 million Afghan refugees returned from Pakistan to Afghanistan. This marked the largest refugee repatriation operation in the previous three decades. Although UNHCR had initially projected the return of around 800,000 individuals, the program exceeded expectations, with hundreds of thousands of repatriation requests registered within just 15 weeks. This development reflected both Afghan refugees' confidence in the newly established government in Kabul and the international community's commitment to Afghanistan's reconstruction. [15, pp. 78–79]

During the 1970s through the 1990s, Afghan migrants—many of whom were regarded as *Mujahideen* resisting Soviet occupation were generally treated with respect and enjoyed broad political and social support in Pakistan. However, following the political and security transformations after the events of 11 September 2001, the attitude of both the Pakistani government and society toward Afghan migrants shifted markedly. Afghan refugees increasingly faced police harassment, arbitrary detention, extortion, and even mass deportations. Many were pushed into poverty due to the non-renewal of identification documents and deteriorating economic conditions. At the same time, return to Afghanistan remained largely unfeasible for many refugees because of persistent insecurity, limited livelihood opportunities, and inadequate infrastructure.

Despite these challenges, Afghans have made significant contributions to Pakistan's economy and society and, through extensive social and economic linkages, have become an integral part of the country's social fabric. Nevertheless, the Pakistani government's increasingly restrictive policies and the frequent stigmatization of Afghan refugees as "terrorists" or affiliates of "Al-Qaeda" have rendered everyday life precarious for many of them. Such discriminatory practices have resulted in a persistent lack of security and stability for Afghan refugees, even for those holding valid legal documentation (BBC Persian, 2012). Moreover, although Pakistan's nationality law is formally based on the principle of *jus soli* (right of the soil), this principle has never been effectively applied to Afghan migrants. Second- and third-generation Afghans born in Pakistan remain deprived of citizenship rights and are instead issued only temporary registration cards. These documents significantly restrict access to essential public services, including education and healthcare. As a consequence, many Afghan children are driven into informal labor markets or early marriage. Although certain initiatives have been undertaken to improve the educational and economic conditions of Afghan migrants, widespread public opposition and security-related concerns have prevented proposals such as the granting of Pakistani citizenship to Afghan refugees from being implemented. [27]

In a 2017 report, Human Rights Watch stated that "since July 2016, the Pakistani government has carried out a campaign of harassment and intimidation against Afghan migrants, resulting in the forced return of nearly 600,000 individuals." This group constituted one of the largest populations subjected to forced return in recent years. Many Afghan refugees reported that a combination of factors—including police abuse, threats of deportation, and hostility from local communities—compelled them to return to Afghanistan. Nevertheless, through these actions, Pakistan violated international legal norms prohibiting forced return (*non-refoulement*) to unsafe territories. These deportations occurred at a time when Afghanistan was experiencing escalating violence, widespread displacement, and severe poverty. [10]

5.5. The Taliban's Return to Power (Post-2021 Phase)

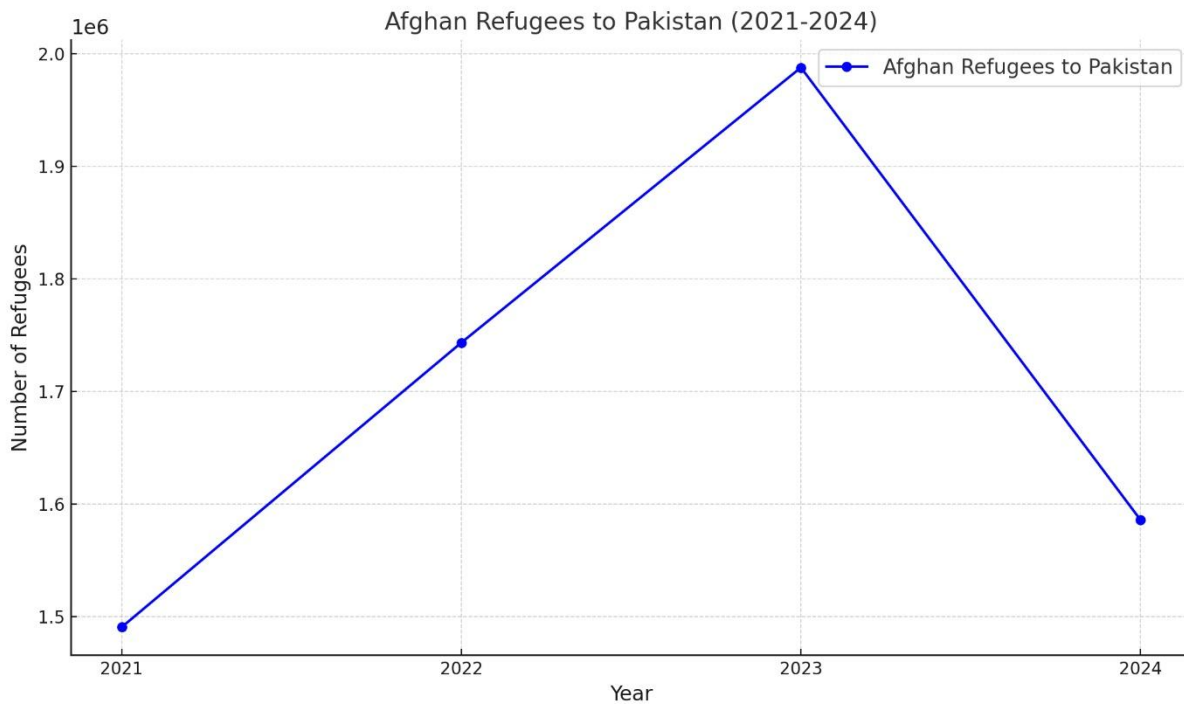
On 15 August 2021, the Taliban seized control of Kabul, the capital of Afghanistan. Concurrent with the withdrawal of U.S. forces and the rapid deterioration of security conditions, thousands of Afghans rushed to Hamid Karzai International Airport in an attempt to flee the country. Evacuation operations led by the United States and its allies began on 14 August 2021 and were widely described as one of the largest airlift operations in modern history. Within a two-week period, more than 124,000 individuals were evacuated from Kabul through a total of 387 military flights and 391 civilian flights. In addition to the

United States, several countries undertook extensive efforts to evacuate their citizens and Afghan nationals considered to be at risk. Germany, the United Kingdom, Canada, Australia, and other Western allies organized special evacuation flights to extract their diplomatic staff, local employees, and affiliated Afghan personnel. At the same time, a substantial number of Afghan civilians sought to leave the country through both formal and informal routes, crossing borders into neighboring states such as Iran, Tajikistan, Uzbekistan, and Pakistan. [4, p. 10]

At present, Afghanistan has approximately 8.2 million migrants residing in 103 countries worldwide, constituting one of the largest and most protracted refugee crises in the seven-decade history of the United Nations High Commissioner for Refugees (UNHCR). Afghan refugees represent the third-largest displaced population globally, following Syrians and Ukrainians. Notably, between 2021 and 2022 alone, approximately 3.6 million Afghans were newly displaced as a direct consequence of the Taliban's return to power. [21] Of this number, only around 600,000 sought refuge in Pakistan. This figure indicates a significant surge in the presence of Afghan refugees in Pakistan during this period (see Figure 3). Nevertheless, Pakistan responded to this new influx with increasingly restrictive and coercive measures toward Afghan refugees.

A particularly significant development was the Pakistani government's announcement in September 2023 of its intention to forcibly expel more than 1.7 million undocumented Afghan migrants—a move widely regarded as unprecedented in scale and severity. [7] Although intervention by the UNHCR and negotiations with the Pakistani authorities temporarily halted the deportation process, more than 630,000 Afghan refugees were forcibly returned during this period, accounting for approximately 57 percent of all returnees to Afghanistan. [28] These measures can be characterized as the harshest policies ever imposed on Afghan refugees in Pakistan. Furthermore, Pakistani authorities have indicated their intention to proceed with second and third phases of forced returns, potentially targeting even documented Afghan refugees holding Afghan Citizen Card (ACC) and Proof of Registration Card (PoR cards). As a result, many Afghan refugees currently reside in Pakistan under precarious conditions, often living in hiding due to fear of arrest, detention, or deportation. [11]

Figure 3. Presence of Afghan Asylum Seekers (2021–2024)



Source:

UNCHR, 2024

6. DISCUSSION

International legal instruments recognize core rights of refugees, including non-refoulement, access to education, employment, adequate housing, and pathways to nationality. The principle of non-refoulement, enshrined in Article 33 of the 1951 Refugee Convention, prohibits returning refugees to places where their life or freedom is at risk. Although Pakistan is not a party to the 1951 Convention, non-refoulement is widely recognized as a norm of customary international law binding upon all states. [23] Pakistan's large-scale forced deportations—particularly the 2023 campaign targeting over 1.7 million undocumented Afghans [7]—thus constitute potential violations of customary international law. This raises a fundamental structural problem: the absence of effective enforcement mechanisms capable of compelling state compliance with customary norms. The reliance on voluntary compliance and diplomatic pressure has proven insufficient to deter coercive repatriation policies driven by domestic security considerations.

Economic and social rights, including the right to work and education, are largely unmet. Afghan refugees are restricted to informal employment, while children face limited access to formal education. This reveals a critical tension: while the 1951 Convention establishes rights regarding employment

(Articles 17–19) and education (Article 22), these provisions assume host states possess both institutional capacity and political willingness to implement them. In Pakistan, the absence of domestic refugee legislation creates a legal vacuum where international norms lack a domestic basis for enforcement, leaving refugees subject to executive discretion. Housing and nationality rights face similar obstacles, with no effective pathways for permanent residency or citizenship. The non-application of *jus soli* to Afghan-born children, despite its formal existence in Pakistani law, illustrates how the gap between legal entitlement and administrative practice produces *de facto* statelessness. [27]

Although Pakistan has ratified the Convention on the Rights of the Child, many refugee children remain undocumented, limiting access to healthcare, education, and social protection. This discrepancy underscores a broader critique: treaty ratification without corresponding domestic legislation does not translate into effective protection. The historical analysis across four periods reveals that shifts in refugee policy have been driven primarily by geopolitical calculations—Cold War alliances, post-9/11 security paradigms, and declining international support—rather than by international legal obligations. This confirms the study's hypothesis that the structural dependence of international refugee law on state political will constitutes its fundamental limitation, highlighting the need for enforceable compliance mechanisms within the international refugee protection regime.

7. CONCLUSION

Over the past four decades, Afghanistan has faced continuous crises, causing a significant portion of its population to migrate. Pakistan has hosted large numbers of Afghan refugees across generations; however, many still lack fundamental human rights. International law, through the 1951 Refugee Convention, the 1967 Protocol, the Convention on the Rights of the Child, and other instruments, has provided a normative framework for refugee protection. However, this study demonstrates that implementation in Pakistan has been systematically undermined by structural limitations of the international legal order. Although Pakistan is not a party to the 1951 Convention, its obligations under customary international law—particularly non-refoulement—and ratified instruments remain legally binding, yet the absence of enforceable compliance mechanisms has rendered these obligations largely aspirational. The findings confirm the study's hypothesis: international law has failed to ensure effective protection for Afghan refugees in Pakistan not merely due to non-accession to key treaties, but because the enforcement architecture of international refugee law is structurally dependent on the political will of host states. Pakistan's refugee policies have been shaped primarily by geopolitical imperatives rather than

by adherence to international legal norms. The principle of non-refoulement, the right to education and employment, adequate housing, and pathways to naturalization remain unrealized, and children—due to lack of documentation—remain the most vulnerable group. This study demonstrates that the gap between normative commitments and protection outcomes is structural, rooted in the absence of binding enforcement mechanisms and the subordination of refugee rights to state sovereignty. Bridging this gap requires developing domestic refugee legislation in host states and reforming the international enforcement architecture to reduce its dependence on voluntary state compliance.

REFERENCES

- [1] Abraham, R. (2013). *The Afghanistan refugee crisis: Implications for Pakistan and Iran*. *Air Power Journal*, 8(3), 189–208.
- [2] Adebayo, A. (2015). The legal regime for the protection of asylum seekers and refugees: An overview of the Geneva Convention 1951. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 6, 83–91.
- [3] Avis, W. (2021). *Refugee and mixed migration displacement from Afghanistan*.
- [4] Barlas, A. W. (2022). *Population movements in Afghanistan: A historical overview, migration trends under the Taliban regime, and future outlooks*. Munich Personal RePEc Archive.
- [5] BBC Persian. (2012, August 8). *A forgotten generation with an uncertain future: Afghan migrants in Pakistan*. https://www.bbc.com/persian/afghanistan/2012/08/120808_s-afghans_in_pakistan_sana
- [6] Esmaeili, H., Vosoughifard, B., & Mirabasi, S. B. (2022). An inquiry into asylum seeker rights in Iran with reference to international documents. *Monthly Journal of Iranian Political Sociology*, 5(5). <https://doi.org/10.30510/psi.2022.281387.2214>
- [7] Foreign Policy. (2023, November 1). *Why is Pakistan expelling 1.7 million Afghans?* <https://foreignpolicy.com/2023/11/01/pakistan-deports-million-afghans-undocumented-migrants/>
- [8] Hashimy, S. Q. (2024). Goodbye to Afghans: What is the Promise of Human Rights to Human Rightslessness Afghan Migrants in Pakistan?. *Int'l JL Changing World*, 3, 120.
- [9] Hamza, M., & Shaukat, B. (2024). Access to basic rights and fundamental services in Pakistan: A case of Afghan refugees. *Pakistan JL Analysis & Wisdom*, 3, 303.

- [10] Human Rights Watch. (2017, February 13). *Pakistan: Mass forced returns of Afghan refugees*. <https://www.hrw.org/news/2017/02/13/pakistan-mass-forced-returns-afghan-refugees>
- [11] Migrant News. (2025, December 30). *Year 2025: Deportation events and their challenges for Afghan migrants*. <https://www.infomigrants.net/prs/post/68803/>
- [12] International Organization for Migration. (2023). *Comprehensive action plan for Afghanistan and neighbouring countries: 2023 revision (August 2021–December 2024)*. IOM.
- [13] Jalilpiran, A. K., Mardani, N., & Atashneh, M. (2020). The status of foreigners' rights in Iran and the nature of international migration. *Monthly Journal of Iranian Political Sociology*, 3(2), 555–581. <https://doi.org/10.30510/psi.2021.295814.2032>
- [14] Keyhanlou, F. (2021). The Afghanistan crisis and Afghan refugees: Challenges and solutions from the perspective of international law. *Journal of Law and Modern Studies*, 2(2), 4.
- [15] Khan, M., & Farooq, H. (2021). The inconclusive repatriation of Afghan refugees from Pakistan: Prospects and challenges. *Central Asia*, 89(Winter), 67–95.
- [16] Khuhro, M. U. R., Rajper, S. A., & Mirani, A. R. (2024). Refugee rights and the repatriation of Afghan nationals: A legal perspective in Pakistan. *Pakistan Journal of Law, Analysis and Wisdom*, 3(9), 45–61.
- [17] Masudi, J. A., & Mustafa, N. (2022). The legal status of Afghan refugees in Pakistan. *Pakistani Journal of International Affairs*, 5(2), 1273–1285.
- [18] Mowahid, A. A., & Ahmadi, F. A. (2025). The Role of International Law in Protecting Afghan Asylum-Seekers and Afghan Refugees in Iran. *International Journal of Law in Changing World* 4 (1), 42-65. DOI: <https://doi.org/10.54934/ijlcw.v4i1.122>
- [19] Nisar, M. H., Khalid, H., Ali, J., & Khalid, F. (2024). Socio-economic analysis of Afghan refugees repatriation from Pakistan: a 2023 case study. *Pakistan Journal of Humanities and Social Sciences*, 12(1), 517-524.
- [20] Qadir, M., & Kazemi Foroshani, H. (2018). Examining the phenomenon of refugeeism from the perspective of Islam and international law. *Comparative Research in Islamic and Western Law*, 5(1), 119–148. <https://doi.org/10.22091/csiw.2019.2673.1291>
- [21] Radio Azadi. (2023, August 14). *The last two years in Afghanistan have led to a new wave of mass migration*. <https://da.azadiradio.com/a/32547388.html>

- [22] Rahatullah, Iqbal, A., & Khan, U. N. (2024). *The responsibility to protect and the plight of Afghan refugees: Examining the gaps in international law*. *International Journal of Islamic Studies & Culture*, 4(3), 147–157. <https://ijisc.com.pk/index.php/IJISC/index>
- [23] Sabel, R. (2012). Review of *The 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary*. *Israel Law Review*, 45(3), 555–566. <https://doi.org/10.1017/S0021223712000210>
- [24] Schöch, R. T. (2008). *Afghan refugees in Pakistan during the 1980s: Cold War politics and registration practice* (Vol. 29). UNHCR.
- [25] Seyfi, M. M., & Parvin, K. (2019). Trump's anti-migration order in the context of domestic and international law. *Journal of Islamic Law*, 16(62).
- [26] Siddikoglu, H. (2016). *Pakistan's inconsistent refugee policies: Identity and cultural crisis for Afghan refugees in Pakistan*. Migration Policy Implementing and Research Centre, Ankara Yildirim Beyazit University.
- [27] Silk Road. (2022, March 8). *Educational challenges facing Afghan migrant children in Pakistan*. <https://jade-abresham.com/reports/4343/>
- [28] Tasnim News Agency. (2024, July 17). *The statistics on the forced deportation of Afghan refugees from Pakistan have been announced*. <https://www.tasnimnews.ir/fa/news/1403/04/27/3123484>
- [29] UNHCR. (n.d.). About UNHCR. <https://www.unhcr.org/about-unhcr>
- [30] UNHCR. (2010). *Convention and protocol relating to the status of refugees*.
- [31] UNHCR. (2014). *Guidelines on temporary protection or stay arrangements*. United Nations High Commissioner for Refugees. <https://www.refworld.org/policy/legalguidance/unhcr/2014/en/74916>
- [32] UNHCR. (2024). *Refugee data finder*. <https://www.unhcr.org/refugee-statistics/download/>
- [33] UNHCR. (1981). *Executive Committee Conclusion No. 22 (XXXII): Protection of asylum-seekers in situations of large-scale influx*. <https://www.unhcr.org/excom/exconc/3ae68c6e10/protection-asylum-seekers-situations-large-scale-influx.html>
- [34] UNICEF. (1989). *Convention on the rights of the child*.
- [35] United Nation (UN). (2024). *International migration*. <https://www.un.org/en/global-issues/migration>
- [36] Zieck, M. (2015). Guidelines on international protection No. 11: Prima facie recognition of refugee status (UNHCR). *International Legal Materials*, 54(6), 1115–1129. <https://doi.org/10.5305/intelegamate.54.6.1115>

- [37] Zubair, M., Khan, M., & Shah, M. (2019). Analysis of Pakistan's policy towards Afghan refugees: A legal perspective.

LEGISLATION AND CASES

- [38] *The Foreigners Act, 1946*, Act No. XXXI of 1946 (Pak.). Government of Pakistan.
<https://www.refworld.org/legal/legislation/natlegbod/1946/en/40585>
- [39] *The Pakistan Citizenship Act, 1951*, Act No. II of 1951 (Pak.). Government of Pakistan.
<https://www.refworld.org/legal/legislation/natlegbod/1951/en/97165>
- [40] Islamabad High Court. (2023, June 19). *Rahil Azizi v. The State* (PLD 2024 Islamabad 231; Writ Petition No. 1666 of 2023). Refworld.
<https://www.refworld.org/jurisprudence/caselaw/pakhc/2023/150040>
- [41] Islamabad High Court. (2021, May 19). *Hafiz Hamdullah Saboor v. Government of Pakistan* (W.P. No. 3748 of 2019; PLD 2021 Islamabad 305).

ABOUT THE AUTHORS



Ali Ahmad Mowahid – Bachelor's degree in Law and Political Science from Jami University of Herat. Currently pursuing a Master's degree in International Relations at the same university. Academic interests include International Law, International Relations, Migration Studies, and Nonviolent Political Movements.

e-mail: aliahmad.mowahid100@gmail.com

ORCID ID: <https://orcid.org/0009-0008-8983-4218>



Fazl Ahmad Ahmadi – Assistant Professor of International Law at Jami University, Herat, Afghanistan. Bachelor's degree in Arabic Literature at Herat University. Master's degree in International Law from Khatam Al-Nabieen University in Kabul. Ph.D. in International Law from Shahid Beheshti University in Tehran, Iran. Ten years of teaching experience at higher education. Specialized in Public International Law, International Organizations, and the Legal Relations among States.

e-mail: fazlahmadahmadi@gmail.com

ORCID ID: <https://orcid.org/0000-0002-2146-319x>

Google Scholar ID:

<https://scholar.google.com/citations?hl=en&user=RNOWW9QAAAAJ>

ABOUT THIS ARTICLE

Conflict of interest: The authors declare no conflicting interests

CrediT contribution:

Ali Ahmad Mowahid: Conceptualization, Methodology, Investigation, Formal Analysis, Resources, Data Curation, Writing - Original Draft, Writing – Review & Editing.

Fazl Ahmad Ahmadi: Supervision, Validation, Methodology, Writing - Review & Editing.

Declaration of AI use: During the preparation of this manuscript, the author used an AI-based language model solely to assist with grammatical proofreading and with the formatting and verification of reference citations. The author reviewed and edited all AI-assisted output and takes full responsibility for the content of this article.

Funding: This research received no external funding.

Data availability: This is a doctrinal legal study; thus, it used existing datasets. All sources analyzed are publicly available and cited in the reference list.

EL IMPACTO DEL DERECHO INTERNACIONAL EN LA PROTECCIÓN DE LOS SOLICITANTES DE ASILO Y REFUGIADOS AFGANOS EN PAKISTÁN

RESUMEN

Este artículo examina la eficacia de los marcos jurídicos internacionales en la protección de los refugiados y solicitantes de asilo afganos en Pakistán, analizando la brecha persistente entre los compromisos normativos y los resultados reales de protección. Mediante una metodología cualitativa, descriptivo-analítica y doctrinal, el estudio se basa en instrumentos jurídicos internacionales primarios —incluidos la Convención sobre el Estatuto de los Refugiados de 1951, el Protocolo de 1967 y la Convención sobre los Derechos del Niño—, así como en fuentes académicas secundarias y el marco jurídico interno de Pakistán, todo ello complementado con una revisión longitudinal de las políticas pakistaníes sobre refugiados a lo largo de cuatro períodos (1979–2024). Se argumenta que la incapacidad del derecho internacional para proteger a los refugiados afganos no deriva únicamente de la no adhesión de Pakistán a la Convención de 1951, sino de la dependencia estructural del régimen internacional de refugiados respecto a la voluntad política y la infraestructura jurídica interna de los Estados de acogida. Esta deficiencia ha dado lugar a violaciones sistemáticas de derechos, incluidas las deportaciones forzadas. El estudio aporta valor al abordar el derecho internacional como una variable independiente en distintos contextos históricos y políticos dentro de un Estado que no es parte de los tratados pertinentes.

Palabras clave: solicitantes de asilo afganos, principio de no devolución (*non-refoulement*), derechos de los refugiados, derecho internacional, Pakistán

国际法对巴基斯坦境内阿富汗寻求庇护者及难民保护的影响

摘要

本文探讨了国际法律框架在保护巴基斯坦境内阿富汗难民与寻求庇护者方面的有效性，分析了规范性承诺与实际保护成效之间持续存在的差距。研究采用定性、描述性分析及法学教义学方法，依据《1951年难民公约》、《1967年议定书》及《儿童权利公约》等主要国际法律文书，结合学术文献与巴基斯坦国内法律框架，并对巴基斯坦四个时期（1979–2024年）的难民政策进行了纵向考察。文章指出，国际法未能有效保护阿富汗难民，其根源不仅在于巴基斯坦未加入《1951年公约》，更在于国际难民体制在结构上依赖于东道国的政治意愿及国内法律基础设施。这种缺陷导致了包括强制驱逐在内的系统性侵犯权利行为。本文的贡献在于，将国际法视为一个在非缔约国特定历史与政治背景下的自变量进行考察。

关键词：阿富汗寻求庇护者，不推回原则，难民权利，国际法，巴基斯坦