



## Implementation of Diplomatic Assurance Against Torture: The Way to Reduce the Refugee Crisis in South Asia

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**Abstract.** States aim to send refugees back to their home countries in order to end the refugee crisis in their nation. Due to the human rights situation in the countries of origin, this can occasionally be problematic; the return involves the prohibition of refoulment and the prevention of torture or other cruel treatment. States are not allowed to use torture, including putting someone in a position where they might be tortured. For a very long time, diplomatic guarantees have been employed as a defense against the death penalty or unfair trials. From that time, states used to rely on guarantees for a returnee's treatment. The guarantees were protected at the diplomatic level of relations between nations. In this research, subject to legal value, the reliability of diplomatic assurance is measured as well as an assessment has been made about the current state of south Asian nations that have hosted refugees for an extended time. This paper also supports the use of diplomatic assurance as a workable option to alleviate the refugee crisis where developed countries can contribute the best. The findings indicate that there is no specific legal framework to support such assurances in different south Asian developing as well as other developed countries. There is even a lack of research in this regard. South Asian nations could take seven factors into account according to the recommendations of the study. So, it is necessary to implement the recommendations to reach the goal of solving the refugee situation.

**Keywords:** South Asian Countries, Refugees, Developed Countries, Diplomatic Assurance

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**Abstrak.** Negara bertujuan untuk mengirim pengungsi kembali ke negara asal mereka untuk mengakhiri krisis pengungsi di negara mereka. Karena situasi hak asasi manusia di negara asal, hal ini terkadang menimbulkan masalah; pengembalian melibatkan larangan refoulment dan pencegahan penyiksaan atau perlakuan kejam lainnya. Negara tidak diperbolehkan menggunakan penyiksaan, termasuk menempatkan seseorang pada posisi di mana mereka mungkin disiksa. Untuk waktu yang sangat lama, jaminan diplomatik digunakan sebagai pembelaan terhadap hukuman mati atau pengadilan yang tidak adil. Sejak saat itu, negara biasanya mengandalkan jaminan untuk perawatan orang yang kembali. Jaminan tersebut dilindungi pada tingkat diplomatik hubungan antar negara. Dalam penelitian ini, tunduk pada nilai hukum, keandalan jaminan diplomatik diukur serta penilaian telah dibuat tentang keadaan negara-negara Asia Selatan saat ini yang telah lama menampung pengungsi. Tulisan ini juga mendukung penggunaan jaminan diplomasi sebagai opsi yang dapat diterapkan untuk mengurangi krisis pengungsi di mana negara maju dapat memberikan kontribusi terbaiknya. Temuan menunjukkan bahwa tidak ada kerangka hukum khusus untuk mendukung jaminan tersebut di berbagai negara berkembang Asia Selatan serta negara maju lainnya. Bahkan ada kekurangan penelitian dalam hal ini. Negara-negara Asia Selatan dapat mempertimbangkan tujuh faktor sesuai dengan rekomendasi penelitian. Jadi, perlu untuk menerapkan rekomendasi untuk mencapai tujuan penyelesaian situasi pengungsi.

**Kata kunci:** Negara Asia Selatan, Pengungsi, Negara Maju, Jaminan Diplomatik

## 1. Introduction

In the history of human civility, the refugee problem has created one of the most dangerous as well as difficult situations in the world. Different countries are facing different troubles due to being the shelter of a large number of refugees. The infrastructures of those countries are seriously affected by their existence. As host countries are bound by the non- refoulement principle, it's impossible for them to transfer the refugees in such countries where they have that chance to be persecuted. Considering the two- pronged problem, host countries can neither let refugees go nor hold them on. In this situation, if burden free developed countries satisfactorily arrange the shelter for those refugees by giving assurances that they won't be persecuted there, then many host countries' burden of refugees can be reduced. Here, implementation of diplomatic assurance can pave the way to reduce the refugee crisis.

There are so many acknowledgements as well as criticisms in regard to this term "diplomatic assurance". This type of assurance basically reduces the national risks for individuals where states declare that they will not mistreat any individual when he/she will be in their authority. Some researchers have shown that certain assurances can be understood as legal obligations and some others consider the assurances as non- binding obligations in their articles.

Vesna Stefanovsha presents the use of diplomatic assurances and state's responsibility in the case of extradition<sup>1</sup> whereas William Thomas Worster covered the area of the Legal Value of Diplomatic Assurances in Expulsion Cases in his paper.<sup>2</sup> Though the use of diplomatic assurance against torture has been shrouded by Jeffrey Johnson in his paper.<sup>3</sup> A note has also been presented by UNHCR on diplomatic assurances in the case of International Refugee Protection.<sup>4</sup> On the other hand, Andrew Jillions in his Research Article presents that how Diplomatic

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<sup>1</sup> Vesna Stefanovska. "Diplomatic Assurances and the State's Responsibility When Considering Extraditing a Person Whose Human Rights May Be Violated." *Varstvoslojje: Journal of Criminal Justice & Security* 19, no. 2 (2017): 167-182.

<sup>2</sup> William Thomas Worster. "Between a Treaty and Not: A Case Study of the Legal Value of Diplomatic Assurances in Expulsion Cases." *Minn. J. Int'l L.* 21 (2012): 253-346.

<sup>3</sup> Jeffrey Johnston. "The Risk of Torture as a Basis for Refusing Extradition and the Use of Diplomatic Assurances to Protect against Torture after 9/11." *International criminal law review* 11, no. 1 (2011): 1-48.

<sup>4</sup> Division of International Protection Services (DIPS). "UNHCR Note on Diplomatic Assurances and International Refugee Protection." 2006.

Assurance manage the tensions of persecution in particular area and respond to the legacy of the war on terror before assessing why and where human rights advocates have been pushing back against their use.<sup>5</sup> Again, Gregor Noll surfaced the effects of diplomatic assurances on the international law of human rights as well as silence of human rights law in this regard.<sup>6</sup> Then, Lena Skoglund reviewed the jurisprudence that whether diplomatic assurances against torture are effective strategy.<sup>7</sup> In the same way, Katherine R. Hawkins also discusses the legality of rendition by diplomatic assurances in a journal.<sup>8</sup> Aristi Volou measures the area of diplomatic assurance as guarantees of safety against torture and ill- treatment.<sup>9</sup> Moreover, Sara Isman covered diplomatic assurances in light of prohibition of refoulement in her thesis.<sup>10</sup> The majority of scholarly efforts done to date in regard to diplomatic assurances are summarized in the aforementioned literature reviews. They have discussed diplomatic assurance in relation to extradition, principle of non- refoulement and so on. But no specific academic or research work has been done on reducing the refugee crisis by implementing diplomatic assurance by developed countries. So, the research will be a very progressive one in this regard whereas this is limited to the south Asian countries.

## 2. Methodology

The research is conducted by qualitative method as well as doctrinal method. By the qualitative method, this study discusses the nature of the problem and provides accurate details about the relevant area. The study is also explorative and is dependent on formative evaluation. In the case of the doctrinal method, this study has been carried out by objective analysis from different secondary sources

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<sup>5</sup> Andrew Jillions. "When a gamekeeper turns poacher: torture, diplomatic assurances and the politics of trust." *International Affairs* 91, no. 3 (2015): 489-504.

<sup>6</sup> Gregor Noll. "Diplomatic assurances and the silence of human rights law." *Melb. J. Int'l L.* 7 (2006): 104-126.

<sup>7</sup> Lena Skoglund. "Diplomatic Assurances Against Torture—An Effective Strategy? A Review of Jurisprudence and Examination of the Arguments." *Nordic Journal of International Law* 77, no. 4 (2008): 319-364.

<sup>8</sup> Katherine R. Hawkins. "The promises of torturers: diplomatic assurances and the legality of rendition." *Geo. Immigr. LJ* 20 (2005): 213.

<sup>9</sup> Aristi Volou. "Are Diplomatic Assurances Adequate Guarantees of Safety Against Torture and Ill-Treatment? The Pragmatic Approach of the Strasbourg Court." *UCLJLJ* 4 (2015): 32-54.

<sup>10</sup> Sara Isman. "Diplomatic Assurances-Safeguard against Torture or Undermining the Prohibition of Refoulement?." PhD diss., University of Lund, 2006.

e.g. articles, journals, e-book, commentaries etc. The descriptive and detailed analysis add harmony, stability, validity in the research issue from different secondary sources.

### **3. Results and Discussion**

#### **3.1. Refugee Crisis in South Asian Countries**

##### **3.1.1. Bangladesh**

In 2017, about a million Rohingya refugees, the majority of whom were Muslims, crossed into the Cox's Bazar region of southeast Bangladesh to escape ongoing, state-sponsored atrocities in Burma.<sup>11</sup> Temporary camps were immediately built, and foreign media outlets started to pay notice to the problem.<sup>12</sup> Even though there isn't enough space to do justice to the crisis's genesis in this instance, some basic background knowledge is necessary to place the case at hand in its proper historical and social perspective. A largely Muslim ethnic minority, the Rohingya are confined to Western Burma. The Myanmar government views their language, ethnicity, and religious identities as distinct from the country's dominant culture. They have consequently endured prejudice, persecution, and religious intolerance for many years.<sup>13</sup> The historical origins of the issue may be traced back to the British conquest of sections of Burma in 1824, after which the country's territory became a part of British India. During the colonial era, the current international border between Bangladesh and Myanmar was merely a line dividing districts, across which the British government routinely relocated inhabitants in accordance with labor demands.<sup>14</sup> When Burma was separated from British India in 1937, the limits of the coastal region of Arakan, which is now a part of today's Rakhine State and is where the majority of Rohingya dwell, were never properly established. As a result, the boundary between Burma and India was porous. The sizable Muslim minority living in Arakan after Burma attained independence in

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<sup>11</sup> David Lewis. "Humanitarianism, civil society and the Rohingya refugee crisis in Bangladesh." *Third World Quarterly* 40, no. 10 (2019): 1884-1902.

<sup>12</sup> Lisa Brooten, and Yola Verbruggen. "Producing the news: Reporting on Myanmar's Rohingya crisis." *Journal of Contemporary Asia* 47, no. 3 (2017): 440-460.

<sup>13</sup> Victoria Palmer. "Analysing cultural proximity: Islamic relief worldwide and Rohingya refugees in Bangladesh." *Development in Practice* 21, no. 1 (2011): 96-108.

<sup>14</sup> Akm Ahsan Ullah. "Rohingya refugees to Bangladesh: Historical exclusions and contemporary marginalization." *Journal of Immigrant & Refugee Studies* 9, no. 2 (2011): 139-161.

1948 was denied citizenship. The claim that the Rohingya did not comprise the state's pre-1824 population and do not therefore qualify as a recognized minority group is a fundamental component of the Myanmar state's ongoing refusal to give citizenship.<sup>15</sup> In recent years, waves of Rohingya refugees have sought refuge in Bangladesh due to conflict and instability. These waves included those in 1978, the early 1990s, 2007, and 2012. As a result of Burmese government policies and long-standing tensions between Muslims and the state's majority Buddhist population in Rakhine, where the Rohingya continue to be a sizable minority, are still denied citizenship, and are formally regarded as illegal immigrants from Bangladesh, such movements of people have occurred.<sup>16</sup> For instance, when Buddhist radicals stormed Rohingya houses and businesses in Rakhine State in revenge for a rumored assault on a local woman in 2012, more than 200 people were killed and 140,000 were displaced.<sup>17</sup> The attack on police stations by Rohingya terrorists on August 25, 2017, set off the crisis. In the month that followed, the Myanmar army and its local allies carried out an organized campaign of mass brutality that resulted in the deaths of over 6,700 Rohingya, the routine use of rape as a weapon, and the destruction of at least 288 Rohingya villages. The widespread migration of people across the border to Bangladesh was sparked by this tragedy.

Locals who live close to the country's refugee camps are already feeling the harmful effects of the Rohingya catastrophe. The Teknaf and Ukhina upazilas are two places where one can see that in action (subunits of districts). Prices have increased, plantations have been devastated, there have been reports of criminal activity linked to the refugees, commercial and educational operations have been disrupted.<sup>18</sup> This should not come as much of a surprise given that the refugee camps are hardly livable despite Bangladesh's efforts and the humanitarian assistance provided by locals and non-governmental organizations (NGOs). Things can only become worse because refugees outnumber natives two to one. Indeed, there is a considerable chance that these Bangladeshi refugees may cause a health disaster. As a result of the large influx of fresh refugees beginning on August

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<sup>15</sup> Ian Holliday. "Addressing Myanmar's citizenship crisis." *Journal of Contemporary Asia* 44, no. 3 (2014): 404-421.

<sup>16</sup> Gerry Van Klinken, and Su Mon Thazin Aung. "The contentious politics of anti-Muslim scapegoating in Myanmar." *Journal of Contemporary Asia* 47, no. 3 (2017): 353-375.

<sup>17</sup> Lisa Brooten, and Yola Verbruggen. Loc. Cit.

<sup>18</sup> Tarek Mahmud. "Rohingya influx: Refugees outnumber Ukhiya, Teknaf locals." *Dhaka Tribune* (2017).

25, numerous Rohingya camps have combined to form one big slum. It lacks access to clean water, enough latrines,<sup>19</sup> or even the most basic amenities to keep the refugees dry. NGOs have made an effort to assist by setting up sanitary latrines and tube wells for the encampment. However, the Department of Public Health Engineering (DPHE) of Bangladesh has declared that because they did not adhere to health laws, their efforts may have been ineffective. There doesn't seem to have been a safe separation between tube-wells and latrines. In certain instances, the water used for drinking was already contaminated, increasing the likelihood that waterborne illnesses would spread. This is already the case, as evidenced by the rise in the prevalence of skin conditions, diarrhea, and dysentery among refugees. As a result, Bangladesh planned to immunize the Rohingya against cholera from the beginning of October to the end of November 2017. But without adequate international assistance, it's feasible that this humanitarian catastrophe may eventually turn into a health crisis.<sup>20</sup>

### **3.1.2. Nepal**

The majority of the ethnic Nepalese refugees from Southern Bhutan entered Nepal for the first time through Indian Territory at the end of 1990 from the eastern bordering town Kakarbhitta. On December 12, 1990, 60 asylum seekers received their first shelter in Maidhar in Jhapa for humanitarian reasons. By September 1991, there were about 5,000 refugees living in Nepal, and that number was growing daily.<sup>21</sup> The Dalai Lama's departure from Lhasa for asylum in India in 1959 marked the beginning of the migration of Tibetan refugees across the Himalayan border into Nepal. For a few more years, and even at this time, Nepal has been experiencing an influx of Tibetan refugees.<sup>22</sup>

Despite UNHCR and other organizations' outstanding contributions for the necessities like food security, shelter, health, and education, Nepal has used its people and other resources to improve the living conditions of the refugees. The issue of food insecurity affects refugees constantly. Because Nepal's economy is

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<sup>19</sup> Kate White. "Rohingya in Bangladesh: an unfolding public health emergency." *The Lancet* 390, no. 10106 (2017): 1947.

<sup>20</sup> Didier Chaudet. "The Rohingya Crisis: Impact and Consequences for South Asia." *Journal of Current Affairs* 2, no. 2 (2018): 1-17.

<sup>21</sup> Netra Bahadur Karki. *Refugees in Nepal. Impact on Refugee Lives and National Security*. Munich: GRIN Verlag, 2016.

<sup>22</sup> George Woodcock. "Tibetan refugees in a decade of exile." *Pacific Affairs* (1970): 410-420.



too dependent on foreigners, the refugee issue directly affects it. Since Nepali manufacturing cannot meet even the most basic needs of the refugees, imports inevitably rise. Refugees' appalling living conditions and, in some cases, greed have driven them to commit a variety of crimes, from insignificant to monstrous. Tenzin Sirup, a Tibetan refugee, was detained by the District Police Office in Jhapa with 10 kg of illegal gold and an unauthorized Chandragadi citizenship card. This is the most recent literature that was cited in the paper, and records from various sources indicate that refugees are detained and accused of crimes like drug trafficking, smuggling, robbery, forging a passport or citizenship card, murder, etc.; these have presented difficulties and threats to the government of Nepal. Even after 56 years since their initial admission, the influx of Tibetan refugees is still going strong. Young people from Tibet take grave risks to get across the Himalayas and into Nepal. Beijing's assertion that it shot refugees in self-defense is refuted by a Romanian videotape that appears to show Chinese security personnel shooting two Tibetan refugees in the Himalayas. China confessed that on September 30, 2006, soldiers killed one refugee and injured a second.<sup>23</sup> In and around refugee settlements, gender-based violence (SGBV) has posed a serious threat to society. When forced to escape their homes, women are frequently engaged in a cycle of abuse and are subjected to sexual exploitation the entire time they are a refugee. The use of refugees in elections and other criminal acts while taking advantage of their economic weakness has clear socio-political repercussions. For the Nepalese government, upholding the civil, political, cultural, ethical, and religious rights of refugees and asylum seekers is a tremendous challenge.<sup>24</sup>

### **3.1.3. India**

Since gaining its independence, India has taken in different groups of refugees from nearby nations. Even if those who crossed the recently established borders between India and Pakistan—whether voluntarily or forcibly—did not lose their nationalities, they were still made to live as exiles. For those who had survived the worst of the Partition, refugee camps dotted north India. The idea that these immigrants posed a threat to national security because of their presence was dismissed because they were automatically citizens of a newly independent India.

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<sup>23</sup> Joseph Kahn. "Video Disputes China's Claim Shooting Was in Self-Defense." *New York Times* 16 (2006).

<sup>24</sup> Netra Bahadur Karki. *Op. cit.*



The 1948 conflict with Pakistan started, however, while the young state was attempting to stand on its own two feet and straining to give these refugees the necessities (such as food, clothing, and shelter). Particularly in Delhi, the capital city, there was a significant influx of refugees. There were so many that it was necessary to build a complete city, Faridabad, to rehabilitate the refugees who were living in horrific conditions in numerous camps.<sup>25</sup>

Nearly ten years after Partition, in 1959, the Dalai Lama and more than 100,000 of his supporters escaped Tibet and made their way to India in search of political asylum. This marked the beginning of the next significant refugee flow to India.<sup>26</sup> For more than 50 years, many members of the Chakma and Hajong communities, who formerly resided in the Chittagong Hill Tracts (CHT), the majority of which are in Bangladesh, have been living as refugees in India, primarily in the northeast and west Bengal. When Chakma and Hajong first arrived in India in 1964, there were only about 15,000 Chakma and 2,000 Hajong, but the populations have since grown.<sup>27</sup>

The following significant refugee crisis occurred in 1971 during Bangladesh's battle for independence, when millions of people fled their nation for India due to fighting between the Pakistani army and Bangladeshi forces.<sup>28</sup> The Sri Lankan Tamils are another sizable group of refugees in India who fled their island nation as a result of deliberate discriminatory practices and policies by succeeding Sri Lankan administrations, such as the violent Sri Lankan civil war and the Black July Riots of 1983. More than a million of these refugees settled in Tamil Nadu, a state in southern India, as it was closer to Sri Lanka and easier for the Tamils to adapt to life there.<sup>29</sup> The most recent refugees from Myanmar were Rohingya in 2022.

In India, refugees are not given much weight. They experience poor treatment from the locals and grow fearful and uneasy as a result. Because they do not share

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<sup>25</sup> Haimanti Roy. "Partitioned lives: migrants, refugees, citizens in India and Pakistan, 1947-65." (2012).

<sup>26</sup> Claudia Artiles. "Tibetan refugees' rights and services in India." *Human Rights & Human Welfare Working Papers*. [https://www.academia.edu/40688593/Tibetan\\_Refugees\\_Rights\\_and\\_Services\\_in\\_India](https://www.academia.edu/40688593/Tibetan_Refugees_Rights_and_Services_in_India) (2011).

<sup>27</sup> Louie Albert, S. J., S. J. Stan Fernandes, and Bernard D'Sami. "Asia Refugees: in South Asia: Issues and Concerns." *Migratory Flows at the Borders of Our World*: 275-298.

<sup>28</sup> John A. Seaman. "Relief work in a refugee camp for Bangladesh refugees in India." *The Lancet* 300, no. 7782 (1972): 866-870.

<sup>29</sup> Manohari Velamati. "Sri Lankan Tamil migration and settlement: time for reconsideration." *India Quarterly* 65, no. 3 (2009): 271-294.

the same soil as the locals, they are frequently physically and emotionally abused by them. They struggle to find basic essentials including food, housing, and a job. They are compelled to work for meager pay with no special rights or status. There is misunderstanding due to India's ad hoc administrative stance on refugees. Insecurity and exclusivity are caused by ignorance and misinformation within the refugee groups. The process of determining refugee status, which can take up to 20 months for examination, results in the issuance of a refugee card by the United Nations High Commissioner for Refugees. If someone is apprehended by the police during that time, they will be imprisoned, arrested, and deported without even having access to the UNHCR. Many people from nearby nations have illegally relocated to India over the past few decades—not because they were being persecuted by the government, but rather because there were better economic prospects. For instance, more than 10.9 million (legal and undocumented) migrants from Mexico live in the United States, constituting 98% of all immigrants from Mexico.<sup>30</sup>

#### **3.1.4. Pakistan**

Since the Soviet Union invaded Afghanistan in 1979, Pakistan has been sheltering the majority of the world's refugees, particularly Afghans. Surprisingly, Pakistan does not adhere to either the protocol or the refugee convention, unlike Afghanistan. Nevertheless, they contain one of the greatest refugee populations in the world (in the early 1980s, shortly after the Soviet invasion of Afghanistan), the bulk of whom are Afghans; however, many have been able to return home thanks to UNHCR initiatives. While some have adapted to their new environment and are well-suited, the majority of Afghans who are still alive still live in shantytowns or tent cities. In actuality, the process of repatriation of Afghans from Pakistan has been one of the biggest in the world. The UNHCR recruited almost 4.1 million registered Afghan refugees from Pakistan in March 2002, which indicates that there are likely many more Afghan refugees living there who are not officially registered. The UNHCR estimates that 0.4 million Afghans are still lacking proper documentation. Afghan refugees are mainly found in Pakistan's Khyber Pakhtunkhwa province in the northwest. The Pakistani government has given

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<sup>30</sup> Prashant Bharadwaj, and Rinchan Ali Mirza. "Displacement and development: Long term impacts of population transfer in India." *Explorations in Economic History* 73 (2019): 101273.

approximately 0.9 million Afghans Afghan Citizen Cards in an effort to prevent the agony of “statelessness.”<sup>31</sup>

Following the entrance of Afghan migrants in Pakistan, a competition over resources, including water, land, food, and property began between the refugees and locals. As a result, there was a gap between the residents of Khyber Pakhtunkhwa and Balochistan, two areas in Pakistan that were hosting huge numbers of refugees. Refugee demands on resources, education, energy, transportation, and employment throughout the years, which further irritated residents of the two provinces.<sup>32</sup> Refugees affect villagers’ life both directly and indirectly. Many refugees, in the opinion of the locals, have assumed Pakistani identities, which will put their status as the majority at risk. As a result, they worry that the arrival of migrants may lead to a shift in the local Baloch population, making them a minority. One of the key groups pushing for the return of refugees to Afghanistan is the Baloch nationalism movement in Pakistan. The Taliban movement against the Soviet Union was directly supported by Afghans living in Pakistan, and they are currently actively engaged in anti-state actions in the ongoing Afghan conflict against the United States. These actions of the refugees destabilized the host State as well as the region by causing conflict, turmoil, and terrorism. The dirty war of terrorism has had a significant impact on Pakistan’s Balochistan province and tribal regions, and millions of people have been forced to migrate within their own country. Schools and hospitals were bombed, tribal institutions were destroyed, and many people were forced to flee their homes.<sup>33</sup> The flood of Afghans into Pakistan had negative effects on the environment, which led to the proliferation of many diseases. Disease spread from border regions to various regions of the nation, mainly in KPK and Balochistan. Additionally, one of the main causes of the failure to eradicate poliomyelitis from Pakistan is the movement of Afghan refugees to north Pakistan. As a result of migration, millions of refugees are unvaccinated, there is no quick method to eradicate poliomyelitis.

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<sup>31</sup> S. J. Louie Albert, S. J. Stan Fernandes, and Bernard D’Sami. *Loc. Cit.*

<sup>32</sup> Sohail Anwar, Muhammad Hassan, and Allauddin Kakar. “Afghan Refugees Implications on Pakistan.” *Pakistan Journal of International Affairs* 4, no. 3 (2021): 116-129.

<sup>33</sup> World Bank. “World development report 2012: gender equality and development.” *Washington, DC: The World Bank* (2011).

The primary source of polio cases in Pakistan is border regions, where there is constant cross-border movement from Afghanistan to that nation.<sup>34</sup>

### 3.2. Diplomatic Assurance Against Torture

Diplomatic assurances, which are typically requested from regimes known to violate human rights, are State commitments not to mistreat the transferred person upon his or her return.<sup>35</sup> In extradition relations between States, it has long been customary to rely on diplomatic assurances where doing so will allow the requesting State to extradite without violating its obligations under relevant human rights treaties, domestic law, including the constitution, and/or extradition law provisions.<sup>36</sup> Though, assurances are frequently used in cases involving the death penalty, but may also be requested if the requested State has doubts about the integrity of the judicial process in the requesting State or if it worries that extraditing the wanted person could put him or her at risk of torture or other cruel treatment.<sup>37</sup>

In many parts of the world, torture has been used and is still used as an intensified and deliberate form of cruel, inhuman or degrading treatment or punishment. The provision of prohibition towards torture has been initiated with the Universal Declaration of Human Rights (UDHR) where article 5 of that international instrument covers it.<sup>38</sup> Since then, a large number of other global and regional human rights, humanitarian law, and judicial administration instruments have emerged.<sup>39</sup> The prohibition has been codified into legally binding treaties and it has become a significant portion of international customary law. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which has a definition of torture in article 1, is the most authoritative international legal standard on the subject.<sup>40</sup> On the other hand, the prohibition

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<sup>34</sup> Christine Roehrs. "The Refugee Dilemma: Afghans in Pakistan between expulsion and failing aid schemes." *Afghanistan Analysts Network* (2015).

<sup>35</sup> Evelyne Schmid. "The end of the road on diplomatic assurances: The removal of suspected terrorists under international law." *Essex Human Rights Review* 8, no. 1 (2011): 219-235.

<sup>36</sup> Lena Skoglund. *Loc. Cit.*

<sup>37</sup> Division of International Protection Services (DIPS). *Loc. cit.*

<sup>38</sup> United Nations. *Universal declaration of human rights*. Vol. 3381. United States of America: Department of State, 1949.

<sup>39</sup> Sara Isman. *Loc. Cit.*

<sup>40</sup> J. Hermann Burgers. *The United Nations convention against torture: A handbook on the convention against torture and other cruel, inhuman, or degrading treatment or punishment*. Vol. 9. Leiden: Martinus Nijhoff Publishers, 1988.

under article 7 of the International Covenant on Civil and Political Rights (ICCPR) is also more comprehensive.<sup>41</sup> The prohibition on torture is found in a number of regional instruments. The ECtHR in Europe has outlined torture in a number of cases. In the decision of *Ireland v. United Kingdom*, the Court determined that behavior must reach a minimum standard of severity to be prohibited under the Convention.<sup>42</sup> According to the ECtHR, the obligation imposed by article 3 extends to taking proactive measures to prevent the violation of this article. So, it's clear that a state is not only forbidden from using torture, but also required to offer adequate protection against it.<sup>43</sup>

In many places throughout the world, daily life is now frequently characterized by a sense of insecurity that is especially a result of violent conflict, extremist organizations, and organized crime. These issues frequently have deeper causes, including increased inequality, lax legal systems, bad governance, and occasionally environmental repercussions of climate change and the ensuing competition for limited resources. People who are looking for international protection are the ones where the repercussions of this insecurity are most obvious. Especially the massive influx of migrants and refugees taking place in various regions of the world, creating many inconveniences in different countries. These concerns frequently lead to actions like pushing back on refugees and limiting access to certain areas.

In such circumstances, the sending State only complies with its human rights duties if and to the extent that diplomatic assurances reduce the risk to the individual in question and are subject to adequate monitoring. Diplomatic assurance was only used in extradition cases once. At present, such assurances are used in the context of removal proceedings like expulsion or deportation, that the individual being removed won't experience torture or other forms of ill-treatment are being used.<sup>44</sup>

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<sup>41</sup> Christian Tomuschat. "International covenant on civil and political rights." *United Nations Audiovisual Library of International Law, United Nations* (2008): 1-4.

<sup>42</sup> David Bonner. "Ireland v. United Kingdom." *International & Comparative Law Quarterly* 27, no. 4 (1978): 897-907.

<sup>43</sup> Sara Isman. *Loc. Cit.*

<sup>44</sup> Frances Nicholson, and Judith Kumin. *A guide to international refugee protection and building state asylum systems*. Geneva, Switzerland: Inter-Parliamentary Union, 2017.

### 3.3. Justification of Diplomatic Assurance Considering Non- Refoulement Principle

#### 3.3.1. Principle of Non Refoulement

Refoulement is the act of sending someone back to a place where they have fears for their lives or freedom due to their race, religion, nationality, membership in a certain social group, or political beliefs. The principle of non-refoulement is now recognised to everyone by international law.<sup>45</sup>

Any withdrawal or transfer of people, regardless of their status, is prohibited by international human rights law if there are substantial grounds to believe that doing so will put the returnee at risk of suffering irreparable harm due to torture, mistreatment, or other grave violations of those rights. The principle of non-refoulement is an essential component of the outright ban on torture and other cruel treatment, and it is distinguished by its total nature devoid of any exception. In this regard, this principle's application is covered by more relevant human rights law treaties than it is by international refugee law. No matter a person's citizenship, nationality, statelessness, or immigration status, the restriction is applicable to them. It also applies whenever a State has effective control or jurisdiction, including when they are outside of that State's borders.<sup>46</sup>

#### 3.3.2. International Instruments to Protect Refugees by the Principle

Article 33 of the 1951 Geneva Convention relating to the Status of Refugees, which stipulates that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>47</sup>

Article 7 of the 1966 International Covenant on Civil and Political Rights indirectly deduces the concept of non-refoulement (ICCPR)<sup>48</sup> preventing torture through the extraterritorial application of the definition of torture (i.e., when a State

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<sup>45</sup> Hélène Lambert. "Protection against refoulement from Europe: Human Rights Law comes to the rescue." *International & Comparative Law Quarterly* 48, no. 3 (1999): 515-544.

<sup>46</sup> Sigit Riyanto. "The Refoulement Principle and Its Relevance in the International Law System." *Indonesian J. Int'l L.* 7 (2009): 695-715.

<sup>47</sup> United Nations. "Convention relating to the status of refugees." *United Nations, Treaty Series* 189, no. 1 (1951): 137.

<sup>48</sup> Sarah Joseph, and Melissa Castan. *The international covenant on civil and political rights: cases, materials, and commentary*. Oxford: Oxford University Press, 2013.

transfers a person to a nation where they are tortured or subjected to harsh, brutal, or degrading treatment or punishment, they are indirectly committing torture). The 1984 United Nations Convention against Torture (CAT), which specifically stated the non-refoulement commitment in a broader human rights context, was another significant step in this direction. Article 3 of the CAT prescribes it as a general rule that no State shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.<sup>49</sup> The competent authorities shall evaluate all pertinent factors, including, where appropriate, the existence in the State in question of a consistent pattern of severe, flagrant, or mass violation of human rights, in assessing whether such reasons exist. Several times, the UN has reaffirmed the importance of the principle of non-refoulement into the system of international law that protects human rights (e.g. the growing number of resolutions by the General Assembly in this field since the 1980s). Looking at the regional level, legally binding international law documents also include the principle of non-refoulement (international treaties). A definition somewhat different from those provided above is provided in Article II (3) of the 1969 Addis-Ababa Convention, which governs the specific features of refugee problems in Africa. This term is applicable to the African continent (threatening life, physical integrity or liberty is formulated as constituting the obstacle to return, to rejection at the frontier, and to expulsion),<sup>50</sup> while non-refoulement is included in Article 22 (8) of the 1969 American Convention on Human Rights as a purely human rights obligation.<sup>51</sup> The latter general concept of non-refoulement protecting all foreigners is, as regards the reasons serving as the basis of protection, greatly akin to the original definition in the 1951 Geneva Convention relating to the Status of Refugees. Furthermore, the 1984 Cartagena Declaration, which reaffirmed the importance of the non-

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<sup>49</sup> J. Hermann Burgers. *Op. Cit.*

<sup>50</sup> Jeremy I. Levitt. "Convention Governing the Specific Aspects of Refugee Problems in Africa:(Addis Ababa, Ethiopia, September 10, 1969, entered into force June 20, 1974)." In *Africa: Selected Documents on Constitutive, Conflict and Security, Humanitarian, and Judicial Issues*, pp. 413-422. Brill Nijhoff, 2003.

<sup>51</sup> Inter-American Commission on Human Rights, (1969). American Convention on Human Rights. See also, Thomas Buergenthal. "The American Convention on Human Rights: Illusions and Hopes." *Buffalo Law Review* 21, no. 1 (1971): 121.



refoulement principle, placed emphasis on this principle as the cornerstone of the global protection of refugees in Latin America.<sup>52</sup>

European Convention on Human Rights (ECHR) declaring the prohibition of torture as an absolute right,<sup>53</sup> the solid case-law of the Strasbourg Court interpreting and construing the prohibition of torture to be of an extraterritorial nature. The European Court of Human Rights (ECtHR) ruled that both extradition<sup>54</sup> and expulsion<sup>55</sup> violated Article 3 of the Convention banning torture if there were reasonable grounds to assume actual danger that the person concerned would be subjected to torture or inhuman or other degrading treatment or punishment in the receiving State.<sup>56</sup>

Principle of Non-Refoulement is also a part of the Customary International Law and it has a great impact on every state.

### **3.3.3. Relevance of Diplomatic Assurances with Non- Refoulement Principle**

Diplomatic assurances are only relevant where there are concerns about the non-refoulement principle.<sup>57</sup> Any person who is protected as a refugee under the terms of the 1951 Convention is subject to the principle of non-refoulement, which also applies to forcible removal to any other country where a person has cause to fear persecution related to one or more of the grounds listed in the 1951 Convention or from which he or she runs the risk of being returned to their country of origin.<sup>58</sup>

The concept of non-refoulement equally applies to persons who meet the requirements of Article 1 of the 1951 Convention but have not had their status

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<sup>52</sup> Eduardo Arboleda. "The Cartagena Declaration of 1984 and its Similarities to the 1969 OAU Convention—A Comparative Perspective." *International Journal of Refugee Law* 7, no. Special\_Issue (1995): 87-101.

<sup>53</sup> Jochen A. Frowein. "The transformation of constitutional law through the European Convention on Human Rights." *Israel Law Review* 41, no. 3 (2008): 489-499.

<sup>54</sup> R. C. Donnelly. "Soering v. United Kingdom: Whether the Continued Use of the Death Penalty in the United States Contradicts International Thinking?." *New England Journal on Criminal and Civil Confinement* 16, no. 2 (1990): 339-368.

<sup>55</sup> Beate Rudolf. "Chahal v. United Kingdom." *American Journal of International Law* 92, no. 1 (1998): 70-74.

<sup>56</sup> Tamás Molnár. "The principle of non-refoulement under international law: Its inception and evolution in a nutshell." *Corvinus Journal of International Affairs* 1, no. 1 (2016): 51-61.

<sup>57</sup> Evelyne Schmid. *Loc. cit.*

<sup>58</sup> Division of International Protection Services (DIPS). *Loc cit.*

formally recognized because refugee status is a declaratory status. According to all non-refoulement duties, the sending State is required to prove that the person it wishes to expel from its territory or legal authority won't be in danger of suffering significant human rights breaches like those listed above before taking any removal measures. The receiving State's diplomatic assurances regarding a specific person or assurances in the form of paragraphs addressing the treatment of those transferred under a general agreement on deportations or other types of removal are among the factors to be considered when reaching this decision.<sup>59</sup>

### 3.4. "Diplomatic Assurances"- The Mere Promises

"Diplomatic assurances" in the context of extradition refer to requirements established by the sought state.<sup>60</sup> The receiving state is responsible for making sure the person receives care that complies with the terms of the bilateral agreement. The term is more frequently used to describe the requesting state's international law-mandated obligations to respect human rights. These assurances typically include safeguards against the possibility of being tortured in the country of destination. In fact, these diplomatic guarantees allow the sending state the ability to watch and document how the person is treated after returning to the asking nation. In general, there are several types of diplomatic assurances, including notes verbales, aide memoire, memoranda of understanding, or agreements that include terms and a clause describing the future of people who are liable to extradition in the asking state.<sup>61</sup>

When examining the significance of diplomatic assurances, it is important to consider whether the assurance is a legally enforceable contract or only a political promise to behave in accordance with particular predetermined aims. Both types are typical in international relations, especially in the area of human rights law. An instrument's name does not always indicate what kind of legal standing it has. 'Treaties' and 'conventions' of course are 'treaties' falling in the ambit of the Vienna Convention on the Law of Treaties (VCLT).<sup>62</sup>

The decisive aspect is whether they were intended by the parties to be treaties, i.e. to create legally binding rights and obligations. In practice, it seems, The internal

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<sup>59</sup> Sara Isman. *Loc. Cit.*

<sup>60</sup> Johnston, Jeffrey. *Loc. Cit.*

<sup>61</sup> Stefanovska, Vesna. *Loc. Cit.*

<sup>62</sup> Ian McTaggart Sinclair, and Ian Robertson Sinclair. *The Vienna Convention on the law of treaties*. Manchester: Manchester University Press, 1984.

practices of the international organization or groupings of States in which they were drafted are more often taken into consideration when naming treaties.<sup>63</sup> Apart from treaties, there is an endless layout array of loose agreements, sometimes referred to as ‘non-binding’, ‘political agreements’ etc. Such agreements are typically seen as normative in the sense that they are meant to influence future behavior, but they are not seen as being legally binding in and of themselves, despite the fact that it is occasionally maintained that they may occasionally result in “legal repercussions.” These agreements, which have been referred to as “memoranda of understanding,” are frequently used when parties could have just as easily selected the form of a treaty but prefer the non-binding structure because it gives procedural benefits like confidentiality, flexibility, and speed.<sup>64</sup> Again, it is not always possible to determine the status of an instrument by its name; the decisive factor is whether the State Parties intended the agreement to be binding.<sup>65</sup>

Ahmed Agiza, an asylum seeker in Sweden, was expelled in December 2001 after receiving guarantees from the Egyptian authorities that he wouldn’t be tortured. Agiza was turned over to American agents by Swedish authorities and flown to Cairo on a CIA-leased aircraft. Despite plans for post-return monitoring by Swedish diplomats, he was later beaten and exposed to electric shock in an Egyptian prison. The UN Committee against Torture ruled in May 2005 that Sweden had violated its unwavering duty to never return a person to a risk of torture and that “the acquisition of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk.”<sup>66</sup>

On the basis of diplomatic guarantees of humane treatment, the U.S. government moved Maher Arar, a dual Canadian-Syrian citizen, from New York to Syria via Jordan in October 2002. 2003 saw the release of Arar. Despite Syrian promises to the contrary and numerous visits from Canadian consular authorities, an impartial fact-finder appointed by an official Canadian Commission of Inquiry into Arar’s treatment came to the conclusion in October 2005 that Arar had been tortured in Syrian prison. Arar’s torture in Syria is “a tangible proof” that

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<sup>63</sup> Nina Larsaeus. *The use of diplomatic assurances in the prevention of prohibited treatment*. Oxford: Refugee Studies Centre, 2006.

<sup>64</sup> Anthony Aust. *Modern treaty law and practice*. Cambridge: Cambridge University Press, 2013.

<sup>65</sup> Nina Larsaeus. Op. cit.

<sup>66</sup> Sarah Joseph. “Rendering terrorists and the Convention against Torture.” *Human Rights Law Review* 5, no. 2 (2005): 339-346.

diplomatic promises from totalitarian regimes have “no value” and do not serve as a safeguard against torture, the Commission of Inquiry itself ruled in September 2006.<sup>67</sup>

In 2004, the Russian government promised Rasul Kudayev that he would be treated humanely and in compliance with Russian domestic law and commitments, and the U.S. government transferred him from Guantanamo Bay to Russia. In October 2005, Kudayev was wrongfully detained and arrested, violently beaten, and refused essential medical care. When his lawyer raised concerns about his treatment, she was arbitrarily dismissed from the case.<sup>68</sup>

These cases demonstrate that diplomatic assurances do not provide effective protection and should not be used in cases where there is an acknowledged risk of torture.

### **3.5. Legal Obligations on Diplomatic Assurance**

The goal of the assurance is for the transmitting State to be able to rely on the receiving State to uphold its international responsibilities in order to avoid breaching its own. States are not allowed to give up their responsibilities under international law or enter into agreements that tangentially violate such duties. The States involved should, of course, uphold the promise as a contractual obligation in accordance with the *pacta sunt servanda* concept.<sup>69</sup> The remaining issue is whether the guarantees impose legally binding responsibilities on the States, inferring that the sending State is upholding rather than absolving itself of its international obligations.

In accordance with article 26 of the Vienna Convention on the Law of Treaties (VCLT), a contractual duty binds the parties and must be carried out in good faith.<sup>70</sup> Making a treaty is another approach to take on legal duties. The states that participate in a treaty legally obligate themselves to act in a certain manner or to establish certain relationships between themselves. In order for an agreement to be considered a treaty, the States must have the desire to establish legal relations, as

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<sup>67</sup> Yasmeen Abu-Laban, and Nisha Nath. “From deportation to apology: The case of Maher Arar and the Canadian state.” *Canadian Ethnic Studies* 39, no. 3 (2007): 71-98.

<sup>68</sup> Julia Hall. “Mind the Gap: Diplomatic Assurances and the Erosion of the Global Ban on Torture.” *Human Rights Watch World Report 2008* (2008): 63-73.

<sup>69</sup> Igor I. Lukashuk. “The principle *pacta sunt servanda* and the nature of obligation under international law.” *American Journal of International Law* 83, no. 3 (1989): 513-518.

<sup>70</sup> Ian McTaggart Sinclair, and Ian Robertson Sinclair. *Op. cit.*

stated in the phrase “governed by international law” in VCLT article 2. Thus, an assurance would therefore be enforceable as a contract. The agreement could be referred to as a memorandum of understanding instead of a treaty, which may or may not have legal force. The MOU must be legally binding in order to establish obligations.

Declarations made by unilateral acts are one way for a State to take on legal duties. The International Court of Justice (ICJ) in the Nuclear Tests cases stated that: “It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. [...]”<sup>71</sup> When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking [...]” The Court ruled that there was an obligation present since France had meant to make a legally binding commitment in this case. Even though no other State had expressed acceptance of the declaration to give rise to a formal contract or other conventional obligation, it was nonetheless legally binding.

The Court held further that: “one of the basic principles governing the performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperations, in particular in an age when this co-operation in many fields is increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based in good faith, so also is the binding character of an international obligation assumed by unilateral declaration.”<sup>72</sup>

Diplomatic assurances as part of Internationally Wrongful Acts, a state becomes internationally responsible when it engages in an international wrongful Act. The components of acts that are internationally wrongful are outlined in the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts.<sup>73</sup> The act must be legally attributable to a State and constitute a violation of that State’s international obligations in order to include responsibility. Multiple States may simultaneously bear responsibility for the same

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<sup>71</sup> Thomas M. Franck. “Word Made Law: The Decision of the ICJ in the Nuclear Test Cases.” *American Journal of International Law* 69, no. 3 (1975): 612-620.

<sup>72</sup> Bimal N. Patel. “Nuclear Tests Case:(Australia v. France).” In *The World Court Reference Guide*, pp. 409-415. Brill Nijhoff, 2000.

<sup>73</sup> James Crawford. “The ILC’s articles on responsibility of states for internationally wrongful acts: a retrospect.” *American Journal of International Law* 96, no. 4 (2002): 874-890.

behavior. It is also possible to hold another State accountable for their actions. A State is equally accountable for an international wrongful conduct as the State that commits it if it leads or controls the commission of the act, participates in its commission, or coerces another State to do so. Nothing precludes responsibility when it comes to obligations under the peremptory standards of general international law. A significant violation has specific repercussions for States.

Therefore, once the return has been implemented, both the sending State's responsibilities and the existing obligations of the receiving State are significant. The assurance must be mutual, and this should be clear from the assurance's text.<sup>74</sup>

### **3.6. Interconnectivity Between the Obligations Derived from Non-Refoulement Principle and Diplomatic Assurance Under International Law**

Since the prohibition of torture is regarded as a peremptory norm, or *jus cogens*, it supersedes any conflicting treaty provisions or customary international law. It is an element of the body of customary international law that applies to all states, regardless of which treaties they have ratified, and is a peremptory rule. Additionally, the state parties may have *erga omnes* obligations with regard to the human rights provisions established by a treaty. Such a duty is the prohibition of torture and other cruel treatment. The International Criminal Tribunal for the former Yugoslavia (ICTY) argued in *Furundzija* that because of torture is universally despised, a number of treaties and customs prohibiting it have the same status as laws against genocide, slavery, racial discrimination, aggression, the annexation of territory by force, and the forcible suppression of the right of peoples to self-determination.<sup>75</sup> Accordingly, the Court argued that the prohibition imposes obligations on States *erga omnes* and that breaking the prohibition constitutes a violation of the corresponding right of all members of the international community. Since it has the status of *jus cogens*, the prohibition of torture is unaffected by emergencies or times of war that pose a threat to the survival of a country. The obligation of non-refoulement as *jus cogens* would be a strong instrument to make sure the protection of people and their human rights throughout the war against terrorism. Every treaty, treaty obligation, and act by a State or international organization that is in conflict with or in breach of this norm

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<sup>74</sup> Sara Isman. *Loc. Cit.*

<sup>75</sup> Maury D. Shenk, Carrie A. Rhoads, and Amy L. Howe. "International Criminal Tribunal for the Former Yugoslavia and for Rwanda." *International Lawyer* 33, no. 2 (1999): 549-554.

is void if it is accepted and recognized as a peremptory norm of international law.<sup>76</sup> Non-refoulement must be recognized as *jus cogens* through customary international law, State practice, and the justification for the State practice because there is no international agreement establishing that it is. The UNHCR Executive Committee has affirmed that the concept of non-refoulement is *jus cogens* law, reflecting the agreement of States.<sup>77</sup> Additionally, State practice in accordance with the Cartagena Declaration on Refugees<sup>78</sup> provides support for the idea that State practice has the stature of *jus cogens*. For the purposes of this thesis, it is sufficient to state that the ban of refoulement is non-derogable and absolute, and that the law against torture has the status of *jus cogens*.<sup>79</sup>

### 3.7. Diplomatic Assurance: One of the Best Ways to Reduce Refugee Crisis in South Asian Countries

Currently, we can observe that a select few nations are in charge of the majority of the world's refugees. Most nations, including some of those with the biggest economies in the world, hardly ever accept any refugees. For instance, Japan has taken in about 1000 refugees during the past ten years.

The preamble of the Refugee Convention states that all nations should share responsibilities. This includes the countries of Europe and other middle- to high-income regions, who must contribute and raise the number of refugees who are given protection.

We are all aware of the tremendous failures in collaboratively and cooperatively reacting to large-scale movements of refugees in many south Asian countries. As such, responsibility sharing is a fundamental component of international responses to refugee crises.<sup>80</sup> Responsibility sharing is necessary because states bear unequal shares of the expenses of protecting and aiding displaced people. As a result, the

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<sup>76</sup> Rene Bruin, and Kees Wouters. "Terrorism and the Non-derogability of Non-refoulement." *International Journal of Refugee Law* 15, no. 1 (2003): 5-29.

<sup>77</sup> Jean Allain. "The *jus cogens* Nature of non-refoulement." *International Journal of Refugee Law* 13, no. 4 (2001): 533-558.

<sup>78</sup> Cartagena Declaration. "Cartagena Declaration on Refugees." In *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, vol. 22. 1984.

<sup>79</sup> Jerzy Sztucki. "The Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme." *International Journal of Refugee Law* 1, no. 3 (1989): 285-318.

<sup>80</sup> Susan F. Martin, Rochelle Davis, Grace Benton, and Zoya Waliany. "International responsibility-sharing for refugees." *Geopolitics, History, and International Relations* 11, no. 1 (2019): 59-91.



idea of responsibility sharing serves as the foundation for the international refugee regime. This idea can be found in a variety of treaties and legal frameworks that have come to dictate how international and national entities deal with the displaced.<sup>81</sup> The UN General Assembly Resolution and numerous other studies have likewise repeated this idea numerous times.<sup>82</sup> The UNHCR executive committee committed to advancing global solidarity, cooperation, and fair responsibility and load sharing;<sup>83</sup> and further encourages all States and UNHCR to step up their efforts to put these crucial principles into action, including by providing host countries with much-needed support and by mobilizing financial and other resources, as well as by ensuring protection, assistance, and realizing durable solutions for refugees and other people of concern, as appropriate, in order to improve the coping ability and resilience of host communities and provide aid in a humane manner.

So, in the case of responsibility sharing, the nations must guarantee that the refugees won't face persecution there because before all the things the lives of them are foremost. Developed countries should maintain a chain of sharing responsibilities in case of hosting refugees with different developing countries of South Asia by giving the assurance not to torture them. For this reason, all promises must be enforceable against both parties. A violation won't be effective if there are no obvious legal implications. The assurance should also be enforceable and include mention of enforcement mechanisms. Therefore, the problem that has been caused by the influx of refugees into South Asian nations with the assistance as well as implementation of assurance against torture of industrialized nations can soon be removed.

#### 4. Conclusion

Refugee crisis refers to one of the greatest crises in the world including different South Asian countries. There are different solutions to reduce the crisis

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<sup>81</sup> Peter H. Schuck. "Refugee burden-sharing: a modest proposal." *Yale J. Int'l L.* 22 (1997): 243-297.

<sup>82</sup> Ninette Kelley, and Jean-Francois Durieux. "UNHCR and Current Challenges in International Refugee Protection." *Refuge: Canada's Journal on Refugees* 22, no. 1 (2004): 6-17.

<sup>83</sup> Volker Türk, and Madeline Garlick. "From burdens and responsibilities to opportunities: the comprehensive refugee response framework and a global compact on refugees." *International Journal of Refugee Law* 28, no. 4 (2016): 656-678.

but, implementation of diplomatic assurance is one of the superiors. By international co- operation and responsibility sharing as well as giving diplomatic assurance to treat the refugees well, the problem can easily be handled. To achieve the goal, assurance should be drafted and evaluated carefully then considered in the risk assessment. The assurance gives the interested States legal obligations. Since justice is always applied case by case, if an assurance could guarantee that one person is treated in line with his or her human rights, this might be a step toward improving the general observance of human rights in the receiving State.

To conclude, this article found that no specific national laws are in existence to regulate diplomatic assurance in developed countries as well as different South Asian countries. There are no regional laws to govern the specific aspects of diplomatic assurance among countries. Also, no core instruments are available in the international arena by which the standard of diplomatic assurance can be maintained specifically. The legislatures of different countries are not aware enough to make laws in this regard. Academicians as well as researchers don't give importance to research in the area of diplomatic assurance, though some researchers have shown the legality of diplomatic assurances in their perspective, proper implementation has not yet been seen among countries. Lastly, the findings showed that no policy coherences have been taken to make diplomatic assurance reliable.

## **5. Recommendation**

There are some recommendations that can be outlined here. The first is enactment of national laws. Governments of developed as well as different South Asian developing countries should adopt the policy of diplomatic assurance in their legislation. National laws must be enacted to promote and protect the right to get diplomatic assurances.

The second is establishment of Regional Laws. Regional law is necessary to assist the implementation of internationally recognized diplomatic assurances' norms and standards at the national levels, and to facilitate a regional solution to a problem in this regard that triggers regional consequences. The third is Adoption of International Laws. International laws will help to address domestic human rights constraints and challenges when there is a shortage of diplomatic assurance's policies and institutions by setting norms and standards at the international level.

The fourth is awareness of Legislature. The legislative body must be aware to make laws in this regard so that governments of developed countries take the matter seriously. The fifth is ensuring proper study. Researchers should give importance in researching this area. Academicians as well as Researchers should study more and more to utilize diplomatic assurance as a possible solution in the refugee crisis.

The fifth is proper implementation of laws. Though the specific area of diplomatic assurance has not been mentioned in any law, the “prohibition of torture” has legal value which researchers have shown in light of diplomatic assurance. So, proper practice of those legal matters must be implemented. The seventh is policy coherence. Different policies must be taken in this regard and the coherence must be maintained among the policies in the countries.

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