

# An Introduction to International Refugee Law

Edited by  
Rafiqul Islam and  
Jahid Hossain Bhuiyan

MARTINUS NIJHOFF PUBLISHERS

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Dedicated to the memory of  
*Professor Azizur Rahman Chowdhury*



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## PREFACE

The period after the Cold War has been marked by conflict despite what was hoped to be a peaceful and collaborative world. Violence and persecution continue to be committed in different corners of the world which compels many people to flee their countries and seek protection in neighbouring states as refugees, thereby rendering refugee protection an important international issue. Many people mistakenly think that the refugee problem is of particular concern only to the North, yet the South has as much to do being a major source of refugee influx. In the face of global crises of involuntary cross-border human displacement, the protection of refugees has assumed and will continue to assume paramount significance. Since its promulgation in 1951, *the Convention relating to the Status of Refugees* dominates the understanding of refugee issues. However, due mainly to the indifference and refusal of its members to keep true to their commitments under the Convention, it is no longer as relevant and adaptive as it once was. This book, *An Introduction to International Refugee Law*, aims to underscore the urgent need for the members to deliver their commitments and to set the stage for a deeper understanding of these assumed obligations in a global setting. It purports to fulfill this goal by underscoring, highlighting, elaborating, explaining and commenting on the salient rules and principles of international law on refugees to afford a deeper appreciation of its limitations and to pursue a reformist agenda.

We wish to extend our sincere thanks and gratitude to all contributors who have come together to make this collection an exciting publication on international refugee law. As editors, we have pursued a minimalist interventionist approach in all chapters, which remain in substance the original work of their respective author. We are also grateful to Lindy Melman and Bea Timmer of Martinus Nijhoff Publishers for their support and cooperation with this book.

Rafiqul Islam  
Md Jahid Hossain Bhuiyan



## DEDICATION

Sadly, during the preparation of this book the international refugee law community suffered an important loss with the passing of Azizur Rahman Chowdhury. With unfathomable sorrow but deepest admiration and everlasting gratitude, we dedicate the book, *An Introduction to International Refugee Law*, to the memory of Azizur Rahman Chowdhury in recognition of his active involvement in this book as co-editor.

Azizur Rahman Chowdhury was Professor at the Department of Law, Dhaka University. He spent 38 years of his teaching in the Dhaka University. He was Chairman of the Department of Law from 1982–1983. He had been Dean of the Faculty of Law for sometimes. He was member of the editorial board of Journal of the Faculty of Law, The Dhaka University Studies. He was the pioneer in curriculum designing and introduction of Clinical Legal Education Programme of the Faculty of Law, Dhaka University. He had participated in several national and international conferences, and made substantial contribution through his papers. He had contributed many research articles and published several textbooks in law. Some of his remarkable books are Jurisprudence, Constitutional Law, Commercial Law and K.C. Wheare's book "Modern Constitution". He was co-editor of *International Humanitarian Law-An Anthology* (LexisNexis Butterworths), *Issues in Human Rights* (Atlantic Publishers), and *An Introduction to International Human Rights Law* (BRILL, Martinus Nijhoff Publishers).

Beyond his myriad achievements as a professor, researcher and administrator, Professor Chowdhury will be remembered for his vibrant personality, energy, humour, pleasant, wisdom, kindness and most of all, selfless concern for others.



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## INTERNATIONAL LEGAL PROTECTION FOR REFUGEES: ARTICULATING CHALLENGES AND OPTIONS

Rafiqul Islam and Jahid Hossain Bhuiyan

### CONTEXT, NATURE, SCOPE, AND AIMS

Refugee protection has become one of those contemporary challenges that have bewildered the international community in search of an enduring solution. Despite the high expectation of a peaceful and collaborative world generated by the end of the cold war, the post cold war era has been experiencing a conflict-ridden world where violence is a constant feature in nearly every parts of the world and is out of control. The internecine strife due to surging ugly faces of extreme nationalism in pursuit of ethnic cleansing and the disintegration of central authority in the former Yugoslavia and Rwanda in the 1990s, prolonged Sri Lankan separatist civil war, the so-called wars on terrorism in Iraq and Afghanistan, devastating famine and ruthless civil conflicts in Africa, and the ongoing Arab spring terrified, persecuted, and displaced millions of people. Persecution on the basis of ethnicity and religion continues to deprive people of their most basic human rights recognised in international law and the 1945 *Charter of the United Nations*. Many of them fleeing their homeland for fear of their lives and safety and have taken shelter in neighbouring states and beyond as refugees. They remain non-citizens of their states of refuge, which retain full discretion in the admission of refugees and extent of protection. As a result, refugees are unable to claim their status recognised and access to protection as a matter of right. Their basic rights remain elusive.

A series of recent factors, such as global financial crises, rising unemployment, austerity measures and their consequential socio-political unrest, people smuggling, refugee xenophobia, and issues of national security fears have led many, if not most, governments to play populist politics and pursue blatant refugee non-admission policy and practice. The refugee protection obligation of states has receded in favour of seemingly more urgent needs and imperatives of domestic constituency. The force of law has become powerless and made subservient to the dogmatic pursuit of national interests. Moreover, the mainstream international discourse seems to nourish an erroneous perception that refugee is a