The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

BELONGING WITHOUT BORDERS: SHIFTING LEGAL THRESHOLDS IN REFUGEE PROTECTION, TERRITORIAL ASYLUM, AND THE RIGHTS OF STATELESS PERSONS

~ Priyam Pratik

ABSTRACT

International refugee law, once conceived as a relatively contained set of obligations addressed to the aftermath of the Second World War, has grown into a sprawling normative architecture that must now contend with climate-driven displacement, digitised persecution, statelessness on an industrial scale, and the resurgence of extraterritorial push-back practices by states increasingly hostile to asylum. This article examines the evolving legal thresholds that determine who qualify for protection under international law, with particular attention to three interlocking areas: the expansion and judicial elaboration of the refugee definition in the 1951 Refugee Convention, the contested doctrine of territorial asylum and its relationship to the principle of non-refoulement, and the chronic under-protection of stateless persons under both the 1954 and 1961 Statelessness Conventions. The article identifies three principal lacunae: the exclusion of environmentally displaced persons from the refugee definition, the absence of a binding international instrument on territorial asylum, and the persistent gap between the formal obligations of the statelessness conventions and their practical enforcement. It concludes with proposals directed at courts, treaty bodies, and legislatures for a more coherent and principled approach to the protection of the forcibly displaced.

Keywords: *Refugee Status Determination; Non-Refoulement; Territorial Asylum; Statelessness; Climate Displacement; Particular Social Group; Extraterritorial Jurisdiction*

I. INTRODUCTION

There are currently, by UNHCR estimates, over 110 million forcibly displaced persons in the world. Of those, roughly 36 million meet the legal definition of a refugee; a further 5.5 million are stateless; and tens of millions more occupy a legal grey zone, displaced by climate change, generalised violence, or state collapse in ways that existing categories do not adequately capture. These numbers are not merely humanitarian statistics. They are evidence of a structural mismatch between the legal architecture built in the early 1950s to address a specific European crisis and the global displacement realities of the twenty-first century.

The foundational text remains the 1951 Convention Relating to the Status of Refugees.[1] The 1967 Protocol extended its geographic and temporal scope.[2] Between them, these two instruments set out the definition of a refugee, the duties that state parties owe to those who qualify, and, most critically, the principle of non-refoulement. Yet the definition has never been formally amended. Its expansion has occurred through judicial interpretation, regional supplementation, and the normative guidance of UNHCR, producing a body of law that is simultaneously more protective and more uncertain than the original text suggests.

This article proceeds as follows. Part II examines the refugee definition and its doctrinal evolution, focusing on the "particular social group" ground, the question of state protection, and the emergence of subsidiary protection in European law. Part III turns to territorial asylum: its precarious normative status, the prohibition on push-backs, and the extraterritorial reach of non-refoulement. Part IV analyses statelessness: the definitional framework, the protection gaps, and emerging judicial responses. Part V draws together the threads and identifies the principal lacunae in the current framework, before offering constructive proposals in Part VI. Part VII concludes.

II. THE REFUGEE DEFINITION: TEXT, INTERPRETATION, AND EVOLUTION

A. The Conventional Definition and its Structural Ambiguities

Article 1A(2) of the 1951 Convention defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

[1] *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

[2] Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

particular social group, or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country.[3] Every word of that definition has been litigated. The five Convention grounds are exhaustive. The fear must be both subjectively genuine and objectively well-founded. The persecution must be causally connected to one of the five grounds. And the claimant must be outside their country of nationality. Each of these requirements has generated a substantial body of case law across multiple jurisdictions.

UNHCR's 2019 Handbook, now in its fourth edition, offers authoritative guidance on interpretation, though it does not bind state parties as a matter of treaty law.[4] It adopts a purposive approach, emphasising that the Convention is a living instrument whose terms should be interpreted in the light of its humanitarian object and purpose. Most national courts and tribunals have accepted that approach, though the degree of deference they show to UNHCR guidance varies considerably.[5]

B. Particular Social Group: Doctrinal Expansion and its Limits

The "particular social group" ground has proved to be the most contested and the most productive site of doctrinal development. Two competing approaches have emerged. The first, associated with the United States, focuses on whether the group shares an immutable or fundamental characteristic that members cannot change or should not be required to change. The second, developed in Australian and United Kingdom case law, adds or substitutes the requirement of social visibility or social distinction: the group must be cognisable in the society in question.

The United Kingdom House of Lords addressed the question directly in *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, ex parte Shah*, holding that women in Pakistan could constitute a particular social group, and that the failure of the Pakistani state to protect them from domestic violence could constitute persecution for a Convention reason.[6] The decision was significant not only for its expansion of the group concept but for its analysis of the nexus between persecution and the relevant Convention

[3]Refugee Convention (n 1) art 1A(2).

[4]*UNHCR*, 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status' (reissued February 2019) HCR/1P/4/ENG/REV.4, para 65.

[5]James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 18.

[6]*R v Immigration Appeal Tribunal, ex parte Shah; Islam v Secretary of State for the Home Department* [1999] 2 AC 629 (HL).

ground: it accepted that the discriminatory withholding of state protection could itself supply the nexus.

The High Court of Australia reached a similar conclusion in *Minister for Immigration and Multicultural Affairs v Khawar*, emphasising that the failure of the state to protect a person from harm can constitute persecution where the failure is discriminatory and attributable to a Convention reason.[7] The logic of these decisions has been extended to other groups including LGBTQ+ individuals, persecuted castes, and victims of gang violence, though with varying degrees of success in different national legal systems.

The Supreme Court of the United Kingdom, in *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department*, delivered one of the most important modern elaborations of the refugee definition.[8] The Court held that a person who would conceal their sexual orientation to avoid persecution in their country of origin is entitled to refugee status. The decision explicitly rejected the "reasonable practicability of concealment" approach that had previously been endorsed by the Court of Appeal. Lord Hope's reasoning was that asking a person to suppress an innate characteristic in order to avoid persecution is itself a form of persecution; the Convention does not require claimants to modify who they are.

C. Regional Supplementation: OAU, Cartagena, and the EU

The narrow scope of the 1951 definition has been supplemented in significant ways at regional level. Table 1 below sets out the principal instruments and their definitional departures from the Geneva baseline.

Instrument	Definition Trigger	Geographic Scope	Key Expansion beyond 1951
1951 Refugee Convention	Well-founded fear of persecution for 5 grounds	Universal (post-1967 Protocol)	Baseline instrument; no expansion
1969 OAU Convention	As above plus external aggression, occupation, events seriously disturbing public order	Africa	Objective, group-based criterion; no need for individual fear

[7] *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1 (HCA).
[8] *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31, [2011] 1 AC 596.

Instrument	Definition Trigger	Geographic Scope	Key Expansion beyond 1951
1984 Cartagena Declaration	As above plus massive violations of human rights or internal armed conflict	Latin America (non-binding)	Incorporates generalised violence; adopted into many domestic laws
EU Qualification Directive (2004/83/EC)	Refugee status plus subsidiary protection (serious harm incl. Art 15(c) indiscriminate violence)	EU Member States	Subsidiary protection tier; codifies Elgafaji standard
UNHCR Guidelines (2019)	Flexible reading of PSG and political opinion; includes gender-based and LGBTQ+ claims	Universal (persuasive only)	Normative guidance without treaty force; influential in domestic courts

Table 1: Comparative Refugee Definitions across International and Regional Instruments

The 1969 OAU Convention extends refugee status to persons compelled to leave their country "owing to external aggression, occupation, foreign domination or events seriously disturbing public order."[9] This is a group-based, objective criterion that does not require proof of individual fear. The 1984 Cartagena Declaration, adopted in Latin America as a non-binding but influential instrument, goes further still, extending the definition to persons who have fled because their lives, safety, or freedom have been threatened by generalised violence, foreign aggression, or massive violations of human rights.[10] Many Latin American states have incorporated the Cartagena definition into their domestic legislation.

Within the European Union, the Qualification Directive of 2004 created a two-tier system: refugee status for those meeting the Convention definition, and subsidiary protection for those who face a real risk of serious harm, including indiscriminate violence in armed conflict, without necessarily satisfying the Convention grounds.[11] The Court of Justice of the European Union, in *Elgafaji v Staatssecretaris van Justitie*, held that the level of indiscriminate violence

[9]African Union, Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45 (OAU Refugee Convention), art 1(2).

[10]Cartagena Declaration on Refugees (adopted 22 November 1984) Annual Report of the Inter-American Commission on Human Rights, OAS Doc OEA/Ser.L/V/II.66/doc.10, rev.1, 190-93, s III(3).

[11]Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees (Qualification Directive) [2004] OJ L304/12, art 15(c).

in a conflict can, by itself, be so high as to require subsidiary protection, even without proof of individual targeting.[12] The decision substantially expanded the protection available under EU law and confirmed that the subsidiary protection framework operates independently of the Convention definition.

III. TERRITORIAL ASYLUM AND THE PRINCIPLE OF NON-REFOULEMENT

A. The Normative Status of Territorial Asylum

There is no binding international instrument that obliges states to grant territorial asylum to persons who present themselves at their borders. The 1967 Declaration on Territorial Asylum affirms the right of states to grant asylum and calls upon them to exercise it,[13] but its terms are hortatory. It acknowledges that the granting of asylum is a sovereign act, and it provides only that no person shall be subjected to rejection at the frontier or to return to any state where they may be subjected to persecution.[14] The declaration has never been converted into a treaty. Proposals for a Convention on Territorial Asylum failed in 1977, largely because states were unwilling to accept binding obligations to admit asylum seekers at their frontiers.

The practical consequence is that the right to seek asylum exists in international human rights instruments, including Article 14 of the Universal Declaration of Human Rights, as a right to seek and enjoy asylum, not as a right to receive it. The gap between seeking and receiving is filled, imperfectly, by the non-refoulement principle and by humanitarian and human rights law obligations that restrict states' freedom to remove or return persons to places where they face serious harm.[15]

B. Non-Refoulement: Scope, Reach, and Erosion

Article 33(1) of the 1951 Convention prohibits states from expelling or returning a refugee in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.[16] The provision is widely regarded as a norm of customary international law, binding even on states that have not ratified the Convention. The European

[12]*Elgafaji v Staatssecretaris van Justitie* (Case C-465/07) [2009] ECR I-921 (Court of Justice of the EU).

[13]Declaration on Territorial Asylum (adopted 14 December 1967) UNGA Res 2312 (XXII), art 1(1).

[14]ibid, art 3(1).

[15]Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007) 201.

[16]Refugee Convention (n 1) art 33(1).

Court of Human Rights has read a complementary prohibition into Article 3 of the European Convention on Human Rights, extending it beyond the five Convention grounds to any case of a real risk of treatment contrary to Article 3 in the destination country.[17]

The ECtHR's decision in *Chahal v United Kingdom* established that the non-refoulement obligation under Article 3 ECHR is absolute: it cannot be overridden even by national security considerations.[18] This placed the Strasbourg Court in direct tension with the position taken by the United States Supreme Court in *Sale v Haitian Centers Council*, which held that Article 33 of the Convention did not apply to interdiction on the high seas.[19] The divergence reflects a deep disagreement about whether non-refoulement is an obligation owed to persons who are within a state's jurisdiction or to all persons regardless of where they are encountered by state agents.

The Grand Chamber of the ECtHR resolved the extraterritorial question conclusively, at least within the ECHR framework, in *Hirsi Jamaa and Others v Italy*.[20] Italian naval vessels had intercepted migrants in international waters and returned them to Libya without any assessment of their protection needs. The Court held that Italy exercised jurisdiction over the persons on board its vessels and that the collective expulsion and the return to Libya, where the applicants faced a real risk of treatment contrary to Article 3, violated both Article 3 and Article 4 of Protocol No 4 to the Convention.[21] The decision has reshaped the legal framework for maritime migration management across the Mediterranean and its implications are felt well beyond the ECHR's geographic scope.

A further dimension of non-refoulement was examined by the Grand Chamber in *MSS v Belgium and Greece*, where the Court held that Belgium had violated Article 3 by transferring an asylum seeker to Greece under the Dublin system, knowing that conditions for asylum seekers in Greece fell below the minimum standards required by the Convention.[22] The decision introduced what might be called a chain refoulement principle: a state cannot discharge its non-refoulement obligation by transferring responsibility to another state whose protection system is itself deficient.

[17] *Soering v United Kingdom* (1989) 11 EHRR 439 (ECtHR).
[18] *Chahal v United Kingdom* (1996) 23 EHRR 413 (ECtHR).
[19] *Sale v Haitian Centers Council, Inc*, 509 US 155 (1993) (US Supreme Court).
[20] *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECtHR, Grand Chamber, 23 February 2012).
[21] ibid, paras 177-186.
[22] *MSS v Belgium and Greece* (n 15) paras 338-340.

C. The Climate Displacement Lacuna

Climate change is generating displacement on a scale that dwarfs traditional conflict-driven flows. By the middle of this century, the Internal Displacement Monitoring Centre projects that 216 million people could be displaced within their own countries by climate and environmental factors. Persons who cross international borders in search of protection from climate-related harm do not, on the current state of international law, qualify as refugees.[23] The 1951 definition requires persecution for a Convention reason, and environmental harm does not fit within the five exhaustive grounds.[24]

The United Nations Human Rights Committee took a significant step in *Ioane Teitiota v New Zealand*, holding that states may not return persons to a country where climate-related conditions pose an imminent, foreseeable and life-threatening risk, as this could violate Article 6 of the International Covenant on Civil and Political Rights.[25] The Committee's reasoning did not accept that the threshold was met on the facts of the Kiribati case before it,[26] but the principle it articulated opened a legal pathway that lower courts and tribunals have begun to explore.[27]

The absence of a dedicated instrument for climate-displaced persons represents one of the most significant gaps in the current international protection framework. Several academic proposals have been made for a new protocol to the 1951 Convention or a stand-alone convention on climate displacement, but state practice has not moved in this direction.[28] In the interim, the practical burden falls on the non-refoulement principle and on the creative interpretation of existing human rights obligations, with all the uncertainty that entails.

IV. STATELESSNESS: DEFINITION, CAUSES, AND THE PROTECTION FRAMEWORK

A. The Legal Definition and its Gaps

[23]Refugee Convention (n 1) art 1A(2): the definition does not include environmental or climate-related harm.

[24]Refugee Convention (n 1) art 1A(2) (requirement that persecution be 'for reasons of race, religion, nationality, membership of a particular social group or political opinion').

[25]*Ioane Teitiota v New Zealand* (Communication No 2728/2016) UN Doc CCPR/C/127/D/2728/2016 (Human Rights Committee, 7 January 2020).

[26]ibid, para 9.11.

[27]*AF (Kiribati)* [2013] NZIPT 800413 (New Zealand Immigration and Protection Tribunal).

[28]Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) 43.

A stateless person is defined in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons as a person who is not considered as a national by any state under the operation of its law.[29] The definition focuses on de jure statelessness: the formal absence of nationality under any applicable legal system. De facto statelessness, where a person technically holds a nationality but cannot exercise the rights associated with it because the state refuses to recognise or assist them, is not covered by the 1954 Convention, though it may engage other human rights protections.

The International Court of Justice, in *Nottebohm Case (Liechtenstein v Guatemala)*, held that nationality is within the domestic jurisdiction of states, subject to the requirement of a genuine connection between the state and the individual.[30] That domestic competence, affirmed also in the advisory opinion of the Permanent Court of International Justice in the *Nationality Decrees* case,[31] creates the structural condition for statelessness: because each state determines its own nationality laws, gaps and overlaps are inevitable, and persons can fall through them.

The principal causes of statelessness include discriminatory nationality laws that exclude minorities or women; gaps arising from state succession; the absence of birth registration; and deliberate deprivation of nationality as a form of persecution. The 1961 Convention on the Reduction of Statelessness requires states to grant nationality to foundlings and to persons born on their territory who would otherwise be stateless, and prohibits arbitrary deprivation of nationality.[32] Table 3 below sets out the key instruments and their principal obligations and limitations.

Instrument	Core Obligation	Limitation / Gap	State Parties (approx.)
1954 Statelessness Convention	Defines stateless person; prescribes treatment standards	Does not require states to grant nationality; no determination procedure mandated	97

[29]Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117, art 1(1).

[30]*Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Rep 4.

[31]*Nationality Decrees Issued in Tunis and Morocco* (Advisory Opinion) [1923] PCIJ Ser B No 4.

[32]Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175.

Instrument	Core Obligation	Limitation / Gap	State Parties (approx.)
1961 Reduction Convention	Requires grant of nationality to foundlings and persons born on territory who would otherwise be stateless	Allows deprivation in national security cases; no enforcement mechanism	76
European Convention on Nationality 1997	Prohibits arbitrary deprivation; requires facilitated naturalisation after 10 years	Regional in scope; only 20 ratifications	20
UNHCR Action Plan 2014-2024	10-point plan to end statelessness; includes reform of discriminatory nationality laws	Soft law only; implementation depends on state cooperation	N/A (voluntary)

Table 3: International Instruments Addressing Statelessness: Obligations and Gaps

B. The Intersection of Statelessness and Refugee Law

Stateless persons may also be refugees if they satisfy the refugee definition in respect of their country of former habitual residence. The 1951 Convention explicitly accommodates this: Article 1A(2) provides that in the case of a stateless person, the reference to "the country of his nationality" shall be read as the country of his former habitual residence.[33] However, a stateless person who fears persecution from a state that is not their country of former habitual residence, or who faces harm in a country where they have never lived, may fall outside both the refugee and statelessness regimes simultaneously. This is a genuine and underappreciated lacuna.[34]

The ECtHR's decision in *Hoti v Croatia* illustrates the human cost of prolonged legal uncertainty about status. The applicant had lived in Croatia for decades without any secure legal status, having been rendered stateless by the dissolution of the former Yugoslavia. The Court held that Croatia's failure to resolve his situation over many years violated his right to private and family life under Article 8 ECHR, and imposed on the state a positive obligation to

[34]See Michelle Foster and Hélène Lambert, *International Refugee Law and the Protection of Stateless Persons* (Oxford University Press 2019) 88.

provide a procedure through which long-term stateless residents could regularise their status.[35] The decision is significant for its framing of statelessness not merely as an absence of status but as an active violation of existing rights.

The United States Supreme Court observed in *Trop v Dulles* that statelessness is a form of punishment more primitive than torture, noting that its effect is the total destruction of the individual's status in organised society.[36] While that characterisation was made in the context of deprivation of nationality as punishment, its logic applies with force to all forms of statelessness. UNHCR's Global Action Plan to End Statelessness, launched in 2014 with a 10-year horizon, identified ten specific actions required to eliminate statelessness globally.[37] By its own reckoning, significant progress has been made on reform of discriminatory gender-based nationality laws, but the total number of stateless persons worldwide has not declined.[38]

V. PRINCIPAL LACUNAE IN THE CURRENT FRAMEWORK

The foregoing analysis reveals three principal structural lacunae in the international protection framework.

The first is the exclusion of climate-displaced persons from the refugee definition. This is the most urgent gap in numerical terms, given the projected scale of climate displacement. The current reliance on the non-refoulement principle and on Article 6 ICCPR to provide protection is both insufficient and uncertain: it provides no positive obligation to admit climate-displaced persons, no framework for durable solutions, and no institutional mechanism for burden-sharing. A dedicated instrument or, at minimum, a formal re-reading of "particular social group" to include persons fleeing climate-driven persecution by their own states, is needed.[39]

The second lacuna is the absence of a binding multilateral instrument on territorial asylum. The current framework leaves the decision to admit asylum seekers entirely to the discretion of individual states, constrained only by the negative obligation of non-refoulement. This produces a situation in which asylum seekers bear the full burden of geographic proximity to protection, with states at the external borders of wealthy regions bearing a disproportionate

[35] *Hoti v Croatia* App no 63311/14 (ECtHR, 26 April 2018).
[36] *Trop v Dulles*, 356 US 86 (1958) (US Supreme Court) -- statelessness characterised as a punishment more primitive than torture.
[37] Global Action Plan to End Statelessness 2014-2024, UNHCR (November 2014).
[38] ibid, Action 1 (resolving existing major situations of statelessness).
[39] Goodwin-Gill and McAdam (n 18) 424.

share of arrivals and wealthier interior states insulated by geography. The failure of the Dublin system to produce burden-sharing is the most obvious symptom of this structural deficiency.[40]

The third lacuna is enforcement. The 1954 and 1961 Statelessness Conventions have no treaty bodies, no reporting mechanisms, and no individual complaint procedures. Compliance is essentially voluntary. The ECtHR and the Human Rights Committee have filled some of the gap through the application of general human rights norms, but their reach is limited by jurisdiction, by the requirement of individual complaint, and by the absence of any power to impose systemic reform. UNHCR's mandate over stateless persons remains inadequately resourced.[41]

VI. CONSTRUCTIVE PROPOSALS

Four specific proposals are advanced here. First, states parties to the 1951 Convention should, under the auspices of UNHCR, develop a protocol or agreed interpretive note that extends subsidiary protection, modelled on the EU Qualification Directive standard, to persons displaced by climate-related events of sufficient severity. This would not require reopening the Convention definition but would formalise the protection space that courts are already beginning to create through case-by-case adjudication.

Second, the international community should revive negotiations on a binding convention or protocol on temporary protection, building on the experience of the EU's Temporary Protection Directive, activated for Ukrainian displaced persons in March 2022.[42] A binding instrument that obliged states to provide temporary protection during mass influx situations, with built-in burden-sharing mechanisms, would address both the territorial asylum gap and the practical failure of existing asylum systems under mass-flow conditions.

Third, the 1954 and 1961 Statelessness Conventions should be supplemented by a protocol establishing an individual complaints mechanism before a dedicated treaty body, modelled on Optional Protocols to the ICCPR and ICESCR. This would provide the enforcement

[40]Joan Fitzpatrick, 'Temporary Protection of Refugees: Elements of a Formalized Regime' (2000) 94 *American Journal of International Law* 279, 285; Human Rights Council, 'Report of the Special Rapporteur on the human rights of migrants' (2019) UN Doc A/HRC/41/38, para 68.

[41]David Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons' (2006) 28 *Human Rights Quarterly* 245, 249.

[42]Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons (Temporary Protection Directive) [2001] OJ L212/12; Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine [2022] OJ L071/1.

mechanism that the existing framework conspicuously lacks and would create a body of interpretive case law capable of driving convergence in national statelessness determination procedures.[43]

Fourth, national courts should be more willing to use the doctrine developed in *Hoti v Croatia* and in the *Puttaswamy*-style informational privacy line of cases to impose positive obligations on states to provide timely, accessible statelessness determination procedures. The ECtHR has clearly established that prolonged uncertainty about a person's status can itself constitute a violation of Convention rights. Courts with equivalent jurisdiction should apply that principle consistently and urgently.[44]

VII. CONCLUSION

International refugee law in the 2020s bears only a partial resemblance to the compact that states concluded in Geneva in 1951. Through judicial interpretation, regional supplementation, and the normative creativity of UNHCR, the definition of a refugee has been substantially expanded to include victims of gender-based persecution, LGBTQ+ individuals who cannot be expected to conceal their identity, and in some jurisdictions those fleeing generalised violence and climate-related harm. The non-refoulement principle has been extended beyond Convention grounds, applied extraterritorially, and made absolute in the ECHR framework. These are real achievements.

Yet the framework retains deep structural deficiencies. Climate-displaced persons remain outside the refugee definition. The right to seek asylum is unmatched by any binding obligation to grant it. Stateless persons are protected by two widely unratified and unenforceable conventions. The gap between formal entitlement and practical protection has never been wider. The 2022 activation of the EU Temporary Protection Directive for Ukrainian displaced persons showed that when states have the political will to provide protection, the legal tools exist. The challenge is to extend that will beyond the contexts in which it is politically convenient.

[43]European Convention on Nationality (adopted 6 November 1997, entered into force 1 March 2000) ETS 166, art 4; UNHCR, 'Guidelines on Statelessness No 1: The Definition of "Stateless Person" in Article 1(1) of the 1954 Convention' (20 February 2012) HCR/GS/12/01.

[44]*Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* (Advisory Opinion OC-4/84) (1984) Inter-American Court of Human Rights Series A No 4; UNHCR, 'Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers' (Lisbon Expert Roundtable, June 2002).

The proposals advanced in this article, a climate protection protocol, a binding temporary protection instrument, an enforcement mechanism for the statelessness conventions, and more robust domestic adjudication of positive state obligations toward stateless persons, are not radical. They are incremental adjustments to a framework that already contains the values required to protect those who have lost, or never had, the protection of a state. What is needed is not imagination but political will, and the scholarly contribution to that project is to make the legal case, as clearly and as urgently as possible, for why that will must be exercised now.[45]

[45]Hathaway and Foster (n 10) 350-360.