



## The Rejection of Palestinian Refugees Following the October 7, 2023 Attack: A Perspective on Security and Humanity

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**Abstract:** The escalation of the Israeli-Palestinian conflict on October 7, 2023, led to a large-scale attack by Hamas, triggering a refugee crisis in Gaza and subsequent rejections by neighboring countries, including Jordan. This rejection, although in conflict with the principle of non-refoulement as a norm of international law, is viewed as a measure to protect state sovereignty. This research employs a normative juridical method, emphasizing legislative, case-based, historical, and conceptual approaches to analyze the interaction between state sovereignty and refugee protection. The main discussion includes the threats to sovereignty posed by refugees, the perspective of the non-refoulement principle as a *jus cogens* norm, and the implications of the resulting normative conflict. The conclusion indicates that while state sovereignty is crucial, humanitarian considerations and the rights of refugees must also be taken into account to achieve a fair and harmonious solution.

**Keyword:** Israeli-Palestinian Conflict, Refugee Rejection, State Sovereignty, Non-Refoulement, *Jus Cogens*, International Law.

### INTRODUCTION

The Israeli-Palestinian conflict is a long-standing conflict that began with the United Nations issuing General Assembly Resolution 181 (II), Future Government of Palestine, as an execution of the British Mandate for Palestine. General Assembly Resolution 181 (II) divided Palestine into an Arab state and a Jewish state. This decision was welcomed by the Jewish community but sparked outrage among Arab nations. Subsequently, on May 14, 1948, the Sochnut or JAFI (Jewish Agency of Israel) declared the independence of Israel. One day later, Egypt, Syria, Jordan, Lebanon, and Iraq attacked Israel, leading to the first Arab-Israeli war.

The effects of this conflict are still felt today, as discussions regarding historical rights, security, and human rights remain unresolved. One of the humanitarian issues that remains unresolved is the refugee crisis. According to the 1951 Convention Relating to the Status of Refugees, a refugee is defined as a person who is unable or unwilling to return to their country of origin due to insecurity or fear of persecution, particularly for reasons of race, religion, nationality, membership in a particular social group, or political opinion. Currently, one of the most highlighted refugee groups in the world is the Palestinian refugees.

The Palestinian refugee crisis began during the 1948 Arab-Israeli War, which resulted in approximately 750,000 people losing their homes and property. Jordan, Lebanon, Syria, Gaza, and the West Bank became the primary destinations for these refugees. As an effort to address the issue of Palestinian refugees, the United Nations adopted United Nations General Assembly Resolution 302 (IV) on December 8, 1949, which led to the establishment of a new organization, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

The Israeli-Palestinian conflict reignited on October 7, 2023, when a surprise attack was launched by a paramilitary organization known as Harakat al-Muqawama al-Islamiya (Hamas) against Israeli military forces. Hamas initiated the attack by firing approximately 5,000 rockets toward southern Israel.

The head of the Qassam Brigades, the military wing of Hamas, stated, "We announce the start of Operation Al-Aqsa Flood and we announce that the first strike, which targeted enemy positions, airports, and military fortifications, exceeded 5,000 missiles and shells" (Al Jazeera, 2023). In addition to the rocket attacks, Hamas also conducted ground assaults on Israeli military bases, raided towns near the Israeli border, and took both Israeli civilians and military personnel hostage. In response to these attacks, the Israeli government declared war on Hamas and launched various military operations aimed at displacing Palestinian civilians and dismantling Hamas' paramilitary infrastructure.

The United Nations Emergency Relief Coordinator, Martin Griffiths, reported that 85% of Gaza's total population, equivalent to 1.9 million civilians, were forced to flee due to Israeli military operations (UNOCHA, 2024). However, this mass displacement faced resistance from several countries, including Jordan.

King Abdullah II of Jordan explicitly stated, "No refugees in Jordan, no refugees in Egypt" (Jeffery, 2024). This rejection is particularly notable given Jordan's proximity to Palestine and its history of hosting the largest number of refugees among Arab nations. According to UNHCR data, as of early 2024, Jordan hosted approximately 710,000 refugees from various countries registered with the UNHCR. The majority of these refugees were from Syria, with significant numbers also from Iraq, Yemen, Sudan, and Somalia. Around 82% of these refugees lived outside formal camps, and nearly 50% were children (UNHCR, 2024).

Jordan's refusal to accept Palestinian refugees is not without historical context. The country has a troubled history with the presence of Palestinian refugees, most notably during the 1970 civil war, known as Black September. This conflict pitted Palestinian Fedayeen against the Jordanian government under King Hussein.

The war began after Jordan lost the West Bank and East Jerusalem to Israel in the 1967 war, which severely impacted Jordan's economy. By 1970, at least 300,000 refugees had crossed the Jordan River into new camps around Amman and other cities. The Palestinian Fedayeen had effectively established an armed state within a state, controlling large parts of Amman and disregarding King Hussein's authority.

Multiple assassination attempts were made against King Hussein, prompting him to order the 60th Armored Brigade to attack Fedayeen strongholds in refugee camps in Amman on September 17, 1970 (Riedel, 2020). The establishment of Fedayeen bases within refugee camps and their actions posed a significant threat to Jordan's national security. The aftermath of this conflict saw the expulsion of thousands of Palestinian refugees from Jordan to Lebanon. This historical event has contributed to Jordan's current reluctance to accept Palestinian refugees.

Jordan's refusal to accept Palestinian refugees following the October 7, 2023, attacks is a preventive measure to prevent Israel from emptying the West Bank and Gaza of as many Palestinians as possible. Jordan's concerns have been heightened even before the Hamas attack on October 7, 2023, due to a significant but often overlooked factor: demographic issues (Muasher, 2023). Currently, more than 7.3 million Palestinian Arabs live—either as citizens in

Israel or as non-citizens in the West Bank, Gaza, and East Jerusalem—alongside nearly 6.8 million Jewish Israelis. The fertility rate of Palestinian Arabs (4.3 children per woman in the West Bank and 4.5 children per woman in Gaza) far exceeds that of Jewish Israelis, which stands at 3.1 children per woman (Muasher, 2021).

Jordan's refusal to accept refugees presents an intriguing case where two principles of international law come into conflict: the principle of state sovereignty and the principle of non-refoulement, which reflects the implementation of *jus cogens*.

*Jus cogens* represents the highest norm in international law, a concept that cannot be violated under any circumstances. On the other hand, the principle of state sovereignty is a fundamental concept regarding the very existence of a state. This tension between these two principles highlights the complexities of international law in addressing refugee crises.

## **METHOD**

### **Identified Problems**

Based on the background provided above, this paper will address three legal issues:

1. How can state sovereignty be threatened by the presence of refugees?
2. How does the principle of non-refoulement, as a *jus cogens* norm, view the phenomenon of rejecting Palestinian refugees?
3. What implications arise when the principle of non-refoulement threatens state sovereignty?

### **Research Specifications**

The research methodology refers to the scientific procedures or methods employed in a study to collect relevant data and information, transform, develop, and demonstrate that the problem under investigation can be resolved (Qamar, 2017, p. 7). In this research, the author employs a normative legal research method.

Normative legal research is a legal research activity that focuses on examining library materials or other secondary data related to the issues under investigation (Soekanto, 2001, p. 52). Normative legal research refers to the norms and principles of law found within legislation or outside of legislation, research on legal systematics, legal synchronization, comparative law, and legal history.

### **Data Collection Method and Data Analysis**

This research utilizes three approaches to conduct the study: the statutory approach, the case approach, the historical approach, and the conceptual approach. The type of data used is secondary data, which consists of three sources of legal materials, as follows:

#### **Primary Legal Materials**

The primary legal materials used in this research include the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the Charter of the United Nations.

#### **Secondary Legal Materials**

The secondary legal materials used in this research encompass books, journal articles, theses, and other relevant studies related to the issues under investigation.

#### **Tertiary Legal Materials**

The tertiary legal materials used in this research include legal dictionaries and general encyclopedias.

The data collection technique employed in this research is a literature review (library search). The data analysis technique used is qualitative analysis. The results of the data analysis are processed to address the research questions. The data is then used as a reference to draw conclusions.

## RESULTS AND DISCUSSION

### **The Perspective of the Non-Refoulement Principle as Jus Cogens on the Phenomenon of Rejecting Palestinian Refugees**

The principle of non-refoulement is primarily codified in Article 33 of the 1951 Refugee Convention, which was initially intended to protect European refugees from World War II and later expanded through the 1967 Protocol.

It is noteworthy that the English version of the Convention deliberately uses the French term "refouler" and its derivatives, despite the existence of the synonymous English term "return," which is also used in the Convention (Sylvia, 2024, p. 355).

Non-refoulement is a fundamental concept in the international protection system aimed at refugees. The principle of non-refoulement prohibits states from returning or expelling refugees to territories where they would face persecution or life-threatening harm due to reasons related to race, religion, nationality, membership in a particular social group, or political opinion (Guy, 1988, p. 117). The principle of non-refoulement is a core value for refugees and has been adopted in various international legal instruments.

Jus cogens refers to peremptory norms that are obligatory and stand above other sources of international law. These norms cannot be overridden or invalidated by laws created by states, whether through international treaties or domestic legislation (Michael, 1975, p. 273). The binding nature of jus cogens does not derive from positive law or other norms but stems from its inherent character and substance (Atip, 2021, p. 265).

The qualification of the non-refoulement principle as a jus cogens norm in international law can be assessed based on the following considerations. First, the principle of non-refoulement is now an established norm of international law, institutionalized in multilateral international conventions, specifically in Article 33 of the 1951 Geneva Convention (Sigit, 2010, p. 442).

Second, the principle of non-refoulement has also become part of international customary law, practiced by states even before it was formally articulated in international instruments (Jean, 2001, p. 338). Third, in subsequent developments, particularly in legal instruments accepted by the international community concerning refugee protection, the principle of non-refoulement has been reaffirmed and explicitly recognized as jus cogens (Sigit, 2010, p. 443). Fourth, the acceptance and affirmation of the non-refoulement principle in the international protection system for refugees and asylum seekers can be observed in the practices of relevant international organizations, such as the UNHCR (Sigit, 2010, p. 443).

In the context of the rejection of Palestinian refugees, from the perspective of the non-refoulement principle, such actions amount to placing refugees back into dangerous situations. Under the non-refoulement principle, expulsion or deportation occurs when a foreign national is found guilty of actions contrary to the interests of the host state or is a suspect in criminal activities who has fled from judicial proceedings (Sigit, 2010, p. 435). However, in the case of Palestinian refugees seeking entry into Jordan, not all may meet the criteria for the non-application of the non-refoulement principle, indicating a potential violation of this principle.

### **How State Sovereignty Can Be Threatened by the Presence of Refugees**

Under international law, refugees are individuals who have a credible fear of being "persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, are outside their country of nationality, and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country." Refugees are often perceived as a threat to state security and sovereignty rather than as a vulnerable population (Nizar, 2010, p. 88). These threats can manifest in various forms, such as economic challenges, social security issues, terrorism, coups, and others.

Refugees arrive in large numbers and in vulnerable conditions, often traumatized by war and having lost assets that they cannot transfer to the host country (Onur, 2020, p. 2). In this context, the arrival of refugees clearly impacts the economic situation of the host country. For example, the presence of a large number of refugees has forced Jordan to continuously seek foreign aid (Finna, 2023, p. 33).

The conflicts in Syria and Iraq have led to the influx of over one million refugees, contributing to the doubling of Jordan's population since 2000 (to 10 million people) (Finna, 2023, p. 36). According to Hassan, 2014 (cited in Finna, 2020, p. 36), this significant population growth has placed a burden on the labor market, increased living costs, and caused water scarcity issues.

Security threats are also a consequence of refugee arrivals. The entry of refugees into a host country can sometimes provide an opportunity for groups that threaten state sovereignty to infiltrate, especially when refugees become sympathizers of such groups or when refugee camps are misused as military operation bases. A clear example of this can be seen in the Black September incident.

Karama is a small border town in the Jordan Valley near Palestine. It served as the political and military headquarters for al-Fatah; nearby was the Karama Palestinian Refugee Camp, where Palestinians sought shelter after the 1967 war (Abdallah, 1983, p. 110). The Battle of Karama was a military and political turning point for Palestinian resistance (Abdallah, 1983, p. 111).

The impact was evident two days after the battle when thousands joined Fatah (Helena, 1992). This case illustrates how Palestinian refugees were vulnerable to infiltration by external parties with ulterior motives. These parties even used Jordanian towns as military and political headquarters, creating a parallel sovereignty within Jordan.

To worsen the situation, thousands of refugees who were supposed to seek refuge instead became militants, causing security issues within the host country. By 1970, the Palestinians (through the PLO) had become the primary independent force in Jordan and a major challenge to the Jordanian monarchy.

However, this did not last long, and the Jordanian front collapsed in September 1970 after the Hashemite Kingdom of Jordan viewed the Palestinian resistance as a threat to its survival. King Hussein launched a bloody war against the Palestinians and their supporters, aiming to eliminate the Palestinian resistance from Jordan (Rami, 2017, p. 924).

Incidents like Black September have added to the dark history of Palestinian refugees. Refugees who were supposed to seek protection were instead infiltrated, and some even became militants. Consequently, states that are supposed to protect refugees have become reluctant due to the economic burden and sovereignty threats posed by their presence.

### **Implications Arising When the Principle of Non-Refoulement Threatens State Sovereignty**

Sovereignty is a concept deeply intertwined with the state. Sovereignty itself is a reflection of the state. F.H. Hinsley defines sovereignty as the final and absolute authority of a political community. There is no final and absolute authority outside the political community (Christopher W., 2000, p. 2).

A sovereign state acknowledges that there is no higher authority above the state itself. In other words, the state holds a strong monopoly over its authority. Daniel Philpott also states that sovereignty is the supreme authority within a territory and consists of three elements: the prescription of legitimacy, rules for acquiring sovereign status, and prerogative rights (Richard, 2004, p. 282). However, sovereignty has its own limitations. The limitation of sovereignty lies within the state's territorial boundaries, meaning that a state only holds supreme authority within its own territory



In international law, state sovereignty and the equality of states are recognized concepts and form the basis of the international legal system (Sigit, 2018, p. 7). According to David Held, 2002 (cited in Heribertus, 2020, p. 543) sovereignty can be viewed from two aspects: internal and external (David, 2002).

Internal sovereignty pertains to the state's authority to govern itself within its territorial boundaries. Sovereignty encompasses the authority and power to establish laws, enforce compliance, and resolve issues within its jurisdiction (Heribertus, 2020, p. 543). According to Shaw, 2008 (cited in Heribertus, 2020, p. 543), external sovereignty emphasizes the state's ability to engage in relations with other states. A state has the authority to freely determine its relations with other states or groups without pressure, restraint, or oversight from any particular state.

Sovereignty is an absolute necessity for all states because it represents the very existence of state authority. Sovereignty is required to guarantee the rights of citizenship and to determine what is beneficial for its people. However, on the other hand, state sovereignty can have negative implications when it conflicts with obligations under international law, as the state in question may use "sovereignty" as a shield to justify its violations (Heribertus, 2020, p. 657).

In the case of the rejection of Palestinian refugees following the October 7, 2023, attack, Jordan and Egypt refused to accept Palestinian refugees. During a press conference on October 13, 2023, King Abdullah II of Jordan stated, "That is a red line, because I think that is the plan by certain of the usual suspects to try and create de facto issues on the ground. No refugees in Jordan, no refugees in Egypt, the whole region is on the brink of falling into the abyss, all our efforts are needed to make sure we don't get there.

We have a common goal to prevent a conflagration in the region. I once again expressly warn Hezbollah and Iran not to intervene in this conflict." In this statement, King Abdullah emphasized that there would be no refugee admissions to Egypt or Jordan. In the same statement, he also mentioned, "The whole region is on the brink of falling into the abyss, all our efforts are needed to make sure we don't get there." This statement reflects Jordan's reluctance to become involved in the conflict and risk the entry of militants into its territory, which could threaten Jordan's security and sovereignty.

This step clearly violates the principle of non-refoulement by rejecting refugees and placing them in danger. However, this action is justified by the need to protect Jordan's security and sovereignty.

The implication of this event is the emergence of a normative conflict. In legal theory, a normative conflict, whether in any field of law or in international law, requires a conflict between norms. One norm may be permissive, meaning that in complying with or applying one norm, another norm must or is likely to be violated (Erich, 2006, p. 418). In this case, Jordan faces two choices: the first is to allow refugees into its territory in accordance with the principle of non-refoulement, but risk the entry of other parties that could drag the country into conflict and threaten its sovereignty and security. The second choice is for Jordan to secure its sovereignty and national security by closing its borders, thereby endangering the lives of Palestinian refugees.

Between humanity and state sovereignty, the normative conflict seems to divide and obscure the best solution and resolution. In essence, state sovereignty and humanity are two interdependent concepts. Sovereignty is needed to guarantee human rights, while human rights are needed by sovereignty to legitimize it and maintain social stability and the security of a government. Therefore, there should be a harmonious and aligned solution to the issue of refugee rejection following the October 7, 2023, attack.

A concrete example of a solution that balances the fulfillment of humanitarian obligations and the preservation of state sovereignty can be seen in Canada. In practice, Canada accepts a significant number of refugees from the Middle East, thereby fulfilling its humanitarian responsibilities. Furthermore, Canada has established the Immigration and Refugee Board of

Canada (IRB), which plays a crucial role in the refugee admission process. The IRB acts as an independent tribunal responsible for making decisions on immigration and refugee matters (Samin, 2024). Through the IRB, Canada maintains its sovereignty by implementing a rigorous selection process, including background checks and interviews

## CONCLUSION

The Israeli-Palestinian conflict has undoubtedly caused significant losses and given rise to numerous new issues, one of which is the refugee problem. However, the Jordanian government's refusal to accept Palestinian refugees presents an intriguing case, as it involves two principles within the norms of *jus cogens*: the principle of non-refoulement and the principle of state sovereignty.

Theoretically, the actions taken by Jordan clearly violate the principle of non-refoulement. However, it must be recalled that the determination of such a violation must be made by the International Court of Justice. Despite the principle of non-refoulement, it cannot be denied that Palestinian refugees have a troubled history, leading to significant dynamics affecting Jordan's sovereignty, both economically and in terms of security.

The choice between humanitarian obligations and state sovereignty complicates the identification of an optimal solution for both the state and the refugees. Therefore, a balanced approach is necessary to achieve the best possible solution without disadvantaging any party.

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