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## ASYLUM AND REFUGEE STATUS: LEGAL DISTINCTIONS AND CONTEMPORARY CHALLENGES

### Asilo y condición de refugiado: distinciones jurídicas y desafíos contemporáneos

#### ABSTRACT

Contemporary global mobility has intensified the complexity of international protection mechanisms revealing significant conceptual and procedural confusion between asylum and refugee status. The article addresses this problem by examining how the two figures are grounded in distinct legal traditions, institutional processes, and normative obligations. The study's objective is to clarify these differences through a detailed analysis of their international, regional, and Mexican legal foundations, and to evaluate the contemporary challenges that have blurred their operation in practice.

Methodologically, the article conducts a doctrinal analysis of key international instruments (the Universal Declaration of Human Rights, the 1951 Refugee Convention and 1967 Protocol, the Cartagena Declaration, and Latin American asylum treaties) combined with the examination of jurisprudence from the Inter-American Court of Human Rights. It also incorporates empirical data from UNHCR, IOM, and human rights organizations regarding displacement trends and policy restrictions in the Americas. The results demonstrate clear legal distinctions: asylum remains a sovereign act rooted in regional human rights traditions while refugee status constitutes a universal treaty-defined category with standardized criteria and rights. In Mexico, this differentiation is institutionally formalized through separate authorities (SRE for asylum, COMAR for refugee status). However, the study finds that mixed migration flows, regional displacement crises (especially Venezuela, Haiti, and Cuba), restrictive U.S. policies (Title 42, ACAS, CBP One), and border externalization have eroded access to both institutions, producing what scholars describe as a “crisis of access” rather than a cri-

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sis of numbers. The article concludes that protecting asylum and refugee status requires strengthening institutional capacity, reaffirming non-refoulement as *jus cogens*, and adapting protection frameworks to address emerging displacement drivers such as organized crime and ecological collapse.

**Keywords:** asylum; international protection; mixed migration flows; non-refoulement; refugee status.

## RESUMEN

La movilidad global contemporánea ha intensificado la complejidad de los mecanismos de protección internacional, revelando una importante confusión conceptual y procesal entre el asilo y la condición de refugiado. En el artículo se aborda este problema examinando cómo ambas figuras se fundamentan en tradiciones jurídicas, procesos institucionales y obligaciones normativas distintas. El objetivo del estudio es aclarar estas diferencias mediante un análisis detallado de sus fundamentos jurídicos internacionales, regionales y mexicanos, y evaluar los desafíos contemporáneos que han desdibujado su funcionamiento en la práctica. Metodológicamente, en el artículo se realiza un análisis doctrinal de instrumentos internacionales clave (Declaración Universal de Derechos Humanos, Convención sobre Refugiados de 1951 y su Protocolo de 1967, Declaración de Cartagena y los tratados latinoamericanos de asilo), combinado con el análisis de la jurisprudencia de la Corte Interamericana de Derechos Humanos. También se incorporan datos empíricos del ACNUR, la OIM y organizaciones de derechos humanos sobre las tendencias de desplazamiento y restricciones políticas en las Américas. Los resultados demuestran claras distinciones jurídicas: el asilo sigue siendo un acto soberano arraigado en las tradiciones regionales de derechos humanos, mientras que la condición de refugiado constituye una categoría universal definida por tratados con criterios y derechos estandarizados. En México, esta diferenciación se formaliza institucionalmente a través de autoridades separadas (SRE para asilo, COMAR para la condición de refugiado). Sin embargo, el estudio concluye que los flujos migratorios mixtos, las crisis regionales de desplazamiento (especialmente en Venezuela, Haití y Cuba), las políticas restrictivas de Estados Unidos (Título 42, ACA, CBP One) y la externalización de la frontera han erosionado el acceso a ambas instituciones, generando lo que los académicos describen como una “crisis de acceso” en lugar de una crisis de números. En el artículo

se concluye que proteger el asilo y la condición de refugiado requiere fortalecer la capacidad institucional, reafirmar la no devolución como *ius cogens* y adaptar los marcos de protección para abordar las causas emergentes del desplazamiento, como el crimen organizado y el colapso ecológico.

**Palabras clave:** asilo; condición de refugiado; flujos migratorios mixtos; no devolución; protección internacional.

### **LEGAL DISTINCTIONS BETWEEN ASYLUM AND REFUGEE STATUS: INTERNATIONAL, LATIN AMERI- CAN, AND MEXICAN NORMATIVE FOUNDATIONS**

The distinction between asylum and refugee status is one of the most significant conceptual and legal differentiations within international human rights law and international refugee law. While both institutions share the overarching purpose of protecting individuals fleeing persecution, violence, or serious human rights violations, they arise from different legal sources, operate within distinct normative frameworks, and follow separate procedural paths in many national systems, including Mexico. Understanding the legal basis of each requires examining their historical evolution, the international instruments that structure them, their specific development in Latin America, and their contemporary application in Mexican law.

### **I. ASYLUM AS A SOVEREIGN ACT AND PROTECTION PROCEDURE**

In international law, asylum is conceptualized as the *act, decision, and procedure* by which a State grants protection to an individual who faces persecution. Its first universal recognition appears in Article 14(1) of the Universal Declaration of Human Rights (UDHR), which affirms that “everyone has the right to seek and enjoy asylum from persecution” (United Nations, 1948). Although the UDHR does not impose a binding obligation on States to grant asylum, it establishes a clear human right to request protection, creating a foundational basis for subsequent normative developments.

The 1967 Declaration on Territorial Asylum, adopted by the United Nations General Assembly, elaborates this right by outlining key principles, such as:

- the right to seek asylum,
- the prohibition of penalizing asylum seekers for irregular entry,
- the principle of non-refoulement, and
- the discretion of the asylum-granting State to evaluate and determine requests (United Nations General Assembly, 1967).

Although non-binding, the Declaration reflects widely accepted principles of contem-

porary international law and significantly influenced subsequent state practice.

Nevertheless, unlike refugee status, asylum lacks a single binding universal treaty that regulates its procedures and obligations in detail. Instead, its most structured legal development has occurred within Latin America, which has built the most robust regional asylum regime in the world.

## II. THE LATIN AMERICAN ASYLUM SYSTEM: TERRITORIAL, DIPLOMATIC, AND POLITICAL ASYLUM

Through a succession of accords signed in the 20<sup>th</sup> century, Latin America has created a one-of-a-kind Asylum System. This approach makes a clear difference between territorial asylum (given within the State's borders) and diplomatic asylum (given in embassies, consulates, or diplomatic residences).

The 1928 Havana Convention on Asylum was the first international treaty to provide rules for asylum in the region. It recognized diplomatic asylum as lawful and set rules for states to follow to make sure that people who have been granted asylum are secure.

The 1933 Montevideo Convention on Political Asylum made these practices even stronger. It gave the State that granted asylum the sole power to decide whether the acts attributed to the asylum seeker were poli-

tical in nature. This is what sets the Latin American approach apart from others.

The 1954 Caracas Convention on Diplomatic refuge is the most important regional legislation. It sets forth comprehensive conditions for refuge given in diplomatic missions and makes it clear that the territorial State must respect diplomatic inviolability. This convention is still the legal basis for diplomatic asylum cases in all of Latin America.

The Inter-American Court of Human Rights, in its Advisory Opinion OC-25/18, acknowledged the human rights aspect of territorial asylum and confirmed that the principle of non-refoulement is a *jus cogens* norm relevant to any individual facing persecution, torture, or other significant human rights abuses (Inter-American Court of Human Rights, 2018). This view raises the protection framework beyond standard political asylum and links it with modern human rights responsibilities.

## III. REFUGEE STATUS AS AN INTERNATIONAL LEGAL CATEGORY

Refugee status is a clearly defined legal category created by global treaties that must be followed. Asylum is not. The 1951 Convention pertaining to the Status of Refugees and its 1967 Protocol are the principal rules that govern it. They are still the most important rules for protecting refugees around the world.

According to the 1951 Convention, a refugee is someone who is outside their home country and cannot or will not get protection from it because they are afraid of being persecuted because of their race, religion, nationality, membership in a certain social group, or political opinion (UNHCR, 2019). The 1967 Protocol got rid of the Convention's limits on time and space, thus the term can be used anywhere in the world.

The Convention not only defines who is a refugee, but also what rights they have, such as:

- the right to get ID documents,
- the right to move around,
- getting to work and school,
- being able to go to court, and protection against being kicked out unless under very specific situations.

Article 33's principle of non-refoulement is very important. It says that countries can't send people back to places where their life or freedom would be in danger.

Scholars assert that refugee recognition is declaratory, indicating that an individual attains refugee status by fulfilling the Convention criteria, rather than through a formal determination. The ruling just recognizes a legal situation that already exists (Goodwin-Gill & McAdam, 2007).

Regional expansion: The Cartagena Declaration (1984)

Latin America significantly expanded the refugee definition through the Cartagena Declaration, which includes individuals fleeing:

- generalized violence,
- internal conflicts,
- massive human rights violations,
- or other circumstances that seriously disturb public order.

Although Cartagena is a non-binding instrument, many States (including Mexico) have incorporated its expanded definition into domestic legislation, making it a *de facto* regional standard.

#### **IV. THE MEXICAN LEGAL FRAMEWORK: A CLEAR INSTITUTIONAL AND NORMATIVE DISTINCTION**

Mexico is unique in that it has clear legal differences between asylum and refugee status, with each status being handled by different institutions and judicial systems.

Article 11 of the Political Constitution of the United Mexican States affirms the right of any person to seek asylum and refuge. This means that both processes are part of the national protection system.

The Law on Refugees, Complementary Protection, and Political Asylum (2011) is the most important law in the country.

This law makes it clear that the two institutions are separate:

Refugee status

- Managed by the Mexican Commission for Refugee Assistance (comar).
- Based on the 1951 Convention, the 1967 Protocol, and the expanded Cartagena definition.
- Includes complementary protection for persons who may not qualify as refugees, but nevertheless face risks of torture or other serious violations.

Political asylum

- Administered by the Ministry of Foreign Affairs (sre).
- Anchored in Mexican constitutional tradition and in inter-American treaties, such as the Havana (1928), Montevideo (1933), and Caracas (1954) conventions.

This dual structure reflects Mexico's hybrid legal heritage: participation in the Universal Refugee Protection System and adherence to the regional Latin American asylum tradition.

## V. ESSENTIAL LEGAL DIFFERENCE BETWEEN ASYLUM AND REFUGEE STATUS

Although both mechanisms aim to protect individuals at risk, their legal founda-

tions, procedural dynamics, and normative implications differ significantly:

- Asylum is a sovereign act and procedure rooted in human rights law and regional treaties, traditionally linked to protection against political persecution.
- Refugee status is an international legal category defined by universally binding treaties, associated with broader grounds of persecution and accompanied by a detailed catalogue of rights.
- Procedurally, asylum is granted through state discretion, whereas refugee status is determined based on treaty-defined criteria.
- In Mexico and several Latin American countries, different authorities handle each figure: foreign ministries deal with asylum, while specialized refugee agencies adjudicate refugee status.

Understanding these distinctions is essential for legal practitioners, policymakers, and scholars, particularly in contexts such as Mexico, where mixed migration flows require nuanced application of both institutions.

## VI. CONTEMPORARY CHALLENGES FOR ASYLUM AND REFUGEE PROTECTION

International refugee law and the Latin American history of asylum offer strong protective structures, but both systems are under increasing assault in today's geopolitical climate. More complicated patterns of human movement, tight immigration rules, and the outsourcing of border controls have made it much harder to get asylum and refugee status. These problems directly impact the differentiation between asylum as a sovereign procedural institution and refugee status as a treaty-based legal category, frequently obscuring their bounds in reality. This segment looks at four main trends: mixed migratory flows, regional displacement crises, asylum limits in the US, and the externalization of borders. It focuses on how these trends affect Mexico.

### *Mixed migration flows and the blurring of protection categories*

A defining characteristic of modern mobility is the emergence of mixed migrant patterns, wherein refugees, asylum seekers, victims of organized crime, and individuals escaping socioeconomic collapse traverse the same pathways concurrently. UNHCR has frequently said that mixed flows make it harder to find people who require international protection. This raises the

possibility of refoulement if countries don't set up good screening systems (UNHCR, 2020).

In the Americas, mixed flows are particularly evident among those escaping broad violence in northern Central America, gang persecution, and extortion by organized criminal entities. Studies indicate that many of these individuals satisfy the Cartagena Declaration's broadened refugee definition, encompassing those fleeing "generalized violence" and "massive violations of human rights." However, they are frequently regarded as irregular migrants, thereby being excluded from protective measures (Cantor, 2014). This gap between the legislation and how it is enforced is a big problem for the effective implementation of refugee law.

Also, people who have to leave their homes because of climate change, natural disasters, or economic collapse are becoming more common in mixed flows (IOM, 2022). Although these persons may not conform to the traditional 1951 Convention definition, they may nonetheless be eligible for supplemental protection if returning to their home country would subject them to inhumane treatment or conditions that violate human dignity. As a result, the way people move around nowadays shows the limits of traditional refugee classifications and makes broader human rights-based protection systems more important.

*Displacement crises in Latin America  
by region*

Latin America is going through some of the worst displacement crises in its contemporary history right now. More than seven million individuals have left Venezuela, making it one of the largest flows of people leaving their homes in the world (R4V, 2023). Even though Cartagena's expanded criterion for refugees includes people escaping "massive human rights violations" and conditions that "seriously disturb public order," most Venezuelans have not been officially recognized as refugees. Instead, states have used temporary protection procedures like Colombia's Temporary Protection Status for Venezuelans (ETPV), which has led to varied reactions in different regions.

Other urgent concerns include people leaving Haiti because of political instability, gang violence, and the breakdown of governmental institutions as well as Cubans moving again because of economic hardship and political repression. Asylum systems are meant to handle individual claims, but these large numbers of people coming in at once put a lot of stress on national institutions, like Mexico's COMAR, which has seen its caseload grow by leaps and bounds in recent years. According to UNHCR, Mexico got more than 118,000 asylum requests in 2022 alone, making it the third largest country in the world to receive asylum requests (UNHCR, 2023). This

sudden increase has put a strain on administrative resources and made it clear that structural changes are needed to improve refugee protection and make sure that procedural guarantees like prompt interviews, access to interpretation, and legal help are in place.

Limits on asylum in the United States and their effects on other countries

In recent years, US asylum policies have changed in ways that make them much stricter. This has had a direct effect on Mexico, which is both a transit and host country. These dynamics can be seen in a number of policy tools.

a) Asylum cooperative agreements (ACA)

Also called "safe third country" agreements, ACAs inked with Honduras, Guatemala, and El Salvador between 2019 and 2020 let the US send asylum claimants to these countries without checking their claims. Human Rights Watch noted that these countries didn't have the resources to offer real safety, which put the people who were sent at severe risk (2020). Even though ACAs have been put on hold, they set a precedent for outsourcing asylum duties.

b) Title 42 (2020-2023)

Title 42, which was put in place during the COVID-19 pandemic, made

it possible to automatically send migrants back to their home countries without giving them a chance to apply for asylum. Physicians for Human Rights says that millions were sent back under a law that didn't have a public health reason and went against the principle of non-refoulement (2021). This forced thousands of those seeking refuge to stay in Mexico under dangerous conditions.

c) CBP One (2023-present)

As of now, asylum seekers must use an app called CBP One to make appointments before they may enter the us. The International Rescue Committee says that technology problems, a lack of available appointments, and biased facial recognition have made it harder for thousands of people to get asylum (IRC, 2023). This basically turns asylum into a digital gated right, which adds another level of exclusion.

These steps have effectively moved us asylum procedures to Mexico, forcing Mexico to take in more asylum applicants than ever before, even though there is no formal safe third country arrangement.

*The externalization of borders and the loss of protection*

Border externalization is when countries try to keep asylum seekers from entering their territory so that they don't have to follow the rules set by the 1951 Convention. The European Union's agreements with Libya and Turkey are well-known instances, but similar things are happening more and more throughout the Americas.

From a protection standpoint, externalization compromises both asylum (by obstructing access to procedures) and refugee status determination, by hindering individuals from reaching the jurisdiction where they can assert their rights.

- In the context of Mexico and the us, externalization shows up as:  
the need to ask for asylum in transit nations, even if they aren't safe;
- coordinated operations to enforce the law against migrant caravans;
- more military presence on Mexico's Southern border.

Mexico is under pressure to accept returns through initiatives like "Remain in Mexico" (Migrant Protection Protocols).

Research shows that those who were sent back to Mexico by the us have been kidnapped, extorted, and attacked, which is not in line with international protection requirements (Human Rights First, 2021).

In practice, externalization techniques blur the line between asylum and sanctuary, because rights that should be available upon arrival are instead blocked outside of the country.

*The overall effect on protection systems*

Scholars call it a “crisis of access,” not a “crisis of numbers” (Feller, 2016), because of mixed flows, displacement crises, restrictive policies, and externalization. The problem isn’t that a lot of people want protection; it’s that there are more and more legal and administrative impediments that keep them from doing so.

For Mexico, these changes show that there are a number of pressing needs:

- improving COMAR’s ability to do its job;
- making sure that there are procedural guarantees in deciding who is an asylum seeker or refugee;
- fighting violence and discrimination against migrants;
- adding more ways to protect people;
- better working together with regional partners.

These modern issues show that both asylum and refugee status are still very important parts of international protection, but they are also becoming more controversial.

## VII. CONCLUSION

In conclusion, the legal difference between asylum and refugee status is not just a matter of wording. Instead, it shows two different sets of rules that come together around the main goal of protecting people who are fleeing violence, persecution, or major human rights abuses. Asylum, based on international human rights legislation and firmly established in Latin American customs of territorial and diplomatic protection, is still mostly a sovereign act and a way for a State to determine whether to give shelter. Refugee status, on the other hand, is a clearly defined international legal category that is governed by the 1951 Convention and its 1967 Protocol. The Cartagena Declaration, which includes broader situations like widespread violence and massive human rights violations, has made this category more regional (UNHCR, 2019; Cantor, 2014). So, even if both processes have the same humanitarian goal, they work under different legal logics: one is more flexible and political, while the other is more standardized and based on treaties.

But today’s global problems show that these legal classifications that were once unambiguous are becoming less so in practice. Mixed migration flows are on the rise, regional displacement crises like those in Venezuela and Haiti are getting worse, and the United States has very

strict asylum policies, such as Title 42, the Asylum Cooperative Agreements, and the CBP One digital access system. All of these things have made it much harder for people in the region to get protection (Human Rights First, 2021; IRC, 2023; IOM, 2022). Erika Feller says that the problem today is not a “crisis of numbers,” but a “crisis of access.” This means that individuals can’t use rights that are already recognized at the international level because of administrative, technological, and geopolitical impediments (Feller, 2016). These obstacles weaken both the processes for granting asylum and determining refugee status, putting the whole protection system at risk.

In this situation, countries need to not only keep the laws that are already in place, but also change them to fit the needs of the 21<sup>st</sup> century. The Inter-American Court of Human Rights has said that the concept of non-refoulement is a *jus cogens* norm, which means it cannot be changed and must be followed at all times (Inter-American Court of Human Rights, 2018). This means that countries must stop doing things that indirectly make it harder for people to get to their territory or to protection processes. They must also make it easier to find people who need protection and make sure that the systems for deciding who is a refugee are fair, open, and quick. It is also important to realize that the modern causes of displacement

—organized crime, state collapse, socio-economic breakdown, and environmental degradation— go beyond the traditional “persecution” model of the 1951 Convention. This makes it even more important to have extra protection measures.

Asylum and refugee status should be seen as essential parts of the global protection system today, even if they are under more political and structural strain than ever before. In a time when it is getting harder for people to move around and governments tend to focus on deterrence and control, it is important to protect and strengthen these systems not only to keep the international legal system intact, but also to uphold the basic principle of human dignity. UNHCR reminds us that international protection is not an act of kindness; it is a legal and moral duty that is very important in today’s international law (UNHCR, 2023). To strengthen asylum and refugee protection, we need to strengthen its moral basis and reiterate that human rights are still the most important thing in a world that is changing quickly.

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