

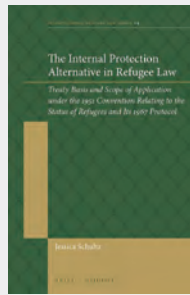
The Internal Protection Alternative in Refugee Law: Treaty Basis and Scope of Application under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol

By Jessica Schultz

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Being a refugee can be assumed as one of the hot topics in today's world. A considerable number of people worldwide have had to or are currently leaving their homes due to persecution or conflict. These displaced persons are often forced to look for security at international borders. Taking these people under protection places several kinds of burdens on host states. Therefore, the 1951 Convention relating to the status of Refugees, followed by the 1967 Protocol came to be passed by the United Nations High Commissioner for Refugees. The 1951 Convention and the 1967 Protocol provide guidelines for member states to draft and promulgate refugee statutes. However, some member states create a condition in their statute; that if an individual cannot relocate in a safe place within their home country, then she or he can receive a refugee status under the 1951 Convention. In other words, these states do not give refugee status to individuals if they have an Internal Protection Alternative (IPA) within their home country. The 1951 Convention does not provide clarity on this conditional approach in dealing with refugees; it remains obscure and member states are free to interpret this condition per their convenience. Thus, the questions arise under what circumstance the IPA can be applied under the convention and is it consistent with human rights and related fields?



The Internal Protection Alternative in Refugee Law analyzes the application of the IPA under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. It discusses, more particularly, whether the application of the IPA as a limit to refugee status under the convention is consistent with

the preamble of the Refugee Concept, as refugee status is also related to human rights. The book is organized into nine chapters that are further subdivided into sections. In the introduction, the author explains the notion of the IPA together with its evolution, treaty-based uncertainty in IPA practice, the motivation for undertaking research and the theoretical structure of the Convention in a succinct and a structured manner.

Chapter 2 presents the methodological approach of Schultz's research which is used to answer the main questions. Schultz not only examines the IPA criteria under the 1951 Convention but also considers the Vienna Convention on the law of treaties to interpret the 1951 Convention article 1A(2). Additionally, the Empirical Research Method is relied upon to display the application of the IPA in practice. Furthermore, in chapter 3 the author throws light on the interpretation of the IPA by UNHCR scholars and states. She discusses the viewpoint that admits that the IPA is a limit used to refuse Refugee Status.

Chapter 2 includes a tabular representation of different parameters, such as returnability, reasonableness, refugee rights and proportionality as current approaches to IPA application in theory and practice.

Schultz revisits the ongoing applicability of the unwritten exclusion clause (IPA) under the Treaty. While doing so, she discusses the surrogate character of refugee law from *thin* and *thick* perspectives. Interestingly, she analyses the surrogate or subsidiary feature given to refugee law by the IPA. In her study, the author places reliance on the background and assumptions on which the ongoing interpretation and applicability of the IPA are based. According to the thick surrogacy interpretation, receiving refugee status is dependent on two requirements; namely, an absence of state protection and requirement of serious harm and persecution. She also takes readers through the well-founded alternative perspective that clarifies that a lack of state protection and a fear of persecution are considered to qualify an individual as a refugee under the Convention. The author further suggests that a Proportionality Test may be viable if the IPA is accepted as an implied limit on an individual's right to refugee status. She takes note of the regional refugee instruments under the 1969 Convention governing the specific aspects of refugee problems in Africa and the 1984 non-binding Cartagena Declaration on refugees. These instruments do not require the internal relocation as prerequisite in order to receive refugee status. Chapter 5 covers the baseline requirements for IPA application including its substantive and procedural criteria. Schultz examines the scope of non-refoulement under Article 33 of the 1951 Refugee Convention and other legal instruments such as the European Convention on Human Rights in order to illuminate the minimum standard for the application

of the IPA, because the author believes that member states may interpret the IPA in a broad context. The final part of this chapter reviews the conditions linked to the durability of protection, the geographic size of the proposed IPA and non-state actors that are legal providers of protection. She highlights the discussion of whether non-state providers of protection are consistent with the refugee conventions or not, since there is no consensual view on it. Cases and instances related to non-state actors are given in this chapter. The author frequently discusses the absence of violation of Article 3 of the European Convention on Human Rights (ECHR) to conclude that the IPA is safe or even 'reasonable' for a refugee claimant.

Chapters 6 and 7 function as a follow-up to the previous two chapters. Schultz analyses '*the what more*' above and beyond effective protection in the IPA Test. According to her, the IPA should be interpreted in a restricted sense pertaining to conditions regarding refugee status or the right to be recognized as a refugee. Further, all and any conditions regarding the granting of refugee status should be interpreted in accordance with the purpose of the refugee conventions. She also touches upon the broad human rights situations in the proposed IPA: the severity of displacement (size and cultural/religious/economic networks), special needs (related to age, disability, health, gender and lack of nationality), the best interests of the child, the prospects for family life and the experience of past persecution in structuring the requirements of IPA application. The author refers to evidentiary issues related to IPA practice and explains that the burden of proof that the IPA is available in the individual's country of origin is on the host state. In discharging this burden the host state must rely on evidence that is up-to-date, accurate and specific in a fair manner.

Chapter 8 mainly indicates the jurisprudence of the European Court of Human Rights (ECtHR) on the application of the IPA as the author examines several cases related to the IPA under Article 3 of the ECHR and notes that the court not only interprets human rights law but also interprets the refugee convention. It clarifies that the courts accept that the IPA is consistent with Article 3. In addition, the author examines and analyses the differences between refugee claims and claims to contemporary protection in terms of the IPA. In Chapter 9, Schultz examines Norway as an example country to demonstrate how the IPA is applied together with the associated practical instances of confusion and the efficiency of the IPA. She reasons that Norway uses the IPA as a limit to the refugee status unlike other states that use the IPA as a part of well-founded fear and protection analysis. Finally, Schultz indicates some findings about contexts in which states may refuse a refugee application on the basis of an IPA under the refugee convention and its protocol. She recommends the adoption of a narrow scope interpretation approach of the IPA by home states to refuse refugee claims.

Despite the book's many merits, one criticism that can be directed at the author is that the states' view that uses the IPA as a ground for challenging refugee status may be analysed in further detail. Refugee claim means that the burden is on the home state with regard to the integration of the refugee into the public. While the author considers IPA from the refugee point of view, she does not highlight the host state's interests. Accordingly, the reason for using the IPA limitation or condition is not examined in this book. Thus, it may be assessed that her approach seems one-sided. To conclude, Schultz's book is a welcome contribution to the field showing the role of the IPA limitation in claiming refugee status in practice. Although there are some articles in the literature that research the IPA as an obstacle, Shultz's book is a first monography providing an in-depth analysis of the effects of the IPA limitation under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. It is worthy of appreciation that, through her research, Shultz enables the reader to discuss and develop knowledge regarding the limitations imposed on refugee applications from a scholarly point of view.