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Article 2

(General Obligations/Obligations Générales)

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Tout réfugié a, à l'égard du pays où il se trouve, des devoirs qui comportent notamment l'obligation de se conformer aux lois et règlements ainsi qu'aux mesures prises pour le maintien de l'ordre public.

MN

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A. Function of Article 2

1 It has long been recognized that treaties may grant direct rights to individuals or impose direct obligations on them.[1] The origins of a specific provision on the duties of refugees in the 1951 Convention has been traced back to international aliens law and the law relating to the protection of national minorities.[2] More specifically, aliens had to comply with and respect the laws of the local State, for instance by paying taxes.[3] However, the local State could not claim an unrestricted right to require aliens to serve in its military forces. Nor could it claim absolute discretion in the treatment of aliens 'in respect of those matters which concern the personal relationship between an individual and his State, or his political rights and duties'.[4] During the first half of the 20th century, treaties relating to asylum were also adopted, requiring States to ensure that refugees do not perform acts contrary to the peaceful nature of asylum.[5]

2 Article 2 of the 1951 Convention constitutes the first provision to refer to the duties of refugees in the context of an international status. It does so in the spirit of the Preamble, acknowledging 'the social and humanitarian nature of the problem of refugees' and requesting that all States 'do everything within their power to prevent this problem from becoming a cause of tension between States'.[6] It was introduced in the draft 1951 Convention 'for psychological reasons, and to maintain a balance' because it was felt that too much

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[1] PCIJ, *Jurisdiction of the Courts of Danzig*, Advisory Opinion of 3 March 1928, Series B, No. 15. At the time, of course, the PCIJ assumed that such rights and duties would be enforced by domestic courts. Meron, *AJIL* 94 (2000), pp. 239, 253.

[2] Hathaway, *Rights*, pp. 75–83, 81.

[3] Jennings/Watts, *Oppenheim's, vol. I/2–4,* p. 905.

[4] *Ibid.*, pp. 907, 909.

[5] *E.g.* Convention on Asylum (Havana, 1928), Art. 2(5); Treaty on Asylum and Political Refuge (Montevideo, 1939), Art. 12; *cf.* also Art. 18 Convention on Diplomatic Asylum.

[6] For further details *cf.* Alleweldt, Preamble 1951 Convention MN 58–61.

emphasis in the draft was put on the rights and privileges of refugees.[7] For the sake of convenience, and with the refugee in mind—when he or she consults the 1951 Convention—provisions on the duties of refugees were inserted at the outset, just after the definition. Hence, Art. 2 has been described as a 'qualifying clause to Article 1'.[8] Its wording is based on Art. 29 of the Universal Declaration of Human Rights (UDHR) according to which: 'Everyone has duties to the community in which alone the free and full development of his personality is possible.' It was recently embraced in the New York Declaration for Migrants and Refugees: '39. …We also note the obligation of refugees and migrants to observe the laws and regulations of their host countries'. This commentary highlights an overwhelming lack of State practice on Art. 2 due to its character as a moral obligation. Of the handful of court decisions referring to Art. 2, it notes a tendency in some countries (*e.g.* Canada and New Zealand) to use Art. 2 beyond its original scope and the overall humanitarian purpose of the 1951 Convention.

B. Historical Development

I. Instruments Prior to the 1951 Convention

3 Article 2 has no precedent in previous instruments relating to refugee status (*i.e.* the 1933 and 1938 conventions). Prior to the 1951 Convention, a special status was granted only to specific categories of refugees.[9] In some cases, the benefit of these conventions was extended to other categories of refugees (*e.g.* to refugees from Austria by way of an additional protocol to the 1938 Convention or to Spanish refugees by way of a decree in France).[10] In 1949, it was agreed that the way forward should be the conclusion of a new

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[7] Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.3 (1951), p. 21.
[8] Statement of Robinson (Israel), *ibid.*
[9] For further details *cf.* Skran, Historical Development MN 98–103, *passim*; Schmahl on Art. 1 A, para. 1 MN 6, *passim*; Einarsen, Drafting History MN 8–11.
[10] For further details *cf.* Schmahl on Art. 1 A, para. 1 MN 50; Skran, Historical Development MN 68.

convention which would apply in principle to all categories of refugees to whom it is intended to give an international status.[11]

II. Drafting History of Article 2

4 A preliminary draft convention was submitted as a basis for discussion at the first set of meetings of the Ad Hoc Committee on Statelessness and Related Problems.[12] Among the guiding principles underpinning this draft was the principle that:

> (c) In view of the fact that the refugee has been received by a country enabling him to lead a normal life, there is no reason why he should elude certain especially heavy obligations which are incumbent on the nationals of the country, namely, military service and other personal services.[13]

5 The following provisions were thus included in the preliminary draft 1951 Convention in the second subdivision relating to the status of refugees properly so-called:

> Chapter IV—Responsibilities of refugees and obligations incumbent upon them
>
> Article 10—General obligations
>
> Refugees (and stateless persons) authorised to reside in a country must conform to the laws in force.[14]
>
> . . .
>
> Article 11—Fiscal charges
>
> . . .
>
> Article 12—Military service and other personal services
>
> The High Contracting Parties reserve the right to subject refugees (and stateless persons) regularly residing in their territory to compulsory military service and to other personal

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[11] Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/2 (1950), p. 8.
[12] The *travaux préparatoires* of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held in Geneva 2–25 July 1951, were preceded, a year before, by meetings of the Ad Hoc Committee on Statelessness and Related Problems and the Ad Hoc Committee on Refugees and Stateless Persons (ECOSOC). The meetings of the Ad Hoc Committee on Statelessness and Related Problems took place in New York between 16 January and 16 February 1950; the meetings of the Ad Hoc Committee on Refugees and Stateless Persons took place in Geneva on 14–25 August 1950.
[13] Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/2 (1950), p. 11.
[14] Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/2 Annex (1950), p. 31.

services (labour service, national service, requisitions in the event of public emergency etc.) in the same manner as nationals.[15]

6 Two points are worth highlighting here. First, the Ad Hoc Committee on Statelessness and Related Problems felt that it was necessary, or at least desirable, to regulate the general obligations of refugees specifically in the new convention. To this end, it was thought draft Art. 10 would constitute 'a reminder of the essential duties common to nationals as well as to foreigners in general'.[16] Secondly, general obligations were meant to apply to refugees and stateless persons 'authorised to reside in a country', as a counterpoint to the rights they were granted. To be sure, Art. 2 was meant to apply to refugees as lawful members of a society.

7 Following a month of discussions among State delegates (Ad Hoc Committee on Statelessness and Related Problems, New York 16 January–16 February 1950), Chapter IV was stripped of its provision on military service,[17] and its provision on fiscal charges was moved to a separate chapter on administrative measures,[18] leaving draft Art. 10 as the key provision on the responsibilities and obligations of refugees. Quite significantly, this provision was inserted at the outset of the 1951 Convention (Art. 2), straight after Art. 1, before any provision on non-discrimination and rights.[19] The Ad Hoc Committee on Statelessness and Related Problems agreed that this provision was 'axiomatic and need not be

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[15] *Ibid.*, p. 32.
[16] *Ibid.*, p. 31.
[17] The Committee felt that a provision relating to military service 'might be open to misinterpretation and that this problem is covered by general rules of international law and practice', Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), p. 36; Weis observed that 'by deleting Article 12 the Committee has altered the structure of the draft convention, which was meant to cover the liabilities as well as the rights of refugees', statement of Weis (IRO), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.12 (1950), p. 10.
[18] For further details *cf.* Nagy on Art. 29 MN 7–9.
[19] Israel had first suggested that the 'French conception of the draft convention as a proclamation of the rights and duties of refugees might be met by a general statement in the preamble', Ad Hoc Committee on Statelessness and Related Problems, UN Doc.E/AC.32/SR.12 (1950), p. 7. However, the US was of the view that the provision on the obligations of refugees (in draft Art. 10) should apply to the whole of the draft convention and suggested that it be inserted towards the end of the document. In February 1950, Israel presented a proposal for a systematic rearrangement of the chapters and articles of the draft 1951 Convention. For the sake of convenience (when the refugee consults the 1951 Convention), the provision on general obligations was inserted in Chapter I on general provisions, in Art. 2.

explicitly stated'.[20] Nonetheless, it was felt that such provision would be useful 'in order to produce a more balanced document as well as for its psychological effect on refugees and on countries considering admitting refugees'.[21] In the words of Robinson (Israel), 'the refugee thus obtained certain privileges and it was only fair to balance those by conferring upon him greater responsibilities'.[22]

8 France, which already met heavy responsibilities in the refugee field, also suggested a second paragraph to Art. 2 with the effect of permitting States to restrict the political activities of refugees. Belgium observed that 'it had been the experience of some States that foreign nationals rarely engaged in political activity, while refugees frequently did so'.[23] Such political activities could threaten the security interests of the State granting asylum. However, the provision in question was rejected by the Ad Hoc Committee on Statelessness and Related Problems on the ground that it 'was too broad, and might be misconstrued as constituting approval of limitations on areas of activity for refugees which are in themselves unobjectionable'.[24]

9 Instead, the Ad Hoc Committee on Statelessness and Related Problems re-affirmed the right, already existing in customary international law, of every sovereign

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[20] *Cf. e.g.* the views of Denmark and Brazil. Denmark was arguing that the provision was 'unnecessary' and should not be included as a matter of principle because it was 'superfluous'. Indeed, 'it was generally known that the laws of a country applied not only to its nationals but also to the foreigners residing in its territory, whether they were refugees or not', Statement of Larsen (Denmark), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.11 (1950), p. 10; *cf.* also Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.23 (1950), p. 9. Brazil too thought that the article was 'unnecessary', and that there was no reason, 'even psychological', for this provision to be included in the draft convention. Indeed, 'it was generally admitted in international law that the jurisdiction of a country applied to all residents, national or foreigners', statement of Guerreiro (Brazil), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.11 (1950), p. 10. *Cf.* also Hathaway, *Rights*, pp. 88–89.

[21] Statement of Robinson (Israel), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.3 (1951), p. 21 and Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), pp. 40–41; *cf.* also Robinson, *Commentary*, p. 71.

[22] Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR. 12 (1950), p. 7.

[23] Statement of Cuvelier (Belgium), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.23 (1950), p. 11.

[24] Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), p. 41. *Cf.* in particular the views of the US. The Ad Hoc Committee on Statelessness and Related Problems further stressed that 'the failure to include such provision is not to be interpreted as derogating from the power of governments in this respect', Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/L.32/Add.1 (1950), p. 2.

government to limit the political activities of aliens, including of refugees,[25] and agreed that in the most severe cases this could include expulsion.[26] Nevertheless, in an effort to meet 'at least in part' the views of the French representative, the phrase 'including measures for the maintenance of public order' was included.[27] Hence, some commentators have argued that the reference to 'public order' in Art. 2 confirms the country of asylum's entitlement to restrict the political activities of refugees 'where this is necessary to protect the vital interests of the State'.[28] According to Hathaway, this is a misunderstanding of Art. 2 drafting history; refugees must conform to the laws and general regulations of the country of their residence but they are not subject to limitations on their political activity in the interest of the country's public order beyond those already applicable to aliens or nationals of the country of asylum.[29] Further details are discussed below.[30]

10 It follows from the discussion above that by the end of the first set of meetings (*i.e.* 16 February 1950), the provision on the general obligations of refugees read as follows:

> Article 2—General obligations
>
> In any country in which a refugee finds himself he must conform to the laws and regulations, including measures taken for the maintenance of public order.[31]

11 France remained unsatisfied with the wording and substance of the compromise draft Art. 2, which it described as 'a bad translation from the English', urging the delegates to consider instead the wording of Art. 29, para. 1 UDHR: 'Everyone has duties

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[25] Statement of Perez Perozo (Venezuela), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.23 (1950), p. 11.

[26] Statement of Cha (China), Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.23 (1950), p. 10; *cf.* also 'Centuries ago, Grotius and Vattel considered it a duty of sovereigns not to permit their subjects (including persons who had found refuge in their territories) to offend foreign Powers', Grahl-Madsen, *JPR* 3 (1966), pp. 278, 285.

[27] Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), p. 41. Such compromise would accommodate France but also China, Belgium, Turkey, and Venezuela, Ad Hoc Committee on Statelessness and Related Problems, UN Doc. E/AC.32/SR.23 (1950), pp. 10–11.

[28] Mandal, UNHCR PPLA/2003/04 (2003), p. 1; *cf.* also Robinson, *Commentary*, p. 72; Weis, *Refugee*, p. 38; Johnsson, *IJRL* 3 (1991), pp. 579, 582.

[29] Hathaway, *Rights*, p. 101 (fn. 84); *cf.* also Grahl-Madsen, *Commentary*, Art. 2 (paras. 4 and 6).

[30] *Cf. infra*, MN 29–45.

[31] Text of the draft 1951 Convention adopted by the Ad Hoc Committee on Statelessness and Related Problems, UN Docs. E/1618 and E/AC.32/5 (1950), p. 13.

to the community in which alone the free and full development of his personality is possible.'[32]

12 Further discussion therefore took place during the second set of meetings (Geneva 14–25 August 1950). Represented by Rochefort, the view of the French government was that, as it stood, Art. 2 was nothing more than a 'declaration' and he was requesting that at least it contains a 'moral *per contra*' that would prescribe certain duties for refugees.[33]

13 Crucially, Rochefort proposed a text that aimed not to 'bring about the forcible absorption of refugees into the community, but to ensure that their conduct and behaviour was in keeping with the advantages granted them by the country of asylum'.[34] In other words, whereas the effect of most articles of the draft convention was to assimilate refugees and other aliens, the effect of Art. 2 was to ensure that refugees would not constitute a problem through non-conformity to the laws and regulations to which they were subject (thereby prohibiting behaviour that could lead to xenophobic attitudes). France therefore was suggesting the following text, based on Art. 29, para. 1 UDHR:

> Article 2—General Obligations
>
> The duties of the refugee towards the community shall include the obligation to conform to all measures taken for the maintenance of public order, and also to the laws and regulations of the country in which he finds himself.[35]

14 Following some disagreement on the meaning of 'community', it was agreed that the text suggested by France should be sent to the Drafting Committee for further consideration, and no further decision was taken by the time discussions at the Ad Hoc Committee on Refugees and Stateless Persons came to an end on 25 August 1950.[36]

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[32] Ad Hoc Committee on Refugees and Stateless Persons, UN Doc. E/AC.32/L.40 (1950), p. 31.
[33] Indeed, among the various European countries represented at the Committee, 'France had the onerous privilege of being the country with greatest responsibilities in the refugee field, and the one that was most exposed', Ad Hoc Committee on Refugees and Stateless Persons, UN Doc. E/AC.32/SR.33 (1950), p. 6.
[34] Ad Hoc Committee on Refugees and Stateless Persons, UN Doc. E/AC.32/SR.34 (1950), p. 4.
[35] *Ibid.*, p. 4.
[36] *Ibid.*, p. 8.

15 A revised Art. 2 of the draft 1951 Convention on the Status of Refugees was presented to the Conference of Plenipotentiaries (Geneva, July 1951) for final discussion and adoption. It read: 'Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.'[37]

Three amendments were introduced (by Australia, Belgium, and France),[38] and withdrawn, and the text of Art. 2, as stated above, was adopted unanimously on 24 July 1951.[39]

16 To summarize, Art. 2 has no precedent in previous refugee conventions. It constitutes the first provision to refer to the duties of refugees in the context of an international status. Its wording is based on Art. 29 UDHR. It provides a moral rule of a general nature, not punitive in character, that is to say 'an imperfect obligation'.[40] It was designed to minimize conduct that could spark xenophobic attitudes; a concern recently reaffirmed in paragraph 39 of the New York Declaration for Refugees and Migrants where the obligations of refugees and migrants are mentioned in the context of ensuring their integration and inclusion, combatting xenophobia, racism and discrimination, and reducing the risks of marginalization and radicalization.[41]It was decided quite early on that a provision on the general obligations of refugees should exclude from its scope matters relating to military service and the political (subversive) activities of refugees because any such

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[37] Conference of Plenipotentiaries, UN Doc. A/CONF.2/1 (1951), p. 6.

[38] The French amendment provided the possibility for States to sanction refugees who fail to observe their duties under Art. 2 and who constituted a danger to the internal and external security of the country of asylum, by forfeiting their rights under the 1951 Convention. It was agreed that any such activity should be dealt with under the provision of the draft 1951 Convention relating to *non-refoulement* ('prohibition of expulsion or return'). Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.4 (1951), pp. 4–13 and Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.24 (1951), p. 19.

[39] Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.33 (1951), p. 7.

[40] Grahl-Madsen, *Commentary*, Art. 2 (para. 3).

[41] Noteworthy is the silence of the Global Compact on Refugees on anything remotely amounting to 'duties of refugees': '98. Local integration is a dynamic and two-way process, which requires efforts by all parties, including *a preparedness on the part of refugees to adapt* to the host society, and a corresponding readiness on the part of the host communities and public institutions to welcome refugees and to meet the needs of a diverse population' (emphasis added).

reference ran the risk of being misinterpreted or misconstrued. Whilst this remains the case regarding military service, the prohibition of political activities of refugees has become increasingly regulated by regional treaties of refugee law and treaties of human rights law.[42]

C. Declarations and Reservations Made with Regard to Article 2

17 To date, none of the contracting parties has entered a declaration or reservation with regard to Art. 2.[43]

D. Interrelationship of Article 2 with Other Provisions

18 Article 2 forms part of Chapter I on 'General Provisions'. It was inserted in the 1951 Convention straight after Art.1 on the definition of the term 'refugee', before any provision on discrimination and rights. Hence, Art. 2 has been described as 'a qualifying clause to Article 1'.[44] Its non-observance does not have any effect in international law (although it may in national law); it does not entail the loss of refugee status or any particular right under the 1951 Convention. Rather if and when refugees fail to comply with their duties and by doing so constitute a danger to the security of the country of refuge or to the community of that country, or a threat to national security or public order, the limitations provided in the 1951 Convention may be used by States.[45] Art. 2's close relationship with other provisions of the 1951 Convention (such as Arts. 28, 31, 32, and 33, para. 2) is therefore evident.[46] Art. 2 has also been described as a 'corresponding obligation' on refugees in exchange for the absolute

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[42] *Cf. infra*, MN 20–28.
[43] *Cf.* Declarations and Reservations to the 1951 Convention, available at <http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en>.
[44] Statement of Robinson (Israel), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.3 (1951), p. 21: 'It was psychologically advantageous for a refugee, on consulting the Convention, to note his obligations towards his host country. Article 2 was therefore a qualifying clause to Article 1.'
[45] Hathaway, *Rights*, pp. 106, 685–686; *cf.* also McNamara, D., 'The 1951 Convention and International Protection', statement made at the Hebrew University of Jerusalem (1999), pp. 3–4, available at <http://www.unhcr.org/admin/ADMIN/42b80f052.html>; Feller, *IJRL* 18 (2006), pp. 509, 520: 'Nothing in the Convention provides license to refugees to commit crimes'.
[46] For further details *cf.* also Vedsted-Hansen on Art. 28 MN 70–73, *passim*; Noll on Art. 31 MN 27, 68–87; 88–127, *passim*; Davy on Art. 32 MN 62–78, *passim*; Zimmermann/Wennholz on Art. 33, para. 2 MN 72–99, *passim*.

right of access to the courts under Art. 16, para. 1.[47] The same could be said about Art. 34 requiring that: 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees.'[48]

Given the context described above, the question arises whether Art. 2 imposes an obligation on individuals seeking refugee protection to tell the truth when applying for refugee status. Few academics have engaged with this issue. From the outset, it should be noted that the 1951 Convention is silent on matters of procedures. Bearing this in mind, Gibney finds it ethically tricky to read 'an implicit legal duty to cooperate with refugee status determination procedures' in Art. 2.[49] He further argues that since refugees flee out of necessity, 'they are under no legal duty to respect the immigration laws of a state to the extent that these laws prevent them from escaping persecution or human rights violations'.[50] In a similar vein, Blake notes that the link between the obligation to obey and the right to morally condemn the individual who fails in this obligation cannot always be made out, thereby defending the idea that security at the border and compassion for those who evaded that security may not always be consistent.[51] The legal reality is that 'a clear verdict on the truthfulness of an applicant's testimony' is often difficult to reach.[52] Indeed, it is not uncommon for decision makers to doubt the truth of an individual's story and still be persuaded that a well-founded fear of being persecuted exists.[53] Piotrowicz, no doubt influenced by Grahl-Madsen's writing,[54] posits that asylum seekers have a duty to be truthful with the State when applying for asylum; he locates the source of this obligation in the UNHCR Refugee Handbook and Art. 2 of the

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[47] UNHCR, *Inquiry into the Migration Litigation Reform Bill* (2005), para. 5, available at <http://www.unhcr.org.au/pdfs/MigLitRef05.pdf>. For further details *cf.* Elberling on Art. 16 MN 23.
[48] For further details *cf.* Marx on Art. 34 MN 39–48.
[49] Gibney, *The Duties*, p.137.
[50] Ibid, p.134 and p.138.
[51] Blake, *Justice*, pp.168-172.
[52] Hathaway/Foster, *Status*, p.149.
[53] Symes/Jorro, *Asylum*, p.60.
[54] Grahl-Madsen, *Status*, p.252: 'The principle of good faith implies that a Contracting State cannot be bound to grant refugee status to a person who is not a *bona fide* refugee …'.

1951 Convention.[55] Piotrowicz nevertheless acknowledges the limits of this duty in international law by reference to Articles 1C, 1F, 31 and 33 of the 1951 Convention and agrees that whilst asylum seekers may be the subject of criminal proceedings, they may not be deprived of the protection of the 1951 Convention for lying during an interview.[56]

The most compelling argument against subjecting asylum seekers to a principle of good faith is made by Goodwin-Gill: 'The so-called good faith requirement seems to offer an attractive and self-justifying response to the asylum seeker who is trying to manipulate the process. However, it has no legal authority. … There is thus no authority for the proposition that the Convention was 'intended to afford protection only to the bona fide individual''.[57] For Goodwin-Gill, a requirement of good faith is largely unnecessary because evidence relating to the country of origin will determine whether a well-founded fear of being persecuted exists.[58]

In sum, there is no obligation in international law for individuals (as opposed to States) to act in good faith and Art. 2 of the 1951 Convention therefore cannot be read to include such obligation.

E. Other Relevant Norms of International Law Relating to Political (Subversive) Activities of Refugees

19 Today, the 1951 Convention is not the only international treaty to provide certain duties for refugees and people in general. The general principle in Art. 2, according to which

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[55] Piotrowicz, *IJMGR* 20 (2013), pp.268-69.
[56] Piotrowicz is further uncertain as to what States should do with asylum seekers who mislead or lie but who nevertheless have a legitimate claim to international protection (ibid, p.271).
[57] Goodwin-Gill, *IJRL* 12 (2000), pp. 670-671.
[58] Ibid, pp. 663–671, *passim*; *cf.* also Towle, R. 'The Principle of Good Faith in Contemporary Refugee Law and Practice', LLM Essay submitted to the University of London, School of Oriental and African Studies, 28 June 1996 (unpublished, on file with the author); UNHCR *Handbook on Procedures* (1979), para. 42; UNHCR *Handbook on Protection of Stateless Persons* (2014), para.107.

'[e]very refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order', was re-affirmed in other instruments of refugee law, with some nuances regarding the subversive activities of refugees. Several treaties of human rights law also make reference to certain duties owed by individuals to 'the community' or 'society', as well as to each other.

I. Regional Treaties of Refugee Law and the UNHCR's Soft Law

20 The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) goes considerably further than the 1951 Convention on the subject of the duties of refugees.[59] In an effort to minimize tension between OAU States as a result of refugee problems, the Heads of States and Governments decided to impose an obligation on refugees not to undertake subversive activities in their host country.[60] The risk of a provision requiring that a refugee 'shall also abstain from any subversive activities against any Member State of the OAU' (Art. 3, para. 1) is that it may be used by some States 'to prohibit all political activity connected to the refugee's country of origin, or in certain cases, any political activity at all'.[61] This would in turn seriously compromise States' compliance with certain civil and political rights, including freedom of expression, protected in international human rights treaties, and the African Charter on Human and Peoples' Rights (ACHPR).[62] As discussed above, this is a risk the drafters of Art. 2 of the 1951 Convention were not ready to take.[63]

[59] For further details *cf.* van Garderen/Ebenstein, Regional Developments: Africa MN 11–45, *passim*.
[60] Art. 3 (Prohibition of Subversive Activities) OAU Refugee Convention, para.1.
[61] da Costa, UNHCR POLAS/2006/02 (2006), p. 170. For further details *cf.* van Garderen/Ebenstein, Regional Developments: Africa MN 32–38.
[62] da Costa, UNHCR POLAS/2006/02 (2006), p. 170. For further details *cf.* van Garderen/Ebenstein, Regional Developments: Africa MN 36 and 74–77.
[63] *Cf. supra*, MN 7 *et seq.*

21 The Cartagena Declaration on Refugees (Cartagena Declaration)[64] also acknowledges States' commitments 'to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees'.[65] It further confirms the friendliness, 'peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee'.[66]

22 The UNHCR too has recommended that asylum seekers should not become involved in subversive activities against their country of origin or any other State.[67] Furthermore, it has recommended that refugees in camps and settlements have duties deriving from the protection afforded to them by the country of refuge. In particular, they have duties to conform to the laws and regulations of the State of refuge, including lawful measures taken for the maintenance of public order, and to abstain from any activity likely to detract from the exclusively civilian and humanitarian character of the camps and settlements.[68] As will be discussed below, the legislation of several African States makes provision for the host State to ensure that asylum seekers and refugees do not use their new country of refuge to launch attacks against their country of origin or any other country.[69]

23 In sum, these regional instruments show that provisions restricting the political activities of refugees are now embedded in refugee treaties in Africa and Central America (including Mexico and Panama). Similar restrictions also exist in the UNHCR's soft law instruments.

II. Human Rights Law

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[64] *Cf.* also the International Conference on Central American Refugees in which States confirmed the obligation of refugees to avoid any activities which might affect the strictly civilian and humanitarian nature of camps and settlements, 'as well as any activity that is incompatible with the regional peace process', International Conference on Central American Refugees (CIREFCA), UN Doc. CIREFCA/89/14 (1989), p. 3, referred to in Johnsson, *IJRL* 3 (1991), pp. 579, 582. For further details *cf.* Piovesan/Jubilut, Regional Developments: Americas MN 48–60.
[65] Part II (p) Cartagena Declaration.
[66] Part III, para. 4 Cartagena Declaration.
[67] UNHCR ExCom, Conclusion No. 22 (1981).
[68] UNHCR ExCom, No. 48 (1988), no. 4 (a).
[69] *Cf. infra*, MN 32; Maina, *JAL* 41 (1997), pp. 81, 85, 87.

24 Several instruments of human rights law make reference to certain duties owed by individuals to 'the community' or 'society', as well as to each other. Article 29 UDHR, for instance, reads: 'Everyone has duties to the community in which alone the free and full development of his personality is possible.'[70] The spirit of this provision found its place in Recital 5 of the Preamble to the International Covenant on Civil and Political Rights (ICCPR): 'Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.'[71]

25 The Declaration on Territorial Asylum expressly provides in Art. 4 that: 'States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.'[72] Under the 1951 Convention, any such activities would lead to exclusion from refugee status under Art. 1 F (c).[73] Art. 34 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also provides for the obligation of migrant workers to comply with the laws and regulations of any State of transit and the State of employment, and the obligation to respect the cultural identity of the inhabitants of such States.[74]

26 At a regional level, the American Declaration of the Rights and Duties of Man strongly emphasizes the duties of individuals in the Americas; five out of the six recitals in its Preamble and an entire Chapter in the main text of the Declaration (Chapter 2, Arts. 29 to 38) are devoted to such duties. The ACHPR also contains specific provisions relating to each individual's 'duties towards his family and society, the State and other legally recognised

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[70] Art. 29, para. 1 UDHR.
[71] *Cf.* also Art. 18 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
[72] For further details *cf.* Skordas on Art. 5 MN 38.
[73] For further details *cf.* Zimmermann/Wennholz on Art. 1 F MN 83–101, *passim*.
[74] Noteworthy is the phrase 'State of transit' contrasting sharply with the wording of Art. 2 of the 1951 Convention and other provisions of human rights law which assume a correlation between duties and membership/belonging into the new State. See generally, though not on this particular point, IOM Global Compact Thematic Paper, 'The Responsibilities and Obligations of Migrants Towards Host Countries', pp.1-5.

communities and the international community' (Art. 27). It further recognizes in Art. 28 the duty of every individual 'to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance'. In addition, it provides a full list of individuals' duties, such as Art. 29, para 3: 'Not to compromise the security of the State whose national or resident he is.'[75]

27 In potential conflict with these provisions, other provisions of human rights treaties have come to provide a new and higher set of international standards against which to measure States' treatment of aliens, including refugees. In particular, the principle of non-discrimination between nationals and aliens imposes strict limitations upon the freedom of States to deal with aliens.[76] So does the right to freedom of expression.[77] This freedom is nonetheless subject to certain limitations as provided by law, and as necessary to ensure the respect of the rights or reputation of others, or the protection of national security, public order, health, or morals. Furthermore, the right to freedom of expression may also be limited on grounds of 'propaganda for war' or 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (*e.g.* Art. 20 ICCPR). Article 16 ECHR stands out among all these provisions because it makes a distinction between nationals and aliens concerning freedom of expression, freedom of peaceful assembly and association, and freedom from discrimination,[78] and hence it provides a 'notable [and highly contested] departure from the general guarantees entrenched in human rights law, including the ECHR itself'.[79]

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[75] C*f*. also Art. 31 African Charter on the Rights and Welfare of the Child.

[76] Art. 2 ICCPR; CCPR, HRI/GEN/1/Rev.7 (2004), pp. 140–142; Goodwin-Gill, *IMR* 23 (1989), pp. -526–546, *passim*; Lambert, *Position*, pp. 18–23.

[77] Guaranteed in Art. 19 ICCPR; Art. 7 Convention on Territorial Asylum; Art. 13 American Convention on Human Rights: 'Pact of San José, Costa Rica'; Art. 9 ACHPR; and Art. 10 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This is also the case, for instance, for the right to freedom of assembly and freedom of association (*e.g*. Art. 11 ECHR).

[78] Art. 16 ECHR: 'Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.'

[79] da Costa, UNHCR POLAS/2006/02 (2006), p. 174; *cf*. also Lambert, *Position*, pp. 25–26.

28 In sum, international human rights law, like international refugee law, provides countries of refuge or asylum with the possibility of protecting the legitimate concerns of the country of origin as well as respecting the sovereignty of other States.[80] Since Art. 2 of the 1951 Convention defines the general obligations of refugees by reference to the domestic law of the contracting parties ('to its laws and regulations as well as to measures taken for the maintenance of public order'), it is to the practice of domestic courts, administration, and legislation that this commentary now turns.

F. Analysis

29 It is apparent from the drafting history above[81] that not every word in Art. 2 was the subject of debate. The term 'refugee', for instance, is used simply to mean a refugee who is benefiting from the protection of the 1951 Convention, namely a refugee under Art. 1. The phrase 'to the country in which he finds himself' is meant to include any country where a refugee is staying lawfully, and not just the country where he is physically present.[82] The phrase 'which require in particular' suggests that refugees may have other duties towards their country of refuge but there is no indication in the *travaux préparatoires* as to what these duties might be.[83] However, the debate that took place during the drafting of Art. 2 over the phrases 'has duties' and 'that he conform to its laws and regulations as well as to measures taken for the maintenance of public order', the essence of which is captured above, has continued to occupy domestic courts.[84] It is generally understood that the words 'has duties' refer to an imperfect obligation, not punitive in character, so that the non-observance of a duty covered by Art. 2 has no effect in international law. It is also generally agreed that the

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[80] Art. 32 of the 1951 Convention; Arts. 4, 19, para. 3, 20, para. 1, 21, and 22, para. 2 ICCPR; Art. 3 OAU Refugee Convention; Arts. 23, para. 2 and 29, para. 3 ACHPR.
[81] *Cf. supra*, MN 4–16.
[82] Grahl-Madsen, *Commentary*, Art. 2 (para. 4); but *cf.* also Goodwin-Gill/McAdam, *Refugee*, p. 524. For further details *cf.* Walter on Art. 4 MN 20–21; Edwards on Art. 18 MN 10–15; Teichmann on Art. 15 MN 45–50.
[83] Grahl-Madsen, *Commentary*, Art. 2 (para. 5).
[84] *Cf. supra*, MN 4–16.

expression ‘public order’ in Art. 2 is to be understood to mean ‘*ordre public*’ within the French meaning of the term, *i.e.* it covers approximately the same ground as ‘national security’ in Arts. 32 and 33.[85]

30 The following section looks at national legislation, court decisions, and administrative practice incorporating or simply referring in some way to Art. 2 of the 1951 Convention. As will become apparent, whilst Art. 2 is reflected in some national legislation, with rare exceptions, it is not to be found in jurisprudence and administrative practice.

I. Legislation

31 Very few countries, outside Africa, have adopted legislative provisions that could even come close to resembling Art. 2 (*e.g.* Bulgaria, Cyprus, and Belize).[86] In some countries, the 1951 Convention and/or 1967 Protocol may not even be signed and the concept of ‘refugee’ remains unrecognized (*e.g.* India).[87]

32 The situation is different in Africa where the legislation of several countries refers in some way or another to the rights and *general duties* of refugees (*e.g.* in Kenya, art. 16, para. 1 of the Refugee Act 2006; in South Africa, art. 34 of the Refugees Act 1998; in Ghana, art. 11 of the Refugee Law 1992; in Sierra Leone, arts. 15 and 18 of the Refugees

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[85] *Cf.* Grahl-Madsen, *Commentary*, Art. 2 (para. 8); Robinson, *Commentary*, p. 72; Hathaway, *Rights*, p. 702. For further details *cf.* also Davy on Art. 32 MN 67–74 and Zimmermann/Wennholz on Art. 33, para. 2 MN 82–89.

[86] Art. 5 Bulgarian Law for Asylum and Refugees, Prom. SG. 54 (2002), amended SG. 31 (2005): ‘The foreigners seeking and having received protection in the Republic of Bulgaria shall have the rights and the obligations according to this law and shall bear civil, administrative and penal responsibility under the conditions and by the order valid for the Bulgarian citizens’. Sec. 26 of the Cyprus Refugees Ordinance of 2003 (Ordinance of 31 March 2003 giving effect to a memorandum of understanding between the UK and Cyprus Governments concerning the areas of Akrotiri and Dhekelia) according to which a refugee must comply with the law of these areas, must not engage in activities which may endanger the security of these areas, harm the public interest or disrupt public order, or engage in activities contrary to the principles of the UN. Sec. 13 Belize Refugees Act—Chapter 165 of the Substantive Laws of Belize—revised edition 2000, provides that ‘every recognized refugee within Belize shall be entitled to the rights and be subject to the duties contained in the [1951] Convention . . . ; shall be subject to all laws in force within Belize; and shall be afforded a reasonable opportunity to work and contribute to the development of Belize’.

[87] Ananthachari, *ISIL Yearbook of International Humanitarian and Refugee Law* (2001), *passim*, available at <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html>.

Protection Act 2007; and in Tanzania, art. 10 of the Refugees (Control) Act 1996).[88]This emphasis on the rights and duties of refugees in a number of African States is clearly the result of a greater emphasis on obligations and duties of the individual towards the community and the State in African refugee and human rights instruments generally (*e.g.* Art. 3 of the 1969 OAU Refugee Convention).[89]

33 In Europe, concern (at least on paper) seems to be more on ensuring that adequate protection is provided and the rights of refugees sufficiently guaranteed. Such concern is reflected in the general lack of anything resembling Art. 2 in domestic legislation.[90] However, during the last twenty years, EU Member States have adopted a number of directives and regulations aimed at establishing a common European asylum system based on the full and inclusive application of the 1951 Convention.[91] Although none of these new measures embraces the exact wording of Art. 2, a few provide explicit duties for refugees, asylum seekers, and beneficiaries of subsidiary protection.

34 The recast Qualification Directive refers in *passim* to the 'rights and obligations' of refugees in a few places, *e.g.* Recital (47), Arts. 12, para. 1 (b) and 22.[92] It also contains provisions relating to specific duties. For instance, Art. 4, para. 1 provides that it is the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. Article 14, para. 3 (b) of the Qualification Directive sanctions misrepresentation or omission of facts, including the use of false documents, which

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[88] The Refugees Act 130 of the South African Republic is currently being amended and new art. 34 of the Refugees Amendment Bill (4 March 2008) refers not only to the obligations of refugees to abide by the laws of the Republic but also to the obligation to inform the necessary authorities of any residential address and changes to that address. Such obligations would be applicable to refugees as well as asylum seekers, and a new heading on 'The Rights and Obligations of Refugees and Asylum Seekers' is being suggested (secs. 20, 27 and 28 Refugees Amendment Bill). *Cf.* also Maina, *JAL* 41 (1997), pp. 81, 85, 87. *Cf.* also van Garderen/Ebenstein, Regional Developments: Africa MN 46–73.
[89] For further details *cf.* also *supra*, MN 19.
[90] But also in the jurisprudence *cf. infra*, MN 37–43.
[91] For further details *cf.* Klug, Regional Developments: Europe MN 33–74; McAdam, Interpretation MN 98–99; *cf.* also Hofmann/Löhr, Introduction to Chapter V MN 16–32; Zimmermann/Mahler on Art. 1 A, para. 2 MN 110–112; Kälin/Caroni/Heim on Art. 33, para. 1 MN 40–45.
[92] Directive 2011/95/EU of 13 December 2011, OJ L 337, 9; Lambert, *ICLQ* 55 (2006), pp. 161–192, *passim*.

were decisive for the granting of refugee status with the revocation of, ending of, or refusal to renew refugee status.[93] The Directive is nevertheless silent on what penalties may apply for failing to comply with such procedural requirements, preferring instead to leave it to the Member States to decide. Further, Art. 4, para. 3 (d) provides that 'the applicant's activities since leaving the country of origin engaged in for the sole or main purpose of creating' a well-founded fear of persecution or serious harm must be assessed against the applicant's risk of persecution or serious harm if returned to that country. And according to Art. 5, para. 2 genuine fear or real risk may also exist based on activities which the applicant has engaged in since they left the country of origin, particularly if these activities 'constitute the expression and continuation of convictions or orientations held in the country of origin'. Hence, the recast Qualification Directive does not equivocally require asylum seekers to act in good faith.

35 The Procedures Directive[94], although not directly a matter of international law, also provides for certain obligations of asylum seekers. According to Art. 13 of the Procedures Directive, the Member States may require from asylum seekers that they 'cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application'; in particular they may be required to report to the competent authorities or to appear in person before them, to hand over relevant documents, to inform the competent authorities of their current place of residence/address or of any changes.[95] The Procedures Directive further allows accelerated procedures to be used in cases where the

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[93] *Cf.* also Art. 19, para. 3 (b) Qualification Directive concerning beneficiaries of subsidiary protection.

[94] Directive 2013/32/EU of 26 June 2013, OJ L 180, 60. For further details *cf.* also Hofmann/Löhr, Introduction to Chapter V MN18–32.

[95] *Cf. e.g.* reference in the Irish Refugee Act No.17/1996, sec. 11, para. 8 (e), (f), to the duty of the applicant for asylum/refugee status to cooperate with the competent asylum authorities, to furnish all relevant information to their applications, and the obligation of the applicant to notify the authority of their address in the host country. *Cf.* also Cyprus Refugees Ordinance (2003), sec. 18, *supra*, fn. 75.

applicant has failed to fulfil his obligations.[96] The Procedures Directive therefore provides a list of procedural rules with which any applicant for asylum must comply, failing which they will be sanctioned; their application may be considered through an accelerated procedure or may simply be declared inadmissible.[97]

36 It is clear from our analysis of the drafting history of Art. 2 of the 1951 Convention above that some of the provisions (i.e. European ones) are quite distinct from the scope and the purely moral and non-punitive character of Art. 2 and cannot therefore be based on Art. 2. Such provisions are also difficult to reconcile with the fact that there is no obligation in international law for *individuals* to act in good faith. In the case of the EU, it will take some time for the CJEU to develop an authoritative interpretation of the provisions relating to the duties of refugees and asylum seekers due to the existing limitations of Art. 267 TFEU.[98]

II. Jurisprudence

37 Jurisprudence relating to Art. 2 is hard to find. Scarce are decisions examining Art. 2 specifically as opposed to related provisions; this is likely due to the character of Art. 2 as 'an imperfect obligation'.[99]

On rare occasions, Art. 2 has been used by courts to justify acts going beyond the scope of Art. 2 and the overall humanitarian purpose of the 1951 Convention. For instance, the New Zealand Immigration Service cited Art. 2 'as justification for the refusal to grant

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[96] Art. 31, para. 8 Procedures Directive. *E.g.*, if he or she has misled the authorities, filed another application giving other personal data, has acted in bad faith (such as destroyed travel or ID documents), entered the territory unlawfully or is an overstayer, refuses to have his or her fingerprints taken, *etc*.

[97] *Cf.* also the Reception Directive (Directive 2013/33/EU of 26 June 2013, OJ L 180, 96) allowing asylum seekers certain rights, such as residence and freedom of movement, to be severely limited for reasons of public interest, public order, or 'when necessary for the swift processing and effective monitoring of his or her application'. Furthermore, sanctions are provided in numerous cases where an asylum seeker fails to abide by certain rules (such as failure to comply with reporting duties or failure to apply for asylum as soon as reasonably practical after arrival).

[98] Lambert, *ICLQ* 58 (2009), p. 524.

[99] Hence, it is not to be found in some of those countries that otherwise have well developed jurisprudence on the 1951 Convention: *e.g.* Austria, France, Germany, and South Africa.

permits to asylum seekers who, while holding a visitor permit only, undertake employment in breach of the terms of that permit'.[100] In Canada, three cases were found where Art. 2 was cited and discussed, albeit *obiter*. All three seem to be interpreting Art. 2 as imposing an implied obligation akin to a duty of good faith for refugees in international law.

38 In *R. v. Arunasalam*, the Quebec Sessions of the Peace found that an applicant who had entered Canada illegally using a false passport and who further knowingly made a false statement was found to have committed a criminal offence under Canadian law (1976 Immigration Act).[101] The judge rejected the application of the 1951 Convention to the case because no legislation had been passed to sanction the relevant treaty provisions (in particular Art. 2) and the treaty could not be considered a peace treaty.[102] However, consideration of the 1951 Convention was made *obiter dicta*. The judge in this case distinguished between Art. 31 (applicable to the applicant's behaviour just after his arrival in Canada)[103] and Art. 2 of the 1951 Convention (applicable to the applicant during the subsequent weeks and more particularly during the immigration inquiry). And he found that if the 1951 Convention had been applicable, the accused's behaviour after his arrival at the International Airport in Canada (*i.e.* travelling with a false passport) could be protected from prosecution under Art. 31. However, the accused's behaviour during the following weeks of the immigration inquiry (*i.e.* the continued use of a false identity) could *not* be protected against prosecution in view of Art. 2. The judge considered the immigration inquiry to be a measure taken for the maintenance of public order, in that 'immigration officers screen potential Canadian

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[100] Refugee Status Appeal Authority (New Zealand), *Refugee Appeal No. 391/92 Re CFK*, 22 April 1994, quoted in Haines, *JRS* 7 (1994), pp. 260, 264. Note that in Australia, Art. 2 of the 1951 Convention has only been referred in *passim* in two cases: *NAGV and NAGW of 2002 v. Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 6; and *Chan v. Minister for Immigration and Ethnic Affairs* [1989] HCA 62, (1989) 169 CLR 379.
[101] *R. v. Arunasalam* [1983] Carswell Que 382 (Canada).
[102] *Ibid.*, para. 18.
[103] For further details *cf.* also Noll on Art. 31 MN 33–67.

residents'.[104] The fact that 'the accused continued to identify himself falsely after the immigration officers had treated him in a most human manner' was sufficient for the judge in this case to activate Art. 2 of the 1951 Convention. The reference to 'public order' in Art. 2 in this context creates confusion since the behaviour in question was found to be contrary to the criminal law of Canada—it was thus covered by the 'laws and regulations' in Art. 2. The reference to 'after the immigration officers had treated him in a most human manner' in the context of Art. 2 adds further confusion since as established above there exists no obligation in international law on the part of *individuals* (as opposed to States) to act in good faith. Rather the matter of deceit/bad faith is one to be considered under national law, in particular in the context of the credibility of the applicant.[105]

39 Ten years later, in *Dee v Canada*,[106] the appellant had been found to be a 1951 Convention refugee. But again because the 1951 Convention *per se* was not part of Canadian law, refugees lawfully in Canada could be subject to deportation in cases listed under the Canadian immigration law. In this case, the appellant entered Canada as a visitor but failed to renew his visa when necessary. As a result, deportation could be ordered under national law. Once again, the court discussed *obiter dicta* the scenario 'if the Refugee Convention was part of Canadian law' and found that even in such cases, the provisions of the 1951 Convention (Arts. 2, 31, and 33) would not help him in establishing that he is in Canada lawfully. The court found that a 1951 Convention refugee has no general lawful right to be in Canada. Only a refugee who is lawfully in Canada has a right to remain. The court concluded:

> . . . the appellant's past conduct shows a willful disregard for the welfare of his family and business associates . . . He was blinded by the opportunity for personal gain . . . the appellant was prepared to engage in unethical and immoral business practices. He was less than a credible witness on the material aspects of his case. All of this must necessarily impact

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[104] *Arunasalam*, *supra*, fn. 92, para. 20.
[105] For further details *cf*. Hofmann/Löhr, Introduction to Chapter V, *passim*.
[106] Dee v. Canada (Minister of Employment and Immigration) [1994] Carswell Nat 2999 (Canada).

negatively on his character. . . . I conclude that the appellant is undeserving of the exercise of the Appeal Division's equitable jurisdiction in his favour.

40 Such reasoning was again applied in *Shirdon v. Canada*.[107] The applicant, ex-ambassador in the former government of Somalia headed by President Siad Barre, was found to be a refugee under the 1951 Convention but was declared inadmissible to enter Canada as an immigrant by virtue of the Immigration Act 1985, on the ground that his admission would be detrimental to the national interest.[108] In this case, the court referred to Art. 2 in support of the withdrawal of his right to remain in Canada under Canadian immigration law.[109] It further denied the existence of compassionate or humanitarian considerations that would warrant special relief (*e.g.* a right to remain) on the ground that 'national interest weighs heavily against granting special relief' and 'the appellant is not morally blameless'.[110]

The High Court of Ireland likewise implied from Art. 2 an obligation on the part of asylum seekers to act in good faith when refusing leave to appeal to a married couple from Zimbabwe whose entire application for asylum had been fabricated. The High Court held that all applicants 'have a duty when engaging in the asylum system to cooperate by presenting their account in a truthful manner'.[111] These obligations are based on the terms of the Irish Refugee Act, which incorporates EU law; they arise from Art. 2 of the 1951 Convention.[112] It may be noted that the same conclusion would likely have been reached by simply relying on the evidence relating to the country of origin.[113]

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[107] Immigration and Refugee Board of Canada, Appeal Division, Case no. T97–06059 [2000] RefLex Issue 150.
[108] He had indeed been a senior member of a government that was engaged in systematic or gross human rights violations, *ibid.*, pp. 1–2.
[109] Note that the Court also referred to Art. 1 F (a) of the 1951 Convention but only *passim* as it considered the matter to be one to be decided under domestic immigration law.
[110] Immigration and Refugee Board of Canada, Appeal Division, *supra*, fn. 98, pp. 16 and 17.
[111] *C. & Anor -v- Refugee Applications Commissioner & Anor* [2010] IEHC 490, para. 24.
[112] Ibid, paras. 24-86.
[113] As argued in Goodwin-Gill, *IJRL* 12 (2000), pp. 663-671, discussing *Danian v Secretary of State for the Home Department,* UK IAT Appeal No. CC 30274/97 (16494), 28 May 1998, and in Refugee Status Appeal authority (New Zealand) Refugee Appeal No. 2254/94 Re HB. See also Refugee Status Appeal Authority (New

41 A more faithful reading of Art. 2 was endorsed by the US Court of Appeals in *Smriko v Ashcroft*.[114] Mr. Smriko had been a lawful permanent resident of the United States for less than five years when he committed three crimes of retail theft involving moral turpitude[115] which, under domestic law, subjected him to deportation. However, he had been admitted to the United States with refugee status pursuant to the Immigration and Nationality Act, implementing the Protocol to the Convention Relating to the Status of Refugees, which itself incorporated Arts. 2 to 34 of the 1951 Convention.[116] The government argued that by 'voluntary choosing to adjust' his status from refugee to lawful permanent resident, he had lost his refugee status and the protection of the Protocol. Smriko argued, in concert with the UNHCR, that obtaining lawful permanent resident status is not a basis for the cessation of refugee status under the 1951 Convention.[117] Furthermore, he agreed that under the 1951 Convention, refugees have certain duties but noted that 'the violation of any criminal law is not, in and of itself, grounds for terminating refugee status under that agreement'.[118] He recognized that:

> While he is liable for violating criminal laws in the same manner as a United States citizen would be . . . [nonetheless] Congress, in implementing the Protocol, intentionally limited the grounds for cancelling refugee status because it intended to give refugees heightened protection (as compared to other aliens) in light of the traumatic conditions they have fled.[119]

42 The Court of Appeal ruled that Smriko presented a plausible reading of the Immigration and Nationality Act, not directly contradicted by statutory text, regulations, or relevant precedent, and allowed his appeal.

Zealand), Refugee Appeal No. 76204, 16 February 2009, paras.134-139; *M v Secretary of State for the Home Department*, United Kingdom Court of Appeal, 24 October 1995 [1996] 1 All ER 870.

[114] *Smriko v Ashcroft*, 387 F.3d 279 (US).

[115] Defined as 'anything done contrary to justice, honesty, principle, or good morals, or an act of baseness, vileness, or depravity in the private and social duties which person owes to his or her fellow citizens or to society in general, whether or not it is punishable as a crime'. It requires 'a vicious motive, corrupt mind, or malicious intention', West, *Corpus Juris Secundum*, Aliens, para. 1141, (p. 327).

[116] For further details *cf.* Schmahl on Art. I MN 20–26, *passim*.

[117] For further details *cf.* also Kneebone/O'Sullivan on Art. 1 C, *passim*.

[118] *Smriko v. Ashcroft*, *supra*, fn. 102, para. 23.

[119] *Ibid*.

43 There are numerous other cases involving refugees where there have been severe breaches of domestic laws and regulations, or measures taken for the maintenance of public order. In such cases, national courts have referred rightly to Arts. 1 F, 31, 32, and 33, para. 2, and not to Art. 2. For instance, in Kenya, the High Court has been reluctant to entertain arguments based on Art. 2 of the 1951 Convention and Art. 3 of the 1969 Convention in order to limit refugees' right of movement,[120] confirming instead that 'the State has legal options with refugees whom it deems to have engaged in conduct that is not in conformity with their status as refugees', namely Articles 1C, 1F, 32 and 33.[121]

III. Administrative Practice

44 On rare occasion, States have limited the freedom of expression of refugees by imposing on them a duty or obligation of reserve (*devoir de réserve*). When this is the case, the obligation is aimed at the State of origin (to confirm the friendly and humanitarian nature of the right of asylum) as well as the State of asylum (to protect itself against possible tension, insurgencies, or xenophobic attacks within the country of asylum). France is the only widely known case of such administrative practice, which dates back more than a century and is still in use today.[122] Notably, an administrative circular of 1974[123] requested that refugees abstain from: (1) interfering in the internal affairs of France, (2) importing any violent political dispute from their country of origin, (3) constituting a threat to national security, and

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[120] Coalition for Reform and Democracy and others v. Republic of Kenya and others, Petition No. 628 of 2014 consolidated with Petition No. 630 of 2014 and Petition No. 12 of 2015, Kenya: High Court, 23 February 2015, para. 397; Refugee Consortium of Kenya & another v Attorney General & 2 others, Petition No. 382 of 2014, Kenya: High Court, 18 December 2015, para. 32.

[121] Coalition for Reform and Democracy and others v. Republic of Kenya and others, Petition No. 628 of 2014 consolidated with Petition No. 630 of 2014 and Petition No. 12 of 2015, para. 430. See also Australia, where the character test in s 501 (6) (aa) Migration Act 1958 has been discussed in connection with Arts. 31 and 33 of the 1951 Convention but not Art. 2 (*NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38) and the EU where Advocate General Sharpston, in a case concerning the revocation of a residence permit on grounds of association with the PKK, made a *passim* reference to Art. 2 of the 1951 Convention but examined in detail provisions such as Arts. 32 and 33 of the 1951 Convention, Arts. 21 and 24 of the Qualification Directive, and Art. 8 ECHR (CJEU, *H. T. v Land Baden-Württemberg*, Opinion of Advocate General Sharpston, 11 September 2014, Case C-373/13).

[122] Alland/Teitgen-Colly, *Traité*, p. 582.

[123] Unpublished.

(4) compromising France's diplomatic relations. In addition, the 1974 circular required that refugees sign a statement guaranteeing their duty of reserve in exchange for a residence permit. In spite of the circular lacking legal basis, since the Ministry of the Interior was not competent in this area, the practice remained and continues. To be sure, there are no legal grounds in France for refugees to be bound by an obligation of reserve, and breach of this obligation cannot be used as a ground of expulsion *per se*; that would be illegal. Rather what exists in France is freedom of expression and limitations on grounds of public order or national security; and it is the latter that have been used as grounds for expulsion.[124]

45 In sum, there is very limited jurisprudence and administrative practice relating to Art. 2 of the 1951 Convention. Legislation encompassing provisions similar to Art. 2 is less scarce, particularly in African countries, thereby reflecting the emphasis on the obligations and duties of individuals in African refugee and human rights treaties.

G. Evaluation

46 Two key issues came to dominate the debate on the drafting of a provision on the general obligations of refugees during the years 1950 and 1951. First, how would such a provision take effect: as a mere declaration, as a moral obligation, or as a legal obligation? Secondly, what would its scope be, most notably, would it include the prohibition of subversive activities of refugees? In spite of these issues having been resolved by 25 July 1951, when the final text of the 1951 Convention was adopted, new international treaties (of refugee law and human rights law) and limited State practice have come to cast some doubt on both issues. It is useful here to conclude on the effect and scope of Art. 2 today.

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[124] Alland/Teitgen-Colly, *Traité*, pp. 582–587, referring to the Commission des Recours des Réfugiés (Refugee Appeals Authority, France), No. 7313, 8 February 1973: 'la réserve qu'impose au requérant son statut de réfugié ne peut être de nature à le priver du droit qu'il possède comme tout homme d'exprimer ses opinions que si cette expression constitue une menace pour l'ordre public ou la sécurité nationale'; and referring to two decisions of the Conseil d'Etat (Council of State, France): *Perregaux*, 13 May 1977, conclusions Mme Latournerie, and *Min int. c/Librairie F. Maspero*, 30 January 1980, conclusions Mr. Genevois. For further details *cf.* also Davy on Art. 32 MN 62–78, *passim*.

47 Regarding the first issue, Art. 2 was designed to be a 'qualifying clause' to Art. 1 of the 1951 Convention, it was only intended to provide a moral obligation on refugees.[125] Consequently, the non-observance of Art. 2 does not have any effect in international law, as opposed to national law; in particular, it does not entail the loss of refugee status or any particular right under the 1951 Convention. It also means that in spite of some scholarship and State practice to the contrary, Art. 2 does not actually impose a duty of good faith on refugees and asylum seekers in international law. The slippery slope to imposing such duties is well captured by Gibney: 'Everywhere one looks one finds examples of refugees being publicly criticised for violating various moral norms, expectations and obligations … The perceived failure of refugees to fulfil their duties is often used to legitimise curtailing their rights through detention and measures that bar access to asylum'.[126]

48 Regarding the second issue, Art. 2 was intended to exclude from its scope any provision restricting or prohibiting the political activities of refugees because the 1951 Convention focuses on refugees who seek a peaceful and normal life, and because any such reference could be misinterpreted or misconstrued. Instead, it was agreed that remedies should continue to be located in national law—with the realization that the 1951 Convention would be relevant if the activities in question were serious enough to be caught by Arts. 1 F, 31, 32, or 33, para. 2. However, provisions restricting the political activities of refugees have come to appear in refugee treaties in Africa and Central America, in human rights treaties, and in the legislation of several African States. The UNHCR too has recognized the prohibition of subversive activities as 'a means of promoting the civilian character of

[125] Statement of Robinson (Israel), Conference of Plenipotentiaries, UN Doc. A/CONF.2/SR.3 (1951), p. 21.
[126] Gibney, 'The Duties' (2019) 132

asylum'.[127] Such activities include propaganda for war, incitement to imminent violence, and hate speech. It follows that as far as the 1951 Convention is concerned, any breach of a prohibition of subversive activities continues to be dealt with under the national law, unless the activities are so severe that they fall under other provisions of the 1951 Convention (*e.g.* Art. 33, para. 2). Such breaches may now also be covered by regional refugee law and/or international human rights law. However, in spite of limited State practice to the contrary and the recognition of certain civil and political rights which may be in conflict with the duties of refugees, the effect and scope of Art. 2 remain unchanged.

HÉLÈNE LAMBERT*

[127] Global Consultations on International Protection, UNHCR EG/GC/01/9 (2001), pp. 2–3. *Cf.* also Declaration on Territorial Asylum.

* Dr Hélène Lambert (Ph.D., Exeter; Maitrise de Droit Public, Strasbourg) is Professor of Law at the University of Technology Sydney. She has held academic posts at a number of universities in the UK, including the University of Westminster, London. She has also held visiting fellowships at the Refugee Studies Centre, University of Oxford, and at Melbourne Law School. She has been a consultant for the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR): she also served briefly as a Protection Officer for UNHCR. She has written extensively on asylum, refugees, and human rights. Her publications include: Foster, M./Lambert, H., *International Refugee Law and the Protection of Stateless Persons* (2019); Lambert, H./McAdam, J./Fullerton, M. (eds.), *The Global Reach of European Refugee Law* (2013); Goodwin-Gill, G. S./Lambert, H. (eds.), *The Limits of Transnational Law—Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union* (2010); Lambert, H. (ed.), *International Refugee Law* (2010); Armstrong, D./Farrell, T./Lambert, H., *International Law and International Relations* (2007, 2nd edn, 2010); Lambert, H., *The Position of Aliens in relation to the European Convention on Human Rights* (Council of Europe, 2nd edn., 2001; 3rd edn., 2006); Lambert, H., *Seeking Asylum—Comparative Law and Practice in Selected European Countries* (1995). She is also author of numerous articles in the *ICLQ*, *IJRL*, *RSQ*, SLR, and the *Review of International Studies*.

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