

‘He doubted strongly whether there would be any cases of persecution on grounds of sex’: Women, Discrimination, and the Refugee Convention at 75

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1. Introduction

Anniversary essays are not easy to write. Like those international ‘days’ that are dedicated to particular groups or topics, *Special Issues* and their commentaries risk sliding into the laudatory or the vacuous. Worse, they may be used to claim authority and to demarcate space. In commemorating something we may celebrate it, but we may also bury the very thing we cherish in a series of high-profile, stakeholder-engaging, institution-building marketing opportunities. How then to approach the 1951 Convention relating to the Status of Refugees (the Refugee Convention)?¹ How to capture some of the variety and richness of international refugee law and in particular, the Refugee Convention’s contribution to the protection of women and others from gender-based violence? How to do so now, on its 75th Anniversary, when the role and ability of international law and multilateral institutions to regulate States and protect refugees seems so very precarious? Those concerned with refugee rights often decry a policy or period as marking, in some significant way, the end of refugee law and protection.² It is, however, the case that this anniversary is occurring at a particular juncture, one where democracy ‘is not

With thanks to Jaya Ramji-Nogales, Sarah Singer and the editors of this journal, and the members of the Refugee Studies Centre’s work-in-progress group for their generous engagement with the arguments made here. For Toni Sender and R.

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

² David James Cantor, ‘The End of Refugee Law?’ (2017) 9 *Journal of Human Rights Practice* 203; Daniel Ghezlbash, *Refuge Lost: Asylum Law in an Interdependent World* (CUP 2018).

healthy anywhere in the world'.³ This is not, of course, to suggest that 'democracy' was, hitherto, in a hale and hearty state. It wasn't when the Refugee Convention was drafted and a significant proportion of the world was under colonial domination. Relatedly, democracies have 'never squarely faced the role of misogyny, indeed of stratified unequal social power in all its forms'.⁴ Nonetheless, and as Kim Lane Scheppelle explains, increasing numbers of States are becoming authoritarian, struggling to recover from authoritarianism, or are, like the one from which I write, the UK, 'one bad election away from catastrophe'.⁵ Democratic backsliding is still backsliding, even when it occurs from a point of deficit.⁶

Opposition to migration has been central to the breakthrough of populist leaders and politics, with animus towards refugees contributing to calls for religion- and race-based restrictions on movement.⁷ Further, authoritarianism and misogyny 'are not just common comorbidities but mutually reinforcing ills'.⁸ Discrimination against women and on the basis of gender identity, sexual orientation, race, religion, and migration status are all imbricated in broader autocratic moves, including attacks on the rule of law, on institutions, and indeed, on other States.⁹

In order to mark both 75 years of the Refugee Convention and the moment at which this anniversary is being celebrated, I return to its contemporary origins and the debates of its drafters on sex discrimination. I then explain, very briefly, how the refugee definition has been interpreted, focusing on developments in Europe. I conclude by considering a recent case from the USA, one that enables us to trace an arc between the views of those who drafted the Convention and current attempts to undermine it. In doing this, I offer only a partial sketch of the field, confident that the diversity and vibrancy of feminist scholarship in this area, including that published in this journal, offer both corrective and inspiration.¹⁰

2. Discrimination and drafting

The debate that defined the Refugee Convention's drafting concerned its geographical scope; the position of those States who wanted to retain a focus on Europe being contested by those advocating for a universal refugee definition. An early draft thus spoke to three broad predicaments, the first of which was having a 'well-founded fear of being the victim of persecution for reasons of race, religion, nationality, or political opinion...' as a result of events in Europe.¹¹ This went on to provide refugees with a broad array of

³ Kim Lane Scheppelle, 'Rights into Structures: Judging in a Time of Democratic Backsliding' (2025) 26 *German Law Journal* 255, 256. Thank you to Cathryn Costello for drawing my attention to this piece.

⁴ Catharine A MacKinnon, 'Three Crises: Saving the World' (2025) 26 *German Law Journal* 360a, 360l.

⁵ Scheppelle (n 3) 256.

⁶ MacKinnon (n 4) 360h.

⁷ Christian Joppke, 'Immigration in the Populist Crucible: Comparing Brexit and Trump' (2020) 8 *Comparative Migration Studies* 49.

⁸ Erica Chenoweth and Zoe Marks, 'Revenge of the Patriarchs: Why Autocrats Fear Women' (*Foreign Affairs*, 8 February 2022) <<https://www.foreignaffairs.com/issues/2022/101/2>> accessed 8 January 2026.

⁹ *ibid.* See also, Elżbieta Korolczuk and Agnieszka Graff, 'Gender as "Ebola from Brussels": The Anticolonial Frame and the Rise of Illiberal Populism' (2018) 43 *Signs* 797; Conny Roggeband and Andrea Krizsán, *Democratic Backsliding and the Backlash against Women's Rights: Understanding the Current Challenges for Feminist Politics* (Discussion Paper No 35, UN Women, June 2020); Stéphanie Hennette Vauchez and Camille Robcis, 'Populism and Gender Ideology' in J Jarpa Dawuni and others (eds), *The Oxford Handbook of Women and International Law* (OUP 2025).

¹⁰ Catherine Dauvergne and Kate Jastram, 'Special Issue on Gender' (2024) 36 *International Journal of Refugee Law* 1.

¹¹ After 3 September 1949 and before 1 January 1951. Ad Hoc Committee on Statelessness and Related Problems, *Report of the Ad Hoc Committee on Statelessness and Related Problems* (UN Doc E/1618, E/AC32/5, 17 February 1950) 12.

protections including, in article 3, by prohibiting discrimination ‘against a refugee on account of his race, religion, or country of origin, or because he is a refugee’.¹² A compromise between these divergent positions was not reached until the final days of the Conference of Plenipotentiaries, an amendment being accepted that enabled States to choose between committing themselves in respect of Europe *or* universally.¹³ It is within the context of this debate that the related issue of article 3’s scope and sex discrimination was discussed.

Observing that the Universal Declaration of Human Rights¹⁴ protected individuals from discrimination on a range of grounds, Mr Makiedo (Yugoslavia) suggested that the words ‘or sex’ should be added to article 3.¹⁵ This was immediately and roundly rejected. Mr Rochefort (France) was concerned it implied ‘that certain countries... practised discrimination on grounds of sex. Such was not the case’.¹⁶ Mr Hoare (UK) asserted that ‘the equality of the sexes was a matter for national legislation’.¹⁷ Such a development in international law may, he opined, generate allegations of sex discrimination in cases where women were employed, but paid less than men.¹⁸ This example was ‘probably academic, but served to illustrate the possible difficulties’.¹⁹ This was not the only problem. Mr Fritzer (Austria) was troubled by differential treatment in rationing, noting that discrimination could also be alleged where a refugee woman did not ‘obtain as many cigarettes as a male refugee. Such was certainly not the intention of article 3’.²⁰ The President of the Conference (Mr Larsen), fearing a long discussion, brought matters to a close by reminding those present of article 3’s purpose, this being to ensure that:

persons who had been persecuted on account of their race or religion, for example, should not be exposed to the same danger in their country of asylum. He doubted strongly whether there would be any cases of persecution on grounds of sex.²¹

The connection drawn here, between conduct that may cause displacement, the refugee definition, and the protection to be afforded to refugees, is illuminating. On the refugee definition, the Convention reason with the ‘least clarity’²² had been introduced the day before. Mr Petrén (Sweden) observed that ‘experience had shown that certain refugees had been persecuted because they belonged to particular social groups’.²³ His intervention went

¹² *ibid* 13.

¹³ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, ‘Summary Record of the Twenty-Third Meeting’ (Geneva, 16 July 1951) (26 November 1951) UN Doc A/CONF.2/SR.23 4, 7.

¹⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

¹⁵ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, ‘Summary Record of the Fifth Meeting’ (Geneva, 4 July 1951) (19 November 1951) UN Doc A/CONF.2/SR.5, 9. This followed his proposal to add ‘or for other reasons’, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, ‘Summary Record of the Fourth Meeting’ (Geneva, 3 July 1951) (19 November 1951) UN Doc A/CONF.2/SR.4, 13.

¹⁶ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, ‘Summary Record of the Fifth Meeting’ (n 15) 9.

¹⁷ *ibid* 9.

¹⁸ *ibid* 9-10.

¹⁹ *ibid* 10.

²⁰ *ibid* 11.

²¹ *ibid* 10.

²² Michelle Foster, *The ‘Ground with the Least Clarity’: A Comparative Study of Jurisprudential Developments relating to ‘Membership of a Particular Social Group’* (August 2012) UNHCR, PPLA/2012/02.

²³ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, ‘Summary Record of the Third Meeting’ (Geneva, 3 July 1951) (19 November 1951) UN Doc A/CONF.2/SR.3, 14.

uncontested, his amendment in these terms accepted without substantive debate.²⁴ The drafters' subsequent discussion of article 3 reveals their understanding of persecution as a particular, aggravated form of discrimination, one imbricated in the refugee predicament.²⁵ Despite assured statements to the contrary, these comments also expose the drafters' uncertainty as to whether their States' practices would withstand discrimination-law challenge, and their related concern with the interaction between national law and these nascent international protections.²⁶

While article 3 was discussed at a number of other meetings, discrimination against women was considered on just one further occasion. Speaking at the invitation of the President, Miss Sender (of the International Confederation of Free Trade Unions) 'wondered why sex was not mentioned among the other grounds on which discrimination was prohibited in article 3'.²⁷ She received no response. In the silence that followed, a revised article 3 was adopted.²⁸ Where the relevant conduct was for reasons of sex, women were not refugees and refugee women were not protected from discrimination. We see, in these summary records, the construction and justification of international law's public/private divide.²⁹

3. Violence and interpretation

Sustained feminist engagement has sought to ensure that the Refugee Convention is 'properly interpreted', to include gender-related claims.³⁰ Milestones in this journey include the adoption of a bifurcated approach to persecution and, of course, the recognition that women may be members of a particular social group (PSG).³¹

UNHCR Guidelines offer a 'gender sensitive interpretation'³² of each element of the refugee definition, addressing women's persecution for reasons of race, religion, nationality, political opinion and PSG membership, one might now say intersectionally. General Recommendation 32 (GR 32)³³ of the Committee that monitors the Convention on the

²⁴ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 'Summary Record of the Twenty-Third Meeting' (n 13) 8.

²⁵ See also, Ad Hoc Committee on Statelessness and Related Problems, 'First Session: Summary Record of the Twenty-Fourth Meeting' (New York, 3 February 1950) (13 February 1950) UN Doc E/AC.32/SR.24, para 55 where Mr Cuvelier (Belgium) explained that article 3 was 'all the more necessary because most refugees had left their countries of origin in order to escape discrimination on grounds of race, religion or political opinions'.

²⁶ See also the comments of Mr Warren (US) on different working hours for men and women and the President on the (in)ability of married women to establish their own domiciles. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 'Summary Record of the Fifth Meeting' (n 15) 10.

²⁷ Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 'Summary Record of the Thirty-Third Meeting' (Geneva, 24 July 1951) (30 November 1951) UN Doc A/CONF.2/SR.33, 7.

²⁸ *ibid.* One that also no longer protected refugees from discrimination *as refugees*.

²⁹ See further, Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

³⁰ UNHCR, 'Guidelines on International Protection No 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (7 May 2002) UN Doc HCR/GIP/02/01, para 6.

³¹ *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal, ex parte Shah* [1999] 2 AC 629; [1999] 2 WLR 1015.

³² UNHCR, 'Guidelines on International Protection No 1' (n 30) paras 1-4.

³³ UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women' (14 November 2014) UN Doc CEDAW/C/GC/32.

Elimination of All Forms of Discrimination against Women (CEDAW)³⁴ speaks to the two regimes' 'shared objective': the complementary and cumulative protection of refugee women.³⁵ Here, the Committee offers a remedy for the Refugee Convention's drafters' silence on the protection of women through a detailed delineation of CEDAW's provisions on discrimination. It also encourages Parties to add sex and/or gender as an additional 'Convention ground' to refugee definitions in their domestic law.³⁶ Finally, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention)³⁷ contains a chapter on migration and asylum that refers to the Refugee Convention's article 1(A)2. Parties are to recognize gender-based violence as a form of persecution and as serious harm (article 60(1)). They are then to ensure a gender sensitive interpretation of the Convention grounds and approach to reception, support, and recognition procedures (article 60(2)-(3)).

It is, of course, the case that while a significant number of States are parties to both the Refugee Convention and CEDAW, the same is not true for the Istanbul Convention.³⁸ Work needs to be done to map and delineate obligations, to better understand the degree to which they are co-extensive or, in some areas, cumulative.³⁹ Such a caveat notwithstanding, the interpretations and obligations introduced above are, at a minimum, mutually reinforcing, the former being anchored in the ordinary meaning of the latter and in the relevant instruments' objects and purposes. The emergence of differences between them and the contemporary jurisprudence therefore warrants close attention.

UNHCR Guidelines characterize as political opinions those held on gender roles, an approach endorsed in the Istanbul Convention's Explanatory Report.⁴⁰ CEDAW's GR 32 similarly explains that political opinions include the 'expression of women's rights'.⁴¹ Yet in *K, L*,⁴² the Court of Justice of the European Union (CJEU) engaged with these standards but recognized as a *PSG*, women and girls who

share as a common characteristic the fact that they genuinely come to identify with the *fundamental value of equality between women and men...*⁴³

³⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

³⁵ UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 32' (n 33) para 9.

³⁶ *ibid* paras 13, 38.

³⁷ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210 (Istanbul Convention).

³⁸ Other relevant instruments include the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) (1994) 33 ILM 1534 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) OAU Doc Cab/Leg/66.6. It would be fruitful to explore the contribution that these make to women's protection as refugees.

³⁹ See further, Council of Europe, *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210)* (2011) paras 311-18. On the EU and Istanbul Convention, see Catherine Briddick, *Violence against Women and Regimes of Exception: Undoing Discrimination in Migration Law* (OUP 2025) ch 7.

⁴⁰ UNHCR, 'Guidelines on International Protection No 1' (n 30) para 32; Council of Europe 'Explanatory Report' (n 39) para 313.

⁴¹ UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No 32' (n 33) para 31.

⁴² Case C-646/21 *K, L v Staatssecretaris van Justitie en Veiligheid* [GC] [2024] ECLI:EU:C:2024:487.

⁴³ *ibid* para 51 (emphasis added).

Those identifying with this value need not ‘be political or religious’, but if they were, they may also be persecuted for these reasons.⁴⁴

In *AH, FN*,⁴⁵ the CJEU, again quoting the Guidelines, CEDAW, and the Istanbul Convention, found that the discriminatory measures faced by women in Afghanistan, a PSG, constituted gender-based persecution. The Court briefly referred to women’s potential non-compliance with these restrictions, before concluding that they reflected

the establishment of a social structure based on a regime of segregation and oppression in which women are excluded from civil society and deprived of the right to lead a dignified daily life in their country of origin.⁴⁶

These cases, and those they built upon, are significant in a number of ways, recognizing women as PSGs, understanding gender-based violence as persecution and serious harm, simplifying individual assessments, and contributing to developments in international criminal law on the concept of ‘gender apartheid’.⁴⁷ Considered together, and acknowledging the constraints imposed by the questions asked, these judgments illuminate both the CJEU’s evolving approach to discrimination against women and its failure to recognize as political actors those who oppose it.⁴⁸ The Court knows what violence against women is and does, but ‘identification’ with the ‘value’ of equality seems a personal, even embodied characteristic. There is, however, a word for people who contest women’s inequality: feminist. There is a politics too and a distinctive legal analysis.⁴⁹ There are also cases where decision makers have identified and protected, as political opinions, women’s resistance to discrimination and gender-based violence.⁵⁰ Such decisions, as well as those that engage substantively with more than one ground, remain rare (outside of New Zealand at least).⁵¹ What does this ‘exclusionary inclusion’⁵² of women tell us? Two tentative and connected conclusions may be drawn. First, the reasoning of the CJEU remains saturated with gendered and racialized stereotyping.⁵³ Second, the force of these stereotypes acts to limit the impact of UNHCR’s Guidelines or the Istanbul Convention’s ‘gender-sensitive’ approach. Even when they apply and are referred to, their transformative capacity remains constrained and contained.

If over-reliance on the PSG ground is, in some contexts, indicative of the persistence of at least one form of discrimination, its reinterpretation in the USA discloses the re-emergence

⁴⁴ *ibid* para 52 (emphasis added).

⁴⁵ Joined Cases C-608/22 and C-609/22 *AH, FN v Bundesamt für Fremdenwesen und Asyl* [2024] ECLI:EU:C:2024:828.

⁴⁶ *ibid* paras 42, 44.

⁴⁷ In addition to the cases cited here, see Case C-621/21 *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* [GC] [2024] ECLI:EU:C:2024:47; Lara-Zuzan Golesorkhi, ‘Gender Apartheid and Asylum: Establishing General Risks of Gender-Based Persecution in International Refugee Law’ (2025) 21 *Politics & Gender* 169.

⁴⁸ Catherine Briddick, ‘Resisting Domestic Violence’ (2024) 36 *International Journal of Refugee Law* 106.

⁴⁹ Denise G. Réaume, ‘What’s Distinctive about Feminist Analysis of Law?: A Conceptual Analysis of Women’s Exclusion from Law’ (1996) 2 *Legal Theory* 265.

⁵⁰ Pertinent examples from the USA include, *Maria Rodriguez Tormes v Merrick B Garland* 993 F 3d 743 (9th Cir 2021); *Hernandez-Chacon v William P Barr* US Court of Appeals No 17-3903-ag (2nd Cir 2020).

⁵¹ See, for example, *IW (Sri Lanka)* [2024] NZIPT 802312 and *KA (China)* [2024] NZIPT 802419 which apply the arguments made in Briddick (n 48).

⁵² Susan Kneebone, ‘Women Within the Refugee Construct: “Exclusionary Inclusion” in Policy and Practice – the Australian Experience’ (2005) 17 *International Journal of Refugee Law* 7.

⁵³ Compare the approach taken in *K, L* (n 42) with Case C-280/21 *P I v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos* [2023] ECLI:EU:C:2023:13, para 33.

of another. In *Matter of K-E-S-G*,⁵⁴ both proposed PSGs, those of ‘Salvadoran women’ and ‘Salvadoran women viewed as property’ were rejected on the basis that to do otherwise would be to add sex as a Convention reason:

It is not the role of the Board to add a specific protected ground that was not included by Congress and the drafters of the Convention and the Protocol. See *Chan v. Korean Air Lines, Ltd.*, (1989) (‘We are to find out the intention of the parties by just rules of interpretation applied to the subject matter; and having found that, our duty is to follow it as far as it goes, and to stop where that stops—whatever may be the imperfections or difficulties which it leaves behind’. (quoting *The Amiable Isabella*,....(1821))). Congress and the drafters of the Convention and the Protocol did not specifically identify sex as a protected ground, and we conclude that a particular social group based on sex alone is not sufficiently cognizable, given our review of this issue and the view of several Federal circuits.⁵⁵

If the CJEU cannot see women as anything other than women, here the Board cannot see women at all.⁵⁶ The Refugee Convention must, of course, be interpreted in ‘good faith’ in accordance with the ‘ordinary meaning’ of its terms, ‘in their context’ and ‘in the light’ of its ‘object and purpose’.⁵⁷ Drawing on the *travaux préparatoires* to understand the contemporary Convention, in adjudication or scholarship, risks offending the rules of treaty interpretation and being anachronistic. Yet the drafters’ understanding of sex discrimination as both unthinkable and inevitable have,⁵⁸ three-quarters of a century later, been deployed to justify denying women protection in the broader context of the dismantling of asylum in the USA.⁵⁹ Similar moves are being made elsewhere.⁶⁰

4. Conclusion

How do instruments like the Refugee Convention live?⁶¹ How do those of us who feel the ‘dual imperative’ to contribute to scholarship and protection keep them alive?⁶²

Women were unable to play a significant role in the Refugee Convention’s drafting. Refugees, women and men, did have an enduring impact on it. The contribution of those with lived experience, on the Convention’s text and the emerging protection regime, is

⁵⁴ *Matter of K-E-S-G*, Respondent (2025) 29 I&N Dec 145.

⁵⁵ *ibid* 152 (some references omitted).

⁵⁶ The Board did acknowledge that sex is an immutable characteristic, just not ‘sufficiently precise’ to define a PSG. *ibid* 148. Compare with *Matter of Acosta* (1985) 19 I&N 211.

⁵⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1).

⁵⁸ Drawing on *Secretary of State for the Home Department v K (FC)*; *Fornah (FC) v Secretary of State for the Home Department* [2006] UKHL 46; [2007] 1 All ER 671, para 84 (Baroness Hale).

⁵⁹ Jaya Ramji-Nogales, ‘Performing Sovereignty: The Refugee Convention Under the Trump Administration’ in this *Special Issue*. See also, Philip G Schrag, Andrew I Schoenholtz and Jaya Ramji-Nogales, *The End of Asylum* (Georgetown University Press 2021) ch 3; Jaya Ramji-Nogales, ‘The Trump Administration’s Unprecedented Violations of the Non-Refoulement Principle’ (2025) 119 *American Journal of International Law* 758.

⁶⁰ Lena Riemer and Lorenzo Acconciamezza, ‘From “Original Intentions” to “Unforeseeable Change of Circumstances”’: The 2025 Escalation of Pressure Towards the ECtHR’ (EJIL:Talk!, 5 January 2026) <<https://www.ejiltalk.org/fromoriginalintentionstounforeseeablechangeofcircumstances/>> accessed 12 January 2026.

⁶¹ Drawing on the ECtHR’s ‘living instrument’ jurisprudence. *Tyrer v UK* App no 5856/72 (ECtHR, 25 April 1978).

⁶² Rosemary Byrne and Thomas Gammeltoft Hansen, ‘International Refugee Law Between Scholarship and Practice’ (2020) 32 *International Journal of Refugee Law* 181, 184-5.

striking.⁶³ It is also one that is too often lost, in part because it is easier to impute purposes to those involved than to read what some of them actually said.⁶⁴ Refugee participation, in research, institutions, and in practice, should ensure that such voices are heard and impactful now.⁶⁵

Securing women's rights in international law has required consensus-building and engagement, the constructive use of legal processes, the development and application of 'soft law' in a context of hard inequality.⁶⁶ For feminists and those who draw on feminist approaches to international law (FAIL), the challenge remains two-fold. We must scrutinize the way that women and gender are included in refugee law, highlighting silences, analysing colonial legacies, and contesting the racialized politics of protection.⁶⁷ Research along these lines might contest stereotyping and re-examine the value of national legislative incorporation of sex/gender as a Convention ground. On cessation and article 1C of the Refugee Convention, feminist engagement may highlight the gendered and racialized dimensions of Europe's 'temporary turn'⁶⁸ and analyse refugee women's access to a nationality.⁶⁹ On article 1D, it may examine what a 'gender-sensitive' approach to 'protection or assistance' entails.⁷⁰ Feminists and FAIL scholars should also continue to defend, use, and develop those instruments and mechanisms that offer women protection from discrimination and persecution. In her writing on autocratic legalism, Scheppele explores the potential of jurisprudence that vindicates rights by requiring States to put protective, democratic structures in place.⁷¹ Equality rights and protections from gender-based violence, including in refugee law, are, among other things, part of a broader package of democratic self-defence measures.⁷² Resisting backsliding in women's rights, understood intersectionally, is resistance for all. That is why anniversaries, like the one being marked by this *Special Issue*, are important. When we take time to reflect upon and celebrate past achievements, in all their

⁶³ Miss Toni Sender and High Commissioner Mr Gerrit Jan van Heuven Goedhart drew on their experiences of displacement to shape the emerging refugee regime. Tristan Harley, 'Refugee Participation Revisited: The Contributions of Refugees to Early International Refugee Law and Policy' (2021) 40 *Refugee Survey Quarterly* 58; Ruth Nattermann, 'Displacement as Lived Experience. Refugee Relief and Female Leadership in the Life and Work of Toni Sender (1888–1964)' (2025) 38 *Journal of Refugee Studies* 495.

⁶⁴ Terje Einarsen, 'Drafting History of the 1951 Convention and the 1967 Protocol' in Andreas Zimmermann, Terje Einarsen and Franziska M Herrmann (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (2nd edn, OUP 2024) paras 29-30, 60-63.

⁶⁵ Tristan Harley, Najeeba Wazefadost and Mohammad Baqir Bayani 'Advancing Refugee Participation 75 years after the 1951 Convention' in this *Special Issue*.

⁶⁶ Sally Engle Merry, 'Constructing a Global Law-Violence against Women and the Human Rights System' (2003) 28 *Law & Social Inquiry* 941; Ekaterina Yahyaoui Krivenko, 'The Role and Impact of Soft Law on the Emergence of the Prohibition of Violence against Women within the Context of the CEDAW' in Stéphanie Lagoutte, Thomas Gammeltoft-Hansen and John Cerone (eds), *Tracing the Roles of Soft Law in Human Rights* (OUP 2016).

⁶⁷ Heaven Crawley, 'Saving Brown Women from Brown Men? "Refugee Women," Gender and the Racialised Politics of Protection' (2022) 41 *Refugee Survey Quarterly* 355.

⁶⁸ Jessica Schultz and Jens Vedsted-Hansen, 'Article 8 ECHR and the "Temporary Turn" in European Asylum Policies' (2025) 32 *Maastricht Journal of European and Comparative Law* 250; Jessica Schultz and Nikolas Feith Tan, 'Cessation and the Temporary Turn in Asylum Law and Practice' in this *Special Issue*.

⁶⁹ Catherine Briddick, Cathryn Costello and Minos Mouzourakis, *Ensuring a Human Rights-Compliant End to Refugeehood through Integration, Naturalisation or Voluntary Repatriation* (Thematic Paper, Council of Europe, Division on Migration and Refugees, March 2026).

⁷⁰ Engaging with, for example, Istanbul Convention art 60 and Case C-585/16 *Serin Altheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* [2018] ECLI:EU:C:2018:584.

⁷¹ Scheppele (n 3).

⁷² *ibid* 256. One that also includes the rule of law, see Catherine Dauvergne, 'Sovereignty, Migration and the Rule of Law in Global Times' (2004) 67 *Modern Law Review* 588.

imperfect, partial, complexity, we remind ourselves that, flawed, inadequate, and incomplete as it will always be, progressive change remains possible.

Funding

None.

Conflict of interest

Catherine Briddick is a member of LJRL's Editorial Board but was not involved in the review or decision-making process for this paper.