



RESEARCH ARTICLE

Sequencing Refugee, Human Rights and Removal Constraints in Comparative Law: Non-Refoulement and National Security

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ABSTRACT

This article examines how States may pursue their national security and immigration control objectives within the parameters of the principle of non-refoulement. It identifies three legal layers that are often conflated in public debate: the 1951 Refugee Convention, notably Articles 1F and 33; human-rights obligations, notably Article 3 of the Convention against Torture (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR); and domestic rules on detention, removal, procedural fairness and judicial review. Recent developments have highlighted the significance of this distinction. The UK's Rwanda litigation highlights the legal significance of chain-refoulement risk; Australia's NZYQ litigation shows the constitutional limits of detention when removal is not reasonably foreseeable; India's 2025 deportation instructions and ongoing Rohingya litigation illustrate the challenges of applying refugee-law principles in a non-party system; and Pakistan's continuing Afghan returns demonstrate the importance of individualised risk assessment under CAT and the ICCPR even outside the Refugee Convention. The article concludes that security is a legitimate governmental objective, but one that does not displace separate and potentially absolute non-refoulement obligations. This contribution provides a structured comparative model, which can be used to determine at each step of a removal decision which legal rule is applicable, which factual finding is required and which remedial option is still available.

1. INTRODUCTION

1. Non-refoulement is not one rule in one legal instrument. What it contains depends on the source of the obligation, the status of the person facing removal, the nature of the feared harm and the domestic legal mechanism by which removal is challenged. The central problem for States is therefore not only whether national security may justify removal. The more precise question is what security-related rules can operate before, alongside or after a non-refoulement inquiry and what forms of protection remain applicable when the person is excluded from refugee status or when the State is not party to the 1951 Refugee Convention.

2. This distinction is important because Article 33(2) of the Refugee Convention is an exception to the Convention's non-refoulement rule, whereas Article 3 CAT provides a separate ban on return where substantial grounds indicate a risk of torture. Article 7 ICCPR, as interpreted by the Human Rights Committee, also requires non-refoulement where removal would expose a person to a real risk of irreparable harm. Nor are these provisions to be treated as interchangeable. The Refugee Convention has a defined security exception. There is no equivalent security exception in CAT. The ICCPR operates through the Covenant's protection of fundamental rights rather than through the Article 33 refugee-specific architecture (United Nations, 1951, 1966; Committee against Torture, 2017; Human Rights Committee, 2004).

3. The article considers: How should States balance non-refoulement with national security and immigration-control goals? It provides a sequencing model to that question. The model requires decision-makers to differentiate between (1) refugee status and exclusion, (2) the Article 33(2) exception where applicable, (3) independent human-rights risk, (4) the safety and practicality of third-country transfer or diplomatic assurances, and (5) detention and removal feasibility. This method does not eliminate hard cases. It stops a security label from fulfilling the role of multiple distinct legal findings.

4. The paper compares five jurisdictions. In the United Kingdom, Canada and Australia, Convention-party systems have emerged in which refugee law is situated alongside domestic human rights and immigration statutes. India and Pakistan are an important contrast because neither is a party to the 1951 Convention, both are parties to the ICCPR, and both have had significant refugee and irregular-migration problems. Pakistan is also a party to CAT, whereas India signed but did not ratify CAT. Thus, the comparison is used to test the dependence of the proposed sequence on Convention membership or whether significant parts of the sequence function independently through human-rights law, domestic constitutional law and customary international law (Office of the United Nations High Commissioner for Human Rights [OHCHR], n.d.).

5. This article contributes in three ways. First, it distinguishes the Convention exception from the absolute or near-absolute constraints on human rights that may apply after refugee status has been denied or withdrawn. Secondly, it treats chain refoulement, third-country arrangements and diplomatic assurances as questions of fact and procedure, not certainties of law. Third, it places detention in the same analytical sequence: a State cannot treat detention as a substitute for a removal destination when domestic constitutional law requires a real prospect of removal. The result is a comparative framework that can be applied to both ordinary removal cases and high security cases.

2. RESEARCH QUESTIONS, OBJECTIVES AND METHOD

6. The core research question is: How do States reconcile the principle of non-refoulement with their national-security and immigration-control objectives? There are three subsidiary questions: First, what is the difference in the way the Refugee Convention, CAT and ICCPR accommodate

security interests? Second, how do domestic courts and legislation in the five jurisdictions translate those international constraints into removal, detention and procedural rules? Third, what sequence of legal inquiry most effectively prevents security considerations from becoming a proxy for a destination-risk assessment?

7. These questions are directly addressed by the objectives. The first is to chart the international legal architecture. The second is to understand the specific domestic mechanisms through which security and removal are governed. The third is to contrast recent litigation and administrative practice. Fourth, to develop an orderly sequence for lawful decision-making rather than a general balancing formula.

8. The method is doctrinal and comparative. Primary materials are treaty texts, domestic statutes, constitutional provisions, appellate judgements, official government material and authoritative material of UN treaty bodies and UNHCR. Secondary materials have been used to identify scholarly disagreement and to situate the doctrinal analysis within the current literature on refugee law. The comparison is one of purpose rather than statistics: the jurisdictions were selected because they illustrate different relationships between Convention status, human rights protection, security powers, detention and third-country transfer.

9. The hierarchy of sources matters. Treaty text and binding domestic law are considered primary authorities. Holdings and legal tests are drawn from judicial decisions. UN treaty-body general comments and UNHCR guidance are considered interpretative materials, not legislation. Government statements and administrative guidance establish contemporary practice, but not legal validity. Pending litigation is identified as such, and is not cited as precedent.

10. The article does not purport to represent the five systems as representative of all common-law jurisdictions. It does not even make an empirical measurement of compliance. These figures are carried over from the original draft and are therefore conceptual illustrations, not scores of compliance. This qualification is important because the original numerical bars and line values have no disclosed coding methodology and should not be taken as quantitative evidence.

3. REVIEW OF LITERATURE AND RESEARCH GAP

11. Non-refoulement literature has evolved in a number of overlapping ways. One is the status and scope of non-refoulement in customary international law. Lambert's treatment of customary refugee law points out that non-refoulement is one of the refugee-law principles that has significant, but not necessarily unanimous, customary support, which is particularly significant for States outside the Convention regime (Lambert, 2021). Recent work on torture and ill-treatment also considers human-rights non-refoulement as a broader protection against irreparable harm, whilst distinguishing the specific scope of CAT Article 3 (Casey-Maslen, 2025).

12. A second category concerns constructive or disguised refoulement. Rodenhäuser shows that the legality of returns cannot be evaluated by formal terminology such as voluntary return, transfer or indirect removal. International law is increasingly challenged by State measures that induce or camouflage return (Rodenhäuser, 2024). This literature is of direct relevance to third-country arrangements and the article's focus on factual destination-risk.

13. The third line is about exclusion and crime. Recent scholarship suggests there is some overlap between Article 1F and domestic security inadmissibility rules, but they are not identical. Grey examines the moral and doctrinal justification of Article 1F, and Doğar's examination of Canada suggests that the domestic inadmissibility system may, in practice, supplant the exclusion architecture of the Convention (Doğar, 2024; Grey, 2024). Debates of this kind expose a flaw in simple comparisons that put 'security exception' in one column and fail to distinguish exclusion, inadmissibility, Article 33(2) and post-status removal.

14. A fourth line relates to the extension of non-refoulement beyond classic persecution. Recent scholarship examines the possible relationship between non-refoulement and economic, social and cultural rights, suggesting that the principle may cover a wider range of severe and irreparable harms than the traditional refugee-law language suggests (Vallandro do Valle, 2024). This is significant for the comparison because protection under CAT and ICCPR can be available even if Article 33 is unavailable.

15. The components are therefore already found in the existing literature, but seldom structured according to the practical order of a removal decision across Convention and non-Convention systems. This contribution is narrower than a claim that the article finds non-refoulement or a new rule of security. This contribution is an integrated comparative framework between status, exception, destination-risk, transfer mechanisms and detention. This is the research gap the article can plausibly claim.

4. INTERNATIONAL LEGAL ARCHITECTURE

4.1 Article 33 and the exception to the Convention

16. Article 33(1) prohibits expulsion or return of a refugee to territories where his life or freedom would be threatened on account of a Convention reason. A refugee shall cease to enjoy the protection of Article 33(1) if there are reasonable grounds for regarding the person as a danger to the security of the country of refuge, or if the person, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of the country of refuge. Thus, the provision is not a general deportation power nor a general national-security exception. The operation of the system is dependent on refugee status and the specific statutory conditions set out in Article 33(2) (United Nations, 1951).

17. Article 1F has a different purpose. It precludes a person from the Convention refugee regime where there are serious reasons for considering that the person has committed one of the specified crimes. Thus, Article 1F is more a matter of status or exclusion; Article 33(2) is an exception to the protection otherwise granted a recognised refugee. Domestic systems may mix exclusion and security inadmissibility in ways that blur the distinction, but the international provisions should not be conflated. The UNHCR guidance stresses the importance of applying the exclusion clauses carefully and on an individual basis (UNHCR, 2003).

18. The original draft correctly identified the danger of making Article 1F(c) a residual terrorism clause, but the formulation was too categorical. The acts contrary to the purposes and principles of the United Nations must be subjected to a careful analysis of the conduct, of the international framework applicable to it, and of the threshold of serious reasons. Membership, association or expression cannot be automatically equated to an offence under Article 1F(c). Therefore, the comparison has to separate the evidence of conduct from administrative characterisation.

4.2 ICCPR Article 7 and CAT Article 3

19. Under Article 3 of the CAT, no State Party may expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee against Torture considers that the assessment is individual and based on the evidence and warns that diplomatic assurances cannot be used as a loophole to undermine Article 3 (Committee against Torture, 2017). The prohibition is not subject to an exception of the national security type under Article 33(2).

20. ICCPR Article 7 reads: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee has interpreted the Covenant to limit removal where substantial grounds have been established that there is a real risk of irreparable

harm contemplated by Articles 6 and 7. The non-refoulement obligation is therefore derived from the substantive rights of the Covenant, and is not textually identical to Article 3 of the CAT (Human Rights Committee, 2004). The shorthand in the original draft that 'ICCPR Article 7 does not permit return' is defensible only if expressed as the Committee's interpretation of State obligations, not as if Article 7 itself has an express deportation clause.

21. That distinction matters too for India and Pakistan. Pakistan ratified CAT and ICCPR in 2010. India is a signatory of the ICCPR but has not ratified CAT. India's ICCPR obligations under Article 7 do not disappear in the absence of CAT membership, nor does this resolve the distinct issue of customary international law (OHCHR, n.d.).

4.3 International Customary Law

22. The article should not take as settled the notion of non-refoulement as it has been traditionally understood. Scholarship provides strong support for the customary rule of non-refoulement, but the scope of the customary rule, especially beyond torture and other basic rights, is still contested (Lambert, 2021). A more cautious formulation is that there is widespread support for non-refoulement to torture and other serious irreparable harm in several human-rights sources, and that this is commonly considered to be binding irrespective of refugee-Convention membership. The exact customary scope of the refugee-specific Article 33(1) rule and its relationship with Article 33(2) should not be taken for granted.

23. The distinction is especially important for Pakistan and India. A non-party cannot be said simply to have 'no non-refoulement law'. It may be subject to treaty obligations under the ICCPR, CAT as appropriate, constitutional protections, domestic judicial doctrines and customary obligations. The legal basis must be established and not assumed by the mere fact of Convention membership.

5. SECURITY, EXCLUSION, ASSURANCES AND CHAIN REFOULEMENT

5.1 Individual Risk and Destination Danger

24. Security cases involve two distinct risk assessments: the risk the individual would pose to the receiving State or community, and the risk of prohibited harm that the receiving State or onwards transfer would pose to the individual. The first does not answer the second one. This is the point of the analytical argument that the sequence proposed in the original draft was making.

25. The language of Article 33(2) in terms of 'reasonable grounds' and 'danger' requires an individualised finding. The second prong also requires a final conviction for a particularly serious crime and a present danger to the community. Therefore, a criminal conviction is not self-executing. The seriousness of the offence, the conviction, the ongoing danger and the factual context must be considered. These requirements must be distinguished from the broader domestic notion of character or national interest.

5.2 Diplomatic assurances

26. Diplomatic assurances can be relevant, but they are no free-standing cure for risk. In *Othman (Abu Qatada) v United Kingdom* the European Court of Human Rights considered the specificity, institutional support and monitoring arrangements of detailed assurances as to treatment in Jordan. The case suggests that an assurance must be assessed in context, and does not demonstrate that an assurance automatically negates Article 3 risk (European Court of Human Rights, 2012). The Committee against Torture also cautions that assurances should not become a loophole around Article 3 (Committee against Torture, 2017).

27. The original draft was best when it stressed that assurances must be specific, credible and monitorable. However, it should guard against suggesting that prior breach is always decisive, or that an MOU is necessarily 'theatre'. They are statements of advocacy, not legal tests. A journal article should identify the criteria used by the relevant court or treaty body and then determine whether the arrangement satisfies those criteria.

5.3 Indirect and chain refoulement

28. Chain refoulement is the basis for third-country removal. In the United Kingdom's Rwanda litigation, the Supreme Court found that there were substantial grounds for believing that persons transferred to Rwanda would be at a real risk of onwards refoulement because of deficiencies in Rwanda's asylum system. The Court's reasoning explains why the sending State must take into account not only conditions in the immediate destination but also the destination's capacity to process protection claims without subjecting individuals to onwards removal to persecution or ill-treatment (*R (on the application of AAA and others) v Secretary of State for the Home Department*, 2023).

29. Rodenhäuser's analysis of constructive or disguised refoulement also reinforces a broader point: the legality of a return cannot be determined by the mere formal label attached to the transfer. Voluntary-return programs, incentives, third-country transfers and border practices must be considered in the light of the realities in which the person is returned (Rodenhäuser, 2024).

6. PLANNING FOR DETENTION AND REMOVAL

30. Detention and refoulement should be studied together, but not conflated. Domestic law may permit detention for a legitimate immigration purpose and in furtherance of removal. The constitutional limit is where there is no real prospect of removal becoming practicable in the reasonably foreseeable future (see: *NZYQ* in the High Court of Australia). The Court did not find that character cancellation was invalid, but rather that detention could not be indefinite where the constitutional justification for detention had failed (*NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*, 2023).

31. Australia's post-*NZYQ* response further demonstrates why third-country transfer cannot simply be the legal solution to detention. The government put in place arrangements with Nauru for long-term visas for members of the *NZYQ* cohort. As of June 2026, 12 people had been transferred to Nauru under the arrangement, with a larger group still subject to the arrangement. The existence of a destination may impact on the detention analysis but does not remove the need to consider whether a transfer was legal and the practical conditions of transfer, including any relevant non-refoulement obligations. So the arrangement belongs in the article as a live test of the sequencing model, not as evidence that Australia has solved the underlying legal problem.

32. The statement in the original draft that 'detention is not a substitute for a removal plan' is analytically useful but should not be stated in those words as a universal international-law rule. But the exact threshold for detention is a question for the domestic constitutional or statutory regime. The comparative proposition is narrower, however, in that, where domestic law requires detention to be linked to a practicable removal purpose, the State must demonstrate that link.

7. COMPARATIVE JURISDICTIONS

7.1 UK

33. The UK is a good case study in the interaction of refugee law, the European Convention on Human Rights, domestic immigration law and political attempts to control third-country removal. In *AAA* the Supreme Court found that it was not safe for Rwanda because there were serious reasons to believe that there was a real risk of refoulement for asylum seekers. The subsequent Safety of Rwanda (Asylum and Immigration) Act 2024 provided that courts and tribunals must treat Rwanda as safe for the purposes of the statutory provisions. The 2024 Act was then repealed by the Border Security, Asylum and Immigration Act 2025. The UK formally notified Rwanda of termination of the Asylum Partnership Agreement on 16 December 2025, and termination took effect on 16 March 2026 under Article 23(5) of the Agreement (*R (AAA), 2023*; Border Security, Asylum and Immigration Act 2025; Asylum Partnership Agreement, 2023/2024).

34. The doctrinal lesson has to be carefully stated. Parliament might alter the domestic legal framework, but could not make the underlying factual risk disappear for the purposes of the UK's ongoing international and human rights obligations. The importance of the Supreme Court decision was therefore not that it banned third-country processing in general, but that it mandated an evaluation of the destination system on the facts.

35. *Othman and Chahal*: earlier human-rights framework. *Chahal* establishes that the national security does not override the Article 3 prohibition on torture or inhuman or degrading treatment. *Othman* shows that diplomatic assurances can be taken into account where the arrangements of the receiving-State are sufficiently specific and reliable, but the assessment is still fact-sensitive (*Chahal v United Kingdom, 1996*; *Othman (Abu Qatada) v United Kingdom, 2012*).

36. The original draft's discussion of the Human Rights Act should be sharpened. The Human Rights Act provides a domestic avenue to Convention rights but the ICCPR is not merely a 'ICCPR-equivalent' domestic source. The relevant domestic rights in the Rwanda litigation were article 3 ECHR and the Human Rights Act.

7.2 Canada

37. Canada is an especially useful case study, as its Immigration and Refugee Protection Act contains both an express non-refoulement provision and security-related exceptions and a pre-removal risk-assessment mechanism. • Section 115(1) provides protection against removal to persecution, torture or cruel and unusual treatment or punishment; and • Section 115(2) provides statutory exceptions for certain serious criminality and security-related inadmissibility. However, the current Act was amended as recently as March 2026 and a journal article should cite the current consolidation rather than rely on an older text (Immigration and Refugee Protection Act, R.S.C. 2001, c. 27, s. 115).

38. *Suresh* is still important because the Supreme Court held that, in the absence of extraordinary circumstances, deportation to torture would usually violate the principles of fundamental justice under section 7 of the Canadian Charter. The ruling did not establish a blanket security exemption for torture protection. Therefore, the later Canadian jurisprudence and statutory framework should be read together. The reading of *Suresh* as a simple 'sliver' allowing deportation to torture should be avoided (*Suresh v Canada (Minister of Citizenship and Immigration), 2002*).

39. *Charkaoui* and *Harkat* also illustrate the importance of procedural safeguards in security certificate cases. Closed material procedures can protect sensitive intelligence, but do not of themselves determine that a destination is safe. It would be good to consider section 112 and section 115 together with the actual PRRA structure and in particular in relation to security-related

inadmissibility. To call section 112(3) in the original draft merely ‘the Canadian 33(2)’ is too loose, for the statutory scheme is not in all respects analogous to Article 33(2).

40. Recent scholarship complicates the comparison further. In practice, Doğar says, Canadian inadmissibility mechanisms can override Article 1F analysis. That debate should be included as it points to the fact that the domestic security architecture may work at a different stage than the exclusion clauses of the Convention (Doğar, 2024).

7.3 Australia

41. The legal position in Australia is governed by the Migration Act 1958, character cancellation under section 501, complementary protection, offshore processing arrangements and the constitutional detention rule established in *NZYQ*. The High Court held that detention could not continue where there was no real prospect of removal becoming practical in the reasonably foreseeable future (*NZYQ*, 2023).

42. The government’s post-*NZYQ* policy has established a long-term visa arrangement with Nauru for those cohort members impacted by the decision. The 2025 arrangement and size of the cohort are recorded in official parliamentary documents, while later reports record transfers to Nauru. The article should differentiate the original *NZYQ* holding from later legislative and administrative responses. The latter do not constitute precedents on non-refoulement in themselves.

43. The original draft also referred to January 2026 amendments to expand the character test following the Bondi attack. The current Migration Act has provisions dealing with spreading hatred and extremism and other grounds. Without any specific legislative source, the article should not attribute the amendments to one incident. Australian character law has moved beyond criminality based on conviction and can operate on ministerial suspicion in defined circumstances. That is the safer doctrinal point. The expansion raises questions regarding the interaction of domestic character powers and the separate Convention and complementary-protection enquiries.

44. Australia thus serves as a good example of the central sequence of the article: character cancellation may answer whether a person may remain in Australia, it does not answer whether the destination is safe, whether removal is practicable, or whether transfer would violate non-refoulement.

7.4 India

45. India is not a party to the 1951 Refugee Convention or the CAT, but it is a party to the ICCPR. The right to life and personal liberty under Article 21 of the Constitution has figured prominently in the litigation involving foreign nationals. The Rohingya litigation in the Supreme Court shows that the domestic legal position is not absent but unsettled. *Mohammad Salimullah v. Union of India*, pending, in which the Court has considered whether Rohingya claimants have enforceable protection against removal under Articles 14 and 21.

46. In May 2025, the Ministry of Home Affairs issued revised instructions on deportation of ‘illegally staying Bangladeshis / Rohingyas (Myanmar nationals)’. The instructions asked states and Union territories to set up district-level mechanisms for detection and identification and establish holding centres. The compatibility of these instructions with constitutional and international obligations is a question for litigation and legal analysis, not settled judicial conclusion.

47. The statement in the original draft that ‘later 2025 orders show a Court that will not easily convert UNHCR cards into a domestic refugee status’ needs to be made precise. The Supreme Court did continue to treat the Rohingya litigation as a live legal issue in 2025, but the cases should

be cited separately. The February 2025 education petition was denied on a narrow procedural ground and is not to be cited as a final determination on deportation. The main deportation litigation was still pending.

48. India's position thus supports a narrower proposition: Convention non-membership does not eliminate constitutional and ICCPR questions, but the precise domestic content of nonrefoulement cannot simply be imported from Article 33 of the Refugee Convention.

7.5 Pakistan

49. Pakistan is not a party to the 1951 Refugee Convention, but it ratified CAT and ICCPR in 2010. This is why the treatment of Pakistan in the original draft is especially important. Hence, Pakistan's legal obligations in terms of non-refoulement cannot be described as merely customary or political. Article 3 of the CAT is a treaty obligation. ICCPR Article 7 is an additional human-rights basis for protection against removal to serious ill-treatment. Recent scholarship on Pakistan's judicial engagement with international refugee law also points to meaningful domestic use of non-refoulement principles despite the absence of Convention membership (Azizi, 2025).

50. Pakistan's Afghan returns should be looked at as a contemporary factual case study and not as judicial pronouncements. Data from UNHCR and IOM show widespread returns following the Illegal Foreigners' Repatriation Plan announced in 2023. In September 2026, UN human rights experts called on Pakistan to establish a transparent and accessible process to identify at-risk Afghans before their removal. According to the experts, some 127,344 Afghans returned to Afghanistan from 10 July to 27 August 2026, of whom at least 14,186 were reportedly forcibly removed. These figures should be derived from the relevant UN materials and should not be presented as a court finding.

51. The legal analysis should also correct the suggestion in the original draft that since Pakistan is not a party, only 'customary' protection is available. Treaty-based constraints: Pakistan's obligations under the CAT and ICCPR. The real question is domestic implementation, and the extent to which courts provide effective remedies. This is a more robust and more specific research problem than the mere observation that Pakistan is outside the refugee system.

52. The Pakistani case thus shows the practical importance of sequencing: identifying security concerns may be legitimate, but it cannot replace an individualised assessment of torture or other serious human rights risk prior to removal.

8. COMPARATIVE DISCUSSION: THE SEQUENCE MODEL

53. Comparative evidence is compatible with a six-stage sequence. Stage one establishes the person's legal status and the factual basis for removal. The second stage is to determine whether exclusion or inadmissibility rules apply. Stage three considers whether removal is possible, even if Article 33(2) applies, in spite of Convention protection. Stage four independently assesses constraints presented by CAT, ICCPR and other human rights non-refoulement obligations. Stage five asks whether the identified risk is in fact removed by any third-country transfer or diplomatic assurance. Stage six is detention and the practical availability of removal, or some alternative lawful disposition.

54. This sequence is preferred to a generic "balancing" model, because the legal instruments do not all use proportionality in the same way. There is no national security exception in CAT Article 3. Article 33(2), meanwhile, expressly adds criteria of security and public danger. The legal question therefore often is one of classification and sequencing before it is one of proportionality.

55. The model also elucidates the relationship between security and immigration control. States have extensive powers to regulate entry, to decide who is an immigrant, to prosecute offences, to exclude people on the basis of statute and to remove people who have no right to stay. Non-refoulement does not give rise to a general right of residence in the State of arrival. It limits the places and means by which a person may be returned.

56. Third country arrangements need a second layer of scrutiny. The destination must be legally and practically accessible; the person's claim to protection must be capable of examination; further removal must not expose the person to prohibited harm; and any assurances must be sufficiently specific and reliable. A formal agreement can assist these enquiries but cannot substitute for them.

57. The detention analysis is equally strict. Domestic lawfulness of detention depends on the relevant constitutional and statutory regime. The take-away from NZYQ is not that all immigration detention is unlawful. It is that a State which has a law that makes detention conditional on removal cannot make detention a substitute for an indefinite destination.

58. The figures derived from the original draft are to be read accordingly. Figure 1 purports to show the tightness of the rules for the five systems, but the numerical values are unsupported by a disclosed coding methodology. Figure 2 assigns numbers to stages in a 'lawful sequence', but these are not measured values, they are illustrative. They should be kept in the manuscript as conceptual schemes only, with explicit captions stating that no claim of empirical compliance score is made.

9. FINDINGS AND IMPLICATIONS FOR REFORM

59. The first point is that the principles of security and non-refoulement operate on different legal planes. A security finding is a statement of behaviour or risk to the individual. Non-refoulement is about what happens when you are expelled. One finding cannot replace the other.

60. The second finding is that human-rights protection and refugee-law exceptions should remain distinct. Article 33(2) is an exception to the Convention. Separate restrictions are Article 3 of the CAT and Article 7 of the ICCPR. A person might no longer be protected by the Convention but still be protected from torture or other irreparable harm.

61. Third, third-country arrangements supplant rather than eliminate the legal inquiry. Rwanda demonstrates that a State must take into account the reception system and the risk of onwards refoulement. The Nauru arrangements of Australia show how a destination created to solve a detention problem raises a new set of questions about the legality and conditions of transfer.

62. The fourth finding is that non-party States are not legally unregulated spaces. India and Pakistan reflect diverse combinations of constitutional law, ICCPR obligations, CAT obligations in Pakistan, domestic immigration statutes, and judicial review. Not being a member of the Refugee Convention changes the legal route to protection, but does not eliminate all routes.

63. Fifth, it is procedural. Individualised assessment is not just an administrative ideal. This is how abstract non-refoulement rules become the subject of legal scrutiny. UN treaty-body guidance repeatedly stresses individual assessment, access to remedy and suspensive review in appropriate circumstances (Committee against Torture, 2017; Human Rights Committee, 2004).

64. Reform should thus be focused on institutional design, not a new universal balancing formula. Security agencies should keep a record of the evidence supporting the danger finding. The immigration decision-makers should separately record evidence of destination-risk. Third country arrangements should have meaningful monitoring and access provisions. Detention law should clarify the relationship between detention and actual removal. Even if there is no system for

determining refugee status, non-party States should establish accessible procedures for identifying persons at risk.

10. SUMMARY

65. Non-refoulement and national security can be reconciled, but not by a single balancing formula. The separation of the questions that the law asks is the key to the legal reconciliation. The first step for a State is to identify the status of the person and the factual basis for removal. Where the Refugee Convention applies, the State must distinguish between Article 1F exclusion and Article 33(2). The State must then conduct an independent assessment under CAT, ICCPR and any applicable domestic human-rights rules. The State must test the factual safety of any third-country arrangement or diplomatic assurance. The State must ensure that detention remains legally linked to a practicable removal objective.

66. This order is justified by the comparative analysis. The UK's Rwanda litigation shows that statutory deeming cannot replace factual assessment of destination-risk. Canada shows that domestic security inadmissibility and Convention protection function through a complex statutory framework with Suresh limiting the use of security as a basis for removal to torture. NZYQ shows that Australia cannot disentangle the feasibility of detention from the feasibility of removal. India exemplifies the neglected domestic consequences of non-party status in the case of Rohingya litigation and 2025 deportation orders. Pakistan shows that CAT and ICCPR obligations remain legally relevant to mass-return policies, despite non-membership in the Refugee Convention.

67. The article thus makes a contribution both doctrinal and methodological. The legality of a security-related removal should not be presented as a binary choice between 'security' and 'refugee rights'. The more precise analysis is asking what legal rule applies at what stage, what factual finding that rule requires, and what remedy there is if the removal cannot lawfully proceed. This approach offers a more accurate picture of both State authority and individual protection.

68. Future work should apply the sequencing model to other jurisdictions and other empirical administrative records. Such work might involve looking into the actual extent to which individual risk assessments are carried out, how often diplomatic assurances are accepted, how third-country transfers are monitored and what happens to people who are legally irremovable but still subject to security restrictions. Those questions would take the literature from doctrinal mapping to institutional evaluation without inflating what the present comparative study can prove.

TABLES AND FIGURES CARRIED FORWARD FROM ORIGINAL DRAFT

As requested, the following tables and figure images are retained from the original manuscript. Tables are reproduced in full, with no rows or columns deleted. The figure images are stored as original image objects and their numerical content is considered conceptual rather than empirical in the revised text, since no coding method was described in the original draft.

Table 1.

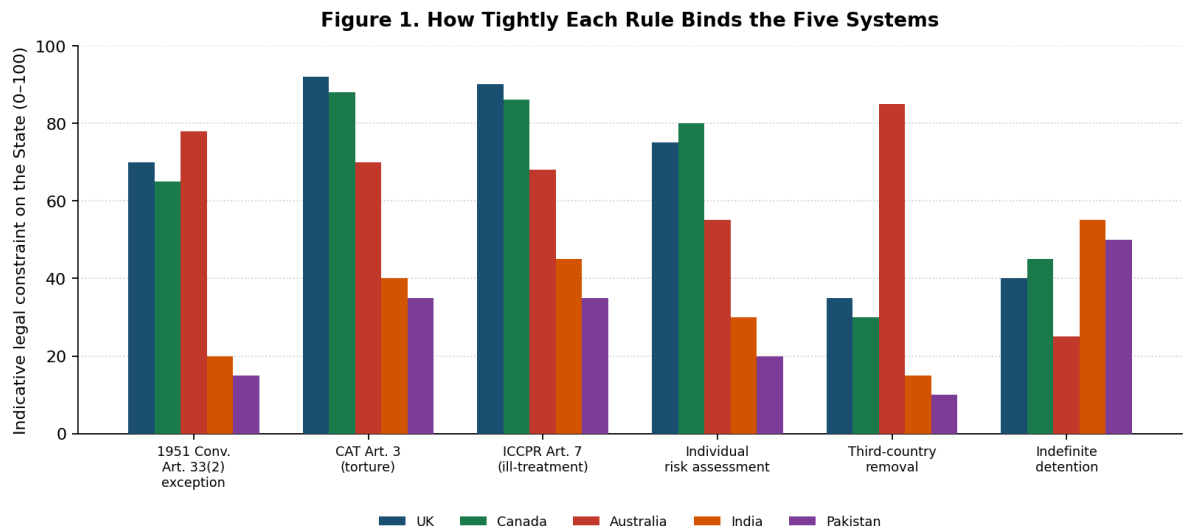
Feature	United Kingdom	Canada	Australia	India
1951 Convention party	Yes	Yes	Yes	No
CAT / ICCPR torture bar	Yes; Human Rights Act channel	Yes; Charter + IRPA	Yes as treaty; weaker domestic channel	ICCPR party; CAT not ratified
Security exception used	Art. 33(2) analogue; SIAC; exclusion	IRPA 115 / Suresh balance; certificates	s 501 character; national interest	Foreigners Act + UAPA; no 33(2) structure
Third-country transfer	Rwanda scheme litigated, then terminated 2026	Safe Third Country with US; limited	Offshore / Nauru including NZYQ cohort	Not a structured third-country system

Feature	United Kingdom	Canada	Australia	India
Detention limit	Harder after common-law and ECHR lines	Charter limits; certificates supervised	NZYQ ended indefinite detention where removal not practicable	Holding centres under 2025 MHA guidelines

Table 2.

Security objective	What international law allows	What it does not allow
Exclude a persecutor / terrorist	Art. 1F exclusion; Art. 33(2) if tests met	Return to torture to make a point
Deport a dangerous criminal	33(2) after conviction and individual finding	Collective expulsion or chain refoulement
Deter irregular arrival	Processing, returns to safe States of embarkation	Legislating a country “safe” against the facts
Hold pending removal	Short, reviewable detention for a real removal	Indefinite warehouse when removal is not practicable
Use secret intelligence	Closed material with a special advocate / court	A certificate that is its own proof of risk

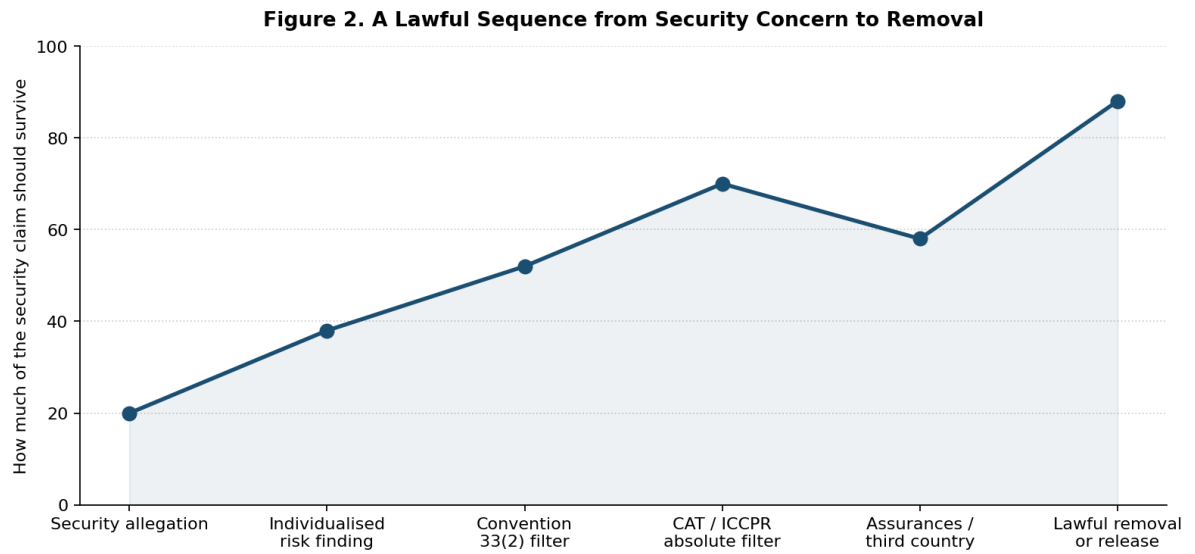
Figure 1. How tightly each rule binds the five systems.



Note. Heuristic. Australia’s third-country bar is high as a policy tool, low as a protection guarantee.

Note. Retained original figure; conceptual illustration only, not an empirical compliance score.

Figure 2. A lawful sequence from security concern to removal.



Note. A State that jumps from allegation to removal skips the filters that make non-refoulement usable.

Note. Retained original figure; conceptual illustration only, not a quantitative scale.

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◆ Ethical Statement

Ethical approval was not required because this study is based exclusively on publicly available legal documents, judicial decisions, treaties and published literature, and did not involve human participants, animals or confidential data.

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