Refugee Status Determination for Humanitarian Military Objectors

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To my loving parents

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1. Introduction

The topic of this thesis is refugee status determination for humanitarian military objectors as regulated by the Refugee Convention. The perspective is international refugee law (IRL),[1] which is based on international legal methodology and rule of law. To achieve a result in the individual case in accordance with the Refugee Convention and the rule of law, both the substantive law and the procedural safeguards must be correctly interpreted and applied.

1.1. Conscientious Objection as a Humanitarian Act

In year 295, Maximilianus was called to serve in the Roman army, and persistently told the Proconsul in Numidia that because of his Christian religious convictions he could not serve as a soldier. He was executed, and in the end, canonized for his martyrdom.[2]

> Conscientious objection to military service is defined as an objection to such service which: *"derives from principles and reasons of conscience including profound convictions arising from religious, moral, ethical, humanitarian or similar motives".*[3]

In 2011, the European Court of Human Rights (ECtHR) found the conviction of a conscientious objector to be a violation of the European Human Rights Convention (ECHR) art. 9 for the first time, in *Bayatyan v. Armenia*. This landmark case will be part of our discussion later on. In other words, the act of conscientious objection to military service has a long but also important recent legal history, often closely tied to religion and objecting to any and all use of force. Although neither of the Conventions protecting the right to freedom of thought, conscience and religion *explicitly* mentions the right to conscientious objection to military service or similar kinds of participation in potential violent conduct, in time this has been understood to be a derivative right to art. 18 ICCPR[4] and art. 9 ECHR.[5] While there are many different grounds for objecting to military service, this thesis will focus on the case of military objectors who object because they do not wish to risk involvement in violations of international humanitarian law (IHL). One distinguishing feature of such cases is that the

[1] As regulated by the Refugee Convention with its additional protocols and other relevant sources. For full-length references on all sources, see bibliography.
[2] Brock 1972: 13, referenced in UNHCR: "*Conscientious Objection to Military Service"* (2012): 2.
[3] UN Commission on Human Rights, Resolution 1998/77.
[4] UNHCR, "*Conscientious Objection to Military Service*" (2012): 7. Codified in General Comment No. 22, paragraph 11.
[5] *Bayatyan v. Armenia*.

applicants are *selective* objectors, not objecting to all war, but to certain actions or reasons of war.

Determining a refugee as such is always prone to causing diplomatic issues between the host state and the state from where the refugee is fleeing, but the determination of refugee status for military objectors is especially sensitive. When the moral or conscientious standard that forms the reason for the objection, is no longer tied to an organised religion,[6] or absolute,[7] it might be perceived as having less to do with the individual's personal lifestyle, and more to do with the State's political and military actions. It is no longer regarded solely as a personal humanitarian matter, but a matter with potential international consequences. Granting humanitarian objectors refugee status might be perceived as endorsing the implied criticism against the home State in the particularly sensitive area of national security, causing the determination to be imbued with political meaning and considerations.[8] It may also be viewed as affecting the opposing state's military capability.

The relevance of the refugee status for humanitarian military objectors only becomes fully apparent in light of the larger international legal context. In the aftermath of the second world war, a new era was founded in international law, with cooperation at the centre, principles of international customary law, human rights and humanitarian law. The first Nürnberg principle introduced individual accountability for combatants despite having acted under orders: *"Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment".*[9]

Despite prohibitions on attacks against civilians in the Geneva Conventions,[10] a large part of people forcefully displaced by war may not be determined as "refugees",[11] because the conditions of "*well-founded fear of persecution*" in art. 1(A)(2) of the Refugee Convention requires targeting of an applicant in a way that is not automatically achieved when fleeing from indiscriminate attacks against civilians. One category of targeting which does qualify for

[6] For a more in-depth analysis of whether such objection is political or religious, see chapter 5.2.
[7] Selective objection is discussed in chapter 5.2.
[8] Such as it was between Sweden and the U.S. after American deserters were given humanitarian asylum in Sweden during the Vietnam War. Çınar 2020: 17; One could argue this is particularly prevalent in cases where the host state and the state of origin for the applicant are allies. Such is the case in *Shepherd v. Germany*, for which the outcome is not yet conclusive in German courts, and for *Hinzman and Hughey v. Canada* (full references in bibliography).
[9] Nürnberg Principles.
[10] Geneva Conventions I, II, III and IV.
[11] Cantor and Durieux 2014: 5; Hathaway, "Reconceiving Refugee Law as Human Rights Protection" 1991:120.

refugee status is sanctions against a person refusing to commit such attacks.[12] Such sanctions are not only a violation of the human right to conscientious objection, but may contribute to the further violation of IHL causing a threat to civilians and their human rights. Given their timing and their purpose, it is only natural to see the accountability of combatants as intrinsically connected to IRL. Any accountability of combatants will be illusory if there are no real alternatives to engage in illegal warfare. Reliable access to refugee status for humanitarian objectors who are not recognised by their country of origin is thereby linked to reducing the frequency and intensity of deliberate attacks against civilians and upholding the laws of armed conflict.

The political sensitivity of these cases may cause an obstruction to the rule of law in the determination of refugee status for the humanitarian objector. The system might be vulnerable to political pressure and foreign policy considerations in these cases, in addition to the more general political pressure on asylum systems to accept less applicants, which from time to time may increase.[13] For the individual applicant to be treated in accordance with the Refugee Convention and to avoid political considerations from the host State in deciding the outcome, it is therefore all the more important that the legal obligations of the parties are correctly interpreted and applied.

1.2. Focus and Structure

The focus of this thesis is the substantive and procedural issues relevant for the determination of refugee status for humanitarian military objectors. It is well-established that military deserters objecting to violating international rules of armed conflict who flee their home country to avoid being forced to perform such acts or punished for refusing them, are under certain circumstances refugees according to the Refugee Convention.[14] In this often highly-politicised area of the law, there are however a variety of substantial and procedural obstacles to having this status recognized. The issues in focus are those, both substantive and procedural, which potentially limit the access to refugee status in such cases. The question is

[12] UN Declaration on the Right and Responsibility of Individuals, art. 10: "*No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so*".
[13] Çınar, 2020: 17-18.
[14] UNHCR, Handbook paragraph 171; Einarsen 2000: 601; Çınar 2020: 18; Kuzas, 1991: 478; Zimmermann and Mahler 2011: 432.

whether these obstacles are in accordance with the Refugee Convention when interpreted within the legal methodology of international law.

The relevant topics discussed to answer this question includes discrimination of rank, incorporation of IRL in domestic legal systems, minimum requirements for the role of the applicant and the decision-maker in the determination process, and standards for evidence gathering and evidence assessment. Part of the discussion will have general application in refugee status determinations, for example relating to the role of the decision-maker and the applicant, and the general standards for evidence assessment. These topics are included because they are crucial for the outcome of cases for humanitarian military objectors as well as their wider impact. To delimit the scope of this thesis, the issues analysed are the ones considered most fundamental and interconnected. Issues such as causality, cessation and exclusion in art. 1C-F, non-refoulment, state protection and what constitutes "persecution" in art. 1(A)(2), as well as regional agreements which may provide refugee protection will not be examined beyond the extent to which they provide context to the issues discussed.

Some might argue that parties to the Refugee Convention have full freedom in all questions which are not explicitly answered in the Convention. To a certain extent this rings true as the territorial integrity is a fundamental principle in the interpretation of treaties.[15] However, the explicit obligations to a certain result also has implications for the process necessary to attain it. To then conclude that the lack of explicit mention of safeguards equals no such obligations for the State is not possible while adhering to the obligations of the Convention. As this paper will show,[16] if the parties are to provide an effective protection, some safeguards are *implied* in the very wording of the Convention itself when it is interpreted according to the general rules of interpretation for treaties.[17]

Following the introduction, chapter 2 outlines the methodology of international law and the relevant rules of interpretation for the Refugee Convention. An initial presentation of art. 1(A)(2) of the Refugee Convention and its purpose is given in chapter 3, which will be applied as a tool of interpretation throughout the paper. Chapter 4 outlines two important topics for the upholding of rule of law for refugees in general when implementing the international legal instruments into domestic legal systems. Chapter 5 analyses key concepts

[15] Preamble of the Convention of the Vienna Convention on the Law of Treaties (VCLT).
[16] Chapter 6 in particular, but also chapters 4 and 5.
[17] See art. 31-33 VCLT.

from the wording of art. 1(A)(2), and the Handbook in substantive access to refugee status for humanitarian military objectors. Chapter 6 outlines evidentiary standards based on international sources, for both evidence-gathering and evidence assessment. The final chapter will present the main findings of this paper and their implications for the parties.

2. Methodology

Codified in art. 38 of the Statute of the International Court of Justice (ICJ), the primary sources of international law are international conventions, international custom, and general principles of law.[18] Judicial decisions and teachings are subsidiary means for the determination of rules of law.[19] The Vienna Convention on the Law of Treaties (VCLT) provides rules for how international treaties should be interpreted. Article 31 states:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

What forms the "context" within this meaning is the text, its preamble, annexes, as well as agreements and instruments agreed upon by the parties in connection to the interpretation of the treaty.[20, 21] The general rules of interpretation in VCLT acknowledges the primary and secondary sources from the Statute of the ICJ. The wording of the Convention in its ordinary meaning is the most important, and this wording must be read in light of its object and purpose. The purpose of the Refugee Convention will be expanded upon in chapter 3 and becomes an important tool in the interpretation of the Refugee Convention which is somewhat vague and general in its wording.

The practice of the parties could be a source of interpretation where the wording of the Convention in light of its object and purpose is unclear, according to art. 31(3)(b) VCLT. A level of unanimity in this practice is necessary for it to be useful as a tool of interpretation. So far, practice on the issues that are unclear from the reading of the Convention has been

[18] Statute of the International Court of Justice.
[19] Ibid art. 38 (b).
[20] According to art. 31(2) VCLT.
[21] Notice that the travaux préparatoire are not considered part of the "context", but is regulated as a supplementary means of interpretation in. art. 32 VCLT. For the interpretation of many treaties such as the Refugee Convention this is reasonable as an overwhelming number of its signatories were not part of the drafting, as pointed out by Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 153.

divergent, but there are some cases where such practice has been able to form universally accepted interpretations.[22] For the purpose of international law, EU directives, regulations and practice on the interpretation of the Refugee Convention is a relevant source of interpretation under (b), to the extent that it constitutes an expression of the practice in a large number of member states. As this thesis takes an international legal perspective, EU sources will only be treated as relevant within this meaning. To be used as an interpretative tool, practices must be within what can be read from the wording of the convention read in its context and in the light of its object and purpose. Practices of parties which are contradictory to this would simply be regarded as a widespread failure to uphold the obligations of the Convention, and in violation of *pacta sunt servanda*.[23]

Legal teachings are a supplementary means of interpretation according to the ICJ,[24] to be applied "*in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable*".[25] Research for this thesis therefore also includes legal writings on international law and asylum systems at large.[26]

The last relevant element together with the context according to art. 31(3)(c) VCLT is "*any relevant rules of international law applicable in the relations between the parties*". This paragraph connects the different legal systems of international law[27] and acknowledges the reality that the parties are party to more than one international obligation, and that for any of these obligations to be effective they must also relate to one another. The most relevant sources for the question of rule of law in refugee status determination for humanitarian military objectors are IHL including laws of armed conflict, and international human rights law, especially considering that some of these rules are *jus cogens*, making them applicable between all the parties to the Convention.[28]

[22] For example, the interpretation of "*well-founded fear of persecution*". The practice of the parties has established that objective risk of persecution leads to a refugee status, in chapter 5.1.1.
[23] Art. 26. VCLT
[24] Art. 38 (b) ICJ.
[25] Art. 32 VCLT.
[26] For more information on the legal writings used in this thesis, see the literature list. Digital research has been the main tool available, with some assistance from the library at the University of Bergen for physical copies of books not digitally available.
[27] Vries-Zou 2020: 99.
[28] Art. 53 VCLT.

Sources not mentioned by art. 38 ICJ are considered "*soft law*". Soft law are non-binding rules in international law, which may nonetheless have practical value where it might be difficult to have all parties agree to a binding framework. For questions relating to humanitarian military objectors, soft law publications of the UNHCR are particularly relevant. The UNHCR was established by the UN General Assembly in 1950, and: "*acting under the authority of the General Assembly, shall assume the function of providing international protection […] and of seeking permanent solutions for the problem of refugees*".[29] This is reiterated in art. 35 in the Refugee Convention on the cooperation of national authorities with the UNHCR. For the question of refugee status determination for humanitarian military objectors, the Handbook and Guidelines No. 10 are of central importance. Despite being subject of debate,[30] the text of the Handbook has largely remained unchanged since 1979, but the more recent Guideline publications complement the interpretations given by the Handbook in light of the international legal development.

3. The Refugee Convention and its Purpose

Refugee Convention art. 1(A)(2):

> *"[…] the term "refugee" shall apply to any person who: […] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; […]."*[31]

These few words define the legal basis for refugee status determination. The wording is broad, and somewhat vague concerning many questions regarding refugee status determinations. This is no unicorn in international law, as many international treaties are vaguely phrased to encompass the varying interests and legal traditions of their parties. However, as this paper will show, there are *implicit* answers to some of them in the very same wording. One initial element to note is how the wording is centered around the applicant's perspective.

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[29] UNHCR Statute Chapter 1(1).

[30] E.g. chapters 5.1.2, 5.1.3 and 6.2.3.

[31] 1967 Protocol to Refugee Convention paragraph 267: "*For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and ..." "and the words"... "a result of such events", in article 1 A (2) were omitted."*

When interpreting the Refugee Convention in light of its object and purpose, the purpose of protecting refugees is what is conceptually most readily available. Indeed, the protection of refugees and their access to fundamental rights and freedoms without discrimination are the very first words of the Convention.[32] This is no accident, and as this paper will show, this purpose is an impactful and useful tool for interpreting the Convention. The following part of the preamble conversely does not concern the wellbeing of refugees, but that of the international community. Perhaps not surprisingly considering its authors and timing, the second purpose of the Convention is to prevent the "problem of refugees" from becoming a cause of tension between States.[33] The preamble specifically mentions unduly heavy burdens on certain countries, and the need for cooperation both between States and with the UNHCR.

Despite intentional vagueness in its wording it is therefore not an imposition against the Convention to seek harmonization in refugee law between States, but rather a prerequisite for achieving both the purpose of protection and cooperation. In fact, the preamble states that the Convention is made *"to revise and consolidate previous international agreements relating to the status of refugees"*. The fact that art. 1 and 33 of the Refugee Convention cannot be derogated from by the parties implies that the harmonization of the refugee status determination and non-refoulment is especially central to the application of the Convention.[34] Many issues outlined in this paper are not addressed explicitly by the Refugee Convention, but answers are nonetheless implied by its wording or stand out as the only viable solution when the wording is interpreted in light of its purpose.

For the protection of rule of law in refugee status determination, especially in politically sensitive cases such as for humanitarian military objectors, it is imperative that harmonized interpretations for both the substantive content and procedural safeguards are developed, using international methodology.

[32] "*It is generally accepted that the preamble to a treaty may have some influence on its interpretation*". Alleweldt 2011: 227, 231.
[33] Ibid. 237.
[34] Refugee Convention art. 42.

4. Domestic Refugee Law

4.1. Non-Refoulment Turned Asylum

Fulfilling the criteria for refugee status in art. 1(A)(2) of the Refugee Convention, initiates the non-refoulment rule in art. 33. *"[R]ecognition of his refugee status does not therefore make him a refugee but declares him to be one"*.[35] The main question *prima facie* is thereby whether the state is prohibited from sending the applicant to their country of origin against their will. It is up to the state to answer this question. In implementing the Refugee Convention, most countries have constructed an asylum system encompassing more rights than that of non-refoulment, which is granted if a person can prove he or she is a refugee.

The focus is thereby shifted from non-refoulment to asylum by asking the applicant to prove their right to a domestic claim within national legislation, rather than applying the Refugee Convention and asking the State to present reasons why this person should be expelled against their will.[36] This has implications for how decision-makers approach their duty to gather and assess relevant evidence, which is shared with the applicant.[37] Implicit obligations in the Refugee Convention for decision-makers and applicants will be analysed in chapter 6.

4.2. Justiciability in Administrative Law

Domestic asylum systems tend to form part of administrative law. Constitutional balance between the roles of the judiciary and the executive institutions result in some states restricting the competence of courts in matters of administrative law.[38] Asylum applicants may experience restricted legal review of their case in those countries.

One might criticise this construction, and whether the refugee determination should in fact be part of the administrative law. Setting that debate aside, the question which determines the justiciability of administrative law in these jurisdictions, namely what is a question of fact versus a question of law[39] mirrors an underlying question when applying the Refugee

[35] Handbook paragraph 28.
[36] Popovic 2005: 35.
[37] Handbook paragraph 196.
[38] Examples include Denmark and the Netherlands, according to Vedsted-Hansen 2005: 57 and Spijkerboer 2005: 96.
[39] Vedsted-Hansen 2005: 7-65.

Convention; what is a question of policy versus what is a question of law. The two should not be conflated, but the answer to these questions have effect on each other.

In systems where questions of fact have limited justiciability, only questions of law are reviewed by courts to consider if mistakes were made. Parts of a refugee status determination which are not justiciable will not be reviewed using the Refugee Convention or any other legal instrument, making the instruments largely irrelevant. To be able to analyse international evidentiary standards, particularly standards regarding evidence and credibility, it is therefore necessary to examine what are questions of fact and questions of law in refugee status determinations.

Using Danish law and jurisprudence as an illustration, Vedsted-Hansen highlights general concepts relevant for the distinction between fact and law in relation to international sources and the refugee status determination.[40] Procedural rules are normally prone to judicial review, but there might be modifications for assessment of proof, such as in Denmark. Even so, *"some issues pertaining to the assessment of proof can be separated from the question of individual credibility and the weighing of often differing general background information. Such separable issues may be legally regulated in a manner that would seem to allow for full or even intensified review of the asylum authorities' compliance […].*"[41]

Vedsted-Hansen analyses a series of cases before the Danish Supreme Court, proposing that because the assessment of proof is connected to generally recognized standards, observance of these standards are justiciable.[42] These include the burden of proof, benefit of doubt, standard of proof,[43] and prognostic considerations inherent in the assessment of risk.[44] Judicial review of such standards is thereby not excluded even when the domestic legal system expressly gives the decision-makers discretion regarding the assessment of evidence.

When performing judicial review, the vagueness of the Convention cannot be read as a carte blanche for the parties, but must be interpreted in accordance with VCLT. Treating the observance of these standards as questions of law thereby opens the door for evidentiary standards from international sources, should they contain applicable standards or principles.

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[40] Section 56 (8) of the Danish Aliens Act: *"Decisions made by the Refugee Appeals Board are final."*
[41] Vedsted-Hansen 2005: 59.
[42] Ibid 61.
[43] Even though this point is especially prone to national differences, Ibid.
[44] Ibid.

5. Refugee Status for Humanitarian Military Objectors

5.1. Article 1(A)(2) of the Refugee Convention

The main question for a humanitarian military objector seeking refugee status according to art. 1(A)(2) of the Refugee Convention is whether there is a "*well-founded fear of being persecuted […] for reasons of political opinion*". The first part is the foundation for the refugee status determination. The second part forms the condition of causality to convention grounds. Because of the UNHCR's authority and the practice of the parties,[45] a third relevant issue is whether the military action is *"condemned by the international community as contrary to basic rules of human conduct"*.[46]

Deserting or evading the military draft is generally criminalised. Fear of punishment for deserting or draft-evasion is not *per se* considered a "*well-founded fear of being persecuted*" in art. 1(A)(2).[47] However, the Handbook makes an exception, where the military action is "*contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience*", which could be the "*sole ground for a claim to refugee status*".[48]

Refugee status determination differs from most civil or criminal cases in that part of the assessment is predictive in nature. Art. 1(A)(2) does not formulate refugee status as dependent on past persecution. Past events are nevertheless a good indicator of future events, and so past persecution creates a presumption for future persecution, but this is not antithetic.[49] The next three chapters will analyse the content of "*well-founded fear*", "*religion*", "*political opinion*",[50] and the Handbook statement on international condemnation.

5.1.1. What is a Well-Founded Fear: Trepidation or Risk Assessment

Debate on the applicant's role in asylum procedures is often centered around the meaning of the thrice appearing word "*fear*" in art. 1(A)(2). In its ordinary meaning, "*fear*" is defined by the dictionary as "*an unpleasant emotion or thought that you have when you are frightened or*

[45] Chapter 2.
[46] Handbook paragraph 171.
[47] Handbook, paragraph 167; Hathaway, *The Law of Refugee Status* 1991: 179.
[48] Handbook, paragraph 170.
[49] This interpretation of the Refugee Convention is supported by the Handbook in paragraph 45.
[50] Refugee Convention art. 1(A)(2).

worried by something dangerous, painful, or bad that is happening or might happen".[51] In other words, it contains both an element of emotion and of prediction.

As outlined in chapter 2, the practice of parties could be relevant for interpreting the Convention. Such practice shows that objective risk of persecution can lead to refugee status.[52] Beyond this, the understanding of "*well-founded fear*" is not agreed upon. There seem to be four dominant interpretations of "*fear*"; (i) trepidation evidenced by emotional expression,[53] (ii) objective risk evidenced by collected data about the country of origin, (iii) forward-looking expectation of risk evidenced by seeking protection,[54] or (iv) the emotive repercussion of risk in the individual to be proved by the refugee status determination.[55]

Interpreting "*fear*" as trepidation is within the "*ordinary meaning of the terms*" pursuant to VCLT.[56] Still, the challenges of both evidence gathering and evidence assessment understanding "fear" as trepidation are glaring, and conclusions based on these factors will in turn be lacking.[57] Thereby it must be rejected based on the "*context*" and "*its object and purpose*" according to VCLT art. 31. This interpretation was considered applicable for a long time, either by itself or as an additional requirement to an objective risk, but has been widely discredited.[58]

If the authors of the Convention wanted to convey a requirement of objective risk, the word "*risk*" or "*threat*" (as in art. 33 RC), could have been used.[59] Although the ordinary interpretation as such might involve elements of threat and risk, it is not solely that. This interpretation of "*fear*" is therefore too narrow within the ordinary meaning of the terms.

For the two last possible interpretations, there is not much difference in the definition of "*fear*" itself, but in how it may be substantiated. Both can reasonably be understood as referring to the *expectation of risk on the part of the applicant*. This understanding of "*fear*" fits within the ordinary meaning of the word as well as the context, object and purpose of the

[51] Cambridge University Press. (n.d.). Fear. In Cambridge Dictionary. Retrieved 12. October 2020 from: https://dictionary.cambridge.org/dictionary/english/fear.
[52] Einarsen 2000: 385, and referrals therein to Jean-Yves Carlier.
[53] Noll, Hathaway and Hicks in literature referenced below.
[54] Hathaway and Hicks 2005: 507.
[55] Noll 2005: 154.
[56] Art. 31 VCLT, chapter 2.
[57] Hathaway and Hicks 2005: 509; Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 152.
[58] Ibid; Carr, 2006: 538; Einarsen 2000: 386.
[59] Einarsen, Hathaway & Hicks and Noll in the abovementioned publications.

Convention. The nuances between the two interpretations lie in which procedural requirements are implied. This question will be further explored in chapter 6.1.

5.1.2. Conscience: Religion or Political Opinion

Disproportional punishment or discrimination in military service and the treatment of objectors is normally required for an objector to be a refugee.[60] However, where the performance of military service *"would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience"*, the *"necessity to perform military service may be the sole ground for a claim to refugee status"*.[61] The Handbook does not provide a precise interpretation of the threshold, but gives one example that should fall outside the scope ("*disagreement with his government regarding political justification for a particular military action*"), and one that should fall inside ("*where the type of military action is condemned by the international community as contrary to the basic rules of human conduct*").[62]

Reading paragraph 172 of the Handbook might indicate that military actions condemned by the international community is relevant *only* to political objection, which would mean that political objectors are held to a different standard from religious objectors. This raises questions about the essence of conscientious objection and the principle of non-discrimination.[63]

The act of objection can be identified as religious or political by the applicant, his home country, or the host State. In the Refugee Convention, religion and political opinion are equal alternatives.[64] Hence it should not matter if the objection is religious or political in nature for the refugee status determination. However, there are principles of sovereignty and the right of states to compel citizens to serve in their self-defence[65] which might justify restrictions where the objection is strictly a matter of "*disagreement with his government about political*

[60] Handbook paragraph 167.
[61] Handbook paragraph 170.
[62] Handbook paragraph 171.
[63] The preamble of the Refugee Convention identifies non-discrimination as a general principle.
[64] Grahl-Madsen 1966: 238, as referred in Bailliet, 2006: 346.
[65] Guidelines No. 10 paragraph 5-6.

justifications for a particular military action"[66] as opposed to a compromise on their inner life and conscience.

Humanitarian objection is often spoken of as a matter of political opinion without explicitly debating whether this is the correct categorization, or as a special case.[67] Goodwin-Gill and McAdam have argued that *"[r]efusal to bear arms, however motivated, reflects an essentially political opinion regarding the permissible limits of State authority; it is a political act"*.[68] The core of the human rights abuse which qualifies as persecution is *"to ask asylum seekers to make a choice between imprisonment and violating their conscience"*.[69]

Since *Bayatyan v. Armenia* in 2011, the ECtHR has found violations of the freedom of thought, conscience and religion in art. 9 ECHR on several occasions. The case law mainly concerns members of Jehovah's Witnesses, and philosophical pacifists. All cases that have found a violation so far have concerned so-called absolute objection to military service.[70] So far, there has not been a case about humanitarian objection, and so it remains to be seen how the ECtHR would categorize the objection and how it views this type of selective objection. However, the Court has stated that military objection as part of this freedom applies both to religious "*or other beliefs*". In *Papavasilakis v. Greece*, the Court also established that a person does not necessarily have to adhere to an actual religion or belong to a pacifist organisation in order to be recognised as a conscientious objector.[71] The Courts opinion is not an application of the Refugee Convention, but its opinions on the human rights aspect will influence states that are party to both Conventions.

Bailliet argues that adjudicators appear reluctant to discuss the human family, and that when a person is viewed only as an individual, his values are not considered his conscience, but rather political opinion, which may be misunderstood and rejected.[72] Hence adjudicators avoid discussing the differential treatment of non-religious values, a topic which could be

[66] Handbook paragraph 171.
[67] See e.g. Hathaway, *The Law of Refugee Status,* 1991; Zimmermann and Mahler, 2011: 430-433.
[68] Goodwin-Gill and Jane McAdam 2007: 87.
[69] Ibid. 114.
[70] Guide on Article 9 ECHR, paragraph 64. The only case on selective objection before this Court is *Enver Aydemir v. Turkey*, which was rejected and did not submit humanitarian objection.
[71] Ibid. paragraph 63.
[72] Bailliet 2006: 347.

controversial, particularly in host countries which promote secularism and non-discrimination of humanistic values in other areas of society.[73]

Guidelines No. 10 states that conscientious objection to military service "*includes objection to military service based on moral, ethical, humanitarian or similar motives*".[74] It does not mention whether all of these are considered part of a religious motivation, but it indicates that the conscience of the applicant should be at the centre, regardless of formal categorization. The relationship between conscientious objection, religion and political opinion is blurry. From the reading of the Convention, the Handbook and the Guidelines there seems nevertheless to be a clear that in cases where the type of military action objected to is "*condemned by the international community as contrary to basic rules of human conduct*",[75] and there is a risk of punishment for objecting, then refugee status should be determined in any case, *even if* the objection is identified as political.

Further, the self-identification of the grounds for objection by the applicant as humanitarian must be regarded as something fundamentally different from a political disagreement, and should not be held against him by creating added requirements based on the Handbook. Such a practice would be placing too much importance by the decision-makers on soft law,[76] and legal assessments of the military actions, overlooking the link between humanitarian values and conscience.

Regardless of whether the military action in question is considered internationally condemned, adjudicators should consider the genuineness of the humanitarian objector's convictions, and whether such convictions are taken into account by the authorities of his country in requiring him to perform military service, corresponding to the assessment that is prescribed for religiously motivated objection in paragraph 172.

Additional nuances between religious and political motivations connected to how selective objection and voluntary conscription plays into potential discrimination will be discussed in chapters 5.2 and 5.3.

[73] This point could have been deciding in *Sepet v. SSHD*, chapter 5.4.
[74] Guidelines No. 10 paragraph 11.
[75] Handbook paragraph 171.
[76] Çınar 2020: 16.

5.1.3. Political Statement or Legal Standard

As argued in the previous chapter; where the type of military action *is* condemned by the international community as contrary to basic rules of human conduct,[77] the applicant should in any case be determined a refugee. The court rejections of claims by selective objectors on account of not meeting standards set in paragraph 171 of the Handbook makes it relevant to examine exactly what standard the Handbook sets by its mention of international condemnation. That is the aim of this chapter.

The requirement in paragraph 171 can be interpreted one of two ways, requiring an assessment to be based on either: (i) political statements, or (ii) violations of IHL. The former interpretation has been held by courts in several countries,[78] but UNHCR publications and domestic jurisprudence shows a development towards the latter.[79]

Requiring political statements of condemnation will certainly be impacted by whether the host nation itself has issued such statements, but also by their bilateral relationships to the state of origin and other countries.[80] This leads to divergence in practice between states. Many nations are unwilling to issue condemnations, and condemnations are often as affected by diplomatic and economic considerations as they are by a review of international standards.[81] If it ought to be interpreted as requiring an international consensus, it should be noted that those are rare, often changing with time or made long after the actions in question took place. One could require condemnation by the UN, but there are many organizations within the UN, which would cause confusion. Questions might also be raised on what constitutes condemnation, causing debate around diplomatic language and phrasing.

Interpreting "condemned" as a legal standard solves many of these issues, and provides a requirement more suited to legal review by the decision-makers in asylum cases. Language used by diplomats is not intended to regulate the outcome of asylum cases, and is not typically suited for that purpose. Paragraph 171 points to an abstract condemnation both in focusing on the "*type*" of military action rather than individualised action, and by referencing

[77] Handbook paragraph 171.
[78] Examples include Norway, the United States, and the United Kingdom. Bailliet 2006: 356-363.
[79] UNHCR Guidelines No. 10: paragraph 21; Zimmermann and Mahler 2011: 433.
[80] Not implying that the Court *has* made political priorities, *Shepherd v. Germany* is one example where a determination of the applicant as a refugee could become politicised as a thorn in the side of the US-Germany relationship and NATO at large.
[81] Bailliet 2006: 354.

"*basic rules of human conduct*". The Guidelines No. 10 paragraph 26-30 clearly states that the UNHCR intended it to be a legal standard.

Political statements of condemnation are relevant to this assessment when they are considered an expression of that state's legal opinion. The main assessment is of the *type* of military action and whether the actions that the applicant testifies to as the cause of their objection would be contrary to international rules for armed conflict.[82]

One important caveat is necessary when depicting the assessment of the military action as a legal one, namely the lowered standard of proof.[83] Determining refugee status is not a trial against the country of origin.

> In *Prosecutor v. Erdemovic* before the International Criminal Tribunal for the former Yugoslavia (ICTY), a soldier had participated in the execution of 1200 unarmed civilians, after being told that: *"If you don't wish to do it, stand in the line with the rest of them and give others your rifle so that they can shoot you"*. The ICTY found that "*duress does not afford a complete defence to a soldier charged with a crime against humanity and/or a war crime involving the killing of innocent human beings*".[84] Bailliet argues that the negation of this defence indicates that soldiers should ensure that they are never placed in a situation of duress during humanitarian violations, and the best way to do so is desertion or draft evasion. Otherwise, the only option is to line up with the victims and be shot alongside them. If such is the perspective of the international community, then it is logical that the asylum policies should provide protection to those soldiers who flee.[85]

Concern for those attempting to avoid situations where they might be forced to commit human rights violations and war crimes requires to a low standard of proof. The applicant cannot be required to make a complicated legal analysis, and the level of risk required must be low.[86] Paragraph 171 itself rather than demanding a direct or indirect involvement requires only that the objector "*does not wish to be associated*".[87] It is useful to remind ourselves that the assessment is one of risk, and so there is a predictive element. This reverts the focus back to the applicant as the main actor of asylum process, by considering their genuineness in objecting to war crimes and their risk analysis for being put in such a situation, rather than a general judgement on their country of origin.

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[82] Geneva Conventions and other relevant treaties of international humanitarian law (IHL).
[83] Chapter 6.2.1.
[84] *Prosecutor v. Erdemovic* paragraph 19.
[85] Bailliet 2006: 380.
[86] Chapter 6.2.1.
[87] Chapter 5.4.

Recognition of the lowered standard of proof separates the asylum system from foreign affairs by acknowledging that the successful claim of an objector is not a condemnation of their home country for IHL violations, but a result of the risk of future punishment for objecting to participate in actions which contradict their conscience. This reverts the focus from foreign policy back to the primary source and the primary concern for whether there is a well-founded fear of persecution on Convention grounds.

The solution of a legal assessment is not only in accordance with what may be interpreted from the Refugee Convention and the UNHCR publications and restricts the arbitrariness for applicants but also makes a better fit for the judicial review of asylum cases, since most domestic legal systems intend their courts to function void of political consideration.[88]

5.2. Selective Objection and Voluntary Conscription

Objection to a type of military action which is internationally condemned in accordance with the Handbook,[89] is necessarily selective,[90] as international law cannot by any interpretation be said to condemn all military actions. Because such objection is necessarily selective, it is beside the point whether the objector volunteered for military service or was drafted. This is sometimes used as an indicator of the genuineness of his or her convictions where the objection has religious grounds.[91] Although this practice has been criticised in general,[92] it would be a particularly unreasonable argument in the case of humanitarian military objectors, considering that these objectors are characterised by being selective in their objection. Despite this fact, there are examples where the selective nature of the objection causes problems in the recognition of the humanitarian military objector.[93]

[88] E.g. the U.S. Court's mandate from Congress, according to Kuzas 1991: 472.
[89] Handbook paragraph 171.
[90] Confirmed in Shepherd v. Germany paragraph 35.
[91] Handbook paragraph 174.
[92] Mathew 2013: 186.
[93] *Hinzman and Hughey v. Canada* paragraph 12: the U.S. investigating officer partly based his decision on the negative and erroneous inference drawn from his belief that Mr. Hinzman did not claim conscientious objector status until after he learned he would be deployed to Afghanistan, and Mr. Hinzmans implying that he would be willing to conduct defensive or peace keeping missions.

5.3. Jus in Bello vs. Jus ad Bellum

One issue of discrimination which is unique for humanitarian military objectors is the consequences in refugee and asylum law of the distinction between *jus in bello* and *jus ad bellum* in general international law. Two cases which illustrate this point in the context of refugee determination are the Canadian case *Hinzman and Hughey v. Canada*, and *Shepherd v. Germany* before the EU Court of Justice (EUCJ).[94] Both cases concern U.S. deserters, and due to the considerable weight of the U.S. internationally and its close bilateral relationship and military alliance with both host states, it is not difficult to imagine them as politically sensitive. The core of the argument of both Courts is that objection to illegality based on *jus ad bellum* is reserved for higher ranking officers who would be involved and potentially held legally accountable for decisions on the use of force. This leaves the lower ranking soldier without the option to object on the grounds of the prohibition of use of force in art. 2.4 of the UN Charter.[95]

In *Hinzman and Hughey v. Canada*, one applicant was deployed to Afghanistan and the other to Iraq, both deserting due to their opinion that these wars were illegal by international law. The issue of whether the Handbook paragraph 171 leads to a differentiated treatment of soldiers and officers in their right to conscientious objection was therefore at the core of the case before the Immigration and Refugee Board. In the decision of the Federal Court, Justice Mactavish concluded that the Board's decision was appropriate, holding that in the case of a "*mere foot soldier*", paragraph 171 only refers to "*on the ground*" conduct.[96] She qualified a question for the Court of Appeal, asking for confirmation on this assessment. The Court of Appeal avoided the question, ruling that there was sufficient state protection in the home country of the applicant.

In *Shepherd v. Germany*, a member of the armed forces of the United States objected to serving in Iraq. Shepherd enlisted for service, trained as a helicopter mechanic and completed one tour before returning to base in Germany. He left the army upon receiving a travel order to return to Iraq *"believing that he must no longer play any part in a war in Iraq he considered illegal, and in the war crimes that were, in his view, committed there"*.[97] He applied for asylum in Germany, which was rejected. The German Court deciding his appeal

[94] Ibid and *Shepherd v. Germany*.
[95] United Nations, *Charter of the United Nations* art. 2.4.
[96] Sited from the case in the Court of Appeal, *Hinzman and Hughey v. Canada*.
[97] *Shepherd v. Germany*, paragraph 17.

asked for a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation of the EUQD.[98] The Court did not explicitly go into the question of *jus ad bellum* versus *jus in bello,* but made two relevant points on the subject:

First, that a level of personal involvement is required in the war crime, either directly or indirectly. The wording of art. 9(2)(e) EUQD is open to both violations of *jus in bello* and *ad bellum,* as it refers to art. 12 (2), which includes both. The Court stated the directive concerns the commission of war crimes including where: *"[...] the applicant for refugee status would participate only indirectly in the commission of such crimes if it is reasonably likely that, by the performance of his tasks, he would provide indispensable support to the preparation or execution of those crimes".*[99] This requirement of individual involvement might restrict which persons may object against a "*crime of aggression*",[100] causing a differential treatment between soldiers and officers in their right to conscientious objection.

Secondly, the Court establishes a presumption that "*no war crimes will be committed*" in military action engaged upon pursuant to a mandate by the Security Council or based on international consensus.[101] It would be reasonable to infer a presumption that violations of *jus ad bellum* will not take place when the military action is engaged upon pursuant to a UN Security Council mandate, as a military action engaged upon pursuant to such a mandate makes the action legal in accordance with art. 42 of the UN Charter and thereby it can never be a violation of the prohibition on use of force. However, most likely violations of *jus ad bellum* were *not* what the Court had in mind, as it used the term "*war crimes*", not "*crime against peace*", which is differentiated in art. 12 EUQD. Even if the reasons for use of force are legal, there is no automatic inference that the means and methods of war will share this legality. It is unclear why the Court supposes that a Security Council mandate will have effect on whether war crimes are committed, and such a presumption might make the case of a conscientious objector very demanding.[102]

International accountability of combatants will be illusory if not provided real alternatives to engage in illegal combat.[103] Nonetheless, this concept cannot be reversed. In other words, it is

[98] EU Qualification Directive: 9–26 (EUQD).
[99] *Shepherd v. Germany*, paragraph 46.
[100] ICC Statute art. 8.
[101] *Shepherd v. Germany* paragraph 41.
[102] Çınar 2020: 14.
[103] Chapter 1.1.

not a prerequisite that the combatant might be facing criminal responsibility for him or her to be acknowledged as an objector. There is no reason put forth by any of the cases examined why a foot soldier participating in an illegal war through legal methods and means, should have less access to refugee status, given that his or her only alternative to illegal warfare is punishment.

The required connection in the Handbook between the objector and the military action is merely that they do not wish to be *"associated"*.[104] The focus of the refugee status determination is the objector's conscience, not his potential for future criminal responsibility. To offer differentiated protection between soldiers and higher level commanders is therefore discriminatory, as the soldier may hold himself morally responsible regardless whether he is liable under international criminal law.[105] The case of a humanitarian military objector should therefore be treated equally with regard to the *jus in bello* and *ad bellum* distinction. The next chapter will examine the association required by the applicant with potential humanitarian violations.

5.4. Type of Military Action with Which an Individual Does Not Wish to Be Associated

Despite the presented issues of discriminating lower ranking soldiers or the restrictions sometimes put on *selective* objectors, the right to protection under the circumstances of punishment for refusing to commit war crimes is widely recognised.[106] Consequently, it may come as a surprise that national procedures often conclude that such claimants cannot be considered refugees pursuant to relevant legislation after all,[107] and an important fraction of cases is decided on the basis of evidentiary assessment rather than on legal issues.[108] It is beyond the scope of this thesis to exhaustively review the different national practices of the

[104] This viewpoint is supported by Guidelines No. 10, paragraph 23.
[105] Bailliet 2006: 273; Chapter 5.4. The Guidelines No. 10 supports this conclusion in paragraph 23: "*it is not necessary that the applicant be at risk of incurring individual criminal responsibility […] rather the applicant would need to establish that his or her objection is genuine, and that because of his or her objection, there is a risk of persecution*".
[106] Supra note 14.
[107] For different causes of rejection, each reflected in chapters 4 through 6.
[108] Noll, "Introduction: Re-mapping Evidentiary Assessment in Asylum Procedures" 2005: 1; Vedsted-Hansen, 2005: 57.

Refugee Convention, but the fact that the national interpretations *do* diverge is an important factor in the outcome of humanitarian military objectors seeking refuge.[109]

Applying a variety of legal standards can cause obstacles to the rule of law and harm the intended cooperation between parties as one person might be determined a refugee in one country but not the next.[110] The wording *"with which an individual does not wish to be associated"* in paragraph 171 of the Handbook is a useful illustration.[111]

In the Norwegian asylum system, the deciding factor is whether the applicant has a "*real risk*" of participating in illegal conduct. In Australia, the question is whether the applicant can show *"a reasonable possibility that he will be personally forced to participate in such conduct, directly or indirectly*".[112] The UK changed its position, from "*reasonable likelihood that the applicants would have been required to engage in military action contrary to basic rules of human conduct*"[113] to "*are or may be required on a sufficiently widespread basis to act in breach of the basic rules of human conduct*".[114] The EUCJ implies a similar standard in *Shepherd v. Germany*.[115]

In different ways, applying any of these interpretations might very well raise the bar for determining whether a conscientious objector is a refugee compared to the original wording *"does not wish to be associated"* in paragraph 171. Applicants thereby encounter widely different standards for their case based on the national interpretation. Even when legal standards are agreed upon, the gathering or assessment of evidence may cause other obstacles to refugee status, such as in *Sepet v. SSHD*.

In *Sepet v. SSHD*,[116] the UK House of Lords decided on the case of two humanitarian military objectors from Turkey. The applicants objected, because they did not want to participate in military actions including atrocities against Kurds. It was undisputed that the applicants

[109] The divergence of jurisprudence is addressed in the introduction to Guidelines No.10; One example of divergent practice is the multitude of different approaches to "*well-founded fear*", see Einarsen 2000: 384-385; General divergence is also referenced by Gorlick 2003: 358.
[110] One illustrative example is Norwegian returns of Afghan nationals more frequently than other countries, with a sudden drop from 2015 to 2017 following a policy change. UNHCR Report by Jessica Schultz, *The Internal Flight Alternative in Norway: the law and practice with respect to Afghan families and unaccompanied asylum-seeking children* (2017), 13-15.
[111] Bailliet 2006: 365-369. Makes the comparison of the references from Norway, Australia and the UK.
[112] RRT Case No. V95/03169, [1995] RRTA 2742, Australia: Refugee Review Tribunal, 7 December 1995: 20.
[113] *Sepet v. SSHD* paragraph 26.
[114] *Krotov v. SSHD* paragraph 51.
[115] Quote from the Court in chapter 5.4.
[116] For full reference, see bibliography.

would face prison sentences upon return *and* be forced to participate in military service upon release. The Court rejected conscientious objection as a human right,[117] holding that a requirement of persecutors intentions is implied in the causality condition, and that there was no violation if all objectors were treated the same.

Even though a low standard of proof is established,[118] and the judges briefly acknowledged that one way to refugee status for the applicants would be if the military service would include war crimes,[119] there was no assessment of whether this was the case, as the judgement relied upon the conclusion from the special adjudicator that found "*no reasonable likelihood that he would be forced to engage in military action contrary to basic rules of human conduct, even assuming that he was required to serve in a predominantly Kurdish area of Turkey*".[120] Leaving this topic without scrutiny when rejecting military objectors from a conflict where the violations of IHL are so widespread and well-known even at the time of this case[121] is at best a curious and unfortunate effect of domestic application of international sources, and at worst a symptom of resistance in the court system against acknowledging violations of IHL by a military ally.

6. International Evidentiary Standards for Refugee Status Determination

6.1. Evidence Gathering

Suffering from having similarity to both criminal and administrative law, while not being exactly that, gathering and assessing evidence can be challenging in refugee status determinations compared to other fields of law. Not only do asylum applicants rarely have much in terms of hard evidence of their identity or persecution, but trauma, time, language difficulties, cultural differences and the situation in the country of origin make it difficult both to gather and assess the evidence. This is an especially vulnerable part of the protection offered by the Refugee Convention and cannot principally be held as something separate from what is suited for legal review using the Convention and other relevant sources of interpretation. Trauma, the extreme nature of the military actions and the relationship between

[117] Disregarding Comment No. 22 paragraph 11, and other international legal sources, arguing that neither source provided *reasons* for the recognition of conscientious objection as a human right. Lord Hoffman stated such a right "*is not supported by either a moral imperative or international practice*" in paragraph 53.
[118] Chapter 6.2.1.
[119] Ibid paragraph 52.
[120] Ibid paragraph 3.
[121] Human Rights Watch, *Weapons Transfers and Violations of the Laws of War in Turkey*, 1 November 1995.

classified, formal and informal information make gathering and assessment of evidence in refugee status determinations for humanitarian objectors challenging.

6.1.1. Regarding the Applicant

Building on chapter 5.1.1, "*fear*" within its ordinary meaning read in light of the context, object and purpose of the Convention should be understood as *expectation of risk on the part of the applicant*. The remaining question is then procedural: from the side of the applicant, is well-founded "*fear*" sufficiently evidenced by the applicant seeking protection, or does it require further participation?

What kind of information is needed to determine whether an applicant is a refugee is quite often unpredictable, especially from the perspective of the applicant. The amount and type of information needed varies from case to case. Even though the initial application might include some detailed questions, it seems unlikely that the applicant would include all information that could possibly be relevant. Hathaway and Hicks argue that the statement of the applicant and all other relevant information would still be admissible in establishing whether "*fear*" is "*well-founded*", and they also place the applicant at the centre of the process. However, this seems to depend on states choosing an "*embrace of the human rights-based approach*",[122] and not purely as a result of the wording of the Convention. The inclusion of applicants by this interpretation could be less resistant to increasing pressures on asylum systems.

Noll's interpretation is that "*fear*" understood as the emotive repercussion of risk in the individual (interpretive alternative (iv)), includes a procedural obligation for the parties to allow for a communication of that risk assessment.[123] As a direct consequence of the wording, the applicant not only triggers the refugee status determination, but is a critical and active part of it, as it would not be possible to assess such fear without them.[124]

The description of "*fear*" in paragraph 37 of the Handbook supports an understanding of this wording as a procedural requirement,[125] by placing emphasis on the applicant's statement above general judgements about the country of origin.

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[122] Hathaway and Hicks 2005: 560.
[123] Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 155.
[124] Ibid. 143-144.
[125] Handbook paragraph 37 last sentence.

Hathaway and Hicks find support in the historical context of the Convention for their interpretation (iii).[126] Referring to writings about the preparatory works that "*threatened*" in art. 33 was intended as a shorthand for the determination according to art. 1(A)(2), the authors propose that "*well-founded fear*" is purely about establishing the objective risk.[127] Following art. 32 VCLT, the preparatory works are secondary tools of interpretation. Noll argues the meaning of "*fear*" is clear, and that the preparatory works therefore hold no weight in the matter.[128] In terms of the substantial interpretation of "*fear*", it seems based on the analysis above that Noll is right in pointing this out. However, in the procedural aspect of "*fear*" in which he is disagreeing with authors Hathaway and Hicks, the word "*fear*" could be regarded as ambiguous, evidenced by this scholarly debate taking place and diverging national practice.[129] This makes the historical context relevant, insofar as it might be helpful. In this case, it helps to support the interpretation of Hathaway and Hicks that the applicant has sufficiently expressed an expectation of risk by seeking protection.

Hathaway and Hicks' article raises the legitimate concern that lack of "appropriate" display of emotion in itself has wrongfully been used as a reason for rejection.[130] The interpretation argued by Noll also includes an emotive element, whether that was Noll's intention or not, which could be misconstrued to require some display of emotion and for which Noll gives no explanation. With reference to the arguments laid out by Hathaway and Hicks, such a requirement would not be in accordance with the object and purpose of the Convention and has shown to be impractical.[131]

Both the interpretations by Hathaway and Hicks, and by Noll are within the ordinary meaning of the Convention, and within what can be understood from its context, object and purpose. The nuances outlined above may be viewed as contrary, but can also be viewed as complementary. One is concerned with the obligations of the applicant, and the other with the obligations of the state. Hathaway and Hicks make a convincing case for why the Convention cannot be read as though requiring more from the applicant than to seek protection in order to

[126] Hathaway, *The Law of Refugee Status* 1991: 74, which is frequently referenced in the article by Hathaway and Hicks.
[127] Hathaway and Hicks 2005: 542, and references therein to Paul Weis' commentary of the Refugee Convention.
[128] It should also be pointed out that it would be particularly inadvisable to interpret the Refugee Convention subjectively based on the travaux préparatoire, as an overwhelming number of its signatories were not part of the drafting, see Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 153.
[129] Einarsen 2000: 385, and the referrals therein to research by Jean-Yves Carlier.
[130] Ibid. 560-561.
[131] Ibid. 509.

have proved their "*fear*". Likewise, Noll makes a convincing case for why the Convention obligates the state not only to receive the initial application but to give the applicant agency.

To summarise, "*fear*" must be understood as an *expectation of risk on the part of the applicant*. While the requirement "*fear*" puts on the applicant is one that is fulfilled by the mere act of seeking protection, it further obligates the host State to allow for the communication of such fear and its well-foundedness by the only person qualified; the applicant. Thereby, as a direct consequence of the wording, the applicant is not only a trigger of the refugee status determination but is a critical and active part of it.[132] A process which does not facilitate this will inevitably lack information to make a determination and it would not be in accordance with the Refugee Convention to reject applications based on it.

Where the objector is determined to be objectively at risk of being required to commit war crimes, or being punished for refusing so, they are a refugee.[133] In any case, the applicant's perception of such risk must be the focus of the inquiry in order to gather as much evidence as possible on the reasons why the applicant fled their country of origin. A "well-founded" fear must then be understood as an expectation of risk that they will be required to participate in war crimes or punished for refusing upon return, *based on experiences and knowledge about the past and present*.

The applicant should be considered a source of clues.[134] Sometimes he or she will be the most important source of clues, and in other situations the applicant might not be able to provide many clues at all. Despite the primary consideration that the wording of the Convention, and the Handbook places on the applicants own assessment, it is obvious that this leaves the State with a fundamental responsibility to produce evidence which might substantiate that applicant's claim. In cases of humanitarian military objection, this means focus should be on the applicant's genuineness in their objection and risk assessment.[135] These are subjects which require high-quality communication between the applicant and the decision-maker, to be further examined in chapter 6.2.2.

[132] Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 143-144.
[133] Chapter 5.1.1.
[134] Popovic 2005: 52.
[135] Chapter 5.1.2 and 5.2.2.

6.1.2. Regarding the Decision-Maker

Because the debate regarding the applicant's role is centred around the wording "*fear*", the wording "*well-founded*" is often attributed to the host State. As shown in chapter 6.1.1, what constitutes a "*well-founded fear*" must be considered as a totality, and a procedural requirement to involve the subject, rather than an assessment of respectively objective and subjective elements. The function of the State according to paragraph 37 of the Handbook is primarily to evaluate the applicant's statements, rather than making a judgement on the situation prevailing in the country of origin.

Noll points out a problematic exercise of splitting up "*well-founded*" from "*fear*" followed by an identification with the host State and the applicant respectively, resulting in the State as the objective and the applicant as the subjective source of information. Upon review, it becomes clear that the information provided by the State and the applicant are human interpretations and assessments of future risk, making both inherently subjective. "*[…] [A] move from 'fear' to 'subjectivity' and from 'well-foundedness' to 'objectivity' invariably adds things to the Convention definition that are simply not there*".[136] Doing so can cause a lack of critical review for any information gathered by the State, simply holding it up to the statement of the applicant as a measurement of truth.

Principles of objectivity should not be abandoned altogether, but the subjective scope of both the applicant and the decision-maker must be recognised to achieve fairness and a higher level of information. To accomplish the purpose of the Refugee Convention to protect those that leave their country of origin for reasons of persecution, the State must strive to substantiate the assessment of risk communicated by the applicant, and to review the credibility of information deriving from both the applicant and other sources.

Due to the applicant's importance in the process and the nature of the dilemma that the humanitarian objector is attempting to avoid,[137] the decision-maker must be willing to consider information from the applicant about on-the-ground conditions which might not be accessible through formal sources.[138]

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[136] Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 144.
[137] *Prosecutor v. Erdemovic* in chapter 5.1.3.
[138] Chapter 6.1.3.

Popovic compares the asylum process to the criminal process, arguing that because of the potential impact the state action of refoulment has on the individual integrity, similar principles must be applied to legitimizing it.[139] An additional similarity is the imbalance between the individual and state in available resources. Not only that, but the applicant which is truly a helpless victim of persecution is often the one that will have the least evidence to submit. This impacts expectations of both the applicant and the host State. Effort must be made to facilitate any production of evidence that favours the case of the applicant, as part of the State's evidence gathering.

For the decision to legitimise State action against the individual, the decision-maker must be unbiased.[140] The crucial first step to unbiased gathering and assessment of evidence is to keep the two separate. Not discounting the fact that few domestic asylum systems have enough resources to separate the two resembling the police and court institutions during criminal procedure, the *conceptual* structure must be similar in the asylum process. Otherwise, policy instructing the decision-maker in how the evidence should be assessed will easily spill over into the gathering of evidence, causing a distortion of the facts. Conflating the two might lead to a construction of the State as the objective party and the applicant the subjective one.[141] This creates an impossible standard of proof for the applicant to overcome, considering the State is in possession of the resources to produce evidence against the applicant, *and* the power to disregard the applicants statement.

"*[W]hile the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application."*[142] Further "*[i]t will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings*".[143] The applicant suffers the risk of rejection, which means they should participate to the best of their abilities. However, the Handbook acknowledges that the State is oftentimes better positioned to substantiate statements made by applicants than the applicants themselves. To use the words

[139] Popovic 2005: 30.
[140] Ibid. 44.
[141] Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 146.
[142] Handbook paragraph 196.
[143] Ibid. paragraph 200.

of Popovic, it is an "*incitement rather than a burden*" for the asylum seeker to be active in the inquiry.[144] This understanding of the burden of proof corresponds with the Refugee Convention's purpose of providing protection for those who leave their country for reasons of persecution.[145] The State cannot then act like an adversary but must investigate and then take on the role of adjudicator.

6.1.3. Impediments to Fact-Finding Caused by Classified Information

For humanitarian military objectors, it is in the nature of the case that authorities of the host State cannot approach authorities in the country of origin for verification.[146] Not only that, but the true substance of the applicant's statement about the military actions and the potential persecution might *only* be evidenced by said authorities' classified records.

When objectors flee from active duty or after first having served for a period of time, their communication with the host state in processing the application might cause suspicion or potential persecution for revealing military secrets upon return and become an added risk. This must be taken into consideration by the decision-maker in the assessment of objective risk, regardless of whether the applicant argues that point or the fact that their statement is treated as confidential.[147]

Military records are secretive for the purpose of military strategy, and political considerations. Governments go to great lengths to conceal any possibility of violations against IHL. The case against Katherine Gun is illustrative. Gun, a translator working for the Government Communications Headquarters in the UK, admitted to leaking information about an American request to produce compromising information on the members of the Security Council before the vote on the prospective invasion of Iraq in 2003. The UK still holds that they chose not to prosecute because there was *"not sufficient evidence for a realistic prospect of conviction"*,[148] despite her having admitted to the leak and her only defence being one of necessity due to violations of IHL. The prosecutor later told reporters the case was dropped because Gun *"could only get a fair trial if we disclosed material to the defence that would compromise*

[144] Popovic 2005: 38.
[145] See also section D in "Recommendations" (Part IV) to the Refugee Convention.
[146] Einarsen 2000: 480.
[147] Handbook paragraph 200.
[148] Statement made by the Attorney-General on February 26, 2004 to the House of Lords. Available at: https://api.parliament.uk/historic-hansard/lords/2004/feb/26/katharine-gun (Accessed 15 October 2020).

national security".[149] Her defence holds that the choice not to prosecute was made not to expose information that might incriminate members of the government. Regardless of which explanation is true, it is a useful illustration that classified information can be problematic to deal with as a source of evidence.

Gathering evidence to determine refugee status for humanitarian objectors can include information from a variety of formal and informal sources, and the value of different sources must be assessed with regard for their context.

6.2.Evidence Assessment

"*Evidentiary assessment constitutes the glue that keeps procedural and substantive law together […] assessment of fact must be in correspondence with both the type of procedure and the substantive law if the procedure is to provide with an effective protection"*.[150]

Considering the challenges outlined above, in many cases there is not enough evidence even when both the applicant and the decision-maker have exhausted their resources to produce evidence. There is no explicit guidance in the Refugee Convention for the outcome in such situations, but the wording read in its context, with regard for the object and purpose of the Convention provides some implicit guidance, with help from soft law interpretations by the UNHCR and developments in related fields of international law.

6.2.1. Standard of Proof

The purpose of the Refugee Convention is protection.[151] In refugee status determinations, the result is potentially high-risk for the applicant, there is often a lack of conclusive evidence, and there is a degree of uncertainty because of the predictive nature of the assessment. Keeping in mind that the obligation of the Refugee Convention is one of non-refoulment, the collective implication of these elements infers a low standard of proof for the applicant to be determined as a refugee.

[149] Quote from Sir Ken Macdonald, former director of public prosecution, published by the Guardian 1 September 2019. https://www.theguardian.com/uk-news/2019/sep/01/iraq-war-whistleblower-katharine-gun-national-security (Accessed 15 October 2020).
[150] Popovic 2005: 37.
[151] Chapter 3.

As mentioned in chapter 2, consistent practice is a relevant tool of interpretation. This general low standard of proof in the refugee status determination is one thing most of the parties to the Convention seem to agree on. Goodwin-Gill commented on this widespread recognition of "*degrees of likelihood far short of any balance of probability*" almost 25 years ago.[152] The UNHCR also noted this consensus.[153] The British standard applied is a "*reasonable degree of likelihood*", the American standard is "*a reasonable possibility*",[154] and Australia and Canada apply similar formulations. Substantially identical standards are also applied in Norway.[155]

In the "*theory of the three scales*", Carlier presents an illustration of the three central elements to the refugee status determination (risk, persecution and proof) as a telescopic ladder.[156] To reach the standard of proof, all three must have a minimum extension, but not the maximum extension of all three. If the risk of persecution is high, the gravity of the persecution and the evidence can be lower, and vice versa. For the case of humanitarian objectors, the gravity of the persecution is high because in addition to violating their right to object, that violation involves violating others. The potential damage to the human rights of others ought to be taken into consideration when assessing the gravity of the persecution.

6.2.2. Assessing the Statement of the Applicant

General principles of law dictate that the fact that the refugee status determination is an assessment of risk impacts the refugee status determination at every level, as assessing future risk is fundamentally different from assessing evidence of past events.

The obligation to assist the applicant's risk assessment[157] requires the decision-maker to facilitate high-quality communication. Consistent development of standards for assessing testimony has been lacking in refugee law,[158] but progress has been made in international criminal law. Standards developed in international criminal tribunals can be both relevant and useful to apply in refugee law, because both systems deal with testimony about violations of IHL, human rights abuse and similar inter-language, inter-cultural challenges.[159] As the

[152] Goodwin-Gill and McAdam 1996, referenced in Gorlick 2003: 368, footnote 21.
[153] UNHCR, Note on Burden and Standard of Proof in Refugee Claims.
[154] *INS v. Stevic*, 467 U.S. 407 (1984).
[155] Rt. 2011 s. 1481.
[156] Carlier 1997, as referenced in Einarsen 2000: 498 in footnote 544.
[157] Chapter 6.1.1
[158] Attempts made by the UNHCR, and by domestic asylum systems are few and lacking. Byrne 2007: 621-629.
[159] Ibid. 613, 638.

burden of proof in any case will be much higher in criminal cases, there is no evident disadvantage to applying them, and the asylum process could gain a more consistent framework for how to deal with the statement of applicants, it is hard to argue against this point.

Kagan's comparative analysis shows that credibility assessment is often centered around four main criteria; demeanour, consistency, accuracy and corroboration.[160] These are mainly derived from national criminal procedures for testimony of witnesses,[161] which accounts for the disparity between them and the standards from international criminal law.

The primary tool in inter-language and inter-cultural legal proceedings is language translation. What the Trial Chambers of the International Criminal Tribunal for Rwanda and Yugoslavia found is that language translation must also be conducted *in context*.[162] This requires a cultural 'decoding' when cultural differences between the decision-maker and the applicant might cause misunderstanding or mischaracterization of the applicant. In the *Akayesu* case in the International Criminal Tribunal for Rwanda, the Trial Chamber noted "*expert testimony that described the cultural trait of Rwandans not to answer questions directly, particularly when concerning delicate matters. Likewise, the difficulty of specifying dates, times, distances and locations, as well as the inexperience of witnesses with maps, film and graphic representations, were noted as not being construed as necessarily having an adverse affect on credibility*".[163] The Handbook also includes the clearing up of inconsistencies and contradictions in the obligations of decision-makers.[164]

The Committee Against Torture (CATC) also developed a set of standards for evaluating human rights testimony. One of these standards is the importance of distinguishing between inconsistencies and inaccuracies in testimony relating to core and peripheral facts. Inaccuracies relating to facts that are peripheral to the applicant's experience have less probative weight, and are found not to impair the general truthfulness of a claim.[165]

Dealing with increasing pressure on the asylum system and policy aiming at restricting the total number of positive outcomes in refugee status determinations, criteria to methodically

[160] Ibid. 621 with further reference to Kagan 2003: 367-416.
[161] Ibid. 623.
[162] Ibid. 634.
[163] Ibid.
[164] Handbook paragraph 199.
[165] Byrne 2007: 626.

disprove applicant testimonies are appealing. It is easy to understand how the main criteria found by Kagan provide a welcomed method for decision-makers. Nonetheless, such criteria must take into consideration the type of process the refugee status determination is. The findings of international criminal law institutions suggest that these criteria are not useful.

Assessing the statement of the applicant, the same concern for language in context, and to the distinction between inconsistencies or inaccuracies relating to core facts versus peripheral facts should be made as in the international criminal tribunals and the CATC. Humanitarian objectors could be impacted by trauma, and cultural taboos on the content of the war crimes. Assessing the applicant's statement, efforts must be made to provide opportunities to clarify and explain prima facie inconsistencies and inaccuracies, rather than dismissing statements by assuming that inaccuracies and inconsistencies are caused by dishonesty.

6.2.3. Benefit of the Doubt and Credibility Assessment

The discussion surrounding the concept of "*benefit of the doubt*" in international refugee law is linked to the UNHCR's statements in paragraph 196, 203 and 204 of the Handbook. According to paragraph 196 it should be applied when independent research by the decision-maker is not successful or statements are not susceptible of proof.

Paragraph 203 and 204 elaborate upon 196: "*After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. […] it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. […] The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility*".

The phrase "*benefit of the doubt*" has been interpreted as an expression of the generally lowered standard of proof, corresponding to what is implied by the Convention in itself, and accepted by its parties.[166] The Handbook statement on the benefit of the doubt as dependent on a positive credibility assessment has therefore caused some confusion.[167]

[166] As outlined in chapter 6.2.1
[167] For example: Noll, "Evidentiary Assessment Under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" 2005: 149-151.

In some cases, these paragraphs have been interpreted to mean that the general low standard of proof[168] does not apply in cases where the applicant's statement is considered to lack credibility.[169] Following this interpretation, credibility becomes the bottom line of the assessment, because if a lack of credibility is found, it will lead to a heightened standard of proof very few refugees would be able to meet due to the nature of the case. It is unclear how the assessment of credibility differs from the assessment of evidence,[170] how it relates to the standard of proof implied by the Convention or the Handbook statement that decision-makers *"must apply the criteria in a spirit of justice and understanding and [...] should not, of course, be influenced by the personal consideration that the applicant may be an 'undeserving case'"*.[171, 172]

As outlined by chapter 2, the Handbook is not binding, but has a special role in the interpretation of the Convention. It should not be disregarded, but the Handbook must be understood as a merely interpretative tool confirming and elaborating upon what is already explicitly or implicitly stated by the Convention. Interpreting the Handbook as introducing a new, second standard of proof which in practice overrules the standard of proof implied by the Convention runs counter to the general rules of interpretation for treaties, and causes more confusion than clarity. The interpretation of the "*benefit of the doubt*" therefore merits further exploration.

The phrase "*benefit of the doubt*" is defined as *"the state of accepting something/someone as honest or deserving of trust even though there are doubts"*.[173] Reading the statements of the Handbook in paragraph 196, 203 and 204 as an interpretative tool to the primary source, I would argue a more reasonable interpretation is one where the Handbook statement on the benefit of the doubt simply confirm what is already stated by the prohibition of refoulment.[174]

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[168] Chapter 6.2.1 and the reference made therein to Goodwin-Gill.
[169] As held by the Norwegian Immigration Appeals Board and by some Appeal Courts in Norway. LB-2019-192982 and LB-2013-50622.
[170] Noll, "Evidentiary Assessment under the Refugee Convention: Risk, Pain and the Intersubjective Fear" 2005: 150-151.
[171] Handbook paragraph 202.
[172] Uncertainty is added by some domestic legal systems restricting the justiciability of credibility assessments, as e.g. the Netherlands, see Spijkerboer 2005: 96.
[173] Merriam-Webster (n.d.). In Merriam-Webster Dictionary. The benefit of the doubt. Retreived 6 November 2020 from: https://www.merriam-webster.com/dictionary/the%20benefit%20of%20the%20doubt#:~:text=%3A%20the%20state%20of%20accepting%20something,what%20he%20says%20for%20now.
[174] Refugee Convention art. 33.

As mentioned in chapter 4.1, the obligation derived from the Refugee Convention is a prohibition of refoulment and thereby mainly concerned with that result. If the decision-maker does not know whether there is a well-founded fear of persecution for Convention grounds, the Convention implies that the applicant cannot be rejected. The Handbook statements must therefore be understood as confirming the low standard of proof; where there is not sufficient evidence to conclude the application, the applicant must be accepted even though there are doubts, as indicated by the ordinary meaning of the phrase.

This interpretation is supported by the fact that giving a false statement is not grounds for exclusion in art. 1 C-F of the Refugee Convention. Thereby, one statement or the applicant's testimony in its entirety may be found to be a lie, but if the evidence shows that the applicant is at risk of persecution on Convention grounds, there is no added requirement of truthfulness.[175] Interpreting the Handbook as adding an assessment of credibility which determines a possibly heightened standard of proof through a soft law instrument would not be reasonable when the Convention gives no such indication.

The credibility assessment is a safeguard against cases where there is a lack of evidence and the statement of the applicant is non-coherent, implausible or runs counter to generally known facts.[176] By this, it is acknowledged that even with the lowered standard of proof, a lack of evidence cannot *on its own* determine the refugee status; there is also a minimum requirement to general credibility. This does not shift the standard of proof, which must still be low. However, it is in accordance with the shared responsibility of the applicant to take active part in the gathering of evidence,[177] and certainly to not make efforts to destroy or obscure evidence, to hold these minimum requirements. In summary, the connection between the benefit of the doubt and the credibility assessment comes down to this: where there is doubt, a*nd that doubt is not the fault of the applicant*, the benefit of the doubt shall be given.

In assessing credibility, the decision-maker must apply the same low standard of proof, and the standards for assessing the statement of the applicant as outlined in chapter 6.2.2. The assessment of credibility is limited to evaluating whether the applicants statement is "*coherent*", "*plausible*" or "*runs counter to generally known facts*" and should not be used as

[175] Hathaway and Hicks 2005: 534.
[176] Handbook paragraph 204.
[177] Chapter 6.1.2.

an all-encompassing subjective assessment of the applicant's motives or deservedness.[178] It is also worth noting that the target of credibility assessments are the statements, not the applicants. If part of the statement is found to lack general credibility, this should only impact that part, and it cannot be transferred upon the applicant or to otherwise credible statements made by the applicant.[179]

Should a lack of general credibility be found within these standards, it is only a possible reason for rejection *after* the gathering of evidence is exhausted and there is no conclusion to be drawn from it. To halt the search for evidence substantiating the applicant's statement before exhausting the available sources because parts of the information that the applicant has provided is viewed as incoherent, implausible or counter to generally known facts is not in agreement with the Convention or the Handbook. If one statement or a part of it is found to lack credibility, this impacts its weight in the assessment of whether there is a well-founded fear of persecution for convention grounds, as in any other field of law, but it does not alter the standard of proof applied.

Refugee status for humanitarian objectors is deemed appropriate exactly because of the brutality and extraordinary character of their situation. Stories told by applicants are often of a brutal reality different from the decision-makers own experiences of what is probable. The "*adjudicator is asked to give credence to the incredibility of evil"*.[180] Stories of the time in military service before deserting or from living as civilian in an area affected by the IHL violations in question might sound improbable to a decision-maker without being so. It is especially important that the benefit of the doubt is applied when assessing evidence in these situations.

7. Concluding remarks and thoughts for the future

As this thesis has shown, the rule of law in refugee status determination for humanitarian military objectors face multiple obstacles. Incorporating the Refugee Convention into domestic law may cause conflicting and sometimes erroneous demands on the applicant,[181] a

[178] Sited from paragraph 204. Paragraph 202 of the Handbook underlines the duty of decision-makers to assess evidence in the spirit of justice.
[179] Supported by paragraph 201 and 202 of the Handbook,
[180] Noll, "Introduction: Re-mapping Evidentiary Assessment in Asylum Procedures" 2005: 4.
[181] Chapter 4.1.

lack of appropriate legal review[182] and even possibly wrongful interpretation of international refugee law.[183] Accelerating and streamlining national asylum systems is incompatible with policy by the states to restrict the number of people determined to be refugees, if they are to meet the obligations of the Refugee Convention.

To correctly apply the Refugee Convention, refugee status determination for humanitarian military objectors should be centered around the applicant's risk assessment[184] and whether their objection is genuine.[185] Regard must be had as to the difficulty in producing evidence.[186] A low standard of proof should be applied to all parts of the process[187] and without discrimination.[188] Assessments of credibility should be made of individual statements, not the applicant,[189] and with regard to the low standard of proof. Where there is doubt after exhausting the available evidence, and that doubt is not the fault of the applicant, benefit of the doubt shall be applied.[190]

The political problem of dealing with humanitarian military objectors must be solved by the application and development of legal standards acknowledging that the subject of the determination is the applicant's need for protection, not the interests of the State they have fled.[191] The Refugee Convention must furthermore be applied in accordance with standards for inter-language, inter-cultural testimony consistent with similar areas of human rights and international law,[192] and by decision-makers acting as independent and impartial investigators and adjudicators rather than adversaries.[193]

[182] Chapter 4.2.
[183] Chapter 5.4.
[184] Chapter 5.1.1.
[185] Chapter 5.1.2.
[186] Chapter 6.1.1, 6.1.3.
[187] Chapter 6.1.1, 6.2.3.
[188] Chapter 5.1.2, 5.3.
[189] Chapter 6.2.3.
[190] Chapter 6.2.3.
[191] Chapter 5.1.3, 6.1.3.
[192] Chapter 6.1.2.
[193] Chapter 6.2.2.

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