

# **The frontier of the international refugee regime:**

Refugee protection, legal orientalism, and  
what better alternative in the Middle East  
and Asia?

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# The Problem



## The Argument

Traditional accounts of refugee protection in the Middle East and Asia mischaracterise the presence (or absence) of refugee law within these regions and result in flawed (or at least incomplete) operational interventions. An alternative account of refugee law within these regions (which I will call, to differentiate it, a “law of asylum”) has a record that is worthy of both caution and further examination.



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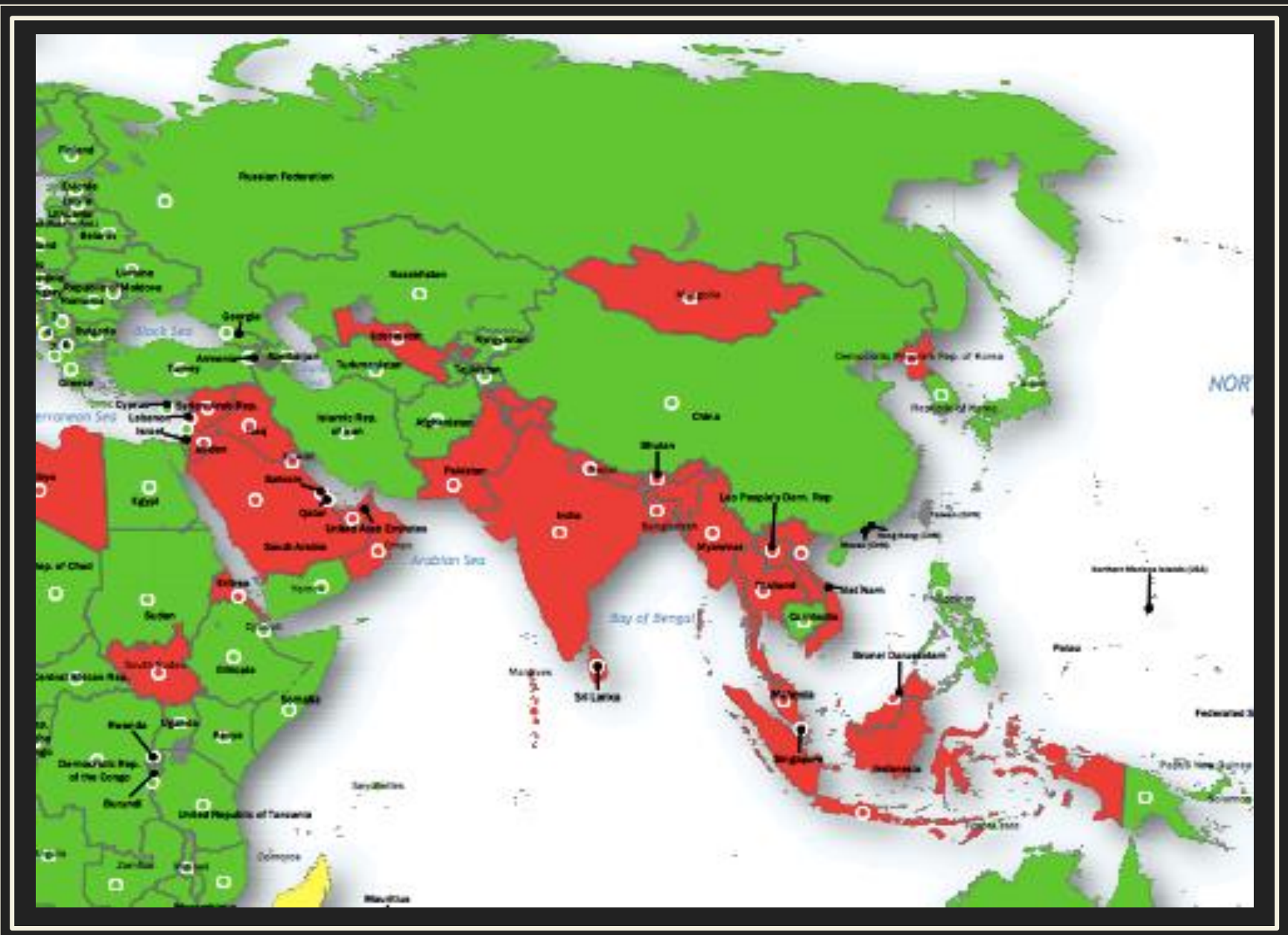
# THE REJECTION HYPOTHESIS

Traditional accounts of refugee protection in the Middle East and Asia foreground the hesitant relationship of these two regions with the international refugee regime.



148 state parties to  
either / both the  
*Refugee*  
*Convention* or the  
*Refugee Protocol ...*

55 state parties to  
neither





*“persistent rejection of international refugee law by the large majority of South East Asian states”*

(Davies, 2006)

**INTERNATIONAL REFUGEE LAW**



**NATIONAL REFUGEE LAW**



**REFUGEE PROTECTION**







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## **LEGAL ORIENTALISM**

**This approach results from a legal orientalism that both mischaracterises the law and legal institutions in these regions and compares them to an idealised account of these entities elsewhere.**



*““it may come as a surprise to some that no country in South Asia is party to the 1951 Refugee Convention.”  
(Chimni, 2007)*



*“legal orientalism ... on the most general level [is] a set of interlocking narratives about what is and is not law.”*

(Ruskola, 2014)



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## PROTECTION SPACE

Flowing from this account, the international community has taken the lead in the protection of refugees in these regions. The resulting zone of exception from the international refugee regime is fundamentally unsustainable and privileges international interests, fora, and UNHCR as the negotiator.

## Protection Space

**Refugee protection as negotiated:** a politically contested commodity that is expressed as a “humanitarian” gesture towards refugees in need or, more recently and now much more commonly articulated, as creating “*protection space*” for refugees.



**Protection space** privileges international interests, fora, and UNHCR as the negotiator; devalues the normative strength of obligations towards refugees; and, allows the underlying responsibility for the provision of refugee protection to drift from the state to UNHCR.



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## LAW OF ASYLUM

Resistance to this approach within these regions has a record that is worthy of both caution and further examination.

**LACK OF REFUGEE LAW:  
NON-RECOGNITION OF REFUGEES AND THE ABSENCE OF THE RULE OF LAW**

**HONG KONG**

Prolonged strategic litigation drawing upon “local” norms has resulted in a “unified screening mechanism” (USM) closely approximating conventional refugee status determination.

**INDIA**

National and sub-national legislative regimes have been adopted to protect refugees (particularly from neighbouring states).

**EGYPT**

Legal interventions based on a mix of international law and non-refugee-specific local law have produced a success rate of >95%.

**LACK OF REFUGEE LAW:  
EXPANDING OUR UNDERSTANDING OF THE LAW**

**MALAYSIA**

Local (state) Sharia Courts have been suggested as a way to protect various rights belonging to (Muslim) refugees.

**INDONESIA**

Legal argumentation based on historic customary law in Aceh supported the rescue at sea of Rohingya refugees.





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## THE PROJECT

Two year research project working with four leading legal aid providers to examine the experiences of legal encounters by local lawyers and refugees

## Research Design

### Stage 1

Study of legal environment, current experiences and analogous situations.

In each case study jurisdiction: 40 interviews and four focus groups

### Stage 2

Documentation of legal encounters.

In each case study jurisdiction: 30 legal encounters, with each including three interviews and a range of other documentation methods

### Stage 3

Discussion and advocacy on the role of refugee legal aid

In each case study jurisdiction, 10 digital stories and one national / sub-regional workshop and production of a range of training / dissemination outputs

Thank you!

**ANY QUESTIONS?**



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