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Rethinking International Refugee Law: A Meta-Juridical Approach To Migration Governance In A Fragmented World

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Abstract

This paper is intended as a presentation of a topic for reflection within the legal field, designed to stimulate readers' critical thinking and discernment. The study, whose thoroughness is grounded in the bibliography consulted, explores the issue of the potential application of a meta-juridical approach in the field of international law, with a particular focus on migration law.

The underlying theme reflects a certain concern regarding international legal frameworks - particularly those governing asylum and refugee protection - which are proving increasingly inadequate in managing complex and hybrid migration flows. Through a critical analysis of existing norms and practices - including, notably, the 1951 Refugee Convention – this article examines the growing tension between the normative foundations of international refugee and contemporary state practices in migration governance. In particular, it argues that the current international refugee regime struggles to respond effectively to mixed migration flows, border externalization policies, and increasingly restrictive interpretations of state responsibility. To address these limitations, the article develops the concept of meta-jurisprudence as an interpretive and analytical framework capable of complementing traditional legal reasoning.

The article situates meta-jurisprudence within existing socio-legal and critical legal traditions, particularly legal pluralism, critical legal studies and interpretative legal theory. Rather than replacing positive law, meta-jurisprudence seeks to strengthen the adaptability and legitimacy of legal interpretation through three core dimensions: innovation, interculturality and flexibility.

Methodologically, the study adopts a qualitative doctrinal and socio-legal approach combining legal analysis, critical interpretation and a focused case study concerning migration governance in the Central Mediterranean.

The article demonstrates how a meta-juridical approach may help bridge the gap between formal legal obligations and practical migration governance by encouraging context-sensitive interpretations of international protection norms.

The article concludes that meta-jurisprudence provides a useful complementary framework for interpreting international refugee law in a fragmented global order. By promoting adaptive and context-oriented legal reasoning, the framework contributes to a more coherent, legitimate, and human-centered system of migration governance.

Keywords: meta-jurisprudence, refugee, migrant, migration governance, innovative jurisprudence, international refugee law.

Introduction

In the contemporary landscape of global migration, international refugee law faces an existential crisis caused by the complexity of global migration patterns. It is evident that there is a growing chasm between rigid legal frameworks and the fluid reality of mixed migration flows. Although the advocacy community invokes formal protection principles, it is commonly known that governments are unlikely to heed the minimum standards[1], dishonoring international obligations and duties as enunciated in the UDHR along with the vast pool of human rights instruments.[2]

Despite the existence of well-established legal instruments, including the 1951 Refugee Convention, a significant gap persists between regulatory obligations and state practices. While the 1951 Refugee Convention remains the normative cornerstone of protection, its application is increasingly undermined by state practices of border externalization and restrictive interpretations of sovereignty. This article argues that these limitations are not solely political or institutional. They are also linked to structural constraints within legal reasoning itself. Traditional legal interpretation often privileges doctrinal rigidity, formal categorization, and static understandings of jurisdiction, thereby limiting the law's capacity to respond rapidly to evolving migration dynamics.

To address these challenges, the article proposes the concept of meta-jurisprudence as a complementary interpretive framework for international refugee law. Meta-jurisprudence is defined here as a context-sensitive and interdisciplinary approach to legal interpretation that incorporates social, political, cultural, and institutional realities into legal reasoning. The framework is grounded in three interconnected dimensions: innovation, interculturality, and flexibility.

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[1] J. C. Hathaway, *Reconceiving International Refugee Law* (Martinus Nijhoff Publishers, 1997).

[2] A. Nafees, *Contemporary Challenges for International Refugee Law*, (SSRN, 2016). Available at SSRN: https://ssrn.com/abstract=2875594

The article seeks to answer three main research questions:

1. Why does contemporary international refugee law struggle to address current migration governance practices effectively?
2. How can the concept of meta-jurisprudence be theoretically situated within existing legal scholarship?
3. In what ways can a meta-juridical framework improve the interpretation of state responsibility and refugee protection in contemporary migration governance?

The article proceeds in five sections. First, it examines the structural limitations of international refugee law. Second, it analyzes the gap between legal norms and state practice. Third, it conceptualizes meta-jurisprudence and situates it within broader socio-legal traditions. Fourth, it applies the framework to migration governance through the case of externalization in the Central Mediterranean. Finally, the article reflects on the implications, limitations, and future applicability of the proposed framework.

Methodology

Before addressing the key issues of this study, it is important to briefly touch upon the methodological considerations, which are essential for ensuring greater reliability.

The research employs a qualitative[3] and interdisciplinary methodology[4], combining doctrinal legal analysis with socio-legal and interpretative approaches. The study does not aim to produce quantitative findings; rather, it seeks to develop a conceptual framework capable of explaining contemporary tensions within international refugee law.

The methodological design consists of three interconnected stages. First, the article undertakes a doctrinal analysis of international refugee law, focusing primarily on the 1951 Refugee

[3] J. Gerring, *Social Science Methodology: A Unified Framework* (Boston University, 2011).

[4] H. Tobi, J. K. Kampen, *Research Design: The Methodology for Interdisciplinary Research Framework* (Qual Quant, 2018, Vol. 52, pages 1209-1225).

Convention, and related human rights obligations. This stage examines the legal foundations of the refugee protection regime and identifies the principal limitations highlighted in contemporary scholarship.

Second, the research applies a socio-legal and critical analytical approach to assess the divergence between legal norms and state practices. Particular attention is devoted to migration externalization, differentiated access to protection, and evolving interpretations of jurisdiction and sovereignty. The analysis draws upon academic literature, policy documents, and judicial developments.

Third, the article develops and applies the concept of meta-jurisprudence as an interpretive framework. In order to operationalize the framework, the study uses a focused case study concerning migration governance in the Central Mediterranean, particularly cooperation between European states and Libya following the 2015 migration crisis.

The case study method was selected for two reasons. First, the Central Mediterranean represents one of the clearest examples of the tension between international legal obligations and contemporary migration governance practices. Second, the case illustrates how traditional territorial understandings of responsibility become increasingly inadequate in contexts characterized by indirect control and transnational cooperation.

The analysis is informed by theoretical perspectives drawn from legal pluralism, critical legal studies, and socio-legal scholarship. These approaches provide the conceptual basis for understanding law not merely as a formal system of rules, but as a dynamic process shaped by political, institutional, and cultural realities.

While the study remains primarily theoretical, the use of the case study enables the framework to be applied in a practical context. The article, therefore, aims to combine conceptual development with applied legal analysis.

The Structural Limits of International Refugee Law

The contemporary international refugee regime is primarily grounded in the 1951 Geneva Convention of Refugee, which is regarded as a cornerstone of international legal norms and continues to represent the only binding international legal instrument specifically designed to ensure protection for refugees.[5]

However, despite their enduring normative significance, these legal frameworks reveal the historical foundation of significant limitations when confronted with the complexity of contemporary migration dynamics.[6] One major limitation concerns the definition of "refugee" itself. The Convention definition was developed within a specific historical context and primarily addresses individual persecution linked to race, religion, nationality, political opinion, or membership in a particular social group. While this framework remains essential, it does not fully encompass many contemporary forms of displacement, including environmental migration, generalized violence, state collapse, and severe socio-economic destabilization. As a result, large numbers of displaced individuals remain outside formal protection categories despite facing serious vulnerabilities. Contemporary migration flows are frequently characterized by overlapping motivations, making strict distinctions between "migrants" and "refugees" increasingly difficult in practice.

In addition to definitional limitations, the refugee regime has evolved through various soft law instruments, including guidelines issued by international organizations and regional frameworks such as the Global Compact on Migration and the Global Compact on Refugees, which aimed to outline a framework for a more comprehensive international cooperation on the subject of migration.[7] While these instruments aim to enhance cooperation and

[5] M. Barnett, *Global governance and the evolution of the international refugee regime* (International Journal of Refugee Law, 2002, Vol. 14, No. 2, pages 238-262).
[6] P. Ballinger, *Historical Foundations and Limitations of International Refugee Law* (Annual Review Law and Social Science, 2025, Vol. 21, pages 285-305).
[7] E. Guild, S. Grant, *Migration Governance in the UN: What Is the Global Compact and What Does It Mean?* (Legal Studies Research Paper, 2017, Vol. 252, Queen Mary University of London, School of Law).

adaptability, there remains a need for more sustainable and long-term solutions rather than suggesting rapid actions to manage migratory crisis.[8]

State obligations, although clearly articulated at the normative level, are increasingly subject to restrictive interpretations. Jurisprudence at both regional and international levels has attempted to clarify the scope of protection, particularly in relation to non-refoulement and extraterritorial responsibility.[9] However, judicial developments remain uneven and often constrained by political considerations. The clear interplay between social and political factors and legislation is encapsulated in what is known as "politics of immigration", where the law is considered as a dependent variable. At this point, it may be necessary to shift policy and law to wider orientations, practicing alternative models[10] that are anchored in a meta-juridical approach.

Interpretative trends further reflect a tension between formal adherence to legal norms and their practical application. States frequently adopt narrow readings of their obligations, emphasizing national sovereignty and migration control over global protection responsibilities.[11] This trend is evident in the increasing reliance on procedural barriers, accelerated asylum processes, and the designation of "safe third countries" all of which limit effective access to protection, on the contrary this raises important human rights concerns, especially about the vulnerability of migrants who are forced into overcrowded refugee camps.[12]

Taken together, these elements highlight structural rigidity within international refugee law. Although the legal framework remains formally intact, its ability to respond to changes in

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[8] A. Parshotam, *The UN Global Compacts on Migration and Refugees: A New Solution to Migration Management, or More of the Same?* (South African Institute of International Affairs, Occasional Paper No. 273, 2017).

[9] G. S. Goodwin-Gill, *International Law and the Detention of Refugees and Asylum Seekers* (The International Migration Review, 1986, Vol. 20, No. 2, pages 193-219).

[10] I. Bloemraad, *The Politics of Migration Law: Interests, Ideas, and Institutions* (Research Handbook on the Law and Politics of Migration, 2021, Edward Elgar Publishing, pages 8-20).

[11] H. Fields, *Closing Immigration Throughout the World* (American Journal of International Law, 1932, Vol. 26, No. 4, pages 671-699).

[12] J. Hwang, *Sovereignty and the Global Migration Crisis: Legal and Humanitarian Challenges* (International Journal of Science and Research Archive, 2024, Vol. 12, No. 2, pages 3003-3013).

migration patterns and to find effective solutions - especially in practical terms - is clearly constrained. This limitation sets the stage for a growing gap between legal normativity and state practice, which has become particularly visible in contemporary migration governance, susceptible to social and political differentiations of migrants that contradict the equality principles[13] asserted by international law.

The Gap Between Legal Norms and State Practice

The divergence between formal legal obligations and state practices represents one of the central challenges facing the international refugee regime today. While the formal framework of protection remains grounded in well-defined obligations, its implementation is increasingly shaped by policies that prioritize migration control over humanitarian commitments. Specifically, sovereign states should reconcile their national interests with their humanitarian responsibilities towards the increasing irregular migration.[14]

A central example of this gap is the practice of border externalization. States have progressively shifted migration control measures beyond their territorial boundaries through bilateral agreements, cooperation with third countries, and the outsourcing of border management functions.[15] These practices allow states to limit access to asylum procedures while formally maintaining compliance with their international obligations. However, such strategies often result in situations where individuals are prevented from seeking protection

[13] M. Baumgärtel, *Legal Status, Civic Stratification, and the Structural Limit of the Human Rights of Migrants* (International Journal of Constitutional Law, 2026, Vol. 00, No. 00, pages 1-31).
[14] A. C. Helton, *Forced Migration, Humanitarian Intervention, and Sovereignty* (SAIS Review, 2000, Vol. 20, No. 1, pages 61-86).
[15] L. Laube, *Diplomatic Side-Effects of the EU's Externalization of Border Control and the Emerging Role of "Transit States" in Migration Diplomacy*, (Historical Social Research, 2021, Vol. 46, No. 3, pages 78-105).

altogether, effectively undermining the principle of non-refoulement, generating violations of the state's legal obligations.[16]

Closely related to externalization is the emergence of differentiated access to international protection. Not all individuals seeking asylum are treated equally: instead, access is increasingly conditioned by nationality, route of entry, or geopolitical considerations. This selective approach is reflected in practices such as expedited procedures for certain groups, restrictions on admissibility, and the uneven recognition rates across jurisdictions. This system of inequality, which claims the right to dictate the realization of migrants' human rights, has its roots in government policies, political and social movements, and public political discourse.[17]

Judicial bodies have occasionally addressed these issues, highlighting the tensions between legal obligations and state conduct. Nevertheless, enforcement remains limited, and the adaptability of state practices often outpaces the development of legal accountability mechanisms. As a result, a *de facto* hierarchy of protection, often linked to racial hierarchies rooted in migration control[18], has emerged, in which legal guarantees are applied inconsistently and, at times, circumvented altogether.

This wide divergence between regulations and state practices and behaviors clearly highlights the limitations of a purely legal approach. The gap reveals the urgent need to find a new interpretive framework capable of taking into account not only legal and judicial requirements, but also of functioning effectively within institutional, political, and social contexts that are extremely complex and diverse. In this sense, the gap represents the starting

[16] A. Desmond, *From Migration Crisis to Migrants' Rights Crisis: The Centrality of Sovereignty in the EU Approach to the Protection of Migrants' Rights* (Leiden Journal of International Law, Vol. 36, No. 2, pages 313-334).

[17] L. Morris, *Citizen Rights, Migrant Rights and Civic Stratification* (Routledge, New York, 2025).

[18] E. T. Achiume, *Racial Boarders* (The Georgetown Law Journal, Vol. 110, pages 445-508).

point - a critical juncture - for applying a meta-juridical perspective that can build an effective bridge between international norms and state practices, based on legal reasoning that is more sensitive to the context under analysis.

Conceptualize Meta-Jurisprudence: Heading to a New Culture

This article proposes meta-jurisprudence as a complementary interpretative framework capable of addressing some of the limitations identified above. Importantly, meta-jurisprudence is not presented as a replacement for positive law or doctrinal analysis. Rather, it seeks to complement existing legal interpretation by recognizing that legal meaning is shaped not only through formal rules, but also through the contexts in which those rules are applied. The framework draws conceptually from several established theoretical traditions. First, meta-jurisprudence shares important affinities with socio-legal scholarship, which emphasizes the interaction between law and society.[19] Socio-legal approaches recognize that legal systems cannot be understood independently from the social and institutional environments in which they operate.

Second, the framework reflects elements of legal pluralism. Legal pluralist scholarship challenges the assumption that law derives exclusively from state-centered systems and instead recognizes the coexistence of multiple normative orders and actors.[20] Third, meta-jurisprudence incorporates insights from critical legal studies by acknowledging that legal interpretation is never entirely neutral and may reproduce political and structural inequalities.[21] Building upon these traditions, the framework is organized around three operational dimensions: innovation, interculturality, and flexibility.

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[19] S. S. Silbey, *A Sociological Interpretation of the Relationship between Law and Society*, (Law and the Ordering of Our Life Together, 1989, Grand Rapids, Michigan, Erdmanns Press, pages 1-27).
[20] G. Swenson, *Legal Pluralism in Theory and Practice* (International Studies Review, 2018, Vol.20, No. 3, pages 438-462).
[21] S. Sciaraffa, *Critical Legal Studies: A Marxist Rejoinder* (Cambridge University Press, 1999).

Innovation

Starting with the first point, innovation refers to the capacity of legal interpretation to adapt to evolving social and institutional realities. In the context of international law, this implies moving from static interpretations of legal texts toward more adaptive approaches. Today's jurisprudence can achieve greater precision and open-mindedness by complementing traditional methods with empirical ones.[22]

Innovative legal reasoning does not imply abandoning legal certainty. Rather, it involves interpreting legal principles in ways that remain consistent with the protective objectives underlying international refugee law.

Interculturality

Turning to the second element, interculturality[23] - with its rich array of definitions - aims to highlight the diversity of perspectives that shape legal meanings at the international level. Indeed, given the multicultural nature of the global landscape, international laws cannot be produced or interpreted according to a single cultural or political approach. International law itself is the result of various interactions between different legal traditions, values and social realities. The meta-juridical approach, therefore, welcomes this diversity and promotes interpretive openness, particularly in the context under analysis - that of migration policies - where cultural assumptions can often influence the recognition of rights and vulnerabilities.

Flexibility

Third and final element: flexibility, assuming that the legal system has a duty to maintain a reasonable balance between certainty and flexibility.[24] It is important to emphasize that concepts such as "refugee" or "migrant" cannot be treated as fixed or neutral, but as

[22] T. Kevin, *Methodology and Innovation in Jurisprudence* (Columbia Law Review, 2023, Vol. 123, pages 2483-2516).
[23] C. A. Grant, A. Portera, *Intercultural and Multicultural Education: Enhancing Global Interconnectedness* (Routledge, New York, 2011).
[24] P. Sales, *Certainty and Flexibility in the Law* (Judical Review, 2025, Vol. 30, pages 7-18).

constructs that reflect, in the appropriate sociological sense, specific historical and political contexts. For the purposes of this article, Flexibility is that often unspoken yet essential element that allows legal actors, stakeholders and experts to revisit and, to some extent, redefine certain categories in the field of migration, so that a more appropriate interpretation - and, consequently, application - can be found to address contemporary challenges.

It is important to clarify that the three dimensions outlined above - innovation, interculturality and flexibility - are not intended as vague or aspirational principles. The three founding principles of the meta-juridical approach were conceived as structural components aimed at bringing about a sweeping transformation of legal reasoning. For these reasons, meta-jurisprudence cannot be superficially understood as a mere methodological tool, but rather as an emerging legal culture that serves as a key to unlocking a revolution in legal theory, interpretation, and application. In this view, legal culture is defined as a certain process that has to be constantly invented and defended.[25]

Such a cultural shift implies a reorientation in the way law is conceived, interpreted and applied. Traditional legal frameworks, while essential for ensuring stability and predictability, often operate within strict boundaries that limit their capacity to address complex and evolving global phenomena. Meta-jurisprudence can be intended as a new cultural paradigm, which seeks to transcend these limitations not by discarding legal rigor, however by reconfiguring it through adaptability and critical engagement. Legal change[26], in its interaction between legislation and judicial decisions, is essential for a change of course, especially if originates from the professional legal community who may act as gatekeepers, influencing the interpretation of the laws.

[25] J. Clammer, *Culture, Development and Social Theory. Towards an Integrated Social Development* (Zed Book, New York, 2012).

[26] A. Watson, *Legal Change: Sources of Law and Legal Culture* (University of Pennsylvania Law Review, 1983, Vol. 131, No. 5, pages 1121-1157).

In this perspective, innovation becomes a continuous process rather than an exceptional response; interculturality evolves into a constitutive element of legal interpretation rather than a negligible consideration, and flexibility functions as an embedded practice within legal reasoning rather than an external critique. The integration of these dimensions and the applicability of a new cultural paradigm into a more coherent legal system enables the law to move beyond formal constraints and to engage more effectively with the realities it seeks to regulate.

Therefore, the added value of meta-jurisprudence lies not only in its analytical contribution, but in its potential to reshape the epistemological foundations of legal thought, especially in fields such as international refugee law, where it is evident the tension between normativity and reality.

A Meta-juridical Reading of Migration Governance

As previously noted, the meta-juridical approach applied to migration governance enables a shift from a purely formal understanding of the international refugee law to an interpretation that is more dynamic and practice oriented. By integrating the dimensions of innovation, interculturality, and flexibility into legal frameworks, a more accurate interpretation of legal norms can be achieved, especially when they are put into practice in order to develop more effective responses to contemporary challenges.

In this section, the three elements will be analyzed as they apply to migration governance, in order to assess their applicability in more concrete contexts.

From the standpoint of innovation, the framework challenges rigid distinctions between “refugees” and “migrants”. Contemporary migration flows frequently involve overlapping forms of vulnerability that cannot always be captured through traditional legal categories. A meta-juridical approach therefore encourages more context-sensitive interpretations of

protection needs. This does not require abandoning legal categories altogether but rather interpreting them in light of contemporary migration realities.[27] UNHCR is aware of modern migration patterns that make it difficult to classify individuals into a specific legal category, given the heterogeneity of migration flows.[28] Individuals often move for multiple, overlapping reasons that do not fit neatly within established legal definitions.

Innovation is also evident in the reinterpretation of government procedures and obligations, particularly with regard to the externalization of border control, which challenge the traditional territorial scope of international law by displacing control measures beyond state borders.[29] In this case, the meta-juridical approach suggests that legal liability does not need to be necessarily linked to the presence of a particular state on the territory, but that such liability must also be considered in terms of the exercise of effective control or influence. This perspective aligns with emerging jurisprudential trends that recognize the applicability of human rights obligations in extraterritorial contexts[30], thereby offering a basis for holding states accountable for actions carried out through third-country arrangements or indirect mechanisms. The dimension of interculturality further enriches this analysis by highlighting the plurality of actors and normative perspectives involved in migration governance.[31] In this case, the meta-juridical approach aims to analyze this imbalance by recognizing and highlighting the role of the various actors from diverse cultural, regional, and institutional backgrounds who constantly shape legal meaning. This plurality of actors includes not only states, but also international organizations, non-governmental actors, and local communities. It could be considered as a

[27] For an overview about context-driven interpretation: A. Presbitero, *Phenomenon-driven Contextual Research and Context-driven Phenomenon Research: Advancing Impactful HRM Scholarship* (Personnel Review, 2025, pages 1-12).
[28] E. Feller, *Refugees are not Migrants* (Refugee Survey Quarterly, 2005, Vol. 24, No. 4, pages 27-35).
[29] P. Janig, *Extraterritorial Application of Human Rights* (Elgar Encyclopedia of Human Rights, 2022, Vol. 2, pages 180-191).
[30] Ibid.
[31] T. Caponio, M. Schiller, C. Talleraas, *The Politics of Governance of Migration* (Governance, 2025, Vol. 38, No.4).

pluralist approach, where public and non-public actors with diverse interests and values cooperate in policymaking processes, bringing ideas and tangibles solutions.[32]

In practical terms, interculturality serves as the element that brings greater inclusivity and contextual sensitivity to legal and judicial frameworks. For example, regional practices in Africa have developed broader refugee definitions that incorporate generalized violence and other forms of harm not explicitly covered by the 1951 Convention.[33] Engaging with these alternative legal traditions can contribute to a more pluralistic and adaptive understanding of protection, reducing the gap between formal norms and lived realities. Moreover, interculturality encourages participatory approaches to governance[34], where affected populations are not merely passive recipients of protection, but can actively contribute to shaping the legal responses to their emergency situations.

Flexibility, as the third core dimension, plays a crucial role in uncovering the underlying assumptions embedded within legal systems. While acknowledging that the international legal framework proposes a highly detailed classification of migrants[35], it is important for legal professionals and actors to continue examining the wide range of categories, procedures, and institutional practices that might, in some way, conceal instances of exclusion or inequality. Above all, in the context of migration governance, flexibility exposes the ways in which ostensibly neutral mechanisms - such as admissibility criteria, safe third country designations, or accelerated procedures - can function as tools of restriction rather than protection.

Furthermore, a more flexible approach allows for a continuous reinterpretation of the relationship between law and power. Indeed, state practices regarding the control of migration

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[32] E. Sørensen, J. Torfing, *The Democratic Anchorage of Governance Networks* (Scandinavian Political Studies, Vol. 28, No. 3, pages 195-218).
[33] For more details: P. Kourula, *Regional Refugee Definitions* (in Broadening the Edges, 1997, Brill, Nijhoff).
[34] For an overview: S. R. Osmani, *Participatory Governance for Efficiency and Equity. An Overview of Issues and Evidence* (Participatory Governance and the Millennium Development Goals, New York, 2007, pages 1-45).
[35] O. Bakewell, *Some Reflection on Structure and Agency in Migration Theory* (Journal of Ethnic and Migration Studies, 2010, Vol. 36, No. 10).

flows are often justified by legal language that may, however, differ significantly from the spirit in which international migration laws were originally enacted. In this regard, meta-jurisprudence offers a new perspective - a shift in direction - according to which the introduction of migration management laws that protect human rights can enhance state sovereignty, thereby safeguarding national security and public order.[36]

At the same time, meta-jurisprudence allows for a more transparent assessment of legal compliance that goes beyond formal adherence and aims to achieve substantive accountability. It is important to emphasize that flexibility paves the way for institutional learning and adaptation: in this way, courts, administrative bodies, and international organizations can adopt flexible practices by systematically reviewing the impact of their decisions and policies, while ensuring that legal frameworks remain appropriate to evolving conditions. Since, in the migration domain, it is difficult to guarantee predictability and coherence, flexibility could be the practical solution to decrease institutional uncertainty.[37]

Although analyzed individually, these three dimensions - when considered as a whole - demonstrate that a meta-juridical approach is not merely theoretical but has concrete implications for migration governance. Meta-jurisprudence allows for a reconfiguration of legal reasoning that is better equipped to address the complexity of contemporary migration, while preserving the normative core of laws and the international regime.

By synthesizing and moving beyond rigid legal formalism, meta-jurisprudence provides a framework through which the gap between legal norms and state practice can be addressed more effectively. The aim is certainly not to weaken the law, but to strengthen its capacity to engage with reality in a more inclusive and forward-looking manner. In practice, although the Refugee Convention remains a fundamental instrument in the field of international migration,

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[36] L. Thompson, *Protection of Migrants' Rights and State Sovereignty* (UN Chronicle, 2013, Vol. L, No. 3).
[37] P. Pannia, *"Institutional Uncertainty" as a technique of migration governance. A comparative legal perspective* (DPCE Online, 2020, Vol. 45, No. 4)

some commentators acknowledge that it has limitations or gaps that must be addressed. The UNHCR itself believes that the Convention should be interpreted dynamically, considering current changing conditions.[38] Therefore, with a particular focus on the Refugee Convention, a meta-juridical analysis could allow for a new interpretation of the Convention itself.

Case Insight: Externalization and Responsibility in the Central Mediterranean

Over the past decade, European migration policies have increasingly relied on externalization mechanisms designed to prevent migrants and asylum seekers from reaching European territory. Externalization is considered as a lever for solving the European's migration issues, yet poses several legal and ethical problems that, in the long term, may risk weakening Europe's reputation as a leading regulatory power.[39]

A particularly telling example of the gap between legal norms and state practice, as well as of the potential of a meta-juridical approach, is migration governance in the Central Mediterranean, particularly in the context of cooperation between European states and Libya following the 2015 migration crisis.

Cooperation with Libyan authorities, including support for and training of the Libyan Coast Guard, has played a central role in this strategy. While formally framed as efforts to combat smuggling and enhance border management[40], these practices have raised significant concerns regarding access to protection and compliance with international legal obligations.[41]

One of the key legal issues concerns the attribution of responsibility. By enabling interceptions at sea and the subsequent return of individuals to Libya - where conditions in

[38] A. Radjenovic, *Is it Time to Reform the International Refugee Regime* (European Parliamentary Research Service, 2026).
[39] J. Kohlenberger, *Migration Policy: European Union Increasingly Outsources Responsibility for Asylum* (Heinrich Böll Stiftung, 2024).
[40] T. Latici, *European Union Naval Force – Mediterranean Operation Sophia* (Toward A New Policy on Migration, Legislative Train Schedule, European Parliament, 2019).
[41] Y. Maccanico, *Italy's Redefinition of Sea Rescue as a Crime Draws on EU Policy for Inspiration* (Statewatch, 2019).

detention centers have been widely documented as inadequate - European states effectively limit access to asylum procedures while maintaining a degree of formal distance from direct violations.[42]

Judicial developments have begun to address these challenges, in part to provide practical and tangible evidence to the international community. Although it predates the 2015 migration crisis, the following judgment remains an important legal precedent in the cooperative relationship between Italy and Libya. In the case of "Hirsi Jamaa and Others v. Italy", the European Court of Human Rights (ECHR) ruled that Italy had violated the European Convention on Human Rights (ECHR) by intercepting migrants at sea and returning them to Libya. Responsibility was clear, as the Italian state had acted directly.[43] After 2015, Italy changed its operational model, seeking ways to circumvent the rules: the Italian government funded and trained the Libyan Coast Guard, which intercepted migrants at sea and returned them to Libyan detention centers. At that point, the difficult legal and procedural challenge lay in determining the state's responsibility: under the ECHR, it must be demonstrated which state exercises jurisdiction. In fact, in the case "S.S. and Others v. Italy," the applicants argued that Italy was acting from a distance, but the European Court of Human Rights held that sufficient control had not been demonstrated to hold Italy responsible. Since 2015, the outsourcing of border controls to Libya has shifted the state's responsibility from direct to indirect, creating a "gray area" in which Italy's operational influence does not easily translate into jurisdiction under the ECHR.[44]

Having analyzed the dynamics of the case under consideration, it is necessary, for the purposes of this research, to propose a meta-juridical approach for a reinterpretation of the case

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[42] J. Sunderland, H. Salah, *No Escape from Hell. EU Policies Contribute to Abuse of Migrants in Libya* (Human Rights Watch, 2019).
[43] I. Papanicolopulu, *Hirsi Jamaa v. Italy* (The American Journal of International Law, 2013, Vol. 107, No. 2, pages 417-423).
[44] H. Jha, *S.S. and Others V. Italy: When the ECtHR Chose Borders Over Rights* (Refugee Law Initiative, Blog on Refugee Law and Forced Migration, 2025).

itself. From a meta-juridical perspective, the context of the Central Mediterranean not only highlights the shortcomings of existing legal frameworks but also offers a concrete context in which alternative interpretive pathways can be outlined. Traditional legal reading tends to confine state responsibility within territorial boundaries, thereby allowing externalization practices to operate in a space of reduced accountability.[45] On the contrary, a meta-juridical approach redefines this assessment through its three fundamental dimensions.

This innovation allows for a shift from a strictly territorial conception of jurisdiction to a functional one, in which responsibility is linked to the exercise of control, coordination, or decisive influence over migration management practices. This enables a more consistent attribution of responsibility in cases involving indirect forms of refoulement.

Secondly, interculturality broadens the analytical framework by fully integrating the perspectives and roles of non-European actors, including third countries and local institutions. Rather than treating them as external to the legal system, a meta-juridical approach places them within a pluralistic and multilevel governance structure[46], thereby acknowledging shared and overlapping responsibilities in the protection process and in the guarantee of human rights.

Finally, flexibility provides the critical perspective needed to highlight the discrepancy between the formal legality of cooperation mechanisms and their substantive effects. The element of flexibility challenges the assumption that compliance can be assessed solely on the basis of formal adherence to agreements, emphasizing instead the necessity and urgency - given today's migration flows - of evaluating the real impact of such practices on access to protection and fundamental rights.

[45] V. Moreno-Lax, M. Meberg-Pedersen, *Border-induced displacement: The Ethical and Legal Implications of Distance-Creation Through Externalization* (Questions of International Law, Zoom-in No. 56, 2019, pages 5-33).
[46] P. Scholten, R. Penninx, *The Multilevel Governance of Migration and Integration* (in B. Garcés-Mascareñas, R. Penninx, *Integration Processes and Policies in Europe*, 2016, IMISCOE Research Series, Springer, Cham).

Taken together, the elements underpinning meta-jurisprudence do not merely reinterpret the case; rather, they suggest a more coherent and responsible legal response. Thus, the aim is to move and look beyond rigid doctrinal constraints, and in this sense, a meta-juridical approach allows for a reconceptualization of responsibility that is better aligned with both the normative foundations and the practical realities of the international refugee regime.

Conclusion

This article has sought to illustrate the limitations and gaps in contemporary international refugee law, which are not merely the result of political resistance or inadequate implementation. As the discussion has shown, these limitations are also rooted in the structural rigidity of legal reasoning itself. There is a persistent gap between normative commitments and state practices - particularly evident in migration governance - which reveals the inadequacy of approaches based exclusively on formal legal interpretation.

In response to these challenges and to foster a more mature approach, the article introduced the concept of meta-jurisprudence, understood as an analytical and practical framework capable of rethinking the role of law in evolving contexts. By grounding this approach in the three dimensions of innovation, interculturality, and flexibility, the paper demonstrated how legal reasoning can be expanded, in a meta-juridical sense, without undermining its normative foundations.

Through an analysis of the international refugee regime and an in-depth examination of the situation in the Central Mediterranean, it has been demonstrated that a meta-juridical perspective allows for a more coherent understanding of responsibility, particularly in situations where traditional territorial frameworks prove insufficient. Given these premises, which are also practical, it is argued that meta-jurisprudence is by no means intended to replace

existing legal structures but rather aims to function as a complementary paradigm that strengthens their ability to address contemporary realities.

The contribution of this article lies not only in the conceptualization of meta-jurisprudence, but also in its application as a tool to bridge the gap between law and practice. By enabling more adaptive, inclusive, and critically informed interpretations, this approach opens the possibility of a more effective and legitimate international protection system, based on a shared sense of humanity, which is precisely what is needed today.

From a broader perspective, it is reasonable to hope that the adoption of a meta-juridical perspective might give rise to a renewed legal culture, capable of integrating complexity and embracing diversity on a global scale - a context characterized by growing fragmentation and uncertainty. Such a change, however challenging it may be to embed in the global legal consciousness, is not only desirable but necessary.

Despite the literature reviewed and although this article proposes meta-jurisprudence as a conceptual and practical framework, this research nonetheless serves as a starting point for further exploration and subsequent investigations, given the ongoing developments in the field of migration. The analysis has certainly developed primarily a theoretical model supported by insights based on selected cases, rather than a broad empirical investigation. Therefore, the practical applicability of meta-jurisprudence within concrete legal and institutional contexts remains only partially explored. In addition, a further limitation must be acknowledged regarding the scope of the study, which pertains exclusively to the field of international refugee law, and thus does not exhaust the potential applicability of the framework in other areas of international law.

However, these limitations should not be viewed negatively; rather, they may point to new avenues for reflection and open up promising paths for future research. Further studies could focus on the empirical verification of meta-jurisprudence - including in areas other than

the one examined here -within judicial and administrative practices, exploring how courts and decision-makers might integrate its fundamental dimension into legal reasoning.

Furthermore, applying a meta-juridical perspective to other fields - such as security governance or human rights - could help assess its relevance and adaptability in a broader sense.

In light of what has been written so far and considering the significant challenges of the international legislative system in the field of migration, the purpose of this article is to offer a new perspective, where the value of meta-jurisprudence lies not in offering definitive solutions, but in opening new avenues for the understanding and application of the law. The hope is that this article will encourage a meta-juridical, innovative, intercultural, and flexible approach; and, with an ambitious vision, it aims to invite further exploration of how legal systems can evolve in response to an increasingly complex global landscape, in the hope of sparking a legal and cultural revolution toward a potentially more open and receptive international community.