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International law of refugees - a subset of international human rights law

Abstract. International refugee law is concerned with refugee status through the framework and limits of the 1951 Refugee Convention, it is nevertheless strongly interrelated with international human rights law. Whilst application of human rights can be enjoyed by every human being, the benefits of refugee status are dependent on the predicament of persons need protection as based on the five grounds expressed in the definition of a refugee. The proliferation of the number of cases are going through the human rights courts, inevitably, had an impact on the application of the 1951 Refugee Convention through extending the definition of a refugee as an interpretation of its provisions. Therefore, the complementary and supplementary functions of international human rights law create the basis for full implementation of international refugee law. Although these two branches of international law are distinct from each other, both have common ground in terms of the protection of human beings, though through their own distinct approaches. It appears that the acceptance of refugee law within the basis of human rights law is as a subset of the latter, but with that the provision of the specific protection of refugees as a 'first aid' in some senses.

Key words: international refugee law, international human rights law, non-refoulement, definition of refugee.

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Introduction. International refugee law and international human rights law, as two branches of international law, provide both similar and different regimes of protection for their subjects. On the one hand, with the intention to grant refugee status and protect refugee rights under the Convention relating to the Status of Refugees (1951 Refugee Convention) [1], the scope of international refugee law it is quite specific. International human rights law, on other hand, by providing broad principles of protection in way that refugee law cannot, serves asylum seekers and displaced people as well as refugees. [2] The close relation of the two regimes of refugee and human rights is evident, though each remains distinct. This is because of the specific rights provided by international refugee law, which is a primary source of the protection of refugees based on their special character.[3] Although international refugee law and international human rights law retain their own conventional autonomy, the former's operates as a subset of the latter due to the latter dealing with the broad field of human rights law.[4] In light of these views, this paper will argue that international refugee law is a special branch of international law, providing protection for its special subjects, refugees, and that it exists within the framework of human rights law both inherently and effectively. Thus, this paper will support opinions and perspectives stating that international refugee law is a one part, or a subset, of international human rights law.

To this end, this paper will be divided into five sections of analysis. First, two parameters of protection will be examined: the definition of 'refugee' and the principle of non-refoulement, in the first and second parts of this essay, respectively, where the impact of human rights on the 1951 Refugee Convention will be seen through the ambivalent relationship between the two branches of law. The third section will be devoted to the consideration of the 1951 Refugee Convention as a human rights treaty, whereas the fourth section will analyse international human rights law treaties as the fundamental basis of refugee protection. Finally, the intertwined relationship of both branches will be discussed in the last section of the paper.

Definition of refugee. The 1951 Refugee Convention and 1967 additional Protocol Relating

to the Status of Refugees (1967 Refugee Protocol) [5] provide protection through refugee status. The definition of a refugee provided in Article 1A(2) of the 1951 Refugee Convention is that of anyone who is outside their country of origin 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'. [1] The highly selective approach taken by the 1951 Refugee Convention shows its narrow and specific application. Nevertheless, some regional instruments have expanded this definition to cover persons fleeing armed conflicts, massive or systematic human rights violations, or serious public order disturbances. [6]

The selectivity of the definition of refugee is constituted by distinct levels of requirements, namely the clauses of inclusion, exclusion and cessation. [4] The inclusion clause is provided by Article 1A(2) of the 1951 Refugee Convention, which defines the status of refugee through meeting the following four requirements: first, having a well-founded fear of persecution; second, grounds for such a fear of persecution is linked to five grounds, namely those of race, religion, nationality, membership of a particular social group or political opinion; third, being outside their country of nationality; and, finally, being unable to return to their country of origin or fearing to return. [7] However, an exclusion to covering forced migration due to the selective nature of the definition of refugee was premediated. [4]

Furthermore, selective protection, as an essential characteristic of the 1951 Refugee Convention, is reinforced by the exclusion clauses. There are two distinct sets of exclusion circumstances, even in the instance that the requirements of Article 1A(2) have been met. Firstly, if the individual(s) in question are already benefiting from other means of protection, whether international, national or UN protection (Article 1D), or by Article 1E where the individual(s) possess the rights and obligations attached to the nationality of the host country. Another clause, Article 1F, reinforces the selectiveness of the definition of refugee in cases of serious crime (against peace and humanity, war crimes, serious non-political crimes and acts contrary to the purposes and principles of the UN). In addition, Article 1C enumerates the cessation clauses that reassert the dual feature of refugee status, those of its surrogate nature and selective protection. Therefore, the temporary protection of refugee status is terminated as soon as the justification for protection is no longer required. [4]

However, neither the 1951 Refugee Convention nor other international instruments define the notion of persecution. The various attempts to formulate the definition of this term have met with very little success. [8] Goodwin-Gill and McAdam stated that persecution may include torture, cruel, inhuman or degrading treatment, or punishment out of proportion to the offence committed. [9] Foster claimed that violations of economic, social and cultural rights may also amount to persecution. [10] A systematic approach to defining persecution was proposed by Hathaway with a model of categorisation of human rights violations according to the nature of the rights (included in the International Covenant on Civil and Political Rights (ICCPR) as being non-derogable or derogable civil and political rights, economic, social and cultural rights that are recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and rights only included in the Universal Declaration of Human Rights (UDHR)). While a violation of rights included in the UDHR does not suffice to amounting to persecution, the violation of non-derogable rights will always constitute persecution. [11]

Nevertheless, Edwards claims that keeping the definition of persecution open allows the refugee protection regime to accommodate both human rights violations of sufficient severity and serious harms that are not yet considered human rights violations but which nevertheless threaten an individual's life or freedom. [12] Therefore, the definition of refugee with its pivotal aspects of persecution and grounds listed as constituting such are the subject of court judgments and various interpretations. For instance, sexual and gender-based violence against women and girls as a serious harm that has been increasingly recognised as a form of persecution, such as in

the cases of *Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.),* where it was stated that, as a group, women were discriminated against and left unprotected by the Pakistani government [13]; a further example is that of *Minister for Immigration and Multicultural Affairs v. Khawar,* where the Hight Court of Australia stated that domestic violence against women and their complaints were not investigated by Pakistani authorities who systematically failed to lay charges.[14] Both cases accepted that domestic violence constituted a form of persecution in the context of Pakistan because of the absence of state protection. Furthermore, in the case of *Canada v. Ward*, the court stated that persecution is any situation in which 'the state is not in strictness an accomplice to the persecution but is simply unable to protect its citizens'. [15] *Horvath v. Secretary of State for the Home Department* case stated that 'the word «persecution» implies a failure by the state to make protection available against the ill-treatment or violence which the person suffers at the hands of his persecutors'. [16] Nevertheless, acts of persecution, as well as the reasons for such, are detailed in various regional frameworks, such as the European Union Qualification Directive (Articles 9-10). [17]

While persecution is one of key notions in the definition of refugee, the second pivotal notion of this definition are the 'grounds' on which an individual is at risk of being persecuted, namely 'race, religion, nationality, membership of particular social group or political opinion'. These five grounds of persecution provide a link to, and affiliation with, the human rights of freedom of thought, opinion and expression and the principle of non-discrimination. [4] Nonetheless, whilst the other four grounds are fairly clear, the most flexible, albeit least understood, ground is that of 'membership of particular social group', which has found, in different cases, a particularly with wide interpretation. Therefore, Edwards stated that the scope of refugee protection has been expanded through the interpretation of the social group ground, which has slowly become more aligned with other proscribed grounds of discrimination under international human rights law. Cases such as *Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal and Another Ex Parte Shah (A.P.) and Minister for Immigration and Multicultural Affairs v. Khawar* have all been successful under the context of 'membership of a particular social group', including those based on age, gender, sexual orientation, and family membership, as well as those involving child soldiers and victims of trafficking. This has allowed, for instance, female victims of domestic violence, or those subjected to female genital mutilation, or forced marriage, to be granted refugee status and protection. [3]

Under the 1951 Refugee Convention, recognition as a refugee is declarative, as emphasised by the United Nations High Commissioner for Refugees (UNHCR), who stated that an individual is 'a refugee … as soon as he fulfils the criteria … recognition of his refugee status does not … make him a refugee but declares him to be one'. [18] Therefore, the process of determination of refugee status is significant in that it requires the provision of evidence and prove various facts. In this case, the European Court of Human Rights (ECtHR) have had several judgments regarding the implications of the standards of proof, the sources of evidence and the risk assessment in situations of refugee protection. For instance, the ECtHR in the *M.S.S. v. Belgium and Greece* case stated that 'the applicant should not be expected to bear the entire burden of proof' because the Belgian authorities were already aware of the general situation of the treatment of asylum seekers in Greece. [19] Moreover, the Court confirmed in the *Hirsi et al v. Italy* case that requiring evidence of an individualised threat regarding treatment was contrary to Article 3, and that information reported by independent sources might suffice to make the evidence 'sufficiently real and probable' that the situation in a particular country is sufficiently risky that the individual is not required to return. [20] The reiteration of this position by the Court can be seen in the *Rustamov v. Russia* case where the Court noted specifically that 'requesting an applicant to produce "indisputable" evidence of a risk of ill-treatment … would be tantamount to asking … to prove the existence of

a future event, which is impossible, … [it] would place a clearly disproportionate burden on him'. [21] However, Goodwin-Gill claims that whilst it appears to be for the benefit of asylum seekers and refugees, it is challenging to actually fit this jurisprudence into the procedural context for the determination of refugee status. [22]

It appears that as the definition of refugee as a determination of refugee status is not fixed, mostly due to the evolvement of human right court cases through the intermingling of refugee law and human rights law. Although these two regimes work in tandem, they have overlapping common ground in the principle of *non-refoulement,* which will be examined in the next section.

Principle of *non-refoulement* as an international customary law rule and human right. One of the most significant provisions of the 1951 Refugee Convention is the *non-refoulement* principle. [23] The 1951 Refugee Convention provides protection for refugees according to the exhaustive list of reasons given in Article 33, stating that a refugee will not be expelled or returned 'in any manner whatsoever' to a location where he or she would face threats to his or her life or freedom 'on account of his race, religion, nationality, membership of a particular social group or political opinion'. [1] There are not situations that considered to be relevant to the majority of refugees. Facing unforeseen situations of international and non-international armed conflicts, civil wars, manmade and natural disasters, grave human rights violations and others are required consideration of status when people flee such situations. Therefore, the gap in the existing law is addressed through use of the principle of *non-refoulement.* [24]

In addition, there is an overlap between the refugee *non-refoulment* norm and the prohibition on return under international human rights law. Therefore, this principle provides for the prohibition of the expulsion or return of a person regardless of granting of refugee status or otherwise, as well as of persons for whom there are substantial grounds that they would be in danger of being subjected to torture as is set in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Article 3(1) of the Convention against Torture incorporates the principle *non-refoulement a*nd provides that a person will not be expelled, returned or extradited 'to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'. [25] It appears that the principle of *non-refoulement* is also intertwined with other human rights frameworks.

Furthermore, explicit or implicit implementation of the *non-refoulement* principle is incorporated in various international conventions. For instance, the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War in its Article 45 states that a person will not be transferred 'in no circumstances … to a country where he or she may have reason to fear persecution for his or her political opinions or religious belief.' [26] In addition, Article 7 of the ICCPR states that nobody will be subjected to torture or to cruel, inhuman or degrading treatment or punishment' [27], both of them give the implication of principle of prohibition of *refoulement.* [28]

Various regional human rights frameworks also include the principle of *non-refoulement*; for instance, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), [29] the Asian-African Legal Consultative Committee in its Principles Concerning Treatment of Refugees (Article III (3)), [30] Article II (3) of Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention), [6] Article 22(8) of the 1969 American Convention on Human Rights (ACHR), [31] the 1981 African Charter on Human and People's Rights (ACHPR) in its Article 12(3) [32] and the 1984 Cartagena Declaration on Refugees which declared the principle of *non-refoulement* as a 'cornerstone of the international protection of refugees' and further stated the necessity to acknowledge *non-refoulement* as *jus cogens*. [33]

Such common grounds of protection between the two branches of law have helped strengthen

and reaffirm the prohibition of *refoulement* of asylum-seekers and refugees through the human rights courts. For instance, the European Court of Human Rights in *Soering v. United Kingdom* stated that '… the decision … to extradite … give rise to an issue under Article 3 … where substantial grounds have been shown for believing that the person … if extradited, faces a real risk of … torture or inhuman or degrading treatment or punishment'. [34] In addition, in another case, Hirsi Jamaa and Others v. Italy, for example, the ECtHR determined that the Italian 'push-back' policy, or the interception of asylum seekers in the Mediterranean Sea and returning them to Libya, in this case of 11 Somalian and 13 Eritrean nationals, was unlawful, and in violation of Italy's obligations under Articles 3 'Prohibition of torture' and 13 'Right to an effective remedy' of the European Convention on Human Rights, Article 4 of Protocol No. 4, the 'Prohibition of collective expulsion of aliens'. Therefore, the ECtHR stated that 'Italy is not exempt from complying with its obligations under Article 3 … because the applicants failed to ask for asylum or to describe the risks faced as a result of the lack of an asylum system in Libya'. [20, para 157]

However, application of Article 33 of the 1951 Refugee Convention is limited to refugees who are outside of their country of nationality, and hence the status of those who have not yet left their country of origin does not fall under Article 33 of the 1951 Refugee Convention. As a result, protection cannot be claimed in such an instance under the *non-refoulement* provision. [35] Despite this, asylum seekers and recognised refugees are equally covered by application of the principle of *non-refoulement*, provided that they are under the jurisdiction of a concerned state. In addition, contrary to other provisions of the 1951 Refugee Convention, this norm is independent from of the means of their presence, meaning that Article 33 applies regardless of legal or illegal entry into the territory a state. [4] Hathaway argues that implementation of Article 33 by states which requires the principle of non-refoulement be respected, and thus implies a *de facto* duty to admit the refugee. [36] However, this is not an absolute duty because the exceptions provided by Article 33(2) do not give the benefits of the *non-refoulement* principle for a refugee that represents a danger to the host country's security, or the community of that country, through conviction of a serious crime. [1] Nonetheless, the Court in *Attorney General v. Zaoui* stated that 'exception must be interpreted restrictively' and 'the danger to security must be serious enough to justify frustrating the whole purpose of the Refugee Convention by sending a person back to persecution'. [37] Therefore, Chetail states that operation of the principle of *non-refoulement* has to reconcile two competing values. While on the one hand it is compromised by states' right to control access to their territory, such authoritative protection can threaten the lives and freedoms of refugees on the other. [4]

Despite the fact that non-derogation is part of the 1951 Refugee Convention according to its Article 42 [1], Farmer argued that this is further supported by the fundamental nature of the *non-refoulement* principle. [38] However, Hannkainen argues that the exceptions contained in Article 33(2) of the 1951 Refugee Convention create the 'room' for derogation in attaining the *jus cogens* status of the *non-refoulement* principle. [39] Similarly, Schabas believes that arguments regarding the principle of non-refoulement reaching jus cogens status are not convincing. [40] Nonetheless, Orakhelashvili states that given the non-derogable description of any human rights convention as evidence provides it as a *jus cogens* rule. [41] This view was supported by the UNHCR Executive Committee, stating that of not being a subject for derogation of the principle of *non-refoulement*. [42] Lauterpacht and Bethlehem stated that *non-refoulement* is a principle of customary international law. [43]

To summarise, in light of the above-mentioned discussion and cases, it is important to note two main distinctions in the principle of non-refoulement between international refugee law and international human rights law. First, in the former, refugees are protected against return where a threat to life, or freedom, or other human rights violations or serious harm amounting to persecution exists; in the latter, all individuals are protected against return in any instance of a

range of potential rights violations, the scope of which is under development, but at a minimum, where torture or other forms of inhuman or degrading treatment exist. Second, the 1951 Refugee Convention permits lawful *refoulement* in specific circumstances, whereas as a human right *non-refoulement* is an absolute. [3]

Refugee Convention as a specific treaty of human rights. The preamble of the 1951 Refugee Convention states that the Convention is enacted in the context of the fact that '… human beings shall enjoy fundamental rights and freedoms without discrimination'. [1] As a starting point, the 1951 Refugee Convention with its human rights principles created a new regime of protection through revising, consolidating and extending previous conventions. [44] Sternberg states that the reference to the Universal Declaration of Human Rights (UDHR) in the Preamble of the 1951 Refugee Convention gives an indication of the tandem development of the definition of refugee and human rights principles. [45] Lauterpacht and Bethlehem stated that the human rights law is 'an essential part of [of the 1951 Refugee Convention] framework'. [56, 75 p.] Therefore, Hathaway argues that the 1951 Refugee Convention should be considered as 'part and parcel of international human rights law' and thus a refugee law is 'a remedial or palliative branch of human rights law'. [36, 4-5 p.] Edwards argued that the 1951 Refugee Convention is a human rights instrument with the particular scope for the protection of the rights of a specific category of protected person, namely the refugee. Nevertheless, the 1951 Refugee Convention is the 'floor', though not the 'ceiling', for the rights of refugees. [3]

In addition, adoption of the 1951 Refugee Convention soon after the UDHR and explicit proclamation of human rights commitments in its preamble show the intention to contribute to the UN's aims and principles regarding the advancement of human rights. [46] The UN Charter in Articles 1(3) and 55 declare its aim through 'promoting and encouraging respect for human rights and for fundamental freedoms for all' [47] and 'universal respect for and observance of human rights and fundamental freedoms for all', [47] respectively. Therefore, the 1951 Refugee Convention, as applies to a specific category of individuals, was the first human rights framework, though the drafters of the 1951 Convention anticipated that subsequent treaties would provide additional protection. [46]

Hathaway argued that international human rights law and the 1951 Refugee Convention are both primary sources of refugees' rights. The 1951 Refugee Convention was specifically designed to satisfy refugees' needs, though the evolution and development of international human rights law is also useful [36]. Whilst Edwards claimed that international refugee law, i.e., the 1951 Refugee Convention, is a rights-granting instrument which is informed by human rights standards [3], Goodwin-Gill argued that the 1951 Refugee Convention is a scheme of obligations between states parties, and a refugee can benefit from the fulfilment of those duties. Thus, the 1951 Refugee Convention is a duty-driven framework, rather than human rights-based one. [48]

Nevertheless, Chetail states that in framing the refugee rights regime, the historical normative context played a significant and decisive role at the time when the 1951 Refugee Convention was drafted. Therefore, the emergence of refugee status was as a 'hybrid' with the provision of minimum standards for aliens and fundamental rights within the new subset of international human rights law, as underlined in the 1951 Refugee Convention's preamble. The ultimate objective and the *raison d'être* of the 1951 Refugee Convention is in providing for refugees the 'exercise of … fundamental rights and freedoms'. [4]

In the light of the arguments of scholars and the various views as to its interpretation, it appears that the 1951 Refugee Convention contains the main definitions and provisions, such as the principle of non-discrimination (Article 3), the principle of *non-refoulement* (Article 33), a guarantee of non-penalisation (Article 31) as well as the widest possible exercise of fundamental rights, provides for considerable protection of the rights of refugee, though it should be noted that this provision does not extend to a full range of rights. Therefore, Ziegler stated that the 'legal

space' of the 1951 Refugee Convention was made by the drafters in order to expand refugee protection through subsequent human rights treaties, which implies the human rights instrument character of the 1951 Refugee Convention. [46]

International human rights law treaties as a fundamental basis for refugee protection. In order to provide protection to individuals who fall outside the scope of the definition of refugee under Article 1A(2) of the 1951 Refugee Convention, the protection of such people is considered by complementary protection as a matter of international law. The term 'complementary protection' describes states' protection as complements and supplements the 1951 Refugee Convention through their obligations that arise from international legal instruments such as treaties and customs. The scope of the principle of *non-refoulement* under international law is widened by the effect of complementary protection. [49] Through this, the prohibition on *refoulement* may be explicit or implicit. While Article 3 of the Convention against Torture [25] expressly prohibits torture, interpretations of the provisions of Article 3 of the ECHR [29] and Article 7 of the ICCPR [27] by the European Court of Human Rights and the UN Human Rights Committee in the cases *Soering v. UK* [34] and *Chahal v. UK* [50] preclude the removal of individuals when there is a real risk of them being exposed to harm. However, Schabas argues that complementary protection through the human rights regime becomes superfluous, and takes over the 1951 Refugee Convention [51], even though it is not only about the principle of *non-refoulement* but extending the definition of refugee and the definition of refugee status. Therefore, scholars such as Wachenfeld and Christensen stated that the 1951 Refugee Convention is eclipsed by human rights covenants, even in such areas of equal treatment. [52] Following this view, Maluwa asserted that the features of international human rights law were considerably more extensive than those of refugee law with its specific tenets because the latter, in essence, is a subset of human rights. [53]

Furthermore, the ICCPR plays an essential role in the process of reinforcement and supplementing refugee status. Although the 1951 Refugee Convention contains the civil and political rights of refugees, such as non-discrimination, freedom of religion, freedom of association, freedom of movement, and access to court, they are, however, fairly limited. Moreover, rights such as the right to family unity and the right to return are not guaranteed by the 1951 Refugee Convention, even though they are considered to be particularly critical to refugees. [4] Therefore, the HRC in its General Comments expressly emphasised the availability of the rights in Covenants for all individuals and limitless of enjoyment of rights regardless of nationality or status (being an asylum seeker or a refugee). [54] For instance, the *Ngambi v. France* case, where Mr. Benjamin Ngambi, of Cameroonian origin with refugee status in France, and Ms. Marie-Louise Nébol, of Cameroonian nationality and resident in Douala, Cameroon, claimed as to violations by France of Articles 17 and 23 of the ICCPR. In such cases, the HRC stated that the necessity of interpretation of the ICCPR's provision in a broader sense, and pointed out that 'Article 23 of the Covenant guarantees the protection of family life including the interest in family reunification' [55] and the prevention of the separation of family members for different reasons, such political or economic. [56]

Relationship between international refugee law and international human rights law. Both international refugee law and international human rights law share common roots, arising from the grave consequences of World War II in terms of persecution and the number of people seeking safe locations across international frontiers. Being displaced or fleeing due to human rights abuses means that refugee rights are undoubtedly interrelated with human rights. However, the response of each body of law is different, albeit interrelated; while human rights law aims to ensure the prevention and avoidance of such violations through creating a global regime of fundamental rights, responding to the displacement of people whose rights have been violated is in the competence of refugee law. Thus, functions of these regimes are complementary, yet distinct. [3]

McAdam stated that refugee status, as set out in the 1951 Refugee Convention, is reinforced and improved through the extensive body of universal human rights law. Although human rights law plays a role in enhancing and extending refugee rights, refugee status is only actually created via the 1951 Refugee Convention's mechanism attached with no derogation. McAdam went further, indicating the inadequacy of international human rights law in its own function in providing for the protection of individuals and their entitlements at the national level. [44]

Although many international human rights conventions have been adopted since the conclusion of the Refugee Convention, international human rights law is broad in the sense of its application and conclusions regarding the fundamental rights of all human beings. The intersection of international human rights law and refugee law, Edwards points out, occurs in at least three main ways, such as causes of fleeing serious human rights violations, basis of human rights standards for granting refugee status and entitlement of benefits of general human rights regime. [3]

The contrast between international refugee law and international human rights is possibly overplayed, as it is evident that the former remains a secure part of the broader field of the latter. [57] However, it is also true that international human rights law can strengthen the refugee protection architecture by effectively filling the latter's gaps. [3] As Goodwin-Gill and McAdam claim, 'refugee law is an incomplete legal regime of protection, imperfectly covering what ought to be a situation of exception'. [9]

Chetail states that the 1951 Refugee Convention, while being a human rights instrument, is the primary tool for refugee protection. Chetail further claimed that human rights law should be the primary source of refugee rights rather than the reverse, asserting that human rights law is broadly eclipsed by the protections in the 1951 Refugee Convention. [4] Nevertheless, contrary to such a positive focus on human rights law, Edwards argues that the range of rights are tailored to the specific circumstances of refugees in the 1951 Refugee Convention, such as exemption from the usual requirements regarding length of stay within its description of enjoyment of rights (Article 6), continuity of lawful residence (Article 10), refugee seamen (Article 11), movable and immovable property (Article 13), recognition of foreign diplomas (Article 19), welfare rights (Articles 20 to 24), special administrative assistance (Article 25), travel documents (Article 28), exemption from fiscal charges (Article 29), transfer of assets (Article 30), non-penalisation for illegal entry or stay (Article 31) and naturalisation (Article 34), despite the fact that such rights do not find any expression in human rights instruments. [3]

The relationship between both regimes can be seen from the perspective of dispute settlement. While Article 38 of the Refugee Convention refers to the International Court of Justice for the any issues arising between parties regarding its interpretation or application which, however, was never invoked by any state party of the 1951 Refugee Convention, [4] it can be seen that this process can rather be settled through the Human Rights adjudicative bodies. It is evident from the blurred borders of these two that they represent are intimately interdependent branches of law. Whether the weakness of refugee law needs to be strengthened, or its flexibility allows legal gaps to be filled, it is clear from the given practices that both regimes of protection, in principle and in practice, undoubtedly work to supplement each other, and work in tandem.

Conclusion. In conclusion, given that international refugee law is concerned with refugee status through the framework and limits of the 1951 Refugee Convention, it is nevertheless strongly interrelated with international human rights law. The tangible difference between the international human rights law and international refugee law is evident in the scope of these two branches of law. Whilst application of human rights can be enjoyed by every human being, the benefits of refugee status are dependent on the predicament of persons needing protection as based on the five grounds expressed in the definition of a refugee. Nevertheless, the proliferation of the number of cases going through the human rights courts have, inevitably, had an impact on the application of

the 1951 Refugee Convention through extending the definition of a refugee as an interpretation of its provisions. Therefore, it appears that the complementary and supplementary functions of international human rights law create the basis for full implementation of international refugee law.

In addition, the existence of the principle of *non-refoulement* represents common ground for protection, as in refugee law as in human rights frameworks. Nevertheless, human rights law has had a significant impact on the evolution of the *non-refoulement* principle, which has been expressly endorsed in many important human rights frameworks, at both the universal and regional levels. Thus, this reinforces and consolidates the refugee law's cornerstone as common ground for protection. Therefore, stating that the 1951 Refugee Convention is not a human rights treaty is rather ironic because of its duty-driven characteristics, rather than being a right-based framework. [4]

Although these two branches of international law are distinct from each other, both have common ground in terms of the protection of human beings, though through their own distinct approaches. Despite this, it is hard to imagine the separate operation of refugee law due to its specific nature regarding the protection of refugees. Therefore, it appears that the acceptance of refugee law within the basis of human rights law is as a subset of the latter, but with that the provision of the specific protection of refugees as a 'first aid' in some senses, though this does depend on from which perspective one considers the protection and rights of refugees.

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Халықаралық босқындар құқығы - халықаралық адам құқығының ішкі жиынтығы

Аңдатпа. Халықаралық босқындар құқығы босқындар мәртебесіне қатысты 1951 жылғы босқындар туралы конвенцияның шеңбері мен шектерінде болатындығын ескере отырып, бұл халықаралық адам құқықтарымен тығыз байланысты. Адам құқықтарын кез келген адам пайдалана алады, бірақ босқын мәртебесінің артықшылықтары босқынның анықтамасында көрсетілген бес негізге сүйене отырып, қорғауды қажет ететін адамдардың жағдайына байланысты болады. Адам құқықтары жөніндегі соттар арқылы қаралатын істер санының көбеюі, сөзсіз, 1951 жылғы босқындар туралы конвенцияны босқынның ережелерін түсіндіру ретінде кеңейту арқылы қолдануға әсер етті. Осылайша, халықаралық адам құқығы қосымша және қолдаушы функциялары халықаралық босқындар құқығының толық орындалуына негіз жасайды. Халықаралық құқықтың осы екі саласы бір-бірінен ерекшеленсе де, олардың әрқайсысының жеке көзқарастары арқылы адамдарды қорғауға қатысты ортақ тұстары бар. Адам құқықтары заңнамасы негізінде босқындар туралы заңнамасының қабылдануы соңғысының қосындысы болып табылады, бірақ бұл ретте босқындарды белгілі бір мағынада «алғашқы көмек» ретінде қорғауды қамтамасыз ету керек.

Түйін сөздер: Халықаралық босқындар құқығы, халықаралық адам құқықтары, қайтарымсыз, босқын анықтамасы.

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Международное право беженцев - подмножество международного права прав человека

Аннотация. Учитывая, что международное право беженцев касается статуса беженца в рамках и в пределах Конвенции о статусе беженцев 1951 года, оно, тем не менее, тесно связано с международным правом прав человека. Хотя каждый человек может пользоваться правами человека, преимущества статуса беженца зависят от положения лиц, нуждающихся в защите, исходя из пяти оснований, изложенных в определении беженца. Увеличение числа дел, рассматриваемых судами по правам человека, неизбежно повлияло на применение Конвенции о статусе беженцев 1951 года, расширив определение беженца. Таким образом, дополнительные и вспомогательные функции международного права в области прав человека создают основу для полного осуществления международного права беженцев. Хотя эти две ветви международного права отличаются друг от друга, обе имеют общую почву в плане защиты людей, хотя и с помощью своих собственных подходов. Представляется, что принятие закона о беженцах в рамках законодательства о правах человека является подмножеством последнего, но при этом в некоторых смыслах обеспечивается особая защита беженцев в качестве «первой помощи».

Ключевые слова: международное право беженцев, международное право прав человека, невыдачи, определение беженца.

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1. Журнал мақсаты. Заң ғылымдары бойынша мұқият тексеруден өткен ғылыми құндылығы бар мақалалар жариялау.

2. Журналда мақала жариялаушы автор мақаланың қол қойылған бір дана қағаз нұсқасын Ғылыми басылымдар бөліміне (редакцияға, мекенжайы: 010008, Қазақстан Республикасы, Нұр-Сұлтан қаласы, Қ. Сәтпаев көшесі, 2, Л.Н. Гумилев атындағы Еуразия ұлттық университеті,

Бас ғимарат, 402 кабинет) және vest_law@enu.kz электрондық поштасына Word форматындағы нұсқаларын жіберу қажет. Мақала мәтінінің қағаз нұсқасы мен электронды нұсқалары бірдей болулары қажет.

Мақалалар қазақ, орыс, ағылшын тілдерінде қабылданады.

3. Автордың қолжазбаны редакцияға жіберуі мақаланың Л.Н. Гумилев атындағы Еуразия ұлттық университетінің хабаршысында басуға келісімін, шетел тіліне аударылып қайта басылуына келісімін білдіреді. Автор мақаланы редакцияға жіберу арқылы автор туралы мәліметтің дұрыстығына, мақала көшірілмегендігіне (плагиаттың жоқтығына) және басқа да заңсыз көшірмелердің жоқтығына кепілдеме береді.

4. Мақаланың көлемі: 8 беттен 18 бетке дейінгі көлемде қабылданады;

Мақаланың құрылымы: (А4 беттінде, кітап өлшемінде, жолдың барлық жақтауы – 20 мм. Шрифт: Times New Roman, размер (кегль) - 14);

5. ХҒТАР http://grnti.ru/ - бірінші жолдың сол жақтауында;

Автор(лар)дың аты-жөні – жолдың ортасында;

Мекеменің толық атауы, қаласы, мемлекеті (егер авторлар әртүрлі мекемеде жұмыс жасайтын болса, онда әр автор мен оның жұмыс мекемесі қасында бірдей белгі қойылу керек) – жолдың ортасында;

Автор(лар)дың E-mail-ы – жақша ішінде, курсивпен, жолдың ортасында;

Мақала атауы – жолдың ортасында, жартылай қою кіші әріппен жазылады;

Аннотация (100-200 сөз; мақаланың атауын мейлінше қайталамауы қажет; әдебиеттерге сілтемелер болмауы қажет; мақаланың құрылысын (кіріспесі, мақаланың мақсаты, міндеттері, қарастырылып отырған сұрақтың тарихы, зерттеу әдістері, нәтижелер/талқылау, қорытынды) сақтай отырып, мақаланың қысқаша мазмұны берілуі қажет).

Түйін сөздер (6-8 сөз не сөз тіркесі)

Түйін сөздер мақала мазмұнын көрсетіп, мейлінше мақала атауы мен аннотациядағы сөздерді қайталамай, мақала мазмұнындағы сөздерді қолдану қажет. Сонымен қатар, ақпараттық-іздестіру жүйелерінде мақаланы жеңіл табуға мүмкіндік беретін ғылым салаларының терминдерін қолдану қажет.

Негізгі мәтін мақаланың мақсаты, міндеттері, қарастырылып отырған сұрақтың тарихы, зерттеу әдістері, нәтижелер/талқылау, қорытынды бөлімдерін қамтуы қажет – жоларалық интервал - 1, азат жол «қызыл жолдан» - 1,25см, беттеу жолағы – еніне сай жасалады.

Таблица, суреттер – аталғаннан кейін орналастырылады. Әр таблица, сурет қасындаоның аталуы болу қажет. Сурет айқын, сканерден өтпеген болуы керек.

Мақаладағы формулалар тек мәтінде оларға сілтеме берілсе ғана номерленеді.

Жалпы қолданыста бар аббревиатуралар мен қысқартулардан басқалары міндетті түрде алғаш қолданғанда түсіндірілуі берілуі қажет.

Қаржылай көмек туралы ақпарат бірінші бетте көрсетіледі.

Әдебиеттер тізімі

Мәтінде әдібиеттерге сілтемелер тікжақшаға алынады. Мәтіндегі әдебиеттер тізіміне сілтемелердің номерленуі мәтінде қолданылуына қатысты жүргізіліде: мәтінде кездескен әдебиетке алғашқы сілтеме [1] арқылы, екінші сілтеме [2] арқылы т.с.с. жүргізіледі. Кітапқа жасалатын сілтемелерде қолданылған беттері де көрсетілуі керек (мысалы, [1, 45 бет]). Жарияланбаған еңбектерге сілтемелер жасалмайды. Сонымен қатар, рецензиядан өтпейтін басылымдарға да сілтемелер жасалмайды (әдебиеттер тізімін әзірлеу үлгілерін төмендегі **мақаланы рәсімдеу үлгісінен қараңыз).**

6. Мақала соңындағы әдебиеттер тізімінен кейін библиографиялық мәліметтер орыс және ағылшын тілінде (егер мақала қазақ тілінде жазылса), қазақ және ағылшын тілінде (егер мақала орыс тілінде жазылса), орыс және қазақ тілінде (егер мақала ағылшын тілінде жазылған болса) беріледі.

Авторлар туралы мәлімет: автордың аты-жөні, ғылыми атағы, қызметі, жұмыс орны мен мекенжайы, телефон, e-mail – **қазақ, орыс, ағылшын тілдерінде толтырылады.**

7. Қолжазба мұқият тексерілген болуы қажет. Техникалық талаптарға сай келмеген қолжазбалар қайта өңдеуге қайтарылады. Қолжазбаның қайтарылуы оның журналда басылуына жіберілуін білдірмейді.

Редакцияға түскен мақала жабық (анонимді) тексеруге жіберіледі. Барлық рецензиялар авторға жіберіледі. Автор (рецензент мақаланы түзетуге ұсыныс берген жағдайда) ескертулерді күн аралығында қайта қарап, қолжазбаның түзетілген нұсқасын редакцияға қайта жіберуі керек. **Рецензент жарамсыз деп таныған мақала қайтара қарастырылмайды.** Мақаланың түзетілген нұсқасы мен автордың рецензентке жауабы редакцияға
жіберіледі.

8. Төлемақы. Басылымға рұқсат етілген мақала авторларына төлем жасау туралы ескертіледі. 2019 жылға төлемақы көлемі ЕҰУ қызметкерлері үшін - 4500 теңге, басқа ұйым мен мекеме қызметкерлері үшін - 5,500 теңге.

Реквизиттер:
РГП на ПХВ «Евразийский Национальный Университет имени Л.Н. Гумилева»
БИН 010140003594

АО «Банк ЦентрКредит»
БИК банка: KCJBKZKX
ИИК: KZ978562203105747338 (KZT)
Кнп 859
Кбе 16

АО «Bank RBK»
Бик банка: KINCKZKA
ИИК: KZ498210439858161073 (KZT)

АО «ForteBank»
БИК Банка: IRTYKZKA
ИИК: KZ599650000040502847

АО «НародныйБанкКазахстан»
БИК Банка: HSBKKZKX
ИИК: KZ946010111000382181

Положение о рукописях, представляемых в журнал «Вестник Евразийского национального университета имени Л.Н.Гумилева. Серия: Право»

1. Цель журнала. Публикация тщательно отобранных оригинальных научных работ по юридическому направлению.

2. Автору, желающему опубликовать статью в журнале, необходимо представить рукопись в твердой копии (распечатанном варианте) в одном экземпляре, подписанном автором в Отдел научных изданий (по адресу: 010008, Казахстан, г. Нур-Султан, ул. Сатпаева, 2, Евразийский национальный университет им. Л.Н.Гумилева, Учебно-административный корпус, каб. 402) и по e-mail **vest_law@enu.kz**. При этом должно быть строго выдержано соответствие между Word-файлом и твердой копией.

Язык публикаций: казахский, русский, английский.

3. Отправление статей в редакцию означает согласие авторов на право Издателя, Евразийского национального университета имени Л.Н. Гумилева, издания статей в журнале и переиздания их на любом иностранном языке. Представляя текст работы для публикации в журнале, автор гарантирует правильность всех сведений о себе, отсутствие плагиата и других форм неправомерного заимствования в рукописи, надлежащее оформление всех заимствований текста, таблиц, схем, иллюстраций.

4. Объем статьи не должен превышать 18 страниц (от 8 страниц).

5. Схема построения статьи (страница – А4, книжная ориентация, поля со всех сторон – 20 мм. Шрифт: тип – Times New Roman, размер (кегль) - 14):

МРНТИ http://grnti.ru/ - первая строка, слева

Инициалы и Фамилию автора(ов)- выравнивание по центру, курсив

Полное наименование организации, город, страна (если авторы работают в разных организациях, необходимо поставить одинаковый значок около фамилии автора и соответствующей организации)

E-mail автора(ов) – в скобках курсив

Название статьи – выравнивание по центру полужирным шрифтом

Аннотация (100-200 слов; не должна содержать формулы, по содержанию повторять название статьи; не должна содержать библиографические ссылки; должна отражать краткое содержание статьи, сохраняя структуру статьи – введение, постановка задачи, цели, история, методы исследования, результаты/обсуждение, заключение/выводы).

Ключевые слова (6-8 слов/словосочетаний).

Ключевые слова должны отражать основное содержание статьи, должны использоваться термины из текста статьи, а также термины, определяющие предметную область и включающие другие важные понятия, позволяющие облегчить и расширить возможности нахождения статьи средствами информационно-поисковой системы).

Основной текст статьи должен содержать введение, постановку задачи, цели, история, методы исследования, результаты/обсуждение, заключение/выводы.

Межстрочный интервал – 1, отступ «красной строки» -1,25 см, выравнивание по ширине.

Таблицы, рисунки необходимо располагать после упоминания. Каждой иллюстрации должна следовать надпись. Рисунки должны быть четкими, чистыми, несканированными. В статье нумеруются лишь те формулы, на которые по тексту есть ссылки.

Все аббревиатуры и сокращения, за исключением заведомо общеизвестных, должны быть расшифрованы при первом употреблении в тексте.

Сведения о финансовой поддержке работы указываются на первой странице в виде сноски.

Список литературы

В тексте ссылки обозначаются в квадратных скобках. Ссылки должны быть пронумерованы строго по порядку упоминания в тексте. Первая ссылка в тексте на литературу должна иметь номер [1], вторая - [2] и т.д. Ссылка на книгу в основном тексте статьи должна сопровождаться указанием использованных страниц (например, [1, 45 стр.]). Ссылки на неопубликованные работы не допускаются. Нежелательны ссылки на нерецензируемые издания (примеры описания списка литературы, описания списка литературы на английском языке см. ниже в образце оформления статьи).

В конце статьи, после списка литературы, необходимо указать библиографические данные на русском и английском языках (если статья оформлена на казахском языке), на казахском и английском языках (если статья оформлена на русском языке) и на русском и казахском языках (если статья оформлена на английском языке).

Сведения об авторах: фамилия, имя, отчество, научная степень, должность, место работы, полный служебный адрес, телефон, e-mail – на казахском, русском и английском языках.

6. Рукопись должна быть тщательно выверена. Рукописи, не соответствующие техническим требованиям, будут возвращены на доработку. Возвращение на доработку не означает, что рукопись принята к опубликованию.

7. Работа с электронной корректурой. Статьи, поступившие в Отдел научных изданий (редакция), отправляются на анонимное рецензирование. Все рецензии по статье отправляются автору. Авторам в течение трех дней необходимо отправить корректуру статьи. Статьи, получившие отрицательную рецензию, к повторному рассмотрению не принимаются. Исправленные варианты статей и ответ автора рецензенту присылаются в редакцию. Статьи, имеющие положительные рецензии, представляются редколлегии журнала для обсуждения и утверждения для публикации.

Периодичность журнала: 4 раза в год.

8. Оплата. Авторам, получившим положительное заключение к опубликованию, необходимо произвести оплату по следующим реквизитам (для сотрудников ЕНУ – 4500 тенге, для сторонних организаций – 5500 тенге):

Реквизиты:
РГП на ПХВ «Евразийский Национальный Университет имени Л.Н. Гумилева»
БИН 010140003594
АО «Банк ЦентрКредит»
БИК банка: KCJBKZKX
ИИК: KZ978562203105747338 (KZT)
Кнп 859
Кбе 16

АО «Bank RBK»
Бик банка: KINCKZKA
ИИК: KZ498210439858161073 (KZT)

АО «ForteBank»
БИК Банка: IRTYKZKA
ИИК: KZ599650000040502847

АО «НародныйБанкКазахстан»
БИК Банка: HSBKKZKX

ИИК: KZ946010111000382181

Provision on articles submitted to the journal
“Bulletin of L.N. Gumilyov Eurasian National University. Law Series”

1. Purpose of the journal. Publication of carefully selected original scientific works in the fields of Juridical sciences.

2. An author who wishes to publish an article in a journal must submit the article in hard copy (printed version) in one copy, signed by the author to the scientific publication office (at the address: 010008, Republic of Kazakhstan, Nur-Sultan, Satpayev St., 2. L.N. Gumilyov Eurasian National University, Main Building, room 402) and by e-mail vest_law@enu.kz in Word format. At the same time, the correspondence between Word-version and the hard copy must be strictly maintained.

Language of publications: Kazakh, Russian, English.

3. Submission of articles to the scientific publication office means the authors’ consent to the right of the Publisher, L.N. Gumilyov Eurasian National University, to publish articles in the journal and the re-publication of it in any foreign language. Submitting the text of the work for publication in the journal, the author guarantees the correctness of all information about himself, the lack of plagiarism and other forms of improper borrowing in the article, the proper formulation of all borrowings of text, tables, diagrams, illustrations.

3. The volume of the article should not exceed 18 pages (from 8 pages).

4. Structure of the article (page – A4 format, portrait orientation, page margins on all sides - 20 mm. Font: type - Times New Roman, font size - 14)

IRSTI http://grnti.ru/ - first line, left

Initials and Surname of the author (s) - center alignment, italics

Full name of the organization, city, country (if the authors work in different organizations, you need to put the same icon next to the name of the author and the corresponding organization) - center alignment, italics

Author’s e-mail (s) - in brackets, italics

Article title - center alignment,bold

Abstract (100-200 words, it should not contain a formula, the article title should not repeat in the content, it should not contain bibliographic references, it should reflect the summary of the article, preserving the structure of the article - introduction, problem statement, goals, history, research methods, results /discussion, conclusion).

Key words (6-8 words/word combination. Keywords should reflect the main content of the article, use terms from the article, as well as terms that define the subject area and include other important concepts that make it easier and more convenient to find the article using the information retrieval system).

The main text of the article should contain an introduction, problem statement, goals, history, research methods, results / discussion, conclusion - line spacing - 1, indent of the “red line”-*1.25 cm, alignment in width.*

Tables, figures should be placed after the mention. Each illustration should be followed by an inscription. Figures should be clear, clean, not scanned.

In the article, only those ***formulas*** are numbered, to which the text has references.

All ***abbreviations,*** with the exception of those known to be generally known, must be deciphered when first used in the text.

Information on ***the financial support*** of the article is indicated on the first page in the form of a footnote.

References

In the text references are indicated in square brackets. References should be numbered strictly in the order of the mention in the text. The first reference in the text to the literature should have the number [1], the second - [2], etc. The reference to the book in the main text of the article should be accompanied by an indication of the pages used (for example, [1, 45 p.]). References to unpublished works are not allowed. Unreasonable references to unreviewed publications (examples of the description of the list of literature, descriptions of the list of literature in English, see below in the sample of article design).

At the end of the article, after the list of references, it is necessary to indicate bibliographic data in Russian and English (if the article is in Kazakh), in Kazakh and English (if the article is in Russian) and in Russian and Kazakh languages (if the article is English language).

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Список литературы

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5 Walker C.J. Inside Agency Statutory Interpretation // Stanford Law Review. - 2015. – Т. 67. - № 5. - С. 999-1079. – **статья**

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Жылжымайтын мүлікке құқықтарды мемлекеттік тіркеу саласын жетілдіру

Аңдатпа. Екі мемлекеттің - Қазақстан Республикасы мен Ресей Федерациясының жылжымайтын мүлікке құқықтарды мемлекеттік тіркеу туралы құқықтық актілерін салыстыру негізінде қазақстандық заңнаманың өзекті мәселелерін анықтау бойынша әрекет жасалды. Мақалаға кіріспеде жылжымайтын мүліктің азаматтық айналымда маңызы анықталып, жылжымайтын мүлікке құқықтарды мемлекеттік тіркеудің қажеттілігі негізделді [100-200 сөз].

Түйін сөздер: Азаматтық заңнама, азаматтық құқықтардың объектілері, жылжымайтын мүлік, мемлекеттік тіркеу, мүлік алушының меншік құқығы пайда болатын кез, тіркеу процедурасы, өтінішпен жүгіну мерзімдері мен нысандары [5-7 сөз / сөз тіркесі].

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Improvement of the sphere of state registration rights to real estate

Abstract. Based on a comparative analysis of legal acts on state registration of rights to immovable property of two countries, the Republic of Kazakhstan and the Russian Federation, an attempt to identify problematic aspects of Kazakhstan's legislation was made. In the introduction of the article, the value of real estate in public circulation is disclosed, the need for mandatory state registration of rights to real estate is substantiated [100-200 words].

Key words: Civil law, civil rights objects, real estate, state registration, the moment of occurrence of the right of ownership of the acquirer, registration procedure, terms and forms of appeal [5-7 keywords].

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