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THE INTERPLAY BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND REFUGEE LAW

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“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safety and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum.”¹

-United Nations High Commissioner for Refugees

I. INTRODUCTION

Since the second half of the twentieth century, the international arena has witnessed striking developments that have led to the expansion of the scope of international law. The process of globalisation has been accelerated by modern means of communication and transportation. Nowadays, we live in an era in which the growing awareness of increasing interconnectedness among social lives has been transforming our world into a borderless global village.

As the period of transition has been generating new challenges that require an effective international response and regulations, the need for interstate cooperation has assumed tremendous significance more than ever, in order to deal with the pressures of contemporary issues that have taken place at the head of the global agenda such as human rights violations and refugee crises.

As a natural consequence of the changing face of global challenges, specialised rules and rule-systems that have no clear relationship to each other have been created.² The expansion of

¹ Statement made at the 50th session of the UN Commission on Human Rights (1994) Quoted in UNHCR, *Human Rights and Refugee Protection, Part I: General Introduction* (October, 1995).

² International Law Commission (ILC), ‘Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law’ (2006) 145 UN Doc A/CN.4/L.682.

international law has led to the concern about the ‘fragmentation’ of international law.³ The current legal framework is divided into a variety of branches including International Human Rights Law and International Refugee Law. This compartmentalization in the international legal framework has started a debate on the relationship between different branches of international law.

The principal objective of this paper is to examine the interaction between international human rights law and international refugee law that has been the subject of recent academic discussion of great importance. Whilst some conceive international refugee law as a distinct branch of international law; others argue that it is, in essence, a sub-set of international human rights law. From my point of view, the two regimes are distinct but complementary. International refugee law is not a panacea in terms of providing adequate protection and assistance for the world’s 68.5 million forcibly displaced people.⁴ Thanks to its well-established structure, international human rights law could fill the existing *protection gap*⁵ by operating as a backup system.

What are the pivotal aspects of international refugee law? How international refugee law and human rights law interact? What rights does a refugee enjoy? This paper endeavours to examine these questions through a critical lens.

II. INTERNATIONAL REFUGEE LAW

Human mobility has always been an integral part of history since human beings have inhabited the earth. People have moved from one place to another for centuries in search of a better future. People have been forced to flee their home due to a variety of reasons since ancient times.⁶ International refugee law deals with the status and standards for the protection of refugees. This section will examine the extent to which the provisions of refugee law ensure protection and assistance for those forcibly displaced.

³ Hafner Gerhard, ‘Pros and Cons Ensuing from Fragmentation of International Law’ (2004) 25(4) Mich. J. Int’l L 849.

⁴ United Nations High Commissioner for Refugees (UNHCR) ‘Global Trends: Forced Displacement in 2017’ (Geneva 2018).

⁵ Amy Lieberman, ‘Where will the climate refugees go?’ (*Aljazeera*, 22 December 2015) <https://www.aljazeera.com/indepth/features/2015/11/climate-refugees-151125093146088.html> accessed 1 December 2018.

⁶ Jung-hyun Cho, ‘The Interaction and Co-action of Refugee Law and Human Rights Law: The Protection of North Korean Escapees under International Law’ (PhD thesis, University of Edinburgh 2008).

A. Defining the Term ‘Refugee’

Article 1A(2) of the Refugee Convention offers an outdated definition of the term “refugee”. The definition identifies a number of circumstances under which displaced people may be entitled to refugee status. The definition defines a refugee as a person (a) who is outside his/her country of nationality or habitual residence; (b) who is not able to return to his/her home country due to a well-founded fear of being persecuted for reasons of religion, race, nationality, membership of a particular social group or political opinion; and (c) who is unable or unwilling to receive the protection of his/her country of nationality.

The scope of the Convention could be considered narrow since such displaced groups as climate migrants have been excluded. Natural disasters cause substantial damage to human life and property. However, the Convention is not applicable to the victims of climate change-induced displacement as the origin of damage is not based on one or more of the five enumerated grounds contained in Article 1A(2). Internally displaced persons are not covered by the Convention either.

Furthermore, the Convention was initially limited both in space and time. It was intended to cover only ‘pre-1951 European refugees’; however, the 1967 Protocol Relating to the Status of Refugees removed those limitations of the 1951 Convention. Nonetheless, some contracting parties maintain this anachronistic geographical restriction to the Refugee Convention.

B. The Key Components of International Refugee Law

The Refugee Convention could be divided into five core components.⁷ First, a refugee, as already mentioned, is someone who is outside his/her country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.⁸

The Article 1F of the Convention points out that that it does not apply to certain categories of persons for whom, albeit persecuted, there are serious reasons for considering that they have

⁷ Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 515.

⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 1A(2).

been guilty of acts such as crimes against peace, crimes against humanity, war crimes, or serious non-political crimes.⁹

Moreover, the Convention specifies that it does not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.¹⁰ Palestinian refugees, for instance, receive assistance and protection from the UN Relief and Works Agency for Palestine Refugees in the Near East (UNWRA), which operates in Gaza, the West Bank, Jordan, Lebanon, and Syria¹¹. For this reason, Palestinian refugees are excluded from coverage under UNHCR's mandate.

Second, the *principle of non-discrimination* contained in Article 3 guarantees that the contracting parties shall apply the provisions of the Convention to refugees regardless of their race, religion or country of origin.¹²

Third, the Convention prevents the penalisation of a refugee who shows 'good reason' for his/her illegal presence *within* a state's territory.¹³ It should be noted that the records of the Conference of Plenipotentiaries to the Refugee Convention indicated that 'good reason' would include fleeing persecution, but there could be other good reasons.¹⁴

Fourth, states parties are obligated not to forcibly return or expel anyone to a country where they are in danger of being subjected to torture and ill-treatment.¹⁵ The prevention of refoulement could be considered as the primary advantage of being entitled to refugee status.

⁹ Ibid., Art 1F.

¹⁰ Ibid., Art 1D.

¹¹ Michael Kagan, 'Is there Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees' (2009) 28(2-3) Refug. Surv. Q. 511.

¹² Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 3.

¹³ Ibid., Art 31(1).

¹⁴ Guy S. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection' in Erika Feller, Volker Türk, and Franches Nicholson (eds), *Refugee Protection in International Law* (CUP 2003) 185.

¹⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 33.

States parties have recognised the *principle of non-refoulement* as a rule of customary international law.¹⁶

The last key element is the assurance of the *widest possible exercise of fundamental rights and freedoms* included in the Preamble to the Refugee Convention .¹⁷

III. THE INTERFACE BETWEEN HUMAN RIGHTS AND REFUGEE LAW

The relationship between international human rights law and international refugee law has been the subject of important recent academic discussion. The two bodies of law are closely intertwined. Both modern refugee law and human rights law have their origins in the aftermath of Second World War as well as the refugee crises of the interwar years that preceded it. An enormous number of people were forced to flee after the Russian Revolution and the partition of the Ottoman Empire. After two decades, millions of people were forced to flee due to the devastation of Second World War.¹⁸

There is a causal relationship between human rights and refugee law. Refugees are forced to flee their countries since they face persecution and human rights violations. Therefore, human rights violations are widely recognised as the principal driving force behind refugee movements.¹⁹ However, international refugee law differs from international human rights law as the latter responds the macro dimension of the problem by forming a global human rights regime that codifies precautionary measures in order to deter, and protect against, future violations. Refugee law, on the other hand, provides assistance and protection to a victim whilst violation of rights occur. This reflects the fact that the two branches of international law perform distinct but complementary roles.²⁰

¹⁶ Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Ministerial Meeting of States Parties (adopted 13 December 2001) UN Doc HCR/MMSP/2001/09, 16 January 2002.

¹⁷ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 preamble.

¹⁸ Nevzat Soguk, *States and Strangers* (University of Minnesota Press 1999).

¹⁹ Vincent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (OUP 2014).

²⁰ Alice Edwards, 'International Refugee Law' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 517.

The refugee protection regime is premised on general principles of human rights. Pursuant to Article 14(1) of the Universal Declaration of Human Rights (UDHR), everyone has the right to seek and to enjoy in other countries asylum from persecution.²¹ Article 14(1) together with universally agreed human rights directly locate international refugee law within the human rights paradigm.²² Furthermore, the Preamble to the Refugee Convention refers to the 1945 UN Charter and the principle of equality and non-discrimination contained in the UDHR.²³ When viewed from this angle, it obviously appears that it was not intended to keep international refugee law separate from international human rights.²⁴

Refugee Convention is evidently a valuable human rights treaty; however, it should be reminded that it creates a particular legal status for its beneficiaries, whereas human rights are applicable to everyone everywhere simply in virtue of being human.²⁵ In this respect, the Refugee Convention is distinct from the major human rights instruments. The refugee regime is reinforced and complemented by international human rights law in a variety of ways.

Neither international refugee law nor international human rights law does explicitly provide a right of asylum. This illustrates the reluctance of states to grant asylum.²⁶ However, it is necessary to consider that Article 14 of the UDHR stipulates that everyone has the right to seek and to enjoy in other countries asylum from persecution.²⁷ Although the Declaration is not legally binding, it is generally argued that Article 14 is implicit within the Refugee Convention.²⁸ In its judgment in the case of *MSS v Belgium and Greece*, the European Court of Human Rights (ECtHR) held the same view: “Belgium and Greece have ratified the *1951 Geneva Convention relating to the Status of Refugees*... which defines the circumstances in which a State *must grant* refugee status to those who requested it, as well as the rights and duties

²¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 14.

²² Alice Edwards, ‘Human rights, Refugees, and The Right ‘To Enjoy’ Asylum’ (2005) 17(2) Int’l J. Refugee L. 293.

²³ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 preamble.

²⁴ Alice Edwards, ‘Human rights, Refugees, and The Right ‘To Enjoy’ Asylum’ (2005) 17(2) Int’l J. Refugee L. 293.

²⁵ Jane McAdam, *Complementary Protection in International Refugee Law* (OUP 2007) 6.

²⁶ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (2nd edn, OUP 1996) 172-173.

²⁷ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 14.

²⁸ S.R. Chowdhury, ‘A Response to the Refugee Problems in Post Cold War Era: Some Existing and Emerging Norms of International Law’ (1995) 7(1) IJRL 100.

of such persons”.²⁹ Additionally, the right to asylum is enshrined in several human rights instruments.³⁰

The UN General Assembly has adopted many resolutions that call for the promotion and protection of the human rights of all refugees.³¹ Moreover, due to the lack of a mechanism for individuals to file complaints under the Refugee Convention, refugees and asylum-seekers are increasingly resorting to human rights mechanisms.³² The Committee Against Torture (CAT), for instance, has provided significant protection to refugees and asylum seekers against refoulement.³³

Guy S. Goodwin-Gill and Jane McAdam, in *The Refugee in International Law*, describe refugee law as an “incomplete legal regime of protection”.³⁴ So as to fill the protection gap, international human rights law provides a useful back-up to the existing refugee regime. Another scholar of international refugee law, James C. Hathaway, claims that refugees are granted a broader range of civil and socio-economic rights under the Refugee Convention compared with the rights in international human rights law.³⁵ These scholars are of the same mind on that the Refugee Convention serves as a primary source of refugee protection whilst it is a human rights instrument. Vincent Chetail, on the other hand, argues that international human rights law is the primary tool of refugee protection.³⁶

²⁹ *MSS v Belgium and Greece* (2011) 53 EHRR 28.

³⁰ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 36 OAS Treaty Series art 22(9) OEA/Ser.K/XVI/I.I; African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 59 art 12(3).

³¹ UNHCR ‘Thematic Compilation of General Assembly & Economic and Social Council Resolutions’ (Division of International Protection Geneva 2015).

³² Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 517.

³³ Icelandic Human Rights Centre, ‘Refugees’ (*Icelandic Human Rights Centre*) <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups/refugees> accessed 9 March 2019.

³⁴ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007) 1.

³⁵ James C. Hathaway, *The Rights of Refugees under International Law* (CUP 2005).

³⁶ Vincent Chetail, ‘Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law’ in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (OUP 2014).

A. The Impact of International Human Rights Law on the Determination of Refugee Status

As already mentioned in Chapter II, a refugee is someone who has been forced to flee his/her country of origin due to a well-founded fear of being persecuted on the grounds of race, religion, nationality, political opinion or membership in a particular social group. The integral elements of the refugee definition are “persecution” and “discrimination”.

There is no clear definition of the concept of “persecution” contained in the 1951 Convention. In 1979, the UNHCR published the “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status” where the term “persecution” is inferred as a threat to life or physical freedom.³⁷ However, the meaning of the term remains uncertain. International human rights law has, therefore, become a significant point of reference in defining forms of persecution.³⁸

The UNHCR asserts that persecution takes different forms including: (a) *a threat to life or freedom, and other serious violations of basic human rights*; (b) *discriminatory treatment* which may lead to considerable hardship to an individual, e.g. serious restriction on the free exercise of religion; and (c) *a combination of various measures* that leads to cumulative effects.³⁹

Article 9 of the EU Qualification Directive provides as follows:

In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

³⁷ UNHCR ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’(Geneva 2011) UN Doc HCR/1P/4/ENG/REV. 3.

³⁸ UNHCR ‘Self-Study Module on Refugee Status Determination’ (Geneva 2005).

³⁹ UNHCR ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’(Geneva 2011) UN Doc HCR/1P/4/ENG/REV. 3.

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).⁴⁰

On the other hand, the definition of the concept should not be limited to human rights violations. This is because the existing human rights standards do not encompass all known modes of persecution. Before 2000, for instance, the use of child soldiers in armed conflict was not qualified as a human rights violation.⁴¹ Edwards argues that keeping the definition of persecution open leaves the regime able to recognise both new human rights violations of sufficient severity and serious harms that are not yet considered as human rights violations.⁴²

Another key component of the refugee definition is “discrimination”. It is important to bear in mind that being subjected to discrimination per se is not enough to establish a case for refugee status. Discrimination should be sufficiently serious for being granted refugee status.

Being limited to five grounds, the Refugee Convention is narrow. It is applicable to individuals owing well-founded fear of persecution on the grounds of “religion, race, nationality, membership of a particular social group or political opinion” whilst the International Covenant on Civil and Political Rights (ICCPR) provides an extensive list of prohibited grounds of discrimination.⁴³

Of the five Convention grounds, “membership of a particular *social group* is undoubtedly the most ambiguous reason for persecution in the refugee definition. *Travaux préparatoires* does not provide an adequate explanation as to what intended meaning of this category is.⁴⁴ There are different approaches to interpreting this ground. I adopt the “protected characteristics” approach (sometimes referred to as an “immutability” approach). An immutable characteristic is so fundamental to human dignity that is impossible to change or wrong to force someone to

⁴⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9.

⁴¹ UNHCR ‘Self-Study Module on Refugee Status Determination’ (Geneva 2005).

⁴² Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 519.

⁴³ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 2 and 26.

⁴⁴ Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 520.

change it. International human rights norms may help us identify essential human characteristics linked to human dignity.

B. The Principle of *Non-Refoulement* and Human Rights

Pursuant to Article 33 of the 1951 Refugee Convention, states parties are obligated not to forcibly return or expel anyone to a country where they are in danger of being subjected to torture and ill-treatment on account of race, religion, nationality, membership of a particular social group, or political opinion.⁴⁵ The prevention of refoulement could be considered as the primary advantage of being entitled to refugee status. However, Article 33(2) brings exception to the general prohibition on the expulsion or return of a(n) refugee/asylum-seeker who is considered to pose a danger to his/her host country.⁴⁶

Besides the Refugee Convention, the prohibition of refoulement is explicitly enshrined in various international human rights instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Furthermore, the principle is incorporated into several regional human rights instruments such as the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union.

Given the overlap between the two bodies of law, international human rights mechanisms and regional human rights courts have helped reinforce the principle of *non-refoulement*.⁴⁷ In the case of *Hirsi v Italy*, for instance, the ECtHR held that Italy's push-backs to Libya of persons intercepted or rescued at sea were illegal under international human rights law.⁴⁸ Similarly, in the case of *Haitian Centre for Human Rights et al. v United States*, the Inter-American Commission on Human Rights (IACHR) found the United States in breach of a number of

⁴⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 33.

⁴⁶ *Ibid.*, Art 33(2).

⁴⁷ Alice Edwards, 'International Refugee Law' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 521.

⁴⁸ *Hirsi Jamaa and Others v Italy*, Application no 27765/09, Judgement of 23 February 2012.

rights contained in the American Declaration on Human Rights.⁴⁹ However, there is a lack of case law dealing with the Refugee Convention directly.⁵⁰

As already mentioned above, state parties have been given discretion to revoke or refuse to renew refugee status under two circumstances pursuant to Article 33(2): “*The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country*”.⁵¹ In this case, human rights law could fill the protection gap caused by Article 33(2).

McAdam argues that although the Refugee Convention acts as a *lex specialis*, the *lex generalis* of international human rights law does not become silent, but rather complements its application.⁵² Under international human rights law, *non-refoulement* to particular risks such as torture or inhuman treatment are regarded as absolute.⁵³ Examples at the regional level could also be found. The Organisation of African Unity (OAU) Convention, for example, does not include such exception as in the Refugee Convention.

To sum up, it could be said that international refugee law and human rights law provide complementary and mutually reinforcing protection whilst they have distinct characters.

C. The Rights and Protections Conferred upon Convention Refugees

People who are entitled to refugee status enjoy a range of rights and protection measures contained in the Refugee Convention: non-discrimination in applying the provisions of the Convention (Article 3), free exercise of religion and religious education (Article 4), movable and immovable property rights (Article 13), protection of industrial and intellectual property

⁴⁹ Case 10.675, *The Haitian Centre for Human Rights et al. v United States*, IACommHR Report No 51/96 (13 March 1997).

⁵⁰ Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 522.

⁵¹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 33.

⁵² Jane McAdam, *New Issues in Refugee Research* (UNHCR Research Paper No. 125, 2006) <https://www.unhcr.org/uk/44b7b7162.pdf> accessed 14 March 2019.

⁵³ Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 522; *Chahal v UK* (1997) 23 EHRR 413; *Soering v UK* (1989) 11 EHRR 439.

(Article 14), the right to belong to non-political associations and trade unions (Article 15), free access to courts (Article 16), the right to engage in wage-earning employment (Article 17), the right to self-employment (Article 18), liberal professions (Article 19), rationing (Article 20), access to housing (Article 21), access to public education (Article 22), access to public relief and assistance (Article 23), protection provided by social security (Article 24), administrative assistance (Article 25), freedom of movement (Article 26), documentation of identity (Article 27), travel documents (Article 28), equal treatment in the matter of fiscal charges (Article 29), transfer of assets (Article 30), non-penalisation for illegal entry or presence (Article 31), expulsion in exceptional cases (Article 32), prohibition of expulsion (Article 33), and facilitation of naturalization (Article 34).

It is important to bear in mind that some of the measures do not apply immediately; rather the length of stay is considered. There are four general levels of entitlement: (a) *physical presence*, (b) *lawful presence*, (c) *lawful stay*, and (d) *habitual stay*.⁵⁴ For example, mere *physical presence* grants refugees the right to free exercise of religion whilst *lawful presence* is further required for the right to self-employment.⁵⁵ Also, a very limited number of rights contained in the Refugee Convention is overtly applicable to asylum-seekers (eg non-penalisation in Article 31 and non-refoulement in Article 33). It could be suggested that the gradual expansion of rights and entitlements draws a distinction between international human rights law and international refugee law.

In addition to the progressive accumulation of rights, refugees are not always accorded the same treatment as nationals; rather they are granted the treatment provided to most favoured nationals or the most favourable treatment possible.⁵⁶ For instance, a state must afford refugees the same treatment as nationals of that country with regard to the right to free access to courts whilst the state must provide the most favourable treatment possible with regard to the right to self-employment. On the other hand, The Human Rights Committee states that individuals must be

⁵⁴ Alice Edwards, 'Less Coercive Means: The Legal Case for Alternatives to Detention for Refugees, Asylum Seekers and Other Migrants' in Satvinder S. Juss (ed), *The Ashgate Research Companion to Migration Law, Theory and Policy* (Routledge 2013) 454.

⁵⁵ Vincent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (OUP 2014).

⁵⁶ UNHCR 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations' (Division of International Protection Geneva 2006).

granted each one of the rights of the ICCPR without discrimination between citizens and aliens as a general rule, with only a few exceptions.⁵⁷

In addition to the rights and measures listed above, many universally recognised human rights are directly applicable to refugees simply by virtue of their being human as human rights treaties are inalienable and equally applicable to ‘everyone’, and to ‘all human beings’. These include the right to life, freedom from torture and inhuman or degrading treatment, the right to a nationality, and the right to freedom of movement. A rare number of rights; however, such as the citizen’s rights to political participation in Article 25 ICCPR, are category-specific. Moreover, Article 2(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) enables developing countries – that host an estimated 80 per cent of the world’s refugees⁵⁸ – to make an exception regarding the economic rights of non-nationals.⁵⁹

It should also be noted that Article 5 of the Refugee Convention provides that “[n]othing in this convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention”.⁶⁰ In light of the *travaux préparatoires* of the Refugee Convention, it could be said that international refugee law was intended to be supplemented and strengthened by international human rights law where the latter provides greater protection.⁶¹

Notwithstanding a broad range of rights to which refugees are entitled, the Refugee Convention does not address all the challenges facing displaced people. The prohibition on torture in Article 3 of the European Convention on Human Rights (ECHR), for example, does not have any counterpart in the Refugee Convention. However, under no circumstances could refugees be tortured. International human rights law could fill in the grey areas of the Refugee Convention.

⁵⁷ UN Human Rights Committee ‘CCPR General Comment No. 15: The Position of Aliens under the Covenant’ (11 April 1986) in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies’ (1994) UN Doc HRI/GEN/1/Rev.1.

⁵⁸ UNHCR ‘Global Trends 2011: A Year of Displacement’ (Geneva 2012).

⁵⁹ Alice Edwards, ‘International Refugee Law’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (2nd edn, OUP 2014) 523.

⁶⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 5.

⁶¹ Paul Weis (ed), *The Refugee Convention 1951: The Travaux Préparatoires Analysed with a Commentary* (CUP, 1995).

IV. CONCLUSION

To sum up, refugee rights are human rights. Both the Refugee Convention and regional protection mechanisms are human rights mechanisms since they stipulate a number of rights specific to refugees. Unlike international human rights law, international refugee law constitutes an exclusive legal status for its beneficiaries. However, refugee law fails to provide sufficient protection to refugees. So as to fill the existing protection gap, human rights law supplement and complement refugee law. The two branches of international law are, therefore, distinct and, at the same time, complementary.

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