

## PRINCIPLE OF NON-REFOULEMENT AND ITS EVOLUTION AS HUMAN RIGHT

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The word non-refoulement originates from the French verb *refouler*, which means to "drive back" or "repel". In **Article 3 of the 1933 Convention Relating to the International Status of Refugees**, the notion that a State should not, under certain conditions, send individuals back.

The principle of Non- Refoulement has recognized and accepted as the customary international law and gained the status of *Jus Cogens* worldwide. **Article 33 of 1951 Refugee Convention** embodied this principle which prohibits the expulsion or return of a refugee. Article 33 states that a refugee cannot be expelled or returned (referred to as "refouler") in any way to the borders of nations when his life or freedom is in danger due to his race, religion, nationality, membership in a particular social group, or political beliefs.

The principle of Non-Refoulement reflected in various international instruments, both at universal and regional levels other than the refugee convention. **The 1951 Refugee Convention** and its **1967 Protocol** are the two most important refugee laws as mentioned above, they are universal treaties that define specific legal concept for those who are in need of international protection. The protection of refugee's rights based on human rights which is clearly provided under **Article 14 of the Universal Declaration of Human Rights**. It states that everyone has the right to seek and to enjoy in other countries asylum from persecution. It is crucial for this principle to gain a proper life in the international legal instruments in order to give protection to refugees under current legal system. With the existing scheme of refugee protection it is vital for the principle to acquire a proper standing in the international framework as it is still uncertain as to whether the principle has acquired the status of *jus cogens* norm.

Key Words: Refugee, Human Right, Convention, Non-Refoulement, *Jus cogens*.

## **Principle of Non-Refoulement and its evolution as Human Right**

### **Introduction**

Every person has the right to live with safety and security while also being treated with respect. Many people around the world have experienced having to leave their hometown and source of income. They might relocate to the next village, city, or state. But for some people they need to leave their country. Their relocation has a variety of causes. Some people need to move out of their current location for any transient reason, sometimes for good and sometimes for bad. People may be forced to relocate owing to a natural disaster like an earthquake or flood or because of their employment or education. Others are forced to leave because of persecution or abuses of their human rights. Millions of people flee from violent conflicts or other humanitarian emergencies. Some people no longer feel safe and may have been marked out because of who they are, what they do, or what they believe, such as because of their race, religion, sexual orientation, or political beliefs. The problems caused by the influx of people looking for safety or asylum around the world present serious challenges for the countries that are their destinations. Many nations, both established and developing, are dealing with various difficulties related to refugees and asylum seekers.<sup>1</sup>

### **Interpretation: Refugee and Asylum-seeker and Migrant**

People who are on the move, who have left their nations, and who have crossed borders are referred to as migrants, refugees, and asylum seekers. Although the phrases "asylum seeker" and "refugee" are frequently used interchangeably, there is a legal distinction between the two.

#### **Refugee**

A person who has fled his home country because the fear being persecuted and subjected to severe human rights violations is known as a refugee. He thought he had no alternative but to leave his nation in search of safety because his own government could not or would not defend him from those dangers. Refugees are entitled to international defense.

#### **Asylum-seeker**

An individual who has fled his country and is looking for protection from persecution and grave human rights violations in another country, but who has not yet received official recognition as a refugee and is awaiting a decision on his application for asylum, is said to be an asylum-seeker.

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<sup>1</sup> Guy S. Goodwin-Gill, "The Refugee in International Law", Oxford: Clarendon Press. 1983.

Asylum seeking is a human right. This implies that everyone should be permitted to travel to another nation to look for asylum.<sup>2</sup>

The phrases "refugee" and "asylum seeker" are frequently misused or used wrongly because of the confusion around their differences. A person who requests international protection but whose application for refugee status has not yet been processed is known as an asylum seeker. A refugee, on the other hand, is someone who has been officially recognized as such under **the Convention Relating to the Status of Refugees, 1951**. According to the Convention, a "refugee" is anyone who is outside the country of their nationality due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion and is unable or unwilling to take advantage of that country's protection; or who does not have a nationality and is outside the country of their former habitual residence as a result of such a fear..<sup>3</sup>

### **Migrant**

One more category of people who leave their country is Migrants. Most of the time the term refugee and Migrant used interchangeably. But both have the different legal meanings. Refugee is a status which is approved by the host country from whom he is seeking asylum. On the other hand the person who migrate from his own place due to some bad or as well as good reason. The term migrant includes those persons also who move from one place or state to another place in search of better employment, education or living standard by their own will.

### **Refugee Crisis-**

In 2022, we exceeded 30 million refugees around the world. By 2023, nothing has changed for the better. These are the top ten refugee crises and scenarios that will exist in 2024, according to UNHCR data.

Over the past ten years, the size of the global refugee issue has grown by more than 100%. More than 100 million people were reportedly displaced globally as of 2022, according to the **UNHCR (United Nations High Commission For Refugees)**, indicating that more than 1.2% of the world's population had been compelled to flee their homes. More over 32.5 million of these people are refugees. 76% of all refugees are from only six countries.<sup>4</sup>

The countries are having the issues of displaced persons:-

1. Syria - Following the 10-year Syrian conflict, more than 25% of all refugees worldwide are now a member of the global diaspora. By the end of 2022, 6.8 million Syrians had fled their country, mostly to Turkey, Lebanon, Jordan, Iraq, and Egypt. (which is currently the largest host countries for refugees).

<sup>2</sup> Asylum- Parliamentary Assembly Debates, Council of Europe Publishing, 1995

<sup>3</sup> Article 1(A)(2) Convention and protocol relating to the status of Refugee, 1951, <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>, visited on 10-5-23

<sup>4</sup> <https://www.concern.net/news/global-refugee-crisis> accessed on 14.05.2023.

2. Ukraine- Escalating conflict in Ukraine caused a full humanitarian crisis, including 5.4 million refugees. Over 16% of the current global refugee population is Ukrainian, exceeding the UNHCR's initial estimate that 4 million Ukrainians or nearly 10% of the nation's population would be displaced as a result of conflict.
3. Afghanistan -Afghanistan constantly ranks as one of the top countries of origin for refugees because to the continuous humanitarian catastrophe there. The surrounding countries of Pakistan and Iran are home to more than 88% of Afghan refugees.
4. South Sudan- The world's youngest country is also home to one of the biggest refugee crises. 2.3 million South Sudanese had to leave the country totally after being ejected from their homes.
5. The Rohingya crisis- Over 1.1 million stateless Rohingya people have been fleeing the ongoing violence in Myanmar's Rakhine State since August 2017. The world's largest refugee camp, which is close by in Cox's Bazar, Bangladesh, is still home to a great number of people.
6. Democratic Republic of Congo- With events in a protracted crisis rarely reaching headlines, the Democratic Republic of the Congo continues to be one of the most "forgotten" humanitarian catastrophes in the world. Its numbers of internally displaced people (IDPs) and refugees are the highest in all of Africa.

India is not a signatory to **1951 Convention Relating to the Refugee Status**. India has also not rectified the **1967 Protocol to 1951 Convention Relating to the Refugee Status** . It is a Multilateral Treaty of the United Nations which provides the definition of refugee and the rights of the people who get the status of refugee and impose the liability on the nations that grants asylum to them.

The host countries or the destination countries are struggling with the disposal of the applications of asylum seekers. The countries who signed the **1951 Refugee Convention** are bound by its provisions. Any asylum seeker who is on border of any of these countries cannot be denied to provide asylum. The rule of Non- Refoulement guarantees that the host country shall not force the people to return their country who are on border for protection from persecution.

This principle led to a new controversy or issue which concern to the sovereignty and security of a state destination for refugees. Recently in April- May 2023, the American President Biden announced to change the foreign policies and process of screening the applications of asylum seekers.<sup>5</sup> This step of him has not only been criticized globally but also pressure has been build up by various internal groups like associations of Immigration lawyers.

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<sup>5</sup> <https://www.washingtonpost.com/politics/2023/04/03/biden-foreign-policy-instinct/>

## Principle of Non-Refoulement

The French verb *refouler*, which means to "drive back" or "repel," from where the word non-refoulement originates. In **Article 3 of the 1933 Convention Relating to the International Status of Refugees**, the notion that a State should not, under certain conditions, send individuals back to other States was first mentioned.<sup>6</sup>

The principle of Non-Refoulement has recognized and accepted as the customary international law and gained the status of *Jus Cogens* worldwide. **Article 33 of 1951 Refugee Convention** embodied this principle which prohibits the expulsion or return of a refugee. Article 33 states that a refugee cannot be expelled or returned (referred to as "refouler") in any way to the borders of nations when his life or freedom is in danger due to his race, religion, nationality, membership in a particular social group, or political beliefs.

However, a refugee who is deemed to be a danger to the security of the state in which he is, or who, after being found guilty by a final judgement of a particularly serious crime, is a danger to the community of that country, may not claim the benefit of the present provision.<sup>7</sup>

## Evolution of the Principle

The concept of seeking asylum has deep historical roots and is linked to the idea of providing refuge or protection to those fleeing persecution or danger. The right to seek asylum is recognized in various international agreements and has evolved over time.

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<sup>6</sup> **Convention of 28 October, 1933 relating to the International Status of Refugees Article 3**, Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order. It undertakes in any case not to refuse entry to refugees at the frontiers of their countries of origin.

It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.

<sup>7</sup> <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>, visited on 10-5-23  
1951 Convention Relating to the Status of Refugee, Article 33, **prohibition of expulsion or return ("refoulement")**  
1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.  
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.

**Historical Roots:**

The idea of offering protection to those in need can be traced back to ancient civilizations. In ancient Greece, for example, temples and other sacred places were considered places of sanctuary where individuals could seek protection.

The concept of asylum also has roots in medieval Europe, where churches and other religious institutions were often places where individuals sought protection from persecution.

**Post-World War II:**

The modern framework for asylum seekers and refugees emerged in the aftermath of World War II. The United Nations established the Universal Declaration of Human Rights in 1948, which includes the right to seek asylum from persecution.

The 1951 Refugee Convention, a key international treaty, defines who is a refugee, outlines their rights, and sets out the legal obligations of states to protect them.

**Cold War Era:**

The Cold War era saw significant displacement as people fled from political persecution and conflicts. The 1967 Protocol Relating to the Status of Refugees expanded the scope of the 1951 Convention and removed geographical and temporal restrictions, making its provisions more universal.

**Contemporary Issues:**

Asylum seekers today often flee from a range of human rights abuses, including persecution based on race, religion, nationality, membership in a particular social group, or political opinion. Wars, conflicts, and humanitarian crises have led to large numbers of people seeking asylum in recent decades.

**INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW**

The system of international human rights legislation is a relatively new development. There was no worldwide legal framework for the advancement and defense of human rights prior to the 19th century. In order to defend workers' rights, the international community established the International Labour Organisation (ILO) in 1919 as a part of the Peace Treaty of Versailles. During this period, a treaty outlawing slavery was also adopted.<sup>8</sup> The First World War made it imperative to establish a human rights framework within the League of Nations.<sup>9</sup> But when the Second World War broke out, these attempts at containment failed miserably.<sup>10</sup> The Second World War's atrocities prompted the formation of the United Nations by the worldwide community as a means of preserving peace.

Numerous human rights treaties and conventions that established universal human rights contributed to the evolution of the human rights legal system.

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<sup>8</sup> A.H. Robertson, "Human Rights in the World", 15-20 (Manchester University Press, 1972).

<sup>9</sup> Frans Viljoen, "International Human Rights Law: A Short History", UN CHRONICLE, Vol. XLVI No. 1 & 2 2009, (Mar. 19, 2017, 16:00 PM), available at: <https://unchronicle.un.org/article/international-human-rights-law-short-history>

<sup>10</sup> UNHCR & International Bar Association, "Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors And Lawyers," 12-15 (United Nations Publications, 2003).

Following the adoption of the UN Charter in 1945, a number of treaties were ratified by the UN members.<sup>11</sup> "Only those States, having ratified or acceded to particular treaties are bound to observe that to which they have explicitly agreed," according to the aforesaid Charter.<sup>12</sup> Basic human rights are guaranteed by international human rights legislation through treaties, conventions, and general principles. States are obligated to uphold these rights and abstain from violating human rights.

Significant international human rights instruments were developed, including the 1948 Universal Declaration of Human Rights (also known as the "UDHR"), the 1966 International Covenant on Civil and Political Rights (also known as the "ICCPR"), and the 1966 International Covenant on Economic, Social, and Cultural Rights (also known as the "ICESCR"), which collectively form the International Bill of Human Rights.

With the development of refugee rights, it was observed that there have been cases where nations have been unable or have neglected to carry out their obligations under international law to protect people.<sup>13</sup> Considering this protection to be insufficient, it demanded further documents and unique needs in order to create and develop the rights of the refugees.

Consequently, in 1951, "the Convention on the Status of Refugees (hereinafter referred to as the Refugee Convention, 1951)" was proposed and ratified. The aforementioned Convention's preamble, which "thus contains a specific reference to the UDHR," upholds the idea that everyone has the right to enjoy their fundamental freedoms and rights in an equal and discrimination-free environment. "The social and humanitarian nature of the problems which refugees encounter" is emphasized in the preamble. In fact, some writers believe that the Refugee Convention is distinctly humane.<sup>14</sup>

## **NON-REFOULEMENT UNDER THE CONVENTION ON THE STATUS OF REFUGEES, 1951**

Understanding the provisions of the 1951 Refugee Convention on non-refoulement is necessary in order to assess the scope of the notion under international human rights law. According to Article 33 of the 1951 Convention on Refugees, refugees who escape persecution in a variety of ways are granted broad protection against deportation. Because of the prohibitory nature of Article 33(1), governments are prohibited from turning away a refugee "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

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<sup>11</sup> Dinah L. Shelton, "An Introduction to the History of International Human Rights Law", GW Law Faculty Publications & Other Works, 1052, (2007).

<sup>12</sup> M. Hertig Randall, "The History of International Human Rights Law", in R. & G. Kolb Gloria (Ed.), Research Handbook on Human Rights and Humanitarian Law, 3-34, (2013).

<sup>13</sup> G.H. Fox, "New Approaches to International Human Rights: The Sovereign State Revisited," S.H. Hashmi (Ed.), University Park PA: Pennsylvania State University Press (1997).

<sup>14</sup> Lauterpacht & Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion", Cambridge University Press, (Jun. 20, 2001).

The UNHCR states that the principle of non-refoulement, as expressed in Article 33 of the Refugee Convention, 1951, is essential and cannot be waived.

As a result, Article 33(2) can be interpreted as an exception to the Convention's non-refoulement principle, which states that the right to non-refoulement cannot be exercised in situations where "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 judgement of a particularly serious crime, constitutes a danger to the community of that country."<sup>15</sup>

During the drafting of the Convention, the prohibition on *non-refoulement* had no exceptions or restrictions. However, states like France and the United Kingdom opposed to such an absolute definition of non-refoulement, citing national security concerns.<sup>16</sup> Thus, the present day non-refoulement obligation, as under the Refugee Convention, came to be limited to the exception clause in Article 33(2) of the Convention. This provision, hence is strictly construed as it provides States with an unfettered power to oust refugees who fall within the purview of Article 33(2).

The application of this exception is decided case by case after it has been established if the requirements are satisfied, such as the fact that the person seeking asylum really poses a threat to the national security of the country in which they are seeking asylum, or that the refugee has been found guilty of a serious crime whose nature makes it likely that the refugee will become a danger to the community.<sup>17</sup> The determination is based on facts and circumstances unique to each case, and the exception clause is applied with extreme caution because returning the refugee should be the last resort and should unequivocally result in the elimination of the threat to the country's security or danger to the community.<sup>18</sup> Additionally, it must be made sure that sufficient precautions are taken and that refouling is more beneficial for the host state's safety than it is risky for the person being refouled when they return.<sup>18</sup>

### **Non-refoulement under the Universal Declaration of Human Rights, 1948**

One important document in the history of human rights is the Universal Declaration of Human Rights (UDHR). The United Nations General Assembly endorsed the declaration in Paris on December 10, 1948. In order to ensure that every individual and every organ of society works to promote respect for these rights and freedoms through teaching and education, as well as through progressive national and international measures to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction, the UDHR's preamble states that "the declaration would strive for protecting fundamental human rights and acting as a common standard of achievement for all peoples and all nations."<sup>19</sup> Although the right against refoulement

<sup>15</sup> <https://www.ohchr.org/en/universal-declaration-of-human-rights>, pdf, on visited on 10-5-23

<sup>16</sup> Paul Weis, "The Refugee Convention, 1951: The Travaux Préparatoires Analysed, With A Commentary", 325 (Julian Weis ed., 1995).

<sup>17</sup> UNHCR, *supra* note 15.

<sup>18</sup> Henkin, "Human Rights and State Sovereignty, Sibley Lecture March 1994", Georgia Journal of International and Comparative Law, (1995-1996).

<sup>19</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, Preamble, (1948).

is not expressly stated in the UDHR, the right to seek refuge is a principle that is included in Article 14 of the document. "Everyone has the right to seek and to enjoy in other countries asylum from persecution," according to Article 14.<sup>19</sup> This right may not be used in prosecutions that truly result from non-political offences or from actions that go against the goals and ideals of the UN.

#### **Non-refoulement under the European Convention on Human Rights, 1950**

It was the first document that made some of the rights outlined in the Universal Declaration of Human Rights legally enforceable. In addition to the rights outlined in the original text, the Convention has undergone numerous amendments since it was adopted in 1950. Article 3 of the ECHR states "that no one shall be subjected to torture or to inhuman or degrading treatment or punishment."

#### **Non-refoulement under the International Covenant on Civil and Political Rights, 1966**

As stated in Article 6 of the ICCPR, "Every human being has the inherent right to life," even though the right to non-refoulement is not specifically protected by any laws. The law will uphold this right. Nobody's life may be taken from them without cause. "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment," states Article 7 of the ICCPR. Specifically, no one may be the subject of medical or scientific experimentation without that person's voluntary consent.<sup>20</sup>

In accordance with Article 13 of the ICCPR, an alien who is legally on the territory of a State Party to the present Covenant may only be expelled from that state in accordance with a decision made in accordance with the law. Unless there are compelling reasons of national security to the contrary, the alien will be allowed to present his case before the competent authority or a person or persons specifically designated by the competent authority, have his case reviewed, and submit reasons for his expulsion.<sup>21</sup>

#### **Non-refoulement under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

The CAT seeks to protect various human rights including the prevention on refoulement. Article 3 of the CAT enshrines the concept of non-refoulement stating that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Refoulement is expressly forbidden by the article in cases when the individual in question faces torture upon their return. The Article provides broader protection because it does not specify any requirements for eligibility. When assessing whether an individual is at risk of torture, the competent authorities must weigh all pertinent factors, particularly the State's record on human rights.<sup>22</sup>

<sup>20</sup> Art. 7, UN General Assembly, International Covenant on Civil and Political Rights, 16 Dec. 1966, U.N.T.S, vol. 999, p. 171.

<sup>21</sup> Art. 13, UN General Assembly, International Covenant on Civil and Political Rights, 16 Dec. 1966, U.N.T.S, vol. 999, p. 171.

<sup>22</sup> Art. 3(2), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984.

There are some other important instruments at regional level relating to the rights of refugees. The **OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969** which states number of important rules relating to asylum with the expression in binding form. The member states shall not compel to a person to return or to remain in a territory where his life would be in danger or his physical liberty or integrity would be threatened.<sup>23</sup>

The **American Convention on Human Rights**, is one another regional document which in **Article 22(8)** addresses non-refoulement. It states that a person shall not to be returned to his country if his right of life and personal liberty is in danger and he would be discriminated on the ground of race, religion, social status etc.<sup>24</sup>

### **Principle of non-refoulement and its Exception**

Despite being a fundamental principle, the Convention itself has a few exceptions to the doctrine of non-refoulement. According to Article 33 (2) of the 1951 Convention the benefit of the non-refoulement principle may not be claimed by a refugee 'whom there are reasonable grounds for regarding as a danger to the security of the country ... or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country'. Basically, this means that refugees may be returned under two circumstances: (i) if they create a threat to the national security of host country; and (ii) if their criminal history and proven criminal nature create a danger to the community. However, it is necessary to interpret the many components of these extraordinary and extreme circumstances.

Regarding the "national security" exception (i.e., having reasonable grounds to believe that the individual constitutes a threat to national security), the term "national security" clearly implies a threat of a different kind than a threat to "public order" or even to "the community," even though national authorities are still in the role of determining the level of danger.<sup>25</sup>

The exception allowed by Article 33(2) should be applied with extreme caution due to the serious consequences that a refugee faces if they are returned to a country where they encounter persecution. Every aspect of the case must be considered, and if the refugee has been found

<sup>23</sup> <https://www.unhcr.org/media/28182>, **OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969**, visited on 2-5-2023

Article II (3): "No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2."

<sup>24</sup> **American Convention on Human Rights: "Pact of San José, Costa Rica"**. Signed at San José, Costa Rica, on 22 November 1969, vol-1144-i-17955-English.pdf

Article 22(8) "in no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions"

<sup>25</sup> In *Reg. vs. Bouchereau*, 2CMLR 800, 1977, the European Court of Justice ruled that there must be a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.

guilty of a serious crime, any provisions for their reintegration should be taken into consideration.

### **Suggestions and Conclusion**

In light of the above discussion and following an examination of the consequences of States' obligations under the concept of non-refoulement, the researcher respectfully offers the following recommendations:

1. To improve its status under international human rights law and to more effectively safeguard refugees and asylum seekers, the concept of non-refoulement needs to be reformulated and acknowledged as a human right.
2. The provisions which are related to the concept of non-refoulement under the human rights regime must be made more effective by extending its application to all types of persecution faced by a refugee or asylum seeker as provided under Article 1(A) (2) of the Refugee Convention.
3. Making sure the non-refoulement principle is upheld and not broken should be of the utmost significance in cases where extradition treaties and human rights instruments include conflicting treaty responsibilities.
4. Human rights treaties should supersede extradition treaties in cases where they violate human rights obligations, such as the obligation of non-refoulement, and should be deemed null and void in order to resolve such problems.

5. When states use extradition in contravention of the non-refoulement principle, this should be viewed as a human rights violation rather than a state rejection of the principle's applicability.

### **Conclusion**

The UNHCR and a significant portion of international society has acknowledged that the doctrine of Non-Refoulement has attained the status of customary international law. Although there are still ongoing discussions on whether it has become a principle of jus cogens. Relying on a substantial amount of scholarly opinion, one might assume that non-refoulement has been acknowledged as a jus cogens norm.

The current refugee protection framework is strengthened by the obligation of non-refoulement under international human rights law, which extends protection from grave human rights violations to all individuals, irrespective of their status as refugees. While certain human rights documents do not explicitly address the notion of non-refoulement, they do implicitly give a level of protection that is comparable to that which is provided by the principle of non-refoulement. In summary, it is obvious that nation states have a duty to prevent refugees from being sent back to their home country if they have a legitimate fear that doing so will result in persecution.