

## **Confrontation of traditional and Islamic international law with international human rights in the international development of asylum law**

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### **ABSTRACT**

*Refugee rights are one of the most important subjects in international law in the present century. Internal, regional, and global unrest and crises have forced millions to flee their homeland. Hence, international law has enshrined the rights of refugees, along with other legal subjects. Treaties and agreements have been adopted to resolve the refugee crisis. The formation of refugee rights began after the outbreak of World War II and the large numbers of asylum-seekers from war-torn countries, with the ratification of the Convention on the Status of Refugees in 1951. In this regard, we are witnessing the formulation and development of the rights of this human group in the legal system of Islamic countries. Refugee rights have evolved through the confrontation of the Islamic rights of Islamic countries with international human rights and their impact on traditional international law. Of course, sometimes the conflict of national interests with the principles of international law has prevented the proper implementation of human rights standards concerning refugees. At the same time, our research results indicate that the global system of human rights has been able to have the desired and transformative effects on traditional international law concerning the observance and development of refugee rights. By compiling important documents like The Islamic Declaration of Human Rights, Islamic countries seek to formulate the rights, develop and protect the foreigners, especially refugees; undoubtedly, it has received some effect from the international human rights system.*

*Keywords: Refugee, Country accepting Refugee, sovereign state, Human Rights, Refugees.*

## Introduction

We should consider the twentieth century as a century of support for human life. Since the beginning of this century, many international documents have been drafted on the protection of human beings and human groups including foreigners and minorities, along with the gradual development of international law, and great steps have been taken to promote human rights. In the global arena, we have witnessed significant growth in the creation, revival, and implementation of the rights of foreigners based on the evolution and gradual development of international law, especially international human rights law. In the past, there did not exist many governments that accept a foreigner as a person with rights, and a foreigner could not expect to enjoy rights. In the process of progress in international relations and the increase in relations among nations, which itself has led to the establishment of relations between individuals and foreign governments, governments have been forced to accept minimum rights for foreigners. In line with national interests, international decency, and most importantly, their basic government structures and legal resources, domestic lawmakers, in each country, have provided other protections for foreigners in the form of legal standards. Nowadays, even these minimum rights have somehow become a global standard, and countries in an unwritten obligation take a step in various ways in line with protecting foreigners.

Therefore, at our age, if every state enforces rules on relations with foreigners in its territory, this progress was a result of changes in recent centuries based on the needs of the countries themselves on the one hand and the obligation arising from the growth in public opinion and a change in human understanding of society and government. Consequently, a change in the international community has occurred in the construction of governments and their relations with each other and the observance of the minimum human rights in general. It is worth noting that observing these rights of foreigners in different countries varies according to different political, social, economic, cultural, and even climatic and geographical conditions of countries. In addition, the Universal Declaration of Human Rights recognizes other international documents, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Relating to the Status of Refugees, and several other international instruments and the countries consider themselves bound and committed to their implementation. Although the Universal Declaration of Human Rights is not in itself binding on countries, the high status and global credibility of this Declaration has led countries to find some unwritten obligation to comply with the Declaration.

In this research, we try to answer the question: how the provisions of international human rights on the one hand and the traditional international law and the law of Islamic countries, on the other hand, have been effective mutually in protecting and developing the rights of foreigners, especially in restricting the principle of sovereignty of governments in dealing with foreigners?

### *1. Some concepts on refugee*

According to Article 1 of the Convention Relating to the Status of Refugees, adopted on 28 July 1951, a refugee is a person who lives outside his or her place of residence for reasons of justified fear of persecution on grounds of race, religion, membership in a social group or of a particular political opinion. The Convention requires the Contracting States not to repatriate refugees to the mainland where they live and whose freedom is at stake because of their race, religion, nationality, political opinion, or membership in a social group (Article 33 of the 1951 Convention). According to Article 1 of the Refugee Regulations in Iran, approved in 1963, "a refugee is a person who takes refuge in Iran for political, religious, racial reasons or membership in a special social group for fear of death and torture of himself and his/her own family."

The protection of refugees is ultimately a moral and religious value and a culture governing nations and the international community. One of the important tasks of international refugee-related organizations is to recognize the protection of refugees not only as a legal duty but also as a universally accepted principle and a treaty obligation to states.

In addition to refugees, aliens comprehend other groups, including displaced persons and immigrants, each with their concepts, definitions, and characteristics. An immigrant is a person who moves from one country to another because the main reason is the limitation or lack of favorable conditions for economic and social growth. The common denominator between a refugee and an immigrant is that they both move abroad for some reason and for a long and unknown time. The word "displaced" is a common name. We can apply it to anyone who, for whatever reason, is forced to leave his home and live in a state of homelessness. Reasons that force a person to leave home can be human rights violations, ethnic conflicts, civil wars, natural disasters such as droughts, earthquakes, floods, hurricanes or poverty and deprivation, and so on. The word "avareh" in Persian has a broad meaning that can also mean in general and non-specialized language, the concepts such as immigrant, refugee, asylum seeker, and displaced person. That is, if we have to choose a word to describe the mentioned phenomena, that word is avareh.

In Islam, too, the sixth verse of Surah Tawbah states: "If one of the polytheists asks you for refuge, give refuge him so that he may hear the word of God, then take him to a safe place where he wants." Asylum has been accepted in Islam. At the same time, although the principle of asylum is acceptable, there is no consensus on its definition (Mottaqi Hindi, 1969: 487). Even the word asylum is not used and instead the terms such as safety, renting and treaty have been used. This legal establishment is a treaty of immunity for foreigners who intend to cross the Islamic country or stay there temporarily. Therefore, granting protection to infidels by Muslims is a contract. This contract is such that requires acceptance and confirmation that, after the contract, it creates rights and duties for the refuge-seeker and the sheltered man (Karimi, 2010: 39).

## ***2. New international measures in support of refugees***

Most international efforts to formulate asylum law in recent decades have focused on national legislation, the development of international jurisprudence, and soft law, namely UN General Assembly resolutions and the deductions of the Executive Committee of the United Nations High Commissioner for Refugees. The United Nations High Commissioner for Refugees (UNHCR) is a specialized agency of the United Nations located in Geneva, Switzerland. The office was established on December 14, 1950, to protect refugees and assist in their return or resettlement. It replaced the International Organization for Refugees (IOM), and earlier the United Nations Office for the Coordination of Humanitarian Affairs. The organization has twice been awarded the Nobel Peace Prize in 1954 and 1981. The UN High Commissioner for Refugees (UNHCR) is responsible for leading and coordinating international activities to protect and address the plight of refugees around the world. The primary goal of the organization is to protect the rights and health of refugees. It strives to ensure that refugees' rights and health are respected in other countries, that they return voluntarily to their home country, that they are resettled in a third country, and so on, in accordance with international laws.

In 2003, when the UNHCR adopted a new evaluation policy called the Human Rights-Based Policy, it adopted a new human rights-based evaluation policy 2003, alleviating some of the criticisms of underperformance in the refugee rights. The first step in the new policy was to see refugees as "holders of rights" instead of considering them as "Beneficiaries of Assistance" (Klabbers, 2011: 420). Moreover, international human rights (NGOs), such as Amnesty International, have in recent years sought to link asylum and human rights as much as possible to make governments more transparent about asylum. To this end, the organization has proposed three approaches:

(A) The first approach proposed at the 1997 meeting of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) was to call on governments to comply with their obligations under Article 35 of the 1951 Convention and to provide information to be given by the UNHCR to the United Nations Economic and Social Council.

(B) The second approach was to call on the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) to reaffirm the principles of voluntary return of asylum seekers and

refugees and to emphasize the need for independence and impartiality in the repatriation decision, based on assessing the human rights situation in the relevant country. The second approach also recommended that an impartial and independent solution should be established to monitor the compliance of governments' performance with the principles of voluntary return.

### ***3. Protection of refugees at the United Nations based on international human rights and its impact on traditional international law***

The international human rights system has been able to make an impact on refugee rights. Some of these effects are as follows:

1. Some human rights authorities, including the European Court of Human Rights, in some of their opinions and theories, with the human rights-based full support of individuals, have been able to show the role of human rights in the development of foreign rights, especially the rights of refugees. For example, the case against the Lithuanian government in the European Court of Human Rights, known as the case of Juozas Sidabras. This was the first case in which the European Court of Human Rights has had the opportunity to examine the effects of legal restrictions on access to work. In this case, the court has asked the Lithuanian government to change its labor law regarding the ban on the work of the former regime's security personnel. Thus, this is one of the clear manifestations of the influence of the transnational legal system on labor rights. In this case, the European Court of Human Rights ordered the Lithuanian government to change its labor laws (<http://hudoc.echr.coe.int/fre?i=001-23517>).

2. Although the International Covenant on Economic, Social, and Cultural Rights, adopted in 1966, does not explicitly refer to the prohibition of discrimination against foreigners in the field of labor rights. Nevertheless, the interpretations of the Human Rights Committee (Article 28 of the International Covenant on Civil and Political Rights) represent a kind of change and development in the field of refugee rights. The interpretations made by the Human Rights Committee on the provisions of this Covenant are somewhat a kind of the development of the rights of foreigners, especially the rights of refugees. For example, the Committee has paid attention to the employment rights of migrant workers in some of its general interpretations.

3. The rulings issued by the international legal procedure, including the arbitration court of Iran and the United States, have also taken steps in the development of foreigners' rights. Contrary to traditional international law, which considers the expulsion of foreigners as part of the rights of host countries, it has had significant effects in developing the rights of foreigners, especially refugees. In some of the Court's rulings, including in the case of Kenneth P. Yeager in 1978, the Iran-US Arbitration Court (<https://jusmundi.com/en/document/decision/en-kenneth-p-yeager-v-the-islamic-republic-of-iran-award-award-no-324-10199-1-monday-2nd-november-1987>) has considered the expulsion of American citizens from Iran contrary to international regulations. (The reason of the Court of Arbitration is that the conditions of their departure was not normal and was a kind of expulsion based on the pressure of the Iranian government) (Ghasemi Shob, 2014: 240).

4. Regarding the expulsion of foreigners, we are witnessing the evolution and development of the rights of foreigners, especially the rights of refugees. Indeed, although traditionally the expulsion is the states' inalienable right, Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that the Convention requires States to consider the situation of the foreigner. Article 3 of the Convention provides that "No Member State shall expel, return or extradite a person if there are compelling reasons for his or her torture." Under the Asylum Convention (1951), persons seeking asylum in another country in pursuit of higher economic well-being will not be subject to the special protection of the Convention, while the 1984 Convention against Torture covers all foreigners who may have been exposed to torture (Tajarloo, 2013: 213). Since 1994, when the Committee against Torture first issued a report on a violation of Article 3 of the Convention, the Committee has issued numerous reports prompting many member states to amend the procedures for the expulsion of foreigners.

The above are examples of the growth and development of the rights of foreigners, especially refugees, in the light of transformations in international human rights.

#### **4. Protecting Refugees in International Islamic Law**

In Islam, there are rights for the sheltered man and the refugee. These rights include:

A) The general rights of refugees include:

1. The right to have a place of residence and the freedom to choose a place of residence and a tourist who requires a residence permit

2. Immunity and personal and family freedom (this immunity of the sheltered man includes both himself and his family)

3. The right to enjoy public services and live an honorable life

4. Freedom of religious belief and behavior, freedom of thought and expression, freedom of education, and freedom of association (provided, of course, that it does not disturb public order and security). The only exception here is the ban on the creation of a particular religious orientation in children. To preserve more freedom for people to choose religion at puberty, the Islamic State wants the person to be free from childhood, choose religion without any reluctance, even indirectly and live only based on reason, logic, and argument (Falsafi, 2016: 103-100).

5. The right to acquire citizenship of the Islamic State, the sheltered foreigners residing in Dar al-Islam, like unsheltered foreigners, have the right to acquire citizenship, and the Islamic State must respond positively to their request. According to Article 12 of the Islamic Declaration of Human Rights, "Every human being has the right to relocate and choose a place of residence inside or outside his country in accordance with the Shari'a. If s/he is oppressed, s/he can take refuge in another country, and that refugee country must bear with her/him until a shelter is provided for her/him. The condition is that the reason for seeking asylum is not to commit a crime according to Islamic law."

B) The economic and social rights of refugees are:

1. The right to property and financial immunity: The Islamic State must ensure the life and financial security of refugees. It is worth mentioning that in Article 17 of the Universal Declaration of Human Rights, this right is one of the basic human rights.

2. The right to employment and the freedom to choose a job, mentioned in Article 13 of the Islamic Declaration of Human Rights.

C) Judicial security: This right of refugees in Islam will include the personal, family, and financial immunity of the sheltered man, the pleading right, and judicial security; because without such a right for the refugee and other foreigners living in Dar al-Islam, it would be meaningless to talk about immunity. Therefore, whenever a foreigner's personality and reputation or property and asset are attacked by the citizens of the Islamic State (Muslims and Dhimmis) or s/he is harmed in a legal event, s/he has the right to file a lawsuit with the court of the Islamic State and the court is obliged to investigate it (Zidan, 2017: 576).

#### **5. Refugee and asylum in international documents**

5-1. Conditions for fulfilling the title of asylum

According to the Statute of the High Commissioner for Refugees and Clause 1 (2) of Article 1 of the 1951 Convention, for a person to be legally recognized as a refugee, the reason for severing ties with the country or place of residence must be a well-founded fear of persecution. The reasons for persecution should

be religion, nationality, political opinion, or membership in a certain social group, provided that s/he cannot or will not enjoy the support of his country or if s/he does not have citizenship, s/he will not return to his country of residence due to well-founded fear (Musazadeh and Kahrizi, 2014: 126).

#### 5-1-1. Well-founded Fear

Lawyers see "well-founded fear" as one of the basic and essential elements of the definition of harassment, and consequently the definition of a refugee. The UN High Commissioner for Refugees refers to the expression "well-founded fear of being harassed" as a key expression in defining the refugee<sup>1</sup> (Kayhanlu, 2011: 19).

Well-founded fear is the main factor in proving a person's asylum, from the person's place of residence or country.

#### 5-1-2. Lack of refugee protection by one's respective government

Article 2 of the 1951 Convention provides: "A refugee is a person who ... is unable, or because of that fear, does not wish to enjoy the protection of that country ...". Asylum is, therefore, alternative support that is activated in the absence of national support. This principle, known as the alternative protection principle, is the main purpose of the Convention and the focus of the international refugee protection system. This principle has been considered and used in the form of the same expressions in the domestic legal procedure of countries receiving refugees (Kayhanlou, 2011: 130)<sup>2</sup>

#### 5-1-3. Bringing legal action against refugee

Another criterion for describing a person as a refugee is to be under prosecution. According to the provisions of clause (a) of Article 1 of the 1951 Asylum Convention, the five aspects of persecution defined as well-founded fear and asylum are race, religion, nationality, membership in certain social groups, or having political views. The drafters of the UNHCR Statute incorporated the four aspects of the UNHCR Statute into the text of the UNHCR Convention. When the draft convention was referred to the Plenipotentiary Conference, at the suggestion of the Swiss representative a fifth aspect has been added to it: "Membership in a special social group" (Schabas, 2000: 35).

A) Race: The International Convention on the Elimination of All Forms of Racial Discrimination, adopted on December 21, 1965, defines it as follows: racial discrimination, any distinction, expulsion, restriction, or preference based on race, color, family lineage, or national origin which has a negative or positive effect in the recognition and enjoyment of human rights and fundamental freedoms in the political, economic, social and cultural spheres (Kayhanlu, 2011: 351).

B) Religion: To eliminate all forms of religious discrimination, the General Assembly decided in 1962 to prepare an international document in this regard. In 1964, the Subcommittee on Prevention of Discrimination and Protection of Minorities drafted the bill and sent it to the Commission on Human Rights. A contract draft was finally studied by the General Assembly. Through the Economic and Social Council, it was given to the Human Rights Commission, which was approved in 1968. According to the above contract, the term religion or belief includes theology, non-theology, and atheism. The establishment or

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<sup>1</sup>According to the 1951 Geneva Convention, a refugee is a person who resides abroad for justified fear due to having special race, religion, nationality, membership in certain social groups, or having political views. and cannot or does not want to become a citizen of that country due to fear. Even in conditions that he is stateless, he cannot return to his country.

<sup>2</sup>Article 14 of the Universal Declaration of Human Rights states: Everyone has the right to seek and to enjoy in other countries asylum from persecution.

recognition of religion or belief by a state or the separation of religion from state is not in itself religious discrimination or religion or belief-based discrimination.

C) Nationality: The approved Statute of the International Organization for Refugees specifically mentioned nationality and race as two of the four reasons for supporting refugees. Of course, nationality is not defined in the 1951 Convention, but the most common meaning of nationality is citizenship; the legal relationship between the individual and the government, or in other words, citizenship in its official sense is a derivation from it (Kayhanloo, 2011: 343).

D) Political opinion: The political opinion depends on the fulfillment of two conditions: The first is that the political views of the asylum seeker have been communicated to the authorities of the respective government or that they have attributed that political opinion to the asylum seeker. Secondly, the political views of the asylum seeker are not tolerated or ignored by the government (Kayhanloo, 2011: 242). However, due to the ambiguity of the concept of political opinion, courts and commissions in charge of recognizing the legitimacy of asylum applications may express different views on its implications (Musazadeh and Kahrizi, 2014: 135).

F) Membership in a particular social group: In fact, membership in a particular social group is a reason for flexibility that allows the support of groups that were not under consideration at the time of drafting the convention. Harassment, as well as the fellowship of a refugee with a particular social group, the principle of prohibition of discrimination between persons for membership in a particular social group, and human rights violations committed against certain social groups by their respective countries, are criteria for identifying specific social groups (Kayhanlu, 2011: 284).

#### 5-1-4. Being temporary

Another condition for asylum is that it is temporary. However, the extent to which the criterion of prosecution lasts has been not specified in international documents and is subject to discretion. The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) has stated that a change must take place in the refugee country that is fundamental, sustainable, and effective. The meaning of fundamental changes is supposedly effective only if they remove the basis for the fear of persecution, and as long as there is a general risk or instability in the refugee's country of origin, the host country cannot stop the asylum. Even after the removal of the conditions of persecution, if there are compelling reasons for the previous persecution of refugees to use the support of their respective governments, it can be possible to seek to maintain the asylum status for a certain person (Kazeruni, 2015, 36).

### ***6. Development of refugee rights in international human rights documents***

There are three perspectives on dealing with foreigners. The first view holds for equality between citizens and foreign nationals. The second view considers the treatment of foreigners based on the domestic law of foreigners. This view is offered by developed countries and developing countries are less inclined to it. The third view believes that while observing domestic laws, the minimum international standards of human rights should also be considered for foreigners (Moqtader, 2005: 156).

Examining the issue of asylum in international law, the question may arise as to whether asylum is in principle a right or a duty. Regarding all the credible international sources, we can say that people in special circumstances who are at risk and fear have the right to seek refuge in other countries, and the individual's requested countries that are the UN members are obliged to accept them (Ahmadi, 2001: 54).

#### 6.1 Exclusive rights of refugees in the 1951 Convention relating to the Status of Refugees

Refugees who are part of foreigners have special rights in international documents, especially in the Convention of the Status of Refugees. Some of these rights are:

(A) Prohibition of reciprocity by the receiving State: Exemption from "reciprocity" is a privileged right reserved for refugees. It is dealt with in Article 7 of the Convention. This means that the refugee is exempt from reciprocal action. The host country cannot retaliate against the refugees of that country and harass the refugees under the pretext that the refugee's government is abusing its nationals.

(B) Prohibition of the expulsion of a refugee by the receiving State: Clause 1 of Article 32 of the Refugee Convention emphasizes that the Contracting States shall not deport refugees who have resided regularly in their territory, except for reasons of national security or public order. Article 33 of the Convention also adds that no Contracting State shall in any way deport or repatriate a refugee to a territory which may threaten his/her life or liberty, on grounds of race, religion, nationality, membership in a social group, or political opinion.

(C) Impossibility of exceptional measures against a refugee by the receiving State: Article 8 of the 1951 Convention, in respect of exceptional measures taken possibly against the person, property or interests of nationals of a particular State, provides that the Contracting States shall not take such measures just because of his/her citizenship in respect of a refugee who is a citizen of that state. The Contracting States whose laws prevent the application of the general principle outlined in this Article shall appropriately grant exemptions to such refugees.

(D) Observance of the acquired rights of refugees in the receiving country: The acquired rights of refugees may not be restricted, even if not specified in the Convention. Article 10 of the Convention lists two of the exclusive rights of World War II refugees concerning their length of stay.

(E) Observance of the principle of the non-repatriation of refugees by the receiving State: According to clause 1 of Article 33 of the Convention, no Contracting State shall return or expel the refugee to the borders of a territory where his/her life and liberty are at risk due to race, nationality, membership in a special social group or affiliation to a political opinion. Therefore, one of the most important rights of refugees is the principle of not returning refugees to a country from which they have been expelled or forced to leave for various reasons.

F) The right of a refugee to acquire the citizenship of the receiving state: The right to acquire citizenship is one of the inalienable rights of refugees. In fact, after that a refugee has resided in the receiving country for some time, s/he may be absorbed by that society and wish to acquire its citizenship. Thus, one way to end asylum is to obtain citizenship. "The Contracting States shall, as far as possible, facilitate the reception and granting of citizenship to refugees and shall, in particular, endeavor to expedite the acquisition of citizenship and to reduce as far as possible the costs and expenses of doing so."

#### 6-2. Development of the rights of refugee women and children and war refugees in international human rights documents

Because some refugees are more vulnerable, such as refugee women and children, who may not even have a guardian, they need international support. Fortunately, this has found its place in both government performance and legislation. In April 1984, the European Parliament passed a resolution describing women as belonging to a special social group in connection with the definition of the word refugee in the 1951 Geneva Convention and calling on governments to apply the Convention and the 1967 Protocol in that sense. In 1985, the UN General Assembly adopted a plan entitled "Preventive Strategies", which called on members of the United Nations and the international community to meet the needs of refugee women. The UNHCR Executive Committee's plans call for special measures to protect refugee women. These include the professional training and expertise of refugee women to support them economically. One of the legal protection of this group of refugees is that if the head of a family is entitled to refugee rights, his dependents, including his wife and children, will be entitled to those rights unless the government rejects the asylum of one of these individuals (Ebadi, 2006: 17).



#### 6-2-1. Rights of refugee women in host countries

Due to the importance of the issue, the UN High Commissioner for Refugees (UNHCR) first provided guidelines for the protection of refugee women in French in July 1991. It published a handbook on the protection of women and girls (including refugees) in 2008 in five languages: English, French, Russian, Arabic, and Spanish. It is believed that refugee women are more vulnerable to various forms of abuse compared to refugee men. Many women flee if prosecuted, during which they lose their relatives and offspring. In this case, they lose that supportive atmosphere and that familiar (social) trusted environment. Rape, oppression, physical violence, sexual harassment, and forced prostitution or abuse to obtain legal permits, property, and food aid are real concerns for the vast majority of refugee women (Musazadeh, 2014: 169).

#### 6-2-2. Rights of refugee children in host countries

In 1989, the General Assembly of the United Nations adopted a 35-article Convention on the Rights of Refugee Children in the Office of the United Nations High Commissioner for Refugees. It covers the political, civil, economic, and cultural rights of children, health care, housing, and supporting against abuse like the exploitation of refugee children. According to the Convention, governments must guarantee the protection and assistance of refugee children. In this regard, Article 4 of the Convention provides that "The Contracting States shall treat in their territory the freedom of a refugee to practice his/her religion and to provide religious education to his/her children, at least to the extent that they treat their nationals."

Another problem that is always raised for refugees is the education of children or the continuation of their own higher education. Article 22 of the Convention on the Status of Refugees provides that, in the case of primary education, Contracting States shall treat refugees as their nationals, including children in the first instance.

### **7. End of asylum status**

One of the conditions of asylum is that it is temporary. Conditions for the termination of asylum are set out in paragraph (c) of Article (1) of the 1951 Convention. These conditions are six, of which four are optional and two are non-optional. The four options are voluntary return to the country or place of permanent residence, voluntary acquisition of citizenship, acquisition of a previously lost citizenship, and return of a refugee to a previously feared country. Two involuntary cases are the change of circumstances in the previous country and the change of circumstances in the country where the person has become a refugee. Refugees leave in two ways, the first being "voluntary return" and the second being "expelling refugees from the host country."

(A) Voluntary return: The return of refugees has been one of the issues raised since 1946 in the Third Committee of the General Assembly of the United Nations regarding persons seeking refuge in Eastern Europe. The UN General Assembly, in its Resolution 538 in 1951, called on member states and the relevant international organization to assist those refugees who wish to return voluntarily to their homeland. The right of return of refugees was recognized in UN Resolution 194 in 1948. The United Nations has approved this resolution and emphasized its implementation every year (Nazari Tajabadi, 1990: 141-143).

(B) Refugee deportation: Under Article 32 of the Geneva Convention Relating to the Status of Refugees, Contracting States do not have the right to deport refugees except in special cases. According to this article, the Contracting States shall not deport refugees who are regularly residing in their territory except for reasons of national security or public order. Therefore, the principle of non-deportation or repatriation of refugees is an international and accepted principle, except in special circumstances where the relevant State feels that the existence of the refugee is dangerous to the security of its country. Or, according to a final court ruling, a refugee is convicted of a serious crime and recognized harmful to society and its country. The principle of non-expulsion or repatriation of refugees is the main basis of refugee protection.

### **Conclusion**

Based on the above mentioned, it follows that the international human rights system has been able to have a positive and transformative effect on traditional international law concerning refugee rights. Some human rights authorities, such as the European Court of Human Rights, have been able to demonstrate the

role of human rights in the development of the rights of aliens, especially the rights of refugees, with the full support of individuals based on human rights documents. Although the International Covenant on Economic, Social, and Cultural Rights, adopted in 1966, does not explicitly refer to the prohibition of discrimination against aliens in labor rights, the interpretations of the Committee for the International Covenant on Civil and Political Rights indicate some development in the field of refugee rights. Moreover, rulings issued by international judicial authorities, including the arbitral tribunal of Iran and the United States, are also important in the development of foreigners' rights. Contrary to traditional international law, which considered the expulsion of foreigners among the rights of the host countries, they had important implications for international human rights in the development of the rights of aliens. In the field of the expulsion of aliens, we also see the evolution of the rights of aliens, especially refugees. Although traditionally the expulsion is a sovereignty right for states, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, we see that this convention requires states to consider the alien's status concerning the expulsion.

The 1951 Asylum Convention is the first international document to impose legal restrictions on the deportation of aliens. According to Article 33 of the Convention, no country shall deport or repatriate a refugee in such a way as to limit the life or liberty of that person on the grounds of race, religion, nationality, membership in a particular social group, or particular political opinion. Examining the Islamic point of view on the rights and rules of refugee protection also shows that the main rights and minimum standards mentioned in international sources are also included in the Islamic sources for refugees. All of these rights are mentioned in the international rules on the rights of foreigners, including The Universal Declaration of Human Rights and the Islamic Declaration of Human Rights.

Article 3 of the 1962 Convention provides similar regulations about certain aspects of the refugee problems in Africa where all asylum seekers are considered refugees unless proven otherwise. So they shall enjoy the protection specified in Article 33 unless their claims concerning refugee status are rejected.

As we can see, while traditional international law has provided some protection to foreigners, international human rights documents such as the Convention against Torture have provided new and broader protection to them. Considering the above, we understand the development of the rights of aliens in the light of transformations in international human rights.

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