

ABSTRACT

The principle of non-refoulement has been enshrined in Art. 33 of the Refugee Convention. It prohibits State from refouling a refugee to the territory of a state where he faces the risk of persecution on basis of race, religion, nationality, membership of social group or political opinion. The principle of non-refoulement has also been enshrined in various other international instruments such as the Convention against Torture and International Covenant on Civil and Political Rights. Any individual who has been validly classified as a refugee can claim protection under the Refugee Convention. Besides this, non-refoulement has also emerged in complementary areas of international law and in customary international law and has been described as a positive obligation of States applied to prevent human rights violations. Its incorporation in several human rights treaties facilitates the protection of other human rights such as the right to life and the right against torture. International human rights law strengthens the specific refugee legal framework by allowing refugees to invoke the protection of norms whose scope of application may be wider than those in the refugee regime. Where few philosophers claim that the principle has not yet received the status of jus cogens norm, the practice followed by the states claim that no derogation of the principle has been made, thus claiming it to be rule of customary international law.

Extradition involves the surrender of an individual by the requesting State to the authorities of the Requested State for the purpose of criminal prosecution. Extradition is based on the concept that an individual must be tried for the offence committed, and must not be allowed to escape lawful prosecution. Extradition is effectuated through various bilateral and multilateral treaties, and other international instruments. The general principles of extradition and grounds for refusal of extradition have now been recognized by various states through the form of State practices.

Prima facie, there is a clear conflict between the two principles under international law. Non-refoulement obligates that a State cannot extradite an individual if there is a real risk that he will be persecuted in the Requesting State. Whereas Extradition law mandates that an individual must be extradited to the requesting State so that he may

be tried for the offences committed. This thesis seeks to analyze the scope of reconciliation between these two conflicting principles for better implementation of both under International Law.

Despite this, States have tried to escape their obligations under international law by choosing to enforce extradition treaties rather than upholding the principle of non-refoulement. The practice of derogation by States through extradition treaties deprecates the protection given to refugees and allows States to escape their international law and human rights law obligations. As a result, the principle of non-refoulement becomes essentially rhetorical with a resultant erosion and limitation of the principle under the human rights regime and the weakening of its position in attaining a jus cogens norm.

These concepts therefore overlap when it comes to their contradictory approach because where one principle focuses on protecting the rights of the states, the other concept insists to keep the inherent right of the humans at a higher pedestal. This thesis, by studying the case laws throughout the year which happens to highlight this issue, tries to focus on the problem pertaining to application of these principles along with the common approach of the court regarding the same. An overview on the interests of the states has also been made wherein by making an attempt to save the interests of an individual, the same of the entire country is always been put on stake. These two concepts need to be dealt in a manner that does not derogate the international norms of human rights and mutual co-operation. An attempt has been made in this thesis that a proper analysis of cases are made and a substantial research undertaken to bring forth the nuances of both the concepts because of the very fact that, if these concepts are not reconciled then States will find it difficult to find a way out when matters are complex and two conflicting doctrines stand in the way of coming out to a solution for a complex situation.

This thesis at the end provides certain suggestions as to how both the doctrines can be reconciled and a common consensus can be reached for better implementation of these two international norms.