



# INTERNATIONAL REFUGEE LAW

## Practice and Procedure

Mohammad Naqib Ishan Jan  
Ashgar Ali Ali Mohamed  
Muhamad Hassan Ahmad



IUM  
Press

# INTERNATIONAL REFUGEE LAW



**Practice and Procedure**

Mohammad Naqib Ishan Jan  
Ashgar Ali Ali Mohamed  
Muhamad Hassan Ahmad



**IIUM  
Press**

Gombak • 2017



First Print, 2017  
© International Islamic University Malaysia (IIUM)

IIUM Press is a member of the Majlis Penerbitan Ilmiah Malaysia - MAPIM  
(Malaysian Scholarly Publishing Council)

All rights reserved. No part of this publication may be reproduced,  
stored in a retrieval system, or transmitted, in any form or by any means, electronic,  
mechanical, photocopying, recording, or otherwise,  
without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Mohammad Naqib Ishan Jan

International Refugee Law : Practice and Procedure / Mohammad  
Naqib ishan Jan, Ashgar Ali Ali Mohamed, Muhamad Hassan Ahmad.  
ISBN 978-967-418-787-3

1. Refugees--Legal status, laws, etc.
  2. Asylum, Right of.
  3. Government publications--Malaysia.
  - I. Ashgar Ali Ali Mohamed.
  - II. Muhamad Hassan Ahmad. III. Title.
- 341.486

*Published in Malaysia by*  
IIUM Press  
International Islamic University Malaysia  
P.O. Box 10, 50728 Kuala Lumpur, Malaysia

*Printed in Malaysia by*  
Naga Global Print (M) Sdn. Bhd.  
No.1, Jalan Industri Batu Caves 1/3  
Taman Perindustrian Batu Caves  
68100 Batu Caves, Selangor Darul Ehsan.

# CONTENTS

<i>Foreword</i>	ix
<i>Preface</i>	xi
<i>List of Cases</i>	xiii
<i>List of Statutes</i>	xv

## CHAPTER I: NATURE AND DEVELOPMENT OF INTERNATIONAL REFUGEE LAW

1.1	Introduction	1
1.2	The Nature of International Refugee Law	2
1.3	Sources of International Refugee Law	3
1.4	The Development of International Refugee Law	3
1.4.1	The League of Nations Refugee Protective Measures	4
1.4.2	The United Nations Refugee Protective Measures	8
1.5	Binding Obligation under the 1951 Convention and 1967 Protocol	12
1.6	Third States and the 1951 Convention	15
1.7	International Refugee Law, International Humanitarian Law and International Human Rights Law: The Three Protective Pillars	16
1.7.1	International Refugee Law and International Humanitarian Law	16
1.7.2	International Refugee Law and International Human Rights Law	19
1.8	Conclusion	20

## CHAPTER II: DEFINITION AND CLARIFICATION OF TERMINOLOGY

2.1	Introduction	21
2.2	Definition of Refugees	22
2.2.1	Definition of Refugees under International Law	22
2.2.2	Definition of Refugees under Regional Agreements	25

2.3	Clarification of Terminology	26
2.3.1	Asylum Seekers	26
2.3.1.1	Brief Historical Background of Asylum	27
2.3.1.2	Meaning of Asylum	28
2.3.1.3	Categorisation of Asylum	30
2.3.1.3.1	Territorial Asylum	31
2.3.1.3.2	Extra-territorial Asylum	34
2.3.1.3.2.1	Diplomatic asylum	35
2.3.1.3.2.2	Asylum in Premises of International Institutions	39
2.3.1.3.2.3	Asylum in Warships and Public Vessels	39
2.3.1.3.2.4	Asylum in Merchant Ships	40
2.3.2	Distinction between Asylum Seekers and Refugees	40
2.3.3	Distinction between Internally Displaced Persons and Refugees	42
2.3.4	Distinction between Economic Migrants and Refugees	44
2.4	The United Nations Mandate for the Protection of Refugees	45
2.5	Conclusion	46

### CHAPTER III: CRITERIA FOR THE DETERMINATION OF REFUGEE STATUS

3.1	Introduction	47
3.2	Criteria for The Determination	48
3.2.1	Well-Founded Fear	48
3.2.2	Persecution	52
3.2.3	Agents of Persecution	54
3.2.4	Grounds for Persecution	55
3.2.4.1	Race	55
3.2.4.2	Religion	56
3.2.4.3	Nationality	57
3.2.4.4	Membership of A Particular Social Group	58
3.2.4.5	Political Opinion	64
3.2.5	Outside the Country of Nationality	69
3.2.6	Lack of Protection	70
3.3	Conclusion	71

### CHAPTER IV: FUNDAMENTAL PRINCIPLES OF INTERNATIONAL REFUGEE LAW

4.1	Introduction	72
4.2	The Development of the Principle of Non-Refoulement	73
4.3	The Principle of Non-Refoulement under International Conventions	75
4.4	Non-Refoulement under International Human Rights Law	78
4.5	A Non-Derogable Principle of Customary International Law	80
4.6	Non Rejection at the Frontier	81
4.7	The Principle of Non-Extradition	86
4.8	The Principle of Non-Expulsion	90
4.9	The Principle of Non-Discrimination	93
4.10	The Principle of Non-Penalisation	97
4.11	Conclusion	98

### CHAPTER V: MINIMUM STANDARDS OF TREATMENT

5.1	Introduction	100
5.2	National Treatment	102
5.3	Most Favourable Treatment	108
5.4	Treatment Not Less Favourable than Aliens	110
5.5	Same Treatment Accorded to Aliens	115
5.6	Conclusion	118

### CHAPTER VI: RECOGNITION AND PROTECTION OF REFUGEES: THE ISLAMIC PERSPECTIVE

6.1	Introduction	119
6.2	The Status of Refugees under the <i>Shari`ah</i>	121
6.3	Definition of Refugee under the <i>Shari`ah</i> and the 1951 Convention	124
6.4	Grounds for Granting Refugee Status under the <i>Shari`ah</i>	126
6.5	Principles in Granting Refugee Status under the <i>Shari`ah</i>	131
6.6	The Duty to Seek Asylum under the <i>Shari`ah</i>	134
6.7	Right to Non-Refoulement under the <i>Shari`ah</i>	137
6.8	The Duties of Refugees and the Host Countries	142
6.9	Protecting Refugee Rights and the Role of Religion	143
6.10	Conclusion	145

## CHAPTER VII: TREATMENT OF REFUGEES: PRACTICES IN SELECTED MUSLIM COUNTRIES

7.1	Introduction	147
7.2	Turkey	146
7.3	Pakistan	149
7.4	Jordan	156
7.5	Conclusion	162

## CHAPTER VIII: RECOGNITION AND PROTECTION OF REFUGEES: THE MALAYSIAN PRACTICE

8.1	Introduction	163
8.2	Refugees in Malaysia	164
8.3	Refugees or Illegal Immigrants: The Dilemma	168
8.4	Control of Illegal Entry into Malaysia	172
8.5	Removal of Illegal Immigrants from Malaysia	172
8.7	The Wayforward	173
8.8	Conclusion	174

<i>References</i>	175
-------------------	-----

<i>Index</i>	193
--------------	-----



MOHAMMAD NAQIB ISHAN JAN is a Professor of Law and currently the Deputy Dean (Postgraduate Affairs) at Ahmad Ibrahim Kuliyah (Faculty) of Laws, International Islamic University Malaysia. He received his Bachelor of Law (LL.B (Hons)), Master of Comparative Laws (MCL) and Doctor of Philosophy (Ph.D) from International Islamic University Malaysia. He is also the Coordinator of the Dispute Resolution Research Unit, a member of the World Trade Organization and Globalization Unit, a member of the International Law and Maritime Affairs Unit, and a member of the IIUM's Phillip C. Jessup Moot Court. His areas of expertise include public international law, international humanitarian law, international human rights law, international dispute resolution, international commercial arbitration, use of force, law of international institutions and refugee law.

ASHGAR ALI ALI MOHAMMED is a Professor of Law at Ahmad Ibrahim Kuliyah (Faculty) of Laws, International Islamic University Malaysia. He graduated with Bachelor of Law (LL.B (Hons)) and Master of Comparative Laws (MCL) from International Islamic University Malaysia, Master of Laws (LL.M (Hons)) from University of Auckland, New Zealand and Doctor of Philosophy in Business Law (Ph.D) from the Graduate School of Management, University Putra Malaysia. He was admitted to the Malaysian Bar as an Advocate and Solicitor by the High Court of Malaya in 1992. His area of interest includes Employment Law, Civil Litigation and Alternative Dispute Resolution.

MUHAMAD HASSAN AHMAD is an Assistant Professor at Civil Law Department, Ahmad Ibrahim Kuliyah (Faculty) of Laws, International Islamic University Malaysia. He holds Bachelor of Law (LLB), Master of Comparative Laws (MCL) and Doctor of Philosophy (PhD). He has special interest in Public International Law; Private International Law; Alternative Dispute Resolution; Comparative Law and Jurisprudence.

# INTERNATIONAL REFUGEE LAW

## Practice and Procedure

The international instruments relating to the protection and rights of refugees are the significant development of international human rights regimes. In this book, entitled *International Refugee Law: Practice and Procedure*, authors identify the status of refugees, examine their rights and privileges under the unnecessary circumstances, and analyse the obligations of states providing protection and assistance to them. As an interdisciplinary subject, the international refugee law also addresses several other issues such as immediate humanitarian assistance, state sovereignty, international relations, and international migration law and policy. The book is divided into eight chapters exploring, inter alia, the criterion for determining refugee status, fundamental principles of international refugee law, minimum standards of treatment and the obligations of states to provide protection as well as assistance under international law. The recognition and protection of refugees from the Islamic perspective is also featured in this book. All those concerned, particularly to the whole legal and non-legal community such as members of the Malaysian Bench and Bar, academics, students, and others, will find this book a valuable aid for a good understanding of the subject. The readers would get insightful ideas on all the aspects of refugee protection under the refugee conventions as well as other international human rights regimes without having to refer to several sources.

ISBN: 978-967-418-787-3



9 789674 187873

IIUM Press

Tel : +603 6196 5014 / 6196 5004

Fax : +603 6196 4862 / 6196 6298

Email : [iiumbookshop@iium.edu.my](mailto:iiumbookshop@iium.edu.my)

Website : <http://iiumpress.iium.edu.my/bookshop>

