

ASYLUM LAW OR CRIMINAL LAW: BLAME, DETERRENCE AND THE CRIMINALISATION OF THE ASYLUM SEEKER ¹

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***Abstract.** Although the Refugee Convention 1951 generally provided that contracting states should recognise those who came within its definition as refugees, it did not prescribe how contracting states should determine this in order to enable them to balance this obligation with their national interests. However, evidence from the background and drafting of the Refugee Convention 1951 suggests that the provisions that a contracting states would implement in order to protect its interests would be commensurate with the human rights spirit of the treaty. This implied that contracting states would act fairly in balancing the competing interests in devising status determination policies and would take into account decent considerations. But, from a theoretical viewpoint, it is arguable that some recent asylum determination policies have been based on the threats posed by asylum seekers. Asylum seekers have come to be blamed for contributing to the national issues that some contracting states face and as such, some contracting states have adopted draconian measures as a result.*

This paper argues that Criminal Law also has an intrinsic nature based on, amongst other things, the need to deter certain forms of harmful conduct on the basis of culpability and, arguably, that some status determination policies are now coming to mirror this.

1 This work is a wider development of a working paper, ‘Criminal Law or Asylum Law: the Criminalisation of the Asylum Seeker’ delivered on 20 January 2009 at the London Migration Research Group, SOAS, Room 102, Building 21-22 Russell Square, London, WC1X 0XG, UK.

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Introduction: Competing Interests at the Heart of the Refugee Convention 1951

The Convention relating to the Status of Refugee 1951 (“the Refugee Convention 1951”) identifies the circumstances in which, under international law, a contracting state should recognise an alien as a refugee,² and also defines the rights of a refugee, including, most importantly, their right not to be expelled or returned to the frontiers of a territory where their life or freedom would be threatened on account of a Convention reason (non-refoulement).³

However, the Refugee Convention 1951 does not prescribe the means by which a contracting state should recognise them. It respects the sovereign right of its contracting members to decide immigration policies. As Dallal Stevens puts it:

*“Post-war international refugee law laid down the ground rules for protection, but contracting states retained their sovereign right to decide whom to admit into their territory, as well as the freedom to implement their own refugee determination process.”*⁴

This embodies one of the fundamental features of the Refugee Convention 1951. Although the instrument was adopted in the backdrop of the Second World War with the need to ensure that the fundamental rights and freedoms of all human beings were protected,⁵ contracting states also wanted to preserve immigration control over who entered their territories and use it as an immigration tool. This is alluded to in the Preamble, which makes reference to the ‘heavy burdens’ that the grant of asylum may cause. As James C. Hathaway adds:

“...much of the debate during the drafting of the Refugee Convention was devoted to how to best protect the national self interest of the receiving states. The Convention

2 Article 1 of the Refugee Convention 1951 provides a legal definition of a refugee for the purposes of the Convention, including the circumstances when the Convention will cease to apply to a person and also when applicants will be excluded from refugee protection

3 Article 33(1), Refugee Convention 1951: *“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.”* There are exceptions in Article 33(2).

4 Stevens, D. *UK Asylum Law and Policy: Historical and Contemporary Perspectives*. London: Sweet and Maxwell, 2004, p. 163–164.

5 Support for the human rights dimension of refugee protection comes from, at least, the reference in the Preamble of the Refugee Convention 1951, including that *“Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination...”*

*grants states wide ranging authority to deny refugee status to criminals and persons perceive to endanger national security.*⁶

Hence, the Refugee Convention 1951 brings to light competing interests, including the right of the asylum seeker not to be returned to a place where they have a fear of persecution, and also the immigration needs of the host state.

However, the Refugee Convention 1951 did not envisage that these would be judged mutually exclusive. Instead, they were to be assessed in light of each other. While contracting states were entitled to take into consideration their national interests in deciding the policies by which refugees would be recognised, they also had to be cognisant of the wider need to protect the fundamental rights of those who had fled persecution. Indeed, it is arguable that the very object of the Refugee Convention 1951 would be defeated if the contracting states were at liberty to implement harsh asylum determination policies that would unduly affect asylum applications. Contracting states had to ensure that they struck a right balance between both their immigration interests and the need to defend people against persecution.⁷ This is implicit in the objects and purposes of the treaty, the spirit of the Final Act of the Conference of *Plenipotentiaries*⁸ and the circumstances in which the treaty was drafted.

However, this paper argues that over the last twenty years, these two competing interests have become polarised. Disproportionate asylum provisions such as the warehousing of asylum seekers, removal of rights of appeal from some groups of applicants, and the refusal of the right to work after a reasonable time, have been adopted because of a belief that certain asylum groups need to be deterred as they represent a danger to the national interests of contracting states. In adopting such measures, potentially bona fide refugees have also been affected, and arguably the wider human rights foundations of the Refugee Convention 1951 have been impinged.

This paper also suggests that such provisions are increasingly coming to mirror the intrinsic nature of criminal law as rules that seek to deter certain forms of serious behaviour on the basis of the culpability of the agent, or the notion that they are to blame for wrongdoing.

1. The Intrinsic Nature of Criminal Law

One argument against the claim that asylum determination policies are becoming increasingly criminalised maybe that criminal law is a specific body of law defined

6 Hathaway, J. C. *Reconceiving International Refugee Law*. The Hague, Boston and London: Martinus Nijhoff Publishers, 1997, Preface, Xviii; Further evidence for this can be gleaned from the travaux préparatoires of the 1951 Conference, which show to some extent that the delegates also wanted to protect their interests.

7 See, for example, Executive Committee of the High Commissioners Programme, statement by Dr. P. Weiss, 16 UN GAOR, (147th meeting), at 4, 6, UN Doc, A/AC.96/349 (1966) cited in Cox, T. N. Well-Founded Fear of Being Persecuted: The Sources and Application of a Criterion of Refugee Status. *Brook. J. Int'l L.* 1984, 10: 333.

8 Travaux préparatoires, 1951 Conference of Plenipotentiaries, Doc Symbol: A/CONF.2/107.

with reference to a particular set of procedures and outcomes. Michael Allen, for instance, says that one definition of a crime is “an act (or an omission or state of affairs) which contravenes the law and which may be followed by prosecution in criminal proceedings with the attendant consequences, following conviction, of punishment.”⁹ By this reasoning, as the asylum determination provisions do not necessarily result in the institution of criminal proceedings or a criminal punishment it would be wrong to argue that such policies ‘criminalise’.

However, arguably, this is a highly formal theory of criminal law, which does not of necessity look at what is internal to a crime. There may, indeed, be issues with defining crimes with reference to substance – but it is arguable that all crimes also have an internal coherence as well – and it is claimed that some determination policies are now largely coming to mirror these.

1.1. Rules that Protect the National Interest

To start with, criminal offences proscribe behaviour that is considered more widely harmful. What distinguishes a crime from a private wrong is that the latter is considered to be more damaging to the wider social interest. Indeed, as Grant Lamond writes:

*“The most influential approach to understanding the nature of crimes has been in terms of their being public, as opposed to private, wrongs. The conception of crimes as ‘public’ has a long tradition in common law thought. Crimes were regarded as violations of the King’s Peace, and, as such, were liable to being pursued as pleas of the crown.”*¹⁰

Thus, crimes forbid conduct that is socially harmful. What this harm is, of course, will depend on the society in question. However, all societies rely on a set of underlying norms and values. Whatever they may be, they enable its agents to interact on a day to day basis and if anything gravely disrupts this, then criminal law will generally be used to proscribe it. As Veron Fox says:

*“The social formation is held in shape by the experiences of each individual in association with other participants in a structured manner that leads him to anticipate the behaviour of others in certain situations. Such anticipation leads to intangible but real phases of interpersonal interaction as trust, faith, belief, common attitudes and prejudices, and other similar contributions to the social interaction. Any deviation damages the formation. Crime is the defined actions of individuals that most seriously damages this interaction.”*¹¹

9 Allen, M. *Textbook on Criminal Law*. Oxford: University Press, 2005, p. 1.

10 Lamond, G. What is a Crime. *Oxford Journal of Legal Studies*. 2007, 27(4): 5.

11 Fox, V. What is a Crime. *U. Fla. L. Rev.* 1963-1964, 16: 147; see also Dworkin, R. Lord Devlin and the Enforcement of Morals. *The Yale Law Journal*. 1966, 75(6): 988: “There are two chief arguments. The first is set out in structured form in the Maccabean lecture. It argues from societies right to protect its own existence. The second, a quite different and much more important argument, develops in disjointed form through various essays. It argues from the majorities right to follow its own moral convictions in defending its social environment from change it opposes.”; and also Lord Devlin, P. *The Enforcement of Morals*. Oxford: University Press, 1996.

1.2. Enforced by the State on the Basis of Fault

However, this is, of course, a very rudimentary starting point. The fact that a body of rules proscribes behaviour that a society considers injurious is not in itself sufficient to make them criminal. Even basic moral codes and branches of civil law, such as tort law and contract law, forbid conduct that societies does not consider desirable. So there must be something else to crimes.

Another fundamental and, arguably, distinguishing feature of criminal law is that it is enforced by the state¹² against a perpetrator who is somehow deemed culpable, or to blame for their actions.

This issue of culpability or fault is the sine qua non of criminal law and is reflected in the maxim *actus non facit reum nisi mens sit rea*. As Lord Bingham of Cornhill put it in *Regina v. G and Another*:

*“First, it is a salutary principle that conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind when so acting was culpable. This, after all, is the meaning of the familiar rule actus non facit reum nisi mens sit rea.”*¹³

At least one reason for this is that criminal law reflects the notion of agency and that a person who was clearly capable of rationalising but nonetheless acted in a manner proscribed by criminal law should be punished. This is one justification for why those who are insane, or not capable as acting as full rational agents, ought to have a defence.

Closely related to this is the idea of retribution: a person should only be punished to the extent that they were responsible for their actions. Thus the sentence will also be based on the type of mind, or mens rea, thus reflecting the weight that criminal law assigns to mens rea. As Eugene J. Chesney further puts it:

*“The essence of criminal law has been said to lie in the maxim – “actus non facit reum nisi mens sit rea.” Bishop writes “There can be no crime large or small, without an evil mind. It is therefore a principle of our legal system, as probably it is of every other, that the essence of an offence is a wrongful intent, without which it cannot exist.”*¹⁴

This arguably explains why a state may treat two people who commit exactly the same act differently. For example, a defendant who kills a human being intentionally will be charged with murder, whereas one who does so recklessly will be charged with manslaughter. Their punishment will reflect the level of their moral guilt or blame.

12 Kemp Allen, C. *The Nature of a Crime. J. Comp. Legis. & Int'l L.* 3d ser., 1931, 13; Hillyard, P.; Tombs, S. From ‘Crime’ to Social Harm? *Crime Law Soc Change.* 2007, 48: 13–14: *“It is often said that the only real distinction between tort and crime is one of procedure. The manager of the action in one case is a private individual, and in another case it is the state.”*

13 [2003] UKHL 50.

14 Chesney, E. J. *The Concept of Mens Rea in the Criminal Law. Journal of Criminal Law and Criminology.* 1939, 29(5): 627; see also Kleinig, J. *Crime and the Concept of Harm. American Philosophical Quarterly.* 1978, 15(1): 27.

Hence, this reflects one of the essential characteristics of criminal law. At its base, it protects important societal interests, but it also does this on the basis of agency or culpability.

1.3. To Act as a Deterrent to Other People

However, apart from retribution, and other underlying criminal law principles such as rehabilitation and incapacitation, there is another prime reason why criminal law imposes penalties on agents who, with a certain state of mind, act against societal interests: deterrence. It is to promote responsibility and prevent other people from acting in the same way. People may refrain from acting in such a way if they know that there is a chance that the state will also enforce the law against them. As Harrison Hitchler says:

*“The law accomplishes its aim primarily through deterrence, and in order to deter there must be a state of mind upon which the threats of punishment can exert an influence.”*¹⁵

There have been many studies conducted on how criminal law acts as a deterrent. For example, in his seminal work, ‘Crime and Punishment: An Economic Approach’, Gary S. Becker considered how both the agent and the state will balance a number of different factors before deciding how to act.¹⁶ However, the objective of this paper is not to look at such research. It is to elucidate the internal structure of criminal law that some modern determination procedures are now coming to parallel. It is argued that while the objects and purpose of the Refugee Convention 1951 imply that contracting states should have been cognisant of the need to balance both the wider human rights objectives of the treaty and also its immigration purposes, contracting states are increasingly criminalising asylum seekers by adopting rules on the basis of national interests and fault and culpability in order to deter other people from acting in the same way.

2. The Growing Criminalisation of Determination Policies

The first characteristic that asylum law shares with criminal law is that they both protect wider societal interests. An application for asylum is essentially territorial. A person, who does not belong in a particular place, will apply for protection there, and the host state will have to decide if they should be admitted. However, this is not an abstract application; it is assessed according to the circumstances in which the host state finds

15 Hitchler, H. Elements of Crime. *Dick. L. Rev.* October 1921 to June 1922, 26: 219; see also Cohen, M. R. Moral Aspects of the Criminal Law. *Yale Law Journal.* 1939, 49: 1016: “In general we know that just as certain factors will tend to increase crime, so certain factors will tend to diminish the amount of it, and that the penalties of law if enforced, constitute one of the minimising causes.”

16 Becker, G. S. Crime and Punishment: An Economic Approach. *Journal of Political Economy.* 1968, 76(2): 169; see also Cook, P. J. Research in Criminal Deterrence: Laying the Groundwork for the Second Decade. *Crime & Just.* 1980, 2: 216; and Chambliss, W. J. The Deterrent Influence of Punishment. *Crime & Delinquency.* 1966, 12(1): 70–75.

itself. If, for example, a host state feels insecure for any reason, then it may be cautious in admitting refugees.

This paper suggests that this is what is happening in some countries today. Globalisation has affected the way that some contracting states and this has been compounded by the economic uncertainty associated with greater global integration. The British Home Office White Paper, ‘Secure Borders, Safe Havens: Integration with Diversity in Modern Britain’, in the backdrop of the Nationality, Immigration and Asylum Act 2002, for example, placed globalisation at the centre of UK government immigration policy. It pointed out that globalisation represented one of the biggest challenges to this country, and that the government had a duty to respond by implementing effective immigration policies, including controlling asylum seekers.¹⁷

Indeed, there is evidence to show that many contracting states have felt to protect their national interests by tightening immigration policies, principally because of the effects of globalisation. As Krystal Gatt writes of Australia, for example, as a result of globalisation, the state began to place more emphasis on skilled migrants and less so on those seeking entry for solely humanitarian reasons and “...*modifications were made to immigration selection criteria to attract highly skilled immigrants and business migrants to generate investment capital. There was less emphasis on humanitarian selection and also a tightening of family reunification migration (Hollinsworth & Hollinsworth, 1998; McMaster, 2001).*”¹⁸

However, the protection of wider social and economic interests is not the only characteristic that asylum law shares with criminal law. It is further the growing perception that the asylum seeker is somehow at fault, or to blame, for some of the negative consequences of globalisation that contracting states encounter. As mentioned, the sine qua non of criminal law is that it is enforced by the state on the basis that the perpetrator is seen as an agent, or culpable or morally to blame for something. If there is no moral fault then a person should not be convicted, (unless it is as strict liability offence) and there has been a growing tendency in some countries to assume that the asylum seeker is somehow responsible or to blame for, amongst other things, overcrowding and unemployment. As Miranda Lewis found, for example, in one report:

*“Fears about asylum seekers can be broadly categorised as concerns about economic impacts (such as on the labour market or welfare systems) and about cultural and social change (such as increased racial diversity and overcrowding). Underlying these are fears that the asylum system is out of control and that the Government has failed to address the issue.”*¹⁹

As such, asylum seekers have increasingly come to be linked with some of the despairs of some contracting states today. This has been played on by some social groups and in some cases has found itself into wider public discourse and perceptions

17 Home Office. *Secure Borders, Safe Havens: Integration with Diversity in Modern Britain*. CM 5387. London: Stationery Office, 2002: The Challenge of Globalisation.

18 Gatt, K. *Sudanese refugees in Victoria: An analysis of their treatment by the Australian Government*. *International Journal of Comparative and Applied Criminal Justice*. 2011, 35(3).

19 Lewis, M. *Asylum: Understanding Public Attitudes*. London: Institute for Public Policy Research, 2005, p. 7.

about asylum issues. As Tadas Leončikas and Karolis Žibas also found in Lithuania, for instance:

*“While negative attitudes towards migrants are changing over time and they were diminishing throughout 2005-2008, the categories such as Muslims, Refugees and Chechens are most disliked by the respondents in public opinion surveys. These categories are actually related to the types of the recent immigrant groups. In case of refugees from the Russian Federation who are Chechens by ethnic origin and Muslims by religion, there seems to be a multiple social distancing. Apart from general attitudes, there are occasional cases of direct attacks against foreigners.”*²⁰

However, it is also not just that asylum seekers are often seen as compounding or to a blame for a country’s woes that has resulted in criminalisation. It is further that governments have also used this notion of fault or culpability as a means to deter other asylum seekers from entering this country- on the basis that they are somehow to blame for the country’s despair. As mentioned, if a state believes that an agent is at fault or culpable for breaching criminal laws, then it will take legal action in order to deter other people from acting in the same way. It realises that the optimal way to prevent people from endangering the public interest is to prosecute those who have some moral culpability or responsibility.²¹ This is also what some government have done with respect to the asylum seekers in the last fifteen to twenty years. They have perceived that asylum seekers constitute a threat and have taken specific measures on this basis to deter them. It is by deterring them on a perceived culpability or threat, rather than balancing immigration control with the need for protection, that essentially criminalises them.

For instance, one of the provisions that the British government introduced in the aftermath of the White Paper mentioned above was a provision in the 2002 Act that allowed the Secretary of State to refuse support if he was not satisfied that an applicant had made their asylum claim as soon as reasonably possible. This was based on the perception that people who had been admitted as visitors may apply for asylum in order to prolong their stay. However, it also caught bona fide asylum seekers who did not apply for asylum as soon as reasonably possible because they did not understand English, or had been instructed to follow an agent. A number of asylum seekers had to sleep in the cold and without food because were refused support. One of the rationales for the provision was the need to deter spurious asylum seekers but, as mentioned, it also affected many genuine asylum seekers.

Further, in 2009, Human Rights Watch reported that Italy had directed boat loads of asylum seekers to Libya:

“On May 6, 2009, for the first time in the post-World War II era, a European state ordered its coast guard and naval vessels to interdict and forcibly return boat migrants on the high seas without doing any screening whatsoever to determine

20 Executive Summary. Situation of New Immigrants in Lithuania. In: Kovalenko, J.; Mensah, P.; Leončikas, T.; Žibas, K. *New Immigrants in Estonia, Latvia, and Lithuania*. Tallinn: Legal Information Centre for Human Rights, 2010, p. 43.

21 Ashworth, A.; Zedner, L. Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions. *Crim Law and Philos.* 2008, 2: 41.

*whether any passengers needed protection or were particularly vulnerable. The interdicting state was Italy; the receiving state was Libya.”*²²

While Italy undoubtedly had the sovereign right under international law to protect its borders, what it did in the interests of immigration control went far beyond the humanitarian objects of refugee protection. While it had an obligation to screen applicants to determine if they should be recognised as refugees, they were turned away for immigration control. The state took immigration control too far.

Moreover, some states have resorted to an increasing use of detention in unreasonable conditions in order to control asylum seekers. For example, Australia detained asylum seekers in detention centres, such as the one at Curtin Air Force Base in Western Australia. However, the state was criticised by UNHCR because of the effects of cutting asylum seekers off from their wider communities.²³

Conclusion: the Refugee Convention and the Need for Balance in Determination Policies

These are just some examples of the ways in which contracting states have adopted restrictive asylum policies in order to control asylum flows. However, as mentioned at the start, the background and drafting history of the Refugee Convention 1951 support the argument that contracting states had a legal duty to be cognisant of both the need to protect those fleeing persecution and their national interests. It certainly did not envisage that these would be mutually exclusive – but that they would fairly balance them both.

However, over the past twenty years, contracting states have increasingly adopted a series of measures that have favoured national interest more. This is nothing new. As Paul Statham says this is the pattern across Western Europe:

*“the issue of asylum opens up a particular contradiction within liberal national states: it puts the universal principle that they should respect and protect human rights by offering asylum to aliens fleeing persecution in direct competition with the principle that they should primarily serve the interests of the state’s existing citizens...[and] domestic politics in west European countries has come down firmly on the side of legitimising anti-asylum policies through the logic of defending the national interests of the state’s existing citizens.”*²⁴

However, the point of this paper has been to show that not only have contracting states given more weight to their national interests, they have also potentially criminalised the asylum seeker in doing so. This is because they have adopted determination provisions on the basis that they are somehow generally culpable or responsible for undermining their interests so ought to be deterred. This paper has argued that this is similar to the

22 Human Rights Watch. *Pushed Back, Pushed Around*. New York: 21 September 2009, p. 4.

23 UNHCR disappointed at Australian decision to reopen detention centre for asylum-seekers. *News Stories*. 20 April 2010.

24 Statham, P. Understanding the Anti-Asylum Rhetoric: Restrictive Politics or Racist Publics? *Political Quarterly*. 2003, 74(1) Special Edition: 165.

way in which states prosecute agents who are morally responsible for committing crimes in order to discourage other people from committing the same.

In this way, the two competing interests at the heart of the Refugee Convention 1951 have become fragmented, even though they were meant to be related. However, it is argued that in an ever globalising world, it is important that they are realigned in order to ensure that those who have a well founded fear of persecution are protected, rather than criminalised on the basis that they are simply culpable or a perceived threat.²⁵

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25 For example, Gibney, M. J. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: University Press, 2004, p. 194: "I argued, using the framework of Thomas Nagel, that these ethical approaches illustrate a conflict between two very powerful claims: the right of the political community to provide for its own members, and the right of all human beings to equal concern and respect...I concluded my discussion of value by suggesting that the tension between these two ideals could be reduced (if not completely dissolved) with an ideal that would see states as justified in restricting entry only in order to protect the institutions and values of the liberal democratic state, defined quite broadly to include not only civil and political rights, but also the kind of social rights associated with a generous welfare state that ensures economic justice...."

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PABĖGĖLIŲ TEISĖ AR BAUDŽIAMOJI TEISĖ: KALTINIMAS, SULAIKYMAS IR PRIEGLOBSČIO PRAŠYTOJO KRIMINALIZAVIMAS

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Santrauka. 1951 m. Jungtinių Tautų konvencija dėl pabėgėlių statuso (toliau – Konvencija) numato pabėgėlio apibrėžimą ir pabėgėlio statusui keliamus reikalavimus bei įtvirtina pabėgėlių teises, iš kurių viena svarbiausių – draudimas asmenis išsiųsti į valstybę, kurioje jo gyvybei ar laisvei kiltų grėsmė dėl Konvencijoje įtvirtintų prievolių. Tačiau Konvencija nenurodo priemonių, kaip Susitariančios šalys turėtų suteikti pabėgėlio statusą. Taigi Susitariančioms šalims paliekama teisė pačioms suformuoti savo migracijos politiką. Tačiau 1951 m. Konvencijos parengiamieji darbai rodo Konvencijos rengėjų poziciją, kad Susitariančios šalys gindamos savo interesus turi atsižvelgti į iš sutarties kylančią žmogaus teisių dvasią. Norėta pasakyti, kad Susitariančios šalys veiks sąžiningai derindamos du konkuruojančius interesus – prieglobsčio prašytojo teisę nebūti išsiųstam į valstybę, kurioje jam gresia persekiojimas, ir pačios valstybės nacionalinius interesus. Tačiau pastebima, kad pastaruoju metu vykdoma pabėgėlio statuso suteikimo politika yra pagrįsta baime dėl pačių prieglobsčio prašytojų keliamos grėsmės valstybės interesams.

Straipsnyje teigiama, kad per pastaruosius dvidešimt metų šių dviejų konkuruojančių interesų supriešinimas paaštrėjo. Dėl įsitikinimo, kad kai kurios prieglobsčio prašytojų grupės kelia grėsmę Susitariančių šalių nacionaliniams interesams, valstybė-

se buvo priimtos neproporcingos prieglobsčio priemonės, tokios kaip netinkamas prieglobsčio prašytojų apgyvendinimas, apeliacijos teisės atėmimas iš kai kurių prašančių pabėgėlio statuso grupių, teisės į darbą neužtikrinimas po numatyto termino. Tokios priemonės paveikė ir bona fide pabėgėlius bei pasikėsino į 1951 m. Konvencijoje įtvirtintą žmogaus teisių dvasią.

Reikšminiai žodžiai: 1951 m. Konvencija dėl pabėgėlių statuso, prieglobsčio nustatymo politika, pagrindiniai baudžiamosios teisės principai, prieglobsčio kriminalizavimas.

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