



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

TREATMENT OF REFUGEES IN THE INTERNATIONAL PURVIEW – STUDY ON THE UKRAINIAN REFUGEE CRISIS

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INTRODUCTION

One of the factors contributing to the original friction between Russia and Ukraine was the formation of the North Atlantic Treaty Organisation (hereinafter NATO) in 1949. This organisation was proposed by US President Harry Truman with the intention of deterring the expansion of the confederation of fifteen states, better known as the Soviet Union, to western Europe.¹ As the Soviet Union had disintegrated in 1991, NATO's intergovernmental alliance expanded to the east despite the United States' alleged promise to the former Soviet Union, President Gorbachev, that they would refrain from expanding eastwards.² In the same year, Ukraine's independence from the Soviet Union was achieved, and Russia was fearful of Ukraine forming ties with NATO.³

Ukraine is disputed by Russia for many reasons, namely: a part of its border is connected to Russia, as well as having access to the Black Sea, Ukraine held a significant amount of the former Soviet Union's defence industries, nuclear arsenal, and agricultural production and in Europe amounts to the second largest country.⁴ Russia began acting against Ukraine after the initiation of the Association Agreement between Ukraine and the EU, starting by modifying its ties with Ukraine and restraining its import from and export to Ukraine, leading to a split between protesters and President Yanukovich's government which rejected the Association

¹ *Why does Russia don't want Ukraine to join NATO?* (2022, March 6). MARCA. Retrieved October 5, 2022, from <https://www.marca.com/en/lifestyle/world-news/2022/03/06/622517e222601d1e328b4571.html>

² A historical timeline of post-independence Ukraine. *PBS NewsHour*. (2022, February 22). Relations. From <https://www.pbs.org/newshour/world/a-historical-timeline-of-post-independence-ukraine>

³ Why does Russia want to block Ukraine from joining Nato? *The Independent*. (2022, September 24). Sommerlad. From <https://www.independent.co.uk/news/world/europe/russia-ukraine-war-news-nato-membership-b2174404.html>

⁴ *Ukraine: Conflict at the Crossroads of Europe and Russia*. Council on Foreign Relations. (2022, April 1). Masters. From <https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia>.

Agreement.⁵ After this, the Crimean Peninsula was targeted by Russia for annexation in 2014, along with the Donbas region in the east of Ukraine.⁶

Since Ukraine's independence, it has attempted to pave the way for its position as a sovereign state within the international community. Ukraine has been inclined towards aligning itself with the West, including its institutions such as the EU and NATO. Keeping these goals in mind, Ukraine has been stunted from achieving them due to the fresh build-up of Russian troops in Ukraine and demands from Russia to NATO to convince them to prevent giving membership to Ukraine. As a result of the ongoing armed conflict, the destruction and loss of life have become unavoidable, especially due to air strikes and artillery shelling.⁷ As innocent citizens' protection and assistance to them are currently threatened, with 6114 recorded civilian deaths as of the 3rd of October 2022, the refugee situation in Ukraine must be examined.⁸

The majority of Ukrainian refugees are seeking refuge in neighbouring countries. Since the initial invasion of Russia in Ukraine, over 12 million citizens have absconded from their place of residence as per the United Nations;⁹ as of the 4th of October 2022, 7,643,944 refugees are recorded residing in Europe.¹⁰ The problem extends to citizens of Ukraine who are unable to flee the country, leaving them with no choice but to be internally displaced, the number amounting to around 7 million, according to the International Organisation for Migration.¹¹ This paper will break down the refugee crisis into parts and bring about a contribution through a comparative study of how refugees are dealt with in other countries and how that can be applied or approached differently in the case of Ukraine. The subsequent analysis will identify some key issues with the situation and possible reasoning regarding the issues.

⁵ A historical timeline of post-independence Ukraine. *PBS NewsHour*. (2022, February 22). Relations, C. O. F. From <https://www.pbs.org/newshour/world/a-historical-timeline-of-post-independence-ukraine>

⁶ Russia's War in Ukraine: Identity, History, and Conflict. In *Center for Strategic and International Studies*. (2022, April 22). Jeffrey Mankoff. <https://www.csis.org/analysis/russias-war-ukraine-identity-history-and-conflict>

⁷ War in Ukraine: Can we say how many people have died? *BBC News*. (2022, July 1). Habershon. From <https://www.bbc.com/news/world-europe-61987945>

⁸ *Number of civilian casualties during the war in Ukraine 2022*. (2022, October 4). Statista. Retrieved October 5, 2022, from <https://www.statista.com/statistics/1293492/ukraine-war-casualties/>

⁹ How many Ukrainian refugees are there and where have they gone? *BBC News*. (2022, July 4). BBC News. Retrieved October 6, 2022, from <https://www.bbc.com/news/world-60555472>

¹⁰ Ukraine Refugee Situation [Dataset]. In *Operational Data Portal*. The UN Refugee Agency. (2022, October). UNHCR. <https://data.unhcr.org/en/situations/ukraine>

¹¹ Ukraine Internal Displacement Report: General Population Survey. (2022, May). In *DTM Understanding Displacement*. International Organization for Migration. <https://displacement.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-5-17-23-may-2022>

The author will discuss the subject of refugees in the international legal sphere pertaining to the ongoing Russia-Ukraine conflict. The analysis will be conducted in three segments. First, beginning with the roots of international law, the view of the positivist and naturalist schools of thought regarding refugees will be enumerated, and their relevance will be assessed. Which school of thought has the most practical approach and which route is currently being implemented to the Ukrainian refugee crisis will be ascertained. Second, the respective international law on refugees and their formation, namely, the 1951 Refugee Convention and the United Nations High Commissioner for Refugees (herein UNHCR) guidelines, will be discussed in depth to ascertain their applicability to the case of Russia and Ukraine. Third, upon assessing the areas mentioned above, the manner in which other countries have dealt with issues regarding refugees will be discussed. Understanding whether the treatment of refugees in Ukraine can be taken as a 'precedent' for how refugees in other countries should have been dealt with and assimilating why a double standard is present will be examined through this sequential method of analysis.

The scope of this paper will be limited to the schools of thought that are discussed, as well as countries that have been taken to compare against Ukraine. The countries selected for comparison will be chosen based on their discussion and the light given to them in the international arena. The scope of research in this paper will be confined to European countries in which the refugees have settled and not beyond that limit. As the Russia-Ukraine conflict is ongoing, the degree of international legal intervention that has already occurred until recently will be deliberated upon, in addition to the international laws that should be invoked or kept in mind going forward. Ultimately, it is hoped that this paper will address two pressing issues – first, the path of positivism or naturalism taken by a state and the implication this has on the treatment of refugees; second, the double standard regarding how the behaviour towards refugees of third world countries compared to refugees of Ukraine differs.

SCHOOLS OF LAW

The purpose of understanding the philosophical roots of international law by way of the major schools of law is to identify the methodological foundation of the law and how it is coterminous with the aspect of refugees in the international sphere.

Positivist School

In essence, the concept of total legal protection in terms of positive law (also known as the state-sovereignty approach)¹² is based on the idea that the state, as per its discretion, can protect the nation's interest through the use of its sovereign power.¹³ The way in which it achieves this is through regulating the social aspect of citizens' lives.¹⁴ The maintenance of social order is prioritised in the positive view, and the smallest subject of public international law is the sovereign state. It heavily relies upon the consent theory of international law,¹⁵ which states that a sovereign state is under no international obligations apart from those the state has consented to and ratified, even if those obligations concern universal natural rights and morals.¹⁶ In this manner, legal positivists believe that there is no requirement for there to be a connection between morality and the law, which is known as the separability thesis.¹⁷ Emmerich de Vattel, the Swiss jurist, and the German writer Christian Wolff put forth their views on the positivist school amid the eighteenth century,¹⁸ which gave further clarity. They mentioned that the duty a state has towards itself would take priority over the duties it has to other states and nations.¹⁹

From this understanding of positivism, we can deduce that from the legal perspective, natural rights are not inherent; they are obtained. In relation to refugees, they are not direct bearers of the natural rights which are stipulated in the Refugee Convention of 1951, nor do they hold natural rights that are available in any other treaty of human rights²⁰ unless it has been subscribed to by the sovereign state that they are a citizen in. Upon application to the current position of international refugee law, there are two implications. First, this theory makes a state

¹² Economic Warfare in Contemporary International Law: Three Schools of Thought, Evaluated According to an Historical Method. *Stanford Journal of International Law*, 26(1), 67–92. (1989). Neff, S.

¹³ *Law, Order And Freedom: A Historical Introduction To Legal Philosophy (Law And Philosophy Library)*. Springer. (2011, September 10).

¹⁴ *Law, Order And Freedom: A Historical Introduction To Legal Philosophy (Law And Philosophy Library)*. Springer. (2011, September 10).

¹⁵ On the Quasi-Legislative Competence of the General Assembly. *The American Journal of International Law*, 60(4), 782–791. (1966, October). <https://doi.org/10.2307/2196928>

¹⁶ Legal Positivism and the Nuremberg Judgment. *American Journal of International Law*, 42(2), 405–414. (1948, April). <https://doi.org/10.2307/2193683>

¹⁷ On the Incoherence of Legal Positivism. *Notre Dame Law School*. Finnis, (2000) https://scholarship.law.nd.edu/law_faculty_scholarship/202/

¹⁸ *The Law of Nations: Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. (2015, November 5). Cambridge University Press.

¹⁹ *The Law of Nations: Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. (2015, November 5). Cambridge University Press.

²⁰ *International Covenant on Economic, Social and Cultural Rights*. (n.d.). United Nations Treaty Collection. Retrieved October 3, 2022, from https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en

more concerned with letting asylum seekers and refugees into their country and less concerned with what instigated a citizen to leave the country.²¹ What the state is interested in is whether or not they are required to provide services for asylum seekers and refugees in their country within the ambit of the 1951 Refugee Convention.²² As a state, following the positivist law keeps the national interest at the highest priority. If, in the future, for any reason, their own citizens may need to seek refuge in another country, positivists, to some extent, must adhere to certain grounds of the refugee system.²³ Second, it is believed by the positivist school that the refugee system in international law is dependent upon the contracting and non-contracting member states of the 1951 Refugee Convention.²⁴ If it is decided by the member states not to adhere to the rules in the 1951 Refugee Convention, then the UNHCR cannot counter this refusal by the states as it only has the power of supervision.²⁵ In effect, if a state takes on new domestic legislation, the courts would be limited in their capacity to review the state's compliance with international commitments,²⁶ purely since positivist states have more inclination to follow their domestic laws to achieve their national interest.

Naturalist School

As opposed to the positivist school, natural law considers not just states but individuals as a subject of public international law. It differs fundamentally from the positivist theory, as it emphasises moral order being the pillar which holds up social order and justice.²⁷ The principles that have been extrapolated from the natural theory cannot be rejected, as its nature is that of basic rights inherent to individuals, unlike positivist law by which rights are created.²⁸ They are unalienable and universal rights as they are found in moral behaviour and are a part of human nature, and these rights are not stated by the law for them to come into existence.²⁹ Natural rights, defined by Professor Jack Donnelly, are described as a right that is 'possessed

²¹ The Geopolitics of Refugee Studies: A View from the South. *Journal of Refugee Studies*, 11(4), 350–374. (1998, January 1). <https://doi.org/10.1093/jrs/11.4.350-a>

²² *The Anarchical Society* (3rd ed.). Columbia University Press. (2002, October 15).

²³ Refugee Law in Context: Natural Law, Legal Positivism and the Convention. *SSRN Electronic Journal*. (2014). Kfir. <https://doi.org/10.2139/ssrn.2493157>

²⁴ The Rights of Refugees under International Law. *University of Michigan Law School*. (2021, March 10). <https://doi.org/10.1017/9781108863537>

²⁵ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, Art. 8(a), 1950.

²⁶ The Rights of Refugees under International Law. (2021, March 10). *University of Michigan Law School*. <https://doi.org/10.1017/9781108863537>

²⁷ Refugee Law in Context: Natural Law, Legal Positivism and the Convention. *SSRN Electronic Journal*. (2014). Kfir. <https://doi.org/10.2139/ssrn.2493157>

²⁸ Kelsen on Natural Law Theory. *Revus*, 23, 135163. (2014, November 10). <https://doi.org/10.4000/revus.2976>

²⁹ Natural Law and Legal Reasoning. *Notre Dame Law School*. Finnis, J. M. (1990). https://scholarship.law.nd.edu/law_faculty_scholarship/79/

simply by virtue of being a human being'.³⁰ From the assimilation of the aforementioned ideas of natural law, we can draw two suppositions. First, that social practices can be limited by objectively³¹ putting forth moral order as the standpoint; second, humans can understand what is reasonable to a basic degree³² on the grounds of morality.

Refugee law in the international domain has evolved due to the recognition of basic rights, and these basic rights were put forth through natural law.³³ The need to help others fuelled the conversation around refugee laws, which was brought about as a result of the notions of natural law.³⁴ An intersection between natural law and international refugee law is that due to the existence of basic rights, if those rights are being threatened by the state, contracting states should adhere to the principle of 'non-refoulment'. This principle pertains to the prevention of returning a refugee to the state where their life and freedom were threatened on the basis of religion, race, political opinion, nationality, or member of a specific social group.³⁵ Another point that is highly regarded in natural law's application to refugees is the desire for basic security.³⁶ The first definition of human security was provided by the United Nations Development Program.³⁷ Hence, another goal of refugee rights through the lens of natural law is ensuring that basic security is assured, whether that be in their own country or the country in which they are seeking refuge.³⁸

Assessment of Ukraine

As the war between Ukraine and Russia has escalated, the position of Ukrainian refugees is

³⁰ Human Rights as Natural Rights. *Human Rights Quarterly*, 4(3), 391. (1982). Donnelly. <https://doi.org/10.2307/762225>

³¹ From Natural Law to Human Rights: Or, Why Rights Talk Matters. *Journal of Law and Religion*, 14(1), 77. (1999). <https://doi.org/10.2307/1051779>

³² *Natural Law and Natural Rights*. Oxford University Press, USA.; Soper, P. (1983). Legal Theory and the Problem of Definition (reviewing *Natural Law and Natural Rights* by John Finnis). *The University of Chicago Law Review*, 50(3), 1170. Finnis. (2011, May 26). <https://chicagounbound.uchicago.edu/uclrev/vol50/iss3/7>

³³ *Natural law and international refugee law*. (2019, October 8). Faculty of Arts. From <https://arts.unimelb.edu.au/school-of-social-and-political-sciences/our-research/comparative-network-on-refugee-externalisation-policies/blog/natural-law-and-international-refugee-law>

³⁴ *Natural law and international refugee law*. (2019, October 8). Faculty of Arts. From <https://arts.unimelb.edu.au/school-of-social-and-political-sciences/our-research/comparative-network-on-refugee-externalisation-policies/blog/natural-law-and-international-refugee-law>

³⁵ UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, entered into force Apr. 22, 1954.

³⁶ A Stalled Initiative. *Security Dialogue*, 35(3), 365–365. (2004, September). <https://doi.org/10.1177/096701060403500322>

³⁷ HUMAN DEVELOPMENT REPORT 1994: New Dimensions of Human Security. (1994, January). In *UNDP Human Development Reports*. <https://hdr.undp.org/content/human-development-report-1994>

³⁸ Refugee Law in Context: Natural Law, Legal Positivism and the Convention. *SSRN Electronic Journal*. (2014). <https://doi.org/10.2139/ssrn.2493157>

also in a state of crisis. After one week of Russia's invasion of Ukraine, it is estimated by the United Nations that over one million refugees have fled Ukraine and entered neighbouring countries³⁹ to protect their freedom and right to life. In this particular situation, the aid that Ukrainian refugees were provided was much swifter and more generous in comparison to other ongoing crises, such as in Syria or Afghanistan. Pertaining solely to the crisis in Ukraine, natural law seemed to take a higher stand in comparison to the positivist stance, as Ukrainian citizens were granted the right to work, receive benefits, and live in any of the countries part of the EU for a minimum of one year with a high chance of extending this period of temporary refuge.⁴⁰

To initiate this scale of protection for refugees at a fast pace, the 2001 EU Temporary Protection Directive was instigated by the EU Council for the first time in its existence.⁴¹ This is conclusive proof that the Ukrainian refugee crisis, although not solved, is being dealt with efficiently and heavily relying upon the premise of the natural law principles, being cognizant of the moral obligation states have to ensure the basic rights of unprotected citizens are fulfilled. This degree of urgency given to such a crisis is a shock to the international scene due to the fact that, typically, the notions of positivism have had more weightage in assessing how a refugee situation should be dealt with. Even if there have been grants for refugees to seek protection in other countries in the past, the decisions that were made were filtered through a long process, and ultimately, they did not receive the freedom to the extent of being able to choose the country that they would prefer to take refuge in.⁴² This double standard will be addressed at a further point in this paper. Hence, natural law should be more assertive to challenge the positivist interpretation which dominates the international refugee scene. The positive approach's aim is too narrow to protect refugees to the fullest, and this should and can be prevented by strengthening notions of natural law and human rights laws.⁴³

³⁹ United Nations High Commissioner for Refugees. (n.d.). *Ukraine emergency*. UNHCR. From <https://www.unhcr.org/en-us/ukraine-emergency.html>

⁴⁰ COUNCIL IMPLEMENTING DECISION (EU) 2022/382. (2022, March 4). *Official Journal of the European Union*. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382&from=EN>

⁴¹ *Temporary protection*. (n.d.). Migration and Home Affairs. From https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en

⁴² Asylum decisions in the EU - EU granted protection to almost 300 000 asylum seekers in 2019. (2020, April 27). *Eurostat Newsrelease*. <https://ec.europa.eu/eurostat/documents/2995521/10774018/3-27042020-AP-EN.pdf/b8a85589-ab49-fdef-c8c0-b06c0f3db5e6>

⁴³ *Plaintiff M70/2011 v. Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v. Minister for Immigration and Citizenship | CRIN*. (2013, September 19). From <https://archive.crin.org/en/library/legal-database/plaintiff-m70/2011-v-minister-immigration-and-citizenship-plaintiff-m106-2011.html>

INTERNATIONAL REFUGEE LAW

Formation

Refugee law originally emerged to fulfil the objective of providing protection to those who were rightfully fearful of persecution in their own country based on religion, race, political opinion, nationality, and membership of a particular social group.⁴⁴ The omission of state-based protection created a need for them to be entitled to diplomatic protection, and this notion was prevalent in the 1920s.⁴⁵ During this time, the question of how peaceful relations could be obtained was concentrated upon by the international community. One way in which this could be achieved was by way of special provisions to protect minorities who were not protected or recognised by the states.⁴⁶ Taking this as a starting point, the light was shone on the 'individual' as an actor in the international sphere⁴⁷ (which aligns with the naturalistic ideology). As a result, when the Refugee Convention 1951 was reviewed, it was apparent that the idea of citizenship played a major role – the Convention did not allow for discrimination based on citizenship.

Tied to the notion of the UNCHR to take on lesser responsibility, the goal was to try to provide citizenship to refugees as the strongest form of protection.⁴⁸ During the aftermath of the Second World War, the refugee crisis was temporarily dealt with in Europe by returning displaced persons and refugees to the country of their origin or finding a new place of residence if the former was unattainable.⁴⁹ This task was taken on by the newly created United Nations Relief and Rehabilitation Agency (UNRRA).⁵⁰ The belief that the refugee phenomenon requires a permanent safeguard was brought about in 1950, which led to the creation of the United Nations High Commissioner for Refugees.⁵¹

⁴⁴ Confronting Complexity: Interpretation or Over-Interpretation? *American Society of International Law*, 106, 439–443. Goodwin-Gill. (2012). <https://www.jstor.org/stable/10.5305/procanmeetasil.106.0439>

⁴⁵ Confronting Complexity: Interpretation or Over-Interpretation? *American Society of International Law*, 106, 439–443. Goodwin-Gill. (2012). <https://www.jstor.org/stable/10.5305/procanmeetasil.106.0439>

⁴⁶ Excess of Nationalism: Greco-Turkish Population Exchange. *Nations and Nationalism*, 19(3), 532–550. (2013, May 31). <https://doi.org/10.1111/nana.12028>

⁴⁷ Stateless. *Cardozo Journal of International and Comparative Law*, 20(1). (2011). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1919045

⁴⁸ Refugee Law in Context: Natural Law, Legal Positivism and the Convention. SSRN Electronic Journal. (2014). <https://doi.org/10.2139/ssrn.2493157>

⁴⁹ *Avalon Project - Agreement Relating to Prisoners of War and Civilians Liberated by Forces Operating Under Soviet Command and Forces Operating Under United States of America Command; February 11, 1945*. (n.d.). From https://avalon.law.yale.edu/20th_century/sov007.asp

⁵⁰ The Refugee: A Problem for International Organization. *University of Wisconsin Press*, 1(3), 443–459. (1947, September). <https://www.jstor.org/stable/2704244>

⁵¹ Global Governance and the Evolution of the International Refugee Regime. *International Journal of Refugee Law*, 14(2 and 3), 238–262. (2002, April 1). Barnett. https://doi.org/10.1093/ijrl/14.2_and_3.238

United Nations High Commissioner for Refugees (UNHCR)

Refugees as a subject of international law had been established, and their protection could be availed through the United Nations High Commissioner for Refugees.⁵² A person who undergoes Refugee Status Determination in the state in which they are seeking either permanent or temporary refuge will fall under the legal category of refugee.⁵³ THE RELEVANT REFUGEE LAW IS THE UNHCR. The UNHCR was created to establish a common standard for the acceptance of refugees and their equal treatment.⁵⁴ People who are internally displaced are also protected by the UNHCR, and its present goal is to ensure that seeking safe refuge in another state is fulfilled and establish a safe return for those refugees returning to their home country.⁵⁵

UNHCR has played a big role in aiding the Ukrainian crisis. In Western and Central Ukraine, the preparation of relief items for 1.5 million people was initiated in February 2022, and its deliverance has been successful over the months.⁵⁶ A cash assistance program is also in the process of coming to fruition, as many stores are only accepting payments in cash in Ukraine.⁵⁷ In Eastern Ukraine, many humanitarian supplies were being provided, including food and hygiene items.⁵⁸ UNHCR is also working towards providing emergency cash programmes to Ukrainian refugees who have taken asylum in neighbouring countries so that they can sustain themselves and their families until they are able to avail of social support or find work.

⁵² The Refugee in the Post-War World. Pp. xvi, 827. New Haven: Yale University Press, 1953. *The ANNALS of the American Academy of Political and Social Science*, 294(1), 199–200. Jacques V. (1954, July). <https://doi.org/10.1177/000271625429400176>

⁵³ Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law. *Chicago Journal of International Law*, 14(2), 462–463. Goldenziel, J. (2014).

⁵⁴ The Refugee as a Subject of International Law. *The International and Comparative Law Quarterly*, 15(1), 90–116. <https://www.jstor.org/stable/757286>. (1966, January).

⁵⁵ *Membership Detail*. (n.d.). Retrieved October 6, 2022, from <http://www.uneval.org/about/memberagencies/detail/15>

⁵⁶ United Nations High Commissioner for Refugees. (n.d.-b). *UNHCR scales up for those displaced by war in Ukraine, deploys cash assistance*. UNHCR. From <https://www.unhcr.org/news/briefing/2022/3/622b257f4/unhcr-scales-displaced-war-ukraine-deploys-cash-assistance.html>

⁵⁷ United Nations High Commissioner for Refugees. (n.d.-b). *UNHCR scales up for those displaced by war in Ukraine, deploys cash assistance*. UNHCR. From <https://www.unhcr.org/news/briefing/2022/3/622b257f4/unhcr-scales-displaced-war-ukraine-deploys-cash-assistance.html>

⁵⁸ United Nations High Commissioner for Refugees. (n.d.-b). *UNHCR scales up for those displaced by war in Ukraine, deploys cash assistance*. UNHCR. From <https://www.unhcr.org/news/briefing/2022/3/622b257f4/unhcr-scales-displaced-war-ukraine-deploys-cash-assistance.html>

TREATMENT OF REFUGEES

Afghanistan and Syria

The dire situation in Afghanistan escalated when the militant Islamist movement known as the Taliban took control of the country. The president of the European Commission, Ursula von der Leyen, stated that the humanitarian aid supplied by the EU would be increased, as a ‘moral duty’ to help Afghan refugees is bestowed upon countries of the EU. European Commissioner Ylva Johansson stated that the EU should allow Afghans to migrate in a controlled manner to prevent ‘irregular arrivals,’ and given the number of Afghans seeking refuge, achieving this goal would be ‘doable.’⁵⁹

The reality, however, overshadows these statements, as only 56% of Afghans received protection in Europe in 2021. Despite the large number of resources and capability of the EU, as demonstrated in the case of Ukraine, neighbouring countries of Afghanistan are bearing the burden of the forced displacement of Afghan refugees, and less than 10% out of three million⁶⁰ are being hosted by European countries. Afghans waiting for their asylum decision are left to anticipate for months to years. In view of this, Pakistan is housing 1.5 million Afghan refugees, and Iran hosts 1 million;⁶¹ these numbers are multiplied twofold when undocumented Afghans and passport holders of Afghanistan are counted.⁶²

Europe’s reaction towards refugees entering from Syria and Afghanistan was to restrict rights and tighten their legislation.⁶³ In the case of the Syrian refugee crisis, the member states of the EU were the biggest contributors in the international arena to aid those who were affected by the Syrian crisis.⁶⁴ However, it must be noted that these funds have been spread over the years,

⁵⁹ *EU countries agree to take in 40,000 Afghan refugees.* European Union News | Al Jazeera. (2021, December 9). From <https://www.aljazeera.com/news/2021/12/9/eu-member-states-agree-to-take-in-40000-afghan-asylum-seekers>

⁶⁰ United Nations-Coordinated Support to People Affected by Disaster and Conflict. (2021, December 10). In *Global Humanitarian Overview 2021*. United Nations Office for the Coordination of Humanitarian Affairs.

⁶¹ *Why Europe must end limbo for Afghans seeking asylum.* Chatham House – International Affairs Think Tank. (2022, April 12). From <https://www.chathamhouse.org/2021/10/why-europe-must-end-limbo-afghans-seeking-asylum>

⁶² United Nations High Commissioner for Refugees. (n.d.-a). *Renewed commitment needed to support displaced Afghans and their hosts.* UNHCR. From <https://www.unhcr.org/news/press/2021/5/60b4993d4/renewed-commitment-needed-support-displaced-afghans-hosts.html>

⁶³ *Ukraine exposes Europe’s fractured narratives on refugees – but once again cities step up.* (2022, May 17). ODI: Think Change. From <https://odi.org/en/insights/ukraine-exposes-europes-fractured-narratives-on-refugees-but-once-again-cities-step-up/>

⁶⁴ *Syria: EU response to the crisis.* (2022, August 31). European Council. From <https://www.consilium.europa.eu/en/policies/syria/>

and the swiftness in dealing with protecting the innocent refugees was neglected. During the period of 2015 to 2016, unauthorised boats began to arrive through Greece and Italy; first, these refugees were shown sympathy, but later from a governmental level, Europe claimed that they could not provide safety to the number of people entering.⁶⁵ This gradually led to hostility through acts such as closing the borders and putting up fences of razor-wire by the Hungarian Prime Minister.⁶⁶

Ukraine

As of the 16th of August 2022, the three countries that are housing the most Ukrainian refugees are Russia, Poland, and Germany; the number of refugees residing in these countries is 2,197,679, 1,274,130, and 971,000, respectively.⁶⁷ The figure in Russia should be treated with care, as many people have migrated to Russia as a personal choice rather than seeking asylum. Refugees who have either permanently or temporarily settled in Germany have increased the population in Germany to an all-time high, according to the Federal Statistical Office.⁶⁸ Currently, there are over 84 million people living in Germany, making it the most populous country in the EU.⁶⁹ Statistically, as the female population has increased by 1.2% more than the population of males, it is safe to say that the women and children from Ukraine have resorted to Germany for refuge.⁷⁰

Poland has taken a strong initiative to house Ukrainian refugees, many of whom are being ‘hosted as guests in private homes by Polish people’ as per González Morales’s statement.⁷¹ It is for this reason that in Poland, there are not many refugee camps. From the initial war outbreak, immediate action was taken in Poland to assist and take in Ukrainian refugees,

⁶⁵ *Q&A: Understanding Europe’s response to Ukrainian refugee crisis*. Russia-Ukraine War News, (2022, March 10). Khalid, S. Al Jazeera. From <https://www.aljazeera.com/news/2022/3/10/qa-why-europe-welcomed-ukrainian-refugees-but-not-syrians>

⁶⁶ Euro-sceptic yet pro-enlargement: the paradoxes of Hungary’s EU policy. *Southeast European and Black Sea Studies*, 17(4), 591–609. Huszka. (2017, September 4). <https://doi.org/10.1080/14683857.2017.1367462>

⁶⁷ *Situation Ukraine Refugee Situation*. (n.d.). From <https://data.unhcr.org/en/situations/ukraine>

⁶⁸ *Russia-Ukraine war latest: what we know on day 216 of the invasion*. The Guardian. (2022, September 27). From <https://www.theguardian.com/world/2022/sep/27/russia-ukraine-war-latest-what-we-know-on-day-216-of-the-invasion>

⁶⁹ *Russia-Ukraine war latest: what we know on day 216 of the invasion*. The Guardian. (2022, September 27). From <https://www.theguardian.com/world/2022/sep/27/russia-ukraine-war-latest-what-we-know-on-day-216-of-the-invasion>

⁷⁰ *Russia-Ukraine war latest: what we know on day 216 of the invasion*. The Guardian. (2022, September 27). From <https://www.theguardian.com/world/2022/sep/27/russia-ukraine-war-latest-what-we-know-on-day-216-of-the-invasion>

⁷¹ End of visit statement of the Special Rapporteur on the human rights of migrants, Felipe González Morales, on his visit to Poland and Belarus (12 – 25 July 2022) 28 July 2022.

from thousands of Polish citizens to the governmental level.⁷² A special law was rapidly passed to allow citizens of Ukraine and their spouses equal access to healthcare, education, the Polish labour market, and other benefits in the social realm.⁷³

The Double Standard

From the above information, we can gather that the Ukrainian refugees are more than adequately supported. However, according to the UN Special Rapporteur, the reality of refugees and asylum seekers from countries in the past have been treated in a completely hostile manner. González Morales stated that Ukrainian refugees who have entered Poland were welcomed with open arms and have received assistance and protection from the state at an alarmingly fast rate, although third world countries would not have and are ‘not protected under the same legal framework’.⁷⁴ This double standard approach has become much more apparent after the events of the Ukrainian crisis, and the response shown towards the refugees of third-world countries was realised as discriminatory.

In the Syrian refugee crisis, the number of refugees amounted to over 1 million in the first year, and Europe had considered this an impossible situation; Europe has accommodated around 2 million Syrian refugees over the span of a few years. Nevertheless, in the current situation in Ukraine, countries in Europe embraced refugees right from the first week of the war, housing over 7 million in less than one year. The hypocrisy of Hungarian Prime Minister Victor Orban in sealing the border to Syrians compared to taking in Ukrainians reflects the xenophobic views that are present in Hungary. Some reasons for this could be that many Eastern European countries understand the plight of living under the possession of the Soviet Union’s aggression; hence they can sympathise with their situation;⁷⁵ Ukrainians have a right legally to stay in countries part of the EU for up to 90 days,⁷⁶ so allowing them to enter within

⁷² OHCHR. (n.d.). UN expert praises generosity towards Ukrainian refugees by Poland and urges Belarus and Poland to end pushbacks. *OHCHR*. From <https://www.ohchr.org/en/press-releases/2022/07/un-expert-praises-generosity-towards-ukrainian-refugees-poland-and-urges>

⁷³ OHCHR. (n.d.). UN expert praises generosity towards Ukrainian refugees by Poland and urges Belarus and Poland to end pushbacks. *OHCHR*. From <https://www.ohchr.org/en/press-releases/2022/07/un-expert-praises-generosity-towards-ukrainian-refugees-poland-and-urges>

⁷⁴ OHCHR. (n.d.). UN expert praises generosity towards Ukrainian refugees by Poland and urges Belarus and Poland to end pushbacks. *OHCHR*. From <https://www.ohchr.org/en/press-releases/2022/07/un-expert-praises-generosity-towards-ukrainian-refugees-poland-and-urges>

⁷⁵ Challenges to Soviet Control in Eastern Europe An Overview. *RAND Corporation*. (1984).<https://www.rand.org/pubs/reports/R3189.html>

⁷⁶ *Information for people fleeing the war in Ukraine*. (n.d.). EU Solidarity With Ukraine. From https://eu-solidarity-ukraine.ec.europa.eu/information-people-fleeing-war-ukraine_en

the first week of crisis compared to Syrians and Afghans is valid; a view which should not have been considered, however, is the racialised thinking that Middle Eastern individuals are violent, as many indirect statements made by politicians have solidified and spread this notion.

As a result of the non-protection and neglect of countries such as Afghanistan and Syria, wherein citizens are unsafe and facing human rights violations on a daily basis, the global standard of Europe has reduced, particularly in the international sphere and public eye.

CONCLUSION

The two points of research have been successfully addressed in this paper. First, the foundation of international law comprising of the positivist and naturalist perspectives was examined to understand the implication of these ideologies in law. The approach of a state towards an international issue, in this case, the concern of refugees, is deeply rooted in its approach towards the law, which presents itself as either positivist, or on the other end of the spectrum, naturalist; the former being the nation's interest is the state's priority which is achieved by the utility of sovereign power, and the latter focusing on social order and justice, fusing moral order with law. The positivist approach is more limited concerning the acceptance of refugees, as it religiously follows the consent-based theory, which connotes that a state need not contribute if it has not consented to the 1951 Refugee Convention. The UNHCR, in this case, would not be able to take action against this decision either, as its power is limited to supervision only. On the other hand, naturalists are fixated upon the principle of 'non-refoulment', as they believe that basic rights are inherent and should be conjunct with the law. In application to the Ukrainian crisis, natural law has superseded positivism, as the priority given to basic rights enabled the EU to take instantaneous action, which is in stark contrast to previous crises. On the basis of this, it can be concluded by the author that natural law is wider and more inclusive in terms of protection given to refugees and should take precedence to uphold and best deliver human rights in the international space.

In light of the second point of research - over time, the international arena has perceived refugees as a permanent category that is now considered significant enough to ensure their protection. Subsequently, international laws have been formed to serve that purpose, namely, the UNHCR and the 1951 Refugee Convention. It is clear through this paper that the manner in which refugees have been treated over time in different crises varies greatly due to the level

of importance attached to it. Scepticism of certain countries where refugees required protection led to discrimination by European nations due to a lack of knowledge and internal bias towards third-world states. For example, the treatment of the Syrian and Afghanistan refugees in comparison to the behaviour towards Ukrainian refugees was a slow response by the European nations, as they claimed not to possess the capacity to take in those refugees and further tightened their borders. In contrast, Ukrainian refugees received protection within the first week of the war, and immediate action was taken, as well as mass aid sent to internally displaced refugees in Ukraine. The author can conclude that the double standard persists as a result of European countries joining hands and third-world countries being perceived by the West as foreign and volatile, which was evident through their conduct towards them.

