

ADDRESSING THE REFUGEE CRISIS THROUGH THE LENS OF ISLAMIC INTERNATIONAL LAW

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ABSTRACT

This paper aims to examine the current refugee crisis through the lens of Islamic international law. Refugee crisis is one of the most urgent humanitarian challenges of our time and it involves the majority of Muslim nations worldwide. Critical analysis and library research are used to uncover the issue. It is found that Islamic principles like human dignity (*Karamah*), preservation of life (*Hifz Al-Nafs*), and communal responsibility (*Ukhuwwah*) are align to the modern international refugee law in its ethical, moral and humane treatment of refugees and the importance of global cooperation to curb the issue especially among the Muslim countries. The paper also discusses the political, social, and economic impact of refugees in the host countries and relevant Islamic principles to combat them, such as balance and equity (*Mizan, Wasatiyyah*), shared responsibility (*Takaful*), implementing gradual changes (*Tadarruj*), and prioritising security and welfare (*Maslahah*). It is concluded that Islamic principles can enrich and complement the modern international refugee law to develop kinder, fairer, and more sustainable answers to the global refugee challenge. Ultimately, the paper seeks to preserve the lives and well-being of refugees and to address their issue from the perspective of Islamic international law.

Keywords: Refugee crisis, Islamic principles, *Maqāṣid Syariah*, Islamic International Law.

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INTRODUCTION

According to the UNHCR, at least 89.3 million individuals have been forced to evacuate their homes around the world. Nearly 27.1 million refugees are among them, with nearly 41% of them being under the age of 18. UNHCR today employs 20,739 people in 135 countries. They have assisted almost 50 million refugees in successfully resuming their lives, and they continue to safeguard and assist the 108.4 million individuals who are now displaced.¹

Understanding the intricacies of the global refugee problem necessitates a multifaceted approach that transcends traditional legal and geopolitical analyses. One such perspective involves examining the crisis through the lens of Islamic International Law, a rich legal tradition that has navigated complex societal issues, including migration and refuge, for centuries. Examining the refugee problem through International Islamic Law is relevant and significant in the contemporary global landscape.

Islamic International Law, often termed *Siyar*, is a vast and multifaceted legal discipline rooted in religious scripture and a rich tradition of jurisprudence. It is derived from various sources, including the *Quran*, the *Hadith* (Prophet Muhammad's sayings and actions), *Ijma'* (consensus of scholars), and *Qiyas* (analogical reasoning). This complex legal discipline has guided millions of Muslims in their personal, communal, and societal conduct for over a millennium. It plays a vital role in Muslim-majority nations and among Muslim communities worldwide².

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are the two primary legal instruments that define "refugees." A person who

"has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion..."

¹ "108.4 Million People Worldwide Were Forcibly Displaced". United Nations High Commissioner for Refugees (UNHCR). June 14, 2023. <https://www.unhcr.org/my/about-unhcr/who-we-are/figures-glance>

² "The World's Muslims: Religion, Politics and Society," *Pew Research Center*, April 30, 2013, <https://www.pewresearch.org/religion/2013/04/30/the-worlds-muslims-religion-politics-society-overview/>.

is defined as a refugee by the Convention. The person is abroad and is unable or unwilling to invoke the protection of his country of nationality or place of habitual residence due to his fear of persecution.³ The refugee problem is a pressing global issue, exacerbated by many factors, including conflict, persecution, environmental crises, and a lack of political will to address the issue effectively.

Islamic International Law can offer a valuable perspective on the refugee problem for multiple reasons. First, it provides a unique ethical framework that underscores human dignity, protection of life, and community responsibility, all of which are central to refugee protection. Second, it holds significant influence in many countries that are primary sources or hosts of refugees, making its tenets particularly relevant in these contexts. Lastly, it provides a potentially practical approach to refugee protection that can complement and enrich International Refugee Law.

This paper delves into the intricate relationship between the refugee problem and Islamic International Law, examining how this legal framework addresses the rights and duties of refugees and the responsibilities of host states. It explores the intersection of Islamic International Law with International Refugee Law, providing a comparative analysis that uncovers similarities, differences, and potential points of synergy. The paper also considers the impacts of large-scale refugee influx on host countries and how they might be effectively managed under International Islamic Law.

Case studies involving countries such as Malaysia and their response to refugee situations, particularly the Rohingya crisis, are incorporated to provide practical insights. The study concludes by evaluating the future prospects of Islamic International Law in addressing the global refugee crisis, suggesting recommendations for overcoming challenges and enhancing its effectiveness. The conclusions drawn aim to provide a diverse, inclusive, and comprehensive approach to solving the refugee problem, thereby contributing to the broader discourse on refugee protection and human rights.

³ "Convention Relating to the Status of Refugees," (1951), article 1; "Protocol Relating to the Status of Refugees," (1967).

Understanding Refugees and Islamic International Law

Delving deeper into the refugee crisis demands an in-depth understanding of who qualifies as a refugee. According to the United Nations High Commissioner for Refugees (UNHCR), a refugee is someone who is unable or unwilling to return to their country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion⁴. This legal definition, enshrined in the 1951 Refugee Convention, frames the issue in global discussions⁵.

However, in Islamic International Law, the term 'refugee' corresponds closely to the Arabic term “*muhajir*”. A *muhajir* is an individual who migrates from a place of persecution or harm to a place of safety, primarily to preserve their faith⁶. This concept stems from early Islamic history when Muslims migrated from Mecca to Medina to escape religious persecution. Thus, the Islamic definition of refugees is rooted in a historical context of migration for the preservation of faith and life.

The global refugee problem, while appearing to be a contemporary issue, has deep historical roots. Modern history has witnessed several significant refugee crises, from the displacement caused by World Wars to the ongoing crises induced by regional conflicts and persecutions⁷. The evolution of this issue has been marked by the growing complexity of causes of displacement, including non-traditional factors such as climate change and the increasing resistance of states to admit and accommodate refugees.

Islamic International Law, or *Siyar*, is an extensive legal and moral code that provides guidance on various aspects of life.

⁴ “What is a refugee?,” United Nations High Commissioner for Refugees (UNHCR), accessed July 23, 2023, <https://www.unhcr.org/what-refugee>.

⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, accessed July 23, 2023, <https://www.refworld.org/docid/3be01b964.html>.

⁶ Arafat Madi Shoukri, “*Amān* (safe conduct) in the Islamic Tradition,” in *Refugee Status in Islam* (New York: I. B. Tauris & Co Ltd, 2011), pp. 51-55.

⁷ Mark Cutts and Office of the United Nations High Commissioner for Refugees (UNHCR), “Chapter 1: The early years,” in *The State of the World's Refugees: Fifty Years of Humanitarian Action* (Geneva, New York: UNHCR, Oxford University Press, 2000), pp. 13-36. <https://www.unhcr.org/media/state-worlds-refugees-2000-fifty-years-humanitarian-action-chapter-1-early-years>.

Originating from the *Sharia*, its sources are religious scriptures of the *Quran* and the *Hadith*, and it has been expanded and interpreted through *Ijma'* (consensus among scholars) and *Qiyas* (analogical reasoning)⁸. The principles enshrined within International Islamic Law, such as human dignity (*Karamah*), preservation of life (*Hifz Al-Nafs*), and communal responsibility (*Ukhuwwah*), have significant relevance to the refugee issue⁹. These principles promote a culture of protection and assistance towards those facing persecution, a position aligning well with the aims of the international community in addressing the refugee crisis.

Historically, the Islamic world has witnessed numerous forced migration and refuge instances. The most notable was the *Hijrah*, the aforementioned migration of Prophet Muhammad and his followers from Mecca to Medina to escape religious persecution¹⁰. This event is so significant that it marks the beginning of the Islamic calendar. Additionally, Muslim empires throughout history have often accepted those seeking refuge from persecution, reflecting the Islamic principles of asylum (*Istijarah*) and protection of life (*Hifz Al-Nafs*)¹¹.

An examination of Islamic history and tradition further illuminates the plight of refugees. For instance, the narrative of Prophet Ibrahim (Abraham), who left his home and migrated to escape religious persecution, is similar to the experiences of contemporary refugees¹². Prophet Musa (Moses) was also a refugee in Islamic tradition, leading his people away from Pharaoh's oppression in Egypt towards safety¹³. Such historical instances of forced migration to preserve faith and

⁸ Abdul Ghafur Hamid @ Khin Maung Sein, *Public International Law: A Practical Approach* (Selangor: Thomson Reuters Asia Sdn Bhd, 2019), p. 19.

⁹ Kirsten Zaat, "The protection of forced migrants in Islamic law," UNHCR, December 2007, accessed July 23, 2023, <https://www.unhcr.org/media/protection-forced-migrants-islamic-law-kirsten-zaat>.

¹⁰ Arafat Madi Shoukri, "Jiwār in the Islamic Tradition in the Meccan period," in *Refugee Status in Islam* (New York: I. B. Tauris & Co Ltd, 2011), pp. 33-43.

¹¹ Abdul Rahman Latif, "Be Brothers"—Case Studies of Muslim Receptions of Refugees in History," last updated October 20, 2020, <https://yaqeeninstitute.org.my/read/paper/be-brothers-case-studies-of-muslim-receptions-of-refugees-in-history>.

¹² Fahad Ansari, "Refugee Crisis: the Islamic Approach," last updated June 22, 2022, <https://www.islam21c.com/islamic-thought/refugee-crisis-where-are-the-muslim-voices/>.

¹³ *Ibid.*

safety in Islamic traditions resonate with the current global refugee crisis.

Understanding the universal and Islamic perspectives on refugees, and the historical context, offers a nuanced foundation for exploring how International Islamic Law addresses the current global refugee problem.

International Islamic Legal Principles and Refugees

The provisions of Islamic International Law encompass a range of principles that hold profound significance for refugees. Exploring these selected principles - *Karamah*, *Hifz Al-Nafs*, *Ukhuwwah*, *Istijarah*, and *Hijrah* - yields a comprehensive understanding of the obligations and rights of refugees and host countries alike.

Human dignity, or *Karamah*, is a central tenet of Islam, as emphasised in the Quran: "We have honoured the children of Adam" (Quran 17:70). This belief bestows upon every human being an inherent and inviolable dignity, irrespective of their race, religion, or circumstance¹⁴. In the context of refugees, this principle mandates that they be treated with respect and honour, thereby implying a duty on the part of host nations to uphold the dignity of refugees.

Preservation of life, or *Hifz Al-Nafs*, is another critical Islamic principle relevant to refugees. *Hifz Al-Nafs* is one of the five central traditional elements in *Maqāṣid Syariah* (objectives of Sharia) elaborated by al-Ghazali apart from preserving one's property (*al-māl*), intellect (*al-'aql*), religion (*ad-dīn*), and dignity/lineage (*an-nasb*)¹⁵. It is rooted in the Quranic verse: "Whoever saves one life, it is as if he saved the whole of mankind" (Quran 5:32). This principle emphasises the sanctity of life and the obligation to preserve it. Therefore, it

¹⁴ Mohammad Hashim Kamali, "Chapter 1: The Qur'anic View of Human Dignity," in *The Dignity of Man: An Islamic Perspective* (Cambridge: The Islamic Texts Society, 2002), pp. 1-4.

¹⁵ Zulfaqar Mamat, Rodziana Mohamed Razali, Wan Abdul Fattah Wan Ismail, and Tasneem Rahmatullah, "Kajian Awalan Pendekatan Maqāṣid Syariah Sebagai Alternatif Dalam Dasar Dan Perundangan Berkaitan Pelarian Di Malaysia: A Preliminary Study of Maqāṣid Sharīah Approach as An Alternative in Policy and Legislation Related to Refugees in Malaysia," *AL-MAQASID The International Journal of Maqāṣid Studies and Advanced Islamic Research* 1, no. 1 (2020): 1-14, <https://doi.org/10.55265/almaqasid.v1i1.4>.

necessitates that refugee - fleeing threats to their lives - should be granted protection by the host countries to ensure their safety.

The principle of brotherhood and mutual responsibility, or *Ukhuwwah*, finds expression in the Hadith:

"The Believers, in their mutual love, mercy and compassion, are like one body: if one organ complained, the rest of the body develops a fever"¹⁶.

This principle underscores the collective responsibility of the global community, including host states, to support refugees as if they were their own kin¹⁷.

Asylum, or *Istijarah*, is directly related to the treatment of refugees. It originates from the Prophet's practice of protecting those seeking refuge, reflecting an Islamic tradition of sanctuary¹⁸. Under this principle, refugees have the right to seek asylum, and host countries have the duty to offer refuge and protection.

The principle of *Hijrah*, or migration for the sake of religion, harks back to the earliest instances of forced migration in Islamic history. It denotes the act of fleeing from persecution, especially in the preservation of one's faith, which mirrors the current reality of many refugees¹⁹. The principle of *Hijrah* upholds the right of refugees to seek sanctuary and the responsibility of host countries to provide it.

Collectively, these principles of Islamic International Law construct a comprehensive framework for the rights and duties of refugees, as well as the obligations of host states. They uphold the rights of refugees to dignity, life, brotherhood, asylum, and migration while concurrently asserting the duties of host states to protect and assist refugees. The principles align closely with international

¹⁶ Muḥammad Ibn Ismā'īl Bukhārī. *Sahih Al-Boukhari* : Arabe-Franc,Ais. Tome 2, Du Hadith No.1773 Au Hadith No. 6011. Paris: Al Qalam, 2012.

¹⁷ M. Alvi Syahrin, "The Rohingya Refugee Crisis: Legal Protection on International Law and Islamic Law," paper presented at the *1st International Conference on Indonesian Legal Studies (ICILS 2018)*, Semarang, Central Java, Indonesia, July 25, 2018, <https://www.atlantis-press.com/article/25903147.pdf>.

¹⁸ Muhammad Nur Manuty, "The Protection of Refugees in Islam: Pluralism and Inclusivity," *Refugee Survey Quarterly* 27, no. 2 (2008): 24-29, <https://www.jstor.org/stable/45054314>.

¹⁹ Khaled Abou El Fadl, "Islamic Ethics, Human Rights and Migration," in *Migration and Islamic Ethics* (Leiden, The Netherlands: Brill, 2019), pp. 13-27, doi: https://doi.org/10.1163/9789004417342_003.

standards on refugee protection, reflecting the deep-rooted Islamic tradition of upholding human rights, providing refuge and ensuring safety for the persecuted.

Comparison between Islamic International Law and International Refugee Law

International Refugee Law is a collection of international legal instruments that provide a framework for the rights of refugees and the obligations of states. The cornerstone of this legal framework is the 1951 Refugee Convention and its 1967 Protocol²⁰. These legal instruments define who is a refugee, set out the rights of individuals granted asylum, and outline the responsibilities of nations that grant asylum. They are complemented by regional instruments such as the 1969 Organisation of African Unity (OAU) Convention²¹ and the 1984 Cartagena Declaration in Latin America²². Furthermore, they interact with and are complemented by international human rights and humanitarian law.

In parallel, Islamic International Law, deriving from Quranic teachings, *Hadith*, *Ijma'* (consensus), and *Qiyas* (analogical reasoning), offers robust principles guiding the treatment of refugees. These principles, as previously outlined, include *Karamah* (human dignity), *Hifz Al-Nafs* (preservation of life), *Ukhuwwah* (brotherhood), *Istijarah* (asylum), and *Hijrah* (migration).

A comparative analysis of the two legal systems reveals both similarities and differences, particularly concerning refugee treatment. Both systems are founded on the principles of preserving human

²⁰ UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, <https://www.refworld.org/docid/3be01b964.html>; UN General Assembly, *Protocol Relating to the Status of Refugees*, January 31, 1967, United Nations, Treaty Series, vol. 606, p. 267, <https://www.refworld.org/docid/3ae6b3ae4.html>. [accessed July 23, 2023]

²¹ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, September 10, 1969, 1001 U.N.T.S. 45, accessed July 23, 2023, <https://www.refworld.org/docid/3ae6b36018.html>.

²² Organization of American States (OAS), *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, November 1984, accessed July 23, 2023, https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf.

dignity and life, indicative of a shared understanding of the inherent worth of every individual, including refugees.

In both Islamic International Law and International Refugee Law, the right to seek asylum is acknowledged. The principle of *Istijarah* in Islamic law aligns with the 1951 Convention's stipulation of non-refoulement, a crucial aspect of the right to seek asylum²³. Similarly, *Hijrah*, or the right to migrate due to persecution, bears a resemblance to the Convention's definition of a refugee as someone unable or unwilling to return to their country of origin due to fear of persecution.

While both legal frameworks advocate shared responsibility for refugees, some differences exist. The principle of *Ukhuwwah* in Islamic Law extends a sense of kinship and collective responsibility for refugees to all believers. In contrast, International Refugee Law distributes responsibilities based on capacities and resources, emphasising states' physical proximity to crises²⁴.

Points of conflict between the two systems may emerge from different interpretations and applications of principles. International Refugee Law, being predominantly secular and regional in nature, might face resistance in settings where Islamic Law is applied. Furthermore, the interpretation and application of Islamic principles can vary widely among Muslim-majority countries, presenting potential obstacles to a uniform refugee policy guided by Islamic Law²⁵.

However, these differences still need to diminish the potential for these two systems to complement and reinforce each other in addressing the refugee crisis. By understanding the commonalities and unique strengths of each, it is possible to develop an approach that leverages the strengths of both systems while accommodating their differences. This comparative analysis thus presents an opportunity for

²³ Arafat Madi Shoukri, "The 1951 Geneva Convention relating to the Status of Refugees in the light of Islamic tradition," in *Refugee Status in Islam* (New York: I. B. Tauris & Co Ltd, 2011), pp. 106-114.

²⁴ Dana Schmalz, "The principle of responsibility-sharing in refugee protection: An emerging norm of customary international law," *Völkerrechtsblog*, March 6, 2019, <https://voelkerrechtsblog.org/de/the-principle-of-responsibility-sharing-in-refugee-protection/>.

²⁵ "The World's Muslims: Religion, Politics and Society," *Pew Research Center*, n. 1.

improved refugee protection within a harmonised and holistic legal framework, incorporating both International Refugee Law and International Islamic Law.

The Impact of Refugee Influx on Host Countries

The phenomenon of large-scale refugee influxes presents significant challenges for host countries, particularly when those are already grappling with their own socio-economic issues. The scope of these challenges often depends on the scale of the influx, the socio-economic context of the host country, and the availability of international support.

In socio-economic terms, the sudden arrival of a large refugee population can strain a host country's resources, infrastructure, and services. This strain includes pressure on public services such as healthcare, education, housing, and social welfare systems. For example, public services have been overstretched in Lebanon, hosting approximately 1.5 million Syrian refugees, contributing to increased tension between host communities and refugees²⁶.

Refugees often require access to the labour market to sustain themselves and their families. However, their integration into local economies can be a double-edged sword. While their participation can stimulate economic activity and contribute to the host country's economy, it can also lead to job competition, potentially fuelling tension and xenophobia, especially in countries with high unemployment rates²⁷.

Culturally, the arrival of a large number of refugees can have profound effects on host societies. Integrating new cultures, languages, and religious practices may enrich local communities, fostering cultural diversity and exchange. However, it can also lead to cultural

²⁶ Omer Karasapan and Sajjad Shah, "Why Syrian refugees in Lebanon are a crisis within a crisis," *The Brookings Institution*, April 15, 2021, <https://www.brookings.edu/articles/why-syrian-refugees-in-lebanon-are-a-crisis-within-a-crisis/>.

²⁷ Paolo Verme, "Theory and evidence on the impact of refugees on host communities," *World Bank Group*, March 28, 2023, <https://blogs.worldbank.org/dev4peace/theory-and-evidence-impact-refugees-host-communities>.

clashes and resistance from host communities, especially when cultural differences are substantial²⁸.

In terms of security, while it is vital to challenge the stereotype that associates refugees with higher crime rates, the arrival of a large number of refugees can present security challenges. These range from potential tensions with host communities to concerns about the infiltration of armed groups²⁹. Some host countries express concerns about radicalisation within refugee populations, mainly if they come from regions beset by conflict and extremist ideologies.

These impacts are not merely theoretical but have been observed in real-world contexts. Challenges in countries like Jordan³⁰ and Lebanon³¹, which host significant numbers of Syrian refugees, include strained public services, socio-economic tensions, and complex cultural and security dynamics. Similarly, Turkey, the country hosting the most refugees worldwide, has faced significant integration challenges, although it has also seen examples of successful integration and economic contribution from refugees³².

In summary, the influx of refugees can significantly impact host countries across multiple dimensions. This highlights the importance of comprehensive and long-term approaches to refugee management, ideally involving international cooperation and burden-sharing. It also underscores the potential of International Islamic Law's principles, emphasising solidarity, human dignity, and the shared responsibility of

²⁸ Sanjugta Vas Dev, "The reluctant host: the socio-cultural impact of refugees on developing communities," *Mots Pluries* 21 (2002). <https://motspluriels.arts.uwa.edu.au/MP2102s.html>.

²⁹ Simon Bell, "Why Refugees Are a Threat to National Security," accessed July 23, 2023, https://www.academia.edu/7188234/Why_Refugees_Are_a_Threat_to_National_Security.

³⁰ Mazen A. S. Alougili, "The impact of Syrian refugee on Jordanian national security," *European Journal of Social Sciences* 2, no. 3 (2019): 83-99, https://revistia.org/files/articles/ejss_v2_i3_19/Alougili.pdf.

³¹ Omer Karasapan, and Sajjad Shah, "Why Syrian refugees in Lebanon are a crisis within a crisis," n. 23.

³² Yusuf Emre Akgündüz, Marcel van den Berg, and Wolter Hassink, "The Impact of Refugee Crises on Host Labor Markets: The Case of the Syrian Refugee Crisis in Turkey," *IZA Discussion Paper*, no. 8841 (2015), <https://dx.doi.org/10.2139/ssrn.2564974>.

Ummah, to offer valuable insights and strategies for managing these challenges.

Regulating Refugee Influx under Islamic International Law

International Islamic Law provides clear guidance on how nations should respond to an influx of refugees. These guidelines include principles of balance and equity (*Mizan, Wasatiyyah*), shared responsibility (*Takaful*), implementing gradual changes (*Tadarruj*), and prioritising security and welfare (*Maslahah*).

The principles of *Mizan* and *Wasatiyyah* underline the Islamic emphasis on moderation and balance in all aspects of life³³. This aspect can extend to refugee management, wherein nations strive to accommodate refugees in a manner that maintains socio-economic balance. This implies creating policies that welcome refugees while also considering the carrying capacity of the state and the potential impact on host communities. The policies can be made by the Muslim government of the Islamic nations as it is their responsibility to establish the rules as stipulated in the Quran (4:59).

Responsibility Sharing, or *Takaful*, is another significant principle of International Islamic Law that can be applied to the refugee issue. This principle emphasises mutual assistance and shared responsibilities within the Islamic community (*Ummah*)³⁴. In practice, this can translate into a more equitable distribution of refugees among nations, thereby mitigating the pressure on countries most affected by refugee influxes. *Takaful* can provide an Islamic foundation for an international response to refugee crises based on solidarity and burden-sharing. For instance, in 2019, the UNCHR introduced Refugee Zakat Fund with support from Islamic scholars and fatwas³⁵. This initiative allows Muslims to participate in burden-sharing regarding refugees in the Muslim world.

³³ Khaled Abou El Fadl, "Qur'anic Ethics and Islamic Law", *Journal of Islamic Ethics* 1, no. 1-2 (2017): 7-28, <https://doi.org/10.1163/24685542-12340002>.

³⁴ Hossameldeen Mohammed and Ray Jureidini, "Umma and the nation-state: dilemmas in refuge ethics," *Journal of International Humanitarian Action* 7, no. 17 (2022), pp. 11-13, <https://doi.org/10.1186/s41018-022-00124-z>.

³⁵ *Ibid.*, pp. 16-20; see also "The Refugee Zakat Fund," UNCHR, accessed July 23, 2023, <https://zakat.unhcr.org/en/about-zakat>.

Tadarruj, the principle of gradualism in Islam, advocates for changes to be made systematically and incrementally³⁶. This principle could guide the phased integration of refugees into the host societies, thus ensuring the process is manageable and sustainable. For example, refugees' access to certain services or job markets could be introduced progressively to prevent sudden shocks to the system. Introducing refugees into the labour landscape not only strengthens the host country's human resources but also allows the refugees to make a living to fulfil their other needs. Again, the government can create a policy to facilitate this.

Finally, *Maslahah* prioritises public interest, security, and welfare, underscoring the need for policies that benefit the majority while protecting vulnerable minority groups like refugees³⁷. This principle may guide countries to develop refugee policies that balance the needs of refugees and host communities, maintaining social harmony and national security, which complements the principles of *Mizan* and *Wasatiyyah*.

Practical applications of these principles can be observed in various Islamic-majority countries. For instance, Turkey, which hosts the most significant number of refugees globally, has adopted a phased integration approach, implementing policies gradually while prioritising public interest and security. The Turkish government has begun to allow Syrian refugee children to enter Turkish public schools³⁸.

Similarly, in Jordan, a country that hosts a significant number of Syrian refugees, the principle of *Takaful* is demonstrated through its efforts to provide asylum and share the responsibility with international

³⁶ Amir Husin Mohd Nor, "Tadarruj (Beransur-ansur) Dalam Pelaksanaan Hukum Islam Masa Kini," *Jurnal Syariah* 9, no. 1 (2019): 1-12, <https://ejournal.um.edu.my/index.php/JS/article/view/22910>; Muhammad Shahrul Ifwat Ishak, Ahmad Akram Mahmad Robbi, and Nur Syahirah Mohammad Nasir, "The Principle of Tadarruj in Islamic Finance: A Conceptual Review," *Journal of Islamic Finance* 10, no. 1 (2021): 15-24, <https://journals.iium.edu.my/iibf-journal/index.php/jif/article/download/558/248>.

³⁷ Kirsten Zaat, "The protection of forced migrants in Islamic law," pp. 31-32, n. 7.

³⁸ Alan Makovsky, "Turkey's Refugee Dilemma: Tiptoeing Toward Integration," *Center for American Progress*, March 13, 2019, <https://www.americanprogress.org/article/turkeys-refugee-dilemma/>.

actors³⁹. However, the struggle to maintain balance and equity in the face of the overwhelming refugee influx also underlines the need for broader global action based on the *Takaful* principle.

In short, International Islamic Law provides valuable principles for regulating the refugee influx. These principles can inform robust, sustainable, and ethical responses to the global refugee crisis when coupled with other legal systems. Thus, implementing these principles presents an opportunity for synergising Islamic ethics with global humanitarian efforts.

Challenges and Opportunities in Applying Islamic International Law to the Refugee issue

As with any legal and ethical framework, applying Islamic International Law to the refugee problem presents challenges and opportunities.

Politically, resistance may come from various quarters, both within and outside Muslim-majority countries. These countries' resistance can be rooted in national interests, fears of instability, or a desire to limit foreign influence. The geopolitical complexities of certain regions, such as the Middle East, can also hinder the implementation of Islamic International Law in a manner that addresses the refugee crisis comprehensively and effectively.

Legally, there is considerable diversity in the interpretation and application of Islamic law across different countries and schools of thought⁴⁰. While a strength in many respects, this diversity can make it challenging to reach a consensus on specific legal issues, including refugee rights and responsibilities. Discrepancies between national laws, International Islamic Law, and International Refugee Law can create additional complexities, necessitating careful negotiation and legal acumen.

³⁹ Bouthaina Ben Kridis, "The Jordan Compact: A model for burden-sharing in the refugee crisis," *Refugee Law Initiative*, May 17, 2021, <https://rli.blogs.sas.ac.uk/2021/05/17/the-jordan-compact-a-model-for-burden-sharing-in-the-refugee-crisis/>.

⁴⁰ Emad Hamdeh, "What is a Madhhab? Exploring the Role of Islamic Schools of Law," last updated March 22, 2021, <https://yaqeeninstitute.org.my/read/paper/what-is-a-madhhab-exploring-the-role-of-islamic-schools-of-law>.

Culturally, while many Muslim-majority countries share a common faith, their cultural practices and societal norms can vary significantly. This diversity can lead to differing views on the treatment and integration of refugees, which can challenge a harmonised approach to refugee management. For example, the legal treatment of refugees in Saudi Arabia is confined to the *kafala* system, which is highly debated whether it is cultural or religious in nature⁴¹.

Despite these challenges, applying International Islamic Law to the refugee problem also presents several opportunities. The emphasis on human dignity, brotherhood, and mutual responsibility can foster increased international cooperation in managing refugee issues. Islamic law principles can complement and enhance existing international law frameworks, adding a rich, faith-based dimension to global discussions on refugee rights and responsibilities⁴².

Moreover, Islamic International Law can contribute to the empowerment of refugees. By recognising the rights of refugees, countries can better facilitate their integration, enabling them to contribute positively to their host societies⁴³. This empowerment can have significant benefits in terms of social harmony, economic productivity, and cultural enrichment.

Further, promoting human rights is a crucial aspect of International Islamic Law. Therefore, its application to the refugee issue can help strengthen the global human rights regime, ensuring that the rights of some of the world's most vulnerable individuals are protected and upheld⁴⁴.

While challenges exist in applying Islamic International Law to the refugee problem, they are outweighed by the potential benefits.

⁴¹ Charlotte Lysa, "Governing Refugees in Saudi Arabia (1948–2022)," *Refugee Survey Quarterly* 42, no. 1 (2023), pp. 1–28, <https://doi.org/10.1093/rsq/hdac027>.

⁴² Ahmed Al-Dawoody and Tilman Rodenhäuser, "The principle of non-refoulement under Islamic law and international law: complementing international legal protection in Muslim contexts," *International Committee of The Red Cross*, June 20, 2021, <https://blogs.icrc.org/law-and-policy/2021/06/20/non-refoulement-islamic-law/>.

⁴³ "Promoting integration through social connections," UNCHR, accessed July 23, 2023, <https://www.unhcr.org/handbooks/ih/social-connections/promoting-integration-through-social-connections>.

⁴⁴ Ahmed Al-Dawoody and Tilman Rodenhäuser, "The principle of non-refoulement under Islamic law and international law," n. 39.

These include fostering international cooperation, empowering refugees, and promoting human rights. The key lies in negotiating the complexities and leveraging the strengths of International Islamic Law to forge more compassionate, equitable, and effective responses to the global refugee crisis.

Islamic International Law and Refugees issue in Malaysia

One of the most pertinent examples of applying Islamic International Law to the refugee problem is Malaysia's handling of the Rohingya refugee crisis.

The Rohingya, an ethnic minority from Myanmar, have faced severe persecution in their homeland, resulting in one of the largest forced migrations in recent years⁴⁵. Despite not being a signatory to the 1951 Refugee Convention or its 1967 Protocol, Malaysia has become a significant destination for these refugees, primarily due to its geographical proximity and socio-cultural affinity with the Rohingya, who are predominantly Muslim^{46,47}.

Malaysia has responded to this crisis in a variety of ways. While it has stopped short of formally recognising the Rohingya as refugees, it has allowed a significant number to reside within its borders, which is in accordance with the Islamic principle of hospitality and asylum (*Istijarah*)⁴⁸. This approach also reflects the principle of preservation of life (*Hifz Al-Nafs*), as the Rohingya are fleeing severe threats to their safety and well-being.

The Malaysian government has also made concerted efforts to provide for the needs of the Rohingya, in line with the Islamic principle

⁴⁵ "Rohingya emergency," UNHCR, accessed July 23, 2023, <https://www.unhcr.org/emergencies/rohingya-emergency>.

⁴⁶ Farid Sufian Shuaib and Saiful Izan bin Nordin, "Protecting Refugees, Preserving State Sovereignty and Mandating Equitable International Burdensharing: Finding The Balance for Malaysia," *INSAF - The Journal of the Malaysian Bar* 39, no. 1 (2022), pp. 42-73, <https://insaf.malaysianbar.org.my/ojs/index.php/jmr/article/view/10>.

⁴⁷ Ruhanas Harun, "The Rohingya Refugees in Malaysia: issues, Approaches, national Security Implications and Challenges," *Journal of Public Security and Safety* 9, no. 1 (2019): 47-63, https://www.moha.gov.my/images/maklumat_bahagian/ipsom/jurnal/volume9/no4_volume_9_2019.pdf.

⁴⁸ "Malaysia," UNCHR, accessed July 23, 2023, <https://www.unhcr.org/countries/malaysia>.

of brotherhood (*Ukhuwwah*). Various non-governmental organisations (NGOs) and Islamic charitable organisations have been pivotal in these efforts, providing food, healthcare, education, and other forms of support⁴⁹⁵⁰.

However, applying Islamic International Law in this context has also posed specific challenges. Balancing the needs of the local population with those of the Rohingya refugees, following the principle of balance and equity (*Mizan, Wasatiyyah*), has proven difficult. There have been tensions due to perceived competition for resources and jobs, leading to social discord in some instances⁵¹.

Furthermore, Malaysia's non-recognition of the Rohingya as refugees, while in some ways a pragmatic response to a complex situation, has also hindered the implementation of more structured, long-term solutions for their integration and welfare⁵². This presents a dilemma regarding the principle of human dignity (*Karamah*), as the lack of legal status often leaves refugees vulnerable and precarious.

Similarly, Malaysia did not recognise the Rohingyas' status as immigrants or refugees, so they are considered lawless and not bound to any state or international jurisdictions. This "stateless" status has led some Rohingya refugees to commit crimes and other illegal acts, creating tensions within the local community. Their status also allows them to be free from being imposed Malaysian tax, which makes some Malaysians feel threatened. This somehow fed into xenophobia and was used by some parties to "scare" the public into questioning their

⁴⁹ Ratu Ayu Asih Kusuma Putri and Dennyza Gabiella, "The Organisational Pattern of Rohingya Refugee Community in Malaysia: Structural Opportunities, Constraints, and Intra-Community Dynamics," *Refugee Survey Quarterly* 41, no. 4 (2022), pp. 673–699, <https://doi.org/10.1093/rsq/hdac010>.

⁵⁰ Hemamalani Kunapalan, Norafidah Binti Ismail, and Aminurraasyid Bin Yatiban, "The Roles of Non-Governmental Organisations (NGOs) in Assisting Refugees: From Malaysia Context," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 5, no. 5 (2020), pp. 89 - 94, <https://doi.org/10.47405/mjssh.v5i5.401>.

⁵¹ Richard J. Towle, "Challenges and Way Forward in Handling Rohingya refugees in Malaysia" (presentation speech, Putrajaya, Malaysia, March 14 – 16, 2017), UNHCR, <https://www.unhcr.org/my/news/challenges-and-way-forward-handling-rohingya-refugees-malaysia>.

⁵² Christine H. Kim, "Challenges to the Rohingya Population in Malaysia," *Center for Strategic & International Studies*, July 10, 2020, <https://www.csis.org/blogs/new-perspectives-asia/challenges-rohingya-population-malaysia>.

rights as Malaysian citizens and protecting their *status quo*, especially since the COVID-19 pandemic hit⁵³.

Thus, the case of the Rohingya in Malaysia provides valuable insights into the complexities of applying Islamic International Law to refugee situations. It demonstrates the potential of Islamic principles to guide compassionate and supportive responses, but also highlights the challenges inherent in balancing competing interests and needs. Despite these challenges, the Malaysian example accentuates the relevance and applicability of Islamic International Law in addressing the refugee problem.

CONCLUSION

The analysis presented in this paper underscores the significant potential of Islamic International Law in addressing the global refugee crisis. The ethical and legal principles embodied within this framework, ranging from the preservation of life to the principle of brotherhood, offer an alternative lens through which to view and address refugee situations. It reaffirms the rights and dignity of refugees while also delineating the responsibilities of host states.

For Islamic International Law to be more effectively employed in addressing the refugee problem, several vital recommendations must be considered. Firstly, concerted efforts should be made to reach a consensus on interpreting and applying Islamic International Law to refugee issues. This may necessitate scholarly dialogue and the formation of consensus-building institutions or committees, particularly within Muslim-majority states.

Secondly, increased cooperation between Muslim-majority states and the broader international community is crucial. This could involve partnerships in areas such as policy formulation, refugee management, and resource sharing. More significant integration of Islamic principles within global refugee frameworks may also promote increased acceptance and compliance by Muslim-majority states.

Lastly, measures should be taken to address societal tensions and ensure harmonious coexistence between refugees and host communities. Cultural sensitivity training, community dialogue

⁵³ Huei Ting Cheong, "In Malaysia, why has solidarity turned to hostility for Rohingya refugees?" *Globe Media Asia*, December 11, 2020, <https://southeastasiaglobe.com/rohingya-xenophobia-malaysia/>.

initiatives, and policies promoting equity and inclusion may be particularly beneficial⁵⁴.

This paper has highlighted the rich and complex interplay between Islamic International Law and the global refugee problem. It has identified critical Islamic principles that have bearing on refugee issues, explored the impact of refugee influx on host countries, and analysed the challenges and opportunities that arise when applying Islamic International Law to refugee situations. The case of the Rohingya refugees in Malaysia served as a practical example, demonstrating both the potential and the challenges inherent in this approach.

In conclusion, it is evident that the refugee problem requires a diverse, inclusive, and practical approach. Indeed, Islamic International Law, emphasises human dignity, equality, brotherhood, and social justice and provides a crucial perspective in this effort. By weaving these principles into the fabric of the international response to the refugee crisis, it may be possible to forge more compassionate, equitable, and sustainable solutions to one of the most pressing humanitarian issues of the current era.

⁵⁴ “Promoting welcoming and inclusive societies,” UNCHR, accessed July 23, 2023, <https://www.unhcr.org/handbooks/ih/welcoming-inclusive-societies/promoting-welcoming-and-inclusive-societies>.