


The British Nationality and Borders Bill and the international protection of refugees in the light of the concept of community interest in international law

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Abstract: The crisis that Europe faced in 2015 has never been resolved and countries have adopted different strategies to deal with the influx of migrants. Some of them raise serious legal doubts for good reason. One of the new national solutions currently in the process of passing is the new migration plan announced by the United Kingdom in the Nationality and Borders Bill last year. The aim of the reform is to improve the British asylum system and to fight effectively illegal immigration and people smuggling. The aim of the article is to present the most important assumptions of the British reform in the field of granting refugee status. The analysis would allow to assess the compliance of the designed solutions with international obligations, the fulfilment of which should form the basis of the asylum policy of each State being a party to the 1951 Convention relating to the Status of Refugees. The main aim of the article, however, is to draw attention to the fact that the international protection of refugees should be equated with community interests and referring to the individual interest of the State is an erroneous and dangerous assumption.

1. Introduction

In March 2021, the UK government announced the adoption of the New Plan for Immigration, which was officially announced two months later¹. Its assumptions are to be implemented through the adoption of the Nationality and Borders Act, the Bill of which was published on 6 July 2021².

As explained on the UK government website, the Bill is “the cornerstone of the government’s New Plan for Immigration”, which aims to provide “the most comprehensive reform in decades to fix the broken asylum system”. There are also three aims of the Act, which are: 1) to make the system fairer and more effective, to better protect and support those in genuine need of asylum, 2) to deter illegal entry into the UK by breaking the business model of criminal trafficking networks and saving lives, 3) to remove from the UK those with no right to be here³. One of the reasons for the reform is that in 2019 the number of asylum applications increased by 21% compared to the previous year, i.e. to almost 36,000, which was the highest rate since the European migration crisis in 2015/2016. It was also referred to the cost of the asylum system, which exceeds a billion pounds a year, and the fact that the number of people who cannot be removed due to legal restrictions had been steadily declining for several years. It was stated that “as a result, there are now over 10,000 Foreign National Offenders circulating on the streets, posing a risk to the public”. At the same time, it was declared to continue accepting refugees and helping them to integrate with British society⁴.

The British Nationality and Borders Bill was criticised by international organizations. The UN Refugee Agency website clearly stated the planned reform in the UK would punish the majority of refugees seeking asylum

¹ New Plan for Immigration. Policy Statement, March 2021, accessed January 10, 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972517/CCS207_CCS0820091708-001_Sovereign_Borders_Web_Accessible.pdf.

² The text of the Nationality and Borders Bill (HL Bill 82) as of 9 December 2021, accessed January 10, 2022, available at: https://publications.parliament.uk/pa/bills/lbill/58-02/082/5802082_en_1.html. Detailed information on the stages of its passing is available at: <https://bills.parliament.uk/bills/3023>.

³ Policy Paper - Nationality and Borders Bill: Factsheet, 6 July 2021, accessed January 10, 2022, <https://www.gov.uk/government/publications/the-nationality-and-borders-bill-factsheet/nationality-and-borders-bill-factsheet>.

⁴ Ibidem.

in that country, creating a model that would undermine the established rules and practices for international refugee protection. According to the United Nations High Commissioner for Refugees, the law undermines the 1951 Convention relating to the Status of Refugees (Refugee Convention), to which the United Kingdom is a party, and does not promote the British government's goal of protecting people at risk of persecution⁵. Amnesty International also expressed a critical opinion. It indicated, *inter alia*, that the Bill would not break the business model of people smugglers through provision that increases criminal sentences, but it would only increase the reliance of people, already vulnerable to exploitation by trafficking gangs. On the other hand, the organization recognized the real goal of the reform to discourage potential asylum seekers in the United Kingdom⁶. In turn, Human Rights Watch stated that the measures proposed in the Bill undermine international refugee and human rights obligations⁷.

The aim of the article is to review the most important assumptions of the British asylum system reform in the context of international protection of refugees and to present the concept of community interests with which, according to the Author, international protection of refugees should be equated.

2. Basic assumptions of the reform of the British asylum system and their evaluation

The Nationality and Borders Bill consists of 7 Parts, which include provisions concerning, *inter alia*, nationality, asylum, immigration control, age assessments, modern slavery.

As regards the title issue, the first thing that draws attention is the differential treatment of refugees adopted in Clause 11. The Bill divides refugees

⁵ The Nationality and Borders Bill, accessed January 10, 2022, <https://www.unhcr.org/uk/uk-immigration-and-asylum-plans-some-questions-answered-by-unhcr.html>. The United Kingdom signed the Convention on the day of its opening for signature and was one of the first countries to ratify it. For the text of the Convention, see Convention relating to the Status of Refugees, Geneva, 28 July 1951, Journal of Laws 1991, No. 119, item 515.

⁶ Eight ways the Nationality and Borders Bill falls short, accessed January 10, 2022, <https://www.amnesty.org.uk/nationality-borders-bill-truth-behind-claims>.

⁷ United Kingdom. Events of 2021, accessed January 10, 2022, <https://www.hrw.org/world-report/2022/country-chapters/united-kingdom>.

into two groups. The first one includes those who “have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention)”, and “have presented themselves without delay to the authorities”. In addition, if the refugee has entered or is staying in the UK illegally, it is required that they “can show good cause for their unlawful entry or presence”. Refugees who do not meet these conditions are to be included in the second group (Clause 11(1)-11(3)). Such a distinction is to allow for a different treatment of refugees and their family members, for example in respect of the length of the period of limited leave to enter or remain, the requirements that the person must meet in order to be given indefinite leave to remain, or a prohibition on access to public funds (Clause 11(5)-11(6)). The Bill Explanatory Notes indicate that Group 2 refugees would be granted temporary protection status with no possibility of settlement for at least ten years⁸. It should also be noted that the Bill only indicates examples of differential treatment. The enumeration is not exhaustive; thus, it leaves a lot of freedom in the selection of measures resulting in a different treatment of refugees from the first group and the second group.

As Clause 11 indicates, the main criterion differentiating the refugee status is the fact of arriving directly from the country or territory where the refugee’s life or freedom was threatened. The Bill more broadly refers to the condition of immediate arrival from a country where life or freedom was threatened, and in Clause 36(1) it is stated that “A refugees is not to be taken to have come to the United Kingdom directly from a country where they life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugees Convention in that country”. This means that people who for some reason stayed in another country before coming to the UK should be refused recognition as a refugee. The regulation broadens *de facto* the interpretation of Article 31(1) of the Refugee Convention. In a legal opinion entitled “UNHCR Observations on the Nationality and

⁸ Nationality and Borders Bill Explanatory Notes as introduced in the House of Commons on 6 July 2021 (Bill 141), 6, para. 19, accessed January 10, 2022, <https://publications.parliament.uk/pa/bills/cbill/58-02/0141/en/210141en.pdf> (access: 10 Dec. 2021).

Borders Bill”, prepared by the United Nations High Commissioner for Refugees in October 2021⁹, it was noted that such an interpretation of “coming directly” would be inconsistent with the Refugee Convention unless it continued to be interpreted in line with current UK jurisprudence. According to it, the term “directly” is defined broadly and purposively, which protects from being punished those refugees who have crossed through, stopped over or stayed in other countries on their way to the country of intended sanctuary¹⁰.

The provisions of Clause 35(1) are quite unclear and may raise doubts not only due to possible reasons for stopping in another country, which are not specified in the Bill, but also due to the resulting condition of seeking effectively protection in the UK. The question arises whether a refugee must apply for protection in the first safe country. The Refugee Convention does not refer to the first safe country principle and does not oblige a refugee to seek protection in the nearest country or the first country to which they flee¹¹. The doctrine indicates that the use of the safe country concept violates the rights of refugees by restricting their freedom to choose the State in which they will seek protection. Moreover, it infringes the individual character of an asylum claim by relying on a general assessment of the situation in the country of origin or a third country, without considering individual circumstances¹². The concept was also critically assessed by the United Nations High Commissioner for Refugees in a document prepared in 1991 entitled “Background Note on the Safe Country Concept and Refugee Status”¹³. The UNHCR pointed out that the use of the concept “would *a priori* preclude a whole group of asylum seekers from refugee status” which, in the opinion of the High Commissioner, “would

⁹ UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021–2022, October 2021, accessed January 10, 2022, <http://www.migration.org.za/wp-content/uploads/2017/08/First-Safe-Country-Principle-in-Law-and-Practice.-Issue-Brief-7.pdf>.

¹⁰ Ibidem, 9, para. 25.

¹¹ Roni Amit, “The First Safe Country Principle in Law and Practices,” *Migration Issue Brief* 7 (June 2011): 4.

¹² Potyrała Anna, “Ochrona uchodźców w ustawodawstwie państw członkowskich Unii Europejskiej z Europy środkowej i wschodniej,” *Studia Polityczne* 2 (2012): 232.

¹³ Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, 26 July 1991, accessed January 10, 2022, <https://www.unhcr.org/excom/scip/3ae68ccac/background-note-safe-country-concept-refugee-status.html>.

be inconsistent with the spirit and possibly the letter of the 1951 Convention relating to the status of refugees”. In particular, it would be a reservation to Article IA (2) of the Convention, which would be in violation of the prohibition against making reservations to this article under Article 42. It would also introduce *de facto* new geographic restrictions to the Convention, which would be contrary to the intent of the 1967 Protocol to the Convention. The UNHCR also accused the concept of non-compliance with Article 3 of the 1951 Convention which requires States to apply its provisions without discrimination as to country of origin. In the High Commissioner’s opinion, “strict application of the concept could lead to individuals being returned to a situation of danger to life, in violation of the Article 33 prohibition against refoulement”¹⁴. Simultaneously, in the same document, the High Commissioner did not exclude the legitimacy of an international reconciliation of formal mechanisms for determining responsibility which incorporates the “safe country” notion with the provision of clearly defined and harmonized criteria against which to measure whether countries should be considered safe. However, such mechanisms can only be effective if certain conditions regarding standards of application (to whom the mechanisms apply and with respect to which countries), standards of treatment (how the mechanisms shall be applied and when) will be included in an agreement between the interested parties. It is also important to agree on the operational modalities that would relate to treatment of asylum seekers, arrangements for return and readmission, as well as monitoring the implementation of commitments¹⁵. It is worth noting that the doctrine does not negate the use of the safe country concept in international agreements either, as long as their content corresponds to the standards of refugee protection¹⁶. However, even in such a situation, the allegation of limiting the refugee’s right to choose the country in which they want to apply for protection seems justified if the claim is assessed solely on the basis of general premises. Therefore, the actions of States in

¹⁴ Ibidem, para. 17.

¹⁵ Ibidem.

¹⁶ See Amit, “The First Safe Country,” 4–5; James C. Hathaway, “Refugees and Asylum,” in *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud, Jillyanne Redpath-Cross (Cambridge: Cambridge University Press, 2012), 183.

this area must meet high standards of verification of submitted claims and of assessment of the circumstances, so that the basic principles of international refugee protection are maintained. It seems that States' reaching for the safe country concept may justify the burden of providing protection in the event of a mass influx of refugees and the need to guarantee this protection at an appropriate level. However, the success of the concept in its practical dimension requires agreement and solidarity between States. An individual assessment of the claim is important in order to consider circumstances such as the right to family life under the principle of family reunification. This would contribute to the assimilation of the refugees and facilitate their naturalization.

According to Schedule 3 – “Removal of asylum seeker to safe country”¹⁷ the concept of “safe countries” used in the Nationality and Borders Bill allows the refoulement of a refugee or obliging them to leave the territory of the UK and go to a country where “a person’s life and liberty are not threatened by reason of the person’s race, religion, nationality, membership of a particular social group or political opinion”, from which “a person will not be removed elsewhere other than in accordance with the Refugees Convention” and to which “a person can be removed without their Convention rights under Article 3 (...) being contravened” and from which “a person will not be sent to another State in contravention of the person’s Convention rights”. It is also noted that it is a place where “the person is not a national or citizen of the State” (Section 77(2B)). In the legal opinion of the UNHCR, the applied concept of “safe countries” was criticised. It was noted that there was no requirement that the territory be a State or a party to the Refugee Convention, or that it offered the possibility of applying for refugee status or otherwise recognised the rights guaranteed to refugees in the Refugee Convention. It was also found that there was no consideration of the reasonableness of the transfer in any individual case, and the law provided an opportunity for a person to show that in their particular circumstances they would be at risk of violations of their rights

¹⁷ Schedule 3 - Removal of asylum seekers to safe country, Amendments to section 77 of the Nationality, Immigration and Asylum Act 2002, The Nationality and Borders Bill (HL Bill 82), 88–91, accessed January 10, 2022, https://publications.parliament.uk/pa/bills/lbill/58-02/082/5802082_en_1.html.

under the European Convention on Human Rights, but provided no such opportunity with regard to the risk of persecution or onward refoulement or expulsion prohibited under the Refugee Convention¹⁸.

Doubts are also raised by the content of the provisions that use the concept of a “safe third State”. According to Clause 15, Section 80B(4), it is a country in which “the claimant’s life and liberty are not threatened (...) by reason of their race, religion, nationality, membership of a particular social group or political opinion”, from which “a person will not be sent to another State - (i) otherwise than in accordance with the Refugee Convention, or (ii) in contravention of the their rights under Article 3 of the Human Rights Convention” and “a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State”. As the United Nations High Commissioner for Refugees notes, first of all, the regulation creates a low standard for when a State would be considered ‘safe’ for a particular claimant. It also allows to assume that a country could still be considered safe even if the applicant had been at risk of being subjected to human rights violations there that either fall short of threats to life and liberty, or to which they were not exposed for reasons of a Refugee Convention ground. The quite general wording of point (ii) of the regulation, which uses the term “a person may”, was also criticised. It was found that it was not clear from the terms of the Bill that this possibility needs to be available to the particular applicant. From the wording of the Bill it appears it may arguably be sufficient that in general there is the possibility of applying for refugee status in that State¹⁹.

Under the law, a connection of an asylum seeker in the UK with a safe third State would render a claim in this matter inadmissible. To clarify the assumptions of the regulations, Clause 15, Section 80C explains that the term “connection” to a safe third State means the fulfilment of one of five conditions under which the claimant: 1) has been recognized as a refugee in the safe third State, and remains able to access protection in accordance with the Refugee Convention in that State, 2) has otherwise been granted protection in a safe third State as a result of which the claimant would not be sent from the safe third State to another State: otherwise

¹⁸ UNHCR Observations on the Nationality, 12, para. 37.

¹⁹ Ibidem, 10, para. 31.

than in accordance with Refugee Connection, or in contravention of their rights under Article 3 of the European Convention on Human Rights, and remains able to access that protection in that State, 3) has made a relevant claim to the safe third State and the claim: has not yet been determined, or has been refused, 4) was previously presented in, and eligible to make a relevant claim to, the safe third State, it would have been reasonable to expect them to make such a claim, and they failed to do so. The last condition is that in the claimant's particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third State. The concept of a safe third State in the above form was therefore not based on a guarantee of obtaining the refugee status, but only on protection against expulsion in contravention of the Refugee Convention and Article 3 of the European Convention of Human Rights, or on meeting the condition of making or having a reasonable opportunity to make a "relevant claim" to the safe third State for such protection²⁰.

Other doubts are raised by the provisions of Clause 39. The Explanatory Notes to the Bill indicate that "this clause creates a new criminal offence of arriving in the UK without a valid entry clearance (with Electronic Travel Authorisation to be added once substantive clauses on this provision are introduced) where required, in addition to entering without leave"²¹. The lack of reference in the regulation to the situation of people seeking refugee protection may in practice penalise their arrival in the UK without the required visa. On the other hand, obtaining a visa is not a condition, the fulfilment of which is to enable a claim for protection under the 1951 Convention. It may rather constitute evidence of an unfavourable policy of States which are looking for various solutions limiting or preventing obtaining the refugee status. Moreover, as the UNHCR observes, British law does not provide for the possibility of applying for entry clearance to apply for an asylum, and thus "no one from a country whose citizens normally need a visa would be able to come to the UK to seek asylum without potentially committing a criminal offence"²².

²⁰ Ibidem, 10, para. 32.

²¹ Nationality and Borders Bill Explanatory Notes, 45, para. 382.

²² UNHCR Observations on the Nationality, 12–13, para 37.

Unfortunately, all of the presented regulations of the Nationality and Borders Bill raise reasonable doubts and it is difficult to resist the impression that they fit into a broader practice of States, which results in adopting various solutions in national law, sometimes questionable in terms of their compliance with the norms of public international law. At the same time, States make use of the quite controversial, though willingly practiced, construction of a “safe country”²³. In addition, the provisions contained in the Bill leave the British administration a considerable margin for actions that are highly questionable as to their compliance with the universal standards of human rights protection. According to Article 14 of the Universal Declaration of Human Rights “everyone has the right to seek and to enjoy asylum from persecution in other country”²⁴. The significance of this regulation is not diminished by the fact that the UNDH is not legally binding²⁵. Whatever position we take in the discussion of representatives of the science in this matter, it should be remembered that the Declaration is a political and moral model for States, and it is based on the recognition of inherent human dignity. In addition, the 1951 Convention obliges States not to return back refugees to a place of harm under the *non-refoulement* principle (Article 33). Even when adopting a broad framework for interpreting the provisions of the Refugee Convention, one must not forget about the guarantees created for refugees by the agreement itself,

²³ More about the safe country concept, *inter alia* in: Cathryn Costello, “Safe Country? Says Who?,” *International Journal of Refugee Law* 28, (2016): 601–622; Susan Kneebone, “The Legal and Ethical Implications of Extra-territorial Processing of Asylum Seekers: the Safe Third Country Concept,” in *Moving On: Forced Migration and Human Rights*, ed. Jane McAdam (Oxford: Hart Publishing, 2008), 129–154; Anna Magdalena Kosińska, “Ewolucja koncepcji bezpiecznego kraju pochodzenia w dobie kryzysu migracyjnego” in *W obliczu kryzysu. Przyszłość polityki azylowej i migracyjnej Unii Europejskiej*, ed. Anna Magdalena Kosińska (Lublin: Wydawnictwo KUL, 2017), 141–164; Silvia Morgade-Gil, “The ‘Internal’ Dimension of the Safe Country Concept: the Interpretation of the Safe Third Country Concept in the Dublin System by International and Internal Courts,” *European Journal of Migration and Law* 20, no. 1 (2020): 82–113.

²⁴ Universal Declaration of Human Rights adopted on 10 December 1948, G.A. Res. 217A (III), U. N. Doc. A/810 at 71 (1948).

²⁵ For more, see Maria “Sullivan and Dallal Stevens, “Access to Refugee Protection. Key Concepts and Contemporary Challenges” in *State, the Law and Access Refugee Protection: Fortresses and Fairness*, ed. Maria Sullivan and Dallal Stevens (Oxford and Portland, Oregon: Hart Publishing, 2017), 8.

and which are expressed in the essence of their protection. Additionally, it is closely related and is part of the system of international protection of human rights. Therefore, the individual approach of States must fit within the framework defined in this way. Meanwhile, the British immigration Bill contains façade regulations, the practical effect of which will be to make it difficult for refugees to seek asylum, and even to punish them.

3. International protection of refugees and the concept of the community interests in international law

The issue of refugees is closely related to the need to guarantee international peace and security. Consideration of it as a threat to these values made the States of Central and Eastern Europe to engage in the interwar period in efforts to solve the problem of forced migration²⁶. Today, migrations constitute a serious challenge for States in the face of successive migration crises. It is for these reasons that it is necessary to undertake international cooperation to work out new solutions under public international law. The individual approach of States is not only inadequate to the scope and scale of the issue, which is, after all, global in nature. This fact also justifies the claim that it is only at the international level that it is possible to deal with the key issues related to contemporary refugees. The foundation of such a position should be the assumption that the international protection of refugees is in the common interest of States.

The common interest of the entire international community is one of the reasons for following the norms of public international law²⁷. However, the perception of the common interest by States is often different, and positions in this matter can be consolidated the most effectively by tragic events affecting most States, or circumstances threatening their security in a multidimensional aspect. Such situations may weaken the natural tendency of States to mark their position in the international community in the name of defending their own interests and sovereignty. The problem undoubtedly lies in the wrong ideological and conceptual approach to international

²⁶ Potyrała, “Ochrona uchodźców,” 212.

²⁷ Remigiusz Bierzaniek and Janusz Symonides, *Prawo międzynarodowe publiczne* (Warszawa: Wydawnictwo Prawnicze PWN, 1999), 22.

values and obligations, which should counterbalance the interests of individual States in the event of their conflict with community interests.

In the doctrine of international law, the term “community interest” is understood as “the interest in the protection of which all States are potentially involved, as opposed to individual and group interests aimed at protecting the status of a specific State or a designated group of States, respectively”²⁸. It is noted that the practical functioning of the concept requires the transformation of international relations and the law regulating them. At the heart of this process is the fact that States have become aware of the existence of certain common goods or values, such as peace, humanity, or the environment, and of the need to protect such goods or values in their mutual relations²⁹. Its complement would create an “ideal state” from the point of view of community interests, which would outweigh the individual interests of the State. In practice, however, the conflict between the two concepts is not always easy to resolve. It is stressed that the simple presumption that “community interests shall prevail over individual interests” is not sufficient and that gaining a balance between the protection of community and that of individual interests is a necessity³⁰. However, it seems that community interests should prevail over individual interests wherever international peace and security are threatened. Their maintenance is guaranteed, *inter alia*, by the protection of human rights, which include the rights of refugees.

The literature indicates that an early example of the recognition of the global sphere of community interests beyond State interests whose protection and promotion is a collective duty is the Universal Declaration of Human Rights. It is also emphasised that the task of public international

²⁸ Roman Kwiecień, *Interesy indywidualne państw a interesy wspólnotowe w prawie społeczności międzynarodowej. O znaczeniu liberalizmu i komunitaryzmu dla teorii prawa międzynarodowego* (Lublin: Wydawnictwo Marii Curie-Skłodowskiej 2015), 65. For more see Wolfgang Benedek, Koen De Feyter, Matthias C. Kettemann and Christina Voigt, ed., *The Common Interest in International Law*, (Antwerp: Intersentia, 2014); Bruno Simma, “From Bilateralism to Community Interests in International Law,” *Recueil des Cours de l'Académie de Droit International* 250 (1994): 217–384.

²⁹ Santiago Villalpando, “The Legal Dimension of the International Community: How Community Interests Are Protected in International Law,” *The European Journal of International Law* 21, no. 2 (2010): 395.

³⁰ For more see Villalpando, “The Legal Dimension,” 415.

law is to create a framework ensuring a sustainable future for all, and the efforts made for this purpose are reflected in different representative areas of law. A characteristic feature of this process is a shift of emphasis from the original specific consent of the contracting parties to the protection of individuals or to collective interests, for example in human rights law and refugee law³¹.

The implementation by States of the provisions of the Refugee Convention differs from the original assumptions that guided its adoption. They were reflected in the preamble to the Convention, in which, *inter alia*, we read that “human beings enjoy fundamental rights and freedoms without discrimination” (paragraph 2). It further states that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation” (paragraph 5). Recognizing the social and humanitarian nature of the problem of refugees, “the wish that all States (...) will do everything within their power to prevent this problem from becoming a cause of tension between States” (paragraph 6) is also expressed. In the preamble formulated in such a way, we find not only a reference to human rights. It is also about the necessity for States to cooperate and to take by them all measures to ensure that forced migrations do not cause conflicts between them. Practice shows that States have a problem coping with this task. They do not connect the obligation of international protection of refugees with the protection of community interests, considering rather that they are contrary to their individual interests.

In view of the increased influx of migrants from sensitive places in the world and forecasts that the problem will increase, for example, due to climate changes³², it is necessary to take appropriate steps to find common solutions. Perceiving the issue in an individual way is quite dangerous and

³¹ Eyal Benvenisti and Georg Nolte, “Community Interests Across International Law: Introduction,” *Global Trust Working Paper* 7 (2017): 2.

³² According to the estimates by N. Myers, presented in 2005 at the 13th Economic Forum in Prague, by 2050 about 200 million people may leave their place of residence. In his opinion, the reason will be “disruptions of monsoon systems and other rainfall regimes, by droughts of unprecedented severity and duration, and by sea-level rise and coastal flooding”. Oli Brown, “Migration and Climate Change,” *IOM Migration Research Series* 31 (2008): 11.

becomes the cause of actions that contradict the assumptions of the concept of international protection of refugees and violate treaty obligations. An example of this are the solutions adopted in the Nationality and Borders Bill presented in the article. Such an approach may lead to situations generating tensions between States or threatening international peace and security in the world. As an example, it is enough to mention the conflict between England and France in the face of the increased influx of migrants to the UK in 2021, or the migration crisis on the Polish-Belarusian border that has been ongoing since mid-2021. Ultimately, however, it is the refugees who bear the greatest costs of the non-cooperation of States and their search for indirect solutions aimed at minimizing the effects of their obligation to international refugee protection.

4. Conclusions

The doctrine of public international law emphasises that collective interest should be invoked with caution and in a justified manner, as the primacy of community interests over other interests, including the interests of States in the legitimization of international law, cannot be taken for granted³³. It is also indicated that the survival of humanity may be difficult without the protection of community interests³⁴. This statement should be treated multi-dimensionally and in connection with various planes of the international community functioning, especially those that require joint action of States³⁵. In the case of refugee protection, the practice of States, which has been going on for more than half a century, has not brought about any specific solutions that should have been adopted in the face of the evolving and growing refugee problem. The lack of constructive cooperation is one of the main causes of neglect in this matter. It seems that any argument based on the individual interest of the State, including invoking its sovereignty, would be difficult to defend. The community interest overpasses the concept of State sovereignty, and not only because of rational arguments that require defending

³³ Samantha Besson, "Community Interests in International Law. Whose Interests Are They and How Should We Best Identify Them?" in *Community Interests Across International Law*, ed. Eyal Benvenisti, Georg Nolte, Keren Yalin-Mor (Oxford: Oxford University Press, 2018), 37.

³⁴ Yoshifumi Tanaka, "Protection of Community Interests in International Law: The Case of Sea Law," *Max Planck Yearbook of United Nations Law* 15 (2011): 375.

³⁵ Benvenisti, Nolte, "Community," 3.

the fundamental values common to the entire international community, such as those resulting from human rights. This superiority should also be sought in what the community interest defends in a broader sense. Tensions between States can have far-reaching consequences, including those whose essence is to maintain international peace and security. The implementation of this goal is undoubtedly also in the interests of the individual States. Therefore, the perception of the refugee issue and the effects of postponing its multilateral solution should be fundamentally changed. It is hard to disagree with J.C. Hathaway, who postulates conclusion of an agreement regulating “both a fair sharing of (financial) burdens and (human) responsibility”³⁶. In his opinion, the right solution would be to create a globally managed refugee protection system and adopt regulations in which “refugees are simply the object, not the subject of the agreement”. In a completely human and ethical dimension, it should be said after J.C. Hathaway that “It is high time for a reform that puts refugees (...) first, and which recognizes that keeping a multilateral commitment to refugee rights alive requires not caution, but rather courage”³⁷. However, counting more on common sense than the courage of States, it seems that the impetus for taking an appropriate initiative could be the perception of international protection of refugees as a matter closely related to acting for community interests in which States should perceive protection of individual interests.

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³⁶ James C. Hathaway, “The Global Cop-Out on Refugees,” *International Journal of Refugee* 30, no. 3 (2018): 601.

³⁷ *Ibidem*, 603 and 604.

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