This assessment piece is worth 25% of the total unit mark. You are required to answer the question and follow the instructions on the "Functions of law" document I have attached. The essay is to be 800-1200 words in length divided clearly into two sections: the first section you should summarise the main points (introduction or summary). The balance of the response, set forth in the second section (analysis), must provide a critique of the main points. The analysis should lead to a conclusion. AGLC4 footnoting and referencing must be used and a bibliography as well.

**The presented question is: What are the most important functions of law and its relationship in society? Why are these important? Support with examples’ application in society. Try find Australian examples. If you cannot find Australian examples, US or UK examples will do.**

**These include:**

* **Social control**
  + to ensure that individuals engage in “right conduct” (social pressure vs. legal punishment)
* **Dispute resolution**
  + Informal and formal
* **Social change**
  + Civil rights movement

You may address disfunctions of law if you find any research on it and can compare it to functions of law.

**I am providing sources that I wish for you to implement in the essay:**

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2885&context=caselrev>

Major Functions of Law in Modern Society Featured David A. Funk

<https://in.sagepub.com/sites/default/files/upm-assets/86864_book_item_86864.pdf>

<https://www.researchgate.net/publication/333987606_The_Functions_of_Law_and_their_Challenges_The_Differentiated_Functionality_of_International_Law>

The Functions of Law and their Challenges:

The Differentiated Functionality of International Law

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The Functions of Law and their Challenges: The Differentiated Functionality of International Law

Dana Burchardt.

<https://openknowledge.worldbank.org/bitstream/handle/10986/25880/9781464809507_Ch03.pdf?sequence=35&isAllowed=y>

### [The role of law - Open Knowledge Repository](https://openknowledge.worldbank.org/bitstream/handle/10986/25880/9781464809507_Ch03.pdf?sequence=35&isAllowed=y)

<https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1084&context=honors>

The Role of Law: How Law Shapes and Alters the Foundations of Societies

<https://essentialseducation.com.au/app/uploads/SACE-2-Legal-Studies-Textbook-Sample-Pages-1.pdf>

SACE-2-Legal-Studies-Textbook-Sample-Pages-1.pdf

<https://openoregon.pressbooks.pub/ccj230/chapter/8-1-functions-and-limitations-of-law/>

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3526&context=penn_law_review>

ON THE EXPRESSIVE FUNCTION OF LAW CASS R. SUNSTEINt

<https://www.sagepub.com/sites/default/files/upm-binaries/64396_Lippman_chapter_1.pdf>

Lippman 2015 An Introduction to Law and Society 1 Law and society 1-42 (1).pdf

**Please mainly use all the sources provided above. But can you please navigate more. Please use scholarly sources such as reputable journals and books for information. Websites can be ONLY used for examples of how these important functions of law are shown in Australian society. If websites are used, they MUST be reputable and scholarly. Please use resources that are accessible to all, I must be able to go through the reference list and be able to visit and read the sources myself.**

**Please use strict AGLC4 referencing for footnotes and a bibliography. Do not use AGLC referencing. Please use the 4th edition.**

**Here is a guideline on how to do it.**

<https://law.unimelb.edu.au/__data/assets/pdf_file/0005/3181325/AGLC4-with-Bookmarks-1.pdf>

This is the marking criteria:

Your response essay will be marked based on the following criteria:

**STRUCTURE, EFFECTIVE COMMUNICATION AND FORMAT 10%**

|  |  |  |
| --- | --- | --- |
| Headings (introduction, analysis, conclusion) | 2 |  |
| Word limit 800-1200 | 2 |  |
| Paragraph use | 2 |  |
| Sentences and grammar / clarity of thought and expression | 3 |  |
| Appropriate margins & fonts | 1 |  |
| **TOTAL** | 10 |  |

**CONTENT 15%**

|  |  |  |
| --- | --- | --- |
| Identifies relevant issues | 1 |  |
| Demonstrates understanding of materials: draws links between concepts discussed in lectures and tutorials and the provided examples | 2 |  |
| Discusses and analyses relevant arguments and evidence | 3 |  |
| Argument: developed and structured logically | 3 |  |
| Researched appropriate (scholarly) and relevant materials | 2 |  |
| Engaged with the referenced materials: critical evaluation rather than mere description | 3 |  |
| Correct referencing | 1 |  |
| **TOTAL** | 15 |  |

|  |  |  |
| --- | --- | --- |
| **TOTAL (FORMAT + CONTENT) 25%** | 25 |  |

I am also attaching an example of a response essay provided by the teacher. This is said to be a high mark:

**Australia and international law on the protection of refugees:**

**a slippery slope to a rogue state**

**Introduction**

We Australians pride ourselves on being a developed country with outstanding governance according to well-established, widely accepted law administered by trustworthy legal institutions. Our heritage comes from the UK with its common law tradition extending some eight hundred years to the 12th century. We enjoy reputation of an active supporter of international efforts in preventing conflict and restoring peace and security, while exercising a strong leadership role in the South-East Asia and the Pacific region.

However, our treatment of asylum seekers indicates that Australia might be slipping away from these traditions. An apparent breach of international law regarding asylum seekers illustrates our political leaders’ decision to walk away from our legal foundations and jeopardise not only our standing in the region and globally, but the very order of our society. Walking away from these legal foundations is walking the path to rogue state status. Noam Chomsky defines a rogue state as a state that defies international laws and conventions, does not consider itself bound by the major treaties and conventions, World Court decisions — in fact, anything except the interests of its own leadership, the forces around the leadership that dominate policy.[[1]](#footnote-1)

This paper discusses Australia’s compliance with international law in regard to the treatment of asylum seekers. It is a response to a tutorial question considering the consequences of Australia’s non-compliance with international law.

**Analysis**

**Obligation and Applicable Law**

The 1951 Refugee Convention came out of the Second World War when it was acknowledged around the globe that citizens may well be persecuted by their own governments and driven from their homes, not by their own volition. The Convention defines who is a refugee and outlines basic rights that countries that are signatories to the Convention should guarantee to refugees. The Convention is the international community’s acknowledgment that a basic right to escape to save one’s life is a basic human right.[[2]](#footnote-2) A second related right is that governments should not return people running for their lives to the governments persecuting them, known as the principle of *non-refoulement*. This principle applies not only to persons who have been recognised as refugees in the relevant legal procedure but also to asylum seekers, who do not have their refugee status yet declared.[[3]](#footnote-3)

Accordingly, governments that are signatories to the 1951 Refugee Convention have the duty owed to refugees to allow their entrance and seek ‘durable solutions’ for their membership in the community, even when they are not necessarily the state of first admission.[[4]](#footnote-4) However, the Convention also places limitations on who can seek protection. Importantly, the definition of a refugee does not include individuals who leave their country simply in search for a better life.[[5]](#footnote-5)

**Government Non-compliance**

Australian governments have a policy that not only denies asylum seekers the rights Australia agreed to grant and honour when it signed the 1951 Refugee Convention but go so far as to imprisons asylum seekers without charge or trial.[[6]](#footnote-6) Their only ‘crime’ has been to flee troubled countries without a valid visa or travel document, which in most cases would be objectively difficult to obtain in the given circumstances. Under international law, persons facing prosecution and seeking asylum should not be punished for arriving to safe countries without an authorisation nor should they be considered ‘unlawful non-citizens’ if seeking asylum.[[7]](#footnote-7)

Despite these clear international legal obligations, governments’ responses have been to take a hard-line rejection of asylum seekers who come by boat (but not by plane) telling them they “will never settle in Australia.” Australia’s leading, non-partisan body of legal experts, the Law Council of Australia, identifies government policy as non-compliant with international law.[[8]](#footnote-8) The government’s treatment of asylum seekers breaches not only international refugee law but moreover, through asylum seekers’ detention, threatens fundamental common law freedoms. Thus it undermines the very order of our society.

Why does the government take this position? It is clearly not a matter of interpretation of international law. Governments of both sides of politics have realised that there is an advantage to creating an asylum seeker issue. Certain parts of Australian society can be made anxious by describing foreigners and asylum seekers as threats to Australia. Identifying those parts of society and using asylum seekers as a wedge issue – driving a wedge between voters – allows politicians to capture the small percentage of voters who will vote on the issue and so bring their particular party to power. This approach to compliance with international law obligations fits precisely with Chomsky’s definition of rogue state: a state that defies international laws and conventions, does not consider itself bound by the major treaties and conventions… anything except the interests of its own leadership.[[9]](#footnote-9) Australian political parties are not governing the country according to law but to enhance their chances of survival.

**Conclusion**

In its treatment of asylum seekers Australia may be headed toward rogue state status. Its decision to ignore fundamental human rights as set out in the United Nations 1951 Refugee Convention, a Convention to which it is a signatory, and to do so for political purposes fits precisely with Chomsky’s definition of rogue state. Although other cases of international law compliance need to be identified and evaluated before a clearer answer is available, the case of Australia’s extended breach of the Refugee Convention is not promising for those who look to international law as a means of ensuring safety and order on our planet.

1. Noam Chomsky, *Rogue States: The Rule of Force in World Affairs* (Pluto Press, 2000). [↑](#footnote-ref-1)
2. Joan Fitzpatrick, ‘Revitalizing the 1951 Refugee Convention’ (1996) 9 *Harvard Human Rights Journal* 229. [↑](#footnote-ref-2)
3. UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulment Obligations under 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (2007), https://www.unhcr.org/4d9486929.pdf [↑](#footnote-ref-3)
4. Matthew Lister, ‘Who are Refugees’ (2013) 32 *Law and Philosophy* 645. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Asher Lazarus Hirsch, ‘The Borders Beyond the Border: Australia’s Extraterritorial Migration Controls’ (2017) 36(3) *Refugee Survey Quarterly* 48. [↑](#footnote-ref-6)
7. Janet Phillips, ‘Asylum seekers and refugees: what are the facts?’ (Research Paper, Parliamentary Library, Parliament of Australia, 2 March 2015). [↑](#footnote-ref-7)
8. Law Council of Australia, *Asylum Seeker Policy* (2013),

   https://www.lawcouncil.asn.au/publicassets/406c7bd7-e1d6-e611-80d2-005056be66b1/Policy-Statement-Asylum-Seeker-Policy.pdf [↑](#footnote-ref-8)
9. Chomsky n 1. [↑](#footnote-ref-9)