

## Ex-Raying the Role of International Law in Protecting the Rights of Refugees in the 21<sup>st</sup> Century

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### Abstract

Owing to the complexity of societies and the increased contact which comes with intensified relations in our globalized world, the need for rules become even more necessary for the promotion of international cooperation and development and the avoidance of conflict and chaos. More so, the conflicts and wars stemming from relationship between countries leave in their wake problems like refugee crises that international law necessarily has to try to handle. The mandate of international law is thus to promote and protect human rights at the international, regional and domestic level. This paper examines the role of international law in protecting the right of refugees through the use secondary sources of data. The paper underscores the fact that through the instrumentality of modern refugee law, which has its origin in the aftermath of the 2<sup>nd</sup> world war, countries have been granting protection to individuals and groups fleeing persecution for centuries as refugees. These elaborate legal frameworks were examined using the liberal theory of international relations. The paper contends that despite the existence of the international refugee regime, a lot still needs to be done since states as the primary enforcers of refugee laws are reluctant to adhere and observe these rules to the letter. Similarly, the study also discovered that factors like the changed nature of conflict, burgeoning number of refugees and legal and operational difficulties in the definition of refugees have served as obstacles that have made it difficult for states to dispense their responsibilities under the extant regime. In closing, the paper recommends measures like good governance, more specific definition of states responsibility with respect to refugees and support for states that are confronted with a large number of refugees.

### Keywords:

Refugee,  
International, Law,  
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## **Background to the Study**

Suffice is to say that one of the fall outs of the increased complexity of our globalized world is the issue of refugees. While the presence of refugees is by no means a new phenomenon, the handling of individuals so tagged has become an increasingly politically sensitive and logistically difficult challenge for states. There are, of course, many reasons for this increase in complexity, which differs country by country, region by region. In aggregate, the reasons include: the changing nature of displacement; the costs, of many sorts, of hosting refugees; the spread of irregular migration and trafficking of people, which has blurred the “migrant/refugee” distinction; and a growing gap between the people in need of protection today and the instruments and tools we have available to provide it. Because of these developments, the Office the United Nations High Commissioner for Refugees (UNHCR) estimates that there are over 65 million refugees scattered across the world (UNHCR 2016).

It with these developments, namely the peculiar nature of refugees law as a part of international law, and the proliferation of refugees, in mind, that this paper examines the role of international refugee law in protecting refugees. In specific terms the paper investigates, first, to what extent the international refugee laws has being effective in protecting refugees, and, secondly, the nature of the challenges that have mitigated the effectiveness of the international refugee law. This paper is structured in to background to the study, conceptual issues, the international law, the concept of refugee, theoretical framework, methodology, literature review, refugees and international law, refugee's protection and the application of international law, conclusion and recommendations.

## **Conceptual Issues**

### **International Law**

International law has been defined by various scholars in different ways. While the proliferation of definitions can be said to stem from the complexity of the term due to its nature, which begets the problem of applicability and observance amongst nations in the international system, the peculiar nature of some of the issues it handles is another reason for the theoretical, legal and operational complications confronted in grappling, theoretically and operationally, with the term. One of such issues is the problem of refugees. Notwithstanding the issues surrounding the theoretical and legal definition of international law, the concept of international law can be simply seen as the rules and principles that govern states in their actions. Umozurike (1993) asserts that as a result of the complexity of societies and increased contact, the need for rules has become even more necessary for the promotion of international cooperation and development and the avoidance of conflict and chaos.

### **The Concept of Refugee**

The 1951 United Nations convention defined the term refugee to mean any person who owing to a well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and unable or owing to such fear, is unwilling to avail himself of the protection of that country. On its part, the organisation of African Unity (now African Union) convention governing the specific aspect of refugee problem in Africa adopted a regional treaty in 1969 and the Cartagena Declaration of Latin-American government representatives of 1984 have expanded the definition of refugee based on the 1951 convention refugee definition to

include persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances which have seriously disturbed public order.

### **Theoretical Framework**

Liberalism as a theory of international relations is used as a theoretical guide to examine the role of international law in protecting the right of refugees. Liberalism is predicated on the hope that the application of reason and universal ethics to international relations can lead to a more orderly, just, and cooperative world, and that the international anarchy and war can be policed by institutional reforms that empower international organisation and law. The proponents of liberal theory of international relation include David Hume, James Madison, John Stuart Mills, Immanuel Kant, Adam Smith, Jean Jacques Rosseau, Richard Cobden, among others. Cobden for example, argued for the possibility of peace across borders. In his view, if contact and communication among people could expand through free trade, so too would international friendship and peace, secured by prosperity that would create interdependence and eliminates the need for military force to pursue rivalries (Kegly & Wittkopf, 2004:33)

Liberalism underscores the impact ideas have on the behaviour, the quality, dignity and liberty of individual, and the need to protect people from excessive state regulation. Liberalism views individual as the seat of moral value and virtue and asserts that human beings should be treated as ends rather than means. Some tenets of the liberal theory include:

1. Reforms must be inspired by compassionate ethical concerns for the welfare and security of people, and this humanitarian motive requires the inclusion of morality in statecraft.
2. International society must reorganize itself in order to eliminate the institutions that make war likely, and states must reform their political system so that democratic governance and civil liberties within states protect human right and help pacify relations among states
3. That war is global problem requiring a collective or multilateral rather than national effort to control it.

The relevance of liberalism to the issue of refugees lies in the emphasis the theory puts on the importance of individual, their essential dignity and fundamental equality which logically leads to the need to protect and promote human right and civil liberties through international laws. Therefore, refugees, no more and no less than any other category of human beings, are entitled to protection through laws and institutions. Moreover, the legal and precarious existential situation of refugees demands that their welfare be articulated and provided for in international an instrument, that, as far as is possible, brings into responsibility all states of the world. Simply put, only international law, notwithstanding the problems of ratification and application, a consequence of the differential technical and resource endowment of states and the blatant pursuit of national interest, can increase the possibility that the fundamental worth of the individual, which lies at the heart of liberalism, is observed.

## Methodology

The method employed in the paper is documentary analysis of secondary sources. The study is basically a library based and through the interrogation of secondary sources of data, comprising, amongst others, of books, journal articles, internet materials and publications of agencies authorized to deal with refugees like United Nation High Commissioner for Refugees (UNHCR).

## Literature Review

According to Phuong, (Undated) the international refugee protection system, which is firmly based on the 1951 Refugee Convention, suffers from a fundamental problem, namely the lack of clear identification of the respective responsibilities of states towards refugees (and also towards other states). Under the Convention, states have a duty of *non-refoulement* (article 33) and the duty to grant to refugees who are on their territory a range of legal rights (articles 2 to 32). Beyond that, the Convention says nothing about which state should protect, at which stage, which refugee. Issues of state responsibility for protecting refugees go well beyond the granting of asylum/admission: even where a refugee has found physical safety in one state, other states are not exonerated from their responsibility to contribute to his legal and material security in the country of first asylum and to find durable solutions.

For Guild, Monnet and Moreno-lax (2013: 5) there are two strands of international law providing for international protection: international refugee law and international human rights law which are complemented by regional instruments. Of these regional instruments, the most important are the European Convention on Human Rights, the European Union (EU) Charter of Fundamental Rights, the African Convention on Human and Peoples' Rights, the African Convention on Refugees, and the American Convention on Human Rights. But despite the existence of these international instruments, the system has been rendered inaccessible to its addressees, that is the refugees, either through indiscriminate border and migration controls deployed extraterritorially that block prospective beneficiaries *en route* or through the operation of procedural devices, such as the 'safe third country' notion, that push responsibility away from the EU member States.

While the good intentions of the framers of international and regional instruments for the protection of refugees is not in doubt, the success of this regime has been reduced by factors that, for want of a better term, can be described as environmental. In the words of Feller (2001:8)

*Some states that were formally devout practitioners are starting to distance themselves from its basics as they seek to redefine their responsibilities in the face of the changed nature of conflicts, ever-larger numbers of vulnerable people, and a globalized irregular migration movement. Waning public support for refugees and a resurgence of xenophobia have found their political expression, in many countries, in taking a harder line toward those who come uninvited.*

Feller (2001) also supports the idea that mounting challenges from the environment has further complicated the issue of refugees. He contends that during the 1980s and 1990s, substantial changes came about in the environment in which international refugee

protection had to be realized. These changes not only placed basic concepts in question, they also impacted on both political will and readiness of local host communities to continue to offer asylum on the generous terms of the past. The numbers of refugees grew exponentially, no longer as a product of struggles for independence but due to the steep rise in internal inter-ethnic conflicts in now independent States. The conflicts were fuelled by superpower rivalry and aggravated by socioeconomic problems in developing countries. Solutions to refugee problems became even more elusive whether in Afghanistan, with 2.5 million Afghan refugees remaining in exile today, and in Syria with a burgeoning refugee situation (9 million according to Khan 2015) scattered, under different levels of refugee protection, in Jordan, Egypt, and Turkey, Lebanon as well as some European countries.

Bearing these developments in mind, Khan (2015) opines that although international law can serve to publicize the plight of refugees and to provide a platform on which their rights can be discussed, as well as offering an avenue of indirect, if not direct, legal protection, he still insists the current problem with the international framework for the protection of refugees is one that is embedded far too deeply in the realm of politics; It is unlikely that international law, at least on a general level, will be able to compel States to act in a certain manner. Thus, the issue of sovereign states retaining the right, first to assent and then to ratify treaties, in general, lies at the heart of the recurrent problem of the handling of refugees.

### **Refugee and the International Law**

There are laws in terms of conventions and protocols relating to the rights and protection of refugees. The 1951 convention relating to the status of refugee is seen as the foundation of international refugee law. The refugee convention sets the minimum standards for the treatment of persons who are found to qualify for refugee status. However, it is important to note that the 1951 convention was drafted in the wake of 2<sup>nd</sup> world war, and therefore the definition of refugee base on the 1951 focuses on persons who are outside their country of origin and are refugee as a result of the events occurring in Europe or elsewhere before 1<sup>st</sup> January 1951. The 1967 protocol relating to the status of refugee was drafted as a protocol to the 1951 convention to widen both the temporal and geographical scope of the refugee convention. It is seen as independent even though it is integrally related to the 1951 convention. It lifts the time and geographic limit found in the convention's refugee definition.

The refugee convention and protocol covers three main subjects namely:

1. The basic refugee definition, along with terms for cessation of, and exclusive from refugee status.
2. The legal status of refugee in their country of asylum, their rights and obligation including the right to be protected against forcible return or refoulment to a territory where their lives or freedom would be threatened and lastly;
3. State's obligation, including cooperating with United Nation High Commissioner for Refugees (UNHCR) in the exercise of its functions and facilitating its duty of supervising the application of the convention.

Regional bodies also have their legal instruments regarding the right and the management of refugees which is applicable to their member states. Examples of such regional frameworks include the 1969 OAU Convention governing the specific aspect of refugee problem, which

was specifically informed by the conflict that accompanied the end of colonial era in Africa. The conflict led to succession of large-scale refugee movement and prompted the need to have a regional instrument for dealing with the issue of refugees in Africa. The African Refugee Convention of 1969 while reaffirming the earlier conventions, applied to the specific conditions of refugees in Africa where over half of the world's estimated 10 million refugees are located (Umozurike, 1993:166).

The 1984 Cartagena Declaration on Refugee for Latin-America which was convened in Cartagena, Colombia to discuss the international protection of refugee in the region.

The rights of refugees based on the 1951 convention and the 1967 protocol covers issues relating to:

1. **Non-refoulement:** This refers to the obligation of states not to refoule, or return, a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (GC:art. 33(1))
2. **Freedom of Movement:** Article 26 of the 1951 convention provides that states shall afford refugees the right to choose their place of residence within the territory and to move freely within the state.
3. **Right to Liberty and Security of Person:** The right to liberty and security of persons is important in the context of how asylum seekers are treated within the intended country of refuge.
4. **Right to Family Life:** The family is seen as a social group of society and is entitled to protection by society and the state, thus where an individual is granted asylum, his or her dependent relatives will also receive protection through him or her.
5. **Other Rights.** The 1951 convention also protects other rights of refugees, such as the right to education, access to justice, employment and other fundamental freedoms and privileges similarly enshrined in international and regional human rights treaties.

### **Refugees Protection and the Application of International Law**

The legal framework which supports the international refugee protection was built by states, and based on the 1951 convention and its protocol of 1967 as well as the regional instruments for the protection of refugees, is primarily the responsibility of the states. By necessity, the UNHCR has thus been working closely with governments as partners in refugee protection across the globe. With the assistance of UNHCR, governments have generously granted asylum to refugees and allowed them to remain until conditions were conducive for the refugees to return to their homes in safety and with dignity. For example, Iraq, Jordan, Lebanon and Turkey are hosting most of the Syrian refugees which are estimated to be around 2.2 million with Turkey alone hosting about 500,000 thousand (UNHCR 2015).

Despite international community's response through legal framework in addressing the crisis of refugees in the world, there are issues surrounding the applications and observance of such legal provisions. This is because Refugees are sometimes refused admission to safety or are being expelled from asylum countries, and even those who reached a potential country of asylum are sometimes being turned away or sent back without being able to apply for asylum. A good example of this can be seen in the current Syrian crisis where most of the European

Union countries place barriers to entry or forcibly returning asylum seekers who fled the conflict in Syria. Greece and Cyprus rejected the Syrians refugees and this is in clear violation of the international principles guiding the management of refugee. In 2015 alone it was estimated that about 1.3 million asylum seekers applied for asylum in EU countries with many of them turned down. Similarly, James (2016) observed that the refugee crisis has highlighted deep division among the EU countries, with member states reintroducing border control in the passport-free schengen zone ostensibly to make the movement of the refugees more difficult.

There is also the issue of refugee being the targets of violent attacks and intimidation, largely because they were perceived as different from the countries in which they had temporary settled. The massacre of more than 200,000 refugees during the 1996-97 war in Congo illustrates the gap between existing legal standards and their application. The crisis in Rwanda of 1994 which forced about an estimated 1.2 million Rwandans to flee to neighbouring Congo and Uganda, with no adequate provision for shelter and security, and tension always erupts between refugees and local population because refugees are seen as competitors for natural and economic resources, armed combatants are been allowed to mingle freely with-and intimidate with seeming impunity.

### **Conclusion**

In conclusion, that the existence of an elaborate body of principles and legal framework does not automatically translate to their application and observance is obvious from the discussion so far. This is evident in view of the fact that most countries do not apply these laws in all circumstances especially the developed countries. The recent upsurge of terrorist attacks in countries like the UK, Germany and France has further complicated the political equation of otherwise well meaning leaders like Angela Merkel. This trend has made it difficult for the international refugee regime to effectively provide a solution for the abuses that characterize the treatment of the refugees in the international system. And in view of the lingering Syrian crisis, among other ample sources of refugees, there is an urgent need for concerted effort to resolve the mounting odds on the way of making the world receptive to the needs of refugees. In light of this, the following suggestions are put forward.

### **Recommendations**

1. There should be a clear system of definition and allocation of responsibilities in the international refugee laws along global, continental and regional levels based on the scale of refugees that a particular crisis has produced.
2. States neighboring states experiencing endemic conflicts should be given all form of support that would enable them to discharge their asylum responsibility adequately.
3. Good governance has to be enshrined and sustained in fragile states that mostly serve as ample sources of refugee.

## References

- Feller, E. (2001). The evolution of the international refugee protection regime. *Journal of Law and Policy*. [https://law.wustl.edu/harris/documents/p129\\_Feller.pdf](https://law.wustl.edu/harris/documents/p129_Feller.pdf) Retrieved 28th April, 2017.
- Feller, E. (2001) *International refugee protection 50 years on: the protection challenges of the past, present and future IRRC*. 83 (843). [https://www.icrc.org/eng/assets/files/other/581-606\\_feller.pdf](https://www.icrc.org/eng/assets/files/other/581-606_feller.pdf) Accessed 28th April, 2017.
- Goodwin-Gill G. (1996). *The refugee in international law*. 2<sup>nd</sup> ed. Oxford University Press.
- Guild, E., Moreno-Lax, V. & Monnet, J. (2013). *Current challenges for international refugee law, with a focus on EU policies and EU co-operation with the UNHCR*. Belgium: European Union.
- James, C. (2016). *Refugee faces Asylum rejection if they leave country of arrival* <http://www.euractiv.com/section/global-europe/news/under-new-eu-rules-refugees-face-asylum-rejection-if-they-leave-country-of-arrival/>
- Khan, A. A. (2015). Can international law manage refugee crises?. *Oxford University Undergraduate Law Journal*. [https://www.law.ox.ac.uk/sites/files/oxlaw/field/field\\_document/4.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/field/field_document/4.pdf) Retrieved 28th April, 2017.
- Kegly, W. C. & Witkope R. E (2004). *World Politics: Trends and transformation*. Belmont, Wadsworth/Thompson Publishers, U.S.A.
- Phuong, C. (2017). *Identifying states' responsibilities towards refugees and asylum seekers*. <http://www.esil-sedi.eu/sites/default/files/Phuong.PDF> Retrieved 28th April.
- Umozurike, O. (1993). *Introduction to International Law*. Ibadan: Spectrum Law publishers
- UNHCR (2001) *Refugee protection: a guide to international refugee law*, Oxford University Press.
- UNHCR (1995). *Collection of international instrument and other legal texts concerning Refugee and Displaced persons .2.*
- UNHCR (1995). *The state of the world refugees in search of solutions*. Oxford University Press.