AFE BABALOLA UNIVERSITY, ADO EKITI

DEPARTMENT OF PEACE AND CONFLICT STUDIES

AN ASSIGNMENT ON:

CONFLICT AND HUMAN DISPLACEMENT

THE REGIONAL AND GLOBAL INSTRUMENTS FOR REFFUGEE PROTECTION AND THEIR LIMITATIONS

PRESENTED BY:

RHEMA AYIMO SALAMIS - 16/SMS10/016

SUMITTED TO:

MISS. BETHEL ADEDEJI

APRIL 2020

**INTRODUCTION**

The **Responsibility to Protect** (**R2P** or **RtoP**) is a global political commitment which was endorsed by all member states of the [United Nations](https://en.wikipedia.org/wiki/United_Nations) at the [2005 World Summit](https://en.wikipedia.org/wiki/2005_World_Summit) in order to address its four key concerns to prevent [genocide](https://en.wikipedia.org/wiki/Genocide), [war crimes](https://en.wikipedia.org/wiki/War_crime), [ethnic cleansing](https://en.wikipedia.org/wiki/Ethnic_cleansing) and [crimes against humanity](https://en.wikipedia.org/wiki/Crimes_against_humanity). The principle is based on a respect for the [norms](https://en.wikipedia.org/wiki/Norm_(social)) and principles of [international law](https://en.wikipedia.org/wiki/International_law), especially the [underlying principles of law](https://en.wikipedia.org/wiki/Customary_international_law) relating to sovereignty, peace and security, [human rights](https://en.wikipedia.org/wiki/Human_rights), and armed conflict. The Responsibility to Protect provides a framework for employing measures that already exist (i.e., [mediation](https://en.wikipedia.org/wiki/Mediation), early warning mechanisms, [economic sanctions](https://en.wikipedia.org/wiki/Economic_sanctions), and [chapter VII powers](https://en.wikipedia.org/wiki/Chapter_VII_of_the_United_Nations_Charter)) to prevent atrocity crimes and to protect [civilians](https://en.wikipedia.org/wiki/Protection_of_civilians) from their occurrence.

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

**INTERNATIONAL REFUGEE LAW**

**Refugee law** is the branch of [international law](https://en.wikipedia.org/wiki/International_law) which deals with the rights and duties States have vis-a-vis refugees. It is only in 1951 that the international community established a regime for the international protection of refugees. The Geneva Convention Related to the Status of Refugees is the main source of legal protections for refugees. IRL provides a specific definition of refugee, safeguards the right to seek asylum, and protects against being forcibly returned to a country where one would face persecution (non-refoulement). The UN High Commission for Refugees (UNHCR) is mandated by the UN General Assembly to provide international protection to refugees and seek permanent solutions to their plight

**GLOBAL INSTRUMENTS FOR REFUGEE PROTECTION**

Modern Refugee law can now be traced back nearly 100 years, to legal and institutional initiatives taken by the League of Nations, first, in the appointment of a High Commissioner for Refugees in 1921, and then in agreement the following year on the issue of identity certificates to ‘any person of Russian origin who does not enjoy or no longer enjoys the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired another nationality’. After the Second World War, the refugee question became highly politicized ([Goodwin-Gill 2008](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-3)), and the UN’s first institutional response to the problem—the International Refugee Organization (IRO), a specialized agency—was opposed by the Soviet Union and its allies, remaining funded by only 18 of the 54 governments which were then members of the United Nations. Notwithstanding the politics of the day, tens of thousands of refugees and displaced persons were resettled under IRO auspices, through government selection schemes, individual migration, and employment placement ([Holborn 1975](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021" \l "oxfordhb-9780199652433-e-021-bibItem-9); [Loescher and Scanlan 1986](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021" \l "oxfordhb-9780199652433-e-021-bibItem-10)).

In 1951, the IRO was replaced by a new agency, an initially non-operational subsidiary organ of the UN General Assembly charged with providing ‘international protection’ to refugees and seeking permanent solutions. The Statute of the United Nations High Commissioner for Refugees (UNHCR) was adopted on 14 December 1950, and the Office came into being on 1 January 1951. Its mandate was general and universal, including refugees recognized under earlier arrangements, as well as those outside their country of origin who were unable or unwilling to return there owing to well-founded fear of persecution on grounds of race, religion, nationality, or political opinion. Once a temporary agency, UNHCR was put on a permanent basis in 2003, when the General Assembly renewed its mandate ‘until the refugee problem is solved’.[3](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021" \l "oxfordhb-9780199652433-e-021-note-3)

From the start, UNHCR’s protection responsibilities were intended to be complemented by a new refugee treaty, and the 1951 Convention relating to the Status of Refugees was finalized by states at a conference in Geneva in July 1951; it entered into force in 1954 ([Goodwin-Gill 2009](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-4)). Notwithstanding the intended complementarity, there were already major differences between UNHCR’s mandate, which was universal and general, unconstrained by geographical or temporal limitations, and the refugee definition forwarded to the Conference by the General Assembly. This reflected the reluctance of states to sign a ‘blank cheque’ for unknown numbers of future refugees, and so was restricted to those who became refugees by reason of events occurring before 1 January 1951; the Conference was to add a further option, allowing states to limit their obligations to refugees resulting from events occurring *in Europe* before the critical date.

The difficulty of maintaining a refugee definition bounded by time and space was soon apparent, but it was not until 1967 that the Protocol relating to the Status of Refugees helped to bridge the gap between UNHCR’s mandate and the 1951 Convention. The Protocol is often referred to as ‘amending’ the 1951 Convention, but in fact it does no such thing. States parties to the Protocol, which can be ratified or acceded to without becoming a party to the Convention, simply agree to apply Articles 2 to 34 of the Convention to refugees defined in Article 1 thereof, as if the dateline were omitted (Article I of the Protocol). Cape Verde, the United States of America, and Venezuela have acceded only to the Protocol; Madagascar and St Kitts and Nevis remain party only to the Convention; and Madagascar and Turkey have retained the geographical limitation. The Protocol required just six ratifications and it entered into force on 4 October 1967.

**Non-refoulement**

The word *refoulement* derives from the French *refouler*, which means to drive back or to repel. The idea that a state ought not to return persons to other states in certain circumstances was first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees. It was not widely ratified, but a new era began with the (p. 40) General Assembly’s 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin. An initial proposal that the prohibition of *refoulement* be absolute and without exception was qualified by the 1951 Conference, which added a paragraph to deny the benefit of *non-refoulement* to the refugee whom there are ‘reasonable grounds for regarding as a danger to the security of the country...or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.’ Apart from such limited exceptions, however, the drafters of the 1951 Convention made it clear that refugees should not be returned, either to their country of origin or to other countries in which they would be at risk; they also categorically rejected a proposal allowing for ‘cancellation’ of refugee status in cases of criminal or delinquent behavior after recognition.

Today, the principle of *non-refoulement* is not only the essential foundation for international refugee law, but also an integral part of human rights protection, implicit in the subject matter of many such rights, and a rule of customary international law.Every state is obliged to implement its international obligations in good faith, which often means incorporating international treaties into domestic law, and setting up appropriate mechanisms so that those who should benefit are identified and treated accordingly. The 1951 Convention is not self-applying, and while recognition of refugee status may be declaratory of the facts, the enjoyment of most Convention rights is necessarily contingent on such a decision being made by a state party..

REGIONAL INSTRUMENTS

1. **OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA OF 10TH SEPTEMBER 1969 (AFRICA)**

The [Organization of African Unity](https://en.wikipedia.org/wiki/Organisation_of_African_Unity) (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, also called the OAU Refugee Convention, or the 1969 Refugee Convention, is regional legal instrument governing [refugee](https://en.wikipedia.org/wiki/Refugee) protection in Africa. It comprises 15 articles and was enacted in [Addis Ababa](https://en.wikipedia.org/wiki/Addis_Ababa) on September 10, 1969 and entered into forced on June 20, 1974. It builds on the [1951 Refugee Convention](https://en.wikipedia.org/wiki/Convention_Relating_to_the_Status_of_Refugees) and the [1967 Protocol](https://en.wikipedia.org/wiki/Protocol_Relating_to_the_Status_of_Refugees) and it has influenced the 1984 [Cartagena Declaration](https://en.wikipedia.org/wiki/Cartagena_Declaration) and the 2009 [Kampala Convention](https://en.wikipedia.org/wiki/Kampala_Convention). The 1969 Refugee Convention's historical context is the era of [decolonization](https://en.wikipedia.org/wiki/Decolonization), [Apartheid](https://en.wikipedia.org/wiki/Apartheid), as well as internal political and military uprisings.

It was signed by 41 states or governments and has currently been ratified by 45 of the 54 member states of the [African Union](https://en.wikipedia.org/wiki/African_Union). It is the only binding, regional [legal instrument on refugee issues](https://en.wikipedia.org/wiki/Refugee_law) in the developing world and a regional complement of the 1951 Refugee Convention. The 1969 Refugee Convention has made some significant advances from the 1951 Refugee Convention.

The 1969 Refugee Convention has made some significant advances from the 1951 Refugee Convention.

* Discrimination against refugees is prohibited on the additional grounds of membership of a particular social group, nationality, or political opinion. These grounds were absent in the 1951 Refugee Convention.
* Any refugee who has “committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee” or who "acts contrary to the purposes and principles of the OAU" will be excluded from the definition. It also contains a prohibition for refugees and asylum seekers to engage in any subversive activities against any member states.
* It contains suggestions for burden- and responsibility sharing, solidarity and cooperation between the member states, such as regional resettlement and financial support.
* It de-politicized the concept of asylum, a peaceful and humanitarian act, and declared that it shall no longer be perceived by member states as an unfriendly act and it urges the member states to grant asylum to those individuals who fall within the refugee definition. Whereas it advances here from the 1951 Refugee Convention it does still not grant an individual the right to asylum (it remains the state's discretion to grant this right)
* It introduced the *"absolute"* prohibition of [refoulement](https://en.wikipedia.org/wiki/Refoulement), whereas the 1951 Refugee Convention allowed return or expulsion of refugees if the national security of the state would be at risk. However, if asylum seekers commit certain serious crimes, they will be excluded from the refugee definition and could still be returned or expelled. Refoulement is thus only limited but not absolutely prohibited.
* The principle of [voluntary repatriation](https://en.wikipedia.org/wiki/Voluntary_repatriation) was first codified. However, the situation in the country of origin to which the refugee would return was not defined and thus a fundamental change in circumstances and human rights standards in that country is not needed.

|  |
| --- |
| 1. **PROTOCOL FOR THE TREATMENT OF PALESTINIANS IN ARAB STATES ("CASABLANCA PROTOCOL" 1965) (MIDDLE EAST)**   League of Arab States, *Protocol for the Treatment of Palestinians in Arab States ("Casablanca Protocol")*, was ratified on the 11th of September On the basis of the Charter of the League of Arab States and its special annex pertaining to Palestine, and of the LAS Council resolution concerning the Palestinian issue, and, in particular, of the Special resolution pertaining to safeguarding Palestinian existence,  The Council of Foreign Ministers of Member states agreed, in its meeting in Casablanca on 10 September 1965, upon the following regulations, and called upon member states to take the necessary measures to put them into the sphere of implementation:   * Whilst retaining their Palestinian nationality, Palestinians currently residing in the land have the right of employment on par with its citizens. * Palestinians residing at the moment in accordance with the dictates of their interests, have the right to leave and return to this state. * Palestinians residing in other Arab states have the right to enter the land of ...... and to depart from it, in accordance with their interests. Their right of entry only gives them the right to stay for the permitted period and for the purpose they entered for, so long as the authorities do not agree to the contrary. * Palestinians who are at the moment in ......, as well as those who were residing and left to the Diaspora, are given, upon request, valid travel documents. The concerned authorities must, wherever they be, issue these documents or renew them without delay. * Bearers of these travel documents residing in LAS states receive the same treatment as all other LAS state citizens, regarding visa, and residency applications.  1. **BANGKOK PRINCIPLES ON STATUS AND TREATMENT OF REFUGEES” 24th JUNE 2001 AT THE AALCO’S 40TH SESSION, NEW DELHI (ASIA**)   Bangkok principles on status and treatment of refugees was adopted on 24 June 2001 at the Alco’s 40th session, new Delhi. It defines a refugee as a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion or membership of a particular social group: (a) leaves the State of which he is a national, or the Country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or, (b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection. It provides Asylum to a Refugee:   * Everyone without any distinction of any kind is entitled to the right to seek and to enjoy in other countries asylum from persecution. * A State has the sovereign right to grant or to refuse asylum in its territory to a refugee in accordance with its international obligations and national legislation. * The grant of asylum to refugees is a humanitarian, peaceful and non-political act. It shall be respected by all other States and shall not be regarded as an unfriendly act so long as its humanitarian, peaceful and nonpolitical nature is maintained. * States shall, bearing in mind provisions of Article X, use their best endeavors consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.   It also made provisions for Non-refoulement, e.g :   * No one seeking asylum in accordance with these Principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion * In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country * A State shall accord to refugees treatment no less favorable than that generally accorded to aliens in similar circumstances, with due regard to basic human rights as recognised in generally accepted international instruments. 2. T * the standard of treatment shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, to the extent they are applicable to refugees * A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.   It made provisions for Expulsion and deportation such as:   * Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary and as applicable to aliens under such circumstances. * A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, nationality, ethnic origin, religion, political opinion, or membership of a particular social group   Provisions for Right of return. Eg :   * A refugee shall have the right to return if he so chooses to the State of which he is a national or the country of his nationality or if he has no nationality to the State of which he is a habitual resident and in this event it shall be the duty of such a State or Country to receive him. * It shall be the duty of the Government or authorities in control of such place of habitual residence to facilitate, by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them. * The essentially, voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will. * The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.  1. **COUNCIL OF EUROPE COMMITTEE OF MINISTERS RECOMMENDATION No. R (84) 1 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION OF PERSONS SATISFYING THE CRITERIA IN THE GENEVA CONVENTION WHO ARE NOT FORMALLY RECOGNISED AS REFUGEES(EUROPE)**   It was adopted by the Committee of Ministers on 25 January 1984 at the 366th meeting of the Ministers' Deputies) The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members; Having regard to the Convention relating to the Status of Refugees of 28 July 1951 amended by the Protocol relating to the Status of Refugees of 31 January 1967, and particularly to Article 33 of the Convention; Considering that in the member states of the Council of Europe there are persons who satisfy the criteria given for definition of the term "refugee" within the meaning of Article 1 of the Convention of 28 July 1951 relating to the Status of Refugees amended by the Protocol of 31 January 1967 but who because they have not applied for refugee status or for other reasons are not formally recognised as refugees; Recalling the liberal and humanitarian attitude of Council of Europe member states to persons requesting asylum and, in particular, their commitment to the principle of non-refoulement as reflected in Resolution (67) 14 on asylum to persons in danger of persecution and the 1977 Declaration on territorial asylum; Considering that the principle of non-refoulement has been recognised as a general principle applicable to all persons; Bearing in mind the European Convention on Human Rights, and particularly Article 3; Considering Consultative Assembly Recommendation 773 (1976) on the situation of de facto refugees, Recommends that governments of member states, without prejudice to the exceptions provided for in Article 33, paragraph 2, of the Geneva Convention, ensure that the principle according to which no person should be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, shall be applied regardless of whether this person has been recognised as a refugee under the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967. |

REFERENCES

* <http://hrlibrary.umn.edu/africa/REFUGEE2.htm>
* <https://en.wikipedia.org/wiki/Convention_Governing_the_Specific_Aspects_of_Refugee_Problems_in_Africa>
* [http:// <https://www.refworld.org/docid/4dd5123f2.html>archive.ipu.org/splz-e/cotonou.htm](http://archive.ipu.org/splz-e/cotonou.htm)
* Covenant on the Rights of the Child in Islam of June 200
* <https://www.refworld.org/docid/460a2b252.html>
* [https://www.ref](https://www.refworld.org/docid/47fdfaf00.html)[[https://phap.org/PHAP/Themes/Law\_and\_protection/IRL/PHAP/Themes/IRL.aspx](https://www.refworld.org/docid/47fdfaf00.html)](https://phap.org/PHAP/Themes/Law_and_protection/IRL/PHAP/Themes/IRL.aspx)
* [[https://www.refworld.org/pdfid/3dca73274.pdf](https://www.refworld.org/docid/47fdfaf00.html)](https://www.refworld.org/pdfid/3dca73274.pdf)[world.org/docid/47fdfaf00.html](https://www.refworld.org/docid/47fdfaf00.html)