AFE BABALOLA UNIVERSITY ADO-EKITI, EKITI STATE

AN ASSIGNMENT

ON

DISCUSS CRITICALLY THE REGIONAL AND GLOBAL INSTRUMENTS FOR REFUGEE PROTECTIONAND THEIR LIMITATIONS

BY

CONFLICT AND HUMAN DISPLACEMENT

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**Refugee law** is the branch of [international law](/wiki/International_law%22%20%5Co%20%22International%20law)which deals with the rights and duties States have vis-a-vis  [refugees](/wiki/Refugee%22%20%5Co%20%22Refugee). There are differences of opinion among international law scholars as to the relationship between refugee law and [international human rights law](/wiki/International_human_rights_law%22%20%5Co%20%22International%20human%20rights%20law) or [humanitarian law](/wiki/International_humanitarian_law%22%20%5Co%20%22International%20humanitarian%20law).

**ACCESS TO PROTECTION BY REFUGEES**

Article 14 (1) of the Universal Declaration of Human Rights:

“everyone has the right to seek and to enjoy in other countries asylum from persecution”.

Article 33(1) of the 1951 Refugee Convention: No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever 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.

**SECURITY AND REGIONAL INSTRUMENTS**

Security issues and refugee protection are not mutually exclusive; rather, they are complementary and mutually reinforcing. The links between the legitimate security interests of States and humanitarian needs of refugee protection have been reinforced through the various resolutions of the General Assembly and Security Council of the United Nations concerning the fight against terrorism. In effect, these decisions highlight the fact that the fight against terrorism must take place within the framework of international law, and in particular, international refugee law, international humanitarian law and international human rights law. The same happens at the regional level, and, consequently, the OAS General Assembly has highlighted in its resolutions the need for the fight against terrorism to be effectuated with respect for international law and human rights.

In this sense, it is important to note that the Inter-American Convention against Terrorism provides important safeguards for the international protection of refugees. Article 12 provides:

*Each State party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.*

Regional instruments for the protection of refugees in Latin America have also safeguarded the legitimate security interests of States. In this regard, it is interesting to note that the Cartagena Declaration on Refugees of 1984, based on specific provisions of the American Convention on Human Rights, constitutes a practical and flexible tool that articulates the legitimate concerns of national security and regional stability, and humanitarian needs of individual protection. Its focus is the protection and search for lasting solutions, recognizing that there are people who need and deserve international protection.

It is precisely those legitimate concerns for national security and regional stability, in a context where there were various peace efforts leading to the need to provide protection for a growing number of refugees with new characteristics, that spurred dialogue, political will, consultation, and support of the international community towards the adoption of the Cartagena Declaration on Refugees of 1984.

The Cartagena Declaration reaffirms the civilian, non-political and strictly humanitarian grant of asylum and the recognition of refugee status, which should not be considered an unfriendly act between States. It also stresses the importance of respect for the principle of *non-refoulement* and the principle of *jus cogens*. It also includes a regional refugee definition, which incorporates the element of security as a protected right. In this regard, it recommends that

*[...] the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order**.*

The San Jose Declaration on Refugees and Displaced Persons of 1994, adopted to commemorate the tenth anniversary of the Cartagena Declaration on Refugees of 1984, reiterates the importance of security to enable refugees to enjoy and exercise their fundamental rights, as well as the importance of the issues relating to refugees being discussed in regional fora on security. It recommends that issues of international refugee protection be on the agenda of regional security fora, like the other issues related to forced displacement and migration [15](%22%20%5Cl%20%22nt15).

Finally, the legitimate security concerns of States were contemplated in the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees of 2004, adopted to commemorate the twentieth anniversary of the Cartagena Declaration on Refugees of 1984.

In this sense, the Mexico Declaration and Plan of 2004 reiterated the importance of security as a fundamental right of those who need and deserve international protection as refugees, also reaffirming that "national security policies and the fight against terrorism should be framed by respect for domestic law and international instruments for the protection of refugees and for human rights in general".

The Declaration also stresses the need to "take into account the legitimate security interests of States" to foster a broad and open dialogue with the States for the regulation of State practice and doctrine regarding the application of the regional refugee definition, and in particular the application of the Exclusion Clauses.

Accordingly, it is clear that regional instruments for the protection of refugees in Latin America have fairly balanced the legitimate security concerns of States with the humanitarian needs of those refugees who require and deserve international protection.

**PROTECTING REFUGEES IS HUMAN RIGHTS WORK**

“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum“.

United Nations High Commissioner for Refugees.

UNHCR staff working to defend the rights of refugees by providing them with protection and assistance are engaged in human rights work. If you think about the key tasks undertaken by UNHCR, the human rights basis for UNHCR’s work is clear.

1. Protection against forcible return

Refugees are at risk of human rights violations in their home country. The work UNHCR does to ensure they are not subject to refoulement is a direct and powerful means of protecting their basic human rights. In the last decade, refugees who have been forcibly returned to their countries have been killed, tortured, arbitrarily detained, or forced to live in conditions of extreme insecurity. Preventing refoulement is an effective, and sometimes the only, means of preventing further human rights violations.

1. Determination of refugee status

Those who flee their own countries in search of protection abroad do so precisely because their human rights are at risk in their own country. To decide that an individual has a “well-founded fear of persecution“ is in effect to conclude that one or more of his or her basic human rights are not being respected. Similarly, to determine that a group of people fleeing conflict or serious disturbances of the public order are prima facie refugees is in most cases to acknowledge that they are victims of violations of human rights or humanitarian law.

1. Promoting durable solutions

If conditions have fundamentally changed in the country of origin, promoting and monitoring the safety of their voluntary return allows refugees to re-establish themselves in their own community and to enjoy their basic human rights. In addition, monitoring the safety of returnees is a means of ensuring that they do not again suffer the human rights violations which forced them to flee. In a relatively small number of cases, assisting refugees to be integrated locally or resettled in another country is a means of ensuring that refugees who cannot return to their own countries are able to find a new home where they can take up residence and enjoy a secure legal status and basic human rights.