**AFE BABALOLA UNIVERSITY ADO EKITI**

**ASSIGNMENT**

**BY**

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The movement of people between states, whether refugees or ‘migrants’, takes place in a context in which *sovereignty* remains important, and specifically that aspect of sovereign competence which entitles the state to exercise prima facie exclusive jurisdiction over its territory, and to decide who among non-citizens shall be allowed to enter and remain, and who shall be refused admission and required or compelled to leave. Like every sovereign power, this competence must be exercised within and according to law, and the state’s right to control the admission of non-citizens is subject to certain well-defined exceptions in favour of those in search of refuge, among others. Moreover, the state which seeks to exercise migration controls *outside* its territory, for example, through the physical interception, ‘interdiction’, and return of asylum seekers and forced migrants, may also be liable for actions which breach those of its international obligations which apply extra-territorially ([Goodwin-Gill 2011](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-5); [Moreno Lax 2011](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-13), [2012](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-14)).

The international law of refugee protection, which is the source of many such exceptions, comprises a range of universal and regional conventions (treaties), rules of customary international law, general principles of law, national laws, and the ever-developing standards in the practice of states and international organizations, notably the Office of the United Nations High Commissioner for Refugees.

While the provision of material assistance—food, shelter, and medical care—is a critically important function of the international refugee regime, the notion of *legal protection* has a very particular focus. Protection in this sense means using the legal tools, including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that no refugee in search of asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled *as a refugee*; and that the human rights of every refugee are guaranteed. Protection is thus based in the law; it may be wider than rights, but it begins with rights and rights permeate the whole. Moreover, while solutions remain the ultimate objective of the international refugee regime, this does not mean that the one goal is automatically subsumed within the other. That is, protection *is* an end in itself, so far as it serves to ensure the fundamental human rights of the individual. Neither the objective of solutions nor the imperatives of assistance, therefore, can displace the autonomous protection responsibility which is borne, in its disparate dimensions, by both states and UNHCR.

The modern 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%22%20%5Cl%20%22oxfordhb-9780199652433-e-021-bibItem-9); [Loescher and Scanlan 1986](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021%22%20%5Cl%20%22oxfordhb-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’.

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.

**The Convention Refugee Definition**

Article 1A(1) of the 1951 Convention applies the term ‘refugee’, first, to any person considered a refugee under earlier international arrangements. Then, Article 1A(2), read now together with the 1967 Protocol and without time or geographical limits, offers a general definition of the refugee as including any person who is outside their country or origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group (an additional ground not found in the UNHCR Statute), or political opinion. Stateless persons may also be refugees in this sense, where country of origin (citizenship) is understood as ‘country of former habitual residence’.

The refugee must be ‘outside’ his or her country of origin, and having crossed an international frontier is an intrinsic part of the quality of refugee, understood in the international legal sense. However, it is not necessary to have fled by reason of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can emerge during an individual’s absence from their home country, for example, as a result of intervening political change.

**Persecution and the Reasons for Persecution**

Although central to the refugee definition, ‘persecution’ itself is not defined in the 1951 Convention. Articles 31 and 33 refer to threats to life or freedom, so clearly it includes the threat of death, or the threat of torture, or cruel, inhuman, or degrading treatment or punishment. A comprehensive analysis requires the general notion to be related to developments within the broad field of human rights, and the recognition that fear of persecution and lack of protection are themselves interrelated elements. The persecuted do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the likelihood of persecution and to the well-foundedness of any fear. However, there is no necessary linkage between persecution and government authority. A Convention refugee, by definition, must be *unable* or *unwilling* to avail him- or herself of the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non-state actors.

The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture ([Hathaway 2005](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-8); [Goodwin-Gill and McAdam 2007](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-7)).

The Convention does not just say who is a refugee, but also sets out when refugee status comes to an end (Article 1C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin). For political reasons, the Convention also puts Palestinian refugees outside its scope (at least while they continue to receive protection or assistance from other UN agencies; Article 1D); and it excludes those who are treated as nationals in their state of refuge (Article 1E). Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who there are serious reasons to believe has committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations (Article 1F). From the beginning, therefore, the 1951 Convention has contained clauses sufficient to ensure that the serious criminal and the terrorist do not benefit from international protection.

**Non-refoulement**

Besides identifying the essential characteristics of the refugee, states party to the Convention also accept specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution. Foremost among these is the principle of *non-refoulement*. As set out in the Convention, this prescribes broadly that no refugee shall be returned in any manner whatsoever to any country where he or she would be at risk of persecution.

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 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 behaviour 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.

**Convention Standards of Treatment**

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. A procedure for the determination of refugee status thus goes a long way towards ensuring the identification of those entitled to protection, and makes it easier for a state to fulfil its international obligations.

In addition to the core protection of *non-refoulement*, the 1951 Convention prescribes freedom from penalties for illegal entry (Article 31), and freedom from expulsion, save on the most serious grounds (Article 32). Article 8 seeks to exempt refugees from the application of exceptional measures which might otherwise affect them by reason only of their nationality, while Article 9 preserves the right of states to take ‘provisional measures’ on the grounds of national security against a particular person, but only ‘pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary...in the interests of national security’.

States have also agreed to provide certain facilities to refugees, including administrative assistance (Article 25); identity papers (Article 27), and travel documents (Article 28); the grant of permission to transfer assets (Article 30); and the facilitation of naturalization (Article 34).

Given the further objective of a *solution* (assimilation or integration), the Convention concept of refugee *status* thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of contracting states. It is at this point, where the Convention focuses on matters such as social security, rationing, access to employment and the liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that the greatest number of reservations are to be found, particularly among developing states. Otherwise, however, the Convention proposes, as a minimum standard, that refugees should receive at least that treatment which is accorded to non-citizens generally. In some contexts, ‘most-favoured-nation’ treatment is called for (Articles 15, 17(1)), in others, ‘national treatment’, that is, treatment no different from that accorded to citizens (Articles 4, 14, 16, 20, 22(1), 23, 24(1), 29).

**Refugee Definition and Protection beyond the Convention**

In addition to measures adopted at the universal level, the international legal protection of refugees and forced migrants benefits from regional arrangements and instruments which, in turn, may be refugee specific or oriented more generally to the protection of human rights.

In 1969, the Organization of African Unity (now the African Union) adopted the Convention on the Specific Aspects of Refugee Problems in Africa ([Sharpe 2012](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-15)). Article I(1) incorporates the 1951 Convention definition, but paragraph (2) adds an approach more immediately reflecting the social and political realities of contemporary refugee movements. Also to be accepted as refugees are those compelled to flee owing to external aggression, occupation, foreign domination, or events seriously disturbing public order. In 1984, 10 Central American States adopted a similar approach in the (non-binding) Cartagena Declaration, recognizing in addition flight from generalized violence, internal conflicts, and massive violation of human rights. Two years later, in the extradition case of *Soering v United Kingdom*, the European Court of Human Rights laid the essential foundations for protection from removal under the European Convention. In this first judgment in what is now a long and consistent body of jurisprudence, the court ruled that it would be a breach of the Convention to remove an individual to another state in which there were substantial grounds to believe that he or she would face a real risk of treatment contrary to Article 3, which prohibits torture or inhuman or degrading treatment. Later judgments have confirmed the applicability of this principle without exception, for example, in ‘security’ or criminal cases, and in the context also of extra-territorial interception operations.

This human rights jurisprudence contributed substantially to ‘legislative’ developments within the European Union. These include the adoption of the 2001 Directive on Temporary Protection, applicable to ‘displaced persons’ unable or unwilling to return to their country of origin, for example, because of armed conflict, endemic violence, or systematic or generalized violence, and whether or not they are Convention refugees;  and the 2004 Qualification Directive, which besides providing for recognition of Convention refugees, now also calls for ‘subsidiary protection’ in the case of those who would face a real risk of serious harm if returned to their country of origin ([McAdam 2007](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021%22%20%5Cl%20%22oxfordhb-9780199652433-e-021-bibItem-11)).

**Asylum**

No international instrument defines ‘asylum’. Article 14 of the 1948 Universal Declaration of Human Rights simply says that ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution.’ Article 1 of the 1967 UN Declaration on Territorial Asylum notes that ‘Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights...shall be respected by all other States.’ But it is for ‘the State granting asylum to evaluate the grounds for the grant of asylum’ ([Goodwin-Gill 2012](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-6)).

Neither instrument creates any binding obligations for states. Indeed, both texts suggest a considerable margin of appreciation with respect to who is granted asylum and what exactly this means. In practice, however, states’ freedom of action is significantly influenced by ‘external’ constraints, which follow from an internationally recognized refugee definition, the application of the principle of *non-refoulement*, and the overall impact of human rights law. Regional instruments and doctrine have also had an important impact on the ‘asylum question’. Again, the 1969 OAU Convention was among the first to give a measure of normative content to the discretionary competence of states to grant asylum (Article II). Within the EU, the 2000 Charter of Fundamental Rights declares expressly that ‘the right to asylum shall be guaranteed...’, and that no one may be removed to a state where he or she faces a serious risk of the death penalty, torture, or other inhuman or degrading treatment or punishment (Articles 18, 19). The Qualification Directive provides in turn that member states ‘shall grant’ refugee status to those who satisfy the relevant criteria (Article 13; see also Article 8 of the Temporary Protection Directive) ([Gil-Bazo 2008](https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021#oxfordhb-9780199652433-e-021-bibItem-2)).

**Protection and Solutions**

UNHCR’s responsibility to seek permanent solutions for the problem of refugees is commonly translated into a preferential hierarchy, with voluntary repatriation as a first priority, followed by local asylum and resettlement in a third state.

The ultimate purpose of protection is not to ensure that refugees remain refugees forever, and *voluntary repatriation* reflects the right of the individual to return to his or her country of citizenship. No universal instrument deals with this, but the ‘right to return’ is widely accepted as an inalienable incident of nationality. The only formal reference appears in the 1969 OAU Convention, Article 5(1) of which emphasizes that the ‘essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will’. On several occasions, the UNHCR Executive Committee has proposed standards and guidelines for voluntary repatriation operations. The general rule is that refugees should return *voluntarily* and in conditions of *security*, and the international community has a legal interest in the follow-up to any repatriation movement; the security of those returning and the implementation of amnesties and other guarantees are rightly considered matters of international concern, and therefore subject to monitoring against relevant legal standards.

*Local integration*, that is, residence and acceptance into the local community where the refugee first arrives, is the practical realization of asylum. States may be bound to the refugee definition and bound to observe the principle of *non-refoulement*, but they retain discretion as to whether to allow a refugee to settle locally; this point was underlined by the UNHCR Executive Committee in its 2005 Conclusion on local integration, although with little if any regard or reference to states’ other obligations under international law which govern the treatment of non-nationals on state territory.

*Resettlement* aims to accommodate a variety of objectives, the first being to provide a durable solution for refugees and the displaced, unable to return home or to remain in their country of first refuge. A further goal is to relieve the strain on receiving countries, sometimes in a quantitative way, at others in a political way, by assisting them in relations with countries of origin. Resettlement thus contributes to international solidarity and continued fulfilment of the fundamental principles of protection, but given the continuing relevance of the sovereign competence referred to above and the challenges of translating the principle of international cooperation into effective action, it is difficult to see what more international law can contribute to this solution.

**Refugees and Human Rights**

The refugee problem cannot be considered apart from the field of human rights as a whole, which touches on both causes and solutions, so that knowledge and appreciation of the rights at issue helps to understand the refugee concept. The treatment of refugees and asylum seekers within a state is governed not only by the refugee treaties, but also by the broader human rights treaties (and even rules of customary international law), which set out general standards, whether of a procedural or substantive nature (for example, the requirement that a remedy be provided for every violation of human rights; or the duty of a state to protect everyone within its territory or jurisdiction from torture). Here, local law and practice play an important role in ensuring that international rules are applied.

The 1951 Convention is frequently described as a ‘human rights treaty’, to be approached as a living instrument, evolving to meet the needs and challenges of the day. Given the subject matter and the inescapable linkage between human rights violations and forced displacement, this descriptive language is understandable. The Convention, however, is not like most other human rights treaties, and it is styled a convention relating to the *status* of refugees, rather than one on the rights of refugees. Moreover, it does not frame ‘refugee rights’ in terms of what ‘every refugee’ shall enjoy and ‘no refugee’ shall be denied; in this sense its approach differs markedly from that later adopted in the 1966 Covenants, the 1989 Convention on the Rights of the Child, or the 2006 Convention on the Rights of Persons with Disabilities. Whereas later human rights treaties tend to identify the individual as the point of departure—whether simply by virtue of being human, or a child, a woman, a worker, or someone with a disability—the practice of states and international organizations has itself helped to bring the concept of refugee rights into the foreground of international legal protection doctrine.

The 1951 Convention remains quite ‘state-centric’, in the sense that it represents undertakings and obligations, accepted between the parties, to respect, protect, or accord certain rights and benefits. Sometimes a right may be stated simply, unqualified other than by reference to the refugee’s lawful presence (Article 32), but at others, it has to be implied (‘the refugee shall be allowed...’: Article 32(2)), or must be assumed as the reverse side of a qualification to the competence of the state, rather than a right strictly correlative to duty (contracting states ‘shall not expel a refugee...save on grounds of national security or public order’: Article 32(1); ‘shall not impose penalties....’: Article 31; ‘shall issue identity papers...’: Article 27; and ‘No contracting State shall expel or return (“refouler”) a refugee...’: Article 33(1)).

In addition to the ‘protection gap’ between the principle of *non-refoulement* and asylum in the sense of solution, there are further doctrinal gaps between the Convention/Protocol refugee regime and the seemingly broader regime, or regimes, of human rights protection. The 1969 Vienna Convention on the Law of Treaties provides no answer, for example, to the question of how far the general prohibition of discrimination in Article 26 of the 1966 International Covenant on Civil and Political Rights is to be applied to refugees; or how, if at all, their specific entitlements under the 1951 Convention are to be ‘updated’ or ‘expanded’ in the light of parallel systems of protection which seem to be simultaneously applicable.

The practice of states at present provides no clear answers, save that states themselves appear to want to maintain the specific, refugee-focused approach of the 1951 Convention. The fundamental principles of refugee protection, particularly refuge, non-return, or ‘*non-refoulement*’, are necessarily common material to both fields, but reports of human rights undermining the refugee protection regime are likely exaggerated or premature, or just plain academic speculation.

**Limitations and Conclusion**

The 1951 Convention is sometimes portrayed today as a relic of the Cold War, inadequate in the face of ‘new’ refugees from ethnic violence and gender-based persecution, insensitive to security concerns, particularly terrorism and organized crime, and even redundant, given the protection now due in principle to everyone under international human rights law.

The 1951 Convention does not deal with the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities (for example, by prescribing which state should deal with a claim to refugee status). The Convention does not address the question of ‘causes’ of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and notwithstanding the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU Convention and the 1984 Cartagena Declaration; while in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on ‘subsidiary’ or ‘complementary’ protection within the legal system of the European Union.

Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others, the 1951 Convention continues to play an important part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the security and related interests of states, sharing responsibility, and generally promoting human rights. Ministerial Meetings of States Parties, convened in Geneva by the government of Switzerland to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, ‘the continuing relevance and resilience of this international regime of rights and principles...’ and reaffirmed that the 1951 Convention and the 1967 Protocol ‘are the foundation of the international refugee protection regime and have enduring value and relevance in the twenty-first century’.

In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of *non-refoulement*. While initially concluded as an agreement between states on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate.

The concept of the refugee as an individual with a well-founded fear of persecution continues to carry weight, and to symbolize one of the essential, if not exclusive, reasons for flight. The scope and extent of the refugee definition, however, have matured under the influence of human rights law and practice, to the point that, in certain well-defined circumstances, the necessity for protection against the risk of harm can trigger an obligation to protect.