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**MATRIC NUMBER: 16/SMS10/005**

**CONFLICT AND HUMAN DISPLACEMENT.**

**CRITICAL REVIEW OF REGIONAL AND INTERNATIONAL REFUGEE LAWS, THEIR INSTRUMENTS AND THEIR LIMITATIONS.**

**INTRODUCTION.**

Refugee law is the branch of international law which deals with the rights and duties States have vis-a-vis refugees. There are differences of opinion among international law scholars as to the relationship between refugee law and international human rights law or humanitarian law. The discussion forms part of a larger debate on the fragmentation of international law. While some scholars conceive each branch as a self-contained regime distinct from other branches, others regard the three branches as forming a larger normative system that seeks to protect the rights of all human beings at all time. The proponents of the latter conception view this holistic regime as including norms only applicable to certain situations such as armed conflict and military occupation (IHL) or to certain groups of people including refugees (refugee law), children (the Convention on the Rights of the Child), and prisoners of war (the 1949 Geneva Convention III).

Respect for the rule of law and human rights forms the essence of the protection of refugees, returnees and stateless persons. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to provide international protection to refugees, including promoting the accession to international refugee instruments and other relevant human rights instruments. UNHCR’s activities are also focused on assisting in the strengthening of legal structures that would enhance the rule of law, including in the area of transitional justice.

Statelessness is a source of human insecurity, forced displacement and serious conflict, which may pose a threat to national and regional stability. Legislation on nationality and administrative practices that are in accordance with internationally recognized human rights standards are essential elements of the rule of law and key in addressing root causes of conflict. UNHCR provides technical advice and support to governments for the accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

**International Refugee Laws.**

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.

This human rights jurisprudence contributed substantially to ‘legislative’ developments within the European Union. These include the adoption of the 2001 Directive on Temporary Protection,15 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; (p. 42) 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).

The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term “refugee” in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement. Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. The Convention was drawn up shortly after the Second World War, and its authors were focused on refugee problems existing at that time. The definition of a refugee contained in the 1951 Convention refers to persons who became refugees as a result of events occurring before 1 January 1951, and States had to declare whether they would apply that definition only to events that took place in Europe or also to events in other parts of the world. As new refugee crises emerged around the globe during the 1950s and early 1960s, it became clear that the temporal and geographical scope of the 1951 Convention needed to be widened.

**REGIONAL REFUGEE LAW.**

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).10 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, 11 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, 12 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.

The most far-reaching regional developments have come from the European Union (EU), which in 1999 decided to create a common European asylum system based on the “full and inclusive application of the Geneva Convention”. Since then, four key legislative instruments have been adopted in original and revised (or “recast”) versions. Each adds content to refugee laws in areas not addressed in the 1951 Convention.

These instruments concern: (a) temporary protection;

(b) The reception of asylum-seekers;

(c) Qualification for refugee status or “subsidiary protection” and the rights and status to which beneficiaries are entitled; and

(d) Standards for asylum procedures. In addition, the “Dublin III Regulation” sets out the criteria for determining which EU Member State or other participating country is responsible for examining an asylum application. To provide operational support, two EU agencies were established

The European external borders agency Frontex in 2005 and the European Asylum Support Office (EASO) in 2010. The Court of Justice of the European Union (CJEU) has jurisdiction to interpret these EU asylum instruments and to rule on any alleged infringements by Member States. Together with the European Court of Human Rights of the Council of Europe, which has addressed asylum issues in the context of the European Convention on Human Rights and Fundamental Freedoms, these courts have significant influence on the wider development of international refugee laws.

**REFERNCE.**

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* UNHCR Protection Manual on Refworld.
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