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Questioning the Responsibility of States in the Protection of Refugee Status under International Law

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Abstract: *There exist and still presents lots of uproars and hullabaloos as to whether states are really offering protection to refugee, and if this be the case, what becomes so nonconforming and unusual in such protection? Nevertheless, the debate on States responsibility have taken sundry measurement as they are exploring and elaborating their spheres of activities in order to accomplish and even improved refugee protection. At the heart of these likenesses sometimes lies a miscalculation as to evaluate and assess staunchly the duties States owes to refugees and asylum-seekers under international law. This article pronounces that there are lots of diatribes and puzzled when probing and assessing the responsibilities of states in the protection of refugees' status as we continue to observe constant violations on the rights and status of refugees. In order to answer the above hesitations and observations made, it will be proper in developing an analytical research methodology which will be in assessing the responsibilities of States when dealing with refugee protection. From the above radiance, it is clear and unequivocal that there are some hitches and twist in the responsibilities of States as to refugee in matters related to refugee protection. It is therefore in this lane conclusion that one can emphasis that, the problem is not just with the position stipulated for protection under international law, but rather with that protection render by the States which have continue to be regarded of being of questionable character.*

Keywords: refugee, protection, examining, States Responsibilities, Polemics

Introduction

The concept of State responsibility[1] is as old as the human civilization. For it has always been the perpetual responsibility of States to protect the life and liberty of its citizen irrespective of the status they occupied as far as they are living in their territory[2]. Today, individuals and human has become more central to the entire human rights discourse and is being regarded as a subject of International Law.[3] Moreover, national boundaries are losing their connotation. Consequently a new world human order is being emplaced.

The human rights of all individuals including that of refugees have become a polemical debate prophesying a new foundation whereby state concerns and individual rights are at loggerhead with each other. In this conspectus, it is inescapable upon the state to settle this inconsistency in an age of trans-nationalisation of human rights and civil liberties. The question that continues penetrating up is whether those countries of origin of refugees should continue to be accountable for the mass refugees' flows in the world today, and it is the responsibility of the refugee generating state not to create problems of exasperating proportions for the other states as it is contrary to the notion of a civilized state? The rule and proportion will always remain that the responsibility of the country of origin will continue to be higher than the responsibility of state of reception under the International Law.[4]

The situation becomes automatic as since after the outbreak of the 1st and 2nd world wars[5], refugee law has considerably and invariably been perceived as a special branch of international law which addresses exclusively the potential of those countries

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[1] *Catherine Phuong,* Identifying States' Responsibilities towards Refugees and Asylum Seekers, University of Newcastel, *pp 1*

[2] This is in response to article 1 of the 1948 Universal Declaration of Human Right which talks of that application of human right standard to all without discrimination as to race, nationality, sex and other spheres of activities where everyone should be treated indiscriminately without any inhumane, unarbitrariry, and degrading condition. Also that once someone acquires a nationality and citizenship of a country, the persons enjoys all the rights attached to these rights. The situation is not different from a refugee as it is provided that according to the provision of article 1 A (2) of the 1951 Refugee Convention, once the person fulfils the condition as stipulated under the Convention, the said person becomes protected and enjoys all the rights even though residing in a foreign country

[3] Even though article 38 of the International Court of Justice provide that the State is the only actor under international law and have the capacity and status in bringing an action before the court, but ever since the advent of the 9th September 2001 incident as to the Wall Street in American, individual have now being considered as a subject under international law in which they can bring action before the court with competent jurisdiction.

[4] Nafees Ahrnad, Refugees: State Responsibility, The Country of Qiigin and Human Rights,

[5] These wars that affected the entire universe and leads to loss of casualties in terms of human, financial and even materials

granting asylum to refugees. The most of the fundamental of the law is that of the Geneva Convention of 1951 on the Status of Refugees which sets and elaborates the regime of legal rules creating duties for States Parties having received refugees or being faced with demands for admission. In accordance with the principle of *non-refoulement* seen as the cornerstone when dealing with refugee protection[6]and having a legal force of international customary law, [7]places obligations on States by prohibiting them from expelling or returning a refugee to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.[8]

It is clear and unequivocal under the 1951 Refugee Convention which considers a refugee as a person who, because of well-founded fear of political persecution, finds himself outside his State of nationality, unable to obtain the protection of that State. Thus, the country of origin, which has set in motion the tragic sequence of events, is an essential and even the most important actor in the complex triangular relationship whose other elements are the refugee and the receiving States.[9] If it wrought in consonance with current human rights standards, the whole problem would simply disappear. Therefore, one is forced in asking why should the burden of protecting refugees in international law becomes entirely that of other States when the real problem as to persecution of refugees comes from their state of origin? It is clear from the above explanation that the real problem affecting refugee protection and status on the international scene will automatically falls back on their country of origin? For it is really a dilemmas that is affecting receiving states in the protection of refugee, where the law especially the 1951 Refugee Convention are imposing and calling upon these States that they have to ensure the protection of refugees residing in their territory. Therefore in this regard, an assessment will be carried out in having an evaluation as to the notion of States responsibilities under international law

1. Reconsidering the concept of State Responsibility in Refugee Protection

The principle and rule remain that, examining the possible rights of individuals against a State of origin cannot, and will never be considered as a starting point in diagnosing and appreciating refugee as defined under the 1951 Refugee Convention. Looking at the position of **Article 1** of the Refugee Convention, it is clear that before a State offers its protection and recognises someone as a refugee, the said person must have suffered actual injury because fear of persecution. Once a person can prove that he or she will undergo persecution[10] in his country of origin, this thus becomes a sufficient ground to claim a refugee status. The acquisition of refugee status will not extend to everyone whose right has been violated in the case of civil war.[11] It continues to remain a common facade that, for an individual to be attracted for the protection of a State, the individual seeking refuge must have to establish whether he was compelled into leaving his or her country of origin before having claim against that country under the general rules on State responsibility. Voluntary movement of someone into another country will not provide that person a refugee status which warrants protection of States.[12]

1.1. Imaginable Obligations Ascribed to States in Defending Refugees

Under international law, refugees are persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder.[13]

So for a person to falls within the protection of the States, the refugee from the moment he or she meets the criteria of Article 1A(2) of the Geneva Refugee Convention, such a person with all the ramifications of necessity need to be accorded protection by States. A determination by the State to grant refugee status is not a determination of the status, but only its formal recognition.[14] Therefore,

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[6] Section 33 of the 1951 Refugee Convention which sees the need of applying the principle of non-refoulement of refugees to their home country

[7] The recent judgement of the U.S. Supreme Court in *Sale V. Haitian Centers Council,* June 21, 1993, 88 AJIL (1994), p. 114.

[8] Section 33 of the Refugee Convention

[9] Coles, G.J.L., State Responsibility in Relation to the Refugee Problem, with Particular Reference to the State of Origin, Geneva 1993, pp. 4-8.

[10] This is the basis or the cornerstone for offering protection to someone known as a Refugee, as the law will only protects such a person if the persons establishes or determine that his movement from the country of origin to that of seeking refuge is the fear of being persecuted.

[11] Report of the Goup of Governmental Experts on International C0-operation to Avert New Flows of Refugees, UN Doc. A/41/324, May 13, 1986, paras 8,9,66 c.

[12] This is a clear explanation as to the notion of persecution of refugees in international law. For someone to be granted a refugee status and protection, the said person must be able in establishing that persecution as to the grounds provided under Section 1 A(2) of the 1951 Refugee convention. Anything outside of this will not amount to refugee protection by States.

12 The refugee should be compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.' *Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa* (10 September 1969) 1001 UNTS 45,

[14] *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status ofRefugees,* UNCHR, Geneva, September 1979 (UNHCR Handbook), para. 28. The *OAU Convention Governing the*

a refugee attains protection of the State of asylum provides the refugee possesses relevant documentation or ensures that the status is affirmed under domestic laws and procedures, although the protection of his rights afforded by the Geneva Refugee Convention will be limited until the State determines whether the refugee 's situation fulfils the Convention's definition. For refugee status to be recognised under the Geneva Refugee Convention, the following criteria must apply:

1. a well-founded fear of persecution;
2. The persecution must be for reasons of race, religion, nationality, membership of a particular social group or political opinion;
3. The person must be outside the country of his or her nationality or, if stateless, outside the country of his or her former habitual residence;
4. The person must be unable or, owing to such fear, unwilling to avail him or herself of the protection of that country. The rule remain clear here that these requirement provided by the law excludes many scenarios from the scope of possible claims under the law of State responsibility.[15] Those refugees who suffer from the effects of natural disasters, famine and epidemics are not phenomena that can be directly imputed to human activity, although in many cases it might be found that preventive measures could have avoided the fatal consequences. Nor does civil war as such constitute a complex of occurrences wholly under the responsibility of a national government: it can only be made accountable for action carried out by its own troops.[16] Lastly, it stands to reason that a State cannot be answerable if its citizens flee the country because it has become the victim of foreign aggression. However, what essentially remains as a pattern of actions susceptible of entailing responsibility is a policy that flagrantly violates human rights to the detriment of almost all citizens or a specific group of the population of the State of origin

1.2. Has States violated an International Obligation for Protection?

The 1951 Refugee Convention has really provided lasting contributions when dealing with the legal regime of refugee by recognising a single universal definition of a refugee. It continues in providing a series of rights that must be respected by States when refugees take residence into their territory. In this regard, it therefore becomes the responsibility of States in ensuring that the respect of the various rights of refugees in which violations is not permissible. The problem is not just only that of the rights of refugee but all international human rights constitute obligations for the State to which they have to address. One of these rights is that of every person to live without disturbance in his or her country.[17] The position of article 13 of the Universal Declaration of Human Right is clear when it provide that everyone has the right to freedom of movement and residence within the borders of each State.[18]The situation is more understanding as to that provided by the International Covenant on Civil and Political Rights, which guarantees the right of everyone not to be deprived of the right to enter his own country and thereby implicitly recognizes a right of abode has by now been ratified by not less than States.[19] Through that wide acceptance from countries all across the globe, it has become the relevant yardstick for State conduct in the field of human rights in ensuring the protection of refugees lawfully entering their territory. From all the explanations given above, one can safely assume that the right of a person to stay and live in his or her country constitutes, and will always be seen as customary international law[20] all the more so since it reflects the traditional position that the natural place for an individual is the territory of the State of nationality. Expelling individual may not be direct, but if the said individual experienced torture, abuse and even harassment that affects his rights under the Covenant or customary law, this will still amount to violations of the refugee rights. Apart from torture and harassment, even a threat to his life and physical integrity, freedom

Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) seems to contrast to this universal regime as it establishes in its Article 1.6 that it is apt to the State of asylum to "determine" whether an applicant is a refugee. Nevertheless, as the Convention declares that it is complementary to the *Geneva Convention relating to the status ofrefugees* of 1951, read together with its *Additional Protocol* of 1967 *("Geneva Refugee Convention* ") (Preamble, para. 9; Article 8.2), "determine" must be interpreted as recognition and not as granting of refugee status

[15]Hofmann, R., "Refugee-Generating Policies and the Law of State Responsibility, American Journal of International Law, no 2, pp 4

[16]Von Sterberg, M.R., Political Asylum and the Law of Armed Conflict: Refugee Status, Human Rights and Humanitarian Law Concerns, Int. Journal of Refugee Law, 1993, pp. 153 et. Seq.

[17] M.T. Kamminga, Inter-State Accountability For Violations of Human Rights, Philadelphia 1992, pp. 133-134.

[18] Section 13 of the Universal Declaration of Human Right 1948

[19] Section 12 of the 1966 International Covenant on Civil and Political Rights which provide that everyone lawfully within the territory of a State shall within that territory have the right to liberty of movement and freedom to choose residence. It goes on by providing in its sub 2 that everyone shall be free to leave any country including his own

[20] The notion of jus cogen considered as a peremptory norms under international law

from arbitrary arrest, freedom of expression etc.[21]can eventually be an option that is open for the said person to leave the country of residence. It is not a bi-standard that the provision of Article 12 (4) cannot be restricted. There are grounds that restrictions are permitted and the States will not be liable for violation as far as the restriction is not arbitrary.[22]

1.3. Addressing Refugee Engagements against States for Violations

When dealing with the violations of refugees rights in international law, one can proceeds from the assumption that human rights violations constitute an individual entitlements under international law, at least to the extent that they are supported by an international mechanism of individual complaint. The rule or tendency remains that by no means should States violates refugees rights when they have fulfilled the condition as spelled out under the refugee convention when dealing with the status of refugee. The general proposition remains that a breach of an international engagement of States as to the protection of refugee in international law involves a duty to make reparation, as it was formulated by the Permanent Court of International Justice in the *Chorzow case.*[23]The rule remain and stands that when it comes to issues related to violation of international law,the injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation.[24]*However,* when dealing with the position of refugees, for there to be compensation for these refugees, there must be a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, torture, abuses, discrimination, and even degrading treatment.

It is significant, in this connection that the relevant human rights treaties remain largely silent on the issue of the consequences deriving from non-compliance with its obligations by a State. The premise is always that a State must fulfil what it has formally pledged to do. Thus, to the extent that one may assume the existence of an individual entitlement under international law, as refugees has the right to claim that the governmental machinery he or she is confronted with behave as set forth in the relevant provisions.

The body that has consistently shown a bold approach to the issue of reparation is the Human Rights Committee under the International Covenant on Civil and Political Rights. The Covenant itself mentions a right to compensation in two places, each time in relation to personal freedom. Article 9(5) specifies that an individual who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Similarly, Article 14 (6) sets forth that a person who has been the victim of a miscarriage of justice *shall be compensated according to law.*[25] Although these two provisions are primarily intended to enjoin States to establish individual rights under domestic law by enacting the requisite legislation, they shed nonetheless some light on the Covenant as to when a situation must be considered so serious as to warrant being remedied by some compensation in money an assessment that would seem to permit appropriate conclusions. Notwithstanding the restrictive conception enshrined in the Covenant itself, the Human Rights Committee has not felt prevented from expressing in its final views under Article 5 (4) of the Optional Protocol fairly far reaching suggestions as to the way in which a wrong committed is to be corrected. Already in its first views on the merits of a case, brought against Uruguay, it held that the Defendant State was under an obligation "to provide effective remedies to the victims.[26] In many instances, it has held that the victim of a violation was entitled to a remedy, including appropriate compensation.[27] a culmination point of its jurisprudence was reached in a series of views addressing trials resulting in the imposition of the death penalty that had not been conducted in conformity with the procedural standards laid down in Article 14 of the Covenant. In view of the gravity of some of the procedural defects found by it, the Human Rights Committee pronounced itself for the immediate release of the convicted persons.[28]These rulings are not understood by the Committee as the exercise of some jurisdiction *ex aequo et bono*. Rather, the Committee views its appeals for the liberation of the victims as a logical consequence of the breach of the obligations in issue. Indeed, one is confronted here with an ineluctable choice where questions concerning the true meaning of international human rights cannot be papered over anymore by some vague formulae. If an individual injured by a human rights obligation cannot obtain any redress for the loss suffered, the *right* at stake becomes almost meaningless. To buttress its line of reasoning, the committee has taken to invoking Article 2 (3) of the Covenant, which provides that an individual claiming that his or her rights under the Covenant have been violated must be given an effective remedy.

2.0. Assessing and Evaluating the Responsibility towards States

[21] Report of Special Rapporteur Sadruddin Aga Khan, "Questions of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Dependent Countries and Territories", UN Doc. E/CN.4/1503, December 31, 1981, pp. 17-29.

[22] St. Jagerskiold, "The Freedom of Movement", in Henlein, L. (ed.), The International Bill of Rights, New York 1981, p. 180, contends that "there was no intention here to address the claims of masses of people who have been displaced as a byproduct of war or by political transfers of territory or population

[23] Of 13 September 1928, "Collection of Judgments, Series-A, No. 17, pp. 29, 47.

[24] Report of the ILC on the work of its forty fifth session, 48 GAOR Suppl. No. 10 UN Doc. A/48/10 (1993), p. 130.

[25] ibid, pp 66

[26]Human Rights Committee, Selected Decisions under the Optional Protocol, UN Doc. CCPR/C/OP/1 (1985), p. 40.

[27]Campbell V. Jamaica, 24 March 1993 (Report), p. 41.

[28]Simmonds v. Jamaica, 23 Octo. 1992, p. 78 and Collins V. Jamaica, 25 March 1993, p. 85.

The issue of responsibility of refugee protection under international law is really confusing and complicated in its explanation. When questioning and even having a look into the issue of responsibility of the State of origin towards receiving States, one should be able from the foregoing and onset be able in establishing a distinction between States that have suffered palpable injury by being burdened with having to take care of a substantial group of people from the relevant country of origin, and other countries that are not directly affected but may make representations and raise claims as guardians of international legality.

2.1. Breach of responsibilities by States in International Law

As already pointed out, before a refugee claims for violations of his or her status and right as a refugee under the legal heading of State responsibility presupposes in the first place that a breach of an international obligation has occurred at the hands of the State. Pursuant to the fundamental principle of sovereign equality, the rule in international law remains that each State must respect the sovereign equality of its neighbours in which most of the States in question are members and signatory of the 1951 Refugee convention.[29] The 1951 refugee Convention in its article 33 is clear that under no circumstance should a State send back a refugee to its own country of origin where the said refugee will undergo persecution and even torture.[30] The provision of the Convention is clear in its Article 1 A(2) which has provided the condition to be regarded as a refugee, and once a refugee fulfil these conditions as spelled out in the convention, the person deserved to be protected by the receiving States where the person is seeking refuge.[31] The situation under international law becomes complicated and questionable in the situation where states who were supposed to offer protection to its own citizens are the ones pushing these large groups of its own citizens out of its territory, fully knowing that the victims of such arbitrariness have no right of entry to another country but will eventually have to be admitted somewhere else on purely humanitarian grounds, it deliberately affects the sovereign rights of its neighbours to decide whom they choose to admit to their territories.[32] The problem we are posing here is in questioning and determining the State that have really breached or violated the provision of international law? This is really scandalous as the Refugee Convention in its article 33 is placing the blames of violations on the receiving country of the refugees, without considering that the initial breach of State responsibility is on the refugee country of origin. For the notion for the payment of damages as to the injury caused on the refugee as to aspect of violation is really of questionable character and complexities. There should not be too much emphasis on the country who carried out the violation which in most States the blames are always on the residing country. There is no doubt under international law that the States receiving the refugee must be able in respecting the right and status of refugee when these refugee seeks residence in their country. It becomes the responsibility of the state to ensure protection and prevent any situation where the refugees will suffered and experienced aspects of violations on its fundamental human right in all spheres of protection. The blame as to breach or injury caused on the refugee should not only be on the receiving States because as per the provision of Section 1 A[33]before a refugee seeks refuge in another country out of its country of origin, the refugee must have left its country of origin for fear of persecution. So, the initial breach of international law and that of refugee protection can be levied on the State of origin of the refugees. Even the breach is clear as those stipulated under the refugee convention that once a refugee can established persecution under the stated provision of Section 1 A(2), the person need to be protected by the State and under no circumstances should states goes out of such conditions. The situation becomes more complex when assessing the situation of States responsibilities when dealing with the Human rights of the refugees.

2.2. States Responsibilities as a Human Right Obligation

States obligations and responsibilities are clear when dealing with the protection of human right.[34] It becomes the responsibility of the every government not to conduct and carryout a human rights policy which is contrary to general recognized standards, not acting arbitrary, and with the avowed or hidden purpose of coercing the victims. It may then be asked whether States who were supposed to ensure human right protection have really violates its obligations vis-à-vis another State so that it may become liable to make reparation towards any such other State. It is clear from the preambles of the UN Charter, the 1948 Universal Declaration of Human Rights, as well as the two International Covenants of 1966 that there is a close relationship between peace and human in which every State has that obligation to respect and ensures security. Once the States who have accepted to ratify and enforce the Refugee Convention must be able in guaranteeing the protection of these refugees. For the law is clear in saying that every human

[29] Article 2(4) of the United Nation Charter that talks of independent of State and that of equality

[30] This is dealing with the principle of non-refoulement which is considered as the cornerstone of international refugee law prohibiting States for sending back a refugee when the refugee will under torture

[31] Article 1 of the 1951 Refugee Convention is clear as to when a refugee will be granted protection by States, and this applies to everyone as the person is proved to be a refugee

[32] Lee, L.T., The Right to Compensation: Refugees and Countries ofAsylum, 80AJIL (1986), pp. 532 & 535-554.

[33] The section is clear when it provide that owing to a well-founded fear of persecution, some is forced to leave his or her country of origin

[34] This situation is eminent as the article 1 of the Universal Declaration on Human Right 1948 is clear when it emphasis on the principle of equality of all when dealing with human right protection. The law is clear that States should ensure that everyone irrespective of its status, race, nationality, and even religion should be treated equally without any inhumane or degrading treatment

irrespective of its nationality, race, sex, religion deserves to be protected against torture and abuses.[35]Thus, without distorting the finality of human rights, one may conclude in very general terms that respect for, and full observance of; human rights are also designed to prevent any split over effects resulting for States from unrest and turmoil in another State.

2.3. Establishing the causal link between refugee protection and States violations

It might be argued that, as far as States as injured parties are concerned, a causal link was missing since every State had the sovereign right to close its borders to persons requesting admission. However, such objection would have to be dismissed. As far as refugees under the 1951 Convention are concerned, the prohibition of *refoulement* applies. With regard to *de facto* refugees, on the other hand, who attempt to escape from the horrors of civil war, in particular, States are at least under a moral obligation to demonstrate human solidarity vis-à-vis the victims. Within a civilized community, it is only natural that even those who cannot invoke an international legal instrument to their benefit should find refuge in some other country. If the dignity of the human being is proclaimed time and again as the supreme element in a hierarchy of values to be protected, a policy of shutting all doors to undesired arrivals would mean a deadly blow to the very idea of international protection of human rights.[36] Therefore, a State refusing to bear the costs incurred by other States as a consequence of its refugee generating policies must be deemed to be stopped from claiming that to receive its citizens was an independent decision that interrupted the original chain of events. In order to set the record straight, it should be made absolutely clear that the arrival of human beings cannot as such be considered to constitute injury. It is the expenditure incurred in taking care of the refugees that is susceptible of being taken into account as a financial loss relevant under the rules on State responsibility.

3.0. State acting as a Protector of International Legality

The standard principle when dealing with aspect of international law delves in the fact that even those States that pretentiously claimed that they have not directly been affected by the flow of refugees also brings legal claims against the State of origin of these refugees. Whether the states have direct link or not, the rule stands that every State has legal standing to act in some form for the protection of basic human rights that have been breached.[37]If, for instance, a government engages in a policy of killing by terrorizing the members of the persecuted group and inducing them to flee abroad, every member of the international community may be considered affected. State responsibility, in case of a violation of a human rights obligation under customary international law or if the breach attains by its seriousness the quality of an international crime, all other States are to be considered injured; in case of a human rights obligation based on treaty law, all other States parties.

3.1. States Responsibilities on Potential Standard in recognition of Non- Refoulement

The word, 'non-refoulement' is highly connected with refugee law, since it is explicitly mentioned in Article 33 of the 1951 Refugee Convention. This provision excludes refoulement of refugees, that is, forcible return or expulsion of 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 political opinion.[38]" The application of this principle does not neglect or exclude persons captured in armed conflicts[39] or other situations of violence, these persons also falls into these categories and are entitled to protection under refugee law. From the phrasing provided in Article 33(1) of the 1951 Refugee Convention it is faultless that the non-refoulement rule is applicable to any form of forcible removal which to an extent includes those of extradition, deportation or even expulsion As a commonly apposite principle in a refugee protection, non-refoulement is recurrently regarded as a right which extends at all times, and applied to everyone considered as a refugee under the 1951 Refugee Convention as soon the person seeks asylum in the receiving country and throughout his or her stay in the country seeking refuge[40]. The International pamphlets pronouncing the 1951 Convention has established relevant and acceptable instruments in the implementation of a more and explicit definition of non-refoulement. Strengthening the Convention for effective implementation by States is the 1967 Protocol relating to the Status of

[35] One of the fundamental principle of human right is the inalienable and non-discriminatory character in nature. The law is clear that under no circumstances should someone suffered discrimination because of its race, nationality and even status. The 1951 Refugee Convention also frowns at aspect of discrimination and torture when dealing with refugees

[36] Garvey, J.I., "Towards a reformulation of International Refugee Law", 26 Harvard. ILJ (1985), p. 483.

[37] *Barcelona Traction case*

[38] Elizabeth J Lentini, 'The Definition of Refugee in International Law: Proposais for the Future' (1985) 5 B.C. Third World L.J. 185

[39]The principle of non refoulement is also expressed in International Humanitarian law especially in the 1949 Geneva Convention IV in its article 45(4) which is to the effect preclude the detaining power from repatriating a Prisoner of War or transferring a civilian expressing for other country. It continues in its article 49 that in an occupied territory any transfer ofprotected person is prohibited.

[40]*Jean-Francois Durieux & Jane McAdam,* Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies, *16(1) INT'L J. REFUGEE L.4, 13 (2004)SS*

Refugees[41]. This Protocol ensures those states who are parties to the 1951 Convention should implement strictly the provision stipulated in the convention, and in no circumstances should these provisions be violated by States. In extending a coherent understanding of the principle, regional instruments in its part has also seen the need in adumbrating the concept of refugee, especially in the context of well-founded fear of persecution as the standard for determining protection from refoulement have become a platform of basic necessity[42]. In this regard, in observance with the provision of the 1951 Convention, numerous regional instruments and propaganda are of the opinion that State that expulse refugees can constitute refoulement, and some even identify rejection of these refugees at the borders as refoulement[43]. Notwithstanding, even though non-refoulement is seen as a principle with broad application; it has also gained acceptance as a fundamental principle of refugee protection.

States in ensuring the complete application of the 1951 Convention in regard to non- refoulement. The general rule here is that States are bound not to transfer any individual to another country if such transfer would result in divulging him or her to serious human rights violations, notably arbitrary deprivation of life[44], or torture[45] or other cruel, inhuman or degrading treatment or punishment. An unambiguous non-refoulement endowment is establish in Article Three of the 1984 Convention Against Torture[46], and Other Cruel, Inhuman or Degrading Treatment or Punishment[47], which prohibits the removal of a person to a country where there are considerable grounds for believing that he or she would be in danger of being subjected to torture. The said obligation stipulated is an extension of the 1966 Covenant on Civil and Political Rights[48], which encompasses the obligation of Member States to the Covenant not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing there is a real risk of irretrievable harm. The application of this notion is in contemplation of Article 6 of the Covenant which disposes a fundamental element as to the right to life and article 7 right to be freed from torture or other cruel, inhuman or degrading treatment or punishment by any country to which removal is to be effected or in any country to which the person may subsequently be removed[49]. Prohibiting aspect of refoulement that poses a huge threat, and risk of serious human rights violations,

[41] 1967 Protocol Relating to the Status of Refugees comes in to complement the 1951 Convention on the Protection of Refugee. The Protocol in its article 1 emphasizes that States who are parties to the Refugee Convention must respect the definition provided under article 1(2) (A) of the 1951 Refugee Convention which provide the definition of who can be considered as a Refugee in International.

[42] *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, defines a refugee in its article 2 as ;* "The term 'refugee ' shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, *nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country".* This Convention is also read alongside the American Convention on Human Rights in its article 22(8). Formatters of emphasize, the Organization of American States, Cartagena Declaration referred by many as the Cartagena Declaration also adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph the 1951 Convention and the 1967 Protocol relating to the Status of Refugees with a view to distinguishing refugees from other categories of migrants".

[41] Declaration on Territorial Asylum was adopted by the United Nations General Assemblyinits Res. 2312 (XXII) 1967.

[44] **Article 6** of the **International Covenant on Civil and Political Right** with strict compliance. This section is read alongside that *Article 2* of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, **Article 4** of the **American Charter on Human Right** ; and even Article 4 of the African Charter on Human and People's Rights 1986.

[45] The right to be free from torture is guaranteed under **Article 1** of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 2 of the 1985 Inter-American Convention to Prevent and Punish Torture. Article 16 of the **Convention Against Torture** prohibits other cruel, inhuman or degrading treatment or punishment. A prohibition of torture and other cruel, inhuman or degrading treatment or punishment is guaranteed under Article 7 of the ICCPR and provisions in regional human rights treaties, such as, for example, Article 3 of the European Convention on Human Right; Article 5(2) of the ACHR; or Article 5 of the African Charter.

[46] Duffy, A. (2008). "Expulsion to Face Torture? *Non-Refoulement* in International Law" 20 *International Journal of Refugee Law* 373

[47] The 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hereinaftter referred to as the Convention Against Torture.

[48] 1966 International Covenant on Civil and Political Right which *entered into force on the* 23th of March 1976 and hereinafter referred to as the ICCPR.

[49] In respect of the scope of application, States have obligations under Article 7 of the ICCPR that States should *prohibit of torture, or other cruel, inhuman or degrading treatment or punishment.*

torture, and other forms of ill-treatment is considered as detrimental when it comes to the legitimate application and protection of the rights attached to refugees[50]. In therefore a matter of justification that States when applying of this principle of non- refoulement should is not derogate no matter the circumstances in question[51], even if it is in the context of measures to combat terrorism and during the times of armed conflicts . States owes that responsibility in ensuring that the fundamental human right of all irrespective of the person in question should be respected at all times no matter the act or crime committed by the said person.

The Situation of State Security and State Sovereignty

Even though when dealing with refugees, the Convention in its Section 33(2) has given States the rights in sending back a refugee to his or her country of origin when there is a proof that the security and sovereignty of this State is threatened. There is no doubt about this, that it is responsibility of States in protecting its integrity and security, and that they have the inherent right in ensuring this. Our main concern here is usually in the manner in which these States handle issues of this nature in sending back a refugee based on security and criminal threats. Most of the States does it in a manner that these refugees undergo violations on their fundamental human rights, where these rights are internationally recognize by International community as sacrosanct, which warrant protection, and the application of non-refoulement is not an exception Cameroon and the Application of non-refoulement. The greatest humanitarian and basic customary international law principle is the principle of non-refoulement that is the core basis of international refugee and human rights. This principle is seen by many in International law arena, whether governments, NGOs or commentators, as fundamental to refugee law. As such its existence in the Refugee Convention in 1951, has played a key role in how States deal with refugees and asylum seekers[52].

The obligation to protect individuals from being sent to countries where they face a risk of persecution is also embedded in so many international and regional instruments as seen above with the main instrument being the 1951 Convention. Cameroon being a signatory to the said Convention and the OAU Convention on specific aspects of refugee problems in Africa has taken at the national level to internalize these instruments by enacting law no. 2005/006 of 27 July 2005 on the protection of refugees in Cameroon. It should be noted that the Constitution of Cameroon in its Art 45 have taken cognizance of treaties and international agreements by asserting their supremacy over national law. In the case of Omais[53], the Supreme Court of Cameroon affirmed the supremacy of international treaties ratified by Cameroon. Thus, the signature and ratification of the 1951 Convention imposes obligations on Cameroon in the protection of refugees by respecting the principle of non-refoulement.

States has always raised security concerns to expulse refugees or persons found in their territories. We must point out that it is generally accepted that, given the humanitarian character of the prohibition of refoulement and the serious consequences of a refugee of being returned to a country where she/he may be in danger, the exceptions must be interpreted restrictively and in strict compliance with due process of law[54].

The Situation of State Sovereignty

The basic challenge is state sovereignty, which is the basis of the nation-state concept at the heart of the UN and other international bodies. Although some states feel obligated to their own citizens, others are unable or unwilling to fulfil those obligations. In both cases, the state can decide who comes in and out of its borders. Thus, refugees who cross borders without personal documentation or who cannot return to their home countries undermine that idea of state control and state responsibility, thus living as a population in limbo within a state that is not their own The sovereign state's responsibility and accountability to both domestic and external constituencies must be affirmed as interconnected principles of the national and international order. Such a normative code is anchored in the assumption that in order to be legitimate, sovereignty must demonstrate responsibility. At the very least that means providing for the basic needs of its people.

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[50] The jurisprudence of the European Court of Human Rights, which established that *non-refoulement* is an inherent obligation under Article 3 of the European Court on Human Right in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment, including, in particular, with the decision of the Court's in *Soeringv. United Kingdom,* Application No. 14038/88, 7 July 1989.

[51] General Comment No. 29 on States of Emergency in its Article 4. A practical case justifying this is that of Gorki Ernesto Tapia Paez v. Sweden, *U.N. Doc. CAT/C/18/D/39/1996, 28 April 1997, para. 14.5. The absolute nature of the prohibition of refoulement to a risk of torture and other forms of ill-treatment under Article 3 of the ECHR has really been affirmed by the European Court of Human Rights, in Chahal v. UnitedKingdom, supra*

[52] Arif Ahmed (2016), Individual Protection versus National Security: A Balancing Test Concerning the Principle of Non-refoulement, IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 21, Issue 5, Ver. 5, PP 30-40.

[53] Judgment no. 21/CIV CS of13 July 2010.

54 Emanuela-Chiara Gillard (2008), There's no place like home: states' obligations in relation to transfers of persons, International Review of the Red Cross, Volume 90 Number 871, pp. 703-750.

International responsibility-sharing can promote protection for persons whose rights have been violated by states that are unwilling or unable to ensure their safety. However, these are exactly the situations in which international cooperation may be stymied by governments using sovereignty as an excuse to bar international aid for those most needing protection. Or, as in the case of failed states, international action becomes a substitute, rather than a support to national responsibility.

Conclusion

From the foregoing story and understanding it really becomes questionable whether States have any substantial obligation under customary international law to offer protection to refugees as the provision of the 1951 Convention imposes a duty on States not to obstruct individuals' right to seek protection.[55] However, for protection of refugee to take place in international law it requires evidence of a 'good cause' for States to implement their treaty obligations in good faith under the 1969 Vienna Convention on the Law of Treaties[56]will lead to an invocation of State responsibility if a State breaches its obligations. A State will be found to be acting in bad faith even if it tries to avoid its obligations. Therefore, it is clear that there is a degree of protection for refugee through international refugee law. The minimum standard definition in the 1951 Convention applies only to those who flee from persecution, but persecution as a term is not defined as the States are the sole judge of whether a person can be classified as a refugee or not. Thus, we must conclude that there is a great potential for refugee law to offer a significant degree of protection to refugees, but not to asylum seekers, which is where the problem potentially lies.

[55] Guy Goodwin-Gill, The Refugee in International Law (OUP 1998)
[56]1969 Vienna Convention on the Law of Treaties (adopted 23 May 1969) 1155 UNTS 331, arts 26, 31.