

Reconsider Refugees Status in the Eyes of International Law

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Abstract:

The legal instruments on the international plane concerning refugees are the 1951 Geneva Convention on the status of the refugees and the 1967 Protocols related to the status of the refugees extending the definition to the African refugees, including the 1969 African convention of the refugees governing the different aspects of refugees in Africa, and also the 1984 Cartagena Declaration on the refugees in Latin America, so, the main goal is to make understand how the refugees are seen in the eyes of international law through these mentioned international Conventions. So after we do understand the definition of the refugee under international law and the responsibility that states really have on the refugees no matter the place even in Europe, Asia with some African examples, it is going to be good to go a little further in the study of the prohibition of discrimination between and among the refugees through some important principles within the legal framework of the refugees legal system which is also one key point in the Responsibility of states, then highlighting some points in temporary protection and repatriation of refugees in a brief way.

Keywords: refugees, reconsider, international law, states responsibility, refugees law principles

Introduction:

The definition of a 'refugee' in international law is of critical importance for it can mean the difference between life and death for an individual seeking asylum. Definitions in international law, it may be noted, depart from the ordinary meaning of the word 'refugee'. In every speech the word refugee is used to describe a person who is forced to flee his or her home for any reason for which the individual is not responsible, be it persecution, public disorder, civil war, famine, earthquake or environmental degradation, however in international law¹, a refugee is a person who is forced to leave home for certain specified reasons and who furthermore is outside his or her country of origin and does not have its protection. Persons who are compelled to move but not cross international borders are classified as internally displaced persons. Several attempts to define the term refugee have been made in the course of the twentieth century. . The definitions contained in different international instruments during the period of the league of nations providing the historical backdrop against which contemporary definitions need to be considered. These includes the definitions contained in the 1951 convention on the status of refugees (hereafter the 1951 Convention), the 1969 OUA convention governing the specific Aspects of refugee problems in Africa (hereafter OUA convention) and the Cartagena Declaration on refugees, 1984(hereafter the Cartagena Declaration), we see the very important place that the refugee definition have in the eyes of international law. this topic as presented to us has a double interest of study , First one, is the legal importance, the moving of people from one side to another due to political matter or persecution had attracted the attention of states at the international dimension as well as the domestic level willing to set in place some laws regulating the situation of refugees in the world, treaties between states have been concluded, laws at the national level have been voted in order to reinforce the law of human right related to the situation of refugee, and one the fundamental conventions is the 1951 convention on the refugee and the 1967 protocols, so these international instruments give much more importance to the refugees in the eyes of international law before 1951 applied to western refugees and with the 1967 protocols the definition had been extended to all refugees, so based on this legal framework refugees should be respected in the territory of the host country, and protected until the change of the circumstances in his habitual residence which can generate his or her repatriation upon the fundamental principle of voluntary repatriation and non-refoulement ,today even though the existence of these international instruments it seem that some states still do not apply rules of the Geneva convention making the system more paralyzed and even broken Second, is the practical aspect of the status of Refugees, as laws or conventions have been concluded in order to show the concern of states concerning the situation of refugees, the most important problem to know is related to the responsibility of States, and the applicability of international law, are states really abide by the law they have set themselves on the refugees? The practical aspect leads us to the point of understanding refugee rights which has to be respected by states without any sort of discrimination, in practice it has been proved that most the countries are really much more concerned with the security matter, we have the case of Hungary which government is hostile to refugees, that is why the prime minister Viktor Orban wanted to insert an constitutional amendment project against the European plan of the repatriation of migrants ,project unfortunately rejected by his parliament deputy, in 8 November 2016, the security concern becomes one of the arguments of

¹ Convention relating to the status of refugees, 198 UNTS 137 (hereafter the Geneva convention), article 1(A)(2). the entire paragraph of the convention definition reads: refers to article 1 defining the term convention

states to be hostile to refugees, some refugees rights in Africa are not respected, refugees women raped in Uganda and in some others African countries hosting refugees. After understanding the interest of this article from the legal and practical aspect ,a brief background will be crucial ,in fact, the origins of refugee rights are closely intertwined with the emergence of the general system of international human rights law ;like human rights, the refugees right regime is a product of the twentieth century's, its contemporary codification by the United nations took place just after the Adoption of the universal Declaration of Human rights and was strongly influenced by the Declaration 'normative structure , the body of law which influenced the structure of the international refugee was the league of nation system protection of national minorities like aliens law, the minorities treaties which emerged after the first world war were indented to advance the interest of states, their specific goal was to require vanquished states to respect the human dignity of resident ethnic and religious minorities, in the hope of limiting the potential for future international conflict. Europeans were seen as first group of refugees victims of the second world war, and later with the movement of decolonization in Africa generating a large number of refugees then a second group of refugees were inserted in the definition this with the 1967 protocols related to the status of the refugees. In order to get the clue of this paper three points will be developed in a very simple way, first the definition of the refugee under the international refuge law (I) second, States Responsibility (II) and some important legal principles contained in the two instruments relating to the refuges status (III)

I Understanding the Definition of the refugee under the international law

A study of the status or rights of refugees under international law must first stake out a position on the critical question of what count on international law, there is of course a simple answer to the question: refugee rights are matters of international law, to the extent they derive from one of the accepted trio of international law sources, treaties, customs or general principles of law¹ The rules of recognition are applied to determine whether there are human rights derived from custom, General principles of law inhere in all persons, so any protections guaranteed by all the states to all persons will of course accrue to the benefit of refugees, yet while in principle universal human right law² ,so treaty is the most important contemporary source of refugee rights, the simplicity of the assertion that the charter of the united Nations has ushered in a new era of universally accepted human rights norms is attractive ,to date despite rhetoric to the contrary³ in fact, treaties normally creates duties only for states that choose to adhere to them, so specifically custom validation consistent and uniform interstate practice that have come to be regarded by government as matters of obligation⁴ based on this we could say that the universal human right law may arise are rooted in a positivist validation of the will of the states⁵

As mentioned above, the Refugee Convention has not been amended either explicitly or through practice to provide for a revised definition of refugee; however, customarily it is interpreted in an expansive fashion, relying heavily on its object and purpose. In fact, in some instances cited above, the qualification as a refugee may have been supplemented beyond the express terms of the convention; It has been argued that the definition of refugee does not exist under customary international law but only under treaty law. Most scholars of international refugee law have concluded as much. In particular, as far as the European Union is concerned, Kay Hailbronner has concluded, "The assumption of an international legal obligation to grant protection to victims of war, civil war and general violence must still be considered as 'wishful legal thinking.' Similarly, the American Society of International Law has concluded that there is no customary international law obliging states to provide protection to individuals who fall outside the strict terms of the Refugee Convention. Even as active an advocate as Guy Goodwin-Gill has stated that: "Practice reveals a significant level of general agreement not to return to danger those fleeing severe internal upheavals or armed conflict in their own countries" . . . nearly four decades of practice contain ample recognition of a humanitarian response to refugees falling outside the 1951 Convention. Whether practice has been sufficiently consistent over time and accompanied by the opinion- juris essential to the emergence of a customary rule of refuge, is possibly less certain, even at the regional level. As already stated the established refugee definition suffers from basic limitations, first several terms of the definition are ambiguous and result in inconsistent interpretation and application. Second the omission of those who have yet not crossed an international border, but are internally displaced, deny protection to an equally vulnerable group. Third persons ,persons who have externally displaced for reasons other than individualized persecution-including armed conflict and civil strife ,or simply individious and wide –spread discrimination-have been

¹ Statute of the Icj,59,stat.1055(1945)adopted June 26,1945 entered into force oct24 1945(ICJ statute art38(1))

² G.Danilenko (1993) *law-making in the international Community*, at 9-10.

³ .k.Mahoney and P.Mahoney(1993) *Human rights in the twenty –first century* A global challenge at 10

⁴ LANTERPACHT.E (1970) *international law: the collected papers of herspachth (at 238*

⁵ HATHAWAY.J (2000)'*The understanding of the sources of law set out here was first advanced in 'American, defender of democratic legitimacy'* European journal Of IL

omitted from the definition. Millions of persons are outside the scope of international protection because of these limitations and these deficiencies are addressed by the proposed definition of refugee¹ such as persecution, membership in a particular social group, and political opinion are inherently vague. UNHCR, the international organization responsible for supervising the implementation of the treaties² has offered guidelines to define such provisions however, the terms are interpreted differently by national decision-makers. article 33 of the refugee convention and protocol provide for the right of a refugee not to be forcibly returned to a place where his or her life or freedom would be threatened. As noticed before the principle of non-refoulement is the foundation of all refugee protection. Having achieved the status of customary international law, the principle is binding even on states that are not signatories to the refugee treaties, The point of departure for interpretation of the refugee definition, in international and many domestic legal systems, is the ordinary or 'plain' meaning of its terms. On the international level, this textual approach is embodied in both jurisprudence of the International court of justice³ article 31 of the Convention directs that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose⁴ the Vienna Convention is clearly based on the view that the text of a treaty must be presumed to be the authentic expression of the intentions of the parties.⁵

“One of the outstanding achievements of the 20th century in the humanitarian field has been the establishment of the principle that the refugee is a matter of concern to the international community and must be addressed in the context of international cooperation and burden-sharing”⁶ in the context of international cooperation states should be much more objective and broaden the definition of the refugee which has been given in the article 1 of the Geneva Convention related to the status of refugees, millions of people are found outside the scope of international protection, those from fleeing natural disasters, discrimination, minorities becoming stateless like Rohingya in Bangladesh facing great challenges due to their stateless status, so states should in a very cooperative way address this issue and giving more clarity in some concepts within the definition such as “membership of a particular social group or political opinion”, referring to the purpose of the United nations Charter international law has a goal to make the globe a better place to live in peace and security without any discrimination, those people who have not been able to cross the border are also part of the globe and should be able to benefit a global help while looking for a refuge within their territory, when they are faced with food problems and health situation, we see the United nations organization and some other humanitarian organizations going to their help, this is the United nations organizations commitment to those persons that they call “internal displaced persons” they all have to be called refugees to my opinion because they benefits help from the same organizations, that is why this aspect of inserting them in the scope of international protection under the auspices of the Geneva Convention should be really considered. This consideration once taken into account will help have a broad understanding of the term refugee.

II STATES RESPONSIBILITY

During the earlier part of the twentieth century, refugees allowed to enter an asylum status nonetheless often found themselves vulnerable to expulsion on ground that they had committed even minor criminal offenses or were deemed to public charges because they were unable to meet their own need due to negligence or ill health as Grahl Madsen describes the problem: it became the habit of certain states to expel refugees, and push those so expelled across the frontier to a neighboring country, this practice caused considerable hardship to the refugees ...the expulsion became a matter of concern to the international community the question has been dealt with in all international instruments relating to the status of refugee since 1928⁷ A high proportion of the rules of international law is concerned to set in place a legal regime of public international order prescribing permissible spheres of action by states. When the behavior of States goes beyond such spheres, the basic problem confronting the international legal system is to determine the legality of the acts in question and, if they be wrongful, to apportion responsibility for the acts in question. In this way states responsibility seeks to hinder recourse to illegal acts which give rise to a multitude of undesirable consequences on the international plane, including the forced displacement of populations⁸ Accountability for consequences generated by unaccepted conduct of states in international

¹ Guy.S.goodwin (1996) *the refugee in international law* clarendon press at 157

² Arthur C helton ‘(1990) what is Refugee protection?’ *International journal of refugee law* (123 at 124 see also international covenant on civil and political rights, 999 unts 171 (in force 23 march.)

³ Ian Brownlie, (1998) *principle of public international law* 5th edn, oxford university Press, p.632

⁴ UN Doc.A/Conf.39/27, concluded at Vienna on (23 May 1969), 1155 UNTS 331, entered into force 27 January 1990 (hereafter the Vienna Convention)

⁵ Ian Sinclair (1984), *the Vienna Convention on the law of treaties* 2nd edn, Manchester University press, p.115

⁶ The refugee Convention (1951) The travaux preparatoires analyzed with a commentary by Dr paul; Weis, *Cambridge International documents series, Volume 7*

⁷ MADSEN.G.A (1972) *the status of refugees in international law* vol II p 442 443

⁸ CHALOKA.B (1995). ‘state responsibility for the prevention and Resolution of forced Population Displacement in international law’ *international journal of refugee law*

relations is a major focus of the international legal system. In the Corfu channel case, the international court of justice remarked with truism that according to international practice, a state whose territory or in whose an act contrary to international law has occurred, maybe called upon to give an explanation and that such a state cannot evade such a request by limiting itself to a reply that is ignorant of the circumstances of the act and its authors. Responsibility in this case arose from the danger created to navigation in the North Corfu Channel by the laying of mines of which no warning had been given. In the opinion of the court, responsibility lay on the basis of knowledge on the part of Albania of the laying of mines. From this case professor Goodwin-Gill has correctly drawn the analogy that responsibility may be attributed whenever a state, within whose territory substantial trans boundary harm is generated has knowledge or means of knowledge of harm and the opportunity to act¹ Every state must be held responsible for the performance of its international obligations under the rules of international law, whether such rules derives from custom, treaty or other source of international law, Every internationally wrongful act of a state entails the international responsibility of that state. So there is an internationally wrongful act of a state When:

- a) Conduct consisting of an action or omission is attributable to the state under international law;
- b) And that conduct constitutes a breach of an international obligation of the state.

Legal developments brought about by human rights leave no doubt that the conduct of a state with regard to the treatment of its own population is a matter of international law, rather than exclusive domestic jurisdiction. In any case domestic jurisdiction in international law is an essentially relative concept which depends upon development in international relations. The application of the theory of the state responsibility has to vary and extend to the consequences of illegal conduct of a state in breach of human rights obligations.

This point is underscored by the Cairo Declaration of principles of international law on compensation to Refugees which was conducted by international law Association in 1992. Principle 2 of the Declaration states that:

‘Since refugees are forced directly or indirectly out of their homes in their homelands, they are deprived of full and effective enjoyment of all articles in the universal Declaration of Human rights that presupposes a person’s ability to live in the place chosen as home. accordingly, the state that turns a person into a refugee commits an internationally wrongful act, which creates the obligation to make good the wrong done.’ The nature of illegality connected with refugee flows has had a spate of authoritative comment. In 1938, Jennings was of the view that there seems to be good ground for stating that the willful flooding of other states with refugees constitutes not merely an inequitable act, but illegal act, where the refugees are compelled to enter a country of refuge in a destitute condition. Now in the era of human rights it is clearly prohibited to displace population groups by subjecting them to practices amounting to genocide, torture, cruel, or degrading treatment, ethnic cleansing, or violence aimed at dispersing minorities or other ethnic groups from their homeland² when a refugee first arrives in search of protection; he or she enjoys a very limited right of non return³ there is little doubt that the inherent trauma of the refugee experience can be exacerbated by enforced idleness and dependence⁴ Ohaegbulom has written of the refugee’s need to become a whole person again; who earns his own living and the respect of those around him⁵ simply put, self reliance can improve the refugee’s self image and therefore his or her ability to cope with being a refugee⁶ more fundamentally, the refugee’s ability to engage in productive economic activity in the asylum country be critical to survive. While international human rights law has evolved to recognize the duty of states affirmatively to assist all persons under their authority including refugees to access the necessities of life refugees too often find that in practice they must fend

¹ Guy S. Goodwin-Gill (1983) *the refugee in international law* clarendon press, Oxford, first edition p.228

² JENNINGS, R. (1938) ‘some international law Aspects of the Refugee’ *Questions’ british year book of international law*.

³ JAMES C.H. (2005) *The rights of refugees under international law*, p 663

⁴ Gorman makes the case against what he calls the palestinisation of refugee who are forced to remain in dependent situations and are denied the opportunity to pursue self reliance through economic activity, resulting in their alienation, resentment, and exasperation: R Gorman ed; *Refugee aid development* at 8 and see also D: Miserz, ed *Refugee the trauma of exile: the humanitarian Role of the red cross and the red crescent* at 92

⁵ F: Ohaegbulon; (1985) *Human right and the refugee situation in Africa*, in G. Sheperd and V Nandaseds; *human Rights and third World development* at 197

⁶ FORBES. S. MARTIN and COPELAND. E (1988) *Making ends meet.. Refugee women and income Generation* at 3

for themselves, among their rights they also do have the right of freedom of movement¹ Concerning the armed attack on refugees camps and settlement, the legal grounds are often ambiguous and indirect, the 1951 Refugee Convention does not directly cover the question of the physical protection of the refugees this aspect should also be reconsidered by states at the international level with strong legal measures .the Obligation to ensure the safety of the refugees should not rest on asylum countries alone since these may not always have the ability to ensure it. The obligation should be imposed on all the states, both individually and collectively, the custodian of the right to safety and security of refugees should be the international community as a whole with the high commissioner as its principal agent refugee ambassador², The law applicable to aliens is unsatisfactory since the duty to protect aliens is owed by the alien's national state. The situation of refugees is thus anomalous since they do not enjoy the protection of their nationality³ ,above all, a state should not discriminate among refugees as part of its responsibility, The general purpose of the legal duty of non-discrimination is defined by Fredman as being to ensure that individual should be judged according to their personal qualities⁴ consideration has also been given to such key questions as the differences between formal equality(equality before the law)and substantive equality(equality protection of the law) the relative importance of intention and effect in assessing whether discrimination of either kind is demonstrated, and the extent to which international requires positive efforts to remedy unjustifiable distinctions, rather than just a duty to desist from discriminatory conduct. The earlier focus was on whether the broad duty of non-discrimination in particular, that set by art 26 of the civil and political covenant might actually be sufficient in and of itself to require the equal protection of refugee, so concerning the responsibility of states they have to make sure that protection is given to refugee without any kind of discrimination, To a real extend, the inappropriate of differential allocation of refugee right is clear from the fact that the language of the refugee convention presupposes that whatever entitlements are held by virtue of refugee status should inhere in all refugees. In setting the refugee definition, the drafters of the convention were at pains carefully to limit the beneficiary class, they excluded for example, persons who have yet to leave their own country ,who cannot link their predicament to civil or political status who are found not to deserve protection⁵ yet there are in fact often significant differences in the way that particular subsets of convention refugees are treated by states.perhaps most commonly differentiation is based upon nationality .Saudi Arabia recognized Iraqis displaced as a result of the Gulf war as refugee even as it left thousands of refugee from other countries within its borders without status and summarily deported at-risk Somalis⁶ India has allowed Tibetan refugees full access to employment ,but limited in some cases severely the opportunities to earn livelihood for refugees from srilanka and in particular those from Bangladesh⁷

Above all, the refugee issue is a global problem, and solutions also need to be taken at the global level, contracting states of the 1951 convention on the refugees status should come together to find a better and durable solutions for the refugees, this refugee situation is not a current one, that situation has started long time ago, conferences are organized ,international instruments are set in place, but the number of refugees and asylum seekers still increasing, articles are published, ideas are given, but still, many of some of those ideas are not respected by some states, states choose or recognize refugees in term of

¹ Article 26 of the 1951 refugee convention on the status of the refuges

² HOLBORN L,W.(1997)*refugee: A problem of our time*,2 vols Metuchen,NJ:scarecrow press, 153-73.

³ Akehurst, (1997)*modern introduction to International law* ,Routledge seventh edition p. 87.

⁴ Fredman.S, (2001)*Discrimination law*(2001) at 66

⁵ Fredman.S (2001) *Discrimination law Oxford University press* at 66

⁶ The Saudi Arabian government contends that 'Islamic principles rather than international law' are the basis for its extension of haven to Iraqi refugees. The government has failed to sign international treaties and instruments that protect refugees from forced repatriation. It has not articulated an official policy regarding refugees or asylum': Lawyers' Committee for Human Rights, *Asylum under Attack: A Report on the Protection of Iraqi Refugees and Displaced Persons One Year after the Humanitarian Emergency in Iraq* (1992), at 64. More generally, a Canadian government report observed that "Saudi Arabia is . . . known for its policies of discrimination against refugees in general, regardless of whether or not they are Muslims . . . In March 1991, for example, shortly after the downfall of Mohamed Siad Barre and when fighting was fierce in both northern and southern Somalia, Saudi Arabia deported some 950 immigrant workers to Somalia": Immigration and Refugee Board Documentation, Information, and Research Branch, "Kenya, Djibouti, Yemen and Saudi Arabia: the situation of Somali refugee" (1992),at 5.

⁷ Tibetan refugee have been issued certificates of identity which enable them to undertake gainful employment,and even to travel and return to india,Srilanka refugee in contrast have been allowed to engage only in self-employment while Bangladeshi refugees have not been allowed to undertake employment of any kind:B.Chimini,'the legal Condition of refugees in India'(4)journal of refugees studies(1994) 378 at 393-394

consideration or good bilateral relation with the country of origin of the asylum seeker or the refugees, when refugees enter the border of another country they become subject of the domestic policies of that state, so states should side their domestic policies on the line of the convention relating on the refugees status, most of the time when a country has a dark history or have a political problem with the country of origin of the refugee, it does not recognize that country's asylum seeker a status of refugees, there are two fundamental elements that need to be observed:

The first one from my personal analysis including ideas given to me by the co-author is the treatment of the refugee based on the nature of the bilateral relation with the habitual residence of the refugee as I said earlier, is the case of China with North Korea, Myanmar, and Vietnam, and some other examples, this could make weak the effectiveness of the international convention accepted and ratified by many states at Geneva in 1951, the international refugee regime is paralyzed, ideas should come up to bring changes in the international regime of refugees,

The second element is the personal interest of contracting states, in my article on the temporary protection of the refugees in international law; I called it "dualism interest", with the proliferation of terrorists around the world, and these days in European states for example the terrorist Attack in Barcelona Spain in early August of 2017, states are afraid and want to securitize their territories due to some numbers of terrorists among those refugees, that is why some of them became more hostile the case for instance Donald Trump ban refugees and citizen of the six Muslim countries in order to promote the security of the USA and its citizens, this decision may affect the rest of the states around the world already hostile to refugees to be much more hostile this will render the refugee convention "soft and flexible" a state should not discriminate based on the religion or race of the refugees fleeing the unsafe territory, the questions that we should ask about the decision of Trump concerning the refugees from the six Muslim countries are: closing borders to those refugees will stop the terrorists phenomena in the USA? and what about the refugees from these countries already in the USA? , this is the first interest, as I said dualism ,the second one is for the sake of international convention of the refugees clauses which of course should be respected, sometimes states find themselves in the dilemma, in the middle, but the only thing to do is to respect the international clauses and enhance the level of control and security at borders in order not to let refugees entering, and also within their temporary protection they should be really controlled with the high level of technology. States of habitual residence of refugees need to make much more efforts to alleviate conflicts generating large number of refugees, making a step for conflicts resolution, because if no resolutions are taken to cease conflicts, conferences on the refugees will be seen as a grain of seed in the sea.

I suggest together with my co author in this article that the theory of double speed sanctions against states that breach the rules of international law of the refugees, special international courts should be put in place for the protection of refugees and punish states that really do not respect their rights, special courts should be established in countries having big camps of refugees such as Uganda,Greece,Turkey,France,lawyers having good knowledge of international law of the refugees, will be there to defend the cause of the refugees, in a very detail way the Geneva convention should highlight sanctions and strict one against states, there should be a special mechanism from the refugee legal framework enforcing the rule of law, this can make very efficient the refugee law, the very big problem is also on the producers of those refugees, as long as they will not have political will to cease situations that prompted the flight of the refugees ,the plight will remain the same, to some degree mechanisms of sanctions should also be taken against those producers part of the Geneva Convention of refugees in a large number ,to make the regime more efficient we should go deep to the cause of the flight deal with it ,then set in place strict binding rules ,today in 2017 the world is suffering a lot ,states produce anyhow refugees, host states treat them anyhow, finally we are in front of a very broken system, "host states may also be understood to possess forms of compulsory power within the Global refugee regime, given the principle of sovereignty within the international system and the limited enforcement mechanisms for the norms detailed in the 1951 convention, states have ultimate control over their borders and the quantity and quality of asylum they afford to refugees"¹

SOME LEGAL REFUGEES PRINCIPLES

- TEMPORARY PROTECTION

Discussion of temporary protection frequently proceed from a false assumption, in asking whether there is good reason to consider the adoption of temporary protection as either a complimentary remedy to, or replacement for, traditional modes of protection, commentators assume permanent integration of refugees to be the status quo position. To the contrary at least temporary protection is already the universal norm²Temporary protection is a system of protection that is applied to a refugee for certain of period of time depending on the unstable situation of his habitual residence. International law does not contains any rule to the effect that asylum needs to be permanent, the following durable solution exist for the refugees repatriation, local settlement, resettlement in a third State some states criticize the application of temporary protection to mass flux, but the UNHCR executive committees has adopted various conclusions in which it urges granting at least temporary protection in cases of mass-influx.

¹ James Milner and Krystyna Wojnarowicz: Power in the Global refugee regime:Understanding Expressions and experiences of power in Global and Local Conexts, *Canada's journal on refugees vol 33,No 1 2017*

² Hathaway.James (1997) *Reconceiving International refugee law*,Martinus Nijhoff Publishers volume 30 p2

The principle of non-refoulement needs of course to be observed. In understanding simply Temporary Protection we may go through its purpose, the first one is to Grant Protection or some minimal protection and to await repatriation, but through this process its has three goals:1 Administrative and economic resources are served Through the Absence of a full Asylum Procedure assessing individual claims by instead applying a prima facie group determination
2)Politically it becomes easier to return refugees if the situation in the country of origin changes, in. this way a signal is sent to the refugee that his or her stay in the specific country is only temporary
3/ finally but not least temporary a signal is sent to the public at large that this refugee situation is purely a matter of protection without element of voluntary migration. After understanding briefly the Temporary protection let's talk now on its legal scope

The current international legal regime for refugees is a relatively, recent one. Established under the framework of the 1951 Geneva Convention relating to the status of refugees¹ with the entry into force of the refugee convention and the establishment of the UNHCR, the international legal norm affecting bilateral and multilateral arrangements concerning refugees shifted in a manner of significant ways.

Although the refugee Convention was drafted to address the mass displacement caused by World War II in Europe and has provisions for group or category determination, it has been viewed by states primarily as an instrument for individualized refugee assessment². Because individual assessment is considered inappropriate for mass influx, some states view the refugees' convention as inapplicable to situations of mass refugee flow.³

New instruments and policies have been devised to bridge the gap between states-Obligations of non-refoulement and the need for a durable solution in situation where individualized asylum claims overwhelm the capacity of systems or where the cause of flight is for non-Convention reasons, it is in this context that temporary protection has emerged as a regularized status in recent years.

Temporary Protection in its more recent, formalized sense⁴ takes a number of different forms in the areas of the world where it has been implemented and covers migrants or putative refugees fleeing various types of crises in their home states.

As Joan Fitzpatrick states: 'Temporary Protection is like a magic gift, assuming the desired form of it enthusiasts 'policy objectives simultaneously, it serves as a magic mirror of its observers, era for refugee advocates, TP (Temporary protection) expands the protection of forced migrants who cannot and satisfy the criteria under the 1951 convention and its promises group-based protection when the determination of an individual's status proves impossible. '

From the perspective of the state granting the status, Temporary protection has the following advantages,(1) it is a humanitarian response to situations of mass influx, whether toward person who might qualify as refugees under the refugee convention definition, or would not qualify ,but are fleeing emergency situations in their home countries and observe humanitarian treatment in their place of refuge (2) it offers an alternative to the receiving states ,obligation to provide the full asylum procedures otherwise required for persons seeking refuge status, conserving resources in often overstretched adjudication system⁵ making sure that temporary protection is now seen like a universal norm which is applied by the majority of states so what can we say on the treatment that those states give to refugees during their Temporary protection

-Repatriation of the refugees:

¹ Convention relating to the status of refugee adopted in July 28,1951(entered into force (22 April,1954)its companion 1967 protocol(Refugee Protocol) protocol relating to the status of refugees of refugees adopted January 31,1967(entered into force in 4th October 1967)

² Fitzpatrick ,*Temporary Protection of refugees*, at 182

³ See Generally Fitzpatrick, *Revitalizing the 1951 refugee convention*, also Bonaventure. Rutinwa,*Temporary protection and its expression under the reformulation of refugee law, model in perspective on refugee protection in south Africa*, (Jeff hand maker et al-ed 2001)at 50

⁴ For a Thorough study of temporary protection on the range of practice of temporary protection, see inter-Governmental consultations on asylum refugees and Migration policies in Europe, North America and Australia(1995) A review of literature on temporary protection shows contrasting perspectives: Temporary Protection/safe –haven as a non-formalized ,non –specific status of states tolerance of refugees ore 'refugee-like 'persons for short or long periods of time in their territories, or the more specific status of temporary protection with specified parameters for beneficiaries, duration of status of temporary protection, standards of rights ,and criteria cessation included in domestic legislation. For views of some of the commentators on TP see Joan Fitzpatrick, Flight from Asylum, trends towards Temporary 'refugee and local responses to forced Migrations, Morton Kjaerum,Temporary Protection in Europe in the 1990s,Susan Martin.et.al ,Temporary protection towards a New regional and domestic Framework,Immr,L.G 531,1998

⁵ Fitzpatrick,(2000) *Temporary protection of refugees 'American journal of international law'*(2000)

Refuge law as created after the Second World War was to a large extent the product of clashing convictions pertaining to the relation of individual and state. The issue of voluntary repatriation served throughout as a catalyst, shaping the discussions and ultimately providing the ensuing framework with its bias toward exile¹. This repatriation according to the Geneva Convention should be based on the ground of the voluntary element, voluntary repatriation takes place to a variety of different conditions, refugees may return to (i) an ongoing armed conflict (ii) countries where there has been no change of government, but where there have been declarations of general amnesty (iii) situations where there has been a change of government (iv) newly-born states where the states in question may have no responsibility for causing the displacement of the returning refugees, or (vi) defunct states, Each case scenario requires different modalities of intervention². in case of unbearable condition in the habitual residence of the refugees two keys elements might influence his decision to return such as security and the prospect of economic survival. Likewise, the principle that those refugees who decline to return would remain entitled to international protection³ until conditions for the cessation of their refugee status would exist continues to be upheld:

‘In other words, a refugee may continue to refuse to avail himself or herself of the protection of his or her country of origin so long as the circumstances in connection with which he or she has become a refugee have not ceased to exist. This should be determined on a case by case basis through interviews with a view to ascertaining whether the individual not wishing to return is still in need of international protection ‘in a case where refugees express a desire to return ,UNHCR is called upon to assist in such returns, even though the statute merely refers to UNHR’s assisting governments rather than refugees in this respect, facilitating voluntary repatriation pertains to what is referred to as ‘refugee-induced voluntary repatriation and is defined as: ‘assisting refugees, in situations where UNHCR cannot promote voluntary repatriation, to make an informed decision reflecting their own priorities and standards and once they decide ,providing them the necessary support and guidance so that they can achieve the goals of their decision’⁴

Expect the cessation of the unstable situation of the country of origin generating the repatriation of those willing to do so, there is a problem of stability in the relation between the country of origin and the host country, when such relation is deteriorated, this may have a serious impact in the repatriation of refugees without respect of voluntary repatriation or principle of non-refoulement.

let’s see the case of the Afghans refugees in Pakistan who have been driven out of the country in November 2016 by the Pakistan Authorities, in the second half of 2016, a toxic combination of deportation threats and police abuses pushed out nearly 365,000 of the country’s 1.2 million registered afghan refugees, the exodus amount to the world largest unlawful mass forced return of refugees in recent times, Pakistan authorities have made a statement they want to see a similar number returning in 2017⁵

the nature of a political relation between states can have an influence on the way of treating refugees, the case of China with north Korean refugees, those from Vietnam and the Burma refugees, the question in point is the respect of the rights of the refugees, giving a vital sense of the refugee law by abiding the law of the refugees, no matter the bilateral paralysis that may happen between the two states, if states continue to always prioritize their personal interest which is not bad so what is going to be the future of the Geneva convention on the status of refugees? If the nature of the relationship between the country of origin and the host country should always impact on the treatment of the refugees so what is finally the importance to be part of the convention while its legal principles are not fully observed?, we also assist in kind of repatriations which sometimes are not sustainable, but motivated by the desire of governments to get rid of the refugees, some questions need to be asked for the case of the Somali refugees in Dadaab camp in the republic of Kenya in November many Somali refugees have chosen to return to their habitual residence on the ground of the principle of voluntary repatriation which is also advocated in article V of the organization of African unity 1969 refugee convention ,through the dialogue or the agreement existing between the government of Kenya and the Somali government and the UNHCR, a large number of refugees would be returned in November 2016, but the situation in Somalia still not completely stable, the rate of security in Somalia still not perfectly

¹ Zieck, Marjoleine: *UNHCR and Voluntary Repatriation of refugees, A legal Analysis*, Martinus Nijhoff publishers p41

² Hathaway, James (editor): *Reconceiving international refugee law* Martinus Nijhoff publishers p 62

³ UNHCR Handbook *voluntary Repatriation: International Protection*. (1996) at 35

⁴ UNHCR doc. ‘*protection Guidelines on voluntary Repatriation*’ (draft), September 1993 at 34 (emphasis in original), *facilitating voluntary repatriation can take place on the basis of a tripartite agreement (and, moreover may involve a semi- or fully organized turn movement): the difference between facilitating and promoting voluntary repatriation may be deduced from the fact that UNHCR, in those instances where it merely facilitates return, considers that ‘information campaigns with a view to promoting voluntary repatriation are not normally appropriate ‘it may therefore not be easy to infer from an actual voluntary repatriation movement which takes place under UNHCR auspices whether it is promoted or merely facilitated by UNHCR (which may entail confusion on the part of interested government and international community at large, similar confusion arose in 1987 on account of UNHCR’S activities pertaining to voluntary repatriation of Guatemalan refugees from Mexico)*

⁵ www.hrw.org/report/2017/2/13/Pakistan-coercion-Un-complicity/mass-forced-return-afghan-refugee

established, returnees cannot easily access to health care and good education, but how these refugees who have lived in Dadaab camp for more than three years in security accept or opt to go back to an insecure place? How the voluntary repatriation be sustainable if the refugees return in a place without proper infrastructure? How can these questions be legally analyzed?

CONCLUSION

The world in general is full of many refugees; this situation explains the existence of the instability areas around the globe especially in Africa there exists many unstable places generating a large number of refugees, but the majority of states of the international community have committed themselves to make sure that the rights of the refugees are really respected by states, that is why in order to consider the issue in question, some international instruments have been set in place giving a great importance to the refugee status, instruments containing rules, principles internationally recognized and accepted by the states, that is why we can see with the critical European crisis of the refugees led to the EU-Turkey Agreement on the situation of Syrian Refugees the way European states have been and still committed to find a relief to the refugees flow, even though some states still hostile.. the problem of the refugees need to find its solution in the country of residence of the refugees, for example many south Sudanese refugees flee their own territory to Uganda where they are asking for food as, in December 16th 2016 the world food organization has provided food to those south Sudanese refugees in Uganda even now the camp is full of refugees fleeing the insecurity in South Sudan, the Good news is that the south president called for a national dialogue including everybody in order to stabilize the political situation in the country generating a large number of those refugees, still efforts need to be made by south Sudanese political leaders to stabilize completely the Country, so from my personal analysis, countries producer of refugees should highly be committed to cease conflicts for example the *Syria case*, that could only be the only way to let their citizens finding themselves as refugees in another country to return back, the host country in collaboration with international donors must respect the right of refugees in order to meet the requirements of international human rights instruments and regional instruments related on the status of the refugees not to arbitrary return them to borders, further on, states at the international level need to revitalize the regime of the refugees by enlarging the definition of the term, then find some strong legal framework regime to make the system more efficient in order to promote the effectiveness of the rule of international law.

Bibliography and articles:

- 1- Zieck, Marjoleine: *UNHCR and Repatriation of refugees A legal Analysis*, Martinus Nijhoff publishers
- 2- Hathaway, James: *Reconceiving international refugee law*, Martinus Nijhoff Publishers volume 30
- 3- Zieck, Marjoleine: *UNHCR and Voluntary Repatriation of refugees, A legal Analysis*, Martinus Nijhoff publishers p41
- 4- Akehurst, *modern introduction to International law*, Routledge 1997 seventh edition (1997) 87.
- 5- B. Chimini, 'the legal Condition of refugees in India' (4) *journal of refugees studies* (1994) 378 at 393-394
- 6- Fredman, S *Discrimination law* Oxford University press (2002) at 66
- 7- Fitzpatrick (2000) *Temporary protection of refugees 'American journal of international law'*
- 8- HOLBORN L, W. *refugee: A problem of our time*, 2 vols Metuchen, NJ: scarecrow press, (1975) i.153-73.
- 9- Ian Brownlie, (1998) *principle of public international law* 5th edn, oxford university Press, (1998) p.632.
- 10- F : Ohaegbulon (1985) ; *Human right and the refugee situation in Africa* , in G. sheperd and V Nandaseds ; *human Rights and third World developmen*) at 197
- 11- Arthur C helton ' *what is Refugee protection?*' *International journal of refugee law* (1990) 123 at 124 see also *international covenant on civil and political rights*, 999 unts 171 (in force 23 march.)
- 12- FORBES, S. MARTIN and COPELAND, E (1988) ; *Making ends meet.. Refugee women and income Generation* at 3
- 13- Guy S. Goodwin-GILL (1983) *the refugee in international law clarendon press, Oxford, first edition* 228
- 14: G. Danilenko *law-making in the international Community*, (1993) at 9-10.
- 15- CHALOKA, B. (1995) *State responsibility for the prevention and Resolution of forced Population Displacement in international law* 'international journal of refugee law
- 16- Ian Sinclair, *the Vienna Convention on the law of treaties* 2nd edn, Manchester University press, (1984) p.115
- 17- JAMES C.H. *The rights of refugees under international law* (15th September 2005), p 663
- 18- G. Danilenko (1993) *law-making in the international Community*, (1993) at 9-10.
19. k. Mahoney and P. Mahoney *Human rights in the twenty -first century A global challenges* (1993) at 10
- 20- LANTERPACHT, E (1970) *international law: the collected papers of herspachth* at 238
- 21) James Milner and Krystyna Wojnarowicz (2017) *Power in the Global refugee regime: understanding expressions and experiences of power in Global and local context*, Canada's journal on refugees, vol 33, N1

CONVENTIONS AND JOURNALS

1- GENEVA CONVENTION RELATED ON THE REFUGES STATUS 1951

2- THE 1967 PROTOCOLS ON THE REFUGES STATUS

3- AMERICAN JOURNAL OF INTERNATIONAL LAW

5- THE 1969 AFRICAN CONVENTION GOVERNING DIFFERENT ASPECTS OF REFUGES IN AFRICA

6- UNHCR HANDBOOK ON REPATRIATION