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Is International Law Capable of Addressing Refugee Crises?

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Abstract

In this essay, the author intends to determine whether international law is endowed with the right tools to properly handle, in general, refugee situations. I will use the continuing Syrian crisis to ground over concerns and gauge whether, as some post, international law wants asylum seekers to seek shelter in a country that is other than their State of nationality. In responding to the question, I shall divide it into four segments. In the first part, I will define a refugee and explain what rights a ''refugee'' has under the law. In Part 2, the obligations devolving on treaty-making States under international law will be analyzed. In Part 3, the place that international law has played in establishing and/or strengthening refugee rights protection and potential avenues for improvement where applicable will be evaluated. In the last section of this work, in Part 4, I will analyze many proposed upgrades and explain why they cannot be accomplished. Still, this article will only examine whether asylum seekers have any fundamental rights that may be asserted to protect them against States at the international or regional level. As for extensive coverage of this article, it is worth noting that issues of crisis management in domestic environments are not raised in it, as well as cases when, according to the norms of international law, States are legally obligated to undertake practical actions, including operational actions by military forces in direct protection of citizens and their property. Indeed, the term ''manage is quite broad in its meaning. This article will discuss specifically (a) whether international law offers any measure of protection to refugees fleeing their countries, (b) whether international law creates a legal right for States to offer asylum to refugees, and (c) whether data available that international law can indeed protect refugees, where there are cases where asylum seekers managed to get municipal or international legal protection. As to the three questions, I suggest that all should be answered positively; consequently, one can safely deduce that international law can manage refugee crises, present and future. The lack of capacity to deal with the chaos that the asylum seekers from Syria have been subjected to

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probably due to lack of systematic protection, calls for change and points to the fact that the existing international legal regime is not capable of solving the refugee problems. It is high time to explain the definitions of some crucial notions. International law comprises CIL and the international treaty obligation, primarily arising from the United Nations Conventions. I use the term ''refugee'' in a strictly legal meaning – those who fit the definition of the International Humanitarian Law, and ''asylum seeker'' will mean all the individuals for whom the question of recognition remains open. One needs to appreciate that while there is a lot of intersection between IR law and IHRL, the two are entirely different legal regimes; hence, this article is not solely a discussion of the former. The protection of asylum seekers under international human rights law will also be assessed, as well as the ability of the international legal system to provide grave remedial options for refugee conditions. This article will also consider relevant regional legal frameworks, such as those of the EU and AU.

Context: The Persistent Crisis

About 9 million Syrians have fled their homes since the outbreak of the civil war in the country in March 2011. As of up to the date early December 2015, a million refugees have sought refuge in Europe away from the butchery in Syria. Countries impacted are polarized over the optimal approach to resettling these asylum seekers: some of them equally point to a legal basis for giving them refuge, and some point to a political argument for turning the asylum seekers away. Out of a total of 9 million displaced Syrian population, some have moved to neighboring countries and some EU states, while others are still within the country. The first question I will pose regards the extent to which individual asylum seekers enjoy rights under international law. This is where I will focus my main arguments for the first section of Part 1. Cond Pall. 2013 personal communication: Studies show that the vast majority of Gulf States introduced measures allowing entry and residency for Syrians since the start of the war and that only a mere 10 per cent of asylum seekers travel to Europe. Refugee claimants are restricted to this last category, asylum seekers seeking refuge in the international sphere, excluding Syria and neighbouring States. The next question I will discuss in this paper concerns whether or not these asylum seekers are considered refugees. This will be discussed in section 1B and also in sections 3 and 4 of this paper. It is also important to mention that popular media

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has been accusing the international community for years of its failure to provide refugees with proper shelter and a desirable standard of living. Thirdly, I will ask whether states have any legal obligations to asylum seekers and refugees. This shall be discussed in Part 2 and again in Part 3 and Part 4. The huge and tendentious criticism of the system suggests that the international community is not ready to accept a large number of refugees and asylum seekers. In order to decide whether this is a failure of international law or a failure of the international community to follow this law and the procedures of this form of governance, it is highly crucial to provide a brief understanding of what this law entails.

Concerning Refugees

What Can Refugees Do or Be Allowed to Do?

The meaning of legal protection can be regarded as somewhat narrow. The 1951 Convention on the Status of Refugees only occurs once an individual can be classified. This means that under the Convention, governments are under obligation only if an asylum seeker is classified as a ''refugee,'' which conforms to the Convention. This may pose a challenge because it might provide states with the leeway to exercise some discretion, possibly asymptotically, to employ procedural and technical regulation to escape international law obligations. During the signing of the 1951 Convention, States agreed to provide the refugees with several basic administrative needs such as administrative assistance (Article 27), allowing transfer of assets (Article 30) and the grant of citizenship (Article 34). In addition, by the provisions of the 1951 Convention, refugees shall be accorded treatment not less favourable than that enjoyed by other aliens of similar status. EU States define a ''refugee'' according to the 2004 Qualification Directive and ''subsidiary protection'' for a person if there is a genuine risk of being subjected to acute harm upon their return, which fits many people from Syria and nearby regions. Non-refoulement can be referred to without question as the primary idea of the Convention of 1951, according to Article 33. It postulates certainty that all people have the right to be protected from deportation to the country where they could become persecuted. This is probably a principle of customary international law, and it should be binding on all nations, irrespective of whether or

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not they are parties to the 1951 convention. Convention 1951 has crystallized several principles of the genre of customary international law, especially on the rights of Refugees as elucidated under Articles 14-30.

The performance of such duties varies because their effectiveness depends on the political will of the states undertaking precautionary enforcement measures. It is useful where only one State is likely to be in breach, although it has not been used significantly where several States may be in breach as is now, in the present context. This is different from particular regional enforcement, such as the duty to protect the rights of refugees under ECHR or the 1969 OAU Convention. Therefore, as this paper finds, a refugee status entails many rights protected under customary international laws once the individual is recognized. This brings the question of why the rights of Syrian asylum seekers are not protected, as evidenced by the multiple media sources stated at the beginning of the paper. Others' opinions are that the solution can be found by expanding on the definition of refugee under the current legal regime.

What constitutes a refugee?

International Refugee Law states ''refugee'' under Article 1(A)(2) of the 1951 convention as a person who is outside any country of his nationality for fear of persecution on account of race, religion, nationality, belonging to a particular social group or political opinion and is unable or unwilling to avail the protection of that country. This is currently the ''centrepiece of international refugee protection''. It is further supported by secondary sources of protection from related actors at the regional level and the development of international human rights law. The 1967 Protocol relating to the Status of Refugees /Article 1/ modify the 1951 Convention based on the following provision: The term ''refugee'' shall be used without geographic and temporal limitations as were included in the text of the 1951 Convention. The definition of refugees provided by the Convention is viewed as the key reference point in identifying refugees and is used as the basis of the terms used within the European Union. Moreover, as part of the Universal Declaration of Human Rights, Article 14 states, ''Everyone has the right to seek and enjoy asylum in other countries from persecution. This provision applies to all asylum

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seekers and seeks to improve the definition given by the 1951 convention to qualify as refugees so that asylum seekers are covered under human rights law and refugee law. The main difference between the 2004 Qualification Directive and the protection of region in the 1951 convention is that Member State may only apply it to citizens of a non-member State of the EU and stateless persons. They have to stress that the importance of this constraint should not be overestimated; the relevant method relies on the 1951 Convention. This is especially significant because when EU nationals'nationals' right to free movement is restricted, they can directly apply human rights to the ECtHR.

Additionally, as stressed by Hugo Storey, the Qualification Directive does not destroy the provisions of the 1951 Convention; rather, it develops them. Therefore, there is no huge difference in the constitutional rights afforded to the asylum seekers under EU law, even though it can be argued that the EU law can go beyond the traditional international law by offering a second tier of subsidiary protection to the asylum seekers fleeing from the real danger of the serious harm in the country of their origin.

Furthermore, the protection given by the OAU (now AU) seems to be slightly wider than the protection of the 1951 Convention, though the OAU is an extension of the Convention. Unlike the definition found in the OAU Convention, where one has to demonstrate a ''well-founded'' fear of persecution to claim refugee status, the OAU Convention prefers the situation where the aspects of a given situation fit the defined causes of flight. This definition is probably far larger than the 1951 Convention, and I will expand on this in Part 4 about what it may do to improve the general framework.

Concerning States

Whether refugees are protected by State customary international law lows which require States to provide asylum is doubtful. The 1951 Convention does not grant the right to asylum itself, but it requires the States to not interfere with individual’s right to seek asylum. This was reaffirmed in the 1967 Declaration on Territorial Asylum where Article 1 underlined that each State remains solely competent for the determination of the conditions for extending

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protection to refugee enthusiasts. In Article 2, other States 'must seek' means to reduce the burden in case one State cannot deal with asylum seekers. Thus, the international community has not been successful in reaching general understanding for the creation a global asylum system after the Declaration of 1967. It is gradually observed more through regional treaties, which are perhaps not have been that liberal. For example, the regulation of asylum seekers is not backed by any treaty in Europe, such as the European Convention of Human Rights (ECHR). The best that signatory States in Europe have been able to achieve is realization of the fact that the rights under EU law as well as ECHR stem from Article 14 of UDHR which only cements the right of non-refoulement and which also gives individuals the right to have their case(s) determined on merit. It should be noted, though, that the AU seems to afford rather a greater degree of protection as I have pointed out earlier. That means the insertion of the word 'in either part or the whole of' in the definition of 'internal flight or relocation alternative' and eliminates the need of an individual to first seek a 'internal flight or relocation scheme' as provided by the 1951 Convention. The disparities led to an extension of the eligibility for refugees under the OAU Convention as compared to the1951Convention. However this does not extend to recognising an international obligation to offer asylum to asylum seekers. In conclusion, there is no sufficient practice or recognized State and judicial attitude that would exemplify the existence of an international customary law rule that requires States to provide asylum to seekers. As long as it still remains an ambiguous and variable right, the duty to grant asylum is unlikely to be identified as customary law in the foreseeable future.

Regarding a Possible Solution

Looking at the advantages and disadvantage of the current system of International Refugee law to assess how effective it has been to render significant solutions to the refugee crisis on the whole. The three criteria which I will use: (a) the level of protection Asylum Seekers receive, (b) Areas of legal accountability concerning Asylum Seekers placed on governments, (c) Cases where Asylum Seekers have been deemed to have Asserted refugee rights. Their is extremely high likelihood that (c) will prove how far-reaching (b) is. A. The level of protection The first and

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primary issue arising with international refugee law is that there is a severe legal lacuna related to the protection of refugees mostly because the part of relief pertains to the rights of the refugees, but does not place responsibilities on the States to ensure the fulfillment of the status granted. This approach forces States to rely on domestic law or regional measures to decide who is a refugee and whether the person's rights will be protected. This dependence clearly prescribes the contingency of 'the operation of international refugee law on municipal law, which undermines the very international legal regime. However, two critical observations must be made concerning the definition of a refugee under the 1951 Convention that add to this question. Here, no universal definition of the term 'persecution' has been recognised at the outset. Joan Fitzpatrick pointed out that the 'parameters of the notion of persecution are quite flexible dependent with the political volition of States Parties to the Convention .'

Therefore, I argue that, although refugee minXII, States have ample room to avoid meeting their obligations, which is why they have broad authority to decide whether an applicant for asylum is a 'refugee.' However, it seems that most of the applicants for asylum are not genuine with fear of persecution like the Syrians, but are rather individuals who have had their lives affected by war or disasters making them ineligible for refugee status. This situation does not fit the parameters of the 1951 Convention, enabling States to "properly" turn down these asylum seekers. In addition, an individual may be deprived or their refugee status if conditions that necessitated their recognition as a refugee are not present. Although this aspect is less important in relation to the Syrian case because of the continuing warfare, it plays a considerable role in determining the rights of the asylum seekers mainly in terms of protection of refugees rights in the long run. Interesting, the worry over inherent long-term protection gets linked up to the later criticism aimed at the very use of the framework of international law.

B. Calving down of responsibilities on States

One of the fundamental concerns associated with international refugee law is the lack of teeth. For more, analysts argue that the efficiency of this law is below par. Lack of a UN organ to oversee refugees means that the law is implemented erratically. Second, it is argued that there

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is no institutional framework which enforces refugee rights, and that unlike the domestic law, international law cannot necessarily compel States to act. This interaction manifests the fact that States always fulfil these customary international law florating at the local level. As a result, it implies a complete legal regulation of relations between States as legal persons and any statement to the contrary would be pure words. Where international duties are violated, State responsibility can be provoked, which can be penalized in several ways, as I have explained. The first problem with reference to the case of the refugee crisis is that there is no international organization which directly oversees refugee situations, the UNHCR does not have the power to interfere with the state's discretion regarding the recognition of refugees. Despite this, it means that no international body exists to oversee the execution of commitments by the States – this is not, however, a fatal flaw within the context of refugee legislation. This is due to the fact that there are various transnational & regional centres that could be legally capable to monitor such claims & enforcement doesn't automatically requires to be conducted by the UNHCR. Most of the times the UNHCR acts as a fourth party which provides solutions on how the problems created by the growing numbers of refugees could be solved. The European Commission has put considered some measures to reduce the flow of refugees to the member states of the EU. Moreover, it is left unclear whether States would agree to such an entity in practice, to begin with, and, regardless, I do not think this would make a dent to the current refugee issue due to the millions displaced persons. To support this statement, the last criteria, which explains specific cases connected with rights of asylum seekers' protection will be referred.

C. Specific illustrations of protection of Rights

Immense emphasis has been made in this paper but it is explicit that the 1951 Convention is the turning point in international refugee law. It does not contain an explicit requirement for States to accept refugees while at the same time enhancing significantly the understanding of the rights for refugees shielded as well as the duties of States in regard to such individuals as noted in the two previous sub-sections. This is especially the case internationally, which Louise Holborn points out was the case after the First World War the numerous States passed

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legislation domestically to make expulsion and forced repatriation legal on grounds of dissatisfaction. This rather insecure and unstable protection did not protect the rights of refugees; therefore, Hofmann and Löhr are correct to state that the resettlement of such refugees became difficult, and no State was considered legally liable for persons who could not find protection in another State. International refugee law, combined with regional legal standards and human rights law, is now much more stable compared to the ad hoc political approach of the previous two instruments, and gives the States the possibilities to be engaged in the process of creating the operating law and hence be part of its constant development.

Conclusion: A Herculean Endeavor

The system that exists internationally in protection of the rights of asylum seekers in their search for protection in other states cannot, a fortiori, be regarded as a failure. It lays down basic protection norms, is not only political will dependent because domestic law, shaped by international law, can protect some asylum seekers' rights, and also proves fairly effective through regional and local governance structures. The potential which can be unleased by the legal structure is immense but unfortunately, it is dormant. In a letter signed by 674 international attorneys and practitioners, published in September, 2015 the are condemnable acts of violation of human rights against people in search of asylum. Far more can be done. I would like to suggest that it may be realistic to expect a range, as a legal phenomenon, of International Law to afford meaningful contributions. The international legal system, to the same extent as the domestic legal systems, does not have the goal of governing the persons who create the international legal system; instead, it sets up a range of agreements meant to be binding. Enforcement is in the domain of the executive branch and not in the legislative one that is why international law does not have an equivalent figure. The present issue is highly related with the political aspect. This may look quite unlikely if expecting international law, if at all in general, to effectively compel States to act in any particular way. Refugees' plight may be better understood through international law and enhanced through the discussion that was fostered through such laws. It offers an opportunity not only of indirect but often of direct legal

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remedy. Although the human rights law, as well as regional and municipal legislation, significantly develop the international rule of refugee law, it remains too imprecise and non-universal. The international community, too, has particularly been more helpful towards asylum seekers; however, not entirely perfect. Thus, I claim that international law can never actually meet the task of 'governing' the patterns of refugee issues.

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