

When Refugees Break Domestic Law Under International Protection Cover

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ABSTRACT: *The terrorist attack attempt of Syrian refugee, Jabar al-Bakr who committed suicide at the jail in Leipzig in Germany, is in its own classic, a call for a review of the refugee instrument relating to refugee and committal of crime in the state of asylum. The act of the Syrian refugee exposes the 1951 Geneva Convention as ill prepared to address the criminal conduct of individual who already is a refugee and not an asylum seeker. This is partly because most of the penal sanctions in the refugee instrument are status determination measures in the process of filing for asylum. The reliance on article 1F to generate refugee status exclusion right by states is also examined in this work as resort to self help because the article addresses other category of individual and not refugee. Other articles like 32 on expulsion and 33(2) on removal of non-refoulement are examined against legal and political parameters, For instance a terror act is political and expulsion right is granted to a state under committal of non-political crime. The suicide of Bakr prevented the staging of what would have been the most interesting specter in refugee protection law – a further comeuppance to a protection of a terror exponent. The work addresses the legal and political implications of a refugee who is well protected by international protection regimes and who has gone ahead to commit crime. This work raises the challenges and proffer solution to when a refugee commits crime.*

Keywords: *Refugee, Crime, International Protection, Domestic Law*

I. INTRODUCTION

An interest in refugee study is a drive towards grappling with inter-states relations as the concept itself is deeply rooted in international affairs. A refugee situation only arises when the claimant has crossed international boarder and that of cause sets refugee around international regulations herein called convention. Hosting helpless citizens of another state is quite challenging, and naturally, states tend to avoid taking responsibility except when it is couched in convention which will set a benchmark for standard (Battjes, 2006: 68). Students of International Law, (Brownlie, 1998, 2002, 2003, et al) have continued to analyse the general concept of international protection and the interrelationship of international treaties and wonder if there is any legal justification for differentiating between international protection convention of refugees and the protection already offered by international human right laws. This observation is made succinct by the fact that the provisions of the 1951 Refugee Convention were inspired by the United Nations Universal Declaration of Fundamental Human Rights of 1948 (Carlier, 1997).

International refugee law is a set of rules and procedure that aims to protect persons seeking asylum who are recognized as refugees under the relevant refugee instruments (Grahl-Madsen 1997 :17). This legal framework provides a distinct set of guarantees for those specific groups of persons. Although inevitably, the legal protection overlaps to a certain extent with international human rights as well as the legal regime applicable to international humanitarian law (Grahl-Madsen 1997 : 18), the scope of refugee protection law is clearly articulated in Article 1A(2) of the refugee convention.

However, most newcomers to refugee studies would live with the assumption that the process of granting refugee status is purely humanitarian. Otherwise, what other context would accept a citizen of other states into the protection regime of a host state? However, this humanitarian trajectory only explains the concern for refugees, it is not the framework under which refugee status operates or granted. To be sure, all refugee instruments, whether global, regional or national are in some quibble equivocation under the catastrophes of displacement. This attendant concern for humanity and the challenges of disintegration of families and all other vagaries maintain a steady chain of humanitarian value in international protection regime. For instance, the parent refugee convention, the 1951 Geneva Convention, snowballed out of the very concern remotely from the human tragedy of the Bolshevik revolution and immediately from the ructions of the Second World War (WW II). In Africa, the AU Refugee Convention of 1969 embellishes the primary refugee conventions by adding to its refugee scope, individuals, who became refugees as a result of the anti-colonial and nationalist struggles that engulfed the continent at the drafting period (Okoth-Obbo,2001). However, notwithstanding, the extent of humanitarian influence on refugee discourse, refugees, both in concept, practice and theory is a legal matter laced with haywire jurisprudential contents.

The extent of law in the process of admission of refugee is yet to sink in the protection regimes of third world states. This is both deliberate and a revamping economic strategy, given the excruciating state of the economies of these countries which more often than not favours a deflation of international protection tenets. The preponderance of economic woes pushes the legal frames of refugees into abeyance and promoting a very subjective asylum system in third world countries. This scheme allows states copious *alibi* to refuse admission of refugee because humanitarian considerations are promoted rather than allowing the matter to be regulated by international protection law. Other factors like political relations with refugees' state of origin are part of the humanitarian structure with which states in the third world assume refugee admission and protection should be based (Bueno, 2006).

Advanced countries are rather technical in their approach to refugee law. While developed states would not deny the fact that refugee admission and status determination are legal rather than humanitarian; they also fundamentally assume that virtually all the refugees trooping into their territories have functional government in their states of origin and the claim of lack of state protection is seen as personal declaration of refugees status in unclear circumstances. Some also treat the claim to persecution as an inversion of economic dependence leading to technical infraction of how status of, and who, Article 1 of the refugee convention says is a refugee. Only until recently when the ructions of ISIS in Libya, Iraq, and Syria are undeniable, that advanced countries of the world would agree to admitting foreigners under refugee laws and obligations. Before, western states explore other terms in the asylum system other than refugee, which comes with legal implication and discomfitures.

For the individual seeking asylum, the imperative of the humanitarian circumstance which generated his asylum status is not lost in the process of filling for refugee status. Article (40) of the Universal Declaration of Human Rights 1948 (UDHR) guarantees the right of all individuals to seek asylum from persecution in other country. This principle recognises that the option of asylum is predicated on the failure of all forms of human right protection. What accrues from this premise is a deflection that if refugees are products of human rights violations, the process of determination of status and admission should stem from the very humanitarian considerations. However, the Ad Hoc Committee on Statelessness and Related Problem which was set up by the Economic and Social Council (ESOSOC) was the link between the UDHR and the refugee law. While the Principle of Universal Declaration of Human Rights had been firmly consolidated amongst states, the Committee was to determine the status of those refugees who had so far enjoyed no protection under any of the existing instruments (Laurerpacht, 1958: 111). The committee, no doubt, heavily sourced its principles from the Universal Declaration of Human Rights (UDHR); it substantively extended its purview to create a new protection regime. The efforts of the Committee snowballed into the establishment of the Convention on Human Rights for Refugees after carefully studying the provisions of the UDHR, ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and enjoined states' protection of refugees as an international legal duty. (Laurerpacht, 1958: 113).

This evolution has led scholar like Laurerpacht (1958) to conclude that the framers of the refugee convention desired refugee definition to evolve in single file with human rights principles. The UNHCR has also not denied the influence of Human Rights Law on Refugee Law when it admits that:

The human rights base of the Convention roots it quite directly in the broader framework of human rights instruments of which it is an integral part, albeit with a very particular focus. UNHCR (2003)

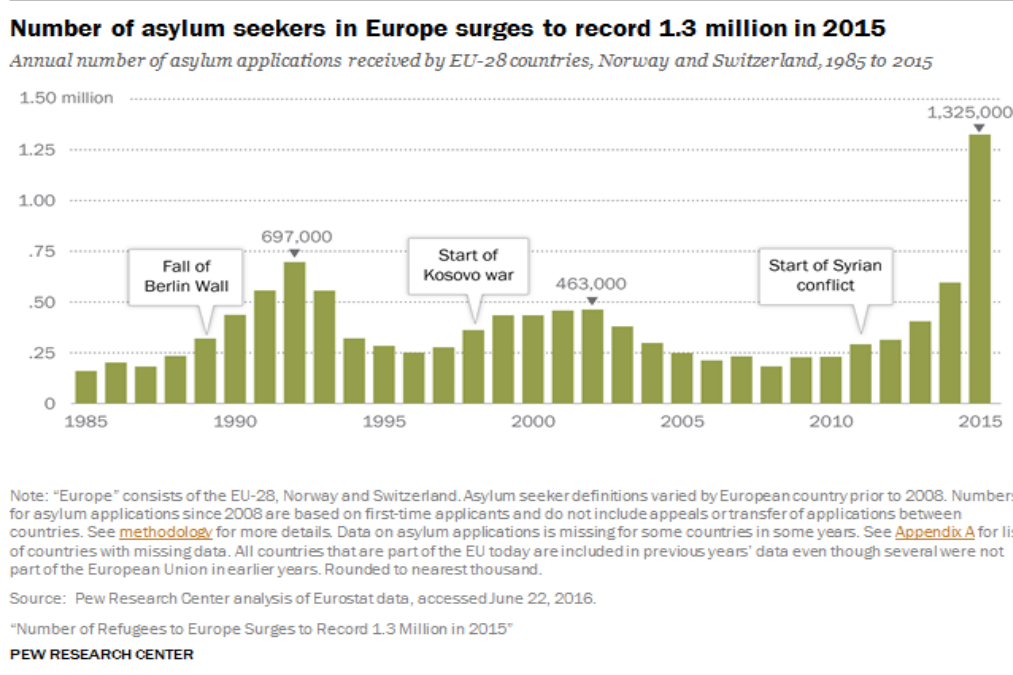
As it is often the case, international conventions emanate specifically from events necessitating them. For instance the Universal Declaration of Human Rights was declared first to secure conviction against Nazi Germany which advanced during the Nuremberg Tribunal that killing of prisoners of war were permitted by Nazi Germany. By contrast the Refugee Convention was occasioned by the lack of protection of stateless people after the Second World War (Weis 1978 :18). Again the peculiarity of refugee status and the focus of the refugee convention show that it is a convalescence of human rights law, because however conventional refugee appears the humanitarian intents of this convention should not be taken for granted

Refugee rights are actually legally generic from the conventional definitions which seek not only legal parameter and restrictive application of the terminology but also promote a *lex specialis* status around the concept (Gaebler, and Shea, 2013). The major specter of refugee law is the dual spheres in which it intends to operate. It remains a fundamental challenge how a law which is developed as *lex specialis* aspires to become a customary international law. The refugee conventions have been developed in a manner that they appear to be skewed against the national interest of host countries and there are other unresolved legal burdens on the shoulders of states that accept refugees within the confines of their territories. This author, has raised elsewhere (Lawal, 2016) the question about host states judicial right to seek restitutions from states of refugee origins and there is also the argument that even refugees too should be able to seek redress against states that bring refugee status on them.

The above legal panorama is essential to tease out the complex web of refugee admission and the deficiencies in addressing crime committed with refugee status. The work addresses the legal implications of a refugee who is well protected by international protection regimes and who has gone ahead to commit crime. This work raises the challenges and proffer solution to when a refugee commits crime.

Refugees And Crimes Committals

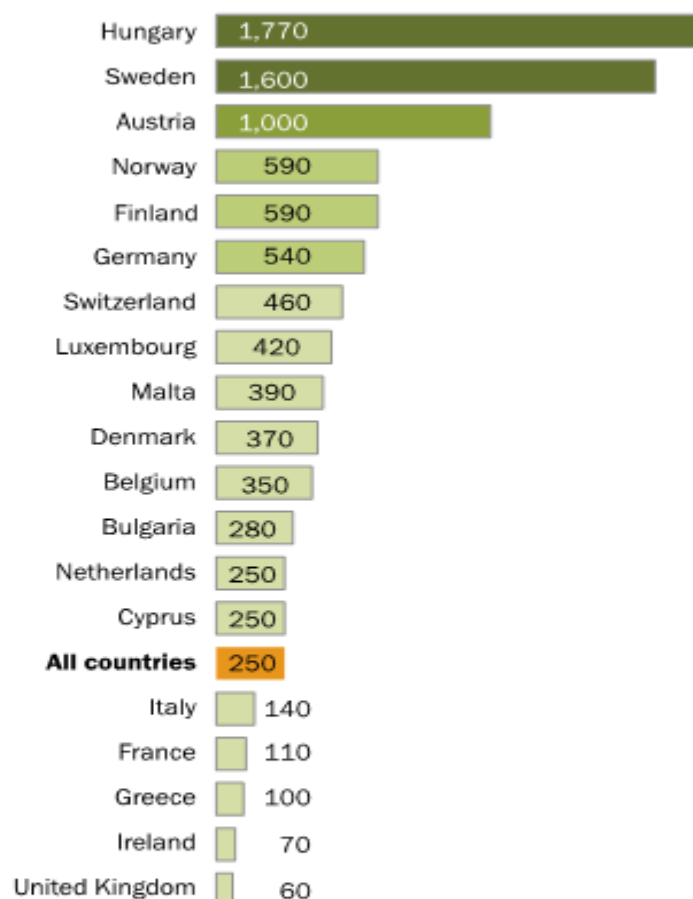
The current crises confronting central authorities in states like Syria, Iraq, Yemen, Afghanistan, etc, the rebelling, often murderous insurgents and the ISIS' onslaught on weak and defenceless elements have all combined to open a vista of refugee movements that the world thought was foreclosed – at least after the mitigations of the WWII humanitarian crises. European nations again have come under the siege of population movement from other countries. Unlike the WW II refugee movement which was essentially intra continental in nature, the current refugee influx to Europe is stimulated by political events outside the European continent. In plain text, the refugees coming into European states are not from Europe but the countries producing them are contiguous to host European states. The refugee data sample of two European states of Norway and Switzerland illustrate this.



The crises in Iraq, Syria and Afghanistan have shifted the pattern of overall flow of refugees in Europe, Eastern European States like Kosovo and Albania used to top states of origins of refugee influx before 2012. Germany has been the primary destination country for asylum seekers in Europe, receiving 442,000 asylum applications in 2015 alone. Following Germany, Hungary (174,000 applications) and Sweden (156,000) received the highest number of asylum applications in 2015. Meanwhile, France (71,000) and the UK (39,000) received roughly the same number of applications in 2015 as in years just prior to the refugee surge in 2015 (Pew Research Center)

Europe's asylum seekers did not equally disperse across countries

Number of first-time asylum applications in 2015 per 100,000 people in the country's population



Note: "Europe" consists of the EU-28, Norway and Switzerland. Numbers rounded to nearest 10. Limited to countries with 50 or more asylum seekers per 100,000 in country's population.

Source: Pew Research Center analysis of Eurostat data, accessed June 22, 2016.

"Number of Refugees to Europe Surges to Record 1.3 Million in 2015"

PEW RESEARCH CENTER

Refugee would come with its attendant challenges. Hosts states begin to feel the consequences of hosting citizens of other countries who have crossed boundary frontiers into their states. What exacerbates this is the nature and context of refugeehood from troubled spots from West–Southern Asia. Refugees are arriving with economic despondent crises, disbanding of families and values and the ecological dimension - the carbon urban footprints. Particularly because the ISIS and those under its influence have penetrated the rank of refugees and asylum seekers, and refugees, now commit crimes. There was the Syrian refugee *Jabar al-Bakr* who committed suicide at the jail in Leipzig after planning a terrorist attack on Germany. His suicide prevented the staging of one of the most interesting spectre in refugee protection law – a further comeuppance to a protection of a terror exponent. Again, Germany witnessed only recently the rape of a German lady by five refugees. (See)

Hathaway, McAdam, Goodwill Gill, etc have all significantly contributed to international refugee law as they affect the process of granting and denial of refugee status. In the statute and the convention of refugee, this process is more a legal limitation which the convention places on its own standards. The cessation clause for

instance, appears to address institutional frameworks which bring refugee status into an end while the exclusion clause maintains a link between personal conduct of refugees which could exclude them from the protection of refugees status.

Article 1F which is an integral of the definition of who is a refugee stipulates:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.*

Article 1F of the convention is derivative of the exclusion clause based on the personal conduct of an individual. Three principles drive the application of refugee laws; one, which is general to all international law, is that they must be obeyed by all signatory states. This concept of *Pacta Sunt Servanda* (treaty must be respected) serves as general treaty compliance framework in international law. The second principle which is peculiar to refugee law is its preemptory nature. This enjoins all states to grant refugee rights immediately and should not subject them to subjective analysis in the process of admission. The last point which is essential here is the fact that laws or conventions do not apply themselves, they are tools in the hands of the agents who apply them for institutional or even personal objectives.

The tripod of statutory compliance, preemptory nature and non-self application require that refugee conventions are not ubiquitous but terms are deliberately targeted. What it remains again is for the convention to address specificity without undermining scope and generic application. The critical issue here, is if article 1F measures up to the requirement, which seeks prosecution of a refugee who has committed crime. Does the article actually address refugees or asylum seekers or all together, an individual who is neither refugee nor asylum seeker?

Another point which should assist some of the validations of this work is to examine under what assumptions do refugees commit crime. There are two possible presuppositions, one is the view that refugees commit crime hoping for a rebuttable presumption when he is connected to refugee rights under international law, leveraging on its cover to escape prosecution (The United States category of 'aggravated felonies'). A refugee who commits crime under this framework will hope to escape into the abyss of refugee protection law which does everything to save the refugee from being prosecuted under a domestic legislative system. Prosecution of refugee in host state's jurisdiction requires usually very high and complex standards of proofs. Every factor is subject to balance of proportionalities and probabilities. The second view is for refugee to commit offence oblivious of what international law says about refugee rights, (examples are bound in African states) such refugee commits the offence for its very terminal objective – crime. Between these two models, what is important is that refugees do commit crime and they would have to be prosecuted under some legal arrangements.

There are both theoretical and legal deflections in the crafting of Article 1F, the principle on which the article is built as been grossly misinterpreted and misapplied. States have constantly used this provision, for both benefits and liabilities to refer to refugees and used this provision to exclude refugees from the benefits of refugee rights. However, article 1F is a determination technique and tool, applicable to asylum seekers and persons whose refugee status are yet to be decided. It is a procedural consideration pre status determination. This is the premise of its parameter when it addresses 'individual' and not 'refugees' in the convention. The reliance of states on this provision to exclude refugees from conventional benefits is a resort to self help in the face of legal and jurisprudential limbo. The provision first recognizes that refugee status has to be protected from abuse by prohibiting its grant to undeserving cases. Due to serious transgressions committed prior to entry, the applicant is not deserving of protection as a refugee. **This of course should be equated with cases where status have been determined.**

Often, states have relied on the provisions of articles 32 and 33 (2) to subject refugees to that country's criminal laws process, however, this reliance do not fall within the scope of the exclusion clause under Article 1F(b).

Exclusion Clause, Expulsion and Non-Refoulement: A Substantive Analysis

Central to this work is how basic refugee instruments intend to handle refugee who commit crime. The analysis here would have sailed without much difficulties if refugees are treated as citizens and nationals of their host states. While host state would continue to engage the difficulties in granting social and economic rights of its citizenry's equivalent, to refugees, nationals often reject unlimited integration of refugees into host communities' social system. This is at the core of the xenophobic allegations against South Africans who see refugees as co-contestants for scarce and limited social and economic resources available in their state. This is partly, although, a result of the arrangement which allows municipal authority to provide direct service to refugees in that country (Lawal 2016). The citizens naturally combust in the face of municipal intervention in matters that they thought is exclusive to national organ like the Ministry of Home Affairs or better, international agency like the UNHCR.

There are clear conventional responsibilities assigned to host state for social and economic rights of refugees, article 17 on wage-earning employment, article 18 on self employment, article 19 on liberal professions, article 20 on rationing, article 21 on housing, article 22 on public education, article 23 on public relief and article 24 on labour legislation and social security are conventional basic attempts to address welfare of refugees in host states. However, there exist some uncertainty about the relationship that exist between refugees and legal system of host communities. The general assumption is that the true measure of domestic law of host state to refugee is its valuation in protection of refugees and not their prosecution.

The exclusion clause has been the subject of judicial considerations in national jurisdictions and extensive academic commentary (see van Krieken 2000) . In view, within the range of relevant international instrument, of what is projects, the exclusion clause is anticipatory and deals only with the process of acquiring refugee status. Considering its targets, article 1F carries no weight in relation to how a refugee can be excluded from conventional refugee rights, or for that matter, how refugee should be brought to justice. The categories of individual which the article excluded from refugee rights are persons who are not yet refugees and who should be excluded from the protection regime. Traditionally, states have applied article 1F during the initial determination procedure, however, the UNHCR's 2003 Guidelines identify the extrapolations of conducts captured under article 1F as basic standards, for the revocation of refugee status, in the event of application of the substance of the article to refugees if necessary at all.

The succour which the guidelines bring to state legal right to exclude refugee from protection is eclipsed under the rigorous procedures which the guidelines have set as safeguard:

It is essential that rigorous procedural safeguards are built into the exclusion determination procedure. Exclusion decision should in principle be dealt with in the context of the regular refugee status determination procedure and not in either admissibility or accelerated procedures. (UNHCR's 2003)

In principle, refugees, including those recognised on a *prima facie* basis, must conform to the laws and regulations of the country of asylum as set out in Article 2 of the 1951 Convention and if they commit crimes are liable to criminal prosecution. The 1951 Convention foresees that such refugees can be subjected to expulsion proceedings in accordance with Article 32 and, in exceptional cases, to removal under Article 33(2). Neither action *per se* involves revocation of refugee status. Where, however, a refugee engages in conduct coming within the scope of Article 1F(a) or 1F(c), for instance, through involvement in armed activities in the country of asylum, state usually employ the application of the exclusion clauses and may also considers the revocation of refugee status as appropriate, provided, of course, that all the criteria for the application of Article 1F(a) or 1F(c) are met (UN Doc).

The implication of this is that the procedures which surround the revocation of refugee status are not the immediate concern of article 1F, however, state only relied on this to achieve revocation of refugee status. This resort may spark legal malpractice for states for the following reasons:

- a) Revocation addresses refugee status that is already granted and it is useful in the process of admissibility or accelerated procedure. Article 1F is an instrument of refugee determination procedure. Article 1F is therefore pre-conditional of refugee status.
- b) Contracting states supplant and interpret article 1F(b) with the accouchement of article 32 and Article 33(2) of the 1951 Convention. Under this application, individuals who commit serious non-political crimes within the country of refugee are subjected to that country's criminal law process . However, Article 32 stipulates : .

The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. There are little legal respite to be attained since article 32 and article 1F(b) operate in counter pointer arrangement

c) There is a limited judicial guidance in relation to the type of conduct and, evidence which may form 'reasonable grounds' for regarding the refugee as a danger to the security of the country of asylum. Beyond this, the text of 32 (2):

The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

Does suggest that the penal sanction for regarding a refugee as danger to host state security is expulsion and to secure the expulsion order, critical steps must be taken by both the state desirous of expulsion and the refugee's will to appeal this. The implication of this is that this often does not assist the process of judicial acceleration and the peremptory atmosphere where refugee matters operate.

d) In interpreting article 32, cognizant must be given of the fact that it is a state's right to expulsion of refugee on the grounds and conditions of its application. The couching of the article should not be interpreted to mean refugee rights' not to be expelled. Article 33(2) on the other hand, states the condition that may warrant a refugee not to benefit from the principle of non refoulement. The two articles however operate in specific atmosphere where refugee status is already granted, they are not, like exclusion clause, a tool of refugee status determination process.

The contention in this work is that refugees conventions have not adequately addressed the incidence of criminal refugees, all the appeals that have been made to some conventional provisions are to say the least, states' own judicial mechanism to attend to issues not specifically raised by the refugee legal instruments, and it is an attempt to seek, within the conventions, avenue to bring to justice refugees who commit crimes. However, some of the conventional provisions can be explored by refugees to escape judicial penalty. For instance, the exclusion clause which states assume will exclude refugee from refugee rights on the grounds of positions of article 1F (a, b, c) as noted above, is only useful in the refugee status determination process and not when status has been determined. The implication of this is that a refugee rights advocate may wonder why a refugee whose status is already determined is still a subject of this procedure rather than the one which should address the penal sanction against his conducts. If and when state of asylum succeeds in using this provision to exclude a refugee from conventional rights and status, this may become extra-conventional scheme and a resort to self help.

Articles 32 and 33 (2) also fall within the extra-conventional scheme given the aforementioned analysis. Article 1F is a balancing test between asylum seeker's conduct before he becomes a refugee and his right to seek asylum, because such conduct might disqualify him from acquiring a refugee status and even that will be weighed against the fear of persecution in his country if he has to be sent back. As such, war criminals and other serious criminals might escape justice if there were to be too great a fear of persecution in their country of origin, except in so far as they might be tried before courts in the State of refuge under principles of extraterritorial criminal jurisdiction or before the International Criminal Court. (Geoff Gilbert, 2001)

But refugees do commit crimes as refugees.

The Specificity of Refugee Crime and Refugee Law

The refugee conventions have paid detailed attention to the conduct of refugee prior to his admission to refugee protection regime. Refugee laws seem to underestimate the need to regulate the behaviour of refugees while they are in country of asylum. This silence concerning the behaving of refugees in country of asylum has led to a plundering of the protection goals of the refugee convention either by state or refugee claimants.

In an attempt to seek conventional and legal justifications for dealing with recalcitrant refugees, states of asylum have resorted to distil from the refugee convention, the predominant features of offences committed prior to the attainment of refugee status. There are clear complications when the offences committed before, are equated with the crimes committed, during refugee status. One major complicated area is the scope and the attention of article 1F which addresses non-political offences, most refugees who commit crimes in states of asylum have very strong ideological persuasion and are involved in what is even a transnational political crimes. The non-political crime concern of Article 1F is to encapsulate the fear of persecution while safeguarding the integrity of the asylum system through the exclusion clause. Extrapolating this to the crime committed by refugees will either hamper prosecution procedure or all together stand in the way of justice. Domestic courts often have interpreted the provisions of the convention to mean that any crime committed before formal recognition as a refugees which warrants the application of Article 1F should serve the same

judicial purpose when refugee commit crime in country of asylum. Aware of the declaratory nature of refugee status, states often claim that the mere fact that a refugee is physically present in a country does not automatically confers refugee status on such individual. This is because the status of an individual as refugee confers a very formidable protection against prosecution, hence the convenience for state of asylum to delay status determination. Therefore, states are relieved from their legal obligation when they claim that a refugees who commit crime prior to admission can be excluded. But this is not operationally coterminous with the UNHCR's view. This maintains that it would not be correct to use the phrase "prior to admission or prior to recognition as a refugee, because refugee status requires peremptory determination and refugee status is declaratory and not constitutive". (UNHCR's 2003)

Generally, states of asylum may resort to penal sanction in a situation of crime being committed by asylum seeker on their territory, but again, a refugee can explore his rights under the convention to escape justice under the technicalities of who the refugees' convention addresses and the scope of its penal sanctions. The hope that the dictates of the convention can add extrapolation values to the issues not specifically targeted may end up in a legal quagmire why generic application of terms can be manipulated. Or raising for its purpose, the need to respect legal restrictions by refugee rights advocacy groups. The point here basically is that refugees who commit crime can leverage on the non-specificity of the conventions about the legal frames guiding this aspect of refugee relations with the asylum state. It should be borne in mind that refugee cases have presented ideal opportunities for refine legal understanding and premises for re-definition, however the ossifying state of refugee laws have not allowed much of this dynamism.

State laws that have been applying the exclusion clause on refugee who commit crime have done so out of legal context because refugee can commit grave offence that is still non-political, and if the convention exempt such from the list of its concern, for its overt concern, for persecution, the same should not be applicable where a refugee status has been granted.. In plain text, the exclusion clause is a principle which can only be applied within the regular refugee determination procedure. In that turf, again it should be noted, that not all non-political crimes fall within Article 1F(b), only serious ones. The Handbook states it should be a capital crime or a very grave punishable act (UN Doc. A/CONF.2/SR.24). It is not an instrument of admissibility in court or a tool used in an accelerated process when criminal charges are brought against refugee. Another level of interaction of the exclusion clause being applied in situation where refugee commit crime is that even at the level of refugee determination process, the convention requires that exclusion clause can only be applied where there is an indictment by an international criminal tribunal.

II. Conclusion

The work takes cognizant of the following normative principles of refugee law: customary law, preemptory norms and international legal instrument. The Geneva Convention of 1951 is the only international instrument in the UN Convention with an optional Protocol. The importance of the Protocol is to amend certain aspects of the original convention.

In drafting of the Protocol of 1967, attempts were made to repair the inadequacies of the 1951 convention; however, various regional bodies had distinct refugee challenges which the protocol still did not also address. The effect of this was felt in the emergence of various regional refugee conventions. These included: 1966 Bangkok Principle on Status and Treatment of Refugee adopted at the Asian-African Legal Consultative Committee in 1966.

- 1968 OAU Convention concerning the specific Aspects of Refugee Problems in Africa.
- The 1984 Cartagena Declaration on Refugee for Latin America.
- The 1976 Council of Europe's Recommendation 773 (1976) on the situation of de-facto Refugees.
- The 2004 European Union's Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees.

Those regional instruments are actually the gradation of the primary refugee conventions; they do not replace but supplement them because all other refugee instruments still draw their legitimacy from acknowledging the birthal influence of the 1951 Geneva Convention and the 1967 Protocol. In spite of the view that the primary refugee conventions are adequate in dealing with all refugee problems, this work directs the attention of the convention to the need for specific attention to refugees who commit crime as refugee and not as asylum seeker. The reliance on legal instruments which deal with identical but not the same issues is in counter-pointer arrangement with the smooth sailing goal of the convention in matters affecting refugees. The strict call to judicial interpretation in refugee issues, makes legal delineation and marked parameter, logically unavoidable. The net implication is that neither the exclusion clause of the article 1F, nor the application of Article 32 and Article 33(2) is adequate in dealing with crimes committed by refugee. This is particularly so because refugee convention operate in very restrictive manner- a concern which ignites its separation from both human rights law and humanitarian law.

The penal sanctions for refugee should not be borrowed from the provisions for asylum seekers to avoid legal limitations that naturally accompany legal repugnance especially according to the provisions of the 1951

Refugee Convention:

Asylum seeker means a person who has applied for asylum under the 1951 Refugee Convention on the status of Refugees on the ground that if he is returned to his country of origin he has a well- founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. He remains an asylum seeker for so long as her application or an appeal against refusal of his application is pending. In this context, a refugee means asylum seeker whose application has been successful and not one whose application is still under consideration. It is imperative to point out here that the exclusion clause which is the goal of Article 1F is, as earlier stated, an admission process for asylum seekers, The refugee requires its own specific mention when crime is committed, this allows for ease of bearing on the matter. The refugee convention should in the end develop a protocol which will address refugees who commit crime, this should exert fundamentally, a distinctive influence on both status and conduct and should be free from ambiguity.

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