

Refugees' Protection Policies: An Examination of Multiple UN Policies

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Abstract

The global upsurge in the number of refugees is of fundamental concern to the United Nations (UN) at both the nationwide and worldwide levels. There are millions of persons who have been displaced due to regional conflicts. The United Nations High Commissioner for Refugees (UNHCR) is mandated to offer protection and assist refugees and others of concern as stipulated by the UN General Assembly. The right of refugees as well as others of concern to physical security, which also includes the enjoyment of several fundamental human rights are based on the protection mandate¹. The aim of this exploratory study is to examine refugees' protection policies that are embedded in: (1) The 1951 Convention Relating to the Status of Refugees; (2) 1967 Protocol Relating to the Status of Refugees; (3) 1969 OAU² Convention Governing the Specific Aspects of Refugee Problems in Africa; (4) The Cartagena Declaration; (5) The 1967 Declaration on Territorial Asylum; (6) UNHCR's Mandate. This study also investigates how States Parties adhere to these conventions and treaties employing refugee protection policies that are embedded in these conventions for the protection of refugees. These Conventions were chosen to be examined in this study because they contain profound refugee

¹ Protection: "Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law"

(UNHCR, 2007a, p. 7).

² Organization of African Unity (OAU) (UNHCR, 2010).

protection policies which state the rules and regulations of various refugee protection policies, the perimeter of States Parties to these conventions, and the manner by which UNHCR should enforce its mandate as supervising instruments in making sure that States Parties to these Conventions are implementing these refugee protection policies. This research focuses on refugees in Tanzanian refugee camps. This study employs content and observational methods of refugees' policies and questioned States' engagements, arguing that the implementations of refugees' policies such as these are preeminently seen not as the consequence of the failure of implementation by some States Parties but, somewhat, as socially failed applications of the conventions because of the lack of burden³ sharing by States. The findings of the study indicate that the majority of States Parties to these conventions abide to these principles but because of the continuous influx of refugees, some States call for burden sharing.

KEYWORDS: UN, Conventions, UNHCR Mandate, Refugees, Protection Policies

INTRODUCTION

The global influx in the number of refugees is of fundamental concern to the United Nations (UN) at both the nationwide and worldwide levels. There are millions of persons who have been displaced due to regional conflicts. The problem is tremendously severe in countries where the right to protection might be inadequate or non-existent, and where basic human rights are not respected. The majority of these countries involved are in Africa, and moreover, it is expansively reported that women and children are predominantly exposed to sexual violence as a consequence of avoidable causes associated with the lack of protection, alongside with various causes (UN 2000 & UN 2010).

The aim of this study is to examine existing UN refugee protection policies that are embedded in various conventions, declarations, procedures, international laws, and treaties, as well as United Nations High Commissioner for Refugees' (UNHCR) mandates, such as: (1) The 1951 Convention Relating to the Status of Refugees; (2) 1967 Protocol Relating to the Status of Refugees; (3) 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; (4) The Cartagena Declaration on Refugees; (5) The 1967 Declaration on Territorial Asylum (by the UN General Assembly resolutions); (6) UNHCR's Mandate (Jastram et al., 2001, p. 21-22). This study also seeks to investigate how States Parties adhere to these conventions, treaties, and

³ Burden sharing implied that sharing the mandate of protection and assistance provided to refugees through International Corporation. The "Preamble to the 1951 Convention Relating to the Status of Refugees, which states that: "the grant of asylum may place unduly heavy burdens on certain countries, and ... a satisfactory solution ... cannot therefore be achieved without international cooperation" (UNHCR 2010, p.13).

declarations and how UN/UNHCR employ refugee protection policies that are embedded in these conventions for the protection of refugees. It should be specified that: (1) The 1951 Convention Relating to the Status of Refugees; (2) 1967 Protocol Relating to the Status of Refugees; (3) 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; (4) The Cartagena Declaration on Refugees, and (5) The 1967 Declaration on Territorial Asylum were chosen to be examined in this study because they contain profound refugee protection policies which state the rules and regulations of various refugee protection policies, the perimeter of States Parties to these conventions, and the manner by which UNHCR should enforce its mandate as supervising instruments in making sure that States Parties to these Conventions are implementing these refugee protection policies.

The 1951 Convention Relating to the Status of Refugees on Article 1 defined refugee as “someone who has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion; is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution” (UNHCR 2010, p. 3). It is epistemologically profound to specify that the Organization for Africa Unity (OAU) included an additional empirically based definition of refugee as any person “compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (OAU Convention 1974, p. 4). It is vital to indicate that refugee protection policies play a fundamental role in shaping the way various refugee protection policies under the mandate of UNHCR are employed in order to make sure that the “right of refugees and others of concern to physical security and the enjoyment of other fundamental human rights [which] lie at the core of this protection mandate” (UNHCR EPAU 2004, p.) of UNHCR are exhibited. By reviewing various policies, this study intended to give a broad perspective of how the UN is playing a role in protecting refugees by examining the contents of these policies and to shed light on the existing protection policies. This exploratory study designed a research question to investigate how the UN plays a role in protecting refugees. The method used in this study is content analysis. The content of existing refugee protection policies was read and analyzed based on the content. Also, an observational method was used to observe the various refugee policies. These methods were employed to help answer the research question on how the UN plays a role in protecting refugees.

The following sections of this paper will present (1) Brief History of: 1951 Convention, 1967 Protocol, 1969 OAU, Cartagena Declaration on Refugees, 1967 Declaration on Territorial Asylum (2) literature review (3) methodology (4) data collection (5) data analysis (6) findings (7) limitation and (8) conclusion of this case study.

Brief History of: 1951 Convention, 1967 Protocol, 1969 OAU Convention, Cartagena Declaration and Declaration on Territorial Asylum

The 1951 Convention Relating to the Status of Refugees

It is vital to accede that the concern of the influx of refugees led to the procedure of structuring a form of international law, conventions as well as standards to protect refugees started in the beginning of the 20th century beneath “the League of Nations, the predecessor of the UN” (UNHCR, 2007b, p. 4). On the 28th of July 1951, “a special UN conference approved the Convention Relating to the Status of Refugees” (UNHCR, 2007b, p. 4). The Convention clearly states who is considered a refugee and the type of “legal protection, other assistance and social rights he or she should receive from the states that have signed up to it” (UNHCR, 2007b, p. 4). The Convention also describes a refugee’s responsibilities to host governments and certain classifications of persons such as war criminals, who do not fit for refugee status.

Many months previous to the Convention’s adaptation, the new Office of UNHCR had started its work on the 1st of January 1951. In the following years, the document has been the substratum of the agency’s exertions to support and protect glowing numbers of more than 50 million refugees. Primarily, the 1951 Convention was preferentially more or less restricted to the protection of European refugees after World War II; however, the 1967 Protocol extended its scope because the problem of displacement escalated throughout the world (UNHCR 2007b). Collectively, they have likewise abetted in stimulating vital “regional instruments such as the 1969 OAU Refugee Convention in Africa and the 1984 Latin American Cartagena Declaration” (UNHCR, 2007b, p. 5). It is worth noting to particularize that there are 147 states that parties “to one or both of the UN instruments” (UNHCR, 2007b, p. 5). UNHCR presently assists “just under 33 million people of whom close to half are refugees or asylum seekers, and the Convention, which has” (UNHCR, 2007b, p. 5) substantiated to be extraordinarily flexible in swiftly changing times, remains to be the foundation of refugee protection (UNHCR 2007b).

1967 Protocol Relating to the Status of Refugees

The Protocol Relating to the Status of Refugees was created because the Executive Committee of the Programme of the UNHCR was concerned about the processes on which to expand the personal scope regarding the 1951 Convention Relating to the Status of Refugees (UN 2012). The 1951 Convention restricted refugees’ status to persons whose situations had come about “as a result of events occurring before [the 1st of] January 1951” (UNHCR, 2010, p. 46). Based on the recommendation of the Executive Committee of the Programme of the UNHCR, “the High Commissioner tendered the draft of the aforementioned Protocol to the UN General Assembly, via the Economic and Social Council (ECOSOC) in his report with regards to the procedures to extend the personal scope of the Convention Relating to the Status of Refugees” (UN, 2012, p. 1). The protocol was adopted by the General Assembly on October 4th, 1967 in

New York City (UN, 2012, p. 1). Furthermore, the words [...] “a result of such events, in article 1 A (2) were omitted” (UNHCR, 2010, p. 46). Article 1 (3) of the 1967 Protocol and “Article 1 (2) of the 1967 Protocol: [indicated that] the present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol” (UNHCR, 2010, p. 46-47).

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

It is fundamental to specify that Heads of State and Governments were concerned with the continuous increase in the number of refugees in Africa and the eager discovery of ways and means of easing refugees’ misery and suffering and providing refugees “with a better life and future” (OAU Convention 1974, p. 2). Knowing the requirement for a fundamentally humanitarian tactic regarding resolving “the problems of refugees, [CONSCIOUS, though], that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,” (AOU Convention 1974, p.2).

They were eager to create a difference among “a refugee who pursues a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside” (OAU Convention, 1974, p. 2). With these concerns, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was implemented by “the Assembly of Heads of State and Government at its Sixth Ordinary Session and enter into force [on the 20th of] June 1974 in accordance with article XI [in] ADDIS-ABABA, [on the 10th of] September 1969 for the protection of refugees” (OAU Convention 1974, p. 1).

Cartagena Declaration on Refugees

The Cartagena Declaration on Refugees was implemented “by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama Cartagena De Indias, Colombia [on the 22nd of] November, 1984” (Cartagena Declaration 1984, p. 31) because the international community was concerned with the “refugee situation in Central America which has [expanded] in recent years to the point at” (Cartagena Declaration 1984, p. 33) which warrants distinctive attentiveness. “They appreciate[ed] the substantial exertions which have been fashioned by countries accepting Central American refugees, despite the great complications they have had to encounter, especially in the recent economic crisis” (Cartagena Declaration 1984). They highlighted the splendid humanitarian and non-political undertaking which UNHCR has been designated to convey in the Central American countries, Mexico and Panama in agreement with the requirements of the 1951 United Nations Convention and the 1967 Protocol, and “those of resolution 428 (V) of the United Nations General Assembly, by which it mandated the United Nations High Commissioner for Refugees [which] is applicable to all States whether or not parties are of the same Convention and/or

Protocol” (Cartagena Declaration 1984, p. 33). They decided to boost programmes for the protection and assistance to refugees, especially in the areas such as “health, education, labour and safety” (Cartagena Declaration 1984, p. 34).

Declaration on Territorial Asylum

The UN General Assembly on the 14th of December 1967 (UNHCR 2012, p.1) adopted the Declaration on Territorial Asylum by resolution A/RES/2312(XXII). The Declaration on Territorial Asylum was created because the international community wanted to uphold international peace and security [which ties with the protection of refugees], to advance friendly relations among all nations and to attain international co-operation in resolving “international problems of an economic, social, cultural or humanitarian character and in promoting and inspiring respect for human rights and for fundamental freedoms for all” (UNHCR 2012, p.1) exclusive of discrepancy as to race, religion, sex, or language (UNHCR 2012). Article 3, subsection 2 discourses the necessity for the protection of persons (for instance, refugees) signifying that “exceptions made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons” (UNHCR 2012, p.1). The Declaration on Territorial Asylum has led down the perimeter of States’ responsibility in safeguarding/protecting “population as in the case of a mass influx of persons” (UNHCR, 2012, p.1). The Declaration on Territorial Asylum is a profound principle that set the perimeter, which governs States responsibilities to give asylum to persons/refugees escaping persecution or have fear of returning home because of the fear of being persecuted. Asylum gives refugees/persons the ability to obtain asylum outside his/her country by seeking protection.

The following section will present a literature review on various studies that focus on the protection of refugees in Tanzania. Tanzanian refugee camps were chosen for this research because Tanzania hosts the most refugees in Africa. As of the last 50 years, Tanzania continues to host refugees who fled from conflicts from the Great Lakes countries (UNHCR global needs, 2011). In addition, it is essential to note that Tanzania has been considered a safe region as a host for refugees from Rwanda who fled because of opposition since 1994 (Landau, 2004).

LITERATURE REVIEW

To understand refugees’ protection policies, four related refugees’ protection policy studies were reviewed in this section in regards to Tanzania refugee camps. There are: (1) *Survival Migration: A New Protection Framework* (by Betts, Alexander), (2) *Sharing the Security Burden: Towards the Convergence of Refugee Protection and Security* (by Milner, James), (3) *Burden Sharing in the Funding of the UNHCR: Refugee Protection as an Impure Public Good* (Roper & Barria), and (4) *Engaging with refugee protection? The Organization of African Unity and African Union since 1963* (by Sharpe, Mariner).

Betts (2010) described a “new protection framework model [for] refugee regime” (p. 361) established after World War II, which offers protection primarily to persons who “escaped individualized persecution or generalized violence” (p. 361). The fundamental intention of the “refugee regime is to confirm that the” (p. 361) international community offers alternative protection for people who escape their country of origin because their own state is reluctant or incapable to guarantee admittance to their utmost fundamental rights.

Similarly, Betts (2010) also indicated that either those who “cross borders are seen as falling within the framework of the 1951 Convention Relating to the Status of Refugees or, with few exceptions, they are viewed as being returnable and without protection needs” (Betts, 2010, p. 362). Betts specified that, UNHCR has started to discourse “people on the move” (Betts, 2010, p. 362) as well as to debate concerning ways to protect susceptible irregular migrants as well as people who are outwardly displaced for causes that “fall outside the scope of the existing refugee regime” (Betts, 2010, p. 362). Likewise, Betts (2010) employed fieldwork and empirically studied national and international institutional reactions to nonrefugee survival migration [refugee] within the framework of sub-Saharan Africa. Betts (2010) employed three populations of survivals of migrants in six countries that host refugees. Betts (2010) also “looked at responses to Zimbabweans in South Africa, Zimbabweans in Botswana, Somalis in Kenya, Somalis in Yemen, Congolese in Tanzania, and Congolese in Angola. In order to explain this variation, [he] drew on a qualitative approach based mainly around interviews (with policymakers, international organizations, nongovernmental organizations [NGOs], migrants, and refugees)” (p. 363). Betts (2010) argued that a variety of “sources of complementary protection” (p. 364) have developed to discourse the gray area among these “extremes of voluntary economic migrant and refugee” (p. 364) such as the 1969 OAU Convention, which includes people escaping exterior “aggression, occupation” (p. 364), foreign dominance or events that were extremely troubling the public order. The 1984 Cartagena Declaration integrates people fleeing widespread violence, “foreign aggression, internal conflicts, massive violation of human rights or other” (p. 364) situations which have extremely agitated public order, especially features of international human rights law have been employed to tackle the protection needs of an assortment of “nonrefugees who may fall outside of the 1951 Refugee Convention” (p. 364).

Betts’ findings show it is extensively acknowledged by the government, as well as the UNHCR, there is partial “generalized violence or persecution in South Kivu [refugee camp in Tanzania]. Hence, there is a situation in which, in the absence of the cessation clause, Tanzania and the UNHCR are de facto protecting nonrefugee survival migrants” (p. 372). The findings also show that “in the sub-Saharan African context, national and international institutional responses to nonrefugee survival migration vary dramatically” (p.378). In certain cases, host states have implemented comprehensive policies as well as legislation that combined “all survival migrants; in other cases, nonrefugee survival migrants have received almost no national protection” (p.378). Betts accedes the concentration on “sub-Saharan Africa means that the findings cannot be generalized”

(p.378), however, it gives a valuable and vital preliminary point for investigating “responses to survival migration [refugees]” (p. 367). “Tanzania’s response can be [categorized] as paradox — it has become a de facto protector of long-stay survival migrants, but has refused to protect new arrivals [...] the UNHCR has covered the gaps” (p. 367).

In the same vein, Milner (2000) examined the international response of the protection [the 1951 Convention Relating to the Status of Refugees] of refugees in the Great Lakes Region of Africa (GLR), notably in Tanzania. Milner employed the use of “extensive interviews in the refugee-affected regions in Western Tanzania,” (p.25-26) with various authors and various stakeholders. Milner (2000) indicated that “displaced populations came under the control of political and military elements” (p. 3). “These problems had broader security implications for the areas around the camps as the activities of the criminal elements extended beyond the camp boundaries. 94 deaths and 74 cases of armed robbery have been attributed to the refugee population in Kigoma region [refugee camps in Tanzania] alone” (p.14). Milner (2000) acceded that the situation in Tanzania exemplifies that “refugee protection cannot effectively take place in conditions of acute and protracted state insecurity” (p. 2). Milner specified that it is essential for “the international community to respond effectively to the security implications associated with forced migration to ensure the protection of refugees” (p. 2). Milner (2000) further asserted that “this burden, like the traditional ‘dual mandate’ burdens of protection and assistance identified in Chapter 2 of the 1950 Statute of UNHCR, can and should be shared by the international community” (p. 2). As Milner specified the appropriateness of “distributing the burden of refugees equitably” (p.6) is obviously expressed in the “Preamble to the 1951 Convention Relating to the Status of Refugees, which states that: ‘the grant of asylum may place unduly heavy burdens on certain countries, and ... a satisfactory solution ... cannot therefore be achieved without international cooperation” (p.6).

Moreover, Milner’s (2000) findings asserted “the Rwandan caseload placed demands on Tanzania which exceeded its capacity to respond. After a long history of hosting victims of conflict-induced forced migration, the scale and nature of the Rwandan influx caused Tanzania to forcibly expel the overwhelming majority of this Caseload” (p. 28). Milner (2000) asserted that it is the “state’s decision to grant asylum and is dependent upon security considerations, refugee protection must develop an approach that addresses state security if it is to remain relevant in cases of conflict-induced forced migration” (p.29).

Likewise, Roper & Barria (2010) examined refugee protection by investing “burden sharing in the funding of the UNHCR: refugee protection as an impure public good” (p. 1) by examining the 1951 Convention. These authors examined Tanzania with regards to foreign policy [the 1951 convention] in regards to donor governments. These authors applied “the theory of collective action and alliance behavior first developed by Olson and Zeckhauser and later extended by Sandler in a series of studies to test whether the nature of refugee protection influences state motivations to provide contributions” (p.

616). Roper & Barria examined “whether refugee protection can be viewed as a pure public good with the concomitant problem of free riding leading to suboptimal outcomes or whether contributions provide states private benefits that transform the nature of the good” (p. 616). “Using a Heckman selection model, they test for the determinants of state contributions to the United Nations High Commissioner for Refugees and find that refugee protection offers several private benefits, indicating that it is best understood as an impure public good” (p. 616). Roper & Barria (2010) concluded, “even when states are able to secure these private benefits, it does not necessarily lead to the optimal provision of refugee protection” (p.616).

Similarly, Roper & Barria (2010) acceded that they cannot straightforwardly test whether “refugee protection is a pure or an impure public good (joint product model)” (p. 620-621); but, “they did not test how state commitments to the financing of the UNHCR reflect states’ views of the good” (p. 620-621). Roper & Barria (2010) employed “cross-sectional time series data to test two models concerning the nature of refugee protection. Model 1 includes variables that are used as indicators of refugee protection as a pure public good while model 2 includes additional private benefits (a joint product model)” (p. 620-621). They specified “if refugee protection is a pure public good, then we anticipate the additional private benefits variables in model 2 to be insignificant” (p. 620-621). Though, if refugee protection also comprises significant “excludable private benefit variables, then the nature of the good has been transformed into an impure public good” (pp. 620-621).

Roper & Barria (2010) assessed the contributions offered by every “UN member state to the UNHCR during the period from 1995 to 2005” (p. 620-621). A majority of the literature that was viewed on alliance theory and public goods has concentrated on the amount that was contributed to the organization (p. 620-621). Roper & Barria (2010) further concluded that, due to the genocide in Rwanda and the civil wars happening in the Great Lakes region of Africa, during the mid-1990s Tanzania accommodated approximately 1.5 million refugees (p. 631). Roper & Barria (2010) acceded, though the number of refugees of concern in Tanzania continued at extremely high levels during the 1990s and into the 2000s, the foreign policy concerns to governments who are donors led to substantial decreases in the UNHCR’s yearly functioning expenses in the country.

Likewise, Sharpe (2011) investigated to establish an understanding of Organization of African Union’s (OAU) [now African Union (AU)] commitment to refugee protection from the time the organization was created in 1963 to the present. The author employed the use archival and interview research methods which were carried out at the United Nations High Commissioner for Refugees’ (UNHCR) headquarters in Geneva, and mainly, OAU as well as AU materials were employed (p. 2).

To sum up, the author’s findings indicated that OAU and AU aim for its establishment was to focus on protection of the refugees. Sharpe (2011) acceded the OAU has been informing its Member States and the international community to the predicament of refugees, as well as displaced persons. He indicated that OAU has

contributed material as well as financial assistance to Member States faced with the difficulty of “assisting refugees, returnees and displaced persons upon recommendations by the Commissioners” (p. 1). Sharpe noted that the OAU has promoted and strengthened the capability of African non-governmental organizations. Several of them have gotten financial assistance from the OAU to allow them to implement their projects in support of refugees, returnees and displaced persons. Sharpe (2011) argued extensively that “the 1969 Convention is one such instrument, governing the legal protection of refugees in Africa” (p.6). It is reasonably short, encompassing a preamble and 15 articles. Sharpe argued that the first article offers two refugee definitions. “The first mirrors that found at article 1A(2) of the 1951 Convention Relating to the Status of Refugees (1951 Convention), minus the 1 January 1951 date limit that most states later agreed, by way of a Protocol (1967 Protocol), not to apply” (p. 6). Article I likewise comprises paragraphs on cessation as well as exclusion. However, every paragraph strictly precedes the 1951 Convention, with three augmentations. The extra two cessation clauses indicate that the 1969 Convention shall cease to employ to any refugee who has “committed a serious non-political crime outside his country of refuge *after* his admission to that country as a refugee or has ‘seriously infringed’ the 1969 Convention’s purposes and objectives” (p.6).

The following section will examine various refugee protection policies that are embedded in the following treaties and conventions: (1) The 1951 Convention Relating to the Status of Refugees, (2) 1967 Protocol relating to the Status of Refugees; (3) 1969 Organization of African Unity (OAU) (the Convention governs certain parts of Refugee problems in Africa); (4) The Cartagena Declaration; (5) The 1967 Declaration on Territorial Asylum (by the UN General Assembly resolutions); (6) UNHCR’s Mandate (Jastram et al., 2001, p. 21-22). The subsequent section will discuss literature review sequentially.

Review on Analysis on various policies

1951 Convention Relating to the Status of Refugees

The United Nations (UN) Convention⁴ Relating to the Status of Refugees was implemented in 1951, which is currently considered the foundation of international refugee protection (UNHCR, 2010, p. 2). The 1951 Convention Relating to the Status of Refugees was a breakthrough in the setting of benchmarks for the “treatment of refugees” (Jastram et al., 2001, p. forward). It integrated the primary models of the refugee protection administration and has persisted as a keystone of that organization to the present day (Jastram et al., 2001, p. forward). The Convention defined refugees on Article 1 as “someone who: has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion; is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution” (UNHCR, 2010, p.

⁴ United Nations (UN) General Assembly resolution 429(V) adopted on the 14th of December 1950 (UNHCR, 2010, p. 2).

3). The 1951 Convention became effective on the 22nd of April 1954. The Convention has been modified with the 1967 Protocol, which detached the geographic regions as well as the “temporal limits of the 1951 Convention was a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before the 1st of January 1951 and within Europe” (UNHCR, 2010, p. 2). The 1967 Protocol detached these restrictions and therefore gave the Convention worldwide capacity. Hence, the 1967 Protocol⁵ was adopted and later implemented.

In the 1951 Convention’s “Article 33 prohibition of expulsion or return (“refoulement”)” (UNHCR, 2010, p. 30) paragraph 1 states: “no Contracting State shall expel or return (‘refoulé’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UNHCR, 2010, p. 30). Article 33, paragraph 1 serves as one of the apparatus of protection for refugees in that it is a clause in the Convention that explicitly prohibits the refoulement of refugees, especially when their life or liberty would be endangered because of his/her “race, religion, nationality, membership of a particular social group or political opinion” (UNHCR, 2010, p. 30). Article 33 paragraph 2 of the Convention stipulated that the advantage of the current provision could not “be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country” (UNHCR, 2010, p. 30).

It is fundamental to note the Convention specified that states should cooperate with UNHCR Article 35 paragraph 1 [states] that: “co-operation of the national authorities with the United Nations” (UNHCR, 2010, p. 31) - the Contracting States should assume to collaborate with the Office of the UNHCR, or whichever agency of the UN which may precede it, in the practice of its functions, and shall in specific facilitates its obligation of overseeing the operation of the requirements of this Convention” (UNHCR 2010). The Convention Article 36 with regards to “information on national legislation” states “the Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention” (UNHCR, 2010, p. 31), especially with that of refugee protection.

1967 Refugee Protocol Relating to the Status of Refugees

The 1967 Refugee Protocol Relating to the Status of Refugees is considered independent of, however intrinsically related to, the 1951 Convention relating to the Status of Refugees. The 1967 Protocol lifts the time⁶ as well as the geographic⁷ limits that are

⁵ “Apart from expanding the definition of a refugee, the Protocol obliges States to comply with the substantive provisions of the 1951 Convention to all persons covered by the refugee definition in Article 1, without any limitation of date” (UNHCR, 2010, p. 4)

⁶ Article 1 (2) of the 1967 Protocol: “For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and ...’ and the words ‘... a result of such events’, in article 1 A (2) were omitted” (UNHCR, 2010, p. 46).

found in the 1951 Convention of refugee definition (UNHCR, 2010, p. 46).

It is essential to stipulate that Article 1 of the general provision of the 1967 Refugee Protocol relating to the Status of Refugees signified that the States Parties to the current Protocol commence to employ “articles 2 to 34 inclusive of the Convention to refugees as herein after defined” (UNHCR, 2010, p. 46). By agreeing to the 1967 Protocol, States accede to apply a majority of the articles in the Refugee Convention stated on Articles 2 to 34 (see appendix A) to all persons protected by the 1967 Protocol’s refugee definition. Thus, by agreeing, States have reaffirmed that the 1951 Convention and the 1967 Protocol treaties are fundamental to the international refugee protection structure.

The protocol also abides to the principle of non-refoulement, that it is the right of refugees to be protected in contradiction to a forcible return, or refoulement, stated in the 1951 Convention relating to the Status of Refugees: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” [Article 33(1) (UNHCR, 2012, p. 30)].

With regards to the responsibility of States Parties to the 1967 Protocol, Article II (1) of the 1967 Protocol indicates that it is the States’ responsibilities to collaborate with UNHCR in the implementation of its role and facilitating its mandate of supervising the application of the Protocol (UNHCR, 2010, p. 47).

The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa

In September 6th to 10th 1969, in the city of Addis Ababa, various Heads of State and Government, gathered, noting with concern the continual rise in the number of refugees in Africa as well as the eagerness of discovering ways to lessen their despair and anguish and offering “them with a better life and future” (AOU Convention, 1974, p. 1), acknowledging the essential a fundamental humanitarian tactic to resolving “the problems of refugees,” (p. 1) though, “that refugee problems are a source of friction among many Member States,” (p.1) and keen of eradicating the source of such disharmony. Heads of State and Government have a concern to construct the dissimilarities between a refugee who pursues a peaceful and normal life and an individual escaping his or her country for the aim of generating subversion from the outside.

⁷ Article 1 (3) of the 1967 Protocol: “Article 1 (2) of the 1967 Protocol: ‘The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol” (UNHCR, 2010, p. 46-47).

Conceivably, the vital aspect of the 1969 OAU Convention is its definition of refugee (see page p. 4 of this paper). The 1969 OAU Convention tailors the refugee definition in the 1951 Convention Relating to the Status of Refugees, although it incorporates additional empirical consideration: “to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (p. 5). This implies that persons escaping political turbulence, extensive violence as well as war, is eligible to claim refugee status in any of the States that belong to this Convention, notwithstanding if they have a substantiated fear of being persecuted.

The Cartagena Declaration on Refugees (1984)

On the 22nd of November 1984, a colloquium of government representatives as well as eminent Latin American jurists, was assembled in Cartagena, Colombia to deliberate on the international protection of refugees in the region. This congregation adopted the Cartagena Declaration (Cartagena Declaration, 2006, p. 33). However, the *Cartagena Declaration* advises that the definition of a refugee employed within the Latin American region and should comprise the 1951 Refugee Convention in relation to the Status of Refugees’ definition such as also “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order” (Cartagena Declaration, 2006, p. 38).

Though the Cartagena Declaration is not legitimately mandatory on States, a majority of Latin American States employ the definition as a subject of practice; several have assimilated the definition into their domestic legislation. The Organization of American States (OAS), the UN General Assembly (The Cartagena Declaration 2006, p. 41), as well as the UNHCR’s Executive Committee have certified the Cartagena Declaration (The Cartagena Declaration 2006, p. 39).

Declaration on Territorial Asylum (1967)

On the 14th of December 1967, the Declaration on Territorial Asylum was adopted by UN General Assembly resolution 2312 (XXII) (Declaration, 2011, p.1). The Declaration indicated that the commitments declared in the Charter of the UN are to “uphold international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion” (p.1). In addition, the Universal Declaration of Human Rights, specified in article 14 (1) that “everyone has the right to seek and to enjoy in other countries asylum from persecution” (p. 1). It should be noted that asylum is considered part of the fundamental protections offered by a country to a refugee in its

region. Therefore, States should uphold and bid to the rules and regulations of the asylum. In addition, States should apply asylum procedures diligently as an application without bias.

This section of the paper presents various views on how the UNHCR protection policies for refugees are being implemented.

UNHCR's Mandate

On the 28th of July 1951, the United Nations High Commissioner of Refugees (UNHCR) was established (UNHCR, 2000). The UN Chapter under Article 22 stated that the UNHCR is a supplementary instrument of the General Assembly (GA). Additionally, article 2 of the UNHCR Status specified that the duties of the High Commissioner will be of completely “non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees” (UNHCR 2000, p. 19). Subsequently, to the creation of UNHCR in 1951, UNHCR has been an organization for international refugee protection (UNHCR 2000). The Convention, likewise, defines the term “refugee” very well and provides legal protections, additional support and assistance, as well as social rights that refugees should attain from a State that endorsed the convention (UNHCR 2007).

From an epistemological stance, it should be emphasized that the Refugee Convention and the 1967 Protocol presents States Parties with a lawful basis for refugee protection. UNHCR’s mandate is to give international protection to refugees and seek lasting solutions to refugees’ plights with its Statute that was instituted by the UN’s General Assembly. It is vital to accede that the Statute establishes the High Commissioner’s roles, comprising “his/her authority to protect refugees as defined in terms similar, although not identical, to the Refugee Convention” (Jastram et al., 2001, p. 21).

It is noteworthy to indicate that the General Assembly has stretched UNHCR’s obligation to comprise protecting several “groups of people who are not covered by the Refugee Convention and Protocol - Some of these people are known as ‘mandate’ refugees; others are returnees, stateless persons and, in some situations, internally displaced persons” (Jastram et al., 2001, p. 21). UNHCR’s mandate is current, thus, significantly broader than the obligations presumed by States Parties to the Refugee Convention as well as the Protocol. It is important to assert that one of the challenges confronting refugees and countries of asylum currently comprises of “bridging the protection gap” (Jastram et al., 2001, p. 21) which occurs in circumstances where UNHCR endeavors to protect persons with regard to whom concerned States do not identify that they have an obligation beneath some of the refugee’s instruments (Jastram et al., 2001).

METHODOLOGY

Content Analysis and Observation Method

This study used observation methods to handle and observe various studies and scholarly journals. Content analysis method was used to review and analyze several studies, literature, Conventions, protocols, treaties, and Declarations on refugees' protection policies. The principle of this study has its grounding in Gorman and Clayton (2005) using the observational qualitative research method and the content analysis method by Berg (2004) in analyzing qualitative data. Parallel methodology has been utilized by Jank (2010) in information studies research. The documents were observed diligently and analyzed based on their contexts.

DATA COLLECTION

The main data collected was from the UN documentations as well as scholarly journals. The research was carried out as exploratory research by employing the various documents from UN's documentation. The research also explored UN documentations on the 1951 Convention Relating to the Status of Refugees, the 1967 Declaration on Territorial Asylum – which was adopted by the UN General Assembly, and several documents from the UN in this research area. During the process of observation of these documents – and with my research question in mind – my note-taking technique gave me the immediate opportunity to take notes while reviewing the huge pile of documents in front of me in regards to the various refugee protection policies. Gorman and Clayton (2005) advised that it is vital to taking notes “as events unfold, or at least on the same day – and preferably both at the same time” (Gorman & Clayton, 2005, p. 120). Berg recommended that field notes should be completed “immediately following excursion into the field” (Berg, 1995, p. 105-107), which I did. After observing and taking notes on key words during the research process when analyzing the data– there was an immediate writing up of full notes as recommended by Berg (1995, p. 105-107).

DATA ANALYSIS

The study employed content analysis to analyze several documents reviewed on the subject of refugees' protection policies and read based on their content.

To completely understand the contents that have been discovered through the observation process and to accurately interpret them tacitly and contextually, numerous methodologies of a qualitative data analysis were used, such as the sorting and the sifting of data in order to identify several key events, patterns as well as phases (George & Clayton, 2005, p. 210). Hsieh and Shannon (2005) defined qualitative content analysis as “a research method for the subjective interpretation of the content of the text data through the systematic classification process of coding and identifying theme of patterns” (p. 1278). Constructing various concepts or variables from several theories or prior studies is extremely beneficial for qualitative research, mostly at the beginning of data

analysis (Berg, 2001), which this study applied by reviewing and analyzing studies to support this study – ties with Berg's recommendations that there is need to incorporate several concepts of several theories or prior studies at the start of content analysis.

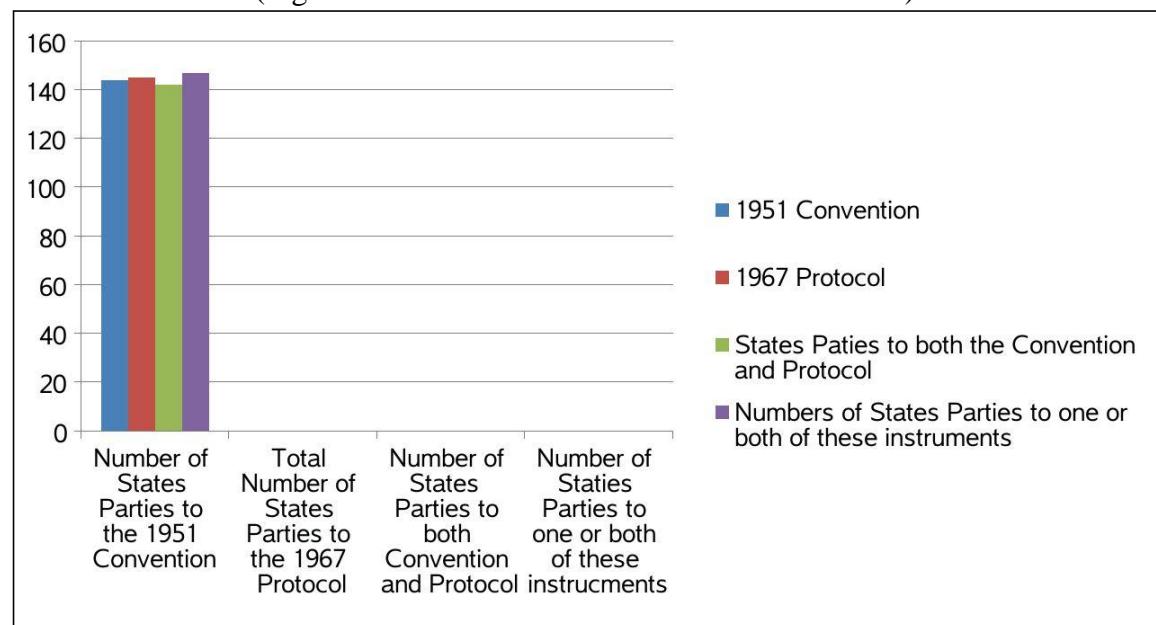
Conclusively, it is essential to accede that when evaluating, analyzing and making sense of these vast qualitative data from the United Nations documentations and various scholarly journals there was care taken to make meaningful decisions on the core meaning of the data. For Patton (2002), when analyzing “any qualitative reduction sense-making effort that takes a volume of qualitative materials and attempts to identify core consistencies and meaning” (p. 453) should be applied. Berg (1998) indicated that content analysis enables researchers to “examine artifacts of social communication – typically, these are written documents” (p. 223). Berg (1998) further indicated, “photographs [...] or any items that can be made into text are amenable to content analysis” (p. 224).

The following section of this study will discuss various findings on the protection policies of refugees based on reviewing and analyzing various studies, and scholarly literature.

FINDINGS

Based on the documents reviewed and analyzed, Figure 1 was created to depict the number of States Parties to the 1951 Convention Relating to the Status of Refugees as well as the 1967 Protocol (UNHCR, 2011, p. 1). Figure 1 was constructed to show numbers of States Parties to these conventions for the protection of refugees.

Figure 1: The Numbers of Parties to the 1951 Convention and the 1967 Protocol
 (Figure 1 was created based on the data on Table 1)



It is fundamental to indicate that Figure 1 comprehensively depicts the various numbers of States Parties to the 1951 Convention and the 1967 Protocol. According to Figure 1, there were 144 States Parties to the 1951 Convention Relating to the Status of Refugees at the time of its implementation. It should be indicated that Congo, Madagascar, Monaco and Turkey “adopted alternative (a), the geographical limitation – Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol. Madagascar has not yet adhered to the Protocol” (UNHCR, 2011, p. 5). But “all other States Parties ratified, acceded or succeeded to the Convention without a geographical limitation by selecting option (b), ‘event occurring in Europe or elsewhere before the 1st of January 1951’” (UNHCR, 2011, p. 5).

In the case of the 1967 Protocol, there were a total of 145 States Parties that adopted the Protocol as shown in figure 1. It is profound to assert that, despite the fact that the 1951 Convention was the first Convention implemented, it is vital to specify that the total number of States Parties to the 1967 Protocol is higher compared to the former. It is a remarkable phenomenon that States seek remedy for a lasting solution to the issues of the influx of refugees. The study has shown that the Convention is an essential instrument that elicits States to respond to the plight of refugees, knowing that the Convention is a binding mechanism to provide protection to refugees as indicated in the definition of “refugee” specified in Article 1. The highlights of this definition are based on the protection of persons from political or some forms of persecution.

Numbers of Parties	1951 Convention	1967 Protocol	States Parties to both the Convention and Protocol	Numbers of States Parties to one or both of these instruments
Number of States Parties to the 1951 Convention	144			
Total Number of States Parties to the 1967 Protocol		145		
Number of States Parties to both Convention and Protocol			142	
Number of States Parties to one or both of these instruments				147

Table 1: The Numbers of Parties to the 1951 Convention and the 1967 Protocol

There are 142 States Parties to both the Convention and Protocol as indicated in Figure 1 and Table 1. This is an indicator that States are responding in adopting both Conventions. However, it is fascinating that there are few States that have not asserted to both Conventions such as Cape Verde, the United States of America, Madagascar, Monaco, and Venezuela (UNHCR, 2011, p.2-4). The United Kingdom of Great Britain, as well as Northern Ireland, is not Party to both Conventions (UNHCR, 2011, p. 4). With regards to States Parties to one or both of these instruments there are 147.

The States Parties to the 1967 Protocol only” (UNHCR, 2011, p.1) are Madagascar, Monaco, Saint Kitts and Nevis. The “States Parties to the 1967 Protocol

only” (UNHCR, 2011, p.1) are Cape Verde, the United States of America, and Venezuela (UNHCR, 2011, p.4).

Findings on the UNHCR’s Executive Committee conclusions

The UNHCR’s Executive Committee (ExCom) counsels the High Commissioner on the exercise of his/her functions: (1) to advise the High Commissioner “in the exercise of his functions under the Statute of his Office” – meaning essentially his work in the field of international protection. Today this advisory capacity can be said to have extended to any aspect of his work. (2) To approve the High Commissioner’s assistance programmes (which was the Executive Committee’s primary function). This review must take place ‘at least annually’ – a requirement that affects all aspects of the planning and financing of assistance programmes” (UNHCR 2001). The Executive’s annual Conclusions that were implemented by ExCom formulated part of the agenda of the international refugee protection regimen. The annual Conclusions are centered on the standards of the Refugee Convention and they are drafted and adopted through consensus in reply to specific protection matters. In addition, the ExCom Conclusions represent the agreement for more than 50 countries with boundless interest and understanding with refugee protection. These, as well as other countries, frequently make reference to ExCom Conclusions when structuring their laws and their policies (UNHCR, 2001).

The findings on the Impact of refugees in Their New Temporary Home, Tanzania

It is vital to note that several theorists have reviewed the protection policies regarding refugees, especially refugees in Tanzanian camps and several impacts of the protection policies. Betts (2010) argued that Tanzania rejects the protection of newly arrived refugees. The rejection of the protection of newly arrived refugees by the Tanzanian government can be seen from an epistemological standpoint such that will put the lives of those seeking refuge in Tanzania in jeopardy. This implied that the rights of refugees is being violated by the Tanzanian government. The non-acceptance of newly arrived refugees by Tanzania is an indication that the Tanzanian government is not abiding to the 1951 Convention and the 1967 Protocol; this calls for further research and the intervention of the international community.

In addition, it is epistemologically profound to signify that Milner (2000) has argued extensively on some of the impacts on the refugees’ population in Tanzania. Milner (2000) argued that displaced populations have come underneath the mechanism, which is a form of “control of political and military elements” (p. 3). Milner (2000) had extensively argued on some impact that refugees in Tanzania are confronted with, “these problems had” (p.14) wider security consequences for the areas around the camps because there are several “[...] activities of the criminal elements [which] extended beyond the camp boundaries” (p.14). Milner (2000) specified that there were 94 deaths and 74 cases concerning armed robbery, which have been associated to the “refugee population in Kigoma region” (p.14) in Tanzania. The underlining finding on the impact of refugees in the new temporary home in Tanzania is an indication of the lack of

protection and security for refugees in Tanzania. Refugees in Tanzania seek protection, on the other hand, are faced with violence and threats to their protection in camps because of the social failure in implementing the Conventions, which is also associated with the lack of burden sharing by States, as Milner (2000) argued that “the Rwandan caseload placed demands on Tanzania which exceeded its capacity to respond” (p.28). Therefore, there is a need for burden sharing with the Tanzanian government in attending to the refugees’ situation.

The general findings have shown that States Parties and UNHCR are trying to make sure that those refugee protection policies that are embedded in the conventions, declaration, and treaties as well as UNHCR’s mandate are implemented in their regions. UNHCR is enforcing its mandate as supervising instruments in making sure that States Parties to these Conventions are implementing these protection policies to address the issue of refugees’ protection.

CONCLUSIONS AND LIMITATIONS

Having extensively reviewed and analyzed several studies and scholarly journals based on (1) The 1951 Convention Relating to the Status of Refugees, (2) 1967 Protocol Relating to the Status of Refugees, (3) 1969 Organization of African Unity (OAU) – Governing the Specific Aspects of Refugee problems in Africa, (4) The Cartagena Declaration, (5) The 1967 Declaration on Territorial Asylum (by the UN General Assembly resolutions), and (6) UNHCR’s Mandate (Jastram et al., 2001, p. 21-22) on the protection of refugees, it is necessary to assert that “by its Statute, UNHCR is tasked with, among others, promoting international instruments for the protection of refugees, and supervising their application” (UNHCR, 2010, p. 4) has been thoroughly examined. According to the findings, States Parties and UNHCR are trying to ensure that the refugees protection policies which are embedded in the conventions, declaration, and treaties, as well as UNHCR’s mandate, are executed by several States Parties to those Conventions and Protocols, declarations, and many more. UNHCR is playing a great role as part of its mandate as supervising instruments by making sure that Parties to the Conventions are implementing these protection policies to address the issue of protecting the refugees. According to some of my findings from some of the studies reviewed and analyzed, it has been indicated that the difficulties faced by some of these refugee-hosting countries is part of the refugee protection policy. Tanzania is a great example of a country that is faced with intruders in the various camps, creating insecurity.

According to Milner (2000), “displaced populations came under the control of political and military elements” (p. 3). “These problems had broader security implications for the areas around the camps as the activities of the criminal elements extended beyond the camp boundaries. He indicated that 94 deaths and 74 cases of armed robbery have been attributed to the refugee population in Kigoma region [refugee camps in Tanzania] solitarily” (p.14). Milner (2000) asserted that the condition in Tanzania exemplifies that “refugees’ protection cannot effectively take place in conditions of acute and protracted state insecurity” (p. 2). He specified “the international community to answer effectively

to the security implications accompanying with forced migration to [safeguard] the protection of refugees” (p. 2). Milner (2000) claimed that “this burden, like the traditional ‘dual mandate’ burdens of protection and assistance identified in Chapter 2 of the 1950 Statute of UNHCR, can and should be shared by the international community” (p. 2). He also identified the need for the appropriateness of “distributing the burden of refugees equitably” (p. 6) as apparently stated in the “Preamble to the 1951 Convention Relating to the Status of Refugees, that: ‘the grant of asylum may place unduly heavy burdens on certain countries, and ... a satisfactory solution ... cannot therefore be achieved without international cooperation” (p.6).

Milner (2000) further noted that “the Rwandan caseload placed demands on Tanzania which exceeded its capacity to respond. After a long history of hosting victims of conflict-induced forced migration, the scale and nature of the Rwandan influx caused Tanzania to forcibly expel the overwhelming majority of this caseload” (p. 28).

Having found out the insecurity that refugees encountered in Tanzania Refugee camps, it should be noted that the UNHCR should investigate and supervise with regards to the insecurity in Tanzanian refugee camps as part of their mandate to make sure that States Parties to the conventions are implementing their mandates by protecting refugees. It is vital to indicate that States Parties to the Conventions should implement refugee protection policies that they adopted and should not be allowed to expel refugees or forced them to return by exposing them to danger or insecurity, which is considered lack of protection. It should be added that the protocol similarly abides to the principle of non-refoulement: that the right of refugees to be protected in inconsistency to a forcible return, or refoulement, stated in the 1951 Convention Relating to the Status of Refugees: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” Article 33(1) (UNHCR, 2012, p. 30).

It should be asserted that the findings of this study cannot be generalized but only shed light on the issue of refugee protection.

The limitation of this study is that the time and days searching for various documentation in regards to these refugee protection policies were not recorded. This is just an exploratory study analyzing various UN conventions, protocols, declarations, refugees, as well as UNHCR’s mandate regarding refugee protection. Although the findings shed light in the various refugee protection policies, a future study should address all these shortcomings and employ a new technique to answer the shortcomings put before this article.

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