

**APPRAISAL OF THE PRINCIPLE OF BURDEN-SHARING IN REFUGEE PROTECTION\***

**Abstract**

*The issue of refugees and internally displaced persons is a recurring decimal, which is precipitated by the fact that societies, communities and nations have always had reasons to be entangled in conflicts with one another. Often times these conflicts result in violence and this violence brings about the displacement of people, who then seek refuge either within national boundaries or outside national boundaries. Victims of such conflicts who seek safe havens outside their national boundaries are termed refugees. The bond of humanity and international solidarity has always driven other people and nations to cater for such people who flee from crises and conflict zones. This article therefore x-rayed the principle of burden-sharing in refugee protection. The doctrinal method was consequently adopted in the conduct of the research. A historical overview of how the principle evolved was undertaken, citing several documented efforts at the international level. The paper also appraised the practice of the principle of burden-sharing. Challenges currently bedeviling the practice of the principle were also discussed. It was recommended that a holistic international legal framework be put in place by the UN to make burden-sharing a binding obligation on Member States.*

**Key Words:** ‘Burden-Sharing’, ‘International Convention’, ‘Refugee Protection’ and ‘Principle’

**1. Introduction**

The issue of refugees has been part of the vicissitudes of mankind’s life from time immemorial, it is well documented in the Bible how Jacob and his sons sought and took refuge in Egypt when famine ravaged Israel.<sup>1</sup> While Prophet Muhammad (PBUH) was also known to have taken refuge alongside his followers in the year 622 at Medina, as a result of persecution from the rulers of Mecca.<sup>2</sup> It is also innate or inherent in mankind to receive, protect and provide for fellow human beings, who are in need or are in troubled situations; these attributes are not only innate or inherent but are also supported by religious injunctions. In the Bible, Jesus Christ enjoined his followers as follows ‘... **You shall love your neighbour as yourself**’.<sup>3</sup> In Islam, there are five pillars a believer is obligated to follow, one of which is doing charity otherwise called *Zakat* payment. *Zakat* is paid and gathered for the purpose of supporting the needy and the poor.<sup>4</sup> It is therefore not out of place to opine that the protection of refugees and displaced persons has been incumbent on mankind as a manifestation of common humanity and *homo-sapien* kinship; as well as in adherence to religious injunctions. Thus, refugee protection as presently undertaken by the international community through several bodies and institutions, provided for the creation of the Office of a United Nations High Commissioner for Refugees (UNHCR) with the mandate of dealing with the plight of refugees.<sup>5</sup>

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<sup>1</sup> The Holy Bible (New King James Version) Genesis Chapter 46; E I Otor et. Al, ‘Legal Challenges to the Principle of Burden –Sharing in Refugee Protection in Africa’, *JILJ* {2017} (3) 1), p 209

<sup>2</sup> <https://www.islamcity.org/history-of-hijrah>>accessed 6 November 2020

<sup>3</sup> Matthew 22:40. Holy Bible (New King James Version)

<sup>4</sup> <https://www.islamcity.org/history-of-hijrah>>accessed 6 November 2020

<sup>5</sup> The UN General Assembly in its Resolution 319(IV) of 3 December 1949 established the UNCHR<<https://www.unhcr.org>> accessed 7 March 2021.

While the 1951 Convention on the Protection of Refugees and other Conventions and Protocols<sup>6</sup> (both at the international and regional level) have been operative in tackling the plight of refugees<sup>7</sup>, a major aspect of the international community's current effort in refugee protection, is in the promotion of the principle of burden-sharing. This work is therefore geared towards examining this principle, by determining its meaning, its origin, its workings and its challenges.

## 2. Burden Sharing Defined

This principle in refugee protection lends itself to several definitions, it has been defined as a subset of international cooperation in which States take on the responsibility for refugees, who in terms of international refugee law would fall under the protection of other States or assist other States in fulfilling their responsibilities.<sup>8</sup> This principle has also been viewed as a form of international cooperation arising in the context of refugee protection.<sup>9</sup> Another dimension, is that it is a principle through which the diverse costs of granting asylum assumed by the host State are more equitably divided among a great number of States.<sup>10</sup> There however exist controversies on the use of the term 'burden-sharing' in the parlance of refugee protection *vis-à-vis* 'responsibility-sharing'<sup>11</sup> The use of the term "burden-sharing" has been criticized, on the basis that it implies, that refugees constitute a burden on/for their host countries, thus the term promotes a negative perception of refugees.<sup>12</sup>

It has therefore been posited by the opponents of this term, that the use of the term responsibility-sharing is most appropriate, as it portrays a more positive image of refugees. These proponents of responsibility-sharing further posit that responsibility-sharing casts refugees in a more favourable light, because they could be potential contributors and assets for their host societies and as holders of rights it creates corresponding responsibilities for States.<sup>13</sup> The position of *Hathaway* and *Neve*<sup>14</sup> reproduced below aptly relays the conceptual differentiations of the two terms:

<sup>6</sup> The Protocol relating to the Status of Refugees is a key treaty in international refugee law which came into force on 4<sup>th</sup> October 1967, with 146 countries as parties See <<https://www.ohchr.org>> accessed 9 March 2021

<sup>7</sup> At the conclusion of the 2<sup>nd</sup> World War the problem of refugees had become imminent. A need therefore arose for a new international instrument to define the legal status of refugees instead of the ad hoc agreements earlier adopted in dealing with particular refugee situations. A call was made for an elaborate legal instrument for determining the issues of refugees. The Convention relating to the Status of Refugees was then adopted by a Conference of Plenipotentiaries of the UN on 28<sup>th</sup> July 1951, the convention then came into force on the 21 April 1954. See Handbook on Procedure for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees <<https://hrlibrary.umn.edu/instrree>> accessed 7 March 2021

<sup>8</sup> K Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations: Short of Mass Influx' (Being a Paper presented at the UNCHR Experts Meeting on International Cooperation to Share Burden and Responsibilities held at Amman, Jordan from 27-28 June 2011).<<https://www.unhcr.org>> accessed 7 March 2021

<sup>9</sup> P Wall, 'International Cooperation and Responsibility Sharing to Protect Refugees: What, Why and How' *Cambridge University, International and Comparative Law Quarterly* [2017] (66) (4) <https://www.cambridge.org> accessed 7 March 2021

<sup>10</sup> J H S Milner, *Refugees, the State and Politics of Asylum in Africa* (Palgrave: Macmillan 2009) 39

<sup>11</sup> P Wall, 'A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol' *IJRL* [2017] (29) (2)

<sup>12</sup> G T Hansen and J C Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence' *Col JTransntLL* [2015] p.5

<sup>13</sup> V Turk and M Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Framework and a Global Compact on Refugees' *IJRL* [2017] (28)

<sup>14</sup> J C Hathaway and R A Neve, 'Making International Refugee Law Relevant Again: A Collectivized and Solution-Oriented Protection' *Harv Hum RstJ* [1997] (115) (10)

Responsibility-sharing is providing safe and humane protection for refugees while burden-sharing is apportioning the fiscal costs of meeting the protection needs of refugees.<sup>15</sup>

Notwithstanding the divergence of opinions, the terms ‘burden-sharing’ and ‘responsibility-sharing’ continue to be used inter-changeably in the discourse on international cooperation for refugee protection.<sup>16</sup>

### **3. Evolution of the Principle**

The use of the term ‘burden-sharing’ emanated from the Cold War era when membership of the North Atlantic Treaty Organization (NATO) placed an incumbent duty on member States to come to the aid of a member when such a member was facing an attack on its sovereign territory.<sup>17</sup> It is apposite that in international refugee protection, this principle is a product of the spirit of international solidarity which had therefore existed since the inception of the UN. However, the principle’s documented birth place in international refugee protection is paragraph 4 of the preamble to the 1951 Convention, which provides thus:

The grant of asylum may place unduly heavy burden on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.<sup>18</sup>

Thus, at its core the principle is derived from the overarching norm of international cooperation. Article 1(3) of the UN Charter stipulates the achievement of international cooperation in resolving problems of *inter alia* humanitarian character as one of the central purposes of the UN.<sup>19</sup> Article 2 extends this as a duty of all UN Member States.<sup>20</sup> Before the coming into force of the 1951 Convention, earlier documented efforts of international collaboration in alleviating the plight of refugees were witnessed during the Balkan Wars (1912-1913), the First World War (1914-1918); the Caucasus’ Region War (1918-1921) and the Greco-Turkish War (1919-1922). Owing to the mass movement of refugees occasioned by these wars, the need for a concrete international effort towards protecting millions of refugees (particularly refugees from the Russian Empire) necessitated the election of the First High Commissioner for Refugees in 1922, named Dr. Fridtjof Nansen.<sup>21</sup>

While the Second World War was on-going another international collaboration towards the plight of refugees resulted in the creation of the United Nations Relief and Rehabilitation Administration (UNRRA). By the 1950’s, after the coming into being of the 1951 Convention, the principle began to take centre stage in the discourse on refugee protection. The principle has continued to feature prominently in the current discourse on international refugee law. It is also noteworthy that there have been tremendous regional efforts at burden-sharing particularly through the execution of several

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<sup>15</sup> *Ibid*

<sup>16</sup> Wall (n10)

<sup>17</sup> P Marton, ‘Challenges of Equitable International Burden-Sharing’ <<https://www.eir.info/2015/08/14-the-challenges-of-equitable-international-burden-sharing>> accessed 8 March 2019

<sup>18</sup> United Nations High Commissioner for Refugees (UNCHR) ‘Burden-Sharing’ Discussion Paper presented at the Fifth Annual Plenary Meeting of Asia-Pacific Inter-governmental Consultations on Refugees, Displaced Persons and Migrants (APC) <[www.iom.int/site/mainsite/ocp](http://www.iom.int/site/mainsite/ocp)> accessed 16 October 2018

<sup>19</sup> UN Charter, Article 1(3)

<sup>20</sup> UN Charter, Article 2

<sup>21</sup> E Feller, ‘The Evolution of International Refugee Protection Regime’ 5 *WASH.U.J.L. & POL’Y* [2001] (129) <[http://openscholarship.wustl.edu/law\\_journal\\_policy/vol5/iss1/11](http://openscholarship.wustl.edu/law_journal_policy/vol5/iss1/11)> accessed 8 March 2019

regional agreements and protocols. Subsequent paragraphs shall contain elaborate discourse on regional efforts at burden-sharing.<sup>22</sup>

#### 4. Workings of the Principle

It is commonly accepted that international cooperation in the context of refugee protection is not the subject of any binding legal agreement<sup>23</sup>, while the importance of international cooperation is emphasized in the preamble to the Convention, no guidance is given as to what this actually means.<sup>24</sup> Even at the time of drafting the Convention, a proposal by the then UN Secretary General for States to formally cooperate by inserting the clause-‘*agreeing to receive a certain number of refugees in their country*’ was rejected.<sup>25</sup> Notwithstanding the absence of a binding international legal document specifying how burden and responsibilities for refugees should be shared, the UNCHR stepped **into provide** a guide on what obligation(s) would be expected of Member States to perform. Thus, to the UNHCR, assuming the burdens of refugees can come by way of material, technical or financial assistance, as well as physical relocation of asylum-seekers and refugees.<sup>26</sup> Succinctly put, burden-sharing by UNHCR standard comes in two forms- the provision of financial and other assistance to host countries and the admission of refugees, most commonly through settlement.<sup>27</sup> It is pertinent at this point to examine the aforementioned forms of burden-sharing elaborately.

##### 4.1 Financial Assistance

Financial assistance to refugee hosting countries is the convenient and common way of sharing burden. It is indeed, the most conventional means through which States (mostly developed countries) contribute funds by way of donations to the UNHCR in support of countries which take the pain of hosting refugees. Though this assistance does not often meet the needs of refugees, it serves to minimize the adverse effects of the inflow of these refugees into the host countries.<sup>28</sup> It is worthy to note that while 84 per cent of refugees are hosted by developing countries, 80 per cent of voluntary contributions come from the developed countries with the United States being the highest donor.<sup>29</sup>

##### 4.2 Physical Responsibility Sharing

This aspect of burden-sharing encompasses 3 facets; voluntary repatriation, local integration and resettlement.

###### 4.2.1 Voluntary Repatriation

Voluntary repatriation is the dignified and voluntary return of refugees to conditions of physical, legal and material safety with full restoration of national protection as the ultimate end. This process usually involves the execution of Tripartite Repatriation Agreements between countries of origin, countries of

<sup>22</sup> The UNRRA’s main purpose was to-plan, coordinate, administer or arrange for the administration of measures for the relief of victims of war in any area under the control of the UN through the provision of food, fuel, clothing, shelter and other basic necessities, medical and other essential services. See also Otor (n1) 217

<sup>23</sup> P H Schuck, ‘Refugee Burden-Sharing: A Modest Proposal’ *Yale JIntL* [1997] (22)

<<https://digitalcommons.law.yale.edu/cgi>> accessed 8 March 2019

<sup>24</sup> Feller (n19) 590

<sup>25</sup> G Good-win and J McAdams, *The Refugee in International Law* (3<sup>rd</sup> edn, Oxford University Press 2007) 362 <<https://www.global.oup.com/resources/annexes>> accessed 8 March 2019

<sup>26</sup> Newland (n7)

<sup>27</sup> *Ibid.*

<sup>28</sup> UNCHR ‘Background Paper High Commissioner’s Dialogue on Protection Challenges: Protection at Sea’ (11 November 2011)p. 8

<sup>29</sup> A Suhrke, ‘Burden-Sharing During Emergencies: The Logic of Collective versus National Action’ *JRS* [1998] (11), 3996

asylum and the UNHCR-which provides the framework for the voluntary repatriation. This framework provides for the respective responsibilities of parties to a repatriation agreement.<sup>30</sup> An example of a voluntary repatriation programme anchored by the UNHCR is the *Comprehensive Solution Strategy for Rwandan Refugees*, which has seen to the return of over 160,000 Rwandan refugees since the year 2000 when it commenced.<sup>31</sup> In September 2015 also, the UNHCR Programme for the repatriation of Angolan refugees ended and at its conclusion over 18,000 Angolan refugees had returned home.<sup>32</sup>

#### **4.2.2 Resettlement**

The UNHCR defines resettlement as the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them as refugees with permanent residence status.<sup>33</sup> This type of burden-sharing dated back to the refugee crisis triggered by the Hungarian Uprising in 1956 and it continued to be in use in response to those fleeing Chile after the Pinochet Coup in 1975 and continues to be used presently in response to magnitude of refugee crisis. Though there is no legal obligation on States to accept refugees for resettlement, it is pursued within the framework of UNHCR's international protection mandate as enshrined in its statute.<sup>34</sup> The UNHCR believes that resettlement comes with the following benefits to the countries of first asylum: strengthening of the protection environment, unlocking of durable solutions, impacting of behaviour and attitudes, decongestion or consolidating of camps, reduction of unnecessary-in-country population movement, fostering community cohesion etc.<sup>35</sup>

#### **4.2.3 Local Integration**

Local integration occurs in a situation in which the host and refugee communities are able to co-exist, sharing the same resources both economic and social with no greater mutual conflict than that which exists within the host community.<sup>36</sup> The following are the characteristics of successful integration:

- i) The socio-cultural change they undergo permits them to maintain an identity of their own and to adjust psychologically to their new situation
- ii) Friction between host populations and refugees is not worse than within the host population itself
- iii) Refugees do not encounter more discrimination than exists between groups previously settled within the host society.<sup>37</sup>

Local integration in a country of first asylum can be an appropriate solution in some countries and/or for some groups of refugees. The 1951 Convention and its 1967 Protocol (the 1951 Convention) provide a legal framework for the integration of refugees by host country governments.<sup>38</sup> Once it is decided that a State will offer local integration prospects, the form of the legal provisions and the extent to which

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<sup>30</sup> UNHCR 'The 10 Point Plan in Action: Solution for Refugees' <<http://www.unhcr.org/5615130c6.html>> accessed 10 March 2019

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> UNHCR 'Resettlement Handbook' Geneva, Switzerland, 2011 <[www.unhcr.org](http://www.unhcr.org)> accessed 10 March 2019

<sup>34</sup> C Bowell, 'Burden-Sharing in The New Age of Immigration' *Migration Policy Institute*, 2003 <[www.migrationpolicy.org/article/burden-sharing.new-age-immigration](http://www.migrationpolicy.org/article/burden-sharing.new-age-immigration)> accessed 10 March 2019

<sup>35</sup> UNHCR 'The Strategic Use of Resettlement' A Discussion Paper prepared by the Working Group in Settlement, June 2003 <[www.refworld.org/docid/41597a824.html](http://www.refworld.org/docid/41597a824.html)> accessed 10 March 2019

<sup>36</sup> B E Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees* (London: Oxford University Press 1986) p45.

<sup>37</sup> T Kuhlman, 'The Economic Integration of Refugees in Developing Countries: A Research Model.' *Economic Integration of Refugees* (London: Oxford University Press 1991) p97.

<sup>38</sup> Article 34, 1951 Convention Relating to the Status of Refugees

specific interventions are needed to support a comprehensive process will depend on a number of factors. Groups for whom the option of local integration can be most important include; refugees born on a host country's territory who are of undetermined nationality or at risk of statelessness and refugees who have established close links in the host country.<sup>39</sup>

Host countries sometimes adopt an incremental approach to local integration by granting permits to stay that gradually lead to a wider range of rights and entitlements over time. UNHCR encourages States to ensure that refugees enjoy some rights including those that appear in the 1951 Convention from the outset of an emergency. These include documentation, administrative assistance and freedom of movement, as well as the rights to work, education, health care and family unity.<sup>40</sup> According to the 1951 UN Refugee Convention, restoring refugees to dignity and ensuring the provision of human rights includes an approach that would lead to their integration in the host society.<sup>41</sup> An example of a local integration programme was carried out in Brazil when Caritas and UNHCR partnered with EMDOC, an immigration law firm, in 2011 to develop a support programme for the placement of refugees in the Brazilian labour market.<sup>42</sup>

### 4.3 Examples of International and Regional Mechanisms and Actions of Burden-Sharing

It is important to state without fear of sounding repetitive, that there is no express provision in the 1951 Convention and the 1967 Protocol which establishes any mechanism for burden-sharing. The Convention and Protocol, however took cognizance of the fact that the protection of refugees pursuant to their rights contained in the Convention, cannot be applicable without States agreeing to work together and without them agreeing to work with the UNHCR.<sup>43</sup> Thus, paragraphs 4- 6 of the 1951 Convention stated below, captures this essence:

CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.

EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States

NOTHING that the United Nations High Commissioner for Refugees is Charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.

It is pursuant to the above provisions that the UNHCR reaches out to Contracting States to share in the burden of protecting refugees. In 1989 the UNHCR in collaboration with 70 States pioneered the drawing up of a Comprehensive Plan of Action (CPA) to cater for the protection of Indo-Chinese Refugees. The CPA was initiated because countries of first asylum were threatening to close their borders to refugees, the Plan consequently *inter-alia* saw to the identification and protection of refugees

<sup>39</sup> K Jacobsen, 'The Forgotten Solution: Local Integration for Refugees in Developing Countries' *New Issues in Refugee Research*, UNHCR Working Paper No.45, Geneva, July 2001

<sup>40</sup> <<http://reliefweb.int/sites/reliefweb.int/files/resources/5613d73c9.pdf>>

<sup>41</sup> UNHCR (n30)

<sup>42</sup> *Ibid*

<sup>43</sup> Otor (n1) 214

especially from Lao Republic and Vietnam.<sup>44</sup> The OAU's (now AU) efforts at refugee protection, culminated in the signing of a Convention. The Convention contains a clear provision for burden-sharing amongst member states. The Convention provides that where a member is in difficulty in continuing to grant asylum to refugees, such a member may reach out to other member(s) and such other member(s) shall; in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the member by taking some of the asylum seekers. Despite the explicit provision of the Convention, there is however no comprehensive mechanism for burden-sharing amongst member states of the AU.<sup>45</sup>

In the European Union the thread binding members efforts at burden-sharing stems from the provisions of the Treaty on European Union which enshrined a principle of sincere co-operation of member States and a principle of solidarity and fair sharing of responsibilities, including its financial implications, between the Member States in matters of border checks, migration and asylum.<sup>46</sup> Since 1999 there has been a concerted effort by the European Union (EU) to develop a sustainable institutional and legal framework for burden-sharing in refugee protection, this effort began with the creation of the Common European Asylum System (CEAS) in 1999; followed by the establishment of the European Refugee Fund to support the efforts of member States. Currently in force, is, the Dublin Regulation which established a system that determines which country within the EU is responsible for examining a particular asylum-application.<sup>47</sup> There is currently in force an agreement between the EU and Turkey. The agreement is for Turkey to stem the mass of influx of refugees from Syria into Europe by taking these refugees while the EU funds the encampment. This Agreement entered in March 2016, has the EU committed to furnishing Turkey the sum of 6 Billion Euros, this sum is to be contributed by member States.<sup>48</sup>

Other documented acts of burden-sharing have taken place between 1999 and 2002; during this period the Romanian Government accepted over 4,500 refugees from Bosnia and Herzegovina and Croatia. In 2008 the Romanian Government further signed an agreement with the UNHCR and International Migration Organization (IOM) for the establishment of an Emergency Transit Centre for Refugees, the Centre hosts persons in urgent need of protection for up to 6 months, until arrangements are made for transfer to a third country.<sup>49</sup> The Canadian Government's Private Sponsorship of Refugees (PSR) programme has seen to the settlement of over 10,000 Syrian refugees as at February 2016. The PSR programme involved international civil societies and individuals sharing the burden of refugee protection while lightening the load of the UNHCR and allowing it to focus on its resettlement referral targets.<sup>50</sup>

## **5. Challenges undermining the workings of the principle**

Myriad of challenges continue to plague the smooth application of this principle in the area of international refugee protection. Some of the main challenges militating against the operation of this

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<sup>44</sup> R W Courtland, 'The Comprehensive Plan of Action for Indochinese Refugees 1989-1997: Burden Sharing and Buck Passing' *Journal of Refugee Studies* [2004] (17) (3)

<sup>45</sup> Article II (4) of the OAU Convention, 1969; Otor (n1) 215

<sup>46</sup> Article 4.3 Treaty of European Union (TEU)

<sup>47</sup> R Burbock, 'Refugee Protection and Burden-Sharing in the European Union' *Journal of Common Market Studies*, [2017] <<https://www.researchgate.net/publication/320326499>> accessed 1 March 2019

<sup>48</sup> D Welle 'The EU-Turkey Refugee Agreement: A Review' <<https://www.dw.com/en/the-eu-turkey-refugee-agreement-a-review/a-43028295>> accessed 13 March 2019

<sup>49</sup> Newland (n8)

<sup>50</sup> J Thomson, 'The Role of Resettlement in Refugee Responsibility Sharing' *CIGI's Global Leadership and Cooperation for Refugees Series*, Paper No.3, 2017

principle include; the absence of coherent policies, fear of terrorism, xenophobia, irregular secondary movement of refugees; economic, social and cultural pressures etc. These challenges shall be examined consequently.

### 5.1 Xenophobia

The perception by citizens of host countries that refugees are burden to their economies, fuels a negative feeling towards refugees. Often time they are seen as incapable of making any meaning economic and social contribution to their host countries. Refugees are also seen as a threat to national security of their host nations. In 2015 there over 490 documented xenophobic attacks on Syrian refugees.<sup>51</sup> This feeling of resentment in certain cases is fuelled by politics. Recently in Europe the rise of Nationalists parties who campaign for stricter immigration policies, has also seen a resultant rise in xenophobic attacks.<sup>52</sup>

### 5.2 Unenforceability of International Refugee Protection Regime

The absence of an enforceable legislative mechanism for compelling contracting States to be involved in refugee protection constitutes another major impediment in burden-sharing. Many international Conventions impose compelling obligations on signatories particularly Conventions that border on global security.

However, the same cannot be said of the 1951 Convention. Thus, the only means of eliciting cooperation of member States is through diplomatic persuasion. While the UN Charter allows for imposition of sanctions on members where there is threat to peace, breach of peace and acts of aggression, refusal to accommodate refugees pursuant to the 1951 Convention cannot be said to constitute a breach of peace as contemplated in the UN Charter.<sup>53</sup> Therefore unless the Convention is amended to make burden-sharing an obligation that is compulsory, the implementation of the principle would continue to suffer nonchalance by member States. Till then the UNHCR must fashion out a proactive means of securing compliance.

### 5.3 Inconsistent Policy Framework

States have had cause to change their policies towards refugee protection. Often times, this shift in policy results to the emergence of more stringent and restrictive policies. Major areas where policy changes have been witnessed in refugee protection are: (a) access (for instance building of walls and barbwire fences) (b) determination of procedures being more restrictive and (c) anti-integration policies that impact negatively on rights and benefits to be enjoyed by refugees.<sup>54</sup> The UNHCR also shares the blame for having inconsistent policy position. This inconsistency is manifest in the contrasting position of the 1951 Convention which envisages that States are no longer obliged to offer protection upon the cessation of the refugee status; while the UNHCR Repatriation Handbook insists that repatriation must be voluntary.<sup>55</sup> The inability of current refugee protection framework to legislate on the means of attaining lasting solutions for refugees and burden sharing template is a major lacuna in the current refugee regime. The practice is such that when any member State agrees to take up the burden of hosting

<sup>51</sup>Otor (n1) 223; <<http://america.aljazeera.com/articles/2015/10/16/german-refugee-center-attacked.html>> accessed 13 March 2019

<sup>52</sup>F Bieber, 'Is Nationalism on the Rise: Assessing Global Trends' *Ethno-Politics* [2018] (17) (5) <<https://www.tandfonline.com>> accessed 13 March 2019

<sup>53</sup>Otor (n1) 224

<sup>54</sup>R E Thielemann, 'Why Asylum Policy Harmonization Undermines Refugee Burden-Sharing' *European Journal of Migration and Law*, [2004] (6)

<sup>55</sup>Schuck (n23); UNHCR 'Repatriation Handbook' Geneva, Switzerland, 1996 <[www.unhcr.org](http://www.unhcr.org)> accessed 13 March 2019



refugees or funding a hosting country, such a State becomes laden almost perpetually with such responsibility. Thus once member States are assured that after receiving refugees (in the spirit of *non-refoulement*) and that there exists a mechanism which would ensure that the burden of taking on these refugees would be shared, States would not hesitate to absorb refugees.<sup>56</sup>

#### **5.4 Irregular Secondary Movement of Refugees**

States have been known to adopt restrictive policies towards refugees because of irregular secondary movement of refugees. Irregular movement entails refugees and asylum seekers moving in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere.<sup>57</sup> Irregular onward movements can occur both from a particular first host country or region to a destination country in another region, or between several receiving countries. Irregular movements can have adverse effects on structured international efforts to provide appropriate solutions for refugees, these kinds of movements also feed smuggling and trafficking networks thereby contributing to the growth of international crime.<sup>58</sup>

#### **5.5 Terrorism**

States' adoption of tighter and more closed door policy towards reception of refugees can be attributed to the activities of human traffickers and threat of terrorism. This has therefore consequently affected the practice of burden-sharing. In 2015 the United States' plan to settle about 10,000 Syrian refugees on US soil, came under immense scrutiny and attack because of fears that Islamic State terrorists could exploit the refugee settlement programmes and infiltrate with their agents who would then easily attack the US.<sup>59</sup> Similarly in 2016, 22 terrorists were found to be among 12,000 Syrian refugees who applied for refugee protection in Australia.<sup>60</sup> Owing to scenarios like these, many refugees deserving of refugee status and opportunities of settlement are denied entry into certain countries. The ever-present threats posed globally by terrorist networks, has led to anti-terrorism laws, these invariably impact negatively on such countries refugee policies.<sup>61</sup> An example of such was the 2017 US travel ban and restriction on certain countries.<sup>62</sup>

#### **5.6 Economic, Religious and Cultural Pressures**

Burden-sharing particularly in underdeveloped countries continues to be weighed down by economic, religious and cultural challenges. The differences in ethnicity, culture and religion causes a lot of friction between citizens of the host country and the refugees, this therefore impedes local integration. In Africa, countries which accept refugees prefer the option of keeping them temporarily in camps. In so far as the funds from donors continue to flow-in. However, where funding becomes difficult, these host

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<sup>56</sup>Otor (n1) 221

<sup>57</sup>'Identifying States' responsibilities Towards Refugees and Asylum Seekers' <<https://esil.sedi.eu>> accessed 1 March 2019

<sup>58</sup>J Milner. 'When Norms Are Not Enough: Understanding The Principle and Practice of Burden and Responsibility Sharing for Refugees' <<https://www.cigioline.org/documents>> accessed 1 March 2019

<sup>59</sup><[www.usnews.com/news/articles/2015/2011/20/08-facts-about-the-us-program-to-resettle-syrian-refugees](http://www.usnews.com/news/articles/2015/2011/20/08-facts-about-the-us-program-to-resettle-syrian-refugees)> accessed 14 March 2019

<sup>60</sup>D Shanahan, 'Syria Refugee Intake Reveals 22 Terror Cases' *The Australian* (Sydney, 6 October 2016)<<http://www.australian.com.au/news/nation/syria-refugee-intake-reveals-22-terror-cases/news-story>> accessed 14 March 2019

<sup>61</sup> M Zard, 'Exclusion, Terrorism and The Refugee Convention'<<http://www.frmreview.org/sites/fmr/files>> accessed 14 March 2019

<sup>62</sup> This was made pursuant to Executive Order 13769 titled 'Protecting The Nation From Foreign Terrorists Entry into the United States' This Order lowered the number of refugees admitted into the United States in 2017 to 50,000 and suspended the U.S. Refugee Admissions Program (USRAP) for 120 days. The Order also suspended the entry of Syrian refugees indefinitely<<https://en.m.wikipedia.org>> accessed 14 March 2019

countries resort to forcefully repatriating these refugees to their countries of origin regardless of whether their security and well-being is assured. An example of such action was the recent forceful repatriation of Nigerian refugees who fled their communities as result of the insurgency in the North-East and sought refuge in Cameroun.<sup>63</sup> The challenges bedeviling the practice of this principle are not insurmountable, with the development of an internationally holistic legal framework and honest commitment of members of the United Nations, these challenges can be surmounted. It is further opined that the international community's efforts in encouraging burden-sharing should be pursued alongside addressing the key issues which lead to conflicts, particularly political conflicts which result in violence, invariably giving birth to hordes of refugees and internal displaced persons (IDP's).

## **6. Conclusion**

The posers which would continue to reverberate in the discourse on international refugee protection are; what, why and how should the burden of refugees be shared? The discourse is currently awash with several opinions on these posers, though, the debates are still raging on. What however, remains indubitable is the absence of a binding legal framework that would compel Contracting States to contribute to the amelioration of the plight of refugees around the globe.

The 1951 Convention and 1969 Protocol provisions do not contain spelt out legal obligations of member States on burden-sharing. Countries should not only participate in any effort to ameliorate the plight of refugees in the spirit of international solidarity but ought to see such commitment as a mandatory moral obligation.

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<sup>63</sup> Otor (n1) 230; P Obaji, 'Cameroon's Forced Return of Nigerian Refugees Leads to More Tragedies' <<https://africanarguments.org>> accessed 14 March 2019.