The state, the crisis of state institutions and refugee migration in the Horn of Africa: the cases of Ethiopia, Sudan and Somalia
Degu, W.A.

Citation for published version (APA):
Degu, W. A. (2002). The state, the crisis of state institutions and refugee migration in the Horn of Africa: the cases of Ethiopia, Sudan and Somalia Amsterdam: Thela Thesis

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3. CRITICAL CONCEPTUALIZATION OF THE IDEA OF REFUGEES

A Refugee is a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence..., is unable or, owing to such fear, is unwilling to return to it. (UN definition of a refugee, Brooks and El-Ayouty, 1970: 226)

... displacement is not an issue across frontiers but also within them ... the causes which led to external displacement have also created a large displacement of persons inside their own country. For the human being directly affected, legal definition - or artificial borders - are meaningless (Mme. Sadako Ogata, the United Nations High Commissioner for Refugees, Quoted in Arboleda and Hoy, 1993: 72).

The refugee in international law occupies a legal space characterized, on the one hand, by the principles of state sovereignty and the related principles of territorial supremacy and self-preservation; and, on the other hand, by competing humanitarian principles deriving from general international law (Goodwin-Gill, 1996: V). This is an important point to start with. However, in order to better understand/explain refugeeism one has to go further and argue that refugees are an integral component of the states-system not only as the product of its recurrent military, religious, ideological, etc. conflicts. The meaning of a 'refugee' our understanding of it and the status of refugees have also been shaped by the global political discourses and practices.

3.1 The conceptualization of a 'refugee': Critical Overview

To start with, 'Discourse', according to George (1994: 29-30), 'is not synonymous with language as such. It refers, rather, to a broader matrix of social practices that gives meaning to the way that people understand themselves and their behaviour. A discourse, in this sense, generates the categories of meaning by which reality can be understood and explained. More precisely, a discourse makes "real" that which it prescribes as meaningful'. Understood in this way, to engage in discourse is to be engaged in the making and remaking of meaningful conditions of existence. A discourse, then, is not a way of learning about something out there in the 'real world'; it is rather, a way of producing that something as real, as identifiable, classifiable, knowable, and therefore, meaningful (Ibid.: 30).

Though discourse is not synonymous with language it is crucial to understand that language is an important component of discourse. In this sense, language no longer describes some essential hidden reality - it is inseparable from the (necessarily social) construction of reality (Ibid.: 144). Thus, the meaning of a term/word/symbol cannot be assumed to correspond to some essential (externally derived) foundation or object but is dependent upon the particular constitutive role it has in particular socio-linguistic systems (Ibid.). It is from this point of view that the discussion on the conceptualization of a refugee is to be understood. This will become clear in the first part of this chapter.
To understand how our conception of a refugee is socially constituted, as we know it today in international law, it is important to understand how it has been shaped by the global political discourses. In this respect, the principles of inclusion and exclusion, identity and difference, citizens and aliens, inside and outside are fundamental to belief systems that determine who does and does not belong to a certain category, be it the state, the nation, ethnic group or refugee in this case. In other words, the principles of inclusion and exclusion with precise distinction between citizens and aliens, and the concepts of sovereignty and territoriality, the concepts of inside/outside shaped our conception of a refugee (Linklater, 1992: 83-84). The constitution of the state as a sovereign territorial political entity also has the same effect. The constitution of the state as a territorially sovereign entity implies, first, that what is going on within its territorial jurisdiction is the responsibility of that state. No other state or international organization has the right to interfere without the permission of the state. Second, citizens of a state have to cross the border of their country to be regarded as refugees. In practice this means, for instance, that an Ethiopian Somali who is forced to leave her/his homeland in Ethiopia can claim refugee status if she/he only moves across the border into Somalia, probably into the region where some members of her/his families are living, but not if she/he moves to a culturally alien part of Ethiopia (Murphy, 1996: 105). Moreover, the asylum request should be accepted by the receiving state, which is sovereign and it is only then that the asylum seeker would be given a status of a refugee and would be under the protection of the international law. What this means is that, as will be discussed later in more detail, the needs of the people are not considered as primary, rather it is the sovereignty of the state. With regard to Africa, as Jackson (1990: 150-151) clearly points out:

Connections between negative sovereignty and political refugees are not difficult to discern. Colonialism in Africa and elsewhere manufactured numerous economic migrants but comparatively few political refugees. Decolonization increased not only the salience of boundaries as a line of control but also their length due to the fact that many previously were merely intra-imperial borders - such as those separating the constituent parts of French West Africa which are now eleven sovereign countries. Other things being equal the more the globe is crosshatched with independent jurisdiction in which human population are confined the greater the necessity of crossing international borders to secure release from oppression and destitution.

This does not mean that colonialism did not oppress and persecute its subjects. It did. The point here is that the countries, which emerged as the results of decolonization, inherited rigid boundaries. These newly independent countries are constituted as sovereign territorial entities in which boundaries became an important element of these states. Crossing these boundaries, therefore, became one of the fundamental criteria for victims to be recognized as refugees. In other words, post-colonial boundaries became an important element in the constitution of the state as sovereign entity and categorization of whether an individual is a refugee or not. In this respect, one may ask whether the state created refugees or refugees created the state or works in both ways.

Clear understanding of sovereignty as a social construct, as discussed in the previous chapter, is relevant for refugee studies in Africa. For it is crucial to understand the ambiguity and the controversy surrounding sovereignty, especially in the case of the collapse of the state and the
increasing interest in and necessity of humanitarian intervention. This is mainly related to the argument that individual states appeal to the principle of non-intervention in their internal politics, thereby constraining global humanitarian involvement. Unless permission is granted by individual states, sovereignty limits international action against human rights violation, persecution or genocide of ethnic or religious minorities, internal colonialism, starvation, and environmental concerns such as the depletion of rain forest (Inayatullah, 1996: 50). However, the increasing flows of refugees (which is the result of all of these) and its impact on the receiving countries and on the international community at large is changing the situation. The international community and receiving countries have been intervening in the ‘domestic’ affairs of sovereign countries to ‘solve’ the causes which have been producing refugees. According to Dowty and Loescher (1996: 53-61), there are two basic justifications (arguments) for the actions (intervention) of the external forces in a country when refugee flows are created. The first is the application of customary law. ‘There is one aspect of the refugee problem to which the general and customary international law is relevant, and that is, the consideration of the legality or illegality of the conduct of the state which creates a refugee population’ (Ibid.; 54). The second argument is that ‘there is an increasing recognition by the international community that massive refugee flows do in fact constitute a threat to international peace and security’ (Ibid.: 58). This means that a country that forces its people to flee or takes actions that compel them to leave in a manner that threatens regional peace and security has in effect internationalized its internal affairs. Thus, there exists a cogent justification for policy makers elsewhere to act directly upon the so-called sources of the threat (Ibid.: 59).

This new thinking reflects a change in our understanding of national sovereignty. As Dowty and Loescher (Ibid.: 60) put it, there are two points to be noted: first, while sovereignty is still regarded as a cornerstone of the international political and legal system, domestic matters previously shielded from outside interference are now targets of international action. Since an elementary justification for the state is its ability to provide reasonable security for its citizens, states that force these same citizens to flee call into question the very basis of their sovereignty. Second, there is the question of whether ‘sovereignty’ is a consideration in the increasingly frequent case of ‘failed/collapsed states’ or ‘crises of authority’ when there is no recognized government exercising effective authority over a state’s territory. In such cases it is believed that the international community not only has the right but also the responsibility to intervene.²

¹ This means, on the one hand, that the expulsion of a state’s national to the territory of other states is itself illegal. There are no acceptable grounds for dumping expellees on the territory of a non-consenting state (Dowty and loescher, 1996: 56). States have the responsibility to ensure the activities within their area of jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of territorial jurisdiction. In general, states are bound by a general principle not to create refugee flows and to co-operate with other states in the resolution of such problems as they emerge (Ibid.: 56). On the other hand, ‘even in cases where a state may not be guilty of illegal acts, ..., by flooding another state with refugees it creates grounds for the affected state to resort to measures of retorsion, defined in Oppenheim’s classical treaties on international law as ‘retaliation for discourteous, or unkind, or unfair and inequitabie acts by acts of the same or of similar kind’ (Ibid.; 54). Therefore, in the context of imposed refugee burden, retorsion would clearly seem to justify certain actions against the country of origin.

² As a result of such development international intervention related to refugee flows has in fact become more frequent in state declarations and practices in the last three decades. A number of cases can be given as examples: Indian intervention in East Pakistan (Bangladesh) in 1971 after an estimated ten million refugees poured into India; Vietnam’s intervention in Cambodia in late 1978, to overthrow the Pol Pot regime under which a large number of Cambodians had fled to Vietnam; Tanzanian
This does not mean, however, that our understanding of sovereignty is radically changing. It is still very true that, on the one hand, refugees to be recognized as refugees have to cross an international border; on the other hand, they have to be accepted as a refugee by the host government. This means that ‘sovereignty provides individual states with a licence to purify their domain of opposition, silence opposition voices, eliminate dissents and decide the fate of the people under their jurisdiction even though it is against international law. In short, the principles of sovereignty shield the state’s internal deficiencies and failings against external pressure and action’ (Inayatullah, 1996: 50).

Because of the importance attached to it and its ambiguities, it should be remembered that the postmodern critique of state sovereignty focuses on sovereignty. It is not the state per se which is under challenge by postmodernism but the claim of sovereignty which brings to the state assumptions of boundedness and supremacy, thereby designating an ultimate maker of certainty (Devetak, 1996: 201). Thus, state sovereignty is the foremost target in international relations because ‘it is predicated on an exclusionary political space (territoriality) ruled by a single, supreme centre of decision-making which claims to represent a single political community and identity’ (Ibid.).

Another important discourse that shaped our understanding of who is a refugee is our conception of cause and effect, and our categorization of economic and political phenomena (circumstances) as they are separate. In many cases specific causes are related to specific effects. For instance, economic hardship, poverty, lack of job opportunity and the search for a better life are believed to be producing economic migrants, while political violence, war (both national and international), persecution, violation of human rights produce refugees. In such conception and rigid categorization, first we missed the complexity and dialectical relationships of cause-effect-cause. Second, we also missed the interconnection between the economic and political. As a result, the society constitutes a different reality, different from what is going on in everyday life. This has been the case in the definition of a refugee. The discourse of rigid categorization, the conceptualization of cause and effect as a linear process prevent us from focusing on the needs of the displaced people regardless of the assumed causes and the category which we believe they belong to.

It is crucial, therefore, to re-conceptualize that a certain phenomenon (circumstance) can be a cause in one circumstance and an effect in another, or it can be both at the same time. It is also important to understand that an effect can be a result of a mixture of causes. For instance, in many African countries economic hardship triggers political violence or the other way round, which finally produces increasing displacement of the population. The same holds true for man-made and natural disasters.

intervention in Uganda in 1979 in support of Ugandan refugees to overthrow the Idi Amin regime; Indian intervention in Sri Lanka following the flow of Tamil refugees; UN/US intervention in Somalia in 1992; US intervention in Haiti in September 1994; French armed intervention in Rwanda in mid-1994; the intervention of the Economic Community of West African States (ECOWAS) in Liberia since 1990; and the intervention of the international community in Iraq after the Gulf War to protect the Iraqi Kurdish people, and more recently in the Balkan states.
This is only one side of the coin. The other side of the coin is the impact of such discourses and practices (especially national and international law) on the behaviour of the would-be refugees. For instance, if victims of the state and other organized forces are aware of the fact that they will be under international protection (as a refugee) only if they cross an international border, they will be forced to do so. Similarly, when people are aware of the fact that they will be accepted in a country of destination only if they claim that they are political refugees, they will present themselves as refugees, regardless of their reasons (motivations) for migrating. This has been the case in many situations in general and in the case of anticipatory refugees in particular. This is what self-fulfilling prophecy means. The principles we use to organize our political system, the language we use in defining who a refugee is, the criteria we use to decide who should and should not be under international legal protection, the laws governments adopted to accept migrants, etc. create the type of refugees we know now as a reality.

In the light of this, I will try to show how the global political discourses and practices have shaped our conception of a 'refugee'. I will begin with some dictionary and encyclopedic definitions of a 'refugee' and 'asylum'. Then, I will deal with the definition of a 'refugee' in international legal instruments (both pre-and post-UN, and international and regional).

However, before going into the dictionary meanings it may be important to see the ordinary usage of the term 'refugee'. According to Goodwin-Gill (1996: 3), in ordinary usage the term 'refugee' has a broader, looser meaning, signifying:

- someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. The destination is not relevant; the flight is to freedom, to safety. Likewise, the reasons for flight may be many; flight from oppression, from a threat of life or liberty, flight from prosecution; flight from deprivation, from grinding poverty; flight from war or civil strife; flight from natural disaster, earthquake, flood, drought, famine.

Implicit in the ordinary meaning of the word 'refugee' lies an assumption that a person concerned is worthy of being, and ought to be, assisted, and, if necessary protected from the causes and consequences of flight (Ibid.). In addition, crossing international boundaries, the political nature of the cause of the flight and the sovereign right of the state to decide who is or is not a refugee are not taken to be the fundamental criteria to be recognized as a refugee. The emphasis here is the needs of the people concerned.

Passing on to the dictionary definition, the term 'refuge' means, according to The New Shorter Oxford English Dictionary (1993: 2524), shelter from danger or trouble, protection; or provide a refuge or retreat (for a person), or take refuge, flee; seek shelter or protection in a place. Accordingly, a 'refugee' is 'a person driven from his or her home to seek refuge, especially in a foreign country, from war, religious persecution, political troubles, natural disaster, etc.; a displaced person' (Ibid.). Webster's Third New International Dictionary (1976: 1910) also defines a refugee' as 'one that flees to a place of safety, especially one that who flees to a foreign country or power to escape danger or persecution in his own country habitual residence because of his race, religion, or political beliefs'.
Another important term in the discussion of refugeeism is 'asylum'. This term is derived, according to Webster's Third New International Dictionary (1976: 136), from the Greek word 'asylös' which means 'exempted from spoliation, inviolable'. Hence, asylum means 'a place of refuge and protection (as a temple, altar, or statute of God or in latter times a Christian church) where criminals and debtors found shelter and from which they could not be forcibly taken without sacrilege'. In international law, according to the same dictionary, asylum is 'a place exempted by custom or convention from the territorial jurisdiction of a state within which it is so that refugees may not be followed to or taken from it except by the consent of the state enjoying the immunity'. The New Shorter Oxford English Dictionary (1993: 136) also defines 'asylum' as 'a sanctuary, a place of refuge and safety' and 'political asylum' as 'protection from arrest by another government'.

In both dictionary definitions the root words of either refugee or asylum have not always been connected with crossing international borders or being outside the jurisdiction of the country of origin. They have not always implied being under other state or government jurisdiction. A temple, an altar or statute of God or a church can be a place of refugee. However, the definition in international law has been incorporated in addition to the original meanings of the term. This has been the result of the influence of the international practices of the states-system and international organizations, and their respective laws.

The Encyclopedia of the Social Sciences (1957: 200) defines 'refugee' as 'any person who under the stress of force majeure has left his home and become dependent on the hospitality of others...'. However, according to the International Encyclopedia of Social Sciences (1968: 362), there is no single definition of a refugee that is suitable for all purposes. When associated with humanitarian aims, the connotation of the term differs from that used in international agreement, since the human aspects of the refugee problem are clearly distinct from the question of a refugee's status in any given situation. However, all refugees have these characteristics in common: they are uprooted, they are homeless and they lack national protection and status. Moreover, a refugee is an involuntary migrant, a victim of politics, war or natural catastrophe. According to the same encyclopedia (Ibid.), every refugee is naturally a migrant, but not every migrant is a refugee. A refugee movement results when the tensions leading to migration are so acute that what at first seemed to be voluntary movement becomes virtually compulsory. The uprooted become either 'internal refugees' that is 'national refugees' (persons who have been displaced in their own country), or 'international refugees' (persons outside their country of origin). The latter are designated refugees in legal terminology when they lack the diplomatic protection granted to nationals abroad (Ibid.).

In comparison with that of the dictionary definitions, the two social science encyclopedias defined a refugee in a manner resembling to that of international law, though they are not identical. However, unlike the definitions in international legal instruments, as we can see below, they include not only refugees created by political, religious and racial persecutions but also those created by natural disaster. Another interesting point that should be noted here is that the definition of a refugee associated with humanitarian aims (see International Encyclopedia of Social Sciences quoted above) is different from that in international law which is the result of the agreement between sovereign states. This is an important indication that the conception of a refugee in international legal instruments has mainly been informed by the process of
strengthening the territorial sovereignty of the state rather than meeting the human needs and alleviating human suffering. In other words, the conception of a refugee in international law has been constituted and reconstituted by our political discourse of the Westphalia states-system. This will be clear in the discussion below which will deal with the definition adopted up until and including the age of the League of Nations and then during the age of the United Nations.

It should be clear from the outset that the discussion below considers the conception of refugees, in line with critical theory, in historical perspective. This is not to justify the prevailing conception. Rather it is to understand how this conception came about and at what expense. In reading the various definitions presented below, it should be stressed, it is crucial to have in mind the following dominant political discourses and practices which have been shaping the definitions: (1) The state is the protector of its citizens and citizens enjoy the protection of their respective state. Therefore, an individual can be a refugee only if he does not enjoy this protection. (2) The state is a sovereign territorial entity with the ultimate power to decide what to do and what not within its jurisdiction. (3) International boundaries of a state are to be respected by others. Therefore, states cannot intervene in the internal affairs of one another. (4) International boundaries constitute who is a citizen and who is a foreigner, what is inside and what not, and who is ‘self’ and who is the ‘other’. (5) Politics is different from economics and they are causes for different types of migration, the former is the cause for refugees while the latter causes labour migration. Therefore, it is possible to categorize migration based on the respective causes.

3.2 The Age of the League of Nations

The history of refugees goes as far back as the known history of mankind itself. Up through the ages human beings have fled from their homelands to escape from tyrants, conquerors, oppressors and natural disasters. Throughout this history up until the establishment of the Westphalia states-system refugees had been granted asylum by rulers (political, religious, etc.) of the area of destination. Sovereigns (but not sovereign states as we know them today) had maintained the right to decide whether a refugee be given shelter, be ordered to leave the territory, or be handed over outright to the ruler who he had tried to escape (Grahl-Madsen, 1966: 9; Arboleda and Hoy, 1993: 68). This means, until recently, that the freedom of the rulers to grant or refuse asylum, and to extradite or refuse extradition at will has prevailed. However, in the nineteenth century states began to conclude treaties of extradition, whereby they bound themselves to deliver persons wanted by other states for certain criminal acts, provided that the individuals concerned did not belong to certain exempted categories. On the whole, these treaties exempted political offenders from extradition. But the law of asylum in a wider sense has remained as unwritten law until after the First World War (Grahl-Madsen, 1966: 9).

However, the existence of important groups of refugees has from time to time found expression in municipal legislation. We shall mention here only a few examples. On October 29, 1685, Friederich Wilhelm, the Great Elector, issued the Edict of Potsdam, whereby the Huguenots from France were authorized to settle in Brandenburg and Prussia (Ibid.). For that matter, the term ‘refugee’ itself was invented only at the end of the seventeenth century, when French persecution of Protestants (following revocation of the Edict of Nantes in 1685) forced some
200,000 - 300,000 refugees into flight (Dowty and Loescher, 1996: 58). In 1708 the British parliament passed 'An Act of Naturalizing Foreign Protestants with a special view to the many strangers of the Protestant or reformed Religion' who 'out of a due consideration of the happy Constitution of the Government of this Realm, would be induced to transport themselves and their estates into this kingdom if they might be made partakers of the advantages and privileges which the natural-born subjects thereof do enjoy' ((Grahl-Madsen, 1966: 10).

In France a number of laws relating to refugees were enacted in the nineteenth century, the most noteworthy of which was perhaps the Loi relative aux extrangers refugies qui Resideront en France, promulgated on April 21, 1832. In addition, the French Loi Sur la Naturalisation et la Sejour des etrangers in France of December 1849 and the British Aliens Acts, 1905, as well as the Aliens (Restriction) Acts, 1914 and 1919, were some of the important stepping stones in the formulation of modern refugee laws (Ibid.: 10-11). As we can see from these few examples concepts such as alien, foreign, naturalization played an important role in the formulation of the respective laws. These are concepts which are based on the concepts of boundaries, rigid categories and differences.

After the end of World War I, even though the covenant of the League of Nations does not contain any provisions regarding the situation of refugees, the plight of 800,000 Russian refugees compelled the Council of the League to take some actions. On February 1921 the Council passed its first resolution on refugees and questions relating to refugees were to become a recurrent subject on the agendas of the Council and the Assembly, throughout the life span of the League (Grahl-Madsen, 1966: 12).

On June 27, 1921 the Council decided to convene a conference on the question of Russian refugees. The conference was convened at Geneva in August 1921 as a result of which the High Commissioner’s office was established and Dr. Fridtjof Nansen, a Norwegian, was appointed as High Commissioner (Ibid.) At the conferences called by the Higher Commissioner’s office, on July 5, 1922 and May 31, 1924, regarding the Arrangement modifying and completing the Arrangements concerning the Issue of Certificate of Identity to Russian and Armenian Refugees, the following definition of a 'refugee' was adopted (Geneva, 12 May 1926):

**Russian:** Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who does not acquire another nationality.

**Armenian:** Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the government of the Turkish Republic and who has not acquired another nationality. (Melander and Nobel, 1979: 8)

On June 30, 1928, a new conference at Geneva adopted three different instruments: an Arrangement concerning the extension to other categories of refugees of certain measures taken in favour of Russian and Armenian refugees; an Arrangement relating to the Legal Status of Russian and Armenian Refugees; and an Agreement concerning the functions of the Representatives of the League of Nations High Commissioner for refugees (Grahl-Madsen, 1966: 13). This conference also adopted a similar definition of a "refugee" with regard to
Assyrian, Assyro-Chaldaen and assimilated refugees (see Melander and Nobel, 1979: 8-10, for the definition.) The 1928 Arrangement (but not the Agreement, which, however, was of limited scope and only acceded by Belgium and France) had been in the form of recommendations. Five years later, on October 28, 1933, a convention relating to the international status of refugees was adopted at Geneva as a legally binding instrument (Grahl-Madsen, 1966: 13, see the definition in Melander and Nobel, 1979: 10). Moreover, a plan for the Issue of a Certificate of Identity to refugees from the Saar was adopted on July 30, 1935. It was followed by a Provisional Arrangement concerning the Status of Refugees coming from Germany of July 4, 1936 and this in turn by a convention of February 10, 1938 on the same subject (Grahl-Madsen, 1966: 13). According to the convention, the term "refugee coming from Germany" applies to:

a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government. (b) Stateless persons not covered by previous conventions or Agreements who had left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German government. (c) Persons who leave Germany for reasons of purely personal convenience are not included in this definition (Melander and Noble, 1979: 10)

Additional protocols of September 14, 1939, to the Provisional Arrangement of July 4, 1936 and to the convention of February 10, 1938, concerning the status of Refugees coming from Germany, which replaced only the word "Germany" for "Austria" complete the list of international instruments defining the position of refugees in the era of the League of Nations (Grahl-Madsen, 1966: 14; see the definition of a "refugee" in the Additional protocol in Melander and Noble, 1979: 12).

Apart from the agreements and conventions mentioned above, a number of treaties, conventions and municipal laws, which are important but not directly related to the status of refugees to be mentioned here, were adopted between the two world wars (see Grahl-Madsen, 1966: 14-17 for some of those legal instruments; see also Goodwin-Gill, 1996 for many of the pre-UN legal instruments).

It is important here to note two points, in addition to the influence of the dominant political discourses, regarding the international legal instruments mentioned above. First, they were all adopted to tackle very specific problems after the problems had already been created. Second, they were all concerned with the problems created in Europe. In short, they were all Euro-centric. As we shall see below, the same Euro-centric approach has also been reflected in the era of the United Nations.³

³ It is worthwhile to note that there were two pre-war international organizations dealing with refugees which survived the Second World War for a short time, namely the office of the League of Nations High Commissioner for Refugees and the Intergovernmental Committee on Refugees (IGCR). The latter was established at Evian, France, on July 14, 1938, with a view to helping refugees from Nazi Germany. However, the High Commissioner's Office could not survive the dissolution of the League of Nations and was closed on December 31, 1946. Its activities were temporarily taken over by IGCR, which lasted a little more than half a year longer (Grahl-Madsen, 1966: 17). Besides, on November 9, 1943, the Allied Powers had agreed to establish a United Nations Relief and Rehabilitation Administration (UNRRA) to rescue millions of displaced persons in the liberated and Allied-occupied territories during and immediately after the war (Ibid.: 18).
Before passing onto the discussion on the major international legal instruments adopted under the UN it is important to look into the Constitution of the International Refugee Organization (IRO) established during the transition period. It was on December 15, 1946, that the General Assembly of the United Nations adopted the Constitution of the International Refugee Organization (IRO). IRO proper operated from August 1948 to January 1952 (Ibid.). According to the 1946 constitution of IRO the term 'refugee' applies to:

1) a person who has left, or who is outside of, his country of nationality or former habitual residence, and who, whether or not he has retained his nationality, belongs to one of the following categories:

   a) victims of Nazi or fascist regimes or regimes which took part on their side in the Second World War, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not;

   b) Spanish republicans and other victims of the falangist regime in Spain; ...

   c) Persons who were considered refugees before the outbreak of the Second World War, ...

2) a person, .. who, as a result of events subsequent to the outbreak of the Second World War, is unable or unwilling to avail himself of the protection of the Government of his country of nationality or former nationality.

3) to persons who, having resided in Germany or Austria, and being of Jewish origin or foreigners or stateless persons, were victims of Nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein.

4) to unaccompanied children who are war orphans or whose parents have disappeared, and who are outside their countries of origin. Such children, 16 years of age and under, shall be given all possible priority assistance, including, normally, assistance in repatriation in the case of those whose nationality can be determined. (See Melander and Nobel, 1979: 14-23, for the detailed definition of a 'refugee' and 'displaced person').

Three important points should be emphasized with regard to this definition. First, the acceptance of victims as refugees was based on their being outside their country of origin or nationality, even if they were unaccompanied children who were orphans or whose parents had disappeared. Children of whatever age were expected to cross an international border to be under the protection of the international community. Second, in number 1 (a) and (b) of the 1946 Convention victims of Nazi, fascist and falangist regimes were accepted as refugees. This may mainly be because these regimes committed crime against humanity (genocide). Similar crimes have been committed recently in the Former Yugoslavia and Rwanda. The question here is how the international community tried to protect the victims of the recent genocide. Third, as it is stipulated in number 4 of the definition above, priority was given to unaccompanied children who are war orphans and whose parents have disappeared. This is a crucial definition which may have enabled the international community to help the helpless children. One should ask here why such priority has not been recognized in both the 1951 convention and 1967 protocol or in any other regional conventions. In addition, one can compare the wider definition (in that particular circumstance) stipulated in the 1946 convention with that of the "well-founded fear of
persecution" of the 1951 convention and the 1967 protocol and the succeeding regional conventions which are relatively narrow, ambiguous and very subjective.

3.3 The Age of the United Nations

The Second World War produced a still larger displacement of people and in the aftermath of the war states, mostly in the developed world, recognized the need for an international legal regime. Thus, the General Assembly of the United Nations decided on December 3, 1949 to establish a United Nations Office of High Commissioner for Refugees (UNHCR) and adopted on December 14, 1950 the Statute of this office which came into being on January 1, 1951. Since IRO closed its operations, UNHCR has been the international body responsible for aid to and protection of refugees (Grahl-Madsen, 1966: 18). On July 28, 1951 a Convention Relating to the Status of Refugees was signed in Geneva (the definition of a "refugee" adopted in the statute of UNHCR and the 1951 Convention will be discussed below). After 1951 various conventions and protocols which are related in one way or another to the status of refugees were adopted by the UN and other regional organizations. However, only five of them: the 1951 UN Convention, the 1967 UN protocol, the 1969 Organization of African Unity (OAU) Convention of Africa and the 1984 Cartegena Declaration on Refugees of Latin America, which are related to the problem of the definition of refugees, will be discussed below.

To start with the 1951 Convention, according to article 1 A (2) of the Convention the term "refugee" applies to a person who:⁴

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (Brooks and El-Ayouty, 1970: 226)

Later on, because the Convention covers only those persons who have became refugees as a result of events occurring before 1 January 1951 and considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may not therefore fall within the scope of the convention, the 1967 UN protocol Relating to the Status of Refugees was adopted. Article 1 (2) of the protocol restated that the term "refugee" shall 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 ... the words '... as a result of such events,' in article 1 A (2) were omitted.' (Ibid.: 245)

As a result of the adoption of the Protocol, the refugee definition of the 1951 Convention became applicable to wider international circumstances. This definition emphasizes that the would be refugee should be outside his country of origin or nationality and that she/he is unwilling to avail himself of the protection of that country. This clearly implies that what is going on within a sovereign state is not the concern of other states and international

⁴ Refer also to chapter 2 of the Status of the office of UNHCR for a similar definition of a refugee.
organizations for that matter. A victim should cross an international boundary to be the concern of other states and the respective international organizations. On the other hand, it indicates that a person or persons who are within the territorial jurisdiction of a country other than his/her country are assumed to be outside the jurisdiction of their country of origin. In short, what matters is to be on the other side of an international border, not the needs of the victims. This shows, among other things, how the discourse of territoriality, boundary, and sovereignty of the state shaped the conception of a refugee in international law. To be on the other side of an international border also means that someone is different from the self (the citizens). He is a foreigner and an outsider. He has a different identity, different from what is taken to be the national identity of his country of destination.

Furthermore, in the 1951 Convention and the 1967 Protocol, and in many other international and regional legal instruments which were adopted before and after 1951, the emphasis is on the individual as opposed to the group. They are particularistic as opposed to general. This is a reflection of Western liberal thinking and Western political supremacy in the early 1950s which reflects a particularistic notion of needs and rights. On the other hand, contemporary population outflows from many Third World countries consist of persons (groups) who flee generalized conditions of insecurity, oppression, poverty and other man-made and natural disasters, and more recently the collapse of the states. These people typically can not count on the protection of their government to provide basic physical, economic, or political security. Their needs may be equal to those who are persecuted in the sense of the UN definition (Suhrke, 1983: 159-160). In general, the UN definition of a refugee does not emphasize the needs of the victims and it does not reflect the situation in many Third World countries, especially in Africa, and the type of refugees these countries are producing. The question, therefore, would be, can this definition be the basis for a definition that aspires to universality?

Mme. Sadako Ogata, the former United Nations High Commissioner for Refugees, has made this point clear in a lecture at Georgetown University in June 1991:

... the process of political and economic adjustment which we are experiencing today, the widening gap between the North and the South, the pressure of poverty and the aspirations of a better life, coupled with technological advance in transport and information, have led to massive movements of people. Second, is the growing complexity of the root cause of refuge flows ... In many parts of the world refugees are victims of civil war and political conflict rather than persecution. Africa, burdened with its colonial past, provides many grim examples of ethnic tensions, exacerbated by poverty, population explosion and environmental degradation, leading to repression and violence. Communal strife and civil war intensify famine and food shortage, forcing people to move in search of safety and survival, for example in Mozambique, Liberia and the Horn of Africa. Thirdly, displacement is not an issue across frontiers but also within them ... the causes which led to external displacement have also created a large displacement of persons inside their own country. For the human being directly affected, legal definition - or artificial borders - are meaningless (Quoted in Arboleda and Hoy, 1993: 72).

What one can understand from this quotation is that, firstly, refugeeism is strongly a development issue and a development problem. Secondly, it is clear that new refugee situations which had not been stipulated either in the Convention or the Protocol, and fall outside the UNHCR's mandate developed in many parts of the world. These new refugee situations, mainly
in Africa, were a special kind calling for a special approach. In order to deal with these situations UNHCR, with the approval of the UN General Assembly, developed and applied the 'good office' procedure (Jackson, 1991: 409). As a result, the UNHCR has been involved in assisting displaced and uprooted persons, who are believed to be in a situation analogous to that of refugees and who should not be excluded from international assistance (Ibid.: 410-411). In this regard it is important to note that the Guiding Principles on Internal Displacement were developed. They set out who 'Internally Displaced Persons' are and what protection should mean for them in all phases of displacement. Two points are worth noting here. First, according to the Guiding Principles internally displaced persons are 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border' (Mooney, 2000: 89). It is important to compare this definition with that of the Convention with special focus on the reference made to persons rather than a person, groups of persons rather than individuals, and on the causes of displacement. Second, the principles provide guidance to the Representative of the Secretary-General on the internally displaced persons; to states when faced with the phenomenon of internal displacement; to other authorities, groups, persons, intergovernmental and non-governmental organizations in addressing internal displacement (Ibid.). This means that the responsibility of addressing internal displacement is shared between different international and national organizations. In addition, the Guiding Principles did not go far enough to give international protection to the victims.

Even though these new situations have been recognized and new steps have been taken, there has not been any significant attempt, internationally through the UN forum, to revise the definition of a 'refugee' stipulated in the Convention. This is so, perhaps, because developing a comprehensive definition of refugees is not in the 'national interest' of the dominant powers. And perhaps the current definition serves better to prevent 'others' coming into their countries, which is believed to be good for maintaining their national identity. This is based on the assumption that 'others' are threats to the 'self', national identity, culture and security.

Regional attempts, however, were made to adopt a broader definition, both in Africa and Latin America. The Organization of African Unity (OAU), recognizing the specific situation in the continent, adopted a relatively broader definition of a refugee. In addition to the UN definition, article 1 (2) of the 1969 OAU Convention Governing the Specific Aspect of the Problem of Refugees in Africa states:

*The term 'refugee' shall also apply 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.* (Brooks and El-Ayouty, 1970: 272)

This definition, Oloka-Onyango (1991: 455-456) observes, has three important implications. Firstly, moving away from the Geneva convention's '... well-founded fear of persecution...' standard, gave credence to the fact that a refugee exodus could be the result of factors of more
general nature, intrinsic to the particular country in question, rather than to the individual subjective status of fear of the refugee. The cases of Liberia, Somalia, Rwanda, Burundi, Sudan and Ethiopia are excellent examples. Secondly, it not only expanded the numbers of persons who could be legitimately termed 'refugees'; it also reduced those known in Europe and elsewhere as de facto refugees, but who are not protected by the provisions of the Geneva convention, that is, those who are unable to prove the fact of an individual well-founded fear of persecution, and yet have fled their homes and are unwilling to return. Thirdly, no distinction was made in the definition between persons fleeing independent African states, and those emanating from colonial or minority-controlled domination. It should be noted, however, that the OAU convention is an African convention, which is not binding outside the continent and, UNHCR and other concerned international organizations do not strictly apply it. It can be taken, however, as an important step in the right direction.

An even broader definition of a 'refugee' was advanced in 1984 in the Cartagena Declaration on Refugees, section III (3) of which provides:

... the definition or concept of a refugee to be recommended for the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees 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. (Arboleda, 1993: 189)

This declaration, as Arboleda (Ibid.: 189-190) puts it, was the first document in the Latin American context to establish guidelines for states faced with mass inflows of refugees. It was also the first international declaration recognizing that the victims of generalized violence, internal conflicts, and massive human rights violation deserve refugee status. The declaration, however, in addition to its regional nature is not binding even within the region, unlike the OAU convention.

It is obvious that the definitions adopted both in Africa and Latin America accepted the 1951 UN definition as their basis. One possible explanation is that though the dominant discourses and practices are socially constituted it is difficult to ignore them unless the objective is to change them. They suppress the development of alternatives. It is because of this nature of the dominant discourses and practices that the regional legal instruments recognized the basic criteria stipulated in the 1951 Convention in their definition of refugees.

Coming back to the 1951 Convention there are additional points to be raised. The definitions of a refugee, according to the Convention and the Protocol, and more or less to the regional legal instruments, cover two sets of individuals: a) those who flee from persecution, and b) those who flee from war and the breakdown of law and order. This means that refugees produced by causes other than 'political factors' are not considered as refugees. This is not because they have different needs but it is mainly because they belong to another category, produced notably by economic factors and natural disasters.

As is stipulated in all definitions, even in the cases of 'political refugees', the basic criterion determining refugee status is persecution, which usually means an act of government against
individuals, thereby excluding those fleeing from generalized conditions of insecurity and oppression, as well as victims of natural disasters (Suhrke, 1983: 159-160, see also Jackson, 1991: 408). It should be noted here that most natural disasters are intensified by actions which governments take or fail to take. This makes it difficult to distinguish between man-made and natural disasters. In addition, the idea of what constitutes persecution shifted over time. Persecution seemed not only to be an act of commission, but also to be acts of omission (failure to protect). Persecution might have an economic aspect as well as a political one (Vincent, 1989: 507), which is not taken seriously in the international definition of refugees. Persecution, moreover, is also generally interpreted to mean loss of certain rights, as opposed to exploitation, which implies failure to enjoy those rights in the first place. Masses of poverty-stricken and powerless peoples in the Third World therefore are excluded. Furthermore, the UN definition specially includes persecuted minorities, but does not mention persecuted majorities (Suhrke, 1983: 159-160).

In the international legal definition the room for 'economic refugees' is closed. However, poverty has also been one major cause for refugee flows. It should be well noted that, since in the majority of cases poverty was the result of government policies, it might not be correct to categorize them in such a way. Even though the apparent causes of flight were economic, there were political factors that mainly accounted for the situation. Moreover, as governments increasingly use economic oppression as a tool of warfare, the distinction between political and economic motivation for flight breaks down (Ferris, 1985: 4). There is one other important point to be considered here. In countries like Liberia Somalia and the Great Lake region of Africa where the state collapsed, citizens fled their countries not because they are active in the conflict or fear persecution (though some are active in the conflict and/or fear persecution), but because there is no way, by any means, to earn their living. For these people, as Mme. Ogata clearly pointed out in the quotation above, legal definition or artificial borders are meaningless. For these people the only priority is survival. How, then, can we define these people? Economic migrants or refugees?

It should be noted that the UN definition of a 'refugee' is not useful for analytical purpose, among other things, for one general reason that it excludes victims of poverty and underdevelopment more generally (Zolberg, 1985:27). As Zolberg (Ibid.) notes, '...it is arguable that if political causes are taken as a starting point, then the analysis should include economic refugees as well, because their fate is often attributed as much to political evils... consciously pursued governmental policies or merely the maintenance by political means of severe social inequality ... as to the intrinsic inadequacy of a country's resources or its mode of economic organization'.

In relation to the same issue, one can also point to the fact that existing legal norms define need primarily with respect to the cause that led the person to flee. However, it can be argued that it would be more meaningful if a definition is based around the concept of need regardless of causes. For such a concept would be relevant to contemporary realities, indeed to any realities

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5. With reference to this situation, Bulcha's (1988) study of Ethiopian refugees in Sudan established that approximately 20 percent of the respondents gave poverty as the reason behind their flight.
Moreover, if only political reasons are taken as the main criterion, as the international definition did, the question will be how does one sort out the relationship between political and economic forces in the country of origin? In other words, does the criterion to delineate who is a refugee embrace those who should be included in the definition? Does the definition explain movements of persons who respond to mixed motives and leave under varying degree of pressure? It should be well noted here that perhaps the most common type of outflow from Third World countries today consists of people with mixed motives and pressure.

Moreover, the refugee regime - the definition based on individual problems - developed in the first years of the cold world war on the basis of experiences from World War II, has today been overburdened by large numbers of asylum-seekers who do not easily fit in the categories of the conventions. Instead of individuals escaping from personal persecution, there is currently a mass migration of people who are fleeing from warfare, ethnic cleansing, harassment, and severe discrimination of ethnic groups, or from territory where the state is no longer capable of providing subsistence, protection, and upholding law and order (Hammar, 1995: 173). It means, therefore, that the definition is unable to include such outflows or that it excludes those individuals and groups who are displaced by the violence of warfare and who have not been singled out for individual persecution (Ferris, 1985: 3). It also has a problem of application on 'anticipatory' refugees - those who sense the danger early and leave. Anticipatory refugees, even though they may not have proof of direct persecution, may be as needy as 'acute' refugees (Ferris, 1985: 5).

A more serious problem of the definition, which is closely related to our understanding of the international states-system, is the distinction made between internally and externally displaced people. All of the definitions indicated above excluded internally displaced people from international protection and assistance whatever their needs might be. In many cases it has been, in relative terms, the people with better financial resources, better physical strength and information who crossed international borders. On the other hand, the very poor, weak and those who lack information remained internally displaced. These groups are the ones who are vulnerable (exposed) for more persecution. In this case the internally displaced people need the protection and assistance of the international community more than anybody else. However, because these people are still within the sovereign jurisdiction of their state of origin, even if it is the state that persecutes them, they cannot get similar assistance and protection regardless of their needs. This has been one major drawback of the definition of a refugee in all the international legal instruments. More importantly, it is one best example which can show that our discourses are not the reflection (description) of the reality out there but rather our discourses themselves create what we understand (take) as a reality.

In many cases refugee flows occasioned by expulsion or flight are but one of the outcomes of political persecution; paradoxically, the refugees may be the more fortunate segment of the original target, others who could not cross borders may be subjected to a worse fate, including not only displacement but even murder. In the light of these considerations, Zolberg (1985) notes that it is evident that the study of refugees with a view to determining the conditions that
bring them about must address itself not merely to the ongoing flows but to the phenomenon of massive political persecution.

Another dimension to the problem of defining who is a refugee is the question whether or not migrants are accorded official recognition as refugees by their country of asylum. Unless a country of asylum recognizes an immigrant community as refugee, it is normally unlikely that any international agency or any potential third country of asylum will (Rogge, 1985: 5). This makes refugees double victims of the international states-system both at their origin and destination. The simple question that arises here is what would be the status of asylum seekers whose applications have not been accepted or rejected by the asylum countries and who are still in the countries of asylum for many years.

Still another issue that should be raised here is the question of how long a refugee remains a refugee. As Rogge (1985: 6-7) observes, in the cases of post war Europe, Southeast Asia and Latin America refugees who were recently settled in North America or Europe were generally given citizenship of an asylum state within a relatively short time span. In Africa, however, most refugee communities remain indefinitely as aliens (refugees). Their children born in exile also became refugees, and there are now even instances of third-generation refugees.6

Many scholars, international and regional organizations seem to recognize the shortcoming of the Convention definition of refugees. The problem, however has been to change it. It is understandable that it difficult for the states system and international and regional organizations created to serve the system to reconceptualize human displacement in general and refugees in particular. Because reconceptualizing human displacement by taking into account the shortcomings discussed above will contradict the fundamental of the states system and the principles of the territorial sovereign state.

Some scholars who understood the basic shortcomings attempted to come up with their own definitions. For instance, Zolberg (Zolberg, et. al., 1989: 153) proposes a definition for purposes of social scientific analysis and policy formulation in which a 'refugee' is defined as a:

**Person whose presence abroad is attributed to well founded fear of violence, as might be established by impartial experts with appropriate information. In the cases of persecution covered by the classic definition, the violence is initiated by some recognizable internal agents, such as the government, and directed at a specific target group; the presence of members of the group abroad may be the result of flight to avoid harm, of expulsion, itself a form of violence. But flight-inducing violence may also arise as an incidental consequence of external or internal conflict, or some combination of both, and affect groups that are not even parties to that conflict.**

Hakovirta (1986: 15), rather than developing a specific definition of refugees, identifies four basic requirements for analytically useful definition. According to Hakovirta (Ibid.), first, the definition must describe the conditions under which a person becomes and ceases to be a

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6 The same is also true for Palestinian refugees.
refugee. Second, it must be comprehensive enough to include all of the most important types of refugees. Third, it must not be too wide or flexible to blur the borderline separating refugees from other types of migrants. Fourth, it must not be so unique that it can not be used in the empirical analysis of major refugee statistics. Even in these two scholarly attempts to develop a better definition of refugees for analytical purposes the influence of the dominant political discourses and practices is evident.

Though changing the legal definition of refugees is difficult unless the Westphalian states-system and the territorial sovereign nature of the state are changed, it is possible to develop a comprehensive definition for analytical purposes in the social sciences. Thus, having in mind Zolberg's definition and Hakovitra's four point requirement indicated above, the following working definition his adopted as a working definition in this research. **Refugees are those people (as individual or group) whose lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal and international conflict, mass violation of human rights, man-made and natural disaster or other circumstances which have seriously disturbed public order and as a result of which they can not continue their life in their original places of residence.**

The emphasis here is not the cause for displacement or their destination, rather, it is their needs.

Having a working definition different from the legal one, however, does not mean that it is easy to conduct the research based on the working definition. This is so for a number of reasons. First, no comprehensive empirical study of the contemporary refugee situation is feasible without heavy reliance on UNHCR and other governmental and non-governmental organizations' refugee statistics, which are mainly based on the Convention's definition of refugees. This means having a definition which deviates radically from the Convention's definition and practices of these organizations will make it difficult to use the statistics produced by these organizations. Second, because of the nature of the definition and the inconsistent practices of the organizations involved in refugee issues, collecting data and providing assistance, etc., it is not clear whether the available statistics are based strictly on the convention's definition or not.

To sum up, I have tried to show that the dictionary definitions of the root words of either refugee or asylum have not always been attached with crossing international borders or being outside of the jurisdiction of the country of origin. A temple, an altar or statute of God or a church can be a place of refugee. However, the definition in international law has been incorporated in addition to the original meanings of the term. This has been the result of the influence of the international practices of the states-system and international organizations, and their respective laws. In other words, the dominant political discourses and practices have constructed the conceptualization of a 'refugee'. Especially, the political discourses on state sovereignty and territoriality, inclusion and exclusion, citizen and alien have shaped our categorization of refugees. This entails that the conceptualization of refugees has been part and parcel of the (re) construction of the state. This means unless the fundamentals of the westphalia states system are reconceptualized differently there will not be meaningful change in our conceptualization of human displacement. With this in mind the next chapter will focus on the typology of refugee migration, and characteristics and magnitude of refugee migration in the Horn of Africa.