IN FLIGHT FROM CONFLICT AND VIOLENCE

The impact of violence and conflict on refugee status determination and international protection is a key developing field. Given the contemporary dynamics of armed conflict, how to interpret and apply the refugee definitions at regional and global levels is increasingly relevant to governmental policy-makers, decision-makers, legal practitioners, academics and students. This book provides a comprehensive analysis of the global and regional refugee instruments as they apply to claimants in flight from situations of armed conflict and violence, exploring their inter-relationship and how they are interpreted and applied (or should be applied). As part of a broader UNHCR project to develop guidelines on the interpretation and application of international refugee law instruments to claimants fleeing armed conflict and other situations of violence, it includes contributions from leading scholars and practitioners in this field as well as emerging authors with specific expertise.

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IN FLIGHT FROM CONFLICT AND VIOLENCE

UNHCR’s Consultations on Refugee Status and Other Forms of International Protection

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CONTENTS

Notes on Contributors and Editors  page vii
Foreword by Filippo Grandi  xiii
List of Abbreviations  xv

Introduction  1
VOLKER TÜRCK, ALICE EDWARDS AND CORNELIS WOUTERS

PART I  Causes, Character and Effects  23
1 The Causes, Character and Conduct of Internal Armed Conflict and the Effects on Civilian Populations, 1990–2010  25
THEO FARRELL AND OLIVIER SCHMITT

PART II  Refugee Status under Global and Regional Instruments  59
2 The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence  61
VANESSA HOLZER
3 Relationship between the 1951 Refugee Convention and the 1969 OAU Convention on Refugees: A Historical Perspective  94
BONAVENTURE RUTINWA
4 The 1969 OAU Refugee Convention in the Context of Individual Refugee Status Determination  116
MARINA SHARPE
vi CONTENTS

5 The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America 141
M I C H A E L  R E E D - H U R T A D O

PART III Refugee Status and Special Groups 181

6 Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention 183
V A L E R I E  O O S T E R V E L D

7 Children Fleeing Conflict: Age and the Interpretation and Application of the 1951 Refugee Convention 215
R A C H E L  B R E T T ,  M A R G A R E T  B R E T T  A N D  H A I F A  R A S H E D

PART IV Subsidiary Protection 239

8 Protection in the European Union for People Fleeing Indiscriminate Violence in Armed Conflict: Article 15(c) of the EU Qualification Directive 241
M A D E L I N E  G A R L I C K

Appendix I Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence 267

Appendix II Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration 282

Index 297
NOTES ON CONTRIBUTORS AND EDITORS

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viii  NOTES ON CONTRIBUTORS AND EDITORS

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X

NOTES ON CONTRIBUTORS AND EDITORS

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FOREWORD

The world today is witnessing many protracted conflicts, violent crises and human rights violations causing enormous human suffering. Several contemporary conflicts have become so complex and widespread that in some places, no one is safe. More than 60 million people have been forcibly displaced from their homes worldwide, including some 20 million who have sought refuge outside their own countries.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are the central legal instruments for the protection of refugees today. Drawn up in the aftermath of the Second World War, they continue to provide a strong legal and ethical basis for the protection of people at risk of persecution, especially those fleeing the devastating effects of armed conflict and violence. As a response to today’s mass movements, we have seen both the generous welcoming spirit that binds us as a human family and ever more attempts to prevent refugees from seeking safety. In addition, the increasing reach of non-state actors – armed groups, smugglers and traffickers or organized criminal gangs – has made the world a very dangerous place for refugees.

Against this background, the 1951 Convention has come under scrutiny both as to its legal parameters and as to how it may offer practical responses to people on the move. Too often its application to those in need of international protection has been wrongly questioned. At other times the 1951 Convention has become the scapegoat for a lack of political will to help people in need. These are extraordinarily difficult times for the institution of asylum.

However, the problem of determining the status of people fleeing armed conflict and violence does not generally lie with the legal framework or with the refugee definition. One of the key challenges is how to strengthen the processes in place at the national level to ensure the interpretation and application of the 1951 Convention in a more harmonized and inclusive manner across countries, such as to enable asylum claims from persons fleeing similar circumstances to be processed
quickly. States need to introduce measures both individually and collectively to reduce the (perceived) arbitrariness in decision-making and accompanying uncertainty for applicants while minimizing the need for onward movements in search of sanctuary. Many other practical and financial solutions are also needed to help states hosting large numbers of refugees and to support the international community’s collective search for solutions.

As part of a project of UNHCR’s Division of International Protection focused on persons fleeing armed conflict and violence, this edited collection represents state-of-the-art scholarship on the legal aspects of the 1951 Convention. Even though it is acknowledged that many practical responses are required to deal with the mass movements of today, the legal framework and the rule of law remain fundamental aspects of every functioning system of governance. UNHCR was established first and foremost as a legal protection agency, with a mandate to supervise the implementation by states of the 1951 Convention and with a broad mandate for international protection and solutions. The contributions to this book will assist UNHCR to exercise this mandate for refugees and will in particular feed into new Guidelines on International Protection, complementary to the Handbook on Criteria and Procedures for Determining Refugee Status, aimed at supporting governments, practitioners, judges and decision-makers with the proper interpretation and application of global and regional refugee instruments to people fleeing situations of armed conflict and violence.

I thank the authors sincerely for their thoughtful contributions to this book. The theme of this new publication could not be timelier.

Filippo Grandi
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ABBREVIATIONS

1951 Convention Convention Relating to the Status of Refugees
AILA American Immigration Lawyers Association
AIT Asylum and Immigration Tribunal (UK)
AMISOM African Union Mission in Somalia
ANSF Afghan National Security Forces
ANSO Afghan NGO Safety Office
AU African Union
AUC Autodefensas Unidas de Colombia
BVerwG Bundesverwaltungsgerecht (Germany)
Cartagena Declaration Cartagena Declaration on Refugees
CEAS Common European Asylum System
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women
CIREFCA International Conference on Central American Refugees (Guatemala City, 1989)
CJEU Court of Justice of the European Union
CNDA Cour Nationale du Droit d'Asile (French National Asylum Court)
CNDH Comisión Nacional de los Derechos Humanos
CODER Comisión para la Determinación de la Condición de Personas Refugiadas
COMAR Mexican Commission for the Assistance of Refugees
CONARE Comité Nacional para os Refugiados (Brazilian Refugee Committee)
COW Correlates of War Project
CRC Convention on the Rights of the Child
CRC-OPAC Optional Protocol to the Convention on the Rights of the Child
DIP Division of International Protection (UNHCR)
DRC Democratic Republic of the Congo
EASO European Asylum Support Office
LIST OF ABBREVIATIONS

ECHR European Convention on Human Rights and Fundamental Freedoms
ECOSOC Economic and Social Council
ECtHR European Court of Human Rights
EU European Union
ExCom Executive Committee of the High Commissioner’s Programme
FARC Fuerzas Armadas Revolucionarias de Colombia
HRW Human Rights Watch
IAC internal armed conflict
IACommHR Inter-American Commission on Human Rights
IACourtHR Inter-American Court of Human Rights
ICRC International Committee of the Red Cross
ICTY International Criminal Tribunal for the Former Yugoslavia
ICU Islamic Courts Union
IDP internally displaced person
IED improvised explosive device
IFA internal flight or relocation alternative
IHL international humanitarian law
IIDH Instituto Interamericano de Derechos Humanos
ILO International Labour Organization
IMI International Migration Initiative
IRB Immigration and Refugee Board (Canada)
IRO International Refugee Organization
ISAF International Security Assistance Force
LTTE Liberation Tigers of Tamil Eelam
MPSG membership of a particular social group
NGO non-governmental organization
OAS Organization of American States
OAU Convention Convention Governing Specific Aspects of Refugee Problems in Africa
OAU Organization of African Unity
Rome Statute Rome Statute of the International Criminal Court
RPG rocket-propelled grenade
RSAA Refugee Status Appeals Authority (New Zealand)
RSD refugee status determination
TFEU Treaty on the Functioning of the European Union
TFG Transitional Federated Government (Somalia)
UCDP Uppsala Conflict Data Programme
UN United Nations
UNHCR United Nations High Commissioner for Refugees
UNITA  National Union for the Total Independence of Angola
UNSC  United Nations Security Council
UNTS  United Nations Treaty Series
US  United States of America
USCENTCOM  US Central Command