

**THE ROLES OF TRADITION AND CULTURE IN THE
APPLICATION OF REFUGEE AND ASYLUM LAWS IN
GERMANY AND SAUDI ARABIA**

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ABSTRACT

International protection law in recent times has assumed the status of customary international law – a framework which confers almost universal compliance to her provisions. However, states' sovereignty retains yet some level of freedom during domestication of international law. This observation is the funnel through which states' tradition and culture interfere in the application of international protection law. This paper examines the roles of culture and tradition in the application of refugee and asylum laws of two asymmetric states, namely the Federal Republic of Germany and the Kingdom of Saudi Arabia. This is a comparative study of two dissimilar societies that face the same refugee challenge in the Syrian crisis. The responses of these states to the influx of refugees from Syria reflect a trajectory that is being dictated primarily by the values of the people but the international protection law only ape their responses in a fundamental way. The work is observatory and exploratory in nature. To get to the roots of this research, information is gathered from news items relating to how these two countries have been responding to the Syrian refugee crisis. Various secondary sources of information on the management of refugees by these two countries are also gathered to give context and content to the research. Finally, sources of refugee laws of these states are examined along the provisions of international protection law. The paper concludes that Germany and Saudi Arabia respond to international protection law within the framework offered by their respective values, culture and tradition.

Keywords: Refugee, Asylum Laws, Culture. Germany, Saudi Arabia

INTRODUCTION

The Syrian crises have pushed International protection law to a yet another nuisance focus. The last time international protection law came under such intense pressure was during the ructions which followed the World War II. Although, the Geneva Refugee Convention of 1951 was a direct intervention in the global demographic displacements after the WWII, later events changed the scope and the horizon of international protection law. Very fundamental is the dateline (i.e. 1951) of its operations which incorrectly limited the scope of the Refugee Convention to events before 1951. This shortfall was the concern of the Refugee Protocol of 1967 which abolished the dateline and brought other refugee occurrences after 1951 under the competence of UN Refugee Convention.

The Syrian crises awaken International Protection Law from its lethargy and exposed its weakness which became quite clear when the crises show the ill-preparedness of international protection law to sudden influx of refugees to other countries – both near and far to the index state. Part of what the Syrian crises exposed was the weakness of international regulation for the resettlements of refugees into the third state. Other unresolved issues are the clash between immigration policies and right to border control of states and international protection law, the trap-wires between national refugee acts, international law and national immigration laws.

Since the emergence of the Syrian refugee crises, many refugee protection issues have come to the fore in the course of measuring and investigating international responses to the crisis. Again, the refugee protection laws of some states capitulated under intense influx of refugees to their states. For instance, Denmark which has one of the most progressive asylum systems in Europe became where hostile refugee instruments are processed. The country was to criminalise her citizens' efforts to assist refugees while she made the closure of her borders, a national policy.

Germany used the Syrian refugee crisis as an integrative tool to, at least, distil the Nazi toga that trails her international relations after the WW II and especially after the Cold War. Statistics show that Germany has hosted the largest refugees from Syria in the entire Europe Continent. This record is to be subsequently challenged by Turkey which, as a result of nearness to Syria, has more influx of refugees from Syria than any country. While this is correct, the fact that Turkey is yet to come to actual determination of the fate of those refugees and the point that Turkey is highly desirous of a Third State resettlements for most of those refugees, nitpick from the general quality of refugee management system in that country.

Muslims and Islamic countries have been deeply criticised in the face of non-commitment to alleviating the refugee crisis in their sister state which share same pristine brotherhood with them. The slur is more horrendous when in spite of the stupendous wealth of these islamic countries, they showed very latent response to the humanitarian crisis in Syrian. Many of them demur in the practical admission of refugees into their territories but rather prefer to send relief

materials to the refugees in camps and anchor centers of other countries. The reliefs are pittance compared to the gross wealth of these Islamic countries. Only Lebanon appears to show credible intervention in the humanitarian crisis in Syria in the region.¹

This work essentially examines the responses of two states to the management of the Syrian refugee crisis. Namely, Germany and Saudi Arabia are the case studies where culture, values and traditions have played a leading role in the management of the refugee crisis of Syrian extractions.

SAUDI ARABIA, ISLAM AND INTERNATIONAL PROTECTION LAW

As at June 2019, the United Nations, High Commissioner for Refugees reported that the authorities in Saudi Arabia had approved the asylum applications of 2,226 refugees representing 100% approval of the total number of 2,226 initial applications.² The UNHCR however, added that nearly all the successful applications were from Syria and Yemen and also observed that there are millions of refugees seeking admission to Saudi Arabia. The Saudi government as early as 2015 had claimed the Saudi government had hosted a total of 2.5 million refugees but admitted that most of them are Syrians.³ Amidst these claims is the need to investigate the sources of refugee policy in Saudi Arabia especially when it appears that the country is totally and widely acknowledged as non-responsive to refugee issues and in particular to the humanitarian crisis in Syria.

As an opening remark, it should be noted that all Islamic states and states under Islamic influence do not have domestic policy on refugees and this partly explains the dearth in information and accurate data of the assistance they have rendered to the Syrians since 2012. Saudi Arabia in particular does not have a national policy on refugees and like most Islamic countries, is not a signatory to the UN Convention and Protocol Relating to the Status of Refugees. This UN Convention generally serves in parental capacity to refugee acts of signatory states where they mainly adopt its basic tenets. The non-acceptance of the UN Refugee Convention in the issues relating to refugees could mean developing a national policy on international affairs that is not parented by international law.

Saudi Arabia also has a psychological debacle with international asylum institution because the global asylum community perceives Saudi Arabia as pursuing domestic policy that sends her citizens to seek asylum in other states. In 2018 for instance, a total of 653 asylum applications were received from nationals of Saudi Arabia fleeing varied degrees of persecutions.⁴ The general atmosphere of mistrust between the international protection law and the Saudi authorities could have accounted for the normative distancing of the Saudi government from the international protection laws.

The Saudi Arabia's Foreign Affairs Minister recently maintains that Saudi Arabia does more for refugee than any state but claims that western media only wish that refugee crisis should only be managed in the framework laid by the UN Refugee Convention. He maintains that Saudi has a well-established method to attending to refugee crisis but "not the UN Refugee Stuff".⁵ This view perhaps has corroboration in the work of Ahmed Abu Al-Wafa, a Cairo University law Professor and Dean of faculty of Law. According to Al-Wafa in his work titled "The Right to Asylum Between Islamic Shari'ah and Refugee Law: A Comparative Study", all the principles embodied in modern international refugee law are to be found in the Shari'ah and protection of refugees, their property and families, the *non-refoulement* principle, the civilian character of asylum, voluntary repatriation – all are referred to in the Holy Qur'an:

Professor Aby Al-Wafa goes further to say that:

All these values are part of Arab tradition and culture...and they describe how Islam respect refugees including non-Muslims, forbids forcing them to change their beliefs: avoids compromising their rights, seeks to reunite families and guarantees the protection of their laws and properties.⁶

Although, Islamic states are not signatories to the UN Refugee Convention, the UNHCR has over the years fraternized with Islamic institutions and organizations to such an extent that it has been able to establish some of its fundamentals in basic Islamic Organisations. For instance, the Organisation of Islamic Conference (OIC) adopted in 1990 a Declaration on Human Rights in Islam stipulating that every human being fleeing persecution has the right to seek asylum and receive protection in another country.⁷

Essentially while it is correct to say that Saudi Arabia is not a signatory to the UN Refugee Convention and Protocol, the country has some degree of mechanisms that she uses to respond to refugee crisis. Again, although, the UN Refugee Convention has made all refugee issues generic from its definitions and description, some other forms of understanding need to be accommodated as long as they resolve basic challenges of refugees and asylum seekers.

As it stands now, Saudi Arabia does not accept refugee under the UN Refugee Convention provision, but it does attend to refugee issues in some form with respect to the Syrian refugee crisis. The Saudi authorities require that Syrians must apply for visa or work permit before admission to the country.⁸ From the point of view of the International Protection law, this requirement negates the per-emptory atmosphere where refugees need instant and prompt admission. Further, the application for visa for refugee is seen as invocation of refoulement of refugees and this runs in counter-pointer arrangement with article 33 of the UN Refugee Convention. on the status of Refugees which prescribes that:

- (i) No contracting state shall expel or return (refoulement) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- (ii) The benefit of the present provision may not, however, be claimed by a refugee when there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.⁹

Saudi officials however, insist that the visa-based model is meant to preserve the dignity of displaced Syrians. According to an official of Saudi government, the visa-based model is to ensure proper accountability pushing them away from deportation traps which may occur when they (Syrians) are not properly documented. Again, the visa-based model is assumed to be an integrative tool which gives proper and quality residency to Syrians. The official claims that under this model close to 2.5 million Syrians have been resettled in Saudi Arabia.¹⁰ Other observers of migrations in the Gulf States accused the Saudi government of engaging in transactional refugee resettlement scheme where refugees are offered short-term transitory working permit in order for them to contribute their quota to the economy of that state while they stay there. It is further argued that such scheme is not in any way in the spirit of the humanitarian intention behind international protection laws.¹¹

The sectarian and schism-based religious competition in the gulf also has some impact on Saudi's response to refugees from Syria. According to Michael Stephens, the Saudi authorities sensed a deep alliance between *Al Bashir* of Syria and the Iranian government and with that lens, Saudi's response to refugees from Syria could not be freed from the prejudice and sectarian dichotomy between Sunni and the Shiite.¹² In addition to this is the fear that terrorists would infiltrate the ranks of genuine refugees. This concern was exacerbated by the Islamic State bombing of Saudi mosques in May and August 2015. According to Michael Stephens:

Many Sunni areas in Syria have served as a base for the Islamic state, which the Saudi and UAE air forces are helping to bomb. Islamic State is hostile to the Saudi regime, and it's important to them whether the refugees are fleeing Islamic State or the bombing.¹³

The administration of asylum system in Saudi Arabia has opened yet another vista in refugee studies. Saudi response to refugee shows that in the application of national policy, states are often prejudiced in determination of who benefits from refugee scheme and again it shows that notwithstanding the ground rules about refugee, national interests are superimposed on humanitarian considerations.

GERMANY, REFUGEES AND ASYLUM SYSTEM

In Europe, both Russia and Germany hold the unenviable records of producing incidences that led to global emigres. For Russia, it was Joseph Stalin's unbridled industrial revolution in the late 1920s to early 1930s that led to the first comprehensive international demographic disarticulations. In Germany, it was the ructions of the WW II which Adolf Hitler and his cohorts visited on the world. But Germany, since the end of the Cold War has acted as elixir to humanitarian crisis, unlike what her progenitors charted for her in the early of the 20th century. Germany has used her position as a leading economy in Europe to promote international law and international protection law in particular with respect to asylum and refugee affairs.

The thrust of the work is to tease out the impact of culture and tradition of a state on the application of international protection law. In Germany, the social welfare of citizens has been promoted almost to the point of right where citizen often seek adjudication and judicial decision when infractions are observed. Technically, international protection laws are easily domesticated in states where citizens' social welfare is not derogated. The nexus here is that in such communities, human dignity is protected and such framework does not exclude refugees and they are well ensconced in the state humanitarian ethos.

Germany is a signatory to the UN Refugee Convention and Protocol. The right to asylum in Germany is codified in article 16a of the German Basic Law. In its law, it is constitutional to protect human dignity. There are general rules and norms for admission of refugees and handling refugee claims, these are codified in the Asylum and Residence Act of the Federal Republic of Germany. The Asylum Acts, states the process and consequences of granting and denying asylum whereas the Residence Act provides rules concerning the entry, stay, exit and employment of foreigners in Germany.¹⁴

SYRIAN REFUGEE RECEPTION IN GERMANY AND SAUDI ARABIA: A COMPARATIVE ANALYSIS

The first observation in comparing Syrian refugee reception in both Germany and Saudi Arabia is the lack of reliable statistics and records of Syrian refugees on asylum in Saudi Arabia. This largely is due to a number of factors earlier mentioned but in addition, is the fact Saudi Arabia has not officially admitted that she is hosting any refugee in her State and this is technically, a correct approach because the country has not in any way aligned with any known provisions in international protection law thus, her refugee admission process cannot be monitored. The figure of refugees in Saudi Arabia is what the officials say it is and therefore such figure is not reliable as it is only an emotive response.¹⁵

Germany on the other hand has reliable records of refugees in her country. There are 745,000 (0.90% of the total population) Syrian refugees in Germany as at December 2019. ¹⁶ Effective tracking of Syrian refugees in Germany started in December 2014 when the Federal Statistical Office of Germany estimated that there were 118,196 Syrian refugees in German asylum system. This figure had reached a tipping point of 637,845 at the end of 2016. Although, there were reports that beginning from 2015 fake Syrian passports were being used by non-Syrians to secure asylum in Germany, this number began to slide in 2017, when German authorities developed models to nip this practice in the bud. ¹⁷

It has been observed that religion of Islam plays a significant role in refugee administration of Saudi Arabia. In spite of dearth of data of refugees in Saudi Arabia, ample evidence exists to show that majority of refugees in Saudi are from Syria and Yemen.¹⁸ The proof of religious interference may be hard to push since there is no official position on the entire refugee concept and there is no evidence that citizens of other countries applied for asylum in Saudi and they are denied on the basis of religion. However, to the extent that, only refugees from Syria and Yemen, have been able to access the asylum in Saudi Arabia, may promote a religious bias in the granting of asylum in Saudi Arabia.

Germany on the hand, shows no religious prejudices, and in fact, has no inclination to do so. Refugees in Germany are predominantly from Syria and majority are Muslims and they hosted majorly in German cities of Frankfurt, Berlin, Hanover, Munich and Stuttgart. Again, majority of those offered asylum in Germany are Kurds, Arabs Assyrians, Turks and generally, nationals of nations who share no cultural link with Germany.¹⁹

One other area where refugee reception and management differ significantly in Germany and Saudi Arabia is in the area of refugee integration and resettlement. Saudi Arabia lays claims to providing a haven of integration for refugees in the country. This claim is affixed to the insistence that refugees must possess a valid visa before seeking asylum in the country. In addition, the Saudi authorities require that refugees must apply and obtain work permit before refugee status can be granted. These measures appear in the competence of international protection laws, as instruments of refoulement for asylum-seekers. But the Saudi authorities claim that, what is intended by those measures is to de-escalate the red-lines which might militate against comprehensive settlement for refugees. According to the Minister of Interior of Saudi Arabia.

These measures are meant to take care of refugees on the spot...on arrival and they are not subjected to inhuman treatments often associated with refugee receptions elsewhere... We only ensure human dignity by so doing. ²⁰

It is not however clear how this system can be reconciled with humanitarian intent inherent in the international protection laws, when the work permits being granted are obviously skewed to provide cheap labour force for various construction companies and other institutions that require the services of unskilled labourers in the country.²¹ In addition to this, the work permit so granted is usually short-term transitory permit which technically has a terminal date. According to a BBC report, this permit is rarely renewed and it appeared that there is a state policy for non-renewal of work permit.²² The net implication of an expired work permit is that such refugee leaves the country after the termination of his contract.²³

This practice is totally unacceptable to the general international protection law and in particular to the conventions establishing the rights of refugees. The system of termination of stay when work permit expired is an invariable invocation of the cessation clause which brings refugee status to an end but under guideline set by the UN Convention relating to the status of Refugees of 1951 and Protocol of 1967.

Germany on the hand has developed a very comprehensive refugee integration system. The country has a language integrative system in the categories of “A1, A2, B1, B2, C1, C2, C3” developed to move asylum seekers into German employability; Germany also has an integrative education system which accepts refugees’ children to the country’s educational system without prejudices and discrimination.²⁴

While Germany soar higher than Saudi Arabia in integration of refugees, populist political ideas are likely to emerge soon in German political scene that will reverse the various progress made by Germany in refugee administration. The Premier of Bavaria, Markus Söder has started an asylum reform which might reverse the peaceful ambiance for refugees. He has processed the establishment of an “Anchor Centre” which will hold refugees and asylum-seekers temporarily pending the determination of their asylum applications. But unlike the regular refugee camps, the Anchor centres may act as pre-deportation detention for refugees who enter Germany. The two states of Saxony and Bavaria are reported to be advancing this proposal.²⁵

This political dimension to refugee rights advocacy should be a concern for international protection law because of the growing populist-based campaigns of would-be German leaders who are poised to take over from Chancellor Angel Merkel at the expiration of her tenure.

CONCLUSION

Essentially this work has examined the significance of culture and beliefs on the application of refugee and asylum laws of states. It shows that in spite of the claims to customary international law of international protection laws, states still hold the trigger when it comes to application. This observation crystalizes in the fact that treaties cannot apply themselves, so during

application, national interest and states' idiosyncrasy will still take their chunk from conventions and international agreements. In the case of refugee laws and asylum system, the customary international law nature of these laws is limited by the fact that the 1951 Refugee Convention and the 1967 Protocol are optional treaties and this is why some countries can gleefully deny their applications in their domains. The Kingdom of Saudi Arabia and other Gulf states are not signatories to the international refugee conventions and therefore are not bound by their provisions. One major reason for the avoidance of the international refugee conventions by some states is the over concentration on legality over issues that should come under humanitarian competence of states. Because of its overt legal nature, the international protection law is often put in abeyance in favour of states whims and caprices. Saudi Arabia therefore relies on her tradition and culture in the administration of refugee and asylum matters than the framework offered by the international protection laws.

Culture and tradition also have some roles to play in the application of refugee and asylum laws of the Federal Republic of Germany. Although Germany is a signatory to the 1951 Refugee Convention and the 1967 Protocol, the value already attached to the welfare of her citizens is a breeding ground for the application of the international protection laws. As already noted in this paper, international protection law thrives where human dignity is profoundly protected. And where welfare of citizens is already in sulky discontent, international protection laws are easily pushed to the abyss.

REFERENCES

1. "UNHCR Syria Regional Refugee Response/ Lebanon". UNHCR. 30 Jun 2019. Retrieved 1 December, 2019.
2. Quora Has Saudi Arabia Taken in any Refugee? Muhammed Z. Taleb June 2019 Retrieved 1 December 2019.
3. "2.5m Syrians hosted by KSA since uprising". Arab News. 12 September 2015. Retrieved 1 December 2019.
4. MBS 'clampdown' fuels surge in numbers of Saudi refugees By Tamara Qiblawi, CNN Report February 3, 2019.
5. MBS 'clampdown' fuels surge in numbers of Saudi refugees By Tamara Qiblawi, CNN Report February 3, 2019.
6. El-Wafa Prof. Ahmed. The Right to Asylum between Islamic Shari'ah and. International Refugee Law. A Comparative. UNHCR. 2009.

7. El-Wafa Prof. Ahmed. The Right to Asylum between Islamic Shari'ah and. International Refugee Law. A Comparative. UNHCR. 2009.
8. Doanvo, Anhvinh (23 September 2015). "Western Media's Miscalculation of Saudi Arabia's Syrian Refugees". Huffington Post. Retrieved 21 December, 2019.
9. Article 33 of the UN Refugee Convention
10. "2.5m Syrians hosted by KSA since uprising". Arab News. 12 September 2015. Retrieved 21 December, 2019.
11. Fathalla, Amira (2 September 2015). "Migrant crisis: Why Syrians do not flee to Gulf states". BBC News. Retrieved 21 December, 2019.
12. Stephens, Michael (7 September 2015). "Migrant crisis: Why the Gulf states are not letting Syrians in". BBC News. Retrieved 21 December, 2019.
13. Stephens, Michael (7 September 2015). "Migrant crisis: Why the Gulf states are not letting Syrians in". BBC News. Retrieved 21 December, 2019.
14. Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, Bundesgesetzblatt [BGBl.] [Federal Law Gazette] I at 1, art. 16a, unofficial English translation at http://www.gesetze-im-internet.de/englisch_gg/basic_law_for_the_federal_republic_of_germany.pdf, archived at <http://perma.cc/RW2X-HD46>.
15. "2.5m Syrians hosted by KSA since uprising". Arab News. 12 September 2015. Retrieved 21 December, 2019
16. Elger, Katrin; Haidar, Asia (2019-07-03). "No Way Back: Why Most Syrian Refugees Want to Stay in Germany". Spiegel Online. Retrieved 21 December, 2019
17. "Germany seizes fake Syrian passports in asylum inquiry". BBC News. 2015-09-04. Retrieved 21 December, 2019
18. MBS 'clampdown' fuels surge in numbers of Saudi refugees By Tamara Qiblawi, CNN Report February 3, 2019.
19. "Kartenseite: Syrer in Deutschland - Landkreise". kartenseite.wordpress.com. 2017-03-26. Retrieved 21 December, 2019

20. Quora Has Saudi Arabia Taken in any Refugee? Muhammed Z. Taleb June 2019 Retrieved 1 December 2019.
21. Quora Has Saudi Arabia Taken in any Refugee? Muhammed Z. Taleb June 2019 Retrieved 1 December 2019.
22. "Demand to open doors to Syrians spreading online". BBC News. 2 September 2015. Retrieved 1 December 2019.
23. "Demand to open doors to Syrians spreading online". BBC News. 2 September 2015. Retrieved 1 December 2019.
24. Asylbewerberleistungsgesetz [AsylbLG] [Asylum Seeker Benefits Act], Aug. 5, 1997, BGBl. I at 2022, § 3, para. 1, <http://www.gesetze-im-internet.de/bundesrecht/asylblg/gesamt.pdf>, archived at <http://perma.cc/S9WY-G6HM> Retrieved 1 December 2019.
25. For more information, see Jenny Gesley, Germany: Proposed Tightening of Asylum Rules, *Global Legal Monitor* (Feb. 8, 2016), <http://www.loc.gov/law/foreign-news/article/germany-proposed-tightening-of-asylum-rules/?loclr=eaglm>, archived at <http://perma.cc/T5WM-7F5B>.