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Droit International et
Migration
Perspectives Africaines et Européennes

International Legal Aspects of
Migration
African and European Perspectives

PROGRAMME
THE HAGUE, THE
NETHERLANDS
14 OCTOBER 2016
LE 14 OCTOBRE 2016



African Association of
International Law



Ministerie van
Veiligheid en Justitie



American Society
of International Law

INTERNATIONAL LEGAL ASPECTS OF MIGRATION: AFRICAN AND EUROPEAN PERSPECTIVES

FRIDAY, OCTOBER 14, 2016

09:00 - 17:00

MINISTRY OF SECURITY AND JUSTICE

TURFMARKT 147

2511 DP THE HAGUE, THE NETHERLANDS

DROIT INTERNATIONAL ET MIGRATION: PERSPECTIVES AFRICAINES ET EUROPÉENNES

VENDREDI, 14 OCTOBRE 2016

09:00 - 17:00

MINISTÈRE DE LA SÉCURITÉ ET DE LA JUSTICE

TURFMARKT 147

2511 DP LA HAYE, PAYS-BAS



Introduction and Welcome 09:00

- ◆ André Nollkaemper, President, European Society of International Law (ESIL)
- ◆ Olufemi Elias, Secretary-General, African Association of International Law (AAIL)
- ◆ Kees Riezebos, Director of Migration Policy, Ministry of Security and Justice of the Netherlands

Panel 1 – 09:15-10:45

Foundational Issues

What are the drivers of irregular migration, what are the differences between the 1969 African Union Convention definition pertaining to refugees and the protection regime applicable in the EU, and what are the implications of conflicting international and regional protection regimes in regard to people traversing numerous regions on their move to safety? This panel discusses various push factors (including armed conflict and situations of generalized violence) and their numerical, geographical reflection, the legal rights and obligations of countries of origin, transit, and destination, and the relevance and adequacy of the current legal framework to address intra-, cross-regional, and mixed-migration flows.

Moderator:

- ◆ André Nollkaemper, President, European Society of International Law

Panelists:

- ◆ Maya Sahli Fadel, Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, African Commission on Human & Peoples' Rights
- ◆ Tom Syring, UNE / Norwegian Appeals Board
- ◆ Ralph Wilde, University College London

Break – 10:45-11:00

Panel 2 – 11:00-12:30

African and European Perspectives on recent “safe (third) country” debates

The tightening of EU visa requirements, the tendency towards stricter interpretation of the refugee definition and exclusion clauses, harsh detention conditions, and increased securitization of migration and asylum law in Europe put people fleeing their country at additional risk by forcing them to seek unnecessarily dangerous avenues, sometimes in contravention of state obligations under international law. Do recent EU efforts to expand the list of so-called “safe (third) countries” run counter to the prohibition of *refoulement* in Art. 33, Refugee Convention, and how do African (Union) States themselves define and apply the notion of “safe country” also in relation to their own neighbors? This panel discusses the narratives of migrants, the positions of African States on the unjust treatment of their own citizens, the criteria generally to be employed before determining any country as “safe”, and the *refoulement* of migrants and how to counter the risk of brain drain/promote circular migration.

Moderator:

- ◆ Olufemi Elias, Secretary-General, African Association of International Law

Panelists:

- ◆ John Oucho, Population Studies and Research Institute, University of Nairobi
- ◆ Kees Wouters, United Nations High Commissioner for Refugees
- ◆ Ibrahim Awad, American University in Cairo

Lunch – 12:30-13:30

Panel 3 – 13:30-15:00

Multilateral Dependencies and Migration Management

In numerous migration related aspects, African and European countries are more interdependent than meets the eye. While European economies traditionally represent strong pull factors for African migrants, the very same countries highly rely on cheap and informal migrant labor in order to uphold their growth. On the other hand, many families and, to a certain extent, African countries' economies depend or benefit, to varying degrees, on remittances stemming from overseas migrant workers. But are existing institutional and legal frameworks adequate? Furthermore, regulating refugee flows, on land and at sea, and successfully conducting search and rescue operations, depends on international coordination and cooperation beyond regional boundaries. What, according to African perspectives, is the EU's (e.g. FRONTEX) role in preventing the loss of lives, how do African states define their own role in this regard, and how could migration in all its aspects be better managed in the future?

Moderator:

- ◆ Tom Syring, UNE / Norwegian Appeals Board

Panelists:

- ◆ Aderanti Adepoju, NOMRA (Network of Migration Research on Africa)
- ◆ Bernard Mumpasi Lututala, University of Kinshasa
- ◆ Siobhán Mullally, Professor of Law and Director of the Centre for Criminal Justice and Human Rights at University College Cork

Panel 4 – 15:15-16:45

The End of the Journey – International Legal Obligations Regarding Resettlement, Relocation, and Return

People move and are moved to their final destination for various reasons and motivations. Some have sought protection in a state often neighboring their own, that cannot offer them a durable solution. Others have managed to flee to safety (e.g. in Europe), but are stuck in a state that cannot cope with the pressure of hosting a relatively large refugee population. In these circumstances, resettlement or relocation to a third state might alleviate some of the pressure on the respective state and the protection needs of its most vulnerable refugee population. Yet others are 'failed' asylum seekers, or migrants on other grounds. Some then return voluntarily, others are forcefully removed and returned to their countries of origin. And some stay in a legal limbo, not having received a positive decision on their (asylum) application, but neither being "returnable", due to a lack of cooperation on the part of their country of nationality, their host state, and/or their own refusal. This panel will discuss to what degree there is an international legal obligation of states to receive refugees for resettlement and relocation, the obligation of states of origin to readmit their own nationals when they can no longer stay in the country where they applied for asylum, as well as the obligations owed by the states of application, by the individual applicant, and by international organizations charged with providing assistance.

Moderator:

- ◆ Ibrahim Awad, American University in Cairo

Panelists:

- ◆ Djacoba Liva Tehindrazanarivelo, Vice-President of AAIL
- ◆ Johan Rautenbach, IOM (International Organization for Migration)
- ◆ Marjoleine Zieck, University of Amsterdam

Closing remarks 16:45-17:00

Maya Sahli Fadel, Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, African Commission on Human & Peoples' Rights



Aderanti Adepaju Nigerian, Professor, economist-demographer, received his PhD in Demography in 1973 from the London School of Economics. He spent several years lecturing and researching issues on migration at the Universities of Ife and Lagos, Nigeria and while working for the ILO (Addis Ababa), UN (Swaziland) and UNFPA (Dakar). A former President of Union for African Population Studies, and member, World Economic Forum's Global Agenda Council on Migration, he is now Chief Executive, Human Resources Development Centre in Lagos and Coordinator, Network of Migration Research on Africa. He serves on the Editorial Advisory Board of key international migration journals and has published numerous scientific articles and books on aspects of Africa's international migration and regional integration. A book --- Migration in the service of African Development: Essays in honour of Professor Aderanti Adepaju (ed. John Ouch, 2011) acknowledged his four decades of research on African migration issues.



Ibrahim Awad is a political scientist and political economist. He is at present Professor of Global Affairs and Director, Center for Migration and Refugee Studies, School of Global Affairs and Public Policy, at the American University in Cairo. He holds a BA degree in political science from Cairo University and a PhD degree in political science from the Graduate Institute of International and Development Studies, University of Geneva, Switzerland. He has worked for the League of Arab States, the United Nations and the International Labour Organization, holding positions of Secretary of the Commission, UN-ESCWA, Director, ILO Sub-regional Office for North Africa and Director, ILO International Migration Programme. His research interests encompass international migration, employment, human and labour rights, development, politics and political transitions in the Middle East and North Africa, international relations, global governance and European integration. His recent publications include "The Making and Unmaking of the 2012 Constitution in Egypt", in *North Africa: from Status Quo to (R)evolution*, edited by Yahia Zoubir and Greg While (Routledge, 2015), "Labour Migration Governance in Times of Political Transition: A Comparative Analysis of Egypt and Tunisia", *Migration and Development*. Published online on 30 September 2015, available at <http://www.tandfonline.com/doi/abs/10.1080/21632324.2015.1085671>; "Population Movements in the Aftermath of the Arab Awakening: The Syrian Refugee Crisis between Regional Factors and State Interest," in *Migration in the Mediterranean* (University of Malta 2014); "Breaking Out of Authoritarianism: 18 months of political transition in Egypt" (*Constellations*, 2013); *International Migration in Africa* (*African Yearbook of International Law*, 2008, Brill/Martinus Nijhoff, 2010.)

Olufemi Elias is the Secretary-General of the African Association of International Law. He is the Executive Secretary of the World Bank Administrative Tribunal in Washington, D.C. He served as the Legal Adviser and Director at the Organisation for the Prohibition of Chemical Weapons, where he had served earlier in his career as Senior Legal Officer. He was previously a legal adviser at the United Nations Compensation Commission in Geneva, where he also served as a Special Assistant to the Executive Secretary of the Commission. He is an Associate Member of the Institut de Droit International. He is a Visiting Professor in international law at Queen Mary University of London and a member of the Nigerian Bar. He has written and edited several books and articles on various aspects of international law, including *The Development and Effectiveness of International Administrative Law* (2012). He holds the degree of Bachelor of Arts in Jurisprudence from the University of Oxford, a Master of Law in international law from the University of Cambridge and a doctorate in international law from University College London.



Maya Sahli Fadel licencié en droit de l'université d'Alger, titulaire d'un magistère en droit international public. Elle enseigne le droit international à l'université d'Alger 1 depuis 1981 et à l'école supérieure de la magistrature (ESM) ainsi qu'à l'institut diplomatique et des relations internationales depuis 2000. Avocate au barreau d'Alger de 1987 à 1992, elle a participé à plusieurs colloques et internationaux et nationaux portant sur ses centres d'intérêts: les grandes questions internationales, la protection internationales des droits humains (y compris le droit international Humanitaire et le droit international des réfugiés) ainsi que les questions relatives aux rapports entre le droit international et le droit interne. De 2008 à 2014, elle a été nommée par le conseil des droits de l'homme, membre du groupe de travail et d'experts des Nations Unies sur les personnes d'ascendance africaine. En 2011, elle fut élue par l'Union Africaine comme membre de la commission africaine des droits de l'homme et des peuples. A ce titre, elle est la rapporteuse spéciale de l'union africaine sur les réfugiés, les demandeurs d'asile, les personnes déplacées et les migrants en Afrique. Dans ce cadre, elle a finalisé en 2014 une étude sur le droit à la nationalité en Afrique. Elle est membre également du groupe de travail sur la peine de mort et a collaboré à l'élaboration du projet de protocole à la charte africaine sur l'abolition de la peine de mort en Afrique, adopté par la commission africaine en 2015. Elle a travaillé également sur la rédaction de l'observation générale N° 03 relatif au droit à la vie. Elle collabore depuis plusieurs années aux activités de recherche sur les droits de l'homme avec l'institut « Raoul WALLEMBERG » dans le cadre du réseau arabe des instituts de la magistrature.





Bernard Lututala Mumpasi est démographe de formation et détenteur d'un doctorat en démographie de l'Université de Montréal (Canada) obtenu en 1987. Depuis l'obtention de son doctorat, il s'est consacré à l'enseignement et la recherche dans plusieurs universités congolaises, principalement à l'Université de Kinshasa, où il enseigne les cours de Migrations, Population et développement, et Méthodes de recherche en sciences sociales au Département des sciences de la population et du développement. Il a été Promoteur ou co-promoteur de plusieurs thèses de doctorat sur les migrations congolaises, notamment à l'Université catholique de Louvain. Il a aussi enseigné dans plusieurs autres universités congolaises, et africaines, dont l'Université Cheikh Anta Diop de Dakar. En 1990, il a été Professeur visiteur au Département de démographie de l'Université de Montréal pour enseigner deux cours : Migrations, et Population du Tiers-Monde. Ses recherches portent principalement sur les migrations congolaises et africaines, l'enseignement supérieur et universitaire en Afrique, et les inégalités de genre. Parallèlement à ses enseignements et ses recherches, il a été appelé plus d'une fois à s'impliquer dans la gestion universitaire et des institutions de recherche. C'est ainsi qu'il a été tour à tour Chef du Département de démographie à la Faculté des sciences économiques et de gestion de l'Université de Kinshasa ; Vice-Doyen chargé de la recherche et Directeur de l'IRES à la même faculté, puis Recteur de l'Université Kongo (2002-2005) et Recteur de l'Université de Kinshasa (2005-2009). De 2009 à 2014, il a été Secrétaire Exécutif Adjoint du CODESRIA (Conseil pour le Développement de la Recherche en Sciences Sociales en Afrique) à Dakar. Et depuis janvier 2014, il est le Directeur Général du Centre Régional de Recherche et de Documentation sur les Femmes, le Genre et la Construction de la Paix dans la Région des Grands-Lacs (CERED-GL), un centre de l'UNESCO de catégorie II créé par 11 pays des Grands-Lacs : Angola, Burundi, Centrafrique, Congo, RD Congo, Kenya, Ouganda, Rwanda, Soudan, Tanzanie, Zambie. Auparavant, soit de 2006 à 2009, il a été le Président de l'Union pour l'Etude de la Population Africaine (UEPA), une organisation panafricaine qui œuvre sur les questions de population et développement en Afrique.



André Nollkaemper is Dean and Professor of Public International Law at the Faculty of Law of the University of Amsterdam and President of the European Society of International Law. He is a member of the Royal Academy of Sciences of the Netherlands, a Member of the Permanent Court of Arbitration and, since 2013, External Legal Advisor to the Minister of Foreign Affairs of the Netherlands. His practical experience includes cases before the European Court on Human Rights, the Special Court for Sierra Leone, the International Criminal Tribunal for the Former Yugoslavia and the Extraordinary Chambers in the Courts of Cambodia. He has written extensively on questions of sharing responsibility in relation to global concerns, including migration.

Siobhán Mullally is Professor of Law and Director of the Centre for Criminal Justice and Human Rights at University College Cork. She is also a Commissioner on the Irish Human Rights and Equality Commission, and Vice-President of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). She has published widely in the field of gender, migration and human rights law. She is Joint Editor-in-Chief of the Irish Yearbook of International Law. Her work has been published in leading law reviews, including International Journal of Refugee Law, American Journal of Comparative Law, Human Rights Quarterly, Oxford Journal of Legal Studies and International and Comparative Law Quarterly. Her books include: Care, Migration and Rights: Law and Practice (Routledge; 2015); Reclaiming Universalism: Gender, Culture and Human Rights (Hart; 2006). Siobhán has worked as an adviser and consultant to international NGOs and UN bodies in several countries and in post-conflict societies, including Timor-Leste, Ethiopia, Afghanistan, Pakistan, Kosovo. She is a member of the Permanent Court of Arbitration, The Hague, and the Irish representative on the Odysseus network of experts on European Asylum and Migration Law.



John Oyaro Oucho is the Founder and Executive Director of the African Migration and Development Policy Centre (AMADPOC). He holds PhD in Geography (specialisation on Population Studies), University of Nairobi, which earned him a Post-doctoral Fellowship in Demography at the esteemed University of North Carolina, Chapel Hill, USA in 1982-1983 where his academic distinction in migration research and training began. Among his notable awards is the European Commission's Marie Curie Chair at the Centre for Ethnic Relations (CRER), University of Warwick, United Kingdom in 2007-2010. He has undertaken consultancies on population studies including migration for many sub-Saharan African countries, different United Nations agencies and international organisations including African Regional Economic Communities (RECs). He has to credit a wealth of publications, which include books, monographs, book chapters, articles in refereed international journals; papers in international conferences; many consultancy reports. All these have made him a world famous migration scholar. He was the only African member of the Commonwealth's Ramphal Commission on Migration chaired by the former Prime Minister of Jamaica in 2009-2011. Realising the lack of scholarship and intellectual intercourse in migration in universities and governments, Professor Oucho founded the African Migration and Development Policy Centre (AMADPOC) in 2008 – a think tank and a bridge between academic and policy pursuits of migration work in Africa, with special reference to the Greater Horn of Africa. Currently, he is the Lead Facilitator of the African Union's draft protocol on free movement of persons in Africa.





Johan Rautenbach is the Director of the Office of Legal Affairs and Legal Counsel of International Organization for Migration since 2011. From 2002 until 2011 he was Director of the Office of Legal Affairs and Legal Adviser of the International Atomic Energy Agency and part of the core team that negotiated with Libya, Iran and DPRK regarding their nuclear programmes. From 1997 to 2002 Johan was Head of Human Resources of the Organization for the Prohibition of Chemical Weapons and from 1993 to 1997 Deputy Legal Adviser of the same organization. Preceding that, he was a member of the Office of the Chief State Law Adviser of the South African Ministry of Foreign Affairs and was also serving as Legal Attaché at the South African Permanent Mission in Geneva, representing South Africa in the final negotiation of the Chemical Weapons Convention in the Conference on Disarmament.



Djacoba Liva Tehindrazanarivelo, Vice-Président (Diaspora) de l'Association africaine de droit international, est titulaire d'un Doctorat en droit international et d'un Diplôme d'études supérieures en relations internationales de l'Institut de hautes études internationales et du développement de Genève (anciennement HEI), d'un Certificat du Centre d'études et de recherche de l'Académie de droit international de La Haye, et d'une Maîtrise en droit public et science politique de l'Université d'Antananarivo, Madagascar. Il enseigne actuellement à la Boston University Studay Abroad Geneva, au Global Studies Institute de l'Université de Genève, et à l'Institut des droits de l'homme de l'Université Catholique de Lyon. Il participe également aux enseignements de Centre d'éducation et de recherche en action humanitaire (CERAH) de l'Université de Genève, et a été professeur invité à l'Université Catholique de Bukavu, République démocratique du Congo, et à la Faculté de droit de l'Université d'Antananarivo, Madagascar. Dans le domaine de la migration, le Conseil de l'Europe l'a chargé en 2007, en tant que consultant-expert externe, de la rédaction d'un rapport sur Le racisme à l'égard des migrants en Europe, publié ensuite par les Éditions du Conseil de l'Europe (2009, 252 p.). Depuis lors, il collabore à titre bénévole avec des syndicats genevois pour la protection des droits des travailleurs migrants, et participe à des débats publics sur la migration, dont une table ronde sur « L'immigration ou les droits humains bafoués », au 6e salon africain du livre, de la presse et de la culture, Palexpo de Genève. Du côté académique, il discute de la question de la migration dans son cours sur The Activities of International Organizations, dans la partie sur la protection des réfugiés et des personnes déplacées internes, et le cours intitulé Politics, Nations and Identity in the New Europe : the Challenge of Immigration. Dr. Tehindrazanarivelo est l'auteur de deux monographies et de nombreux articles sur divers thèmes du droit international, et a co-édité quatre ouvrages collectifs.

Tom Syring currently serves on the Norwegian Immigration Appeals Board. He studied law and political science at the University of Oslo, Norway, and Johannes Gutenberg University Mainz, School of Law, Germany, where he also conducted his doctoral studies. He has been a Lecturer in International Law, Political Philosophy, and International Relations at the University of Oslo and a Visiting Fulbright Scholar and Lecturer in International Law at Boston University. Syring has in particular published and lectured on issues at the intersection of international humanitarian law, international criminal law, refugee law, and human rights. Recent and current research projects include a book on the root causes of protracted refugee crises (*Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises*, co-edited, with Susan Akram); an inquiry into Non-Refoulement Standards in the Rendition of Terror Suspects; and a forthcoming, co-edited volume (with Richard Falk) on state responsibility for refugees and other people in need of protection in the context of war and occupation (*War, Occupation, and Refugees*). Tom Syring is a Co-Founder and former Co-Chair of the American Society of International Law's Interest Group on International Refugee Law, a member of the Norwegian Resource Bank for Democracy and Human Rights (NORDEM), and Co-Chair of the European Society of International Law's Interest Group on Migration & Refugee Law.



Ralph Wilde is a member of the Faculty of Laws at University College London. He writes and teaches on international law and politics, adopting cross-disciplinary methodologies. His previous work focused on the concept of trusteeship over people in international law and public policy, addressing colonialism, belligerent occupation and international territorial administration. His book on that topic, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press, 2008) was awarded the Certificate of Merit (book prize) of the American Society of International Law in 2009. His current project, 'human rights beyond borders', is on the extraterritorial application of human rights law. It is funded by the award of a Starting Grant (in the 'Consolidator' category) by the European Research Council. Ralph previously served on Executive Board of the European Society of International Law, the Executive Council of the American Society of International Law and, at the International Law Association (ILA), as Co-Rapporteur of the Human Rights Committee, one of the UK representatives on the international Executive Council, Rapporteur of the Study Group on UN Reform, and Joint Honorary Secretary of the British Branch. In 2010 the UK Leverhulme Trust awarded Ralph a Philip Leverhulme Prize, which is given to UK-based academics under 40 who are judged to be 'outstanding scholars who have made a substantial and recognized contribution to their particular field of study, recognized at an international level'.





Cornelis (Kees) Wouters is the senior refugee law advisor in the Division of International Protection of UNHCR in Geneva. He is responsible for monitoring international refugee law developments, the adoption of national laws ensuring application of the 1951 Refugee Convention and regional refugee law instruments, and for providing advice on refugee law matters both internally and to partners. Between 2009 and 2015 he was also responsible for steering UNHCR's global judicial engagement strategy. In the past he has worked as a researcher and lecturer

at the Institute of Immigration Law at Leiden University, where in 2009 he obtained his doctoral (PhD) degree with his thesis on International Legal Standards for the Protection from Refoulement. He has worked for various non-governmental organizations in the Netherlands, such as Amnesty International and the Dutch Council for Refugees and was a member of the sub-Committee on Asylum and Refugee Law of the Permanent Committee of Experts on International Immigration, Refugee and Criminal Law (Meijers Committee). He has also worked in Asia as a staff member and lecturer at the Office of Human Rights Studies and Social Development of Mahidol University in Thailand (2000-2004) and as a lawyer for the Centre on Housing Rights and Evictions (2005-2009). In 2005 he joined COHRE where he was responsible for setting up and managing the national office of COHRE in Sri Lanka. In 2007 and 2008 he worked as a consultant and legal officer for COHRE's Asia and Pacific Programme and was involved in various projects concerning housing, land and property restitution for refugees and displaced persons. Kees Wouters has published widely in particular on matters concerning international refugee law.



Marjoleine Zieck is Professor of International Refugee Law at the Amsterdam Law School of at the University of Amsterdam, Professor of Public International Law at the Pakistan College of Law, Lahore, and Visiting Professor at Brooklyn Law School, New York. She is Vice Dean of the Amsterdam Law School and Dean of Admissions of the University of Amsterdam. She studied visual arts, philosophy and public international law, and acquired her Ph.D. degree *cum laude* at the University of Amsterdam on a thesis pertaining to voluntary repatriation of refugees. Her current research focuses on freedom of movement of refugees – a project of Michigan Law School - and resettlement of refugees.

– a project of Michigan Law School - and resettlement of refugees.

Symposium Coordinators

Obinna Edeh obtained a Master of Laws (LLM) degree from the University of Northampton, England. He also obtained a certificate in Public International Law from The Hague Academy of International Law, The Hague, Netherlands. In addition to being admitted to the Bar in Nigeria, he is a graduate of the University of Nigeria where he studied for his Bachelor of Laws (LLB). He is the current programme coordinator for the African Association of International Law. In the past few years, Obinna has researched and written several academic articles on Law and Social Sciences, published in the United States of America and Nigeria. He previously served at the University of Northampton Enterprises, England before moving to the Office of the Legal Adviser, the Organisation for the Prohibition of Chemical Weapons (OPCW), The Hague, Netherlands. He is currently a consultant with Council on African Security and Development (CASADE) Abuja, Nigeria.



Lieve Pothast is a Master of Laws (LLM) student in Public International Law at the University of Amsterdam and assistant to Prof. André Nollkaemper. Previously, she studied African Studies at the University of Cape Town, South Africa. Here in the Netherlands, she volunteers as a ‘buddy’ for female refugees from Eritrea and Somalia.



Devon Swift supports the work of the World Bank Administrative Tribunal judges in Washington, DC. She holds an ABA-approved paralegal certification and is currently pursuing a Juris Doctor (JD) degree at George Washington University.





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