

CONVENTION REFUGEEHOOD, EARLY WARNING SIGNS, AND THE STRUCTURAL CRISIS OF LEGITIMATE STATEHOOD IN CONTEMPORARY NIGERIA

*Obiora Chinedu Okafor**

The struggle for control of Nigeria is an old continuing battle which is not likely to end as long as the perception remains that the country has been wrongly *structured* to offer unique advantages to a particular region.¹

I. INTRODUCTION

That the international refugee protection system, and the set of legal norms that underpin it, currently face an extremely serious challenge to their effectiveness (stemming mostly from the attitudes and actions of the more powerful refugee-receiving countries of the world), is now widely acknowledged in the extant literature.² One very important explanation for

* Associate Professor, Osgoode Hall Law School, and Faculty Member at the Centre for Refugee Studies, York University, Toronto, Canada. Most recently a Visiting Scholar, Human Rights Program, Harvard Law School, Cambridge Massachusetts, USA. LL.B., LL.M. (University of Nigeria, Enugu Campus); LL.M., Ph.D. (University of British Columbia, Vancouver, Canada). This Article is based on a talk that I delivered at the Centre for Refugee Studies, York University, Toronto, Canada, in April 2001. I am grateful to all the participants at that seminar (especially Pablo Idahosa, Peter Penz, Solomon Ukhuegbe, and Patricia Ama Williams) for their useful comments and suggestions. I also want to thank Antony Anghie and Makau Mutua for their various conscious and unconscious contributions to the development of the ideas developed in this Article. Finally, I should like to acknowledge the excellent research assistance provided to me by Shedrack Agbakwa, Pius Okoronkwo, and Deanna Santos. This Article is dedicated to Yohanna Anteyan Madaki, an "eagle on Iroko" whose heroism, fair mindedness, self-sacrifice, and dedicated struggle for the peaceable resolution of Nigeria's crisis of legitimate statehood is extremely touching.

¹ R. Abati, *THE GUARDIAN*, available at <http://www.ngrguardiannews.com/editorial2/en818302.html> (last visited April 13, 2001).

² See G.S. GOODWIN-GILL, *ASYLUM* 103-107 (Sopjie Jeleff, ed., Council of Europe Publishing 1995). See also G.S. GOODWIN-GILL, *REFUGEE IN INTERNATIONAL LAW* 215, 229 (Clarendon Press 1983). J. C. Hathaway, *The Meaning of Repatriation*, 9 *IJRL* 551, 553 (1997) ("The economies of industrialised states no longer require substantial and indiscriminate infusions of labour. Nor is there ideological

the growing tendency of many of these states to speak and act in ways that are subversive of international refugee law is the aversion of these states to the on-going *explosion* the world over in the numbers of persons requiring refugee protection over relatively long periods of time.³ The Office of the United Nations High Commissioner for Refugees estimates that in 2001, there were at least twenty-one million convention refugees⁴ and persons in similar situations around the world.⁵ Without conceding the “right” of these states to rely on the gravity of this situation in order to cut back on their refugee protection obligations, it follows logically that an important *part* of the effort to preserve and enhance international refugee law must be a serious attempt to reduce significantly the numbers of those in need of refugee protection at any one time. But, as most refugee scholars now realise, such a dramatic reduction in the number of the world’s asylum-seekers can

or strategic value in the admissions of most refugees. The demise of the post-War interest convergence between many states and refugees has generated a combination of non-entrée’ tactics and confinement of refugees in their own countries.”). See also B.S. CHIMNI, *Globalisation, Humanitarianism and the Erosion of Refugee Protection* 3 (Refugee Studies Centre 2000) (“The ideology of humanitarianism is, among other things, facilitating the erosion of the fundamental principles of refugee protection [as refugees no longer possess ideological or geopolitical value].”).

³ As James Hathaway has demonstrated, throughout the history of international refugee protection, the tendency has been for states to attempt to reduce the numbers of asylum-seekers they admit precisely at the moments that larger than normal outflows of asylum-seekers have occurred—the moments of increases need. See JAMES C. HATHAWAY, *The Evolution of Refugee Status in International Law: 1920-1950*, 33 INT’L & COMP. L. Q. 348, 348 (1984) (“This freedom of international movement accorded to persons broadly defined as refugees came to abrupt halt after the First World War. The existence of massive groups of refugees who had been dislocated during the war coincided with the rise of political and economic nationalism throughout the Western world. Governments responded to this new social situation by adopting more guarded approaches to immigration in general and refugee movements in particular.”). See also *id.* at 379.

⁴ This term refers to those refugees that meet the relatively narrower test for “refugeehood” stated in the 1951 Convention on the Status of Refugees. See *Refugees by Numbers* at <http://www.unhcr.ch> (last visited January 24, 2002) [hereinafter *Refugees by Number*]. See also <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=basics> (last visited January 24, 2002). See also, B. Donlcon, *A Half-Century of International Refugee Protection: Who’s Responsible, What’s Ahead?*, 18 BERKELEY J. INT’L L. 260, 263 (2000); Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa-Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT’L L. 39, 42-43 (2001).

⁵ See *Refugees by Number*, *supra* note 4.

neither be achieved nor sustained without a much more serious attempt to *understand* and *tackle* the root causes of large-scale refugee flows—especially those root causes that have yet to receive as much attention as they deserve.

One such *relatively* neglected root cause of large-scale refugee flows is the *structural* crisis of legitimate statehood—a fundamental state-building crisis—that currently afflicts most post-colonial African states.⁶ This neglect is highly significant since approximately thirty percent of the total number of refugees in the world originate from these African states.⁷ Despite the widespread recognition in the extant literature of the need for a “root causes approach” to refugee studies,⁸ the conventional tendency in that body of literature has been to focus more or less on the ways in which poor governance, human rights violations, civil and inter-state conflicts, poverty, development, and ecological problems in African and other states, have worked to produce mass outflows of refugees.⁹ However, this is not to say that exceptions to this conventional approach do not exist. At least four

⁶ For an in-depth examination of this crisis of legitimate statehood in the African context, see, O.C. OKAFOR, RE-DEFINING LEGITIMATE STATEHOOD: INTERNATIONAL LAW AND STATE FRAGMENTATION IN AFRICA, 59-67 (Martinus Nijhoff, ed., The Hague 2000) [hereinafter *Re-Defining*]; O.C. Okafor, *After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa* 41 HARV. INT’L L. J. 503, 506-508 (2000) [hereinafter *After Martyrdom*]. See also G. LOESCHER, BEYOND CHARITY: INTERNATIONAL COOPERATION AND THE GLOBAL REFUGEE CRISIS, 12, 78 (Oxford University Press 1993); Aristide R. Zolberg, *The Specter of Anarchy: African States Verging on Dissolution* 39 DISSENT 303 (2002).

⁷ See, *Refugees by Numbers*, *supra* note 6.

⁸ Loescher, *supra* note 6, at 152. See also, J.I. Garvey, *Toward a Reformulation of International Refugee Law*, 26 HARV. INT’L L. J. 483, 492 (1985).

⁹ For example, in conformity with this tendency in the literature, the contributors to a major 1997 symposium on forced displacement in Nigeria focused on the ways in which human development projects, ecological disasters, resource depletion, poverty, violent conflicts, ethnic rivalries, and internal power struggles have combined in varying formations to generate forced displacement in Nigeria. While always skirting around the question, there is little explicit recognition in the collection of essays of the deeper malaise at work, i.e. Nigeria’s structural legitimacy crisis. See generally, P. E. Lovejoy & P.A.T. Williams, eds., 32 J. ASIAN & AFR. STUD. 1 (1997). See also, T. Falola, *Nigeria in the Global Context of Refugees: Historical and Comparative Perspectives*, 32 J. ASIAN & AFR. STUD. 5, 7-10 (1997); L. Dare, *Political Instability and Displacement in Nigeria*, 32 J. ASIAN & AFR. STUD. 22 (1997); M.D. Levin, *The New Nigeria: Displacement and the Nation*, 32 J. ASIAN & AFR. STUD. 134, 138 (1997); P.A.T. Williams, *Religion, Vio-*

notable scholars have explicitly connected some aspect of the *structure* of the post-colonial African state to the tendency of such states to produce relatively large-scale refugee flows.¹⁰ *The point is that this alternative structural approach has hardly been the norm*, even in those sections of the literature that have focused on refugee issues in Africa. Few scholars have approached the search for the root causes of mass refugee outflows from post-colonial African states (such as Nigeria) by focusing, for the most part, on the fundamental structural crises faced by such states (as opposed to the *governance* crises that these states face).

It is not surprising then that relatively very few scholars have to date articulated *explicitly* the deep connections that, in our considered view, do exist between the contemporary *structural* crisis of legitimate statehood that afflicts the post-colonial Nigerian state, on the one hand, and that country's *looming* (if not already simmering) large-scale refugee crisis, on the other hand. Most scholars have skirted this deeper question, preferring in most cases to focus on its symptoms—such as inter-ethnic rivalries and violence. This relative scholarly neglect is, in this particular case, particularly significant given that nearly one in five Africans, and one in two West Africans, live in Nigeria.¹¹

In this Article, I want to flesh out the extremely close connection between the on-going structural crisis of legitimate statehood that is faced by Nigeria, and a looming crisis of refugeehood in that country. Furthermore, I want to consider the relative cognitive failures that have attended this linkage and proffer a number of suggestions that might help avert a possible humanitarian crisis in Nigeria of a proportion that is unprecedented anywhere in Africa. Two overarching arguments will be canvassed in this Article: (a) that Nigeria is currently experiencing a significant intensification of its historically continuous *structural* crisis of legitimate statehood; and if left unaddressed, this simmering crisis may eventually boil over and explode into a nation-wide conflict that will create a refugee crisis in Africa of unprecedented proportions, and (b) that since it is such dramatic explo-

lence and Displacement in Nigeria, 32 J. ASIAN & AFR. STUD. 33, 43-43 (1997). See also Levitt, *supra* note 4, at 43-44.

¹⁰ See, A. Zolberg, *supra* note 6; M. wa Mutua, *The Interaction between Human Rights, Democracy and Governance and the Displacement of Populations*, Special Issue INT'L J. REFUGEE L. 37, at 42, 43 (1995); A. N. M. Abdullahi, *infra*, note 14; L.E. Schafer, *infra*, note 40.

¹¹ *Africa Population Database- Summary Table*, available at <http://grid2.cr.usgs.gov/globalpop/africa/app-2.php3> (last visited January 25, 2002). See also, *Nigeria Population*, available at <http://www.yahooligans.com/reference/factbook/ni/popula.html> (last visited January 25, 2002).

sions in the numbers of asylum-seekers worldwide that have in the past led to attempts by the more powerful refugee-receiving states to subvert the international refugee protection regime, a large-scale refugee crisis in Nigeria is likely to exacerbate that tendency—hence the need for closer and more serious attention to be paid to the early warning signs of a looming refugee crisis in Nigeria.

To this end, I have organized the Article into five sections. In Part II, I will attempt to demonstrate my claim that the Nigerian state currently faces an intense structural legitimacy crisis—a crisis regarding its fundamental architecture—one that is heightening. In my stride, I comment on several instantiations of this crisis. Here, I also seek to make the connection between this heightening *structural* crisis and a looming *refugee* crisis of immense proportion, and discuss several examples of forced displacement in Nigeria that have a close connection to the structural crisis faced by the Nigerian state. In Part III, I discuss the cognitive deficit that marks the domestic and international assessments of, and approaches to, the current Nigerian situation. In Part IV, I ponder the outlines of a number of more adequate responses to the looming crisis—responses that might point the way toward a more effective and enduring resolution of Nigeria's crisis of legitimate statehood. The Article concludes in Part V with a summary of my arguments and an attempt at drawing a linkage between the avoidance of more large-scale refugee outflows (such as the one that would most likely result from a failure to address the structural crisis that currently afflicts the Nigerian state), and the on-going struggle to preserve and enhance an international refugee protection system that is under assault.

One must recognize, however, that *it is not yet doomsday in Nigeria*; violent conflicts are not a peculiarly Nigerian phenomenon; and the Nigerian political elite has (apart from on one occasion) exhibited a relatively remarkable ability to avoid the outbreak of violent conflicts on a national scale. Nevertheless, the crucial point is that to pre-empt an unprecedented *countrywide* conflagration, all of the relevant actors must now take Nigeria's structural legitimacy crisis much more seriously. Such an approach will not only help avoid a large-scale refugee crisis in Nigeria, but also help to defend, preserve and enhance the international refugee protection system, albeit indirectly.

II. THE STRUCTURAL CRISIS OF LEGITIMATE STATEHOOD IN NIGERIA AND THE PRODUCTION OF REFUGEEHOOD

The reality is that we have just about reached a point when the majority of Nigerians are insisting that something is

wrong with this country which needs to be corrected *at once and for all times*.¹²

This excerpt from Reuben Abati's incisive commentary on the state of the Nigerian polity is indicative of the fundamental and urgent nature of the *structural* crisis that afflicts the Nigerian state. It is also indicative of the fact that most discerning Nigerians have come to realise that the *governance* crisis that afflicts the Nigerian state (relating to democratization, human rights, official corruption, etc) is itself largely framed by, and connected to, a more fundamental problem with the very architecture of the Nigerian polity—a problem that relates to the perceived fairness and legitimacy of the structural relationships among Nigeria's constituent sub-polities or sub-state groups. Thus, Abati's commentary is also indicative of the fact that most discerning Nigerians have now come to realise that the solutions to the *governance* crises that face their country are, to a large extent, dependent on the resolution of the *structural* crisis of legitimate statehood that Nigeria has faced from its very inception as a corporate entity.

This structural crisis is manifested today in the struggles and intense disputes that continue to threaten national harmony in that country, and which relate to the question of the fairness and legitimacy of the *structural arrangements* that characterize the Nigerian state. For instance, intense (and at times violent) struggles continue to be waged in Nigeria among its constituent sub-polities about:

- (a) *A perceived lack of true federalism and regional autonomy*—the concentration of governance power at the centre, at the expense of the constituent states and local government authorities—levels of government that are comparatively more susceptible to control by the more nationally powerless sub-state groups.¹³

¹² See R. Abati, *The Guardian*, *supra* note 1, at 2.

¹³ O. Solarin, *Nigerian Federalism: The Lesson from Odi*, NIGERIA WORLD, available at http://nigeriaworld.com/feature/publication/solarin/federalism_odi.htm (last visited November 25, 2001) (“What obtains in Nigeria though is a *de jure* federalism and *de facto* unitarianism. We have a rampaging federal government whose briefs have no limits, so that it treats the federating units as supplicating vassals”). See also B.O. NWABUEZE, *FEDERALISM IN NIGERIA UNDER THE PRESIDENTIAL CONSTITUTION 1* (Sweet & Maxwell 1983) (“but more than the separate existence of an apparatus of government, autonomy requires that each government must exist, not as an appendage of another government, but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government.” He added: “An arrangement, such as existed in Nigeria under the military regime, which legally obliges one government to accept

- (b) *Resource control*—which levels of government, and therefore which sub-state groups, ought to exercise primary control over Nigeria's oil wealth, bearing in mind that this resource accounts for over 90% of that country's foreign exchange earnings?¹⁴
- (c) *The national revenue allocation formula*—regardless of which group(s) primarily control(s) the oil wealth of the country, according to what fair formula ought the proceeds from the sale of that oil wealth be shared among the different levels of government, i.e. the centre, states, and local government areas?¹⁵

direction from another on the conduct of its affairs is not federalism in the true sense of the word.”).

¹⁴ I.L. Glenn, *The Niger Delta Problems and Solutions: The Equilateral Resource Control (ERC) Model: An Alternative Dispute Resolution*, NIGERIA WORLD, at http://nigeriaworld.com/feature/publication/ikpatt/resource_control.htm (last visited October 25, 2001) (“The prevailing concept of federalism in Nigeria today falls short of expectations in both definition and practice. To the extent that it is being practiced as quasi-federalism, there has been an overly centralized control of resources by the Federal Government. This aberration continues to generate perpetual conflict with indigenous rights, hence it has become a major cause of conflict in Niger Delta. . . .”). See also Prof. O. Omoruyi, *South- South Agenda of Liberation in Nigeria: What is to be done?*, at <http://nigeriaworld.com/feature/publication/omoruyi/agenda.html> (last visited January 25, 2001) (“The majority ethnic nationalities in varying degrees controlled the Federal Government and have been conspiring to deny the area their right to control local resources since independence.”). See also, A.N.M. Abdullahi, *The Refugee Crisis in Africa as a Crisis of the Institution of the State*, 6 *IJRL* 562, 567 (1994) (“the appropriation of state resources by one ethnic community to the exclusion of the others further aggravates the crisis. The monopolization of such resources by one ethnic community to the exclusion of the all others leads in turn to the formation of groups of community with varying interests, some wanting to destroy the state, while others want just to maintain the *status quo*.”).

¹⁵ *Nwabueze*, *supra* note 13, at 184 (“Considering that the state government depended on federally collected revenue for over 90% of their total financial resources, a 25% share of that revenue for them clearly created a glaringly and unacceptable imbalance in the financial resources of the two tiers of government. The Federal Government was thereby put in a position of financial superiority which is not at all consistent with the principle of autonomy of each tier of government in the Federal system.”). *Id.* at 185 (“The state government had been reduced to such a position of financial inferiority of having, as it were, to go cap in hand to the Federal Government for subventions which the latter granted or refused entirely in its discretion”). *Id.* at 194. (“financial independence is thus indispensable to real independence in legislative and executive matters. The principle must therefore be accepted that federalism requires that both the general and regional government

- (d) *The establishment of state police forces*—should the states be allowed to establish and run their own police forces, as opposed to the existence of a single national police force controlled by the central government, as is presently the case?¹⁶
- (e) *The institution of sharia criminal law in certain Northern Nigerian States*—should these states be allowed to continue operating sharia criminal legal systems; should certain aspects of that system be outlawed as unconstitutional?¹⁷

must each have under its own independent control the financial resources necessary for the performance of its exclusive functions”).

¹⁶ *Nwabueze, supra*, note 13, at 124 (“it is incompatible with the autonomy of a state government under a federal system that the only organised coercive force on which it relies to maintain its authority and to enforce its law should be under the control of the federal government through the power to appoint and remove its head and commander. The autonomy of the state governments does certainly require that the appointment and removal of Inspector- General should either be a joint responsibility or be vested in a non-partisan body. That is necessary in order that the arrangement of single police may be reconciled with it.”). *See also*, E.U. Obi, *Federal and State Police in Nigeria: Matters of Jurisdiction, Checks and Balances*, NIGERIA WORLD, available at <http://nigeriaworld.com/feature/publication/obi/police2.html> (last visited October 25, 2001) (“To carry out decentralization of the police, the political structure of the government must be taken into account. ALL [sic] levels of government namely local, state and federal must share the responsibility of law enforcement. Therefore, the [local government] must take responsibility for municipal policing, the state for state police and federal for federal offences and matters that cut across state boundaries.”).

¹⁷ S.U. Nwabuzor, *Religion, Pilgrimage and Hoax Secularity in Nigeria*, NIGERIA WORLD, available at http://nigeriaworld.com/feature/publication/nwabuzor/secularity_hoax.htm (last visited October 25, 2001) (“The Sharia is an albatross hanging on the Nigerian nation. No amount of palliative measures, comments and assurances would help. The only solution is separation of state and religion in its entirety. Anything less means a new blueprint for the Nigerian nation needs to be drawn. The draftsmen are waiting to receive the green light. Hopefully this will not entail the use of force and needless loss of lives.”). *See also* O. Gideon, *Why Sharia then and Why Sharia Now?*, NIGERIA WORLD, available at http://nigeriaworld.com/feature/article/sharia_why_now.html (last visited October 25, 2001) (“The issues of religious freedom and way of life must rest solely with their various groups. For a religion to be free in Nigeria, it must be freely practiced and freely abandoned—individual choice of religion and religious association must not be curtailed by the State or by the Religious Sects be it Christian faith or Moslem faith. The advocacy and implementation of Sharia law is in total variance with religious freedom as it hinders freedom of non-Moslem, freedom of Moslems and funded by the revenue that is not purely Moslems.”). *See also*, R. Abati, *Oputa:*

- (f) *Calls for a sovereign national conference*—should all of Nigeria's constituent sub-state groups convene, on the basis of rough equality, a sovereign conference that will be charged with negotiating a fair, and therefore durable, architecture for the Nigerian state (i.e. the fundamentals of their relationships to each other, rather than continue to endure (often violent) conflicts that are deeply connected to the non-resolution of this question?¹⁸

The urgent need for Nigeria to confront and come to terms with its extremely serious structural crisis is evident from the intensity of the (at times very violent) conflicts and conflagrations that have attended many of the above struggles. For instance, in 1999 November, the Nigerian Army attacked and destroyed almost completely the town of *Odi* in the Nigerian Niger Delta.¹⁹ *Odi's* destruction was the culmination of a violent confrontation between the Nigerian state and militant Ijaw youth. Frustrated by nearly forty years of impoverishment and neglect by successive central governments, despite producing most of Nigeria's oil wealth, these militants had attacked and killed several police officers that had been posted to the area in order to maintain a safe environment for the production of oil.²⁰ What was both shocking and instructive about this extremely violent reprisal attack was the response of the Nigerian President, Olusegun Obasanjo.

The End of the Beginning, THE GUARDIAN ONLINE, available at <http://www.nguardiannews.com> (last visited October 24, 2001).

¹⁸ THE GUARDIAN, *Beyond the Oputa Panel*, available at <http://www.nguardiannews.com> ("We believe that the evidence the Panel has gathered on the vexed National Question is clearest case that can be made for the convocation of a national conference. This is because the cries of marginalisation from east to west, and north to south are symptomatic of deep-seated resentment the various ethnic nationalities feel about the Nigerian State. How to assuage these ill-feelings and formulate an administrative machinery of collective desire should be among the primary concerns of the national conference."). See also S.U. Nwabuzor, *The Imperatives of Sovereign national Conference: The Past as a Guide*, NIGERIA WORLD available at <http://nigeriaworld.com/feature/publication/nwabuzor/snc.html> (last visited October 25, 2001).

¹⁹ *Genocide in Odi*, available at: <http://lists.essential.org/shell-nigeria-action/msg00701.html> (last visited October 6, 2000).

²⁰ *Id.* (The twenty-nine human rights groups that visited Odi in December 1999 observed: "That the events in Odi cannot be isolated from the larger crises in the Niger Delta which have their root in the historical political alienation, economic deprivation, environmental devastation, physical brutalisation and psychological traumatising of the people by the oppressive Nigerian State and exploitative multinational oil corporations.").

While expressing some regret for the massive loss of lives and destruction that attended his Army's campaign to arrest the suspected killers of the police officers, Obasanjo refused to apologise for the Army's actions and seemed to imply that such use of force was legitimate.²¹

Observers of the Nigerian scene were therefore not surprised when, in October 2001, the Nigerian Army was accused of killing over two hundred civilians in the village of *Zaki Biam* in the middle-belt region of Northern Nigeria.²² While this incident was not connected with the struggle over the control of Nigeria's oil wealth, it was just as troubling and just as connected to Nigeria's structural legitimacy crisis. By all accounts, the *Zaki Biam* massacres were connected to a decade old struggle for power and resources between the Tiv and Jukun, two of Nigeria's many minority sub-state groups.²³ In response to the kidnapping and murder of a number of Nigerian soldiers, who were said to be on a peace-enforcement mission in that area, the Nigerian Army had raided *Zaki Biam* and are alleged to have shot over two hundred unarmed civilian males in cold blood.²⁴ While the exact motivation for the alleged massacres remains unclear, it is not in

²¹ A. Osuntokun, *From Odi to Benue: A Law and Order Challenge*, NIGERIA WORLD, available at <http://nigeriaworld.com/letters/2001/nov/061f.html> (last visited November 7, 2001). ("On a visit to Odi a while ago the president merely reiterated his initial reaction—to the effect that the military action against the community was regrettable but merits no apology because he had committed no wrong in authorizing an invasion of the town to fish out the killers of 12 policemen in order to stem the slide into anarchy.").

²² D. Doran, *Nigeria's Obasanjo under Fire over Army Massacres*, available at http://dailynews.yahoo.com/h/nm/20011026/wl/nigeria_killings_dc_8.html (last visited October 27, 2001) ("Reuters journalists who visited Zaki-Biam, at the center of the latest violence, saw the town of some 50,000 razed to the ground with more residents hiding in the bush since the invasion. . . ." Adding, "since Obasanjo came to power the President has asked the army to level a town in Bayelsa state called Odi . . . Now the army has levelled a much larger area. Over 500 are dead." [Quoting Gabriel Suswam House of Representatives Member representing Katsina Ala, Logo, Ukum Federal Constituency]).

²³ P. Jason, *The Gathering Storm*, VANGUARD, available at <http://www.vanguardngr.com/news/articles/2001/october/30102001/c302001.htm> (last visited October 30, 2001) ("Today we have on our hands a festering but often forgotten war among the three Middle Belt states of Benue, Nassarawa and Taraba. Thousands of lives have been lost, including those of 19 soldiers who were killed not by an external aggressor, but by fellow citizens. Several other thousands have been made refugees in their own country. Property worth millions of naira [sic] has been destroyed in the needless war that needs urgent attention.").

²⁴ Doran, *supra* note 22.

doubt that these civilians were shot dead by Nigerian soldiers. Once again, and as shockingly, the Nigeria President refused to apologise for these killings and even appeared to imply that the soldiers were entitled to act in the way in which they were alleged to act in the interest of preserving national order.²⁵

Other such serious incidents of violence have occurred—incidents that reflect the growing intensity of Nigeria’s structural legitimacy crisis. Over the last two years, a number of violent clashes leading to the loss of thousands of lives have occurred in some Northern Nigerian states concerning the introduction of sharia criminal legal systems.²⁶ For instance, in Kaduna state, thousands of people have been killed as a result of one such violent struggle.²⁷

Again, in South-Eastern Nigeria, the Movement for the Survival of Biafra (MASSOB) has for at least three years now been locked in an often violent, but generally low intensity, struggle with the central government.²⁸

²⁵ Osuntokun, *supra* note 21 (“The way you should look at it is this. If a situation arises where a policeman will say ‘now you will send me there, if anything happens to me. . .they can just kill me as they like; . . .your own life will not be safe. Your own life will not be secure. . .for young men to carry guns and shoot at soldiers; you don’t think that is dangerous? Whatever else soldiers are taught to be or not to be they are taught to fight in self-defence.” [Quoting President Olusegun Obasanjo]).

²⁶ *The End of the Beginning*, *supra* note 17 (“In Zamfara state the Sharia has been introduced as a legal orthodoxy, contrary to the nation’s constitution. In the name of the Sharia and Islam, peoples’ hands are being amputated for minor crimes. Innocent women are being flogged. A 30 year old single lady who has been put in the family way has been sentenced to death for stoning; she is adjudged guilty of adultery while the father of her unborn child has been declared free by the sharia court for want of evidence. . . . In the last two years alone, we have had religious riots in Shagamu, Jos, Kaduna and Kano, resulting in the loss of lives and property.”).

²⁷ C. Nwangwu, *Sharia-related Killing and Carnage in Kaduna re-enact deadly prologue to Nigeria-Biafra War, of 1967*, available at http://www.usafricaonline.com/shariashowdown_chido.html (last visited June 21, 2001).

²⁸ See *Nigeria: Focus on New Biafra Movement*, IRIN, available at <http://www.reliefweb.int/IRIN/wa/countrystories/nigeria/20000524.phtml> (last visited March 5, 2001). See also, R. Okonkwo, *An Evening with Biafra: A Reporter’s Notebook*, available at <http://nigeriaworld.com/feature/publication/okonkwo/042401.html> (last visited April 25, 2001); P. Okoronkwo, *Rethinking Ethnic Identity and the Right to Self-Determination of Peoples Under International Law: The Nigerian Example* 171 (2001) (unpublished LL.M. Thesis, Dalhousie Law School, Dalhousie University) (on file with author).

This struggle concerns the movement's stated ambition of actualizing the failed late 1960s attempt by the then Eastern Region to secede from the Nigerian state under the name and style of the *de facto* independent Republic of Biafra.²⁹ Set against the strident and very popular demands by many prominent Igbos for one of their kin to be enthroned as Nigeria's president, it becomes apparent that the perceived structural exclusion of Igbos from the centres of power in Nigeria is viewed very seriously among the members of this major Nigerian sub-state group.

A similar centrifugal tendency is evident in the activities in Western Nigeria of the *O'dua* Peoples Congress (OPC), a militant pan-Yoruba movement.³⁰ In any case, this organization's recent clash with the Nigerian police in *Ilorin*, concerning the traditional rulership of that *Yoruba* city by a *Fulani* Emir, is indicative of the violence that is often produced by the unresolved structural crisis that afflicts the Nigerian state.³¹

As instructively, if less violently, it is noteworthy that one of the reasons for the absence of a formidable opposition caucus in the Nigerian parliament has been the fact that one of the two opposition parties, confined as it almost is to a Yoruba base, has, despite the fact that the central government is controlled by another party, tended to act as the vanguard rather than as antagonists of the current President, himself a prominent Yoruba

²⁹ C.R. Nixon, *Self-determination: The Nigerian/Biafra Case*, 24 *WORLD POLITICS* 473, 475 (1972). On 30 May 1967 Eastern Region of Nigeria was declared a sovereign independent state 1967 by the name Biafra. See also, P. Okoronkwo, *id.* at 137.

³⁰ See S.U. Nwabuzor, *The Paradox of Nigeria's Ethnic Militias*, *NIGERIA WORLD*, available at <http://nigeriaworld.com/feature/publication/nwabuzor/militias.html> (last visited October 25, 2001).

³¹ A.A. Mazrui, *The African State as a Political Refugee: Institutional Collapse and Human Displacement*, *INT'L J. REFUGEE L.* 21, 31 (1995) ("What ought to be remembered, therefore is that state-system which Africa has inherited from Europe was originally nurtured in the bosom of conflict and war.") *Id.* at 32 ("Post-colonial Africa is disproportionately burdened with internalised conflict which is, at least in the short run, detrimental both to the consolidation of statehood and to the promotion of a shared sense of nationhood in the population"). See also, C.R. Ezetah, *International Law of Self-Determination and the Ogoni Question: Mirroring Africa's Post-Colonial Dilemma*, 19 *LOY. L.A. INT'L & COMP. L. J.* 811, 856 (1997) ("Looking at our variable and factual lenses, such as 'egregious human rights violations,' it is clear that the contemporary law of self-determination is inadequate to accommodate the African problem. Its principles can only be reactive in the African context where ethnic conflicts are imminent. This is because colonial Africa was built on ethnic division and post-colonial Africa preserved the inequities of colonial Africa.").

leader.³² This is clearly indicative of the ways in which this opposition party is more concerned with maintaining the control of the Nigerian government by a member of the sub-state group from which it draws its basic support than with ensuring the accountability of the ruling party. This provides another clear indication of the way in which Nigeria's fundamental structural problem (in this case evidenced by a significant level of deep rooted suspicion among its constituent sub-state groups) has led to a serious governance problem.

Although most of these episodes have resulted in violent conflicts, they have yet to lead to a *nation-wide* conflagration. However, this is not as comforting as it could be. The principal reason for caution is the nature of Nigeria's historical experience.³³ The years immediately before the Nigerian civil war of 1967-1970 were in fact characterized by similar patterns of deep-rooted, unresolved, localized, low-intensity conflicts.³⁴ As worrisome is the fact that more than ever before since the end of that war, Nigerian politicians and commentators now tend to harness and deploy flashbacks to

³² U.J. EMELONYE, *THE GOVERNANCE SCORECARD: REVIEW OF DEMOCRATIC GOVERNANCE IN NIGERIA* (Hurilaws 2000), available at <http://www.ned.org/grantees/hurilaw/scorecard2000/two.html> (last visited January 30, 2002) ("The AD appeared contented with the fact that the President comes from South West of the nation. It appears that the party is even threatening to tear the country apart should anything happen to the President, to the chagrin of those who solidly stood behind him at the polls.").

³³ K.W.J. Post, *Is There a Case for Biafra?*, 44 INT'L AFF. 26, 27 (1968) (Nigeria is a pluralistic society comprising of about 250 ethnic groups is a product of British political experimentation through the amalgamation of 1914).

³⁴ For instance in 1950, the North threatened to secede at the Ibadan constitutional conference if they were not granted fifty percent of the seats at the federal legislature. See, Tekena N. Tamuno, *Separatist Agitations in Nigeria since 1914*, 8 J. MOD. AFR. STUD. 563, 566 (1970). Also in 1956, Northern Nigeria threatened again to secede if Nigeria was granted independence in 1956. See, A. BELLO, *MY LIFE* 114-120 (Cambridge University Press 1962). Furthermore, during this period there was a leadership crisis in the Action Group Party (based in the western region) which led to the imposition of a state emergency in that region by the Northern controlled federal government. See, *Tamuno, supra* note 34 at 573. Again, Nigerian unity was threatened by the federal election of 1964, which was alleged to have been massively rigged. This prompted the Leader of NCNC, Dr. Okpara, to declare the desire of the Eastern region to secede. *Id.* at 574-575. Furthermore, on 29th May 1966, Northerners massacred several thousands of Easterners mostly Igbos while protesting against Decree 34 of 1966 that introduced the unitary system of government in Nigeria. V.O. BARTKUS, *THE DYNAMIC OF SECESSION* 122 (Cambridge University Press 1999).

that crisis as part of the imagery of their public.³⁵ This is a disturbing insight into their mental attitudes regarding Nigeria's structural legitimacy crisis.

Now, it is important to understand that there is virtually nothing that should be surprising or peculiar about the fact that Nigeria now faces, and has always faced a crisis regarding the nature and fairness of its very architecture. For one, almost every post-colonial African state (such as Nigeria) has faced this kind of crisis of legitimate statehood (as opposed to a *governance* crisis) from its very inception, and even before that point.³⁶ Most post-colonial African states have suffered this kind of fundamental crisis *continuously* from the late 19th century to the present day.³⁷ As has already been demonstrated elsewhere, during their late pre-colonial, colonial, and post-colonial eras, the state-building practices of the preceding era structured and shaped the nature of the African state that emerged in the succeeding era.³⁸ "Thus, late nineteenth-century, pre-colonial state-building led to a colonial African state that was a deeply divided, intensely fragmented, highly violent, and rarely legitimate agglomeration of several distinct nations and political communities."³⁹ "Similarly, the coercive and dictatorial colonial state-building practices created an intensely divided and fragmented post-colonial African state, which was, more often than not, viewed by the relevant constituent sub-state groups as illegitimate (and which, all too often, did very little to shed its inherited illegitimacy)."⁴⁰

³⁵ O. Adigwe, *Obasanjo: A Demagogue?*, NIGERIA WORLD, available at <http://nigeriaworld.com/letters/2001/mar/233.html> (last visited March 28, 2001) ("Do not forget that the Biafran war that almost divided this country was caused by resource control. If Biafra had won, I would have been dead, your governor would not have been in the position he is today" [quoting Mr. Olusegun Obasanjo President of the Federal Republic of Nigeria]).

³⁶ See, *After Martyrdom*, *supra*, note 6, at 506-514. For a book-length development of this point in relation to the role of international law in facilitating its debilitating effects, see *Re-Defining*, *supra*, note 6, at 59-77.

³⁷ *After Martyrdom*, *supra*, note 6, at 506-507.

³⁸ *Id.*

³⁹ *Id.* at 506.

⁴⁰ *Id.* See also, L.E. Schafer, *Learning from Rwanda: Addressing the Global Institutional Stalemate in Refugee Crises*, 6 IND. J. GLOBAL LEGAL STUD. 315, 324 (1998) ("Preserving the states formed by colonization ensures continued political tensions among several ethnic groups that comprise developing states. As violence is ignited and repeatedly erupts in ethnically diverse nations, refugee flows become more problematic and complex.").

Moreover, it should hardly be news to a keen observer of Nigeria's internal politics that the relationship among its constituent sub-state groups has, for the most part, been very problematic. Nigeria's constituent units have, quite understandably, always struggled for relative power. But, more importantly, many of these struggles have concerned their fruitless search for a much more acceptable *modus vivendi* among themselves—a large group of over 250 constituent sub-polities. Given the unfortunate history of Nigeria's pre-colonial, colonial, and post-colonial state-building ethos and practices, the persistence and intensity of such struggles for a more legitimate political architecture should not be surprising. Few serious scholars would expect a relatively sudden, *forcible*, agglomeration of Canada, the USA, and Mexico by a colonial conqueror into one political entity *not* to result (at least in the short-term) in a broader emergent society that is characterized by more or less intense cleavage and competition largely along the pre-existing fault lines. However, if the foregoing analysis is correct, then observers of the Nigerian scene ought not be surprised about the endurance of a similar condition in a country that was almost suddenly created by a colonial power through the *forcible* agglomeration, for the most part, of over 250 already existing, much more organically formed polities. While such conflict generating circumstances and conditions can be either ameliorated or exacerbated by the policies and actions of the governments of the newly created agglomeration, their very presence presents a most formidable challenge to statecraft.

That is not to say though that Nigeria's structural legitimacy crisis does not deserve redemptive attention. Surely, it does. Nigeria is home to approximately one fifth of Africa's population and some of the largest reserves of oil in the world. The occurrence of a second *nation-wide* violent conflict in that country will undoubtedly result in untold human suffering not just in Africa but the world over as well. However, if left unaddressed for much longer, Nigeria's structural legitimacy crisis may well lead to exactly that result. The horizon remains blurry to the eye but the warning signs of a gathering storm have appeared all over it. As Reuben Abati has gravely put it, such a potential conflict:

. . . would effectively mark the end of Nigeria as we know it, and there are enough people in this land who believe that the best solution to all the heartache and stomach upset we live with, is a redrawing of the Nigerian map.⁴¹

If this sort of situation materializes, then the refugee crisis that it could generate would be so serious that, given the tendency of some powerful

⁴¹ See Abati, *supra* note 1.

states to assault the international refugee protection system in times of mass refugee flows, current campaigns and efforts to preserve and enhance that system could be hampered.

Thousands of Nigerians have, at one time or the other in the last two years or so, been *internally displaced* by violent conflicts related to Nigeria's structural legitimacy crisis. Thousands were, and remain, displaced by the "sharia-related" conflicts in Kaduna.⁴² Thousands more were displaced by the bloody destruction of Odi in the Nigerian Niger Delta,⁴³ and the alleged massacre of civilians in Zaki Biam.⁴⁴ A similar number of Nigerians remain displaced from parts of Nassarawa state in North Central Nigeria due to intermittent fighting related to Nigeria's crisis of legitimate statehood.⁴⁵

In the following section, I will discuss what I see as the glaring cognitive and other deficits that mark the domestic and international assessments of, and approaches to, the current Nigerian situation—what I perceive as the failure to take as seriously as is both possible and necessary, the existence of a crisis of legitimate statehood in Nigeria that could result eventually in a humanitarian catastrophe.

⁴² C. Nwangwu, *Sharia-related Killings and Carnage in Kaduna Re-enact Deadly Prologue to Nigeria-Biafra War of 1967*, available at http://www.usafricaonline.com/shariashowdown_chido.html (last visited June 21, 2001).

⁴³ *Genocide in Odi*, available at <http://lists.essential.org/shell-nigeria-action/msg00701.html> (last visited October 6, 2000) (The twenty-nine human rights groups that visited Odi after the massacre observed that: "We saw no single livestock, poultry or domestic animals except a stray cat. The community's 60,000 inhabitants had tied into the forest or been arrested or killed. Only a few thoroughly traumatised old women, old men and children could be seen around, some of them suffering from fractures and other injuries sustained while trying to escape from the advancing soldiers.").

⁴⁴ Doran, *supra* note 22. See also, G. McKenzie, *Nigeria Army Massacre Evidence Shown*, available at http://dailynews.yahoo.com/h/ap/20011025/wl/nigeria_violence_6.html (last visited October 26, 2001).

⁴⁵ Jason, *supra* note 23 ("In the sixties, one of the precursors to the calamities that fully bloomed on 15th January 1966, was the Tiv riot. Today we have on our hands a festering but often forgotten war among the three Middle Belt states of Benue, Nassarawa and Taraba. Thousands of lives have been lost, including those of 19 soldiers who were killed not by an external aggressor, but by fellow citizens. Several other thousands have been made refugees in their own country. Property worth millions of naira has been destroyed in a needless war that needs urgent attention.")

III. THE COGNITIVE DEFICITS IN THE DOMESTIC AND INTERNATIONAL ORDERS

In the foregoing section, the point was made at length that there are palpable early warning signs of a looming (though not inevitable) large-scale refugee crisis in Africa's most populous country. However, the palpability of these early warning signs does not seem to have elicited a corresponding level of awareness and cognition in the extant domestic and international legal orders. In other words, there has been a manifest cognitive deficit in both the domestic and international responses to the structural legitimacy crisis that afflicts the Nigerian state, and its potential to produce refugeehood on an unprecedented scale.

Nigeria's domestic governance institutions seem to be as guilty of this cognitive failure as any other entity. All too often, these institutions have failed to confront and tackle effectively the roots of this fundamental structural crisis. These institutions have preferred to tinker superficially with this serious and highly consequential problem. As importantly, all too often, these institutions have failed to connect the fact of the persistence of this structural crisis with the real possibility of a national humanitarian catastrophe. For instance, not once in Nigeria's corporate history has the *modus vivendi* which must guide the relationships among its sub-state groups been legitimated directly by the representatives of these constituent units.⁴⁶

⁴⁶ For instance, the amalgamation of 1914 that gave birth to Nigeria was done without seeking the consent of the people through a referendum, this made one time Premier of Western Nigeria as well as former Federal Minister of Finance Obafemi Awolowo argued that: "Nigeria is not a nation. It is a mere geographical expression. There are no 'Nigerians' in the same sense as there are 'English', 'Welsh', or 'French.' The word 'Nigeria' is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not." M.G.K. Nayar, *Self-determination Beyond the Colonial Context: Biafra in Restrospect*, 10 TEX. INT'L L. J. 321, 324 (1975) (quoting O. Awolowo, *PATH TO NIGERIAN FREEDOM* at 47-48). Also, the various states creation exercises in Nigeria were done without any input from the people. See, M. Nwachukwu, *The Middle-Belt and her Neighbours: Jos in Perspective*, VANGUARD, available at <http://www.vanguardngr.com/news/articles/2001/September/16092001/sm616901.htm> (last visited October 25, 2002) ("The problem in the middle belt today is largely instigated by the Hausa/Fulani. This is made possible by the fact that they appropriate state machineries at their disposal in determining the fate of their younger siblings in the region. Through the exercise of state creations they have succeeded in splitting major ethnic groups and logging them with unrelated ethnic groups thereby creating new grounds for conflicts in the area of culture, boundary dispute and religious crises."). Further, the annulment of the June 12, 1993 Presidential election and the constitution of interim national government were done against the will of the peo-

Similarly, not once in Nigeria's corporate history has its constitution been, for the most part, directly legitimated by the governed.⁴⁷ Every one of Nigeria's many failed and failing architectural arrangements has been largely *imposed* either by a colonial power or by a military junta.⁴⁸ Each of the country's failed and failing constitutions has been largely *imposed* by either a colonial power or a military regime.⁴⁹ This is a rather remarkable kind of continuity and persistence, albeit in a negative way, over nearly one hundred years of a more or less *forcible* process of structuring of the Nigerian polity. Further evidence of the tendency within Nigeria's institutions of governance to avoid confronting directly, and dealing with effectively the deep-seated nature of the structural legitimacy crisis that afflicts the Nigerian state can be found in the summary dismissal by both the Executive and Legislative branches of government of the never ending demands by various sections of the country for the convening of a sovereign national conference at which a much more legitimate architectural arrangement can be negotiated for the country.⁵⁰ Rather than embrace this peaceable option

ple. See G.E. Moose, *Nigeria: Which Way Forward?*, available at <http://www.nigerdeltacongress.com/narticles/nigeria%20which%20way%20forward.htm> (last visited January 25, 2002). See also *Nigeria: A History of Coups*, BBC NEWS, February 15, 1999, available at [http://news.bbc.co.uk/1/hi/special_report/1998/06/98/after\)abacha/83449.stm](http://news.bbc.co.uk/1/hi/special_report/1998/06/98/after)abacha/83449.stm) (last visited January 25 2002).

⁴⁷ The 1914 Constitution that vested both executive and legislative powers on the Governor who was the Queen representative was imposed on Nigerians by Britain as the colonial power. See, B. O. NWABUEZE, *A CONSTITUTIONAL HISTORY OF NIGERIA* 36 (C.Hurst & Company 1982). Under the 1922 Clifford Constitution there was established a Legislative Council that legislated only for the Southern Province. See, *id.* at 39. In 1946, the Richards Constitution that divided the country into three regions, was promulgated, and the constitution also brought the northern province into the federal legislative arrangement. See, *id.* at 42. There was another constitution imposed on Nigerians in 1951 called the Macpherson Constitution. See *id.* at 46. In 1954, there was yet another constitution before the independence constitution of 1960, however none of these constitutions derived their authority from the people of Nigeria. See *id.* at 52-61. Even the 1979 Constitution that returned the country to civilian democracy did not derive its authority from the people. See *id.* at 253-254. Similarly, the present 1999 Constitution was also an imposition by the military on Nigerian people as the then military dictator General Abubakar simply promulgated the constitution without submitting it to a referendum.

⁴⁸ See *supra* note 46.

⁴⁹ See *supra* note 47.

⁵⁰ The late Justice Minister Bola Ige declared that sovereign national conference is no longer feasible. Dr. Chuba Okadigbo then Senate President described the call for

(one that could for the first time in Nigeria's history produce an architectural arrangement and constitution that is legitimated directly by the sovereign representatives of ordinary Nigerians) these institutions of the Nigerian government have chosen yet again to adopt a government controlled, and *imposed*, process—one that tinkers superficially with the present political arrangement, and hardly recognizes the seriousness of Nigeria's *structural* legitimacy crisis.⁵¹ There is also very little indication in the behaviour of these institutions that they recognise the obvious benefits of tackling squarely this structural affliction. For not only will a mass-based non-imposed process much more likely lead to a better and more effective end product, the architectural arrangement that is thus fashioned is itself much more likely to become widely *perceived* as legitimate.⁵² While the obvious reluctance of the Nigerian government to open the "can of worms" of debating and negotiating the very structural legitimacy of the Nigerian state is historically understandable given the history of Africa's post-colonial states as hastily constituted, extremely fissiparous, highly inflammable entities, it remains obvious nevertheless that to put off the *peaceable* resolution of this

the conference as "idle thinking". Dr. Doyin Okupe, Obasanjo's former media and publicity adviser, described Sovereign national conference as a "spent force", and Professor ABC Nwosu the former Obasanjo's Political Adviser now Minister of Health contended that sovereign national conference is unconstitutional. As he put it: "You cannot have two sovereign powers in Nigeria." See, Ben Eguzozie, *Sovereign National Conference Is the Solution*, TEMPO, March 15, 2000, available at <http://allafrica.com/stories/200003150223.htm> (last visited January 25, 2002). See also, Ken Wiwa, *Whither Nigeria?*, available at http://www.africana.com/Column/b1_views_49.htm (last visited January 25, 2002).

⁵¹ *Id.*

⁵² J. Okwara, *Biafra, Odua and Arewa Republic: A case for Relative Good*, NIGERIA WORLD, available at <http://nigeriaworld.com/feature/publication/okwara/102901.html> (last visited October 29, 2001) (wherein the author raised the following questions: "How for instance, can we allow Muslims up north to operate sharia without infringing on the rights of Christians? How can we tell Igbos not to agitate for Biafra when they are being slaughtered at every turn in the north while the Obasanjo government turns a blind eye. How can a section of the country continually constitute itself into a rebellious entity and make nonsense of the constitution when it wants to pursue its agenda. How can we stop the criminal exploitation of the peoples of the Niger Delta, which disregards their environmental and developmental needs? How can we ensure that we have an ethnically balanced Army, which oppresses no one but protects all? Again, how can we ensure that when a section of the country is returned to power, the Nigerian Army is not again skewed to favor their agenda of domination?").

fundamental problem is to encourage the *violent* reconfiguration of the Nigerian state.⁵³

As importantly, it is worthy of note that the international order has also been as guilty of this kind of “head-in-the-sand posture”—of a cognitive failure to clearly identify and confront head on the fundamental structural crisis that afflicts the Nigerian state. That order has also failed to connect adequately the persistence of this structural crisis and the potential production of large-scale refugeehood in Nigeria. It has, for the most part, endorsed, and even licensed, the superficial tinkering approach that has been preferred by successive Nigerian governments.⁵⁴

The point is not to argue unqualifiedly for more external intervention in Nigeria’s state-building quagmire. In fact, such interventions have in the past formed part of the problem.⁵⁵ However, bearing in mind the extent to which such external interventions are *already ubiquitous* in Nigerian affairs,⁵⁶ the point that is being made is that, in relation to Nigeria’s serious structural legitimacy crisis and its potential to produce refugeehood on a very large scale, the international order has exhibited a cognitive deficit that is similar to that demonstrated by the Nigerian government. This should not be surprising given the extent to which the international order has in their process of legitimizing statehood⁵⁷ historically favoured “peer-review” over “infra-review.” This is to say that, in according legitimacy to states, the international order has historically not been as concerned as it could be with the extent to which a state’s internal architectural arrangement is viewed as legitimate or illegitimate by its constituent sub-state groups. The international order has been much more concerned with the extent to which other states, its peers, view the relevant state as legitimate.⁵⁸ Put simply, the international order has not “cared” as much about the structural legitimacy crisis that afflicts post-colonial African states such as Nigeria. This being so, it has not been able so far to fashion out a system for

⁵³ See M. Mutua, *Putting Humpty Dumpty Back Together Again: The Dilemmas of the Post-Colonial African State*, 21 BROOK. J. INT’L L. 505, 506 (1995).

⁵⁴ See *Re-Defining*, *supra* note 6, Chpt. 3-4.

⁵⁵ Nixon, *supra* note 29, at 495-496. See also, L.C. BUCHHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 171 (Yale University Press 1978); O. Nnoli, *The Nigeria-Biafra Conflict- A Political Analysis*, in *NIGERIA: DILEMMA OF NATIONHOOD* 129 (Joseph Okpaku, ed., Greenwood Publishing Co. 1972).

⁵⁶ *Shell in Nigeria*, CORPORATE WATCH, available at <http://www.corpwatch.org/trac/feature/humanrts/cases/nb-shell.html> (last visited October 3, 2000) (“In Nigeria, power does not flow from the people-it comes from Shell.”).

⁵⁷ See, *Re-Defining*, *supra* note 6, at 54-65.

⁵⁸ *Id.*

dealing as much as is possible with this extremely important and consequential issue. That is why the international order generally lacks a dedicated, focused mechanism to deal with the architecture of relations among the fissiparous sub-state groups that constitute most post-colonial states (such as Nigeria).⁵⁹ That is why early warning mechanisms that might detect such structural crisis before they result in violent conflicts and mass refugee outflows are either lacking or underdeveloped.

Having made the point at length that there are significant cognitive deficits in both the domestic and international orders regarding the seriousness of Nigeria's structural legitimacy crisis, and its potential to explode into a national humanitarian catastrophe, in the next section, I will consider the outlines of a more adequate set of responses to that crisis—a set of responses that might have a better chance of averting a major refugee crisis in Nigeria—a situation that I argue must be avoided, at the very least, in the interest of the non-exacerbation of the existing international refugee protection crisis.

IV. TOWARD A MORE ADEQUATE RESPONSE TO THE ON-GOING AND LOOMING CRISES IN NIGERIA

Given the historical tendencies of the domestic and international orders to tinker superficially with, rather than address directly, the underlying structural legitimacy crisis that afflicts the Nigerian state, it is no wonder that this fundamental problem persists. It is also not surprising that this problem now threatens to explode into a national humanitarian catastrophe that would most likely generate a large-scale refugee crisis. As Abati has noted, what has been needed all this time was for the relevant institutions to address and tackle this problem head on, with a sense of urgency, and "once and for all."⁶⁰

A more effective response to this fundamental state-building problem, this crisis of legitimate statehood, requires processes and outcomes that significantly enhance the *legitimacy* and *legitimization* of the architectural arrangements of the Nigerian state—the structural relationships or *modus vivendi* among its constituent sub-state groups. *While no final solutions are possible and no panaceas palpable*, it seems that there are a number of

⁵⁹ See, G. Alfredsson and D. Turk, *International Mechanisms for the Monitoring and Protection of Minority Rights: Their Advantages, Disadvantages, and Interrelationships*, in A. BLOED, L. LEICHT, M. NOWAK AND A. ROSAS, EDS., *MONITORING HUMAN RIGHTS IN EUROPE: COMPARING INTERNATIONAL PROCEDURES AND MECHANISMS* 181 (A. Bloed, L. Leicht, M. Novak & A. Rosas, eds., Martinus Nijhoff 1993).

⁶⁰ See, Abati *supra*, note 1.

things, both domestic and international, that can be done in pursuit of the desired and desirable outcome.

The first concerns *process*. It is essential that the process of the peaceable re-configuration of the Nigerian state (in order to make its structure much more acceptable to its constituent sub-state groups) be underpinned by *mass participation* and as *consensual* a politics as possible. As has already been demonstrated, no such previous process in Nigeria has been governed largely by this approach.⁶¹ Every previous structural arrangement and constitution has been *imposed* on Nigerians either by a colonial power or an indigenous, but still grossly unrepresentative, military regime.⁶² The substantive demands for much larger political autonomy by the vast majority of Nigeria's sub-state entities must be taken more seriously. This can be done by, as much as is possible, ensuring *their* mass participation and consent to the process of re-configuring the Nigerian state. Furthermore and just as importantly, if Nigeria is to reap more fully the fruits of such a legitimated process, these constituent units must themselves exercise *sovereignty* over that process. That is why nothing less than a *sovereign national conference* of all of Nigeria's constituent nations is required if the grievances harboured by most of these groups are not to boil over and precipitate a nation-wide conflict, and if a potentially massive refugee crisis is to be nipped in the bud.

At the inter-African (international) level, it is imperative that the African Union⁶³ institute a *Special Commission on National Minorities* (quite apart from its Conflict Resolution Mechanism)⁶⁴ to serve as the major forum and centre for the coordination of African efforts to re-think and re-orient the approaches of post-colonial African states such as Nigeria to the fundamental state-building crises that face most of them—their crises of legitimate statehood. It is recognized, of course, that simply turning to yet another international institution is not going to wish away the deep structural problems that face post-colonial African states such as Nigeria. Yet, if it is recognized, as has been demonstrated elsewhere,⁶⁵ that this structural crisis is *the* central factor in the production of the grave instabilities that has

⁶¹ See, *Supra* note 46

⁶² See, *Supra* note 47.

⁶³ This inter-African international institution was formerly known as the Organization of African Unity. See *Constitutive Act of the African Union* (2000), available at <http://www.dfa.gov.za/for-relations/multilateral/treaties/auact.htm> (last visited January 26, 2002).

⁶⁴ *Id.*

⁶⁵ See *Mutua supra* note 53, at 522-523.

beset almost every post-colonial African state, then the imperative need for this particular kind of institution becomes palpable.

Refugee scholars need to embrace more fully and more obviously a research agenda that focuses much more on *pre*-conflict than on *post*-conflict peacebuilding. If we are to reduce significantly the human costs of conflict, the structural legitimacy crises that afflicts most post-colonial African states, including Nigeria, need much more devoted and focused scholarly investigation, not just *after* a war has broken out, but well ahead of the occurrence of such catastrophes.

Each of these proposals has the potential to serve as resources or conceptual frameworks in the effort to prevent some of the incidences of violent conflicts in Nigeria, as elsewhere. In this sense, the proposals are also relevant to the prevention of a large-scale refugee crisis in Nigeria. Given the negative attitudes of many states to such large-scale refugee flows, the occurrence of such a massive humanitarian crisis would likely inhibit current efforts to defend, preserve and even enhance the international refugee protection system.⁶⁶

V. CONCLUSIONS

What I have attempted to achieve in this Article is the forging of analytic linkages among three phenomena: the potentially explosive structural legitimacy crisis that afflicts the Nigerian state; the mass refugee outflows that would be produced by such an explosion; and the potential of such a mass refugee crisis to inhibit efforts to defend, preserve, and even enhance our embattled international refugee protection system. The aim of the Article has not been to paint the picture of a doomsday scenario in Nigeria. After all, Nigeria has survived one civil war and hundreds of localized conflicts, albeit at great cost to national harmony and human development.⁶⁷ The point has simply been to urge that a more concerted effort made to *confront squarely* the structural legitimacy crisis that remains at the root of most social conflagrations in Nigeria and thus help avoid what would be an unprecedented national catastrophe. Such a humanitarian ca-

⁶⁶ G.S. Goodwin-Gill, *Asylum: The Law and Politics of Change*, 7 INT'L J. REFUGEE L. 1, 13-15 (1995); S. CASTLES & M. MILLER, eds., *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* (S. Castles & M. Miller, eds., Macmillan, 1998); J.C. Hathaway & R.A. Neve, *Making International Refugee Law Relevant Again: A Proposal For Collectivized and Solution-Oriented Protection* 10 HARV. HUM. RTS. J. 115, 116 (1997); See, CHIMNI, *supra* note 2, at 14-15.

⁶⁷ A. Ikoku, *Proclamation of the Republic of Biafra*, 6 I.L.M. 665, 670 (1967). See also, Nixon, *supra* note 29, at 476.