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The right of asylum



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Introduction

Asylum seekers leave everything behind when fleeing their countries. They may have witnessed family and friends being killed or have been subjected to torture or extreme violence. Their health and well-being are often seriously affected. For this reason, states have been protecting individuals and groups who are seeking refuge after fleeing from their own country in fear of persecution. In article 14 of the Universal Declaration of Human Rights (UDHR), adopted in 1948, it is stated that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

After various refugee crises in the years following the second World War, many of them the result of ongoing wars, violence or threatening circumstances, more conventions and policies arose on the subject of the right of asylum, which include the 1951 Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.



Source: "Europe's Refugee Crisis." Human Rights Watch. N.p., 16 Nov. 2015. Web. 22 June 2016. <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action>



Definition of Key Terms

Asylum

The right of protection and immunity from extradition, granted by a government to a political refugee fleeing from another country.

Refugee

A refugee has been defined by the 1951 Refugee Convention as an individual outside of his or her country who is unable or unwilling to return as a result of well-founded fear of persecution based on his or her origin, political opinion, religion, race or membership in a particular social group. The 1969 OAU Convention extended this definition to “an individual who is compelled to leave his country of origin or nationality due to external aggression, foreign domination, occupation or events that seriously disturb public order in his or her country, in order to seek refuge in another place.” Internally Displaced Persons (IDPs), including stateless individuals or individuals fleeing from natural disasters or generalized violence, are not considered refugees. The African Union has a convention that specifically protects IDPs, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

Asylum seeker

An individual outside of his country of origin that has applied for recognition as a refugee within another country. If the individual meets the definition of a refugee, he is granted asylum.

Persecution

Acts that could be considered persecution include: acts of physical, mental or sexual violence; administrative, legal or judicial measures that are discriminatory; disproportionate or discriminatory prosecution or punishment; acts that are gender-specific or child-specific. These acts can be committed by both a State actor and a non-state actor, where the State is unable or unwilling to protect the individual.

The principle of non-refoulement

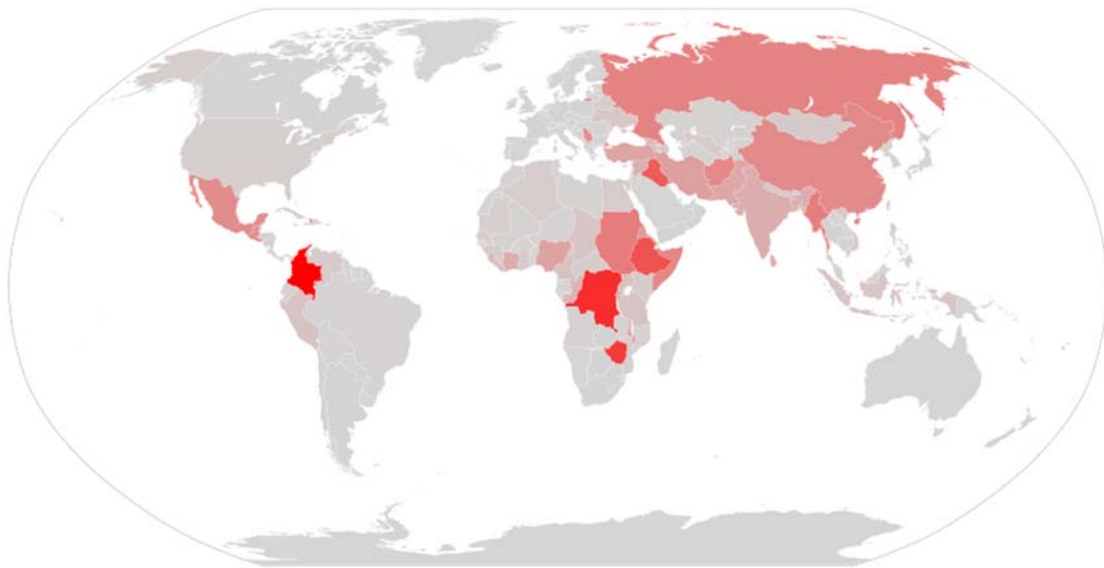
The principle of non-refoulement refers to the obligation of States not to refoule (return) a refugee to “territories where his life or freedom would be threatened because of his nationality, race, religion, political opinion, or membership of a particular social group.” It states that the international community should ensure to all persons the enjoyment of human rights, including the rights to life, liberty, security of person and to freedom from torture or inhuman, cruel or degrading treatments.



General Overview

Historical overview

In the years after World War II, tens of millions of Jewish refugees fleeing to Palestine were part of the largest population movement in the continent's history. By 1959, the refugee crisis became so pressing that the UN General Assembly designated the year as the "World Refugee Year". By the end of 1960, all post-war refugee camps in Europe were closed, but globally there were still millions of refugees seeking refuge in the Middle East, Asia and Africa. In 1961, over a million displaced Palestinians were living in refugee camps across Egypt, Jordan, Syria and Lebanon, as a result of the Arab-Israeli war that broke out after the creation of the state of Israel in 1948. The Soviet war in Afghanistan between 1979 and 1989 created more than five million Afghan refugees, fleeing to the neighbouring nations Pakistan and Iran. In the 1990s, more than two million people fled the violence in former Yugoslavia. In 1994, almost 800.000 people were killed in the Rwanda genocide and about two million people fled to neighbouring countries. Cholera became widespread in the refugee camps and killed thousands more. The most recent and ongoing refugee crisis is the refugee crisis following from the outbreak of the Syrian civil war in 2011. Around four million Syrian refugees have been registered, most of them fleeing to the European Union. These examples show the importance of the right of asylum and the need for the United States to keep improving international cooperation in order to cope with refugee crises.



Asylum seekers in 2009 by country of origin.

■ 40,000 asylum seekers

■ 30,000 asylum seekers

■ 20,000 asylum seekers

■ 10,000 asylum seekers

■ <10,000 asylum seekers (or no data)



Conventions

In 1948, Article 14 of the Universal Declaration of Human Rights (UDHR) was adopted, stating that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” Subsequently, the 1951 Convention relating to the Status of Refugees was established, which provides the definition of a refugee, the principle of non-refoulement and the rights of refugees.

The 1951 Convention gives us a clear definition of a refugee. It is, however, not defined how State Parties should determine whether individuals meet the definition of a refugee. This is left to each State Party to develop. This has led to small differences between the asylum laws of different States.

The principle of non-refoulement refers to the obligation of States not to refoule (return) a refugee to “territories where his life or freedom would be threatened because of his nationality, race, religion, political opinion, or membership of a particular social group.” However, there are two restrictions to this principle: when there are “reasonable grounds” to regard the refugee as a danger to the national security of the hosting country or when the refugee has been convicted of a considerably serious crime and could thus be considered as a danger to the host community, the individual may not claim protection under the principle of non-refoulement.

Other rights of refugees include freedom of movement, the right to liberty and security of the person, the right to family life, the right to education, employment, access to justice, and other fundamental freedoms and privileges of international and regional human rights treaties.



Signature of the 1951 Convention in Geneva. Source: <http://www.unhcr.org/en-us/1951-refugee-convention.html>



Issues

Article 26 of the 1951 Convention advocates that Member States shall grant refugees the right to choose their place of residence and to move freely within the State. Meanwhile, Article 28 compels States Parties to provide refugees with travel documents, which permit them to travel outside the State “unless compelling reasons of public order or national security require otherwise.” Nevertheless, in the national laws of countries such as Kenya and Ethiopia, it is specified that the movement of refugees within the country may be restricted and that refugees might be limited to living in designated areas, namely refugee camps.

Despite the fact that these rights are being protected in the 1951 Convention and multiple human rights treaties, refugees in several countries do not enjoy full legal protection of fundamental rights. Ethiopia, for example, has been treating Articles 17 and 22 as recommendations rather than obligations. Additionally, restrictive labour and property laws in Lebanon, a country that is not a party to the 1951 Convention but is host to a considerably large number of refugees, mostly Palestinians, prevent those refugees from registering property and from practicing certain professions, including law, medicine and engineering.



Palestinian refugees in Lebanon protesting on the border between Lebanon and Israel.

Source: <http://www.gettyimages.nl/detail/nieuwsfoto's/palestinian-refugees-in-lebanon-gather-for-a-protest-on-nieuwsfotos/114194494>

In response to displacement crises which were not covered by the 1951 Convention, regional human rights treaties have since sometimes slightly modified the definition of a refugee. The African Union, for example, has a convention that specifically protects Internally Displaced Persons (IDPs), the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

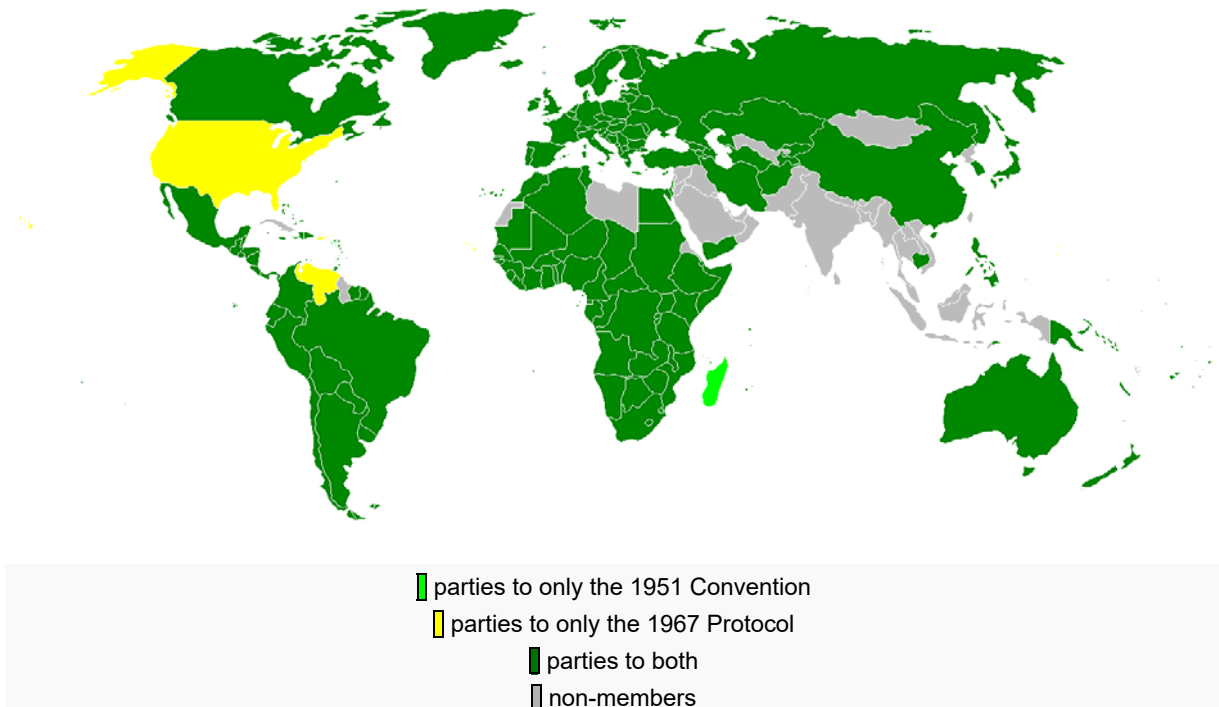


The Protocol

A few years after the 1951 Convention, the 1967 Protocol Relating to the Status of Refugees was published, which extended the definition of a refugee to “an individual who is compelled to leave his country of origin or nationality due to external aggression, foreign domination, occupation or events that seriously disturb public order in his or her country, in order to seek refuge in another place.” This definition thereby changed the reason of seeking refuge from ‘well-founded fear of persecution’ to ‘events that seriously disturb public order in his or her country’. This meant that violence did no longer have to be addressed to individuals belonging to a certain social group for them to seek refuge; individuals were now also granted refugee status when fleeing a country where the order was disturbed.

Where the 1951 Convention had temporal and geographical restrictions (the definition of a refugee was restricted to an individual fleeing due to circumstances that were the result of events occurring in Europe before 1 January 1951), the 1967 Protocol removed those restrictions.

Parties to the 1951 Convention and the 1967 Protocol:



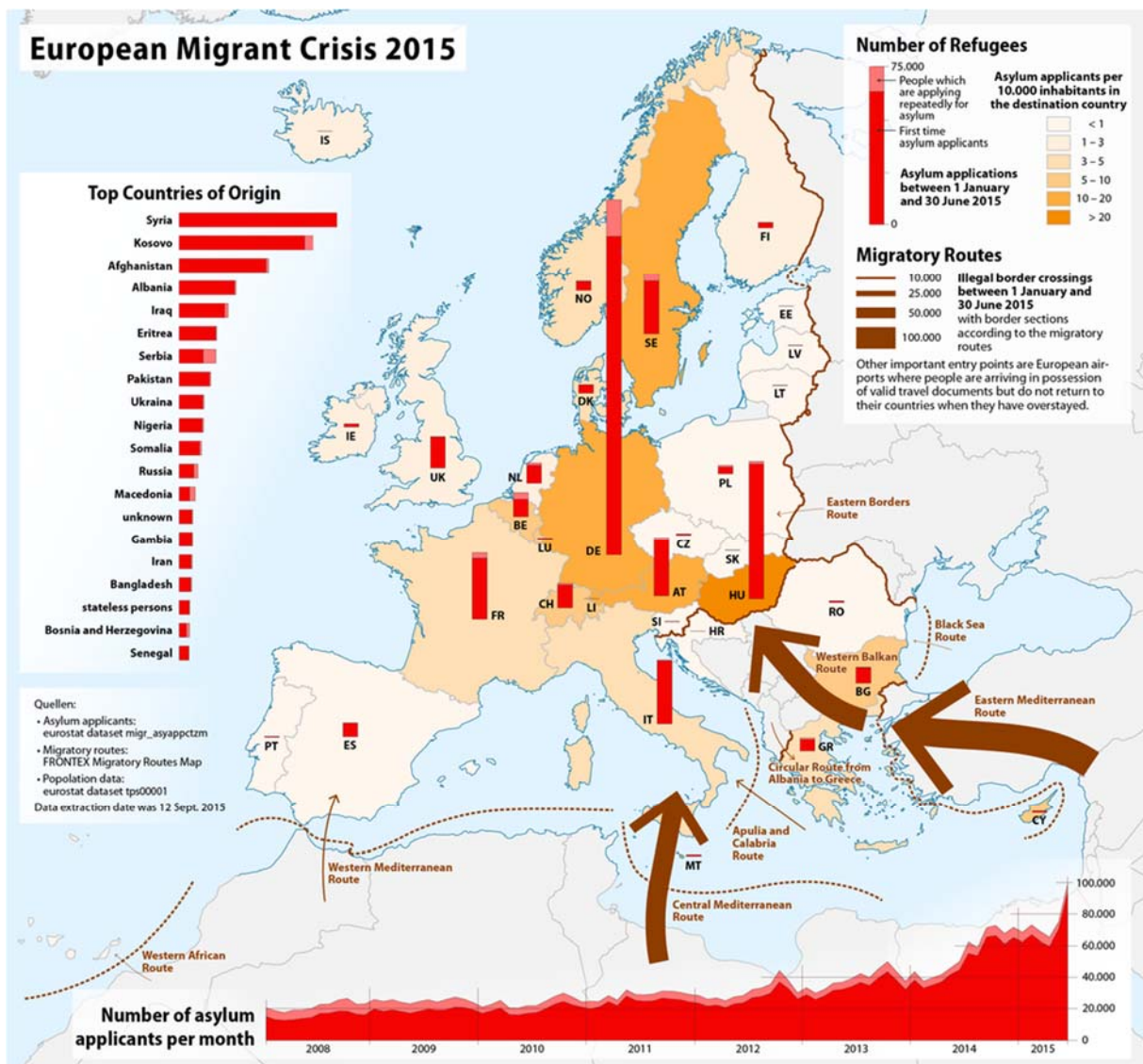
Since 1990, victims of sexual persecution, including domestic violence and systematic oppression of a gender or a sexual minority, are in some countries accepted as rightful claimants to asylum, if their country of origin is unwilling or unable to provide protection.

Major Parties Involved

European Union

Policies in the European Union on asylum include the Geneva Convention of July 1951 on the Status of Refugees, the Dublin Convention in 1990, and the implementation of Eurodac and the Dublin Regulation in 2003. In 2009, two additional proposals on the right of asylum were adopted by the European Commission. These proposals define the laws with regard to asylum in the European Union.

Since the outbreak of the Syrian civil war in 2011, around four million Syrian refugees have been registered, most of them fleeing to the European Union. This has resulted in the European migrant crisis. In 2015, a rising number of migrants fled from areas in Africa, Western and South Africa and the Western Balkans, seeking refuge in the European Union. Most of the refugees were Syrian, Afghan or Iraqi.



The United States of America

Since the Second World War, an extraordinarily large number of refugees has found refuge in the United States. Since 2000, the United States has accepted 50.000 refugees per year. Before the attacks of September 11 2001, asylum applicants were evaluated by the United States Immigration and Naturalization Services (INS). Concerns about the United States' refugee processes include the fact that while the United States has granted asylum to over 100.000 Vietnamese refugees during the Vietnam War and almost 2.000 Venezuelans between 2004 and 2007, the United States has granted refugee status to less than 800 Iraqis following the invasion of the country in 2003.

France

France was the first country to recognise the right to asylum, as enshrined in the 1793 Constitution. Subsequently, in the 1958 Constitution, the modern French right to asylum was recognised, as well as in the Code de l'Entree et du Sejour des Etrangers et du Droit d'Asile (CESEDA), which governs any form of protection under the right of asylum. France has also signed to multiple international agreements on the right of asylum, including the 1951 Convention, the 1967 Protocol, the 1992 Maastricht Treaty and the 1985 Schengen Agreement. The right of political asylum is also recognised by France, although this right is restricted by a few criteria. The two main restrictions are that the request for asylum can be rejected if the refugee could also benefit from 'internal asylum' somewhere else in their home country, and secondly that refugees receive no social protection when they come from a country that is on France's list of supposedly safe countries with regard to principles of liberty and political rights. Some of the countries on this list include India, Ukraine, Ghana, Bosnia, Niger, Albania and Macedonia.

The United Kingdom

Liberty, an independent organisation which attempts to defend and extend human rights and freedoms in England and Wales, is concerned about a few issues concerning the right of asylum in the United Kingdom, including issues of mistreatment asylum seekers in immigration detention centres, the lack of proper consideration of complicated asylum claims as a result of fast-tracking asylum applications and the lack of support or right to work.



Timeline of Key Events

1948	Adoption of article 14 of the Universal Declaration of Human Rights
1951	Adoption of the Convention relating to the Status of Refugees
1959	The 'World Refugee Year'
1961	Crisis of displaced Palestinians after the creation of the state of Israel in 1948
1967	Adoption of the Protocol relating to the Status of Refugees
1979 – 1989	The Soviet war in Afghanistan, leading to more than five million Afghan refugees
1985	The Schengen Agreement
1990	Yugoslavian refugee crisis
1992	The Maastricht Treaty
1994	The Rwanda genocide, leading to two million refugees fleeing to neighbouring countries
2011	Outbreak of the Syrian Civil war
2015	European migrant crisis

Previous attempts to resolve the issue

International and national instruments and conventions relating to refugees include the 1951 Convention relating to the Status of Refugees, the 1967 Optional Protocol relating to the Status of Refugees, the Universal Declaration of Human Rights (art. 14), the American Convention on Human Rights (art. 22), the American Declaration on the Rights and Duties of Man (art. 27), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3), the Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, also known as the Cartagena Declaration, the African Charter on Human and Peoples' Rights (art. 12) the Council Regulation EC No 343/2003, published 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for evaluating an asylum application located in one of the Member States by a third country national, the Cairo Declaration on Human Rights in Islam (art. 12), the OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, the Arab Charter on Human Rights (art. 28), the European Convention on Human Rights (arts. 2, 3, and 5), the Convention on the Rights of the Child (art. 22) the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and the status of stateless persons or third country nationals as refugees or as persons who otherwise need international protection, as well as the content of the protection granted and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.



Possible Solutions

The first step in defining rules on the recognition of refugees could be to ensure that Member States apply common criteria for the identification of individuals who are genuinely in need of international protection. In addition, a minimum level of benefits should be available for these persons. It is necessary to introduce common criteria for the recognition of applicants for asylum as refugees, and differences in legal frameworks should be diminished. Countries all over the world should improve their cooperation in order to cope with international refugee crises.

Despite the fact that multiple rights are being protected in the 1951 Convention and various human rights treaties, refugees in several countries do not enjoy full legal protection of fundamental rights. Ethiopia, for example, has been treating Articles 17 and 22 as recommendations rather than obligations. Additionally, restrictive labour and property laws in Lebanon, a country that is not a party to the 1951 Convention but is host to a considerably large number of refugees, mostly Palestinians, prevent those refugees from registering property and from practicing certain professions, including law, medicine and engineering. Policies should be written that make sure that refugees can enjoy full legal protection in all countries.

Subsequently, Member States should have regard for child-specific forms of persecution and should ensure that the family unity can be maintained.

Furthermore, minimum standards for the qualification of stateless persons and refugees who need international protection should be laid down.

Finally, a common concept of the persecution ground 'membership of a particular social group' should be introduced.

Appendix/Appendices

- <http://www.ijrcenter.org/refugee-law/>



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