

# Human Rights Council

The right to asylum



<b>Forum</b>	Human Rights Council
<b>Issue:</b>	The right to asylum
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## Introduction

The United Nations Refugee Agency (UNHCR) has recently published its Global Trends report, in which is stated that the amount of forcibly displaced people (as a result of conflict, persecution, conflict, violence or human rights violations) exceeded 70 million last year, and thus reaching an all-time high in the agency's over 70 years of operation. Of these displaced people over 3.5 million people were asylum-seekers, people outside their country of birth under international protection, yet awaiting refugee status. In the year 2018 asylum-seekers submitted 2.1 million new claims.

*"What we are seeing in these figures is further confirmation of a longer-term rising trend in the number of people needing safety from war, conflict and persecution," – Filippo Grandi, UN High Commissioner for Refugees*

The international displaced population can be divided into three major subdivisions: internally displaced persons (IDP's), refugees and asylum-seekers. Internally displaced persons (IDP's) are people who are forced to flee their homes, but remain in their country's borders. Although they are often referred to as refugees, they do not fall within the legal definition of the previously stated group. A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries. An asylum seeker is an individual who is seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker.



## Definition of Key Terms

### Asylum-seeker

When people flee their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded.

### Refugee

A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.

### Internally displaced person (IDP)

An internally displaced person, or IDP, is someone who has been forced to flee their home but never cross an international border. These individuals seek safety anywhere they can find it—in nearby towns, schools, settlements, internal camps, even forests and fields. IDPs, which include people displaced by internal strife and natural disasters, are the largest group that UNHCR assists. Unlike refugees, IDPs are not protected by international law or eligible to receive many types of aid because they are legally under the protection of their own government.

### Refugee status determination (RSD)

Refugee Status Determination, or RSD, is the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law. RSD is often a vital process in helping refugees realize their rights under international law.

### Right of asylum

The right of asylum is an ancient juridical concept, under which a person persecuted by one's own country may be protected by another sovereign authority,



## Convention Relating to the Status of Refugees (1951)

The Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention, is a United Nations multilateral treaty that defines who a refugee is, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum.

### General Overview

The right of asylum is an ancient juridical concept under which a person persecuted by one's own country may be protected by another sovereign authority. The Egyptians, Greeks and Hebrews alike recognized this right, from whom it was adopted into western tradition. Modern political asylum is enshrined in the United Nations Universal Declaration of Human Rights of 1948 and supported by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Under these agreements, a refugee is a person who is outside that person's own country's territory owing to fear of persecution on protected grounds, including race, caste, nationality, religion, political opinions and participation in any particular social group or social activities.

The field of asylum is swiftly and seriously developing. These developments include a general refusal by States in a particular area to grant even temporary admission to large numbers of asylum-seekers arriving by sea, a similar systematic refusal is of admission at land frontiers, and the large-scale refoulement of refugees and asylum-seekers who had already entered a State's territory

Two thirds of the refugees present-day have fled from conflict in Syria, South Sudan, Afghanistan, Myanmar and Somalia.

### Asylum-seeking: Problems

The problems that arise in the case of a large-scale influx of asylum-seekers are of a special character, often calling for extraordinary solutions. Problems often arise in three types of situations:

- An asylum-seeker encounters difficulty finding a country willing to consider his request,
- A refugee for various reasons loses his right to reside in or to return to his country of asylum, without having acquired the right of residence in another country,



- A refugee leaves his country of asylum for compelling reasons.

### Difficulties in finding a country of asylum

Certain States carry out restrictive practices in regard to asylum. This can take many forms. Some close their borders to prevent asylum-seekers from being able to submit an asylum request to the authorities. Some States only consider an asylum request when the asylum-seeker has entered the country in legal fashion, whilst asylum-seekers are often obliged to do so in an irregular manner. Other States apply restrictive criteria whilst reviewing asylum request, and exclude certain groups of asylum-seekers solely based on political reasons or ties to the asylum-seeker's country of origin. Lastly, some States are only prepared to admit asylum-seekers to their territory on a strictly temporary basis, suspecting the rapid continuing their journey to a different country.

Unlike those States previously mentioned, many States are prepared to grant asylum to asylum-seekers whom their authorities consider to be refugees. States that thus grant asylum normally also apply certain, specific criteria for determining whether or not they are the "country of first asylum" (the State to which an application for asylum should appropriately be addressed). This position may not be so clear if the asylum-seeker has passed through one or more intermediate countries. Certain States consider that, where an asylum-seeker has passed through another country, it is to the authorities of that country that the asylum-seekers should have addressed himself and their request for asylum. Another criterion relates to the nature of the asylum-seeker's sojourn in an intermediate country, and if during this sojourn he has established any relevant links with that country. If the asylum-seeker can show that it was his intention, when leaving his country of origin, to request asylum in that particular State, less importance will be attributed to the length of time spent by him in an intermediate country or countries. If the country in which he wishes to submit his request will not consider itself "the country of first asylum", this does not provide a solution for the asylum-seeker, who will need to make a further effort to find an asylum country.

A number of States have concluded agreements providing for the return to the other contracting State of persons who have entered their territory from that State in an unlawful manner. Such "refoulement" agreements could therefore also apply to persons coming illegally from the territory of another contracting State in order to seek asylum. It is desirable that refoulement agreements be applied with due regard to the special situation of the asylum-seeker. If not, these agreements heavily clash with the principle of non-



refoulement within international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution.

### Loss by a refugee of his right to reside in or to return to his country of asylum

When a refugee has been granted asylum in a particular country otherwise than on a strictly temporary basis, situations may arise in which he loses his right to reside in or to return to his asylum country, even though he has not acquired the right of residence elsewhere. This situation could arise in a variety of circumstances: the refugee may lose his right of residence due to departure or absence from the country for a certain period, during which the validity of his travel documents or residence permit expires, or the refugee may be the subject of an expulsion measure.

Even though a refugee has been granted asylum, it may nevertheless be necessary for him to travel to other countries for longer periods of time. Under the legislation of a number of countries, however, a refugee may lose his right of residence upon departure or through absence from the country for more than a certain period. Even though the travel document issued to him by the authorities of that country may still be valid and may still give him the right of return, a refugee may find himself in difficulty if he returns to the country, due to his right of residence there having terminated. This can lead to the possibility of a refugee being in a situation where he is once again without a country of asylum. The same situation can take place when the validity of their travel document expires whilst being abroad, which will eventually result in the return to asylum-seeker status under international law.

Situations unfortunately arise in which the authorities of an asylum country feel constrained to resort to an expulsion measure against a refugee. The consequences for the refugee in question are very serious and may often lead to special hardship. The refugee will lose the right to reside in his asylum country, and will have no country other than his country of origin in which he is entitled to take up lawful residence, and therefore returns to asylum-seeker status.

As has been illustrated, procedures surrounding the request of asylum are often very complex and can result in a multitude of difficulties for both States and individuals seeking asylum. Therefore, it is of key importance to ensure safety and shelter for all asylum-seekers, and to make sure that these procedures are regulated through strict yet clear regulations.



## Major Parties Involved

### Hungary

Hungary was one of the countries who refused to partake in the redistribution of asylum-seekers as coordinated by the European Union. On top of this, Hungary has even gone as far as to erect a fence at the Serbian border in 2015 to prevent asylum-seekers from entering the country. Its parliament has also approved the automatic detention of any asylum-seekers in container camps at the country's border, which prompted deep concern at the UN Refugee Agency. Any such detention is a flagrant breach of international and European law. Together with Slovakia, and backed by both Poland and Czech Republic, it has filed a lawsuit concerning the mandatory relocation of asylum-seekers in 2015. However, the case has been thrown out the window in 2017 by the ECJ.

Polls conducted in Hungary illustrate an unwelcoming attitude towards asylum-seekers, them being a threat to the homogenous, Christian societies these countries represent. This is often rooted in the spread of misinformation, as well as the predominantly (far-)right governments ruling these countries.

### Greece

If asylum-seekers bear the intention to settle in Europe, they will often strand of the many Greek islands. There is also a large stream of asylum-seekers that previously have been temporarily housed in Turkey and will now make their way towards Greece and the rest of Europe that lies beyond. This means that Greece heavily bears the massive influx of refugees, needing to provide them with permanent and definite housing, relocating these asylum-seekers throughout their own countries and the rest of Europe, helping them with finding a place of equipment, providing them with the necessary documentation and so forth. To lessen the strain on these countries (with an eye on the country of first asylum policy), it is important that all European countries are willing to comply with rules and regulations fastening the process of redistribution of asylum-seekers whilst regarding human rights.

### Turkey

Although attention is often drawn to the refugee crisis in the European continent, Turkey is the country hosting the biggest asylum-seeking population, as well as a country crossed through by a lot of asylum-seekers on their way to Europe. Turkey hosts almost 2.7 million asylum-seekers, this being 4 times the number of asylum-seekers being hosted in



Europe. When looking at the question of asylum-seekers, it is important to not only pay attention to Europe, but even more so to the countries in the Middle East (Turkey, Lebanon, Jordan) directly surrounding vulnerable regions such as Syria

## UN involvement, Relevant Resolutions, Treaties and Events

- Universal Declaration of Human Rights, 10 December 1948
- Convention Relating to the Status of Refugees, 28 July 1951
- Protocol Relating to the Status of Refugees, 4 October 1967

## Previous Attempts to solve the Issue

With the adaption of the Universal Declaration of Human Rights, a milestone in the UN's history, and the later on adapted Convention Relating to the Status of Refugees, it is established that every country should grant asylum, seeing that it is a human right.

From 1999 and on the European Union (EU) has been working to create the Common European Asylum System (CAES), with the goal to effectively (re)distribute asylum-seekers between European countries. Similar frameworks have been implemented in different continents. However, not all continents have established such a framework yet, therefore making this an area of improvement for some continents and countries.

Although the UN, and the Human Rights Council in particular, has been especially actively engaged with the safety of refugees and asylum-seekers, UN resolutions have not yet tested the principle of the right to asylum itself, and in what way this right to asylum is disregarded, as well as how to improve the execution of this fundamental human right. Therefore, it is of even more importance that concrete regulation surrounding the right of asylum is debated upon.

## Possible Solutions

To actively and effectively tackle the issues concerning asylum, several solutions need to be applied in order to make sure that every asylum-seeker will eventually be able to enjoy their right of asylum





States that at present follow restrictive asylum practices should in a spirit of international solidarity adopt a more flexible approach so as to increase the possibilities for asylum-seekers to find a country of refuge. An effort should especially be made. Especially, an effort should be made to resolve the problem of the “country of first asylum” by the establishment of common criteria, in order to avoid any confusion and difficulties to arise before, during or after the requesting of asylum. These criteria needs to specify which specify to which country the asylum-seeker needs to address themselves and submit their request for asylum or asylum, and needs to be accompanied with any appropriate institutional arrangements. Lastly, whilst establishing these criteria, extra attention is to be paid to ensuring that any such criteria do not breach breach the concept of non-refoulement non-refoulement under international human rights law. Asylum requests should not be excluded from consideration under asylum procedures because of mere non-compliance with formal requirements and States should pay particular attention to the need for avoiding situations in which refugees lose their right to reside in or to return to the country of asylum without having acquired the possibility of taking up residence in another country. In extreme cases, when any refugees return to the status of asylum-seeker due to expulsion, the country issuing the previously stated expulsion must ensure that this asylum-seeker has the possibility of being taken in by another country. States should continue to extend the validity of or to renew refugee travel documents until the refugee has taken up lawful residence in the territory of another contracting State. Where a refugee who has already been granted asylum in one State requests asylum in another State on the grounds that he has compelling reasons for leaving his present asylum country the authorities of the second State should give favourable consideration to his asylum request.

To outline these statements strictly and clearly will ensure that throughout the entire process of submitting an asylum request, the human rights of the asylum-seeker will be guaranteed to the fullest extent, and will positively affect both asylum-seekers and governments alike.

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## Appendix or Appendices

### Appendix I

[https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

### Appendix II

<https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfce1d47>



