

# Research Report

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ECOSOC

Revising of border laws in the EU concerning asylum seekers



# MUNISH '11



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<b>Forum</b>	ECOSOC
<b>Issue:</b>	Revising of border laws in the EU concerning asylum seekers
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## Introduction

This issue concerns the review of border laws in the European Union concerning asylum seekers. The asylum in the European Union was formed by the application of the Geneva Convention Relating to the Status of Refugees on the 28<sup>th</sup> of July 1951. Later Member States agreed on new regulations concerning asylum seekers as a result of common state policies that appeared around the 1990s in connection with the signing of the Schengen Agreement on the suppression of international borders. A common policy on asylum in the European Union was established to avoid unsuccessful asylum seekers making a new application in another EU country. The common policy started to form during the Dublin Convention in 1990. Thereafter the Member States continued to develop their common policy through the implementation of Eurodac and the Dublin Regulation in 2003. In October 2009 another two proposals were adopted by the European Commission. Since 1951 the European Union has agreed upon a great number of regulations and border laws. However, many countries in the European Union, especially the Western European countries and countries at the border of the EU, continue to experience great difficulties with current regulations on asylum.

## Definition of Key Terms

### European Commission

“The European Commission represents the general interest of the EU and is the driving force in proposing legislation (to Parliament and the Council), administering and implementing EU policies, enforcing EU law (jointly with the Court of Justice) and negotiating in the international area.” (Source: official website of the European Commission:

[http://ec.europa.eu/about\\_en.htm](http://ec.europa.eu/about_en.htm))



## Geneva Convention Relating to the Status of Refugees

The United Nations Convention Relating to the Status of Refugees is an international convention signed (either with or without reservations) by 148 nations, that defines which people are considered a refugee and that defines the responsibilities of a nation that grants asylum, concerning the rights of individuals who have been granted asylum in their country. The convention also sets regulations to define which persons do not qualify as, and therefore do not have the rights of, refugees. War criminals for example do not qualify as refugees. The convention was approved on the 28<sup>th</sup> of July 1951 by the United Nations. It was first implemented on the 22<sup>nd</sup> of April 1954. The convention was originally meant for the protection of European refugees after the Second World War. However, in 1967 a new protocol removed the geographical and time limits, whereby the convention's regulations were expanded.

Because the Convention Relating to the Status of Refugees was ratified in Geneva, the convention is sometimes mistakenly referred to as linked to the Geneva Conventions (of which the fourth treaty was signed in the aftermath of WWII) that specifically deal with rights of civilians and soldiers in time of war.

### Asylum seeker

A person who has fled their own country for their safety, often for political or economic reasons or because of war, and applies to the government of another country for protection as a refugee. The term 'asylum seeker' applies to all people who apply for refugee protection, whether or not they are officially determined to be refugees.

### Refugee

As defined by Article 1 of the Convention Relating to the Status of Refugees as amended by the 1967 Protocol:

*"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.."*



However, for example the Organisation of African Unity (OAU) during the Convention Governing the Specific Aspects of Refugee Problems in Africa adopted a regional treaty that was based on the original Convention in Geneva, defining a refugee as:

*“Any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality”*

And also, in 1984 a number of Latin American governments adopted the Cartagena Declaration, which also was based on the original Convention in Geneva, defining refugees as: *“Persons who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”*

## **Schengen Agreement**

The Schengen Agreement was established in 1985. The Schengen Area defines a territory that makes the free movement of persons within that territory possible. No visa or identification is required to travel between member countries. All borders within the Area have been abolished. They have been replaced by an external border, surrounding the Schengen Area, as if the area were a single state. On the border of the Schengen Area common regulations and procedures are used. In addition, to guarantee security within the established Area a coordination between police services and judicial systems of the member countries has been set up. The Schengen Agreement has been incorporated in the European Union Law in 1997. However, all countries within Schengen did not necessarily sign the Schengen Agreement. This can be either because they do not want to eliminate the controls at their borders or because they have not yet fulfilled the conditions required for incorporation in the Schengen Agreement. Members of the Schengen Agreement currently are:

Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

## **Dublin Convention in 1990**

The Dublin Convention is an international agreement on asylum requests in Europe. The goal of the Convention was to come to a regulation that would divide the responsibility



between European countries for the management of the requests for asylum, based on the earlier Convention Relating to the Status of Refugees. All EU Member States agreed to the Convention.

## **EURODAC**

EURODAC is an identification system of the European Union. The system records and compares fingerprints of asylum seekers and illegal immigrants. It was set up to strengthen the Dublin Regulation and is used by all Member States of the European Union as well as by Iceland and Norway (Which signed the Dublin Regulation although not being part of the European Union).

## **Dublin Regulation in 2003**

The Dublin Regulation replaced the Dublin Convention of 1990. The regulation is a European Union Law that determines the responsibility of each EU Member State regarding applications for asylum seekers seeking protection under the Geneva Convention. It regulates the transfers of asylums to a determined Member State. Currently the responsible State will be the State through which the asylum seeker entered the European Union.

## **General Overview**

### **Regulations set by the Convention Relating to the Status of Refugees**

The regulations set by the Convention can be divided into three parts: Responsibilities of Parties, innocence of refugees unlawfully entering the country of refuge, the principle of non-refoulement.

#### **Responsibilities of Parties:**

It is regulated by international law that international treaties are binding upon the nations that ratified the treaty. This means that nations that ratified the Convention must protect any refugees on their territory, in accordance with the regulations set by the Convention. The main responsibilities of the Parties of the Convention and the protocol of 1967 are:



- Cooperation with the UNHCR. The UNHCR should be free to work in the country, helped by the government of that country with the supervising of the implementation of the Convention.
- Information on national legislation: The United Nations should be informed of the laws and regulations that governments may adopt in order to ensure their implementation of the Convention.
- Exemption from Reciprocity

Normally, a government has the right to set regulations that do not allow a foreigner to stay in its country for longer than a defined period of time. (for example: no longer than three months). However, in the case of a refugee this right does not apply, because refugees do not have the protection of their home country.

### **Innocence of refugees unlawfully entering the country of refuge**

*"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."* (Source: Convention Relating to the Status of Refugees, Article 31.)

### **The principle of non-refoulement**

A refugee has the right to be protected against forcible return.

*"No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion"* (Source: Convention Relating to the Status of Refugees, Article 33.)

It is widely accepted in international law that this forcible return of refugees is prohibited. Therefore, also non-party States are obliged to respect this article. When this article is threatened by a state, the UNHCR has the right to respond by intervening with the authorities of said state and will inform the public if it is thought necessary.



However, the European system for the managing of asylum seekers by far is not flawless. Situations occur continuously in which persons asking for asylum are not treated rightfully. This is mainly because some European countries, especially Western European countries and countries on the border of Schengen, are not able to deal with the number of asylum seekers that ask for protection. The treatment of asylum seekers has been a point of discussion in the European Union for the last years now. Member States want to cooperate more on issues concerning asylum seekers. However, this leads to debates concerning the protection of the human rights of the refugees or asylum seekers both when they apply for asylum and during the application procedure. For example, once accepted into the country, during the bureaucratic process of application, the asylum seekers can be kept waiting for years, after which they can still be deported out of the country, because their access into the country has finally been denied. The asylum seeker who during these years fully adopted to his new home country, and who maybe even raised his children in the country, can be forced to move back to his homeland. Governments are sometimes even accused of deliberately using the bureaucratic process to slow down and ultimately reject what might by other parties be considered as valid requests for asylum.

The issue of the protection of the rights of asylum seekers was given a lot of attention in January 2011, when the media reported a remarkable case. The European Court for Human Rights ruled that the deportation of an asylum seeker from Belgium to Greece undermined the human rights of the asylum seeker and was therefore illegal. An Afghan asylum seeker first entered the European Union in Greece, after which he traveled to Belgium to apply for asylum there. Under the regulations set by the European Union in the Dublin Regulation, asylum applications must be processed in the country of entry into the EU, hence the deportation of the Afghan asylum seeker to Greece. The European Court for Human Rights stated that the appalling conditions in Greek refugee camps violate human rights and are humiliating and therefore the deportation to Greece by Belgium was ruled illegal.

This immediately touches upon another issue of argument, namely the conditions in refugee camps in the European Union. According to human rights organisations, these conditions are often inhumane.

The European Council on Refugees and Exiles (ECRE) and UNHCR are of opinion that the current asylum system fails to provide fair, efficient and effective protection. Many times it has been demonstrated by ECRE and UNHCR, that the regulations and conditions in refugee camps undermine legal rights of asylum seekers. They point out problems due to unfair examination of a request for asylum and effective protection after granting of asylum



but also due to the uneven distribution of the asylum claims among Member States of the EU. Other objections to the system are that claims are sometimes never heard; the use of detention to enforce transfers between the country of arrival and the responsible country; the separation of families; the denial to an opportunity to appeal against transfers; and the lack of care for unaccompanied children. They also state that too much pressure is placed on external border regions of the EU.

## Major Countries and Organisations Involved

### UNHCR (United Nations High Commissioner for Refugees)

The UNHCR states that the Convention Relating to the Status of Refugees is the centerpiece of international refugee protection today.

### EUROPEAN UNION

ECRE (European Council on Refugees and Exiles)

## Relevant UN Treaties and Events

- The International Covenant on Civil and Political Rights
- The 1951 United Nations Convention Relating to the Status of Refugees
- modified by the 1967 Protocol Relating to the Status of Refugees, which a country needs to have signed separately in order to be binding
- The 1966 Bangkok Principles on Status and Treatment of Refugees adopted at the Asian-African Legal Consultative Committee in 1966
- The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
- The 1976 Council of Europe's Recommendation 773 (1976) on the Situation of de facto Refugees
- The 1984 Cartagena Declaration on Refugees for Latin America
- The 2004 European Union's Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and content of the protection granted

## Previous Attempts to solve the Issue





Several protocols and conventions have followed earlier out-dated conventions and regulations. Most of these are described above.

## Possible Solutions

Member States of the European Union have been experiencing difficulties with the management of requests for asylum for a great number of years. Often problems are caused do to the big amount of pressure that is laid upon some countries in the EU by the number of asylum seekers the State has to manage.

Member States have been struggling with the issue for a long time and different laws have been adopted or stricken. To give an example the OFPRA (*Office français pour la protection de réfugiés et apatriades*- French Office for the Protection of Refugees and Stateless Persons) has made a list of countries deemed safe and which respect political rights and principles of liberty. Asylum seekers from these countries are not offered asylum in France. After implementation of this law, the number of refugees from the countries on this list was reduced to 80% after six months.

What should probably mainly be tried to achieve, is to set strict regulations on the conditions in refugee/asylum camps and to lessen the pressure caused by the number of asylum seekers on some countries by a better division of requests for asylum between Member States of the EU. Also should the effectiveness and efficiency of the application process and the protection by the Member States of the entire European Union be improved.

## Bibliography

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### Useful links

-Text of the Convention Relating to the Status of Refugees of 1951, including the 1967 Protocol:

<http://www.unhcr.org/3b66c2aa10.html>

### Annex

Positive decisions on asylum applications (%)  
2010

