

International Refugee Law

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UNHCR

- **Created in the aftermath of World War II**
- **Mandated to protect and find durable solutions for refugees**

International Refugee Law

- The Refugee Convention of 1951
- The 1967 Protocol relating to the status of refugees
- The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
- The 1984 Cartagena Declaration on Refugees

The Refugee Convention of 1951

- The RC is the key legal document that forms the basis of the UNHCR
- Defines the term “refugee” and outlines the rights of the displaced, as well as the legal obligations of States to protect them
- The core principle is non-refoulement (Art 33)

Rights of a Refugee

- exempt refugees from reciprocity (Article 7): That means that the granting of a right to a refugee should not be subject to the granting of similar treatment by the refugee's country of nationality, because refugees do not enjoy the protection of their home state.
- be able to take provisional measures against a refugee if needed in the interest of essential national security (Article 9)
- respect a refugee's personal status and the rights that come with it, particularly rights related to marriage (Article 12)

Rights of a Refugee (contd.)

- provide free access to courts for refugees (Article 16)
- provide administrative assistance for refugees (Article 25)
- provide identity papers for refugees (Article 27)
- provide travel documents for refugees (Article 28)
- allow refugees to transfer their assets (Article 30)

Rights of refugees

(contd.)

- provide the possibility of assimilation and naturalization to refugees (Article 34)
- cooperate with the UNHCR (Article 35) in the exercise of its functions and to help UNHCR supervise the implementation of the provisions in the Convention.
- provide information on any national legislation they may adopt to ensure the application of the Convention (Article 36).
- settle disputes they may have with other contracting states at the International Court of Justice if not otherwise possible (Article 38)

Contracting State shall not..

- discriminate against refugees (Article 3)
- take exceptional measures against a refugee solely on account of his or her nationality (Article 8)
- expect refugees to pay taxes and fiscal charges that are different to those of nationals (Article 29)
- impose penalties on refugees who entered illegally in search of asylum if they present themselves (Article 31)
- expel refugees (Article 32)
- forcibly return or 'refoul' refugees to the country they've fled from (Article 33).

Definition of “Refugee”

- “As a result of events before 1 January 1951 owing to *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 return to it.”

1967 Protocol Relating to the Status of Refugees

- Covers the legal status of refugees
- Discusses the obligations of a State
- Removes geographic and temporal limitations

The 1969 OAU Convention

- Met the specific problems of refugees in Africa
- Redefined “refugee”
- Includes people fleeing civil disturbances, violence and war
- Offers protection to those who wish to escape serious disruption of public order

Cartagena Declaration of 1984

- Used as a guiding convention throughout the Latin American region
- Includes the RC's definition and adds “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which has seriously disrupted public order.”

What is meant by protection

- Sovereign (state)-citizen relation
- Non-refoulement
- Resettlement
- Non-discrimination in the enjoyment of civil, economic, and cultural rights

Additional goals of Protection

- Admission to safety
- Physical Security
- Access to a durable solution (i.e voluntary repatriation, local integration, etc)

Legal Lacunae / Ambiguities

- Lack permanence
- Definition of “refugee” and the establishment of a “well founded fear”
- Limited geographical and temporal ambit
- Ambiguity regarding “persecution”
- Left out socio-economic rights
- Heavy limits of protection
- Excluded women

RC: ARTICLE 33

- Inconsistent interpretation
- Restrictive & Broad-based approach
- D'Angelo, the unfortunate reality is that the 'destiny of many refugees depends upon whether they reach the border of a state that interprets Article 33 more favourably than its neighbour'.

Determination of Refugee Status

- Refugee v Asylum seeker
- Determination of Refugee Status is made by States themselves
- Sivakumaran
- Karanakaran Case
- Kaja case

Refugee Hosting countries non-signatories

- Jordan, Pakistan, Lebanon
- Article 33-customary in nature
- No major consequences of violation of

Article 33

Lack of Burden Sharing

- 10 countries
- Countries are building walls to prevent entry
- Underfunded agencies

Syrian Refugee Crisis

- An estimated nine million have fled their homes since the outbreak of the civil war in March 2011
- As of December 2015, one million asylum seekers stepped onto EU soil
- 13.5 million people in Syria are in need of humanitarian assistance
- Children affected by the crisis are at risk of becoming ill, malnourished, abused or exploited

- Countries have adopted the non-entry approach
- Countries such as Jordan and Lebanon have not ratified the 1951 Convention and the 1967 Protocol
- Turkey is only party to 1951 Convention
 - *Those displaced Syrians residing in Lebanon, Jordan, and Turkey have no legal right to be recognized as refugees under the domestic legal framework

Recommendations

- Jurisprudence under the RC should be developed on a case-by-case basis.
- Regional instruments of protection should be adopted
- Remove the notion of a “crisis”.
- Refugees should be resettled in prosperous nations

Recommendations

- States must adopt baselines or best practices in order to make the process of seeking asylum more efficient
- Prosperous nations need to have a strong will to improve level of protection for refugees

Thank you!!!