

## UN and refugee policy United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees was set up as a subsidiary organ of the General Assembly on 1 January 1951<sup>1</sup>

The main task of the High Commissioner is to provide international protection to refugees and to seek durable solutions for refugees by assisting Governments to facilitate the voluntary repatriation of refugees, or their integration within new national communities.<sup>2</sup> The High Commissioner's function is qualified as "entirely non-political" and "humanitarian and social."

In fulfilling its protection function, the tasks of the High Commissioner as set out in the Statute, and included in Appendix 1.

### International refugee law

A number of international instruments establish and define basic standards for the treatment of refugees. The most important are the 1951 United Nations Convention relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees.

### The 1951 Convention relating to the Status of Refugees

The 1951 Convention was drafted as a result of a recommendation by the newly established United Nations Commission on Human Rights, set standards for the treatment of refugees.

The Convention, in its **article 1**, provides a general definition of the term "refugee". The term applies to any person who "as a result of events occurring **before** 1 January 1951 and 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 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".<sup>3</sup>

The Convention prohibits the expulsion or forcible return of persons having refugee status.<sup>4</sup>

### 1967 Protocol relating to the Status of Refugees

The 1951 Convention could benefit only persons who had become refugees as a result of events occurring prior to 1 January 1951. Throughout the late 1950s and 1960s new refugee

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<sup>1</sup> Resolution 319 A (IV) of 3 December 1949 of the General Assembly

<sup>2</sup> Article 1 of the Statute of the Office

<sup>3</sup> The Convention sets the minimum standards of treatment of refugees, including the basic rights to which they are entitled. It also establishes the juridical status of refugees and contains provisions on their rights to gainful employment and welfare, on the issue of identity papers and travel documents, on the applicability of fiscal charges, and on their right to transfer their assets to another country where they have been admitted for the purposes of resettlement.

<sup>4</sup> **Article 33** stipulates that "*no Contracting State shall expel or return (refouler) 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 group or political opinion*".

**Article 34** concerns the naturalization and assimilation of refugees. Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement.

groups emerged, in particular in Africa. These refugees were in need of protection which could not be granted to them under the limited time-frame of the 1951 Convention.

The 1967 Protocol extended the application of the Convention to the situation of "new refugees", i.e. persons who, while meeting the Convention definition, had become refugees as a result of events that took place after 1 January 1951.

### **Other international instruments**

The **1949 Fourth Geneva Convention** Relative to the Protection of Civilian Persons in time of War: **article 44** of this Convention, whose aim is the protection of civilian victims, deals with refugees and displaced persons. Article 73 of the 1977 Additional Protocol stipulates that refugees and stateless persons shall be protected persons under parts I and III of the Fourth Geneva Convention. The **1954 Convention** relating to the Status of Stateless Persons: defines the term "stateless person" as a person who is not considered as a national by any State under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless persons.

The **1961 Convention** on the Reduction of Statelessness: a State party to this Convention agrees to grant its nationality to a person born in its territory who would otherwise be stateless. The State also agrees, subject to certain conditions, not to deprive a person of his or her nationality if such deprivation would render them stateless. The Convention specifies that a person or groups of persons shall not be deprived of their nationality on political grounds.

The **1967 United Nations Declaration on Territorial Asylum**: this Declaration of the United Nations General Assembly lays down a series of fundamental principles in regard to territorial asylum. It states that the granting of territorial asylum "*is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State.*" *It upholds the basic humanitarian principle of non-refoulement and recalls **articles 13 and 14 of the Universal Declaration of Human Rights**, which spell out, respectively, the right to leave any country and to return to one's country and the right to seek and enjoy asylum.*

### **Human rights and refugees**

Asylum seekers and refugees are entitled to all the rights and fundamental freedoms that are spelled out in international human rights instruments. The protection of refugees must therefore be seen in the broader context of the protection of human rights. The work of the United Nations in the field of human rights and that of the High Commissioner for Refugees is inextricably linked in the sense that both entities share a common purpose which is the safeguarding of human dignity. The human rights programme of the United Nations deals with the rights of individuals in the territory of States. The refugee organization was established in order to restore minimum rights to persons after they leave their countries of origin.

## Rights of refugees

The present concept of international protection has evolved gradually and today implies a series of institutional and legal responses. Protecting refugees and seeking durable solutions to their problems are the two main functions of the High Commissioner for Refugees.

In practical terms, the task of international protection includes the prevention of refoulement, assistance in the processing of asylum seekers, **providing legal counsel and aid**, promoting arrangements for the physical safety of refugees, promoting and assisting voluntary repatriation, and helping refugees to resettle<sup>5</sup>

The international protection function has a legal basis, and its exercise is mandatory for the High Commissioner. The right to protection, although not defined as a separate right as such, is implicit in the 1951 Convention and its fundamental provisions, particularly the principle of non-refoulement. In addition, many universally recognized human rights are directly applicable to refugees. These include the right to life, protection from torture and ill-treatment, the right to a nationality, the right to freedom of movement, the right to leave any country, including one's own, and to return to one's country, and the right not to be forcibly returned. These rights are affirmed, among other civil, political, economic, social and cultural rights, for all persons, citizens and non-citizens alike, in the **Universal Declaration of Human Rights**, the **International Covenant on Civil and Political Rights**, and the **International Covenant on Economic, Social and Cultural Rights** which together make up the **International Bill of Human Rights**.

## Non-refoulement

Not all of the important rights for refugees are mentioned specifically in the International Bill of Human Rights. A central element of international protection is the right not to be forcibly returned or expelled to a situation which would threaten one's life or freedom. This is the principle of non-refoulement which is embodied in article 33 of the 1951 Convention.

The United Nations **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** stipulates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture"<sup>6</sup>. Furthermore, "for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights"<sup>7</sup>.

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<sup>5</sup> Article 8 of the Statute of the Office of the UNHCR.

<sup>6</sup> Article 3 para 1 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>7</sup> Article 3 para 2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>8</sup>

Jonathan Goldsmith: Migration crisis: lawyers respond in The Law Society Gazette 26 October 2015