

International and European Refugee Law

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Topics

- Historical development
- Convention Relating to the Status of Refugees
- Other regional instruments
- EU law
- European law

- Discussion

State as a sovereign in international law

- ⊙ State - a sovereign in int.law,
- ⊙ Territory delimited by borders,
- ⊙ States have a bond with a group of persons –citizens
- ⊙ Citizens entitled to enter territory of their states and reside there. Foreigners – no right to enter under int.law, **unless otherwise in conventions!**
- ⊙ Entitlement to control immigration
- ⊙ Migration – a person establishes a new residence in a country of which he/she is not a citizen.

International refugee law - history

- Russian Refugees – after Russian revolution 1917
 - any person of Russian origin who does not enjoy the protection of the government of the Union of Soviet Socialist Republic and who has not acquired any other nationality
- Armenian Refugees
 - 1920's – identity documents
- Convention Relating to the Status of Refugees (1933)
- AD HOC responses (30s - German refugees)

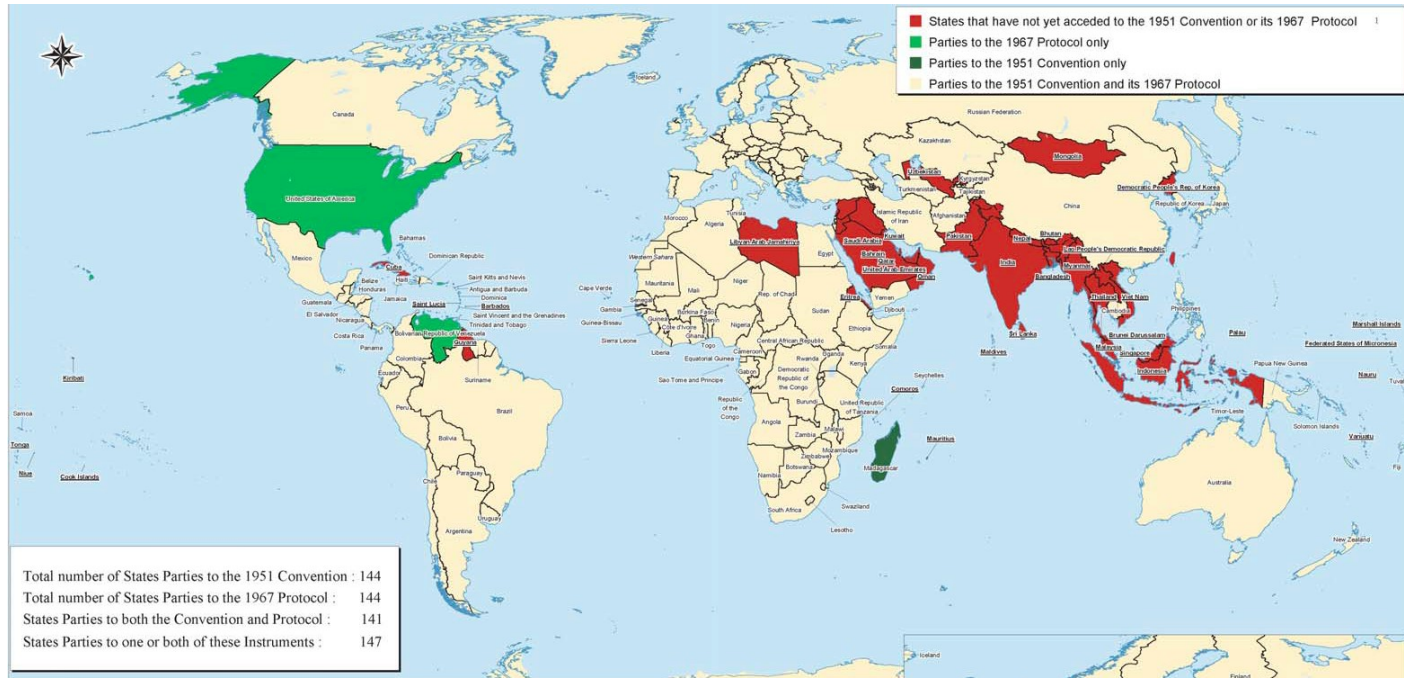
International refugee law – current law

- International instruments:
 - (Geneva) Convention Relating to the Status of Refugees (1951)
 - Protocol Relating to the Status of Refugees (1967)



- Regional instruments

Parties to Geneva convention



Parties to the 1951 Convention relating to the status of refugees and/or its 1967 protocol

As at 1st January 2008

States that have not yet acceded to either instrument are indicated in red and their names are underlined.

The boundaries shown on this map are those used by the UN Cartographic Section, New York. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.



UNHCR

- www.unhcr.org
- United Nations High Commissioner for Refugees
- mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide
- Established as an ad hoc body in 1950 with a 3 year mandate – consequently prolonged until 2003 – now indefinite?

--Durable solutions: return, resettlement, local integration

- As of 31 May 2018, UNHCR employs 11,517 staff members, of whom around 87 per cent are based in the field.
- UNHCR works in 128 countries

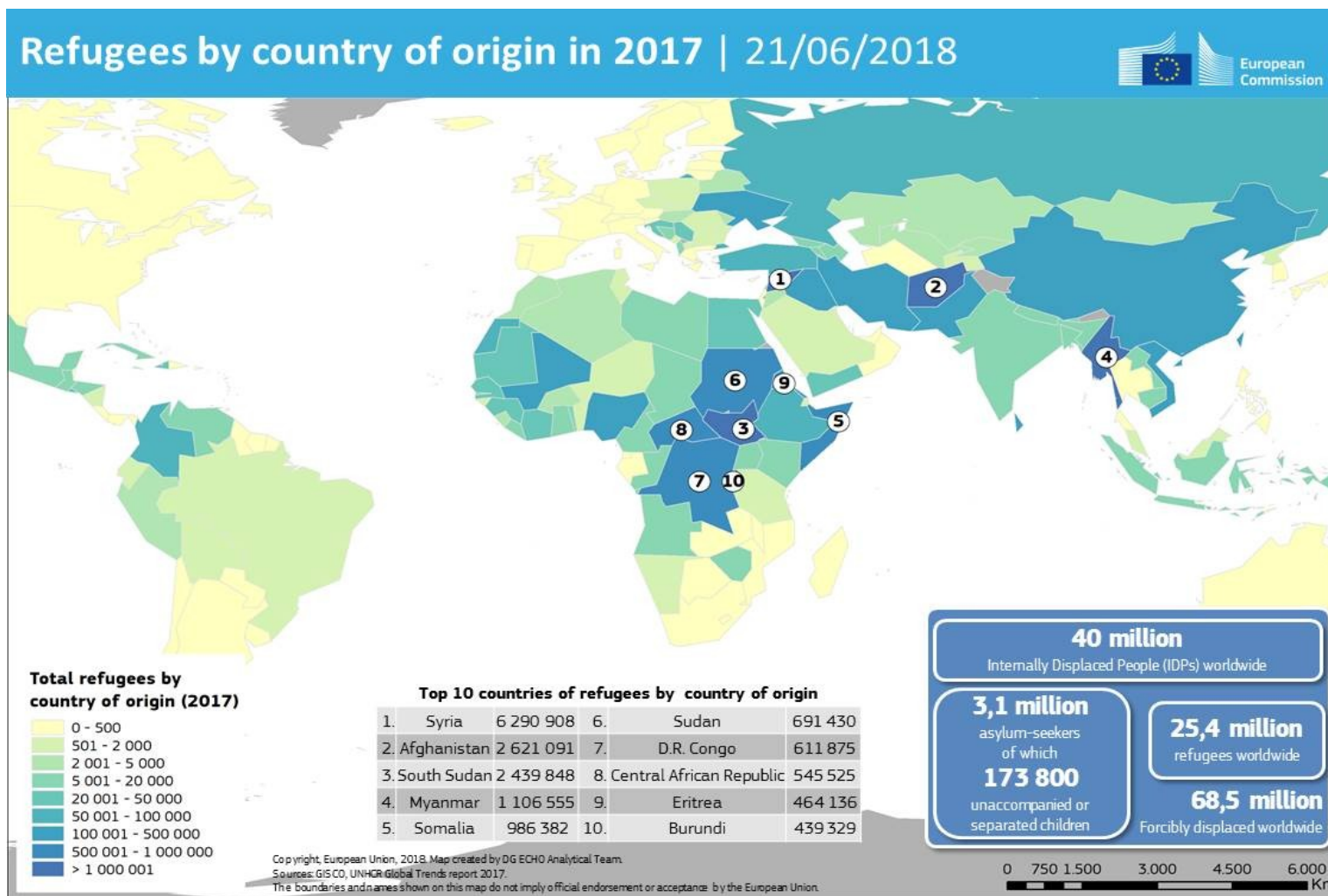
Definition of a refugee

Art. 1A - inclusion clause: Who is a refugee

Art. 1C – cessation clause: Who is no longer a refugee

Art. 1D, 1E, 1F – exclusion clauses: Who does not need the protection or who does not deserve to be treated as a refugee

Main source countries



Inclusion clause

As a result of events occurring before 1 January 1951 and owing to wellfounded 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.

Definition of a refugee

- is outside the country of his/her nationality,
- is owing well-founded fear
- of being persecuted
- for one of the conventional reasons (causal link!):
 - race,
 - nationality,
 - religion,
 - membership of a particular social group,
 - political opinion

(one is enough!).

A refugee must be:

- unwilling or unable to avail himself/herself of the protection of the country

Persecution

- Act causes severe harm to a fundamental human right (right to life, liberty, physical integrity).
- Persecution could result from:
 - direct involvement of state actors
 - actors beyond the control of the state
 - non-state actors tolerated by the state
 - non-state actors that state is not able to prevent from doing so

Exclusion clauses

- Art 1(D) – persons receiving protection from other parts of the UN (e.g. Palestinians within UNRWA)
- Art 1(E) – persons who have been assimilated into the countries where they live – same rights and obligations as nationals
- Art 1(F) – persons who do not deserve protection

Exclusion clause – art. 1 (F)

- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
 - (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) He has committed a serious non-political crime **outside the country of refuge** prior to his admission to that country as a refugee;
 - (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Cessation clause – art. 1 (C)

- C. This Convention shall cease to apply to any person falling under the terms of section A if:
 - (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
 - (2) Having lost his nationality, he has voluntarily reacquired it; or
 - (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
 - (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
 - (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Rights in the convention

- Right of access to courts
- Right to employment
- Right to self-employment
- Right to education
- Right to obtain a travel document

...



Rights in the Convention - example

- **Article 22 - Public education**
- 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
- 2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Non-refoulement – art.33

- *Par. 1 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.“*
- *Par. 2 The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.*

What the Convention does not contain

- No procedural provisions – only says „who is a refugee“
- No explanation of the terms
- No controlling mechanisms
- No crisis mechanisms
- Covers only refugees (x EU law) – no other statuses

Regional instruments for refugees

- Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (regional legal instrument governing refugee protection in Africa) 1969
- Cartagena Declaration on Refugees (non-binding) 1984
- EU law – directives, regulations
- Asia (Bangkok principles on Status and Treatment of Refugees 1966)

Asylum not covered by European Convention on Human Rights nor by ICCPR.

European region

1. Council of Europe

- European Convention of Human Rights
- European Court of Human Rights

2. European Union

- Court of Justice of the EU

European Union

- 28 member states (some of them – Eurozone, some MS + other states – Schengen states)
- Key players:
 - European Commission
 - Council of the EU
 - European Parliament

EU Charter of Fundamental Rights

- Right (?) to asylum
 - Art. 18 „The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.“

Legal space

- Regulations – directly applicable
- Directives – „show directions“ for national laws - transposition
- Decisions – ad hoc situations, directly applicable

European Commission – prepares and submits proposals

Council of the EU and European Parliament – co-decision process

DIRECTIVES

**DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 2011**

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

(recast)

EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Refugees (the Geneva Convention'), as sup
the New York Protocol of 31 Januar
Protocol'), thus affirming the principle of
and ensuring that nobody is sent back

on standards for the qualification of third-country nationals for international protection, for a uniform status for refugees and for international protection, and for the content of that status

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 78(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ⁽³⁾. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.
- (3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the Status of

Article 39

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.

Common European Asylum System

- Aim: unified asylum procedure, assessment of the claims, unified standards for asylum seekers, unified statuses and rights attached to them
- 1999 – 2013: 2 phases: minimum standards, common rules
- **International protection: asylum** (Geneva Convention) and **subsidiary protection** (inspiration art.3 ECHR?)
- 2015-2016 migration crisis – new challenges

EU law

- Common European Asylum System
- „Qualification“ directive - Council and European Parliament Directive 2011/95/EU **on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted**
- definitions - race, religion, nationality, political opinion, social group, acts of persecution, actors of persecution and protection...
- „Procedural“ directive (2013/32/EU)
- ◉ „Reception conditions directive (2013/33/EU)
- ◉ Dublin Regulation – Council Regulation No. 604/2013, – says which country is responsible for determining the claim!

QD – definition of persecution

- Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

- (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

- 2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:
- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
- (f) acts of a gender-specific or child-specific nature.

- Reasons for persecution
- 1. Member States shall take the following elements into account when assessing the reasons for persecution:
 - (a) the concept of **race** shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;
 - (b) the concept of **religion** shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

Asylum procedures directive

Procedural rules for asylum procedure at first and second instance.

May – shall provisions

- an interview before an impartial officer, a formal written decision, appeal procedure,
- rights for vulnerable groups
- right to remain in the state pending examination
- guarantees for applicants (to be informed, to have an interpreter, right to communicate with the UNHCR)
- some guarantees for free legal aid
- not be hold in detention for the sole reason of

Reception Conditions Directive

- Material conditions for asylum seekers – access to accommodation, health care, education, labour market
- Regulates detention! – identity verification, cooperation in the asylum procedure, risk to public order...

Expulsion and detention

European region

State sovereignty

- ✓ State has the power to regulate
 - ✓ Admission of non-nationals (+ border control)
 - ✓ Residence of non-nationals
 - ✓ Naturalization of non-nationals
 - ✓ Expulsion of non-nationals
 - ✓ Detention of non-nationals

State sovereignty

- towards migration is limited
 - by customary international law, by treaties
 -mainly human rights obligations

Expulsion of foreign nationals in European region

- **European Convention on Human Rights**
- EU law – Return Directive 2008/115/EC

Art. 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Where is “expulsion”? – **dynamic interpretation** of the Convention by the European Courts of Human Rights

What is expulsion?

- Art. 3 – originally only territorial application –the state cannot be liable for another state's behaviour
- Expulsion is extradition – Soering case (1988) !
- Expulsion as a criminal sanction
- Expulsion as an administrative sanction (breach of immigration rules)
- Expulsion is any kind of transfer

Case-law: complex cases – more articles in play (art.5 – detention, art.8 – right to family life, art.13 – right to effective remedy)

Article 3 - nature

- along with Article 2, the right to life, one of the most fundamental rights protected by the Convention, whose core purpose is to protect a person's dignity and physical integrity
- unlike some of the other articles of the Convention, Article 3 is stated in absolute and unqualified terms –it is not permissible under any circumstances to engage in torture, inhuman or degrading treatment or punishment. There is therefore no room for limitations by law on the provision.
- The unconditional terms of Article 3 also mean that there can never, under the Convention or under international law, be a justification for acts which breach the article. - not even in case of a fight against terrorism.
- **ABSOLUTE SAFETY NET** – non- refoulement principle

- ARTICLE 15 Derogation in time of emergency
- 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- **2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.**

Deprivation of liberty in the European region

- **European Convention on Human Rights**

- EU law – Return Directive 2008/115/EC

- Deprivation of liberty as a result of **criminal activity** or as a result of **administrative offence** (breach of immigration rules)

Art. 5 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

f) **the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.**

Article 5 - guarantees

- 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided **speedily by a court and his release ordered if the detention is not lawful.**
- 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Thank you for your attention!

Have a nice stay in the Czech Republic!

Taste as many beers as possible! :o)