



United Nations High Commissioner for Refugees

INTERNATIONAL REFUGEE LAW

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Who is a refugee?

Universal definition in international law:

UNHCR's Statute of 1950

Article 1 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol

Various regional instruments



1951 Convention

Article 1 A. For the purposes of the present Convention, the term 'refugee' shall apply to any person who:

- (2) [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....



Inclusion clauses – three basic requirements

1. The person must be outside their country of origin or habitual residence.

2. The person must have a well founded fear of persecution for reasons of:

- race
- religion
- nationality
- political opinion
- membership of a particular social group

3. The person must be unable or unwilling to avail of the protection of their own State for reasons of such persecution



What is persecution?

An act which causes severe harm to a fundamental human right – especially the right to life, liberty and physical integrity.

A person's fear of persecution can relate to something which has already happened or something they think might happen but the fear must be both subjectively and objectively rational.

Persecution could result from:

- **direct involvement of State actors;**
- **non-State actors beyond the control of the State;**
- **non-State actors tolerated by the State.**



Expanded refugee definition

The refugee definition in the 1951 Convention is based on an individualised approach – the specific fear of the individual that they have been singled out for persecution.

Over time a broader understanding of international protection has emerged under which persons who are fleeing serious and indiscriminate threats to life, physical integrity or freedom could also be recognised as refugees. The below situations are included in international refugee status related treaties:

1. Generalized violence
2. External aggression
3. Internal conflicts
4. Massive violations of human rights
5. Other circumstances seriously disrupting civil order



Universal definition of the term 'refugee'

The refugee definition contemplated by the 1951 Convention has three distinct components:

- 1. INCLUSION CLAUSES:** the criteria which make somebody a refugee and determine entitlement to international protection.
- 2. EXCLUSION CLAUSES:** criteria which determine who is not entitled to international protection under the 1951 Convention, either because they do not need it or they do not deserve it.
- 3. CESSATION CLAUSES:** criteria which determine when refugee status comes to an end.



Exclusion Clauses

The Convention specifies that it does not apply to certain categories of persons who, despite being persecuted do not need or deserve international protection.

Art 1(D) – persons receiving protection from other parts of the UN (e.g. Palestinians within UNRWA area)

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



Persons who do not deserve protection – excluded under Art. 1 (F)

Persons with respect to whom there are serious reasons for considering that:

- they have committed a crime against peace, a war crime or a crime against humanity;
- serious non-political crime committed outside the country of refuge and before admission;
- an act contrary to the purposes and principles of the UN.



Objectives of Art. 1 (F) exclusion clauses

- To protect the integrity and peaceful nature of asylum by denying international protection to the perpetrators of atrocities and serious crimes;
- To guarantee that the perpetrators of such crimes do not abuse the asylum system to avoid the legitimate application of justice – prosecution; and
- To protect asylum states from security risks created by such people.



Cessation Clauses – Art 1 (C)

1. When there are fundamental changes in the country of origin

Even when there have been fundamental changes in the home country some people may still have a well-founded fear or persecution or it may be unreasonable to expect them to go home because of the severity of past persecution

2. Voluntary re-availing of national protection – voluntary repatriation

3. Acquisition of a new nationality



The 1951 Convention on Refugee Status - Refugee Protection Principles

1. contains a **general definition** of the term “refugee”
2. embodies the **principle of *non-refoulement***
3. sets **minimum standards** for the treatment of refugees (basic rights and duties)
4. Precludes penalization for illegal entry
5. provisions on the **issuance of ID and Travel documents**
6. requires States to **cooperate** with UNHCR



Non Refoulement – Article 33

Prohibition of expulsion or return.

- (1) 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 group or political opinion.**



Non Refoulement (cont...)

(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.



Refugees unlawfully in the country of refuge - Article 31

States shall not impose penalties (inc. imprisonment or restriction of movement) on refugees coming directly from a territory where they were threatened in the sense of Art 1



1951 Convention – other basic rights

- **general obligation to conform to the law;**
- **non-discrimination**
- **access to courts**
- **right to work**
- **right to housing, education, welfare assistance and social security**
- **freedom of movement**
- **ID documents and travel documents**
- **naturalisation**



Refugee Protection and Mixed Migration

10 Point Plan of Action

Effective protection in the context of migration management/control measures

- 1. Cooperation among key partners – operational engagement & policy discussions;**
- 2. Data collection and analysis;**
- 3. Protection-sensitive entry systems;**
- 4. Reception arrangements;**
- 5. Mechanisms for profiling and referral – e.g. as part of counter-trafficking measures**



10 Point Plan of Action (cont...)

- 6. Differentiated processes and procedures – to allow for prompt processing of claims;**
- 7. Solutions for refugees;**
- 8. Addressing secondary movements;**
- 9. Return of non-refugees and alternative migration options; and**
- 10 Information strategy.**



UNHCR's Mandate

UNHCR is mandated to

- 1. Lead and coordinate international action for the world wide protection of refugees and the resolution of refugee problems**
 - **Safeguard the right to seek asylum and find refuge**
 - **Search for a durable solution (voluntary return to country of origin; local integration; and resettlement to a third country**
 - **Includes interventions on behalf of former refugees who have returned to their homeland (“returnees”)**



UNHCR's Mandate

UNHCR is mandated to

2. Promote prevention and reduction of statelessness and protection of stateless persons as well as assisting individuals and States to resolve the situation of stateless persons

- **A stateless persons is someone who “is not considered as a national by any State under the operation of its law”**
- **Key treaties**
 - **1954 Convention on the Status of Stateless Persons (definition, basic rights)**
 - **1961 Convention on the Reduction of Statelessness (prevention measures)**



UNHCR's Mandate

UNHCR is mandated to

- 3. Lead or co-lead at global level (and in many cases on national level) the protection, camp coordination and camp management as well as the emergency shelter clusters respectively as part of the humanitarian inter-agency cluster approach benefiting internally displaced persons (IDPs) in conflict situations. Same applies for selected situations of natural disasters.**
 - **Definition of an internally displaced person**
 - **Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence , in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognised State border**
 - **Key instruments**
 - **Guiding Principles on Internal Displacement**
 - **Kampala Convention on the Protection and Assistance of Internally Displaced Persons, 2009**



THANK YOU

**FOR MORE INFORMATION ON ANY TOPICS
RELATING TO REFUGEES, ASYLUM-
SEEKERS, STATELESS PERSONS,
INTERNALLY DISPLACED PERSONS AND
THE WORK OF UNHCR**

SEE

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