



Committee: Human Rights

Issue: The Question of the refoulment of refugees

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Introduction:

The definition of a refugee according to the United Nations is someone who, owing to fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to return to it¹. As well as displacement as a result of persecution or conflict, a 21st Century cause of the need to seek refuge in other countries is natural disasters as a result of the current climate crisis. Climate change is causing increasing economic upheaval. There were almost 80 million people forcibly displaced in 2019, 26 million of which were refugees, making the protection of refugees a matter of huge concern to the international community. International co-operation is essential to figure out a durable and permanent solution.

Currently, actions include voluntary repatriation or legal integration into a different country, however in some rare cases refugees are posed with the threat of forced return to their country of origin, known as refoulement. The right to non-refoulement is a rule of international law and is a principle under international human rights law. This right provides that refugees, regardless of their status, should not be returned to a country where they could face torture, inhumane or degrading treatment and other irreparable harm². The principle prohibits transference of individuals by a state out of their jurisdiction as well as prohibiting states from restricting a refugee entering their

¹ "Refugees." United Nations. <https://www.un.org/en/global-issues/refugees>

² The principle of non-refoulement under international human rights law. The Office of the United Nations High Commissioner for Human Rights. July 5, 2018. <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

jurisdiction. This is because refusal of entry can amount to refoulement³. Indirect refoulement is also prohibited. This involves the removal to a third - intermediary - country from which the individual could be removed to the country where there is grounds for believing they are at risk of harm, particularly from human rights violations. The prohibition of refoulement is included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The prohibition of refoulement is applied by some courts to a range of human rights violations, including violations of the right to life, forms of sexual or gender-based violence, female genital mutilation, prolonged solitary confinement, degrading living conditions, lack of sufficient medical treatment and others.

Since refugees are defined as an individual fleeing war, violence, conflict or persecution to find safety in another country, this does not include those who flee due to reasons such as poverty or terrible conditions. Migrants who choose to leave their country of origin, due to reasons other than fear of persecution or death such as lack of access to water, are not treated the same as refugees. Countries deal with migrants based on their own immigration laws. The difference between the principle of non-refoulement under its different codifications is the question of who falls under its protection and why. Under International Human Rights laws, non-refoulement only applies to certain categories of people affected by armed conflicts⁴. There is a growing and overwhelming necessity to provide care and security to vulnerable individuals who are forced to leave their homes for a variety of reasons. Current systems to control the flow of refugees and entry into America and most European countries do not recognize the desperation experienced by some due to economic factors⁵. Therefore, the limitation of aid to the definition of 'refugee' must be altered. In contrast to refugees, migrants are not entitled to certain rights and particularly not to reside in the host country without fear of deportation. A solution for this may be to expand the definition of refugee or who is entitled to the right to non-refoulement.

Human rights restrictions on expulsion have so far been limited, as there is a tendency to apply the principle of non-refoulement to violations of 'fundamental human rights'. A state's right to border control under international law can therefore limit the application of human rights law to cases which poses a 'real risk'. The European Court clarifies that "[a] mere possibility of ill-treatment [...]"

³ The 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The UN Refugee Agency. September, 2011. <https://www.unhcr.org/uk/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁴ Rodenhäuser, Tilman. The principle of non-refoulement in the migration context: 5 key points. International Committee of the Red Cross. March 30, 2018. Accessed at: <https://reliefweb.int/report/world/principle-non-refoulement-migration-context-5-key-points>

⁵ Pahnke, Anthony. "Op-Ed: The world's definition of 'refugee' shortchanges economic migrants." Los Angeles Times. January 2, 2022. <https://www.latimes.com/opinion/story/2022-01-02/migration-refugees-asylum-convention>

is not in itself sufficient to give rise to a breach of Article 3⁶ on the prohibition of torture in the European Convention on Human Rights⁷. This renders the threshold for a real risk as too high, limiting the access to protection for vulnerable individuals who fall under the description of immigrants, and so they are most often returned despite terrible situations in their country of origin. Natural or man-made disasters, or extreme destitution do not automatically generate non-refoulement obligations⁸. Furthermore, there is a burden on vulnerable individuals to provide proof of a 'real risk' if this is disputed by state findings, in order to ensure they are not refouled, creating an imbalance in cases of doubt where state sovereignty has a greater role in the decision than human rights.

Definitions of key terms:

Deportation- the action of forcing someone to leave a country

Dignity- a value owed to all humans to be treated with respect

Displacement- the situation in which people are forced to leave the place where they normally live

Expulsion- (the act of) forcing someone, or being forced, to leave an organization, or country

Legal integration- the action or process of successfully joining or mixing with a different group of people

Migrant- In the global context, a person who is outside the territory of the State of which they are nationals or citizens and who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate.

Persecution- unfair or cruel treatment over a long period of time because of race, religion, or political beliefs

⁶ Röhl, Katharina. Fleeing violence and poverty: non-refoulement obligations under the European Convention of Human Rights. *New Issues in Refugee Research*. Oxford University. January, 2005. 20.

<https://www.unhcr.org/41f8ef4f2.pdf>

⁷ European Convention on Human Rights. Council of Europe. Last modified November 19, 2021. 5.

https://www.echr.coe.int/documents/convention_eng.pdf

⁸ Röhl, Katharina. Fleeing violence and poverty: non-refoulement obligations under the European Convention of Human Rights. 27. <https://www.unhcr.org/41f8ef4f2.pdf>

Voluntary repatriation- the return from asylum of a refugee to his or her country of origin to resume the full national protection of that country as a result of a decision made voluntarily by that refugee.

Major organisations involved:

- **United Nations High Commission for Refugees (UNHCR)**- The UN Refugee Agency was created in 1950 to safeguard the rights and well-being of people who have been forced to flee, ensuring a right to seek asylum and safe refuge is protected.
- **European Court of Human Rights (ECtHR)**- The ECtHR is a regional human rights judicial body based in France created by the Council of Europe and began operating in 1959, and has delivered more than 10,000 judgments regarding alleged violations of the European Convention on Human Rights (ECHR).
- **Council of Europe**- The Council of Europe exists to uphold and further pluralist democracy, human rights and the rule of law and has taken a lead in fighting corruption as it poses a threat to the very foundations of these core values.
- **Equality and Human Rights Commission**- the Equality and Human Rights Commission is an independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain. They have been awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.
- **European Council on Refugees and Exiles (ECRE)**- ECRE is an alliance of 150 NGOs in 39 countries protecting and advancing the rights of refugees, asylum seekers and displaced persons.
- **The Refugee Council**- The Refugee Council is a leading charity working with refugees and people seeking asylum in the UK
- **Amnesty International**- Amnesty International is an NGO that is the world's largest grassroots human rights organisation who lobby governments and companies to ensure international human rights laws are respected
- **International Organisation for Migration (IOM)**- the IOM Mandated to help European governments to identify resettlement countries for the estimated 11 million people uprooted by WWII and is the leading intergovernmental organization in the field of migration.
- **International Committee of the Red Cross (ICRC)**- The International Committee of the Red Cross is mandated to promote compliance with the Geneva Conventions and principles of International Law. It focuses on protecting victims of conflict such as displaced persons and refugees
- **International Refugee Assistance Project (IRAP)**- the IRAP provides legal aid and assistance for refugees and asylum seekers

Timeline of events:

1905- Following significant levels of Jewish immigration post-1880, the Aliens Act was passed in 1905 in the UK which declared that 'undesirable immigrants' would be denied entry to Britain. Although this restricted immigration, it allowed entry to refugees.

1939- During the Second World War, millions of people were displaced and after the Nazis invaded Poland at the beginning of the Second World War hundreds of thousands of refugees fled. In total, 40 million were displaced by WWII.

1943- The United Nations Relief and Rehabilitation Administration (UNRRA) was created as a social-welfare program to distribute relief supplies and aid economic rehabilitation. The UNRRA provided camps and care for displaced persons and refugees after WWII, especially with repatriation.

1946- After the UNRRA ran out of funds the International Refugee Organisation (IRO) succeeded in the care of refugees and displaced persons until 1952, also assuming responsibility for protection and resettlement of refugees.

1949- the principle of non-refoulement was included in the 1949 Geneva Conventions.

1951- The Office of the United Nations high Commissioner for Refugees was established by the UN General Assembly to provide legal and political protection for refugees, replacing the IRO. This year The Convention relating to the Status of Refugees was created at the conference in Geneva on the 28th of July.

1963- Protocol No. 4 of the ECHR was drafted as the first international treaty to address collective expulsion, in order to prevent states to remove refugees or migrants without examining their personal circumstances as well as enabling them to put forward arguments against measures taken by the relevant authority.

1967- An amendment was made to the Convention relating to the Status of Refugees to address refugees fleeing life-threatening situations worldwide rather than particularly in Europe.

1969- the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted by the Assembly of Heads of State and Government in September 1969.

2016- at the United Nations Summit for Refugees and Migrants in September, the General Assembly adopted the New York Declaration for Refugees and Migrants in which member states committed to develop a Global Compact for Safe, Orderly and Regular Migration (GCM).

2018- 192 Member states of the UN agreed on the GCM.

Relevant UN treaties and conventions:

Following the Second World War there was a growing recognition of the need to protect migrants and refugees who were displaced or forced to flee their home countries. In response, the United Nations created the Convention relating to the Status of Refugees signed in Geneva on the 28th of July 1951. Specifically, Article 33 of the convention prohibits the expulsion or return of refugees (“refoulement”) by contracting states when the life or freedom of the refugee is threatened on account of race, religion, nationality, membership of a particular social group or political opinion⁹. Article 33 suggests, however, that the provision of this may not be claimed by a refugee considered to be a danger to the security of the country in which they seek refuge. The convention is still used today as a rights-based instrument for protecting refugees at an international level and is to be applied without discrimination. Following this, the convention was amended by the 1967 Protocol to include a more expansive scope on the problem of displacement around the world rather than limited to protecting European refugees. The High Commissioner submitted the draft of the protocol to the General Assembly of the United Nations, through the Economic and Social Council.



The principal of non-refoulement is mostly referred to in the context of protecting refugees in accordance with Article 33, however the principal has been included in later treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. The definition of refugee in the 1951 convention does not include violations of economic or social rights

⁹ Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. United Nations. July 28, 1951. 21. <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/volume-189-I-2545-English.pdf>

in the concept of persecution. This does not encompass all individuals who need international protection.

In September 2016 the UN General Assembly adopted the resolution of the New York Declaration for Refugees and Migrants to address growing movement internationally of refugees and migrants. This states that “though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms.¹⁰” Despite this, their treatment is governed by separate legal frameworks and international human rights law has a limited scope in terms of those who fit the definitions of displaced individuals and are therefore afforded protection. This resolution particularly highlights the importance of acting in the best interests of children, so particular attention should be paid to needs of migrants in vulnerable situations e.g. children or victims of trafficking¹¹.

The Global compact for Safe, Orderly and Regular Migration (GCM) is the first-ever UN global agreement on a common approach to international migration. It is comprised of 23 objectives for



better managing migration at local, national, regional and global levels to help reduce the vulnerabilities of migrants¹². The Global Compact is grounded in international human rights law and reaffirms States’ commitment to respecting, protecting, and fulfilling all human rights for all migrants¹³. The Global compact upholds the prohibition of collective expulsion and refoulement for all migrants, ensuring that returns are

safe and dignified and reintegration is sustainable. The GCM is not legally binding.

¹⁰ Resolution adopted by the General Assembly on 19 September 2016. United Nations General Assembly. October 3, 2016. 2. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

¹¹ Resolution adopted by the General Assembly on 19 September 2016. United Nations General Assembly. 11. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

¹² Refugees and Migrants. “Global compact for migration.” United Nations. <https://refugeesmigrants.un.org/migration-compact>

¹³ “Global Compact for Safe, Orderly and Regular Migration (GCM).” United Nations Office of the High Commissioner. <https://ohchr.org/EN/Issues/Migration/Pages/GlobalCompactforMigration.aspx>

Previous action:

The principle of non-refoulement is discussed in the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. Article 2 puts forward that “no person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened¹⁴.” Article 2 reinforces the importance of Member States of the OAU prioritizing safety of refugees and granting asylum in a humanitarian and peaceful way. Furthermore Article 1 expands on the definition of refugee as also applying to “every person who, 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, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality¹⁵.” Through clarifying protection for individuals compelled to leave their country of origin due to events seriously disturbing public order, this has a much broader possibility for interpretation of those entitled to protection. Whilst this has a greater scope than other actions, it potentially does not include those affected by severe economic factors.

Similar to the Convention relating to the Status of Refugees, Article 22 of the 1969 American Convention on Human Rights states that there is no case in which it is acceptable for someone to be deported or returned to a country if in that country their right to life or personal freedom is in danger of violation due to race, nationality, religion, social status, or political opinions¹⁶. The convention prohibits the collective expulsion of ‘aliens’. In this case, US law mirrors but does not give greater protection than international law.

¹⁴ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The UN Refugee Agency. September 10, 1969. 7. <https://www.unhcr.org/uk/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>

¹⁵ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The UN Refugee Agency. 5.

¹⁶ American Convention on Human rights. Inter-American Commission on Human Rights. November 22, 1969. <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

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Recommended Reading and useful sources:

- UNHCR website: <https://www.unhcr.org/uk/>
- Convention relating to the Status of Refugees. United Nations Treaty Collection. https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en

- Protocol Relating to the Status of Refugees. United Nations Human Rights Office of the High Commissioner.
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