

Final Author Version: J. Handmaker (2017) 'Refugees: Overview (pp. 197-199) in O. de Schutter (ed.) *Legal Issues Across the Globe* Detroit: Cengage.

Introduction Refugee Law

The United Nations' 1951 Convention Relating to the Status of Refugees attempted to define and, ultimately, protect refugees after World War II. However, government efforts to regulate the entry and reception of refugees and asylum seekers have throughout history been challenged by a variety of political, religious, and cultural pressures. The essays in this chapter reveal, through sometimes personal accounts of individual experiences, the plight of refugees in a number of countries around the globe in obtaining human rights protection and social justice.

Some nations have historically been generous to refugees. For example, during the early 1970s, Kenya readily hosted tens of thousands of Ugandans who had fled individual persecution and armed conflict during the rule of Idi Amin. Australia also has had a long-standing tradition of taking in refugees, which at times has conflicted with its fixation on border control. Korea, too, generously opened its doors to refugees from Vietnam and North Korea, as well as to others fleeing persecution. The United States admitted hundreds of thousands of refugees in the late twentieth and early twenty-first centuries, reflecting its history as a place of safe haven and opportunity. In 2017 there were concerns that this would change with the administration of U.S. President Donald Trump, although increasing restrictions on immigration had already been introduced by previous administrations.

However, alongside this tradition of providing refuge, countries' admissions policies for immigrants of all categories, including refugees, have tended to be based on ethnic and religious exclusions (particularly of Catholics, Jews, and Muslims). A number of these exclusions have prevailed and been reinforced. In 2016 in the United Kingdom, for example, some political parties, including the Independence Party, urged severe restrictions on the admission of all immigrants, alleging that many were faking their refugee status. Earlier, in 2013 Nigel Farage, head of the Independence Party, said it was time for "a proper debate" on "the difference between a refugee—who fears for his or her life—or somebody moving simply for economic benefit." In the United States, President Trump issued an executive order in early 2017 imposing a 90-day ban on travelers who were citizens of six Muslim-majority countries--Iran, Somalia, Sudan, Yemen, Syria and Libya--from entering the United States. This measure, which affected persons irrespective of their legal status, resulted in numerous refugees being stranded in their own countries or in airports across the world. A federal judge blocked the order, but the administration appealed and introduced a revised order.

The legalization of refugee protection occurred at the end of World War II with the 1951 Convention Relating to the Status of Refugees. The Convention was one of the first projects of the then nascent United Nations (UN). Although initially confined to refugees from Europe (particularly from Hungary), the Convention was complemented by the 1967 Protocol Relating to the Status of Refugees that extended the reach of the Convention to countries outside of Europe. Apart from a few nations, including Turkey, states that were already part of the 1951 Convention acceded to the Protocol.

The outcome of the UN-led process of legalization resulted in a commonly shared definition of a refugee that most countries have incorporated into their national legal systems, contained in Article 1 of the 1951 Convention (as extended by the 1967 Protocol):

A person who owing to a 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.

In addition to complementary national legislation, these UN instruments were supported by region-specific conventions. For example, one year prior to the UN Convention, the 1950 European Convention on Human Rights and Fundamental Freedoms was passed. Article 3 of the Convention included a prohibition on torture. This was later interpreted as also prohibiting states from sending people back to a country where they would likely be tortured (complemented in 1984 by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In 1969 the then Organization of African Unity created the Convention Governing the Specific Aspects of Refugee Problems in Africa. It extended the UN refugee definition to include "any person compelled to leave his/her country 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." In addition, the Cartagena Declaration, passed in Colombia in 1984, broadened the UN Convention definition in Latin American countries to include "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

While state definitions and practices often deviated from these international definitions of a refugee, the consensus of scholarly and judicial opinion recognizes them as highly persuasive, if not legally binding. Most crucially the definition of a refugee rests on the (binding) principle of *non-refoulement*, the concept that states should not return a person to a country where they would face a well-founded fear of persecution, including torture or, in relation to the African refugee convention, a situation seriously disrupting public order.

Apart from determining what a refugee *is*, both national and international legal regimes have recognized what one is entitled to *as* a refugee or an asylum seeker. Many of these legal rights are explained in the essays in this chapter, including the right to welfare benefits (particularly in wealthier countries), the right to work (including asylum seekers, particularly in less wealthy countries), and the right to education, healthcare, and other social benefits (which varies from country to country). Furthermore, refugees are generally entitled to the same, or similar, treatment as a country's citizens, particularly after their refugee status has been determined and they begin the process of assimilation. These rights to equal treatment include the right not to be discriminated against, to be treated with dignity and respect, to be free from arbitrary arrest, and to be provided with identity documents. Some countries, notably Ecuador, have even gone so far as to explicitly recognize refugees in their national constitutions.

Several other legal and policy developments are identified in this chapter. For example, immigration authorities in South Africa, the United Kingdom, and the Netherlands have compiled so-called “white lists” of countries presumed to be “safe.” This legal presumption that people from those countries do not qualify for protection has led to a correspondingly massive decrease in the numbers of recognized refugees.

A number of influences have made it challenging for government regulators to maintain the standards of protection envisaged by the 1951 Convention. For instance, in refugee-receiving countries like France, the United Kingdom, and the United States, it has become increasingly acceptable for conservative leaders to refer to refugees as a threat to national security. This has led to increasingly severe restrictions on entry and containment of refugees in refugee camps and prisons—both measures that undermine the notion of safe haven. Some of these nationalist tendencies and societal fears (e.g., of disease, terrorism, and job loss) have translated into xenophobic violence, as described in the essays on Germany, Greece, Australia, Lebanon, and South Africa. Citizens in refugee-receiving countries worry that refugees are actually economic migrants in disguise, migrating to developed nations not because they are fleeing persecution or violence at home but because they want better employment opportunities. Fear and distrust of refugees have been fomented by right-wing political movements and sections of the popular media that have played on these fears, especially during national elections and referenda, including the United Kingdom’s decision to exit the European Union (EU). Meanwhile, some have argued that left-wing political movements have ignored the limited capacity of countries to absorb refugees and migrants, despite vocal opposition by the electorate.

Policies in many refugee-receiving countries have reflected the subtle mantra of irregular migration, which is a policy presumption designed to discourage spontaneous arrivals of people at the border, and upon which most countries have oriented their admissions policies for all migrants, including refugees. According to Jeff Handmaker and Claudia Mora in our essay in *The Role of “Experts” in International and European Decision-Making Processes* (2014), the orienting of policies around the notion of irregular migration has led to a situation in which refugees and so-called “knowledge migrants” have received structural preference over the vast number of other, mostly labor migrants. In other words, rather than deal with the broader complexities of arriving migrants, many of whom leave their countries for mixed reasons, wealthier countries in particular have chosen to retreat to an expensive, highly regulated, and selective policy of containment and arbitrary admissions based on the perceived value of individuals to the “host” society.

Where states have proven to be reluctant to process refugee status, as explained in the essay on Kenya, the UN High Commissioner for Refugees (UNHCR) has stepped in to provide refugee status determination procedures. Barbara Harrell-Bond and Guglielmo Verdirame, in *Rights in Exile: Janus-Faced Humanitarianism* (2005), describe this as a situation of reduced legal accountability and arbitrariness, where the role of the state as primarily responsible for refugee protection has been replaced by the UNHCR. For example, the decision by the UNHCR to contain refugees to large camps in Kenya for indefinite periods has led to what the authors describe as a “custodial regime for innocent people.”

Perhaps the most striking legal and policy development of all that emerges from this chapter is the regional disparities created by EU regulations that seek to manage migration and refugee admissions as a core EU policy, or “first pillar” issue. One particular example discussed is the Dublin Regulation, which states that an individual must apply for refugee status in his or her first country of entry to the European Union. Effectively, this pushes responsibility for reception and processing to Turkey, Greece, and Italy. These countries are at the periphery of the EU yet by far are the least financially equipped to deal with the significant flow of migrants into the region. According to Handmaker and Haijer in our 2016 blog post on *The Broker*, titled “Addressing Root Causes of Europe’s Immigration Crisis through Extra-territorial Measures,” the EU agreed to pay several billion euros to Turkey in exchange for a commitment to step up efforts to block migrant routes to the EU, extending its border control measures extraterritorially.

This trend within the EU is reflected at a global level as well. Of all the countries examined in this chapter, the comparatively poorest (Kenya, Turkey, Lebanon, Greece, Italy, and Turkey) have shouldered a grossly disproportionate burden of hosting refugees, as compared with the wealthiest countries (Australia, United Kingdom, United States, Korea, and Germany). This is illustrated in the case of Lebanon, where more than one-fifth of its population are refugees, including 500,000 Syrians. Lebanon’s massive burden can be compared with the United States (population nearly 320 million), which in 2016 took in around 39,000 Syrian refugees following a rigorous screening process, a small fraction of the global population of nearly 5 million Syrian refugees. The disparity is also reflected in terms of acceptance rates. For example, Korea accepts around 3 to 5 percent of those applying for refugee status compared with the global average of 38 percent.

Despite these unsettling trends, there are some hopeful signs, captured in the essay on Italy. The author explains the experience of Assan, who fled violence in Senegal’s conflict-torn Casamance region. After a dangerous journey through various countries, including Libya, he managed to reach the village of Camini in southern Italy, which welcomed him. While Assan’s experience is hardly representative of the general treatment of refugees, its message of humanity is important to note. As Behzad Yaghmaian writes in his moving portrait of refugees, *Embracing the Infidel: Stories of Muslim Migrants on the Journey West* (2006), despite the myriad challenges faced by migrants and regulators alike and amid growing fears, nationalism, and xenophobic violence, a human face managed to emerge, extending not only protection but also kindness.

In the early twenty-first century protracted violence, armed conflict, and war across the globe have created what some have described as the largest refugee crisis since World War II. The arrival of refugees in need of safe haven at national borders has forced receiving nations (especially those adjacent to conflict zones) to be seen as balancing their international and domestic legal obligations to refugees along with the concerns of their citizenry. The essays in this chapter illustrate each country’s efforts—sometimes successful, sometimes not—to achieve this difficult balancing act. In addition, the essays in this chapter demonstrate how a country’s unique historical and cultural background influences its modern-day legal approaches to refugees, as well as to immigration more broadly.