WORKING PAPER SERIES

CEEAplA WP No. 04/2010

The Future of the Asylum Institute in the World

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May 2010

Universidade dos Açores
Universidade da Madeira

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e CEEAplA

Working Paper n.º 04/2010
Maio de 2010

CEEAplA Working Paper n.º 04/10
Maio de 2010

RESUMO/ABSTRACT

The Future of the Asylum Institute in the World

What is the future of the Asylum Institute? In our opinion it is of the utmost importance to urgently proceed to universalize and to uniform the rights and obligations of asylum seekers and sheltered, the qualified entities who evaluate the asylum requests, the essential and necessary criteria and requirements for the concession of asylum, and to trigger the necessary processes and procedures which will enable to successfully achieve the so yearned for international protection.

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The Future of the Asylum Institute in the World (*)

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Contents:

I – Abstract:

O Instituto de Asilo no Mundo – que futuro? Consideramos que se impõe, urgentemente, universalizar e uniformizar os direitos e deveres dos requerentes de asilo e dos asilados; os órgãos competentes para apreciar os pedidos de asilo; os critérios e os requisitos essenciais e necessários para a concessão do estatuto de asilado; bem como o tipo de processo ou de procedimentos que é necessário desencadear para com êxito alcançar a almejada protecção internacional.

¿Cuál es el futuro del Instituto de Asilo en el mundo? Consideramos que se impone, urgentemente, universalizar y uniformar los derechos y deberes de los solicitantes de asilo y asilados, los órganos competentes para evaluar las solicitudes de asilo, los criterios y los requisitos esenciales y necesarios para la concesión del estatuto de asilado, así como el tipo de proceso o procedimientos que es necesario poner en marcha para alcanzar con éxito la deseada protección internacional.

What is the future of the Asylum Institute? In our opinion it is of the utmost importance to urgently proceed to universalize and to uniform the rights and obligations of asylum seekers and sheltered, the qualified entities who evaluate the asylum requests, the essential and necessary criteria and requirements for the concession of asylum, and to trigger the necessary processes and procedures which will enable to successfully achieve the so yearned for international protection.

Keywords: Humankind, Intrinsic Right, Asylum Institute, Future, Universal, Uniform, Legislation, World.

(*)This paper was presented at the University of Santiago de Compostela (Spain) – Specialised Seminar: "O espazo de liberdade, seguridade e xustiza: As políticas de inmigración e asilo na Unión Europea [The space of liberty, security and justice: immigration and asylum policies in the European Union], area of Public International Law and International Relations – Activities Jean Monnet – 2008-2009 Edition, Coordination by Isabel Lirola Delgado, PhD.

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II – Introduction

Speaking of the Asylum Institute in the beginning of the 21st century is equivalent to speaking of the Asylum Institute in the forming years of mankind, except for the conceptual changes – on the juridical, political and social fields – that have occurred between these two historical extremes.

In fact, the asylum is an intrinsic right of every human being. It is, therefore, unchangeable in time and space, given the fact that each request for asylum springs from a systematic violation of the most basic human rights. In this context, several theories have been developed. Rousseau stated in his Noble Savage Myth that man is good in a state of nature; it is the social existence that corrupts him. In his turn, Hobbes argued that humans in a state of nature were bad; it was society that healed man's natural depravity. Regardless of the social theories and/or criteria that one may embrace, it is unquestionable that there have always been in the history of mankind good and bad persons, victims and aggressors.

Violations of the most elementary human rights, namely of the supreme right to life, have always impended over humankind during the course of time. Therefore, pain, injustice, persecutions, and discriminations by reason of birth, sex, race, language, nation, creed and religious beliefs, political or ideological convictions, education, economic status, social origin or sexual orientation, among many others, have today the same juridical and social symbolism that they had in the forming years of humankind. The systematic violations of human rights affect as intensely today the state of mind of the victims as they did our ancestors'.

Given this scenario, the International Community and the States must understand for good that the Asylum Institute should be given the same constitutional dignity as the Right to Life. There is not a single human being in the world who does not seek protection, shelter or solutions against whatever threatens, causes hardships or systematically violates the most elementary rights of his or her life. It is certain that in many cases only the Asylum Institute can provide an adequate response to the needs of the individuals, as the States prove inefficient in preserving the most legitimate human rights, namely life, freedom, security, and justice.

Today, as before, the Asylum Institute has, on the whole, been used in situations of real emergency, when the most basic human rights are under effective danger. It is therefore impossible to state with accuracy when and where it has been most rooted in, and/or whether humankind will ever abandon this vital tool of human existence. However, history has shown that whenever conflicts, upheavals, social disorders, political or economical convulsions, wars, dictatorial regimes and/or anarchy erupt, requests for asylum increase and gain universal expression.

Having said this, we shall in this paper refrain from analysing the evolution of the Asylum Institute in International Law[1], the several types of asylum (territorial[2], diplomatic[3] and neutral[4]),

[1] The theme is better developed in RODRIGUES, José Noronha.: *A História do Direito de Asilo no Direito Internacional [The History of the Right of Asylum in International Law],* working-paper, n. 18/ 2006, CEEAplA – Centro de Economia Aplicada do Atlântico [Centre of Applied Economy of the Atlantic], in http://www.deg.uac.pt/~ceeapla/papers.php.

[2] CORNU, Gérard.: *Vocabulaire Juridique*, Paris, Presses Universitaires de France, 1987, p.68: [territorial asylum is] " [accès] à leur territoire offert par certains Etats, qui ouvrent leurs frontiers aux prévenus ou condamnés des pays étrangers et refusent leur extradition."

[3] GUILLIEN, Raymond, VINCENT, Jean.*: Lexique de termes juriques*, Paris, Quatrième Édition, Dalloz, 1978, p. 30: [diplomatic asylum is] " [protection] qu`un Etat peut assurer, grace à l`inviolabilité des locaux diplomatiques, aux personnes objet de poursuites qui s`y sont réfugiées, en refusant de les remettre aux autorités locales ou d`autoriser celles-ci à venir les arrêter."

[4] DICCIONARIO JVRÍDICO, Fundación Tomás Moro, Madrid, Espasa Calpe, 1991, pp. 193-195: [neutral asylum] " (…) es decir, del otorgado por tercer Estado respecto a los nacionales o a las Fuerzas Armadas de aquellos otros Estados enfrentados entre sí por un conflicto armado. Salvo supuestos objectivos de mera imposibilidad material – por ejemplo, ante el elevado número de aspirantes a sus benefícios –, el asilo se otorgará siempre provisionalmente por razones de humanidad; confirmándose o denegándose definitivamente según la petición formulada se asienta

the developments occurred in Latin America[5] in this field, the role of the Council of Europe[6] for the development of this humanitarian thematic, and the contribution of the European Union in this matter[7].

sobre razones de índole político o pretenda encubrir actividades delictivas de naturelaza común o generadoras de responsabilidad penal internacional." In fact, neutral asylum is, "una institución característica del derecho de guerra – a diferencia de las anteriores – comprensiva del refugio provisional que el Estado neutral facilita a los indivíduos beligerantes o no pertenecientes a terceros Estados durante el período en que los mismos se hallan en situación de conflicto armado."

[5] In the beginning of the 19th century, on 1 May 1865, the first conference aiming at regulating the Right of Asylum was held in Peru; on 29 January 1867, a second conference took place, from which issued the recognition of diplomatic asylum. Some years later, on 23 January 1889, the First South-American Congress on International Private Law (Argentina, Bolivia, Paraguay, Peru and Uruguay) celebrated the Treaty on International Penal Law. In the beginning of the 20th century, other significant instruments were adopted, such as: I) the Treaty of Washington (1907- Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador) establishes naval political asylum; II) the Treaty of Friendship (1911 – Argentina and Paraguay) settles political asylum in the buildings of the diplomatic missions; III) the Treaty of Friendship (1917 – Bolívia and Colombia) institutes political asylum in the buildings of the diplomatic missions; IV) the Convention on Asylum, signed in the VI Pan-American Conference of Havana (1928); V) the Convention on Political Asylum, signed in the VII American International Conference of Montevideo (1933); VI) the Treaty on Asylum and Political Refuge at Montevideo (1939); VII) the Treaty of Penal International Law, Montevideo (1940).

[6] Some instruments approved within the Council of Europe: the European Convention on Human Rights and Fundamental Freedoms (4 November 1950); the fourteen additional Protocols subsequent to it (in Paris, on 20 March 1952, was approved the Additional Protocol No.1; in Strasbourg, on 6 May 1963, Additional Protocols Nos. 2 and 3; on 16 September 1963, Additional Protocol No. 4; on 20 January 1966, Additional Protocol No. 5; on 28 April 1983, Additional Protocol No. 6; on 22 November 1984, Additional Protocol No. 7; in Vienna, on 19 March 1985, Additional Protocol No.. 8; in Rome, on 6 November 1990, Additional Protocol No.. 9; in Strasbourg, on 25 March 1992, Additional Protocol No. 10; on 11 May 1994, Additional Protocol No. 11; in Rome, on 4 November 2000, Additional Protocol No. 12; in Vilnius, on 3 May 2002, Additional Protocol No. 13; in Strasbourg, on 13 May 2004, Additional Protocol No. 14); the European Convention on Extradition (13 December 1957), the European agreement on the movement of people between the member states of the Council of Europe (13 December 1957); the European Agreement on the Abolition of Visas for Refugees (20 April 1959); the European Agreement on Transfer of Responsibility for Refugees (16 October 1980). The Committee of Ministers of the Council of Europe approved the following documents: Resolution (14) on Asylum to Persons in Danger of Persecution (1967); Recommendation (2) on the Acquisition by Refugees of the Nationality of their Country of Residence (1970); Declaration on Territorial Asylum (1977); Recommendation (16) on the Harmonisation of National Procedures Relating to Asylum (1981); Recommendation (1) on the protection of persons satisfying the criteria in the Geneva Convention who are not formally recognised as refugees (1984); Recommendation (5) on the measures of detention of Asylum seekers (2003); Recommendation (6E) on Exclusion from Refugee Status in the context of Article 1F of the Convention Related to the Status of Refugees (2005); Recommendation (6E) on internally displaced persons (2006). On the other hand, the Parliamentary Assembly of the Council of Europe approved other documents: the Recommendation (293) on the right of asylum (which proposes the inclusion in Protocol 2 of the 1950 Convention (CESDHLF) of a project of Article on the right of asylum), (1961); Recommendation (434) on the Granting of the Right of Asylum to European Refugees (1965); Recommendation (564) on the Acquisition by Refugees of the Nationality of their Country of Residence (1969); Recommendation (775) on the Preparation of an Agreement Concerning the Transfer of Responsibility for Refugees Who Move Lawfully from One Member State of the Council of Europe to Another (1976); Recommendation (773) on *de facto* refugees who don't harmonise with the criteria of the Convention of Geneva regarding the status of refugees (1976); Recommendation (787) on Harmonisation of Eligibility Practice under the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol (1976); Recommendation (1016) on Living and Working Conditions of Refugees and Asylum Seekers (1985); Recommendation (1088) on the Right to Territorial Asylum (1988); Recommendation (1163) on the Arrival of Asylum-Seekers at European Airports (1991); Recommendation (1236) on the Right to Territorial Asylum (1994); Recommendation (1237) on the Situation of Asylum-Seekers Whose Asylum Applications Have Been Rejected (1994); Recommendation (1309) on the Training of Officials Receiving Asylum-Seekers at Border Points (1996); Recommendation (1327) on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe (1997); Recommendation (1475) on the Arrival of Asylum-Seekers at European Airports (2000); Recommendation (1440) on Restrictions on

Asylum in the Member States of the Council of Europe and the European Union (2000); Recommendation (1470) on the Situation of Gays and Lesbians and their partners in respect of asylum and immigration in the Member States of the Council of Europe (2000); Recommendation (1624) on Common Policy on Migration and Asylum (2003); Recommendation (1645) on Access to Assistance and Protection for Asylum-Seekers at European Seaports and Coastal Areas (2004); Recommendation (1703) on Protection and Assistance for Separated Children Seeking Asylum (2005); Resolution (1429) on Asylum Seekers and Irregular Migrants in Turkey (2005); Recommendation (1768) on the Image of Asylum-Seekers, Migrants and Refugees in the Media (2006); Resolution (1483) on the Policy of Return for Failed Asylum-Seekers in the Netherlands (2006); Recommendation (1808) and Resolution (1569) on Assessment of Transit and Processing Centres as a Response of Mixed Flows of Migrants and Asylum-Seekers (2007). Besides these documents, there were other texts indirectly related to this matter, such as: the Recommendation (817) on certain aspects of the right to Asylum (1977); the Recommendation (799) on the political rights and position of aliens (1977); the Recommendation (999) on the national fund for the replacement of refugees and excess of population in Europe (1984); the Recommendation (984) on the Acquisition by Refugees of the Nationality of the Receiving Country (1984); the Recommendation (1348) on the temporary protection of persons forced to flee their country (1997); the Recommendation (1374) on the situation of the refugee women in Europe (1998); the Recommendation (1503) on the health conditions of migrants and refugees in Europe (2001); the Recommendation (1547) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity (2002); the Recommendation (1652) on the education of refugees and internally displaced persons (2004); the Recommendation (1729) and the Resolution (1474) on Activities of the United Nations High Commissioner for Refugees (UNHCR/ACNUR) (2005); the Recommendation (1754) and the Resolution (1509) on Human Rights and irregular immigrants (2006); the Recommendation (1732) and the Resolution (1478) on the integration of immigrant women in Europe (2006); the Resolution (1497) on refugees and displaced persons in Armenia, Azerbaijan and Georgia (2006); the Recommendation (1748) and Resolution (1501) on working migration from the countries of Eastern and Central Europe: present state and perspectives (2006); the Recommendation (1757) and the Resolution (1511) on migration, refugees and population in the context of the Third Summit of heads of state and government of member states of the Council of Europe (Warsaw 16-17 May 2005) (2006); the Recommendation (1802) on the situation of longstanding refugees and displaced persons in South-Eastern Europe (2007); the Recommendation (1804) on State, religion, secularity and human rights (2007); the Recommendation (1808) and the Resolution (1569) on assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers (2007); the Recommendation (1782) on the situation of migrant workers in temporary employment agencies (TEAs) (2007); the Recommendation (1839) and the Resolution (1617) on the state of democracy in Europe – specific challenges facing European democracies: the case of diversity and migration (2008); the Recommendation (1840) on the state of democracy in Europe and measures to improve the democratic participation of migrants (2008); the Recommendation (1850) on Europe's "boat-people": mixed migration flows by sea into Southern Europe (2008); the Recommendation (1852) and the Resolution (1639) on migration and mobility in the Eurasian region – Prospects for the future (2008); and the Recommendation (1862) and the Resolution (1655) on migrations and displacements induced by environmental factors: a challenge for the 21st century (2009).

[7] The 1992 Treaty of Maastricht listed in the third pillar asylum and immigration policies (Title VI, art. K-K.9), and qualified them, for the first time, as being matters of common interest. Some time after, some of these policies were brought into the Community law, namely the asylum policy, when the Treaty of Amsterdam was signed in 1997. This matter was then transferred to a new title (Title IV- art. 61-68) TCE under the heading: "Visas, asylum, immigration, and other policies related to free movement of persons". The Treaty of Nice (2000) brought attached with it a crucial document – the Charter of Fundamental Rights of the European Union. In Chapter 2, Article 18, this document establishes the right to asylum. Finally, the Chapter 2 of the Treaty of Lisbon (2007) focuses on all matters concerning "policies on border checks, asylum and immigration" (art. 77-80 (TFUE). In addition to this, the European Union has used its derived right to adopt many other judicially binding measures, such as the following: A) the Council Decision 2000/596/EC of 28 September 2000, establishing a European Refugee Fund (J0 L 252 of 06/10/2000 p. 0012 – 0018); B) the Council Directive 2001/55/EC, of 20 July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (J0 L 212 of 07/08/2001 p. 0021-0023); C) the Council Decision (2002/463/EC), of 13 June 2002, adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO Programme), (J0 L 161 of 19/06/2002 p. 0011-0015.); D) the Council Directive 2003/9/EC, of 27 January 2003, laying down minimum standards for the reception of asylum seekers in the Member States (J0 L 031 de 06/02/2003 p. 0018 – 0025.); E) the Council Regulation (EC) No. 343/2003, of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (J0 L 050 of 25/02/2003 p. 0001 – 0010.); F) the Council Directive 2003/86/EC, of 22 September 2003, on the right to family reunification of third-country nationals and/or refugees residing lawfully on the territory of the Member States (J O No. L 251 of 03/10/2003 p. 0012 – 0018); G) the Council Directive

Our only ambition is to undertake a juridical-philosophical study of the refugees and asylum seekers in the world. Although we admit that there are in the world enough juridical instruments for the protection of the asylum institute, we also believe that they coexist with worldwide inhumanity and legislative arbitrariness. We think that the reason for this lies in the fact that the right to asylum is not seen as an intrinsic human right. We shall therefore present some brief juridical-philosophical considerations on the future of asylum in the world.

III – Asylum: an intrinsic right of Man

What are the actual inherent rights of Man? Are there many intrinsic human rights or perchance only many Human Rights? What is the difference between the fundamental rights, the rights of the citizen and/or the intrinsic human rights?

We believe that there is only one intrinsic human right, and that there are several fundamental and citizen's rights, expressed on a number of documents, some of them international, others European, enshrined in the Constitutions and/or national or Ordinary Law of the different States. We argue that all fundamental and/or citizen's rights derive from this single inherent human right. What is then the only intrinsic human right?

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 (J0 L 304 de 30/09/2004 p. 0012 – 0023.); H) the Council Directive 2005/85/EC, of 1 December 2005, on minimum standards on procedures in Member States or granting and withdrawing refugee status (JO L 326 de 13.12.2005, p. 13-34.). Besides these measures, emphasis must also be given to: I) Committee Decision No. 1/2000, of 31 October 2000 (set up by article 18 of the Dublin Convention), concerning the transfer of responsibility of the requests for family members in accordance with Article 3 (4) and Article 9 of that Convention; II) Council Regulation No. 2725/2000, of 11 December 2000, concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention; III) Council Directive 2001/40/EC, of 28 May 2001, on the mutual recognition of decisions on the expulsion of third country nationals; IV) Council Regulation (EC) No. 380/2008, of 18 April 2008, amending Council Regulation (EC) No. 1030/2002 , of 13 June 2002, laying down a uniform format for residence permits for third country nationals.

It is our conviction that it is the right that all human beings universally express when they feel their lives endangered. In fact, not even the right to life is truly an intrinsic human right; only life itself is so, because the Right to Life depends on a new life being completely and fully born, which falls beyond the unborn child's control. However, from birth onwards life is judicially protected as an inherent human right. As a consequence, every human being holds from that moment onwards a set of rights and duties as citizen.

On a deeper analysis, we observe that the only right that could relinquish all legislation and/or judicial protection on the grounds of being inherent to all human beings (namely when life is in danger) in the right to individual protection of life. Regardless of any juridical background, we all protect or try to protect our lives at any cost whenever we feel it in danger, since this is an inherent human right standing above every other judicial, moral and/or social norm.

In this way, if the right to individual protection of life is an intrinsic human right, we must in a similar manner acknowledge that the right to asylum is an inherent right of humankind – it is nothing more than a plea for international protection when the asylum seeker's life is in danger in his country of origin. For the purposes stated above, the difficulties surrounding the individual's life mustn't conform to minor social, political, economical or other hardships, but be caused by adverse conditions that offend the principle of human dignity and the most basic human rights by reason of ascendency, gender, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social status and/or social orientation.

The Universal Declaration of Human Rights, of 1948, tried to turn this intrinsic human right into a universal and/or fundamental right, as it established in Article 14 (1) that "everyone has the right to seek and to enjoy in other countries asylum from persecution." Unfortunately, the

present Declaration has just succeeded in changing the nature of the right, converting an intrinsic human right into a subjective right of Man. In fact, in spite of stating that "everyone has the right to seek and to enjoy" asylum, it doesn't compel the States to grant asylum whenever the minimum conditions to concede it are met. Regrettably, the States continue to consider the right to asylum a sovereign, discretionary and arbitrary right, instead of an inherent right of every human being.

IV – Worldwide legislative inhumanity and arbitrariness concerning the Asylum issue

The International Community and the States insist on considering the Right to Asylum nothing but a simple subjective right assisting asylum seekers, bearing a resemblance to the right to work, to health, to housing, to education, to rest and leisure, and to cultural creation, among many others. In the light of this tendency, the States are merely asked to include in their statutes and/or Constitutions this right, without being compelled to assure that it is put into practice – thence creating programmatic constitutional norms, that is, norms that establish guiding lines with a view to democratic goals but that require future governmental action in order to produce effects.

This is probably the reason why the right to asylum is considered a subjective right of asylum seekers in practically all legislations of the world. Even where it is constitutionally enshrined, it doesn't imply the fulfilment of the corresponding State obligations.

Thus, some States go on operating in an unlimited, discretionary, arbitrary, inhuman and sovereign way, in some cases disregarding what is an intrinsic right of all human beings. The absence of objective criteria, procedures, national and/or international organizations tasked with providing a common and uniform set of rules for the purpose of assessing the asylum requests creates disparate responses: in some States a clear violation of the most elementary human

rights meets with governmental acceptance of the asylum request, whereas in other States, often neighbouring ones, the same situation and request meet with categorical governmental rejection for allegedly not complying with the eligible criteria according to which asylum is granted.

As it was done in the past with respect to the fundamental and universal human right – the right to life –, when the International Community and the States proved capable to qualify and to identify the various violations and/or crimes against life, namely: murder (Article. 131), qualified murder (Article 132), "privileged murder" *(*Article 133*),* murder by request of the victim *(*Article 134*),* inciting or assisting suicide *(*Article 135*),* infanticide *(*Article 136*),* manslaughter or "homicide by negligence" (Article 137*),* exposing the victim or "abandonment" (Article 138), propaganda to suicide (Article 139), among others[8], so should it be done with regard to asylum requests. All cases should be objectively assessed so that the judicially legitimate asylum requests are easily identified, accepted and granted.

The International Community and the States should therefore endeavour to list all possible crimes against the most elementary human rights and make them universally accepted as legitimate causes or motivations for granting asylum. Some of the cases that should fall under the rigorous analysis of the International Community and the States are the clitoris removal, the forced marriage of children with adults, the polygamous marriage, persecutions by reason of race, gender, origin, ethnic group, religion, among others. It should be pondered whether these and similar matters provide legitimate and objective grounds for asylum to be granted in any part of the world, in spite of theories concerning the passage by safe third country or safe country of origin.

[8] These articles belong to the Portuguese Penal Code. In addition to these, other articles are listed as Crimes Against Intra-uterine Life: abortion (art. 140), aggravated abortion (art. 141), pregnancy interruption not deserving punishment (art. 142).

Apparently, this would be easily done. However, opponents to this suggestion would object to it with the following arguments: "How can the crimes be proven? Are the motivations or the reports of the asylum seekers enough to accept their pleas? Is it lawful procedure to grant asylum without asking the applicants to prove the allegations of systematic violations of human rights that they supposedly are the victims of?"

These and similar questionings deserve the following answer from the International Community: asylum seekers must be treated in exactly the same terms as the offended party or the criminal assistant in crime processes, i.e., "supposed" victims until proven the contrary.

In this light, just as the offended person has the duty or prerogative of collaborating with the judicial authorities in the criminal process concerning the crime he/she was the victim of, so should happen with asylum seekers. The lawful representative of the State, which in the Portuguese case is the Public Ministry, holds the functions of investigating, starting the criminal process, and producing evidences for the case, based on which the Judge will form his decision of condemning or acquitting the defendant(s) for the crimes that they were accused of.

In a similar manner, the asylum seeker must be held a victim of violation of the most basic human rights until the opposite is proven. As a consequence, he or she must be granted the duty or the prerogative of requesting asylum to the official entities and of collaborating with the authorities in the process of verifying the accuracy of the reason(s) that led to the request.

We further believe that it falls under the sphere of influence of the State, or of the Public Ministry in the capacity of its lawful representative, the task of taking the course of action and/or of carrying on all the investigations as well as of requesting to the State of origin and/or

neighbouring State any information necessary in order to gather evidence and explore all possibilities that may prove useful for the full assessment and regular conclusion of the asylum process. We should all bear in mind that the States possess better ways of accomplishing their ends – juridical, diplomatic, economic and/or technological paths – than asylum seekers, who often possess nothing else but the clothes that they are wearing.

Furthermore, we think that international cooperation should be implemented on several areas of society, particularly in the fields of freedom, safety, and justice. On the other hand, should a State of origin show unwillingness or impossibility to cooperate with the State receiving the asylum request, such a fact should constitute *per se* a fairly clear sign that the asylum seeker possesses solid grounds for objectively and/or subjectively fearing that his or her life is in danger.

We therefore defend that it is the State's responsibility to prove whether asylum seekers are lying or being truthful with respect to the alleged violations; or if they are mere immigrant candidates abusively seeking asylum in order to improve their economic existence. Until proven that the asylum seeker is not worthy of receiving this kind of protection that universally assists humankind, all applicants should be treated according to the principle of innocence and/or enjoy temporary international protection, besides, naturally, enjoying the principle of *non-refoulement.*

V – The future of the Asylum institute in the world

What is the future of the Asylum institute in the world and/or how would we like to see it operating in the future in the world? This is a key question, and one that should be debated all over the world with the support of the International Community. Notwithstanding the necessary debate, it is our belief that the future of this institute can only be one – to become a fully, universally and uniformly established structure in the world.

We are all aware that the search for international protection, namely of asylum, has been a permanent presence in the history of mankind, given the occasional conflicts, the systematic discriminations of the Other and, in short, the violation of the most elementary human rights that derive from ambition rooted in social life.

In this context, to cherish and to preserve a World Asylum Institute is to acknowledge that all human beings are equal in their rights, freedoms and needs, regardless of the place and/or country they are in.

The world leaders of the 21st century must have the courage to adopt a Universal Convention with respect to the Asylum institute. This Convention must establish the causes leading to the concession of asylum as well as the entities tasked with assessing the requests and the formal procedures of the process, besides laying down the rights and duties of not only the asylum seekers, but of the sheltered persons and the official entities charged with judging the cases. All this must be done peremptorily, though not exclusively, i.e., leaving room of manoeuvre for the introduction of future adjustments and interpretations required by new historical conditions.

Without neglecting what other parts of the world have produced with respect to the protection of asylum seekers and sheltered, the International Community may (and must) turn to the several instruments developed over the years in Latin America, in the Council of Europe and in the European Union, for a primary source of inspiration with a view to adopting the Universal Convention on the Asylum Institute.

The right to asylum must be established in the 21st century as both a subjective and an objective right of asylum seekers. In order to achieve this goal, the International Community must settle the legal requirements without which it cannot be granted.

VI – Conclusion

The Asylum Institute has been recurrently used over the years. Whenever human life has been threatened, the victim has mulled over the possibility of requesting the right to asylum among the several prospects of international protection.

This institute has reached the 21st century as a subjective right of everyone who faces a systematic violation of the most elementary human rights. However, producing evidence of the previously mentioned violation is not a *sine qua non* condition for granting asylum to the applicants, because the asylum institute is still regarded as a discretionary, arbitrary, and sovereign right of the States.

In this context, it is crucial that the 21st century recognises that the right to asylum is an intrinsic right of every human being. A judicially binding instrument should be established and/or adopted in all countries of the world, in which the rights and the duties (of the State, of asylum seekers, and sheltered), the official entities tasked with assessing the requests, the requirements or criteria for granting asylum, and the formal procedures of the whole process are fully laid down.

Being the last resource for protection against the systematic violation of the most basic human rights, the internationalisation of the Asylum Institute is a needful and suitable instrument to meet that end.