

Migration, Refugee and Conflict

Week 2 – Introduction to Refugees

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Defining Refugees

- Who are Refugees?
- Who are Asylum seekers?
- Who are Internally Displaced Persons?
- Understanding the differences

Defining Refugees

- Refugees are those persons who escape from their native country due to varied reasons.
- The reasons could be social, political , cultural, religious, regimes.
- However, the words such as persecution, conflict, violence, human rights violations are the main determinants to justify the reasons.
- The crossing of international border to be safe and secured in another country is an important attributes of refugees.
- The 1951 Refugee Convention is a significant legal framework to define refugee and protect their rights.
- The 1967 protocol also is a significant document.

Who are Refugees?

- A refugee is any individual who “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 (her) nationality and is unable or owing to such fear, is unwilling to avail himself (or herself) of the protection of that country...”

(Convention relating to status of refugees 1951) Article 1 A (2)

- It can be mentioned as one who flees for refuge or safety to foreign country due to political upheaval, war, public disorder, diverse prevalent violence's.

Conditions of Being Refugee

CONDITIONS	
One	Have a well-founded fear of persecution
Two	Persecuted for the reasons of race, religion, nationality, membership of a particular social group or political opinion
Three	Outside the country of nationality
Four	Unable or unwilling to avail to the protection of country of nationality.

- The International Law of Refugee Protection basically the 1951 refugee convention was an outcome of those who became refugees by reasons of events that occurred in Europe before 1 January, 1951.
- The definition of refugee was limited with time and geography (location).
- Later the 1967 protocol relating to the status broadens the applicability of the 1951 convention.
- It removes the geographical and time limits that were part of 1951 convention.
- It can be used in any time in any place

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1951 Convention	1967 Protocol
Limited to People made refugees before 1951	No Time Limitation
Only Concerned with refugees from Europe	Recognizes that refugees can be from anywhere

- Not every person is a refugee when he/she leaves the country of nationality.
- Sometimes there occurs a situation when later they become refugees.
- This includes a person becomes a refugee due to certain change of circumstances in his/her country of origin during the time of his/her absence.
- - The person also can be a refugee due to certain actions carried out. The example for this includes expressing political views that leads to fear or persecution.

Three distinct components of 1951 Convention

- 1) Inclusion Clauses: The criteria that makes an individual a refugee and determines entitlement to international protections.
- 2) Exclusion Clauses: The criteria that determines who is not entitled to international protection under the 1951 Convention. Whether they do not need or they do not fit in.
- 3) Cessation Clauses: The criteria that determines when the refugee status comes to an end.

A Question arises

Will once a refugee, always remain a refugee?

- Not everyone can be a refugee. Always certain rules/conditions/criteria's exists. The Article 1 C sets out when refuge status come to an end.
- The 1951 Convention has a cessation clause that answers the above questions.
- Few criteria as such ;
 1. Has voluntarily re-availed of the protection of the country of his/her nationality
 2. Voluntarily re-acquired the lost nationality.

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3. Has acquired a new nationality and enjoys the protection of the country of new nationality (3rd country settlement)

4. Voluntarily re-established in the country which he/she had left owing to fear of persecution.

5. If the circumstances that gave a refugee status does not exists anymore.

So, this can justify that once a refugee always does not remain a refugee.

Exclusion Clauses

- Article 1(F) excludes individuals in reasons as such
 1. Committed a crime against peace, a war crime, or a crime against humanity as defined by the international legal frameworks in considerations to such crimes.
 2. Committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee.
 3. Has been guilty of acts contrary to the purposes and principles of United Nations.

Understanding Persecution

- Reason of persecution is determined due to the circumstantial events that creates fear and threats .
- The 1951 refugee convention has not defined as to what is considered as persecution. However, in its article it has mentioned the determinants to be considered.
- Article 31 and Article 33 refers to threats to life or freedom .
- Basically this focuses on the human rights concerns that links to the issues of threats of torture, cruelty, inhuman or degrading treatment.
- Unable or unwilling are two words highlighted to focus on persecution. Simply not providing protection . Example: against persecution by non-state actors.

As per the Convention

Persecution for reasons as such

- Race
- Religion
- Nationality
- Membership of a particular social group
- Membership of a particular political opinion.

Principle of Non-refoulement

- This is an important highlight of 1951 Convention.
- Article 33
- The principle of non-refoulement prohibits the return of a refugee to a territory where there is presence of threat to the persons life and fear exists.
- No refugee shall be returned where he or she would be at risk of persecution.
- This is considered as the customary international law.
- The term refoulement derives from French refouler meaning drive back or repel.

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- Principle of non-refoulement is considered as the essential foundation for international refugee law.
- It is also an integral part of human rights protection and advocates the belief of humanity in times of crisis.
- However, the cancellation of refugee status can occur in cases of criminal deeds.
- Non-refoulement is universally acknowledged as human rights.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its article 3 also mentions about the non-refoulement provisions.

Do Refugee also have obligations?

- Refugees are required to abide by the laws and regulations of the country they are in refuge.
- Respect measures taken for the maintenance of public order.

How is Refugee status determined?

- The refugee determination process is a kind of exercise and in this process the authorities of the host country or United Nations High Commissioner for Refugees (UNHCR) are involved.
- They ascertain an individual who seeks international protection is actually a refugee or not as per the eligibility criteria under the international or regional refugee instruments and national legislation or UNHCR's mandates.

Why Determination is necessary?

- Who constitutes to be a Refugee?
- Who is Eligible to be a Refugee?
- To effectively implement obligations under the 1951 Refugee Convention and 1967 Protocol.
- Resolution of Refugee Problem
- Protection against refoulement

Rights of Refugees

- Principle of non-refoulement (Art-33)
- Protection against threats to physical security
- Family reunification
- Special measures for the protection of particularly vulnerable groups
- Rights to be issued identity and travel documents
- Right not to be expelled except under certain strictly defined conditions.
- Right not to be punished for the illegal entry

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- Right to work
- Right to housing
- Right to education
- Right to public relief and assistance
- Right to freedom of religion
- Right to access to courts
- Right to freedom of movement within the territory

UNHCR on Protecting Refugees

- Refugees fall under the protection of UNHCR.
- Refugees travel to a refugee camp via different approaches in a first country of asylum and they register themselves for the refugee status.

Durable Solutions by UNHCR includes:

- Voluntary Repatriation
- Local integration
- Resettlement

Durable Solutions

1. Voluntary repatriation:

- It is the rights of an individual to return to the country of citizenship. The homeland of refugees becomes secured to return. The 1969 OAU Convention Article 5(1) emphasizes that the ‘essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against their will’.
- In addition, there also exists a proposed standards and guidelines for voluntary repatriation by UNHCR Executive Committee.
- Refugees should return voluntarily and in conditions of security.

2. Local integration :

- This is process that ultimately leads to the permanent settlement of refugees in the country where they sought asylum.
- Acceptance into the local community where the refugee first arrives.

3. Resettlement:

- Resettlement includes providing durable solution for refugees and the displaced, unable to return home or to their country of first refuge.

The refugees from the country of asylum to a third state willing to gain a permanent settlement.

Resettlement enhances international solidarity and considers the principle of international cooperation into effective action.

Important Initiatives

- In 1969 the Organization of African Unity (now the African Union) adopted the Convention on the Specific Aspects of refugee Problems in Africa.

The Article I (1) of this convention incorporates the definition from 1951 Convention.

The paragraph (2) has an addition to the approach that reflects the social and political realities of the contemporary refugee movements.

OAU convention has 15 articles and it governs the specific aspects of refugee problems in Africa.

It defines refugee by including owing to external aggression, foreign domination, events seriously disturbing public order and is compelled to leave nation.

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- The Cartagena declaration is another important adoption.

In 1984, 10 Central American States adopted this declaration that recognized violence, internal conflicts and massive violation of human rights as the reason to flee.

The Cartagena refugee definition has three criteria's:

1. Person needs to be outside his/her country
2. The country is experiencing at least one situational events
3. The persons life , security is in threat as a result of on-going situational events.

Understanding Asylum

- It can be said that asylum is a grant provided by a state in its territory to protect those persons who are fleeing persecution , human rights violations and serious harm from their home country.
- The 1948 Universal Declaration of Human Rights (UDHR) in its article 14 states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- The 1951 Convention also concentrates on the rights of individuals who are granted asylum and emphasizes on the necessity to grant asylum in considerations to the human rights approaches.

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- The Article 2 of OAU Convention has prioritized Asylum.

It regards granting asylum as a peaceful humanitarian act.

There is a clear statement that no person shall be rejected, returned or expelled that would compel the asylum seekers to return back where their life and liberty is in threat.

- The Cartagena declaration also has highlighted the importance of right to asylum focusing on the principle of non-refoulement.
- In addition, it has placed its concern to the durable solution of refugee issues.
- European Union in its charter of fundamental rights has considered asylum has an important human rights approaches.

Difference between an asylum seeker and a refugee

- Legal mechanism's distinguishes between a refugee and an asylum seeker.
- An asylum seeker is an individual who flee from their homeland due to persecution and grave human rights violations seeking protection in a new country but they have not been recognized legally as a refugee. Simply seeking asylum is a human right.
- The legal determination and fulfilling criteria's to becoming a refugees leads to granting refugee status.

Internally Displaced persons

- Internally displaced persons are those who are forced to flee their habitual residences due to several situational events.
- However, unlike crossing border they remain within the nations territory.
- Reasons behind IDPs could be as follows:
Violence, extortion, torture, development induced , conflict induced.-
- UN Guiding Principles on Internal Displacement has defined IDP .

“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 recognized state border.”

- UN Guiding Principles on Internal Displacement

- Nepal has National Policies on Internally Displaced Persons 2007
- The background of this policy highlights on the natural disasters, human-made circumstances and disasters, armed conflict and situation of violence and fears leading to threat and fear leading to forceful displacement.
- According, to this policy
- person who is living somewhere else in the country after having forced to flee or leave one's home or place of habitual residence due to armed conflict or situation of violence or gross violation of human rights or natural disaster or human made disaster and situation or with an intention of avoiding the effects of such situations.

Statelessness

- Statelessness is the situation of violation of human rights when one is not under the protection of any state.
- Article (1) of the Convention Relating to the Status of Stateless Persons, 1954 defines statelessness persons as “a person who is not considered as a national by any state under the operation of law”

UNHCR Global Trends 2021

- According to UNHCR the rise of forcibly increased at the end of 2021.
- This was the result of persecution, conflict, violence, human rights violations and events seriously disturbing the public order.
- 89.3 million people worldwide were forcibly displaced.
- 27.1 million refugees worldwide
- Distinguishing it according to the mandates;
- UNHCR's mandate = 21.3 million refugees
- UNRWA's mandate=5.8 million

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- 53.2 million are internally displaced worldwide.
- 4.6 million are asylum seekers
- The 69% of refugees are just originated from five countries.

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