



Short booklet of International laws about refugees

A product of



“Everyone has the right to seek and to enjoy in other countries asylum from persecution. ”

[Universal Declaration of Human Rights, Article 14(1)]

This booklet, produced by the 4th High School of Ilion, Athens, for the Erasmus+ project, titled **“Journeys of Hope: educational pathways to social inclusion and tolerance”**, aims to help students and teachers to become familiar with the general principles of international refugee law and to learn how they are implemented. Promoting refugee law and protection presupposes both knowledge and the ability to impart such knowledge. It has the purpose to mobilise them, as European citizens, and to fully understand that protecting the refugees is primarily the responsibility of all countries.

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Conventions and Declarations protecting the refugees

International and regional instruments relating to refugees include:

- 1951 Convention relating to the Status of Refugees
- 1967 Optional Protocol relating to the Status of Refugees
- Universal Declaration of Human Rights (art. 14)
- American Declaration on the Rights and Duties of Man (art. 27)

American Convention on Human Rights (art. 22)

- Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena Declaration)
- African [Banjul] Charter on Human and Peoples' Rights (art. 12)
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa
- Arab Charter on Human Rights (art. 28)
- Cairo Declaration on Human Rights in Islam (art. 12)
- European Convention on Human Rights (arts. 2, 3, and 5)
- 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
- Council Directive 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
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- Convention on the Rights of the Child (art. 22)

The United Nations Convention in 1951

The United Nations Convention relating to the Status of Refugees was a landmark in the setting of standards for the treatment of refugees. It incorporated the fundamental concepts of the refugee protection regime and has continued to remain the cornerstone of that regime to the present day.



On 28 July 1951, at Geneva, when the Convention was originally adopted, it was to deal with the aftermath of World War II in Europe even as the Cold War set in. The inspiration for the Convention was the strong global commitment to ensuring that the displacement and trauma caused by the persecution and destruction of the war years would not be repeated.

The Convention Relating to the Status of Refugees is the foundation of international refugee law. The Refugee Convention defines the term "refugee" (see on page ...) and sets minimum standards for the treatment of persons who are found to qualify for refugee status. Because the Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are

outside their country of origin and are refugees as a result of events occurring in Europe or elsewhere before 1 January 1951.

The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host country. The **cornerstone** of the convention is the principle of **non-refoulement**. [article 33]. According to this, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom.

Other rights contained in the 1951 Convention:

- The right not to be expelled, except under certain, strictly defined conditions (article 32)
- The right not to be punished for illegal entry into the territory of a contacting State (article 31)
- The right to work (articles 17 to 19)
- The right to housing (article 21)
- The right to education (article 22)
- The right to public relief and assistance (article 23)
- The right to freedom of religion (article 4)
- The right to access the courts (article 16)
- The right to freedom of movement within the territory (article 26)
- The right to be issued identity and travel documents (articles 27,28)

The 1967 Protocol

During the decades that followed, the world has been undergoing significant transformations. New refugee crises emerged during the late 1950s and early 1960s, which posed serious challenges to the capacity of States to respond to contemporary displacement situations. So it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Convention was drafted and adopted.

The 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. The 1967 Protocol broadens the applicability of the 1951 Convention and removes the geographical and time limits that were put. These limits initially restricted the Convention to persons who became refugees due to events occurring in Europe before 1 January 1951.

The recurring cycles of violence and systematic human rights violations in many parts of the world are generating more and more intractable displacement situations. The changing nature of armed conflict and patterns of displacement, trafficking and smuggling of people, abuse of asylum procedures and difficulties in dealing with unsuccessful asylum-seekers are additional compounding factors.

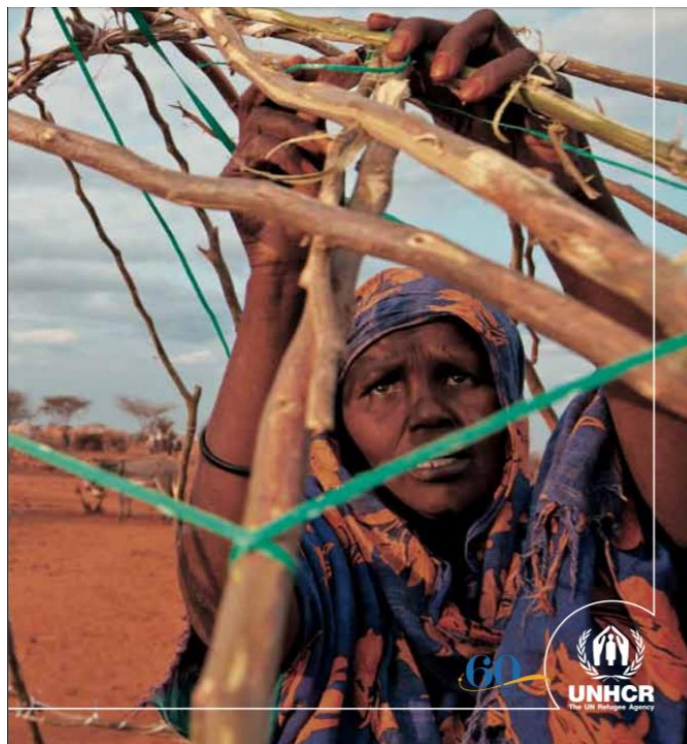
Asylum-seekers have become something of a campaign issue in election situations. They make a perfect target for people wanting to invoke the age-old prejudice against foreigners. Parliamentarians should thus take the lead in promoting respect and tolerance for refugees and in encouraging local populations to see refugees not only as people needing and deserving international protection, but also as persons with a real and enduring contribution to make to the betterment and diversification of their communities.



The United Nations General Assembly created the Office of the United Nations High Commissioner for Refugees (UNHCR). It serves as the 'guardian' of the 1951 Convention and the 1967 Protocol.

UNHCR is mandated to protect and find durable solutions for refugees. Its activities are based on a framework of international law and standards that includes the 1948 Universal Declaration of Human Rights and the four Geneva Conventions (1949) on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and nonbinding, that specifically address the needs of refugees.

The 1951 Convention expressly provides that States are expected to cooperate with UNHCR in ensuring that the rights of refugees are respected and protected.



Who is a refugee?

Article 1(A)(2) of the 1951 Convention defines a refugee as an individual who:

- has a well-founded fear of persecution because of his/her - Race, - Religion, - Nationality, - Membership in a particular social group, or - Political opinion;
- is outside his/her country of origin; and
- is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

Applying this definition, internally displaced persons (IDPs) – including individuals fleeing natural disasters and generalized violence, stateless individuals not outside their country of habitual residence or not facing persecution, and individuals who have crossed an international border fleeing generalized violence are not considered refugees under either the 1951 Convention or the 1967 Optional Protocol.

Countries in the Americas and Africa experiencing large-scale displacement as the result of armed conflicts found that the 1951 Convention definition did not go far enough in addressing the protection needs of their populations. Consequently, both Article 3 of the Cartagena Declaration and Article 1(2) of the 1969 OAU Convention extend refugee status.

The Organization of African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional treaty adopted in 1969, added to the definition found in the 1951 Convention to include a more objectively based consideration, namely:

“ 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 1984, a colloquium of Latin American government representatives and distinguished jurists adopted the Cartagena Declaration. Like the OAU Convention, the Declaration adds a more objectively based consideration to the 1951 Convention refugee definition to include:

“ Persons who flee their countries “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” .

Exceptions: Exclusion and Cessation Clauses

The 1951 Convention places a number of restrictions on eligibility for refugee status. Articles 1(D) and Article 1(F) excludes individuals that:

- (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations.

Individuals who voluntarily avail themselves of the protection of their country of nationality or habitual residence or individuals who have received protection in a third country are also not considered refugees.

[1951 Convention relating to the Status of Refugees, art. 1(C)]

The responsibilities of States to the Refugee Conventions

The 1951 Convention does not define how States parties are to determine whether an individual meets the definition of a refugee. Instead, the establishment of asylum proceedings and refugee status determinations are left to each State party to develop. This has resulted in disparities among different States as governments craft asylum laws based on their different resources, national security concerns, and histories with forced migration movements.

As a general principle of international law, every treaty in force is binding upon the parties to it and must be performed in good faith. Countries that have ratified the Refugee Convention are obliged to protect refugees on their territory according to its terms. Among the provisions that States Parties to the Refugee Convention and Protocol must apply are:

- Cooperation with UNHCR - Article 35 of the Refugee Convention and Article II of the 1967 Protocol contain an agreement for States Parties to cooperate with UNHCR in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.
- Information on National Legislation - The States Parties to the Refugee Convention agree to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention.
- Exemption from Reciprocity - Where, according to a country's law, the granting of a right to an alien is subject to the granting of similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity does not

apply to refugees since they do not enjoy the protection of their home country.

“The Conference calls on all Parliaments and Governments to be conscious of their responsibility to protect refugees and to receive victims of political persecution as defined in the 1951 Convention Relating to the Status of Refugees.”

[78th Conference of the Inter-Parliamentary Union, held at Bangkok, Thailand, October 12-17, 1987]

“The Executive Committee encourages States and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized protection standards and respond to particular regional circumstances and protection needs.”

[UNHCR Executive Committee Conclusion N° 81(k), 1997]

Finally, the United Nations High Commissioner for Refugees (UNHCR) provides protection to IDPs and stateless individuals in addition to 1951 Convention refugees.

“The Executive Committee reaffirms that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime”.

[UNHCR Executive Committee Conclusion N° 87(f), 1999]

Rights crucial to refugee protection

Most of the rights crucial to refugee protection are also the fundamental rights stated in the 1948 Universal Declaration of Human Rights:

- Right to life, liberty and security of person
- Right to seek and enjoy asylum
- Freedom from torture, or cruel, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- Recognition as a person before the law q Freedom of thought, conscience, and religion
- Freedom from arbitrary arrest and detention
- Freedom from arbitrary interference in privacy, home and family
- Freedom of opinion and expression
- Right to be educated
- Right to participate in the cultural life of a community

BASIC RIGHTS in DETAILS

1. NON-REFOULEMENT

The basic principle of refugee law, non-refoulement refers to the obligation of States not to refoule, or return, a refugee 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.”

[1951 Convention relating to the Status of Refugees, art. 33(1).]

Non-refoulement is universally acknowledged as a human right. It is expressly stated in human rights treaties such as Article 3 of the Convention against Torture and Article 22(8) of the American Convention on Human Rights.

Additionally, both regional and domestic courts have interpreted the rights to life and freedom from torture to include a prohibition against refoulement. See *R (on the application of) ABC (a minor) (Afghanistan) v. Sec’y of State for the Home Dep’t* [2011] EWHC 2937 (Admin.) (U.K.); ECtHR, *Case of M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, Judgment of 21 January 2011.

The principle of non-refoulement prohibits not only the removal of individuals but also the mass expulsion of refugees. See, e.g., African [Banjul] Charter on Human and Peoples’ Rights, art. 12(5).

There are two important restrictions to this principle. Persons who otherwise qualify as refugees may not claim protection under this principle where there are “reasonable grounds” for regarding the refugee as a danger to the national security of the host country or where the refugee, having been convicted of a particularly serious crime, constitutes a danger to the host community.

[1951 Convention, art. 33(2)].

2. FREEDOM OF MOVEMENT



At the regional level, the rights to seek asylum and freedom of movement can be found within the text of the same article. [African [Banjul] Charter on Human and Peoples' Rights, art. 12(1) and (3); American Convention on Human Rights, art. 22.]

The rights are closely related, since the inability to return to one's country is the basis of an asylum claim while the ability to leave one's country is a prerequisite for claiming refugee status under the 1951 Convention.

Freedom of movement, however, is also a key right for refugees within their host country. [International Covenant on Civil and Political Rights, art. 12.]

Article 26 of the 1951 Convention provides that States shall afford refugees the right to choose their place of residence within the territory and to move freely within the State. Meanwhile, Article 28 obliges States parties to issue refugees travel documents permitting them to travel outside the State "unless compelling reasons of national security or public order otherwise require."

Freedom of movement is an especially important issue with regard to protracted refugee situations in countries with limited national resources and/or limited legal frameworks for protecting refugees who nonetheless host large refugee populations. In such

countries, refugee warehousing – in which refugees are confined to refugee camps, thereby restricting their access to employment and education – is commonly practiced.

3. RIGHT TO LIBERTY AND SECURITY OF THE PERSON



The right to liberty and security of the person is important in the context of how asylum seekers are treated within the intended country of refuge. The national laws of several countries provide for the detention of asylum seekers at one point or another during the adjudication of their claims. [8 CFR § 235.3(c) (U.S.); Refugees Act (2014) Cap. 173 § 12(3) (Kenya).]

THE DUBLIN REGULATION

The detention of asylum seekers is a contentious issue because of the conditions found in the detention facilities of several countries. This is particularly an issue in Greece, a country

overwhelmed by the number of asylum seekers it receives, many of whom use Greece as a port of entry as they try to access other European countries. In order to clarify which State has responsibility for a particular asylum applicant, the Council of Europe issued 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 (commonly known as the **Dublin Regulation**).

Under the Dublin Regulation, the State through which the third country national first entered Europe is generally considered the State responsible for adjudicating that national's asylum claim. [Dublin Regulation, art. 10(1)].

As a result, many of these asylum seekers are returned to Greece to have their claims adjudicated. Human rights organizations including Amnesty International have reported on unsanitary and over-crowded conditions in Greek detention centers. [Amnesty International, Annual Report 2012 (2012), 157].

Additionally, asylum seekers have claimed that they did not have access to a UNHCR representative or information about how to apply for asylum while in detention. *Id.* The European Court of Human Rights (ECtHR) has held in a number of cases that the conditions in the Greek detention centers violate individuals' rights to humane treatment and dignity under the [ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, Judgment of 21 January 2011.]

4. RIGHT TO FAMILY LIFE

The family is seen as the “natural and fundamental group unit of society and is entitled to protection by society and the State. [“ International Covenant on Civil and Political Rights, art. 23(1).]

In respect of this right, a number of countries provide for the granting of derivative status to dependent relatives. Thus, where an individual is granted asylum, his or her dependent relatives will also receive protection through him or her. [8 U.S.C. § 1158(b)(3)(A) (U.S.); Immigration Rules, 2012, S.I. 2012/11, art. 339Q(iii) (U.K.); National Refugee Proclamation, No. 409/2004, art. 12 (Eth.); Refugees Act (2014) Cap. 173 § 15 (Kenya).]

However, should that individual’s refugee status be terminated, the status of dependent relatives will also be terminated. [National Refugee Proclamation, No. 409/2004, art. 6(1) (Eth.); Refugees Act (2014) Cap. 173 § 20(1) (Kenya).]

Consequently, these domestic laws do not preclude dependent relatives from making their own asylum claims. [National Refugee Proclamation, No. 409/2004, art. 12(5) (Eth.); Refugees Act (2014) Cap. 173 § 15(4) (Kenya).]

The definition of a dependent relative, however, varies by the cultural notions of family prevalent in the State party. In the U.K., dependents are defined as the “spouse, civil partner, unmarried or same-sex partner, or minor child accompanying [the applicant]” while in Kenya, dependent relatives include the brother or sister of an applicant under the age of eighteen, “or any dependent grandparent, parent, grandchild or ward living in the same household as the refugee.” [Immigration Rules, 2012, S.I. 2012/11, art. 349 (U.K.); Refugees Act (2014) Cap. 173 § 2 (Kenya).]

National Procedures for Claiming Asylum

Typically, refugee status determinations or asylum adjudications are conducted by an official from a designated government department or agency. These officials should have a solid knowledge of refugee law. In most cases, the official will interview the asylum seeker to evaluate his or her evidence and credibility. The burden is on the asylum seeker to prove that he or she meets the definition of a refugee and asylum seekers are encouraged to supply as much supporting evidence as possible. Supporting evidence may take the form of country reports, NGO reports, news articles, affidavits, or the in-person testimony of witnesses.

The adjudication of asylum claims is reserved to individual States. Although some States, namely those that comprise the Council of Europe, have made an effort to adopt a uniform asylum system, international and regional bodies lack the jurisdiction to adjudicate individual asylum claims.

[Dublin Regulation; Council Directive 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 (commonly known as the Qualification Directive)] International and regional bodies do, however, adjudicate claims asserting violations of the human rights of refugees and asylum seekers.

Despite differences across, and sometimes within, States, there are a number of commonalities between the asylum procedures of States who have national frameworks for granting refugee status.

Interpretation of Key Terms

In order to understand how the procedures about refugees operate, it is necessary to identify how certain key terms in the 1951 Convention are defined within the domestic legal systems of particular States.

Refugee. States parties to the 1951 Convention and/or the 1967 Optional Protocol have incorporated the Convention's definition of a refugee into their domestic law.

[8 U.S.C. § 1101(a)(42) (U.S.); Immigration Rules, 2012, S.I. 2012/11, art. 334 (U.K.); CESDA L711-1 (Fr.) (French); The Immigration and Refugee Protection Act, S.C. 2001, ch. 27, art. 96 (Can.).

States that are also party to the Cartagena Declaration or the 1969 OAU Convention have also incorporated those instruments' broader definition of a refugee, recognizing individuals fleeing generalized violence and other breakdowns of public order.

[Decree No. 3301, May 6, 1992 (Ecuador) (Spanish); Refugees Act (2014) Cap. 173 § 3 (Kenya).]

Asylum seeker. A person within a State party who has applied for recognition as a refugee. If the asylum seeker is determined to meet the definition of a refugee they are granted asylum.

Stateless person: a person who is not considered to be a national by any State under the operation of its law. He/she may be, but is not necessarily, a refugee. There are millions of stateless persons around the world.

Well-founded fear. Individual States have interpreted the 1951 Convention's requirement of a well-founded fear of persecution to require asylum seekers to show that there is a reasonable possibility that they will suffer persecution if returned to their country of nationality or habitual residence. [*Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987)].

This is considered to be both an objective and subjective standard. Although well-founded fear refers to a future threat of persecution, individuals who have faced persecution in the past are presumed to have a well-founded fear. [Immigration Rules, 2012, S.I. 2012/11, art. 339K (U.K.).]

Persecution. Persecution is not defined in the 1951 Convention or the 1967 Optional Protocol. In an attempt to provide guidance on what constitutes persecution, the Council of Europe included a non-exhaustive list in the Qualification Directive of acts that could be considered persecution such as:

acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; prosecution or punishment, which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment; prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2); acts of a gender-specific or child-specific nature.

[Qualification Directive, art. 9(2).]

The persecution at issue also does not need to have been committed by a State actor; persecutory acts committed by non-state actors may qualify under the 1951 Convention where the

State is unwilling or unable to protect the individual claiming refugee status. See, e.g., *id.* at art. 6.

Race, religion, nationality. The asylum applicant need not actually possess the racial, religious, or national characteristic in question provided that characteristic was attributed to the asylum seeker by the persecutor and is the reason for the persecution [Qualification Directive, art. 10(2)].

Political opinion. Like the above three grounds, political opinion may be imputed to the asylum seeker. There is some debate within the U.S. as to whether neutrality may qualify as a political opinion for the purposes of obtaining asylum. [*Compare Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985)] (no persecution based on political opinion where refusal to join work stoppage resulted in threats and violence from militants because refusal was motivated by desire to earn wages) *with Bolanos-Hernandez v. I.N.S.*, 767 F.2d 1277, 1284-5 (9th Cir. 1985) (persecution based on political opinion where former military member refused to join guerrillas because he wished to remain neutral).

Membership in a particular social group . There is still a lack of consensus as to what constitutes a particular social group and whether classes of persons not included in the 1951 Convention who nonetheless face persecution, such as women and homosexuals, fall within this category.

The Council of Europe has stated that persons may be considered to constitute a particular social group when they share a common immutable characteristic, that is, something innate to their being or so fundamental to their being that they cannot be expected to change it, and have a distinct identity within their country of

nationality or habitual residence because they are perceived as being different by that society. [Qualification Directive, art. 10(1)(d) (applying standard articulated in *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) (U.S.))].

Particularly serious crime. The definition of a particularly serious crime varies by country. The UNHCR considers a particularly serious crime to be a capital crime or a very grave punishable act. The UNHCR recommends balancing the severity of the crime against the severity of the persecution feared but this balancing test has not been widely adopted. [*Ali v. Achim*, 468 F.3d 462 (7th Cir. 2006) (rejecting UNHCR balancing test)].

In the U.S., 8 U.S.C. § 1158(b)(2)(B)(i), provides that an aggravated felony shall constitute a particularly serious crime. Under the statute, aggravated felonies may include felonies for which the potential sentence is imprisonment for one year or more. (For withholding of removal, the potential sentence must be for at least five years.)

War crimes, Crimes against Humanity. States apply the definition provided in international humanitarian law, as articulated in Articles 7 and 8 of the Rome Statute of the International Criminal Court. [*A.B. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform* [2011] IEHC 198 (H. Ct.) (Ir.)].

- Source: <http://www.ijrcenter.org/refugee-law/>

OVERVIEW

States have been granting protection to individuals and groups fleeing persecution for centuries; however, the modern refugee regime is largely the product of the second half of the twentieth century. Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it. Article 14(1) of the Universal Declaration of Human Rights (UDHR), which was adopted in 1948, guarantees the right to seek and enjoy asylum in other countries. Subsequent regional human rights instruments have elaborated on this right, guaranteeing the “**right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions.**”

American Convention on Human Rights, art. 22(7);

African Charter on Human and Peoples’ Rights, art. 12(3).

The controlling international convention on refugee law is the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol). The 1951 Convention establishes the definition of a refugee as well as the principle of non-refoulement and the rights afforded to those granted refugee status. Although the 1951 Convention definition remains the dominant definition, regional human rights treaties have since modified the definition of a refugee in response to displacement crises not covered by the 1951 Convention.

SOURCES for this BOOKLET (and for more INFORMATION):

INTERNATIONAL LAWS

<http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>



**REFUGEE PROTECTION:
A Guide to International Refugee Law**

[<https://epthinktank.eu/tag/eus-refugee-crisis/>]



GREEK LAWS about refugees and asylum seekers:

<https://www.e-nomothesia.gr/kat-allodapoi/prosphuges-politiko-asulo/nomos-4375-2016-phek-51-a-3-4-2016.html>



<https://sites.google.com/site/adeiadiamonis/>

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