

# Refugees, migrants and stateless persons in international law

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**Abstract**— In the paper the author attempts to describe the issue of refugees as a very important problem in international law, a problem which generates profits e.g. a rise in human capital, as well as losses e.g. costs, for the countries involved. The balance depends on the policy of a given country, whether this country is able to capitalize on the human capital or whether it is only counting costs. Sometimes obligations resulting from international law are not sufficient to convince societies that accepting refugees is the right decision. The paper will focus on how, with appropriate legislative tools, the united world can help people who are in danger. The author will also pose a question whether enough is being done, or whether the scope and methods currently in use should be amended. The paper discusses the issue of refugees from the perspective of various organizations involved i.e. global institutions like UNHCR, European Union institutions, non-government organizations (NGOs) and contains a review of relevant legal acts such as the Treaty of Lisbon, the Geneva Convention etc. The author also touches upon the practical side of the refugee policy execution in various countries.

**Index Terms**— refugee, international law, migration, international organizations, UN.

## I. INTRODUCTION

Refugees are a specifically defined and protected group in international law. These people cross national borders to look for safety in nearby countries. It is dangerous for them to return to their homeland and if they do return they can encounter deadly consequences. The definition of refugees formulated by the UN Agency (Anon, 2017) says that ‘they are persons who are outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and, as a result, require international protection’ (Goodwin-Gill and McAdam, 2007). It is worth emphasizing that Article 14 of the Universal Declaration of Human Rights guarantees the right for everyone to seek and enjoy asylum from persecution. The refugee protection system consists of a combination of

international law, human rights, regional agreements and national laws. The actors include single persons, states, international organizations, non-governmental organizations (NGOs), companies and smugglers (Goodwin-Gill and McAdam, 2007).

## II. BASIC TERMS AND DEFINITIONS

The phenomenon of seeking refuge is closely connected to the term "nationality". According to the Geneva Convention this term is extended to ethnic and linguistic groups. Ethnic and linguistic minorities may easily become a subject of hostility and persecution. Other possible reasons for harassment are race and religion. The threat of persecution, for whatever reason, usually evokes fear. The very feeling of fear may sometimes prevent people from taking advantage of the protection offered by international community i.e. to seek the status of a refugee. This inability to look for help may be caused by civil war, riots or refusal of the state to provide protection due to the lack of exclusion clauses against the person applying for the refugee status (Kowalczyk, 2004).

The *Convention Relating to the Status of Refugees*, also known as the *1951 UN Refugee Convention*, contains an extensive definition of a refugee. The provisions of the 1951 Convention, include basic international norms with respect to all measures for the protection and treatment of refugees. Pursuant to the Convention, refugees cannot be expelled or returned to situations in which their life or freedom would be threatened. The primary responsibility for refugee protection is entrusted to the countries involved while the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) includes various regional refugee instruments. UNHCR works closely with governments, helps them and assists with problems as they arise. The 1951 Convention and its 1967 Protocol *Relating to the Status of Refugees* was a legal base to save millions of lives, nevertheless this law is not perfect and sometimes fails (Refugees, 2018).



The Fourth Geneva Convention protects civilians, including those in occupied territories. Before, only combatants had been protected but the events of World War II showed disastrous consequences of the fact that civilians had been left outside the convention. As the result of the experiences of WW2 (Icrc.org, 2018), the Convention adopted in 1949 (Geneva Convention Relative to The Protection of Civilian Persons in time of War), contained a section on the general protection of civilians in war. Article 44 says that 'in applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government' (Geneva Convention, 1949).

A notion which is somehow connected with the issue of refugees is the notion of a migrant. There is no legal and universal definition of this term but some international organizations, mass media and authorities create, understand and use it. Migrants are persons who look for better life conditions in another place, but their existence in their homeland is not threatened in any way. These people usually seek asylum and better economic situation. The domain of the UN, says that: 'we need to ensure that the human rights of migrants are respected. At the same time, we also need to provide an appropriate legal and operational response for refugees, because of their particular predicament and to avoid diluting state responsibilities towards them'. UNHCR always describes refugees and migrants separately, to clearly show the reasons and character behind refugee movements. This is necessary with respect to obligations that are owed to refugees under international law. The factors motivating people to move can be a combination of a number of reasons. Migrants may want to move in order to improve their lives by finding a better-paid work, better education or to reunite with families. People who leave their countries for the above mentioned reasons would not usually be considered refugees under international law. Another very important difference between migrants and refugees is that migrants are protected by international human rights law, which is connected with ordinary protection of human beings. Human rights are very important for migrants as they provide protection in a number of areas.

Another term connected with movements of people is forced migration which is sometimes used by social scientists as a general term describing many kinds of movements, both across international borders and within a single country. In the past, the term forced migration was used to describe people, who had been displaced by environmental disasters, conflicts or development projects but it has never been a legal definition (Geneva Convention, 1949).

Asylum-seekers, in turn, are people who have sought international protection and whose refugee status has not yet been determined, irrespective of where they may have been lodged. Internally displaced persons can be described as people or groups of individuals who have been forced 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 man-made disasters, and who have not crossed an international border. For the purposes of UNHCR's statistics, this population only includes conflict-generated IDPs to whom the Office extends protection and/or assistance.

Returned refugees are former refugees who have returned to their country of origin spontaneously or in an organized fashion but are yet to be fully integrated. Such return would normally only take place in conditions of safety and dignity. And lastly, stateless persons are defined under international law as persons who are not considered as nationals by any state under the operation of its law. In other words, they do not possess the nationality of any state. UNHCR statistics refer to persons who fall under the agency's statelessness mandate because they are stateless according to this international definition, but data from some countries may also include persons with undetermined nationality (Popstats.unhcr.org, 2018).

### III. INTERNATIONAL ADMINISTRATION -UNHCR

The basic act regulating the issue of refugees is the Geneva Convention Relating to the Status of Refugees adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V) adopted by the General Assembly of the United Nations on 14 December 1950. The United Nations High Commissioner for Refugees was founded as a subsidiary organ of the General Assembly by Resolution 319 (IV) of the United Nations General Assembly of December 1949. Initially, the organization was only intended to operate for 3 years, as of January 1951, due to the disagreement of many UN member states over the implications of a permanent body. After three years, the mandate was to be terminated but in reality it was prolonged many times. In the end, the UN General Assembly abolished the requirement to renew the mandate every few years and established the Office permanently. The UNHCR's mandate is to provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions. The statute also specifies the basic functions and tasks of the High Commissioner and the rules for organization of the Office. The High Commissioner is responsible for the management and supervision over UNHCR offices. He/she directs the work of the agenda with the help of the Deputy High. The UNHCR structure also includes regional offices, representative offices, branches and regional offices. UNHCR's activities in individual countries are directed by Representatives of High Commissioner. There are also Regional Representatives of the High Commissioner, who are responsible for coordinating activities in a specific region, including several countries (e.g. Central Europe). From 1959 the Commissioner has been assisted by an advisory body – the Executive Committee of the Office of the UN High Commissioner for Refugees Affairs. The office of the UN High Commissioner for Refugees is involved directly in protection of refugees as the leading and coordinating subject.

UNHCR possesses control competences in the application of the Geneva Convention, which gives a wide range of powers:

consultations on drafting acts, issuing soft law acts after legally guaranteed participation, in an individual procedure granting refugees status. UNHCR is entitled to take various activities listed in § 8 of the Statute, including contribution to the process of concluding and ratifying international conventions to supervise their implementation, concluding special agreements to improve the situation of refugees and limit their number, information activities and cooperation with governments. Pursuant to § 6 of the Statute, the powers of the High Commissioner fall under the so-called historical refugees and mandatorial refugees. The UN has expanded the UNHCR's mandate and the responsibilities of the organization by obliging to protect different groups of people not covered by the provisions of binding international acts e.g. internal refugees i.e. people who left their place of residence, but still remain in the territory of the country. The acts established in 1957 by the Committee have a similar effect.

The data shown by UNHCR indicates that in 2017 the highest levels of displacement ever recorded were observed. About **65.6 million** people around the world were forced out from home that year. This number includes nearly **22.5 million refugees**, half of them **under the age of 18**. **There are also about 10 million of stateless people** who have been denied nationality and access to basic rights such as education, healthcare, employment and freedom of movement. In 2017, every minute nearly 20 people were forcibly displaced as a result of a conflict or persecution.

The above mentioned data was created by full-time statisticians in UNHCR's Field Information and Coordination Section. They track the number of people forced to escape from homes when a major displacement crisis erupts and disseminate this knowledge to public opinion. Staff of Information and Coordination Section employs 10,966 workers, around 87 percent of them are field workers who work in 130 countries and are based in a mixture of regional and branch offices as well as sub and field offices. These people try to help the displaced and they specialize in a wide range of disciplines, including legal protection, administration, community services, public affairs and health. These activities are funded in 87 percent by governments and the European Union, other sources of financing are provided by inter-governmental organizations, pooled funding mechanisms, the private sector, foundations, corporations and the public. Additionally, the Section receives a limited subsidy from the UN budget for administrative costs, and accept in-kind contributions, including items such as tents, medicines and trucks. UNHCR launched an annual budget of US\$ 300,000 back in 1950. Since then the budget rose to more than US\$ 1 billion in the early 1990s and reached a new annual high of US\$ 7.7 billion in 2017. UNHCR runs a programme that supports ongoing operations as well as a supplementary programme covering emergency situations such as for example the Syrian crisis. Although the budget seems to be quite extensive, a huge portion of the money is consumed by the administration.

There are special databases that are used by all partners to respond to the needs of refugee populations. UNHCR Statistics Database provides data, reports and other information essential

for field operations. It also prepares statistical reports on people of concern – refugees, asylum seekers, returned refugees, the internally displaced and stateless people. Detailed information on the country of asylum, place of origin, gender, age, location and legal status of refugees is also available (Refugees, 2018).

#### IV. EU ADMINISTRATION CREATED TO HELP REFUGEES

The European Union administration is to ensure the implementation of law and the implementation of EU policies with respect to refugees. The implementation rests in the hands of various institutions and bodies, consisting of national and EU components (Dyl et al., 2011). Thus, one can speak about two general principles characterizing the administration: separateness and cooperation. The principle of separateness defines the structure of the European administrative order, and the principle of cooperation - its functional aspect.

One of the first regional organizations undertaking activities for refugees and regulating their legal situation is the European Council established in 1949. The issue of refugees appeared on the forum of this organization already at the first session of the Parliamentary Assembly in 1949. It is worth mentioning that the Council of Europe was the only European organization that undertook initiatives for the harmonization of asylum policies and practices until the mid-1970s.

Almost all major regional organizations created specialized institutions dealing with the problem of refugees. The Council of Europe established (Boček et al., 2018):

- the Ministerial Conference of Migration which helps to develop direct contacts between relevant ministers from EU Member States and lays out the organization's direction for the next 2-3 years;
- the Committee of Migration, Refugees and Demography of the Parliamentary Assembly - the commission presents reports which serve as a basis for adoption by the Parliamentary Assembly resolutions and recommendations, organizes thematic meetings for representatives of Council of Europe members;
- the European Committee of Migration (CDMG) is the main intergovernmental body responsible for migration issues, including refugees. The Committee conducts research, implements special programs, organizes conferences. It is responsible for preparing meetings of responsible ministers for migrations;
- ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) - it has important legislative functions, preparing draft legal acts (resolutions and conventions) which are later submitted to the Committee of Ministers of the Council of Europe.

In practical terms, the organs of the European Union and the Council of Europe have developed an extensive program to help refugees especially from the Middle East and Africa. The program was meant to be implemented in all EU countries but some countries refused to accept refugees and decided not to

participate in the program, which undermined the common policy. Another important fact was that most of the so called "first contact countries" i.e. Italy and Greece were not prepared for such a big wave of refugees. Most of the refugees are heading to western countries which can offer them extensive social programme. Germany and France for example have welcomed a big number of refugees, whereas some new EU member states such as Poland and Hungary rejected to accept any, also Bulgaria is reluctant to help due to economic and internal security reasons.

In addition, the Committee aims to harmonize legal provisions and practices in the member states in the field of asylum policy. It also gathers information on the influx of refugees to EU countries. There are two annual meetings of EU member states during which representatives are working towards a common position on refugee issues and justice in respect of fundamental rights. Although the measures, which are based on solidarity between member states, are to lead to a "common policy" in the field of asylum and are supposed to be fair to third-country nationals, it must be remembered that matters in the area of freedom, security and justice are shared competences of all member states (Article 4 (2) (j) TFEU (Eur-lex.europa.eu, 2018)) and in their implementation the principles of subsidiarity and proportionality must be respected. In relation to the wording of the TEC after the Amsterdam reform, significant changes are visible in the basis of the current Treaty. Article 78 paragraph 1 TFEU stresses the desire to pursue a 'common policy' in the field of asylum, subsidiary protection and temporary protection, the aim of which is to grant an appropriate status to every third-country national who requires international protection. The obligation to comply with the principle of non-refoulement gained the nature of a commitment under the Treaty, not only from international obligations of states or customary law. Moreover, this principle of refugee law covers all forms of protection, and not only the status regulated by the Geneva Convention. The Convention will continue to form the basis and pattern of compatibility of the common EU policy.

In addition, article 78 paragraph 1 refers to "other relevant treaties", among which the European Convention, the Convention against Torture of 1984 and the Convention on the Rights of the Child of 1989 are mentioned. Adoption of secondary law instruments in this field respects the so-understood international refugee law, which at the same time sets limits for EU regulations. Any instrument of secondary law which is contrary to the aforementioned treaties does not fulfill the condition of its proper adoption and should be considered to be contrary to primary law. The subjective scope of treaty regulation includes, as before, "third country nationals", i.e. persons who are not citizens of the European Union within the meaning of article 20 paragraph 1 TFEU. For the purposes of Title V TFEU, stateless persons were also included. Citizens of EU member states may enjoy protection in other member states only on the principles set out in the Protocol on the right of asylum for citizens of the member states of the European Union, attached to the EC Treaty, and now to the TFEU.

In 2013 the Common European Asylum System (CEAS) was

established. This legal act regulates refugee laws in the territory of EU. It is a fundamental right for people migrating into the territory of the EU, but interpretative inaccuracies raise many problems for the member states. According to the United Nations High Commissioner for Refugees, "the number of refugees and internally displaced persons has reached in 2015 the highest level since the Second World War, with over 60 million refugees" (Raptim.org, 2018). A large percentage of these people are refugees from Syria. Almost 11 million Syrians have left their homes since the outbreak of war in March 2011. Now, in the sixth year of the war, about 13.5 million people need humanitarian aid inside the country (Refugees, 2018).

The structure of administration involved in foreigners protection is multi-levelled and complicated. For example the EU administration specializing in matters of asylum was developing gradually, mainly from the need to support and coordinate the activities of EU member states. The main reason behind its existence is to monitor the progress in implementing law. Law regarding refugee issues is also created by international administration e.g. by the UN High Commissioner for Refugees. International organizations belonging to the global administration sometimes execute certain tasks in imperious (administrative and non-administrative) form. Between authorities there are different legal dependencies operating on functional levels of cooperation, coordination, control and supervision.

## V. THE TREATY OF LISBON AND REFUGEE POLICY

At the meeting in Brussels on 17-18 June 2004, the European Council expressed its conviction that it was time to start the next stage in the process of creating an 'area of freedom, security and justice' and obliged the Commission to prepare proposals for a new program for the years to come. The Commission, already in 2000, drew attention to the fact that such an ambitious program, which is the construction of the second stage of Common European Asylum System (WESA), cannot be implemented on the basis of article 63 TWE (Eur-lex.europa.eu, 2018). The legal basis for the second stage was to become the new Constitutional Treaty. Finally, the activities undertaken to develop the second stage of WESA (completion was planned for the end of 2012) are based on the Treaty on the Functioning of the European Union (TFEU). The political assumptions of the second stage were included in the Hague Program of 2004, the European Pact on Immigration and Asylum, adopted by the European Council on 17 October 2008 and the Stockholm Program of 2009. The legal basis is article 78 TFEU. It is included in Chapter 2 'Policies on border control, asylum and immigration' of Title V ('Area of Freedom, Security and Justice') of Part Three of the TFEU. It is an extension of article 67 TFEU, stating that the Union is an area of freedom and security in the light of the Treaty (and the political documents mentioned). Now, the EU overall policy on the creation of WESA has two dimensions. The first - internal - boils down to further harmonizing and/or harmonizing the laws of the member states in the field of asylum and solidary cooperation between states in this regard. As regards the scope of

harmonized law in the internal dimension of WESA, it should be stated that it encompasses competence, material law and procedural matters. In these areas, the Union now has the basis to harmonize national law at its chosen level, it is not limited - as before - to setting minimum standards. Authorizations to take legislative action are included in article 78 paragraph 2 letters a-f TFEU: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, adopt measures concerning the Common European Asylum System covering: (a) a uniform status of asylum for third-country nationals, valid throughout the Union; (b) a uniform status of subsidiary protection for third-country nationals who, without being granted European asylum, need international protection; (c) a common system of temporary protection for displaced persons, in the event of a massive inflow; (d) common procedures for the granting and withdrawal of a uniform status of asylum or subsidiary protection; (e) criteria and mechanisms for determining the member state responsible for examining a request for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection." As pointed out by S. Peers, despite the use of the word "common", "uniform" in the TFEU, the Union is not obliged to fully harmonize the law in the field of asylum. These provisions should be interpreted in such a way that the EU institutions still have the option (no longer obligation) to continue the harmonization of the law at the level of minimum standards, although in this context the possibility of determining more favourable regulations by the state becomes another issue (Peers, 2011).

#### VI. NON-GOVERNMENT ORGANIZATIONS

There are various activities related to a permanent solution of the problem of refugees. Resettlement, integration in the host country and voluntary returns of refugees. A number of various entities and institutions is working towards this goal: states, organizations such as the UN, Red Cross, Red Crescent etc. as well as international and regional NGOs. Non-governmental organizations (NGOs) are entities that are independent of public administration and their activity is non-profit. They operate in the form of associations or foundations. They are registered in special registers which contain information about the founder, board of directors etc. Non-governmental organizations play the key role in helping migrants. They provide foreigners with psychological, legal and translation assistance, organize language courses, and integration activities. International organizations which support refugees in this areas are for example: the Syrian American, the Medical Society, the Karam Foundation, the Sunrise USA, the Islamic Relief USA, the Project Amal Ou Salaam (HuffPost, 2018). The NGOs are coordinating and supporting refugees movements often with the UN cooperation. In addition, they may conduct advocacy activities; try to bring about changes in law to improve the situation of some society groups, they monitor the applicable law and its application by the central and local government administration. NGOs are often the first aid stations where newcomers can come to get help in their refugee procedure, talk

to a psychologist and find out how to find a job or an apartment. The organizations also organize projects and meetings in centres for refugees, which, in principle, complements the activities of government administrations, in practice however, many of the duties under the responsibility of the government, falls on the third sector. Unfortunately, despite performing a vast range of tasks that are necessary to provide refugees with a minimal sense of security, the organizations themselves do not get virtually any help from the state.

#### VII. CONCLUSIONS

In the paper the author tried to describe the real way the western world is dealing with the refugee issue. It is a very important problem in international law. Sometimes international law obligation is not enough to convince societies that accepting refugees is the right decision. The author was focused mostly on institutions which offer help for refugees and on legislation tools in hands of individual countries and international communities. The western world is doing a lot for the refugee cause which can be seen in the extensive budget the UN set aside for helping people on the move. However, still a lot needs to be done as some processes and procedures are not perfect and sometimes the aid and support go in wrong directions. This is our obligation as humanity to offer help to those in need. International community as a whole, is doing a tremendous job, yet some individual countries do not get involved in the common effort, they refuse to toe the line for internal security and economical reasons. Luckily, most highly developed countries support refugees and it is a very good fact for humanity.

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