The 1951 Refugee Convention

Key Messages

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Introduction

These Key Messages have been developed to assist a wide range of colleagues with their communications around the 70th anniversary of the 1951 Refugee Convention.

They comprise a mixture of basic facts, top-line messages, historical context and responses to potential queries from the media and/or points that could be made in the political sphere.

Finally, they include some examples on the relevance of the Convention in today's human rights context, as well as some specific case law to illustrate the point.

This is intended as a guide, not a straitjacket. Colleagues should feel free to select the most relevant points for their specific purposes, either for themselves or to brief partners, supporters, donors and others.

Key Messages

The right to seek asylum is a fundamental human right – enshrined and safeguarded under the 1951 Refugee Convention as a key part of international law.

The Refugee Convention is a life-saving instrument of protection. In the context of continuing wars, conflict and persecution, and record levels of displacement, it continues to protect the rights and lives of refugees. It is as relevant today as it was in 1951.

UNHCR calls on all states to give effect to the principles of refugee law, including the 1951 Convention, through enacting legislation, establishing institutions and adopting policies and practices reflecting its provisions.

UNHCR encourages countries which are not contracting states to accede to the Convention – as indeed they continue to do, with the most recent signatory being South Sudan in 2018.

UNHCR is the guardian of the 1951 Convention, with a unique mandate under international law to supervise its application and to work with states to protect refugees.

The Convention remains applicable even during the context of a global health (or any other) emergency; states cannot disregard their obligations under the Convention. They can, and do, take measures to safeguard public health that are consistent with refugees' rights.

Extended messaging

What rights do refugees have under the 1951 Convention?

The 1951 Refugee Convention is a landmark human rights instrument that remains relevant today. The Convention was one of the first treaties to be adopted after the Second World War, forming part of the nascent human rights legal framework. It sought to formalize a minimum set of rights for persons fleeing persecution – first and foremost the right not to be returned to the country of persecution (something that had happened, with terrible consequences, to groups of Jews and others fleeing Nazi Germany). It remains one of the most widely ratified treaties globally.

Unlike the several refugee conventions that had preceded it, the 1951 Convention adopted a universally applicable refugee definition (rather than one in which refugees were defined by nationality). It did at the beginning restrict its scope to people who had become refugees because of events occurring in Europe before 1 January 1951, but the 1967 Protocol lifted these restrictions and made the Convention truly universal and applicable to refugees from all continents. (When we talk about the Convention today, we normally mean "the Convention as modified by the Protocol".)

The Convention is the modern embodiment of the age-old institution of asylum, underpinned by fundamental humanitarian values, and it has saved millions of lives. It also provides a set of shared principles for states to better manage asylum and to cooperate among themselves.

The Refugee Convention protects the rights of people who have been forced to flee their countries, or cannot return to them, owing to persecution. It aims to facilitate the integration of refugees in their new country, though it also foresees the possibility that a change in circumstances may lead to refugee status ceasing.

Under the Convention, refugees are granted the following rights:

- Protection from refoulement
- Non-punishment for irregular entry into the territory of a contracting state
- The right to work
- The right to housing
- The right to education
- The right to public relief and assistance
- The right to freedom of religion
- The right to access to, and have a fair hearing before, the courts
- The right to freedom of movement within the territory
- The right to be issued with identity and travel documents

These rights represent the minimum, and in many developed countries refugees are treated as citizens.

Some countries have made reservations, meaning that some articles may not be applicable in all countries. No reservation is possible to articles that safeguard fundamental rights, such as protection from non-refoulement, access to the courts, freedom of religion and others. UNHCR advocates for the lifting of all reservations and the fullest application of the Convention.

Development of the Convention

Completed on 28 July 1951, the 1951 Convention Relating to the Status of Refugees is as relevant today as it was when it was first presented to the international community.

The Convention states that the term "refugee" shall apply to any person 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". It also applies to any person with such a well-founded fear who does not have a nationality and is "outside the country of his former habitual residence".

The Convention was created in the immediate post-war period when the displacement challenges facing the world mainly concerned refugees of European origin. Among the Conference of Plenipotentiaries that agreed the final text, Europeans comprised the majority. However, conference representation came from many parts of the international community at the time: it included Brazil, Canada, Colombia, the US and Venezuela; Egypt, Iraq, Israel and Turkey; and Australia. Sub-Saharan Africa, still largely under colonial rule, was not represented. Although initially developed in a mostly European context, the standards and principles outlined and defined in the Convention are universal.

Originally, application of the Convention was limited to events occurring in Europe or in Europe and elsewhere (signatories were given a choice), and occurring before 1 January 1951. This limitation was removed for most contracting States with the 1967 Protocol Relating to the Status of Refugees.

The Convention has been complemented by regional instruments seeking to better address their specific challenges: in 1969, the Organization of African Unity (OAU) adopted a Convention that expanded the definition to encompass those who had fled because of external aggression, occupation, foreign domination or events seriously disturbing public order.

In 1984, the Cartagena declaration added those who had fled their country because they were threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order. The Cartagena declaration has been incorporated in domestic law in many Latin American countries.

The Convention's enduring relevance

Over the past 70 years, countries all over the world have faced the realities of mass movement of people fleeing conflict, oppressive regimes and other forms of persecution, violence and violations of human rights. Today, 85 percent of the world's refugees live in developing or the least developed countries. Even in countries that are not party to it or have not adopted a domestic framework for its implementation, the Convention has come to represent a standard that cannot be disregarded, while some of its key features (such as non-refoulement) have become part of international customary law.

The work of the UN Refugee Agency has never been more pressing or complex.

Extreme poverty and climate change and their interrelation with wars and violence are changing the patterns of displacement. Solutions via voluntary returns, integration and resettlement lag far behind the pace of new displacement.

The Convention's ability to afford protection to refugees has been acknowledged and strengthened by legislatures, courts and national administrations all over the world, demonstrating its continued relevance and importance. It can be, and has been, applied in many countries to situations ranging from small-scale to mass movement of people fleeing persecution, with States granting refugees admission to their territory and providing them with protection.

The relevance of the Convention is periodically called into question by those who think it too generous for a time of mass travel, or insufficiently broad to cover new forms of displacement, such as that linked to climate change or natural disasters. The priority today is not to reopen the Convention but to ensure its correct and relevant interpretation, taking account of developments in refugee law as well as the broader human rights legal framework, and changing patterns of displacement and persecution worldwide. It is to find more effective ways to apply the Convention and other principles of international refugee law in a spirit of international cooperation and responsibility-sharing.

The Global Compact on Refugees is a non-binding instrument affirmed by the UN General Assembly on 17 December 2018. It sets out recommended measures for states to share responsibility for refugee protection more predictably – taking account of imbalances in the distribution of the world's refugee population – and support each other in ensuring full implementation of the Convention, especially at a time when new and protracted displacement situations all over the world call for greater efforts to ensure respect for the rights of refugees and local communities alike.

In order to find effective and sustainable responses and solutions to refugee situations, states need to work together. In addition, sharing the responsibility for refugees' safety and well-being reduces the risk of tensions between states which could arise as a result of displacement emergencies. Only concerted international action and political will can resolve new and protracted conflicts and crises.

Refugee protection and national security

National security concerns and international refugee protection are not mutually exclusive goals.

The sovereign right of states to control their own borders is fully compatible with their obligations under international human rights and refugee law, including the 1951 Refugee Convention, to ensure that refugees and asylum-seekers travelling irregularly are able to seek and enjoy asylum, are given access to asylum procedures, and are identified and protected against refoulement.

The Refugee Convention acknowledges in various ways the importance of the host state's national security and public order. It requires refugees to respect the laws of host states, excludes serious criminals from refugee protection, and provides the possibility for states to cancel or revoke a person's refugee status. In exceptional circumstances, it allows for the expulsion of refugees posing a danger to the national security or to the community of the host country.

The Convention does not provide shelter to terrorists and does not protect them from criminal prosecution, extradition or expulsion. On the contrary, it renders the identification of persons engaged in terrorist activities possible and necessary.

UNHCR as guardian of the Convention

UNHCR, the UN Refugee Agency, was given a mandate to protect refugees on December 14 1950, when the UN General Assembly adopted its Statute. For seven decades, we have been protecting people forced to flee.

UNHCR serves as the guardian of the Convention and its Protocol. States are expected to cooperate with UNHCR in ensuring that the rights of refugees, as defined in the Convention and applicable human rights instruments, are respected and protected.

Additional background

UNHCR operates in 135 countries responding to global forced displacement. We are determined to stay and deliver.

The first High Commissioner was the Dutch lawyer, journalist and politician Gerrit Jan van Heuven Goedhart. Filippo Grandi is the 11th High Commissioner.

UNHCR has been twice awarded the Nobel Peace Prize for its humanitarian work – in 1954 and in 1981.

The 1951 Convention and the evolution of human rights law

Since the 1951 Refugee Convention and 1967 Protocol were adopted, the notion of international protection and the awareness of new categories of persons requiring it have evolved, human rights law has developed and considerations about how to assess and determine refugee status have become broader and more complex – from gender-based violence to climate change, to the specific rights of women and children.

The interpretation of the Convention benefits from other relevant international instruments that provide context and principles: this has allowed the Convention to adapt and remain relevant. Among these instruments are:

These instruments commit the international community to expanding and strengthening the access of every person to their fundamental human rights. In addition, they provide additional principles and reference points that assist states in applying the 1951 Refugee Convention. UNHCR has provided guidance on the interpretation and/or practical application of legal standards in response to emerging or operational displacement issues.

- The Convention on the Elimination of All Forms of Discrimination against Women (adopted 1979)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 1984)
- The Convention on the Rights of Persons with Disabilities (adopted 2006)
- The International Covenant on Economic, Social and Cultural Rights (adopted 1966)
- The International Covenant on Civil and Political Rights (adopted 1966)

Examples

Gender-related persecution

> “Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence or dictate the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.”
>
> UNHCR Guidelines on International Protection No. 1

Gender-based violence

UNHCR considers female genital mutilation a form of gender-based violence and a violation of human rights that amounts to persecution – a view supported by international and regional human rights law, including commentary from the Committee on the Elimination of Discrimination Against Women. It also considers the practice to constitute torture and cruel, inhuman or degrading treatment, as affirmed by many UN bodies and the European Court of Human Rights, among others.

Domestic violence

While persecution is most often perpetrated by the authorities of a country, persecution forming the basis for an asylum claim may be perpetrated by non-state actors, a category that could include family members, neighbours and other individuals, and in circumstances when the state is unable or unwilling to provide protection. Applying these principles, States with significant jurisprudence on refugee status determination have concluded that victims of domestic violence may qualify for asylum on account of their membership of a particular social group.

LGBTI rights

All people, including lesbian, gay, bisexual, transgender and intersex individuals, are entitled to enjoy the protection provided for by international human rights law on the basis of equality and non-discrimination. Respect for fundamental rights and the principle of non-discrimination are core aspects of the 1951 Refugee Convention and refugee law more broadly. A proper analysis of whether a LGBTI applicant is a refugee under the 1951 Convention needs to start from the premise that people are entitled to live in a society as who they are, and need not hide that. They also fall under the category of members of a particular social group, one of the five grounds as set out in the Convention for a well-founded fear of persecution

> “...for reasons of race, religion, nationality, membership of a particular social group or political opinion...”

Protection of children

Global awareness about violence, abuse and discrimination against children has been growing, as reflected in the development of international and regional human rights standards (such as the 1989 Convention in the Rights of the Child). As noted by the UN Committee on the Rights of the Child, the definition of refugee should take into account “the particular motives for, and forms of manifestations of, persecution experienced by children” – ranging from child trafficking for prostitution, sexual exploitation, subjection to female genital mutilation, under-age recruitment, and persecution of kin.

Climate change and disasters

Climate change and disasters are affecting the lives of millions of people and forcing many to leave their homes, in some cases across an international border. While not all will be refugees, people fleeing in the context of the adverse effects of climate change and disasters may have valid claims for refugee status under the 1951 Convention. Climate change and disasters may affect the enjoyment of human rights amounting to persecution because of exposure and vulnerability to their effects, as well as a State's capacity, ability and willingness to provide protection.

Especially where climate change interacts with situations of conflict, the willingness or ability of a State to mitigate the adverse effects of climate change and disasters, as well as to respond adequately if they occur, may vary for particular groups, reflecting differences in race, ethnicity, religion, politics, gender or social groups. A well-founded fear of persecution for particular populations may thus arise under the Convention.

Further information:

For the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol, click here.

For UNHCR's various Guidelines on International Protection, click here.