UNHCR and refugee law
A brief overview
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Overview

• History of international protection
• UNHCR and mandate
• International refugee law
• UNHCR’s persons of concern (Asylum-seekers, Refugees, IDPs and Stateless)
• Ex. from Sudan and Europe
• Challenges of the protection regime
• Discussions
History of international protection

• The tradition of asylum/protection is found in all cultures and throughout history (e.g. islam). However, these traditions were essentially localised and ad hoc in nature;

• Wake of the second world war (conflict and displacements-need for int. cooperation, peace and and universal basic rights UDHR48) → creation of the UN (1950)

• Specialised UN agencies developed to supervise universal standards/conventions/treaties on various subjects (e.g. ICCPR, ICESCR, CRC, CEDAW etc).

• Standards on international protection: creation of UNHCR (institution 1950) (appointed by the UN General Assesmbly) and the Int.Conv. for refugees (law for states to sign).
The Mandate of the United Nations High Commissioner for Refugees (UNHCR)

- Established on December 14, 1950 by the United Nations General Assembly and began its work on January 1st, 1951 – given a 3 year mandate (to ‘solve the the refugee crisis’)

- Emerged in the wake of World War I and II to help Europeans displaced by that conflict

- UNHCR was created and still mandated by the UN lead and coordinate international action for worldwide international protection for refugees and to seek durable solutions to the problem of refugees

- UNHCR is one of the specialized agencies and commissions established by UN

- "The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social."

(Resolution of the General Assembly 428 (V) from 14 December 1950. Annex, Sec. 1 and 2.)
UNHCR - The UN High Commissioner for refugees = Filippo Grandi (boss)

He’s job is to ensure that states cooperates to ensure:

- **international protection** for refugees (ensure rights in CR51 is respected, incl. non-refoulement, non-penalty irreg.entry, humanitarian assistance (basic rights))
- **seek durable solutions** to the problem of refugees (int. temporary solution – local int. resettlement, return).

Among others the job of M. Grandi and UNHCR is to ensure that states provides protection to refugees and give them access to rights as stipulated in the 1951 Convention and guidelines agreed on. Speak out about violations by states (e.g. refoulement, detention etc.).
What is international protection?

State primary responsible for providing protection and rights to its citizens (non-discrimination), but when unwilling/unable to provide this the international community responsible to take on this role (as all humans equal/entitled to rights).

“Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.”

UNHCR's refugee protection mandate is firmly embedded in and developed from international human rights and humanitarian law regimes (right to protection and assistance).
Laws relating to refugees
(int.protection when states do not protect its citizens)

Public International Law

- International Humanitarian Law (rules of war)
- International Human Rights Law
- International Refugee Law (1951 Conv)

Regional law (E.g. in Europe ECHR, EU asylum aquis)
National legislation
Soft law/guidelines
International refugee law

**International law**
- **The 1951 Convention on the Status of Refugees** (before 1951, Europe)
- **1967 Protocol** (no time or geographical limit)
- Convention on the Reduction of Statelessness (1961)

**Regional law** (complementary protection)
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) (more generous – ‘general conflict’)
- Cartagena Declaration (1984)
- Common European Asylum System (CEAS) 1990 onwards (complementary prot.).
- ECHR (ECtHR – decision rel. to AS and refugees (e.g. right to family reunification, non-refoulement etc.).

**Soft law** (non-binding guidelines to states)
- Conclusions of the Executive Committee
- Guidelines
The 1951 Convention on the Status of Refugees (the main law)

Some fundamental obligations in the refugee convention:

• It contain a general definition of the term “refugee” (Article 1)
• It embody the principle of “non-refoulement” (Article 33) according to which no person may be returned to a territory where he may be exposed to persecution
• **Non-penalization** of illegal entry (Art. 31) (no detention on the bases of illegal entry)
• It sets the **minimum standard of treatment of refugees**, including basic rights to be granted (Art. 3-34) and the duties of refugees vis-à-vis their country of refuge
• **Supervisory role** of UNHCR (Art. 35) (State cooperation)
148 Signatory states
"Refugee protection is not a matter of generosity or show of solidarity. It is an **obligation** under international law."

UNHCR is to supervise that states fulfill this obligation.
UNHCR’s ‘Persons of Concern’

- Asylum-seekers
- Refugees
- Internally displaced persons
- Stateless persons
  - Persons at risk of statelessness
Nearly 20 people are forcibly displaced every minute as a result of conflict or persecution.
Definition: Who is a Refugee (Art. 1)

1) **Outside** his country of origin
2) have a **well-founded** fear of **persecution**
3) This fear must be based on one of **five grounds**:
   - Race
   - Religion
   - Nationality
   - Political opinion
   - Membership of a particular social group (SOGI, women etc.)
4) **unable or unwilling** to avail him/herself of the protection of that country, or to return there, for reasons of fear of persecution
5) Subsidiary/ complementary protection may apply to those who would be at risk of serious harm if returned to their home country (torture, death due to war/general violence), but who do not fit the strict definition of a refugee.
What is an asylum seeker?

Asylum-seekers are persons whose refugee status has not yet been determined by the authorities but whose asylum application entitles them to protection on the basis that they could be refugees (declaratory status)
What is an Internally Displaced Person?

IDPs are described in the **Guiding Principles on Internal Displacement** as:

"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"
What is a stateless person?

A “stateless person” is someone who is not considered as a national by any state under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons).

At least 10 million people are today considered stateless, denied nationality.

2014-2024 – 10 year campaign to ‘end statelessness’.
Some key refugee crisis

Emergencies:
- Europe
- South Sudan
- Yemen
- CAR
- Iraq, Mali, DRC etc.

Protracted situations (+ 5 years):
- Sudan (Darfur), Syria, Afghanistan etc.

New/recurrent displacements: Rohingya Myanmar

UNHCR today unlimited mandate “until the refugee situation is solved” (1950 was given 3 years)
UNHCR presence in the world
As at 07 February 2014

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
UNHCR’s activities

- **Protection**: advocacy, capacity building (supervisory role), registration, information, reception, RSD, access to territory, SGBV-‘safe from the start’, legal aid/counseling, protection monitoring (detention etc.) etc.

- **Humanitarian Assistance**: WASH, Education, Health, Food/Nutrition, NFI (blankets etc.) etc.

- **Durable solutions**: voluntary repatriation, resettlement, local integration

However **State’s** signed 1951 Convention/1967 Protocol primary responsible for ensuring protection and assistance (UNHCR step in when states fail).
Sudan 2011-2013
UNHCR, 9 camps
(Sudan signed 1951
Conv. but restriction on
movement)
Cooperation with government

Participation of refugees
Example: Europe
European dimension of refugee law:
Common European asylum systems ('one Europe' common standards on reception, qualification, Dublin...)

2,8 million Syrian refugees in Turkey
1+ million Syrian refugees in Lebanon
655,000 Syrian refugees in Jordan...
Challenges...

• Violation of international and regional law and standards for protection of refugees. Focus on ‘security’, ‘border control’ leading to violation of international law e.g. fences preventing entry, pushbacks, detention, killings,
• Refugees used/instrumentalised for political games, dangerous (scape goat) (small numbers)
• Shrinking humanitarian space (conflict – less regard for humanitarian workers, e.g. Afghanistan, Sudan Darfour lack access)
• No ‘international court’ when states violate 1951 Conv (ECJ, ECHR)
• We need to go back to the essence of international protection, rule of law, humanitarian assistance (non political) obligations
• UNHCR lack authority or replace state?

https://twitter.com/twitter/statuses/888332035525312512
Thank you!

Questions?
Questions

• How can we solve the refugee problem?
• How can we ensure that the journey is safe (external processing, visas, safe passages)?
• How can we improve protection of people fleeing their country?
• How can we help refugees regain their (normal) life?
• Do we need an international actor (like UNHCR) to supervise that states respect protection of refugees?
  • How could we make better use of asylum-seekers/refugees’ skills and experiences (reduced to passive recipients of aid/how regain control)?