Human Rights Council (HRC)

The future of the right of asylum.

Research Report

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"Out of this world"

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Introduction

Asylum is a right deeply rooted in international law, traditionally offering protection and sanctuary to people fleeing persecution, violence, and death threats. Anchored in instruments such as the 1951 Refugee Convention[1] and its 1967 Protocol[2]. This right reflects the commitment of the world to humanitarian values and protection of basic human rights. During the past couple of years, however, asylum both as a concept and practice has come under increasingly critical and stress-testing scrutiny, especially with the rise of right wing parties in Europe[3]

New global challenges-asylum systems worldwide are under unprecedented pressure linked to growing displacement caused by conflicts, climate change, and economic instability, resulting in over 100 million refugees[4]. Running parallel to these demands, debates on national sovereignty, security concerns, and the capacity of the host country to receive asylum seekers have led to policies with a restrictive character and growing skepticism toward traditional asylum frameworks. Tensions therefrom give rise to widespread discussions on the relevance and adaptability of the right of asylum in the modern era.

While asylum's future is currently being debated in these dynamic milieus, it remains tenuous to the governments, international organizations, and civil societies. The report reflects on drivers underlying this critical issue through an analysis of its legal, social, and geopolitical dimensions, in order to shed more light on the challenges and opportunities ahead.

Definition of Key Terms

Asylum

Legal protection given by a state to a person who flees his home country due to persecution because of his race, religion, nationality, political opinion, or membership in a particular social group set up under the 1951 Refugee Convention.

Refugee

A person who has fled his home country as a result of a well-founded fear of persecution and who is unable to return safely. A refugee enjoys specific rights and protections under international law.

Internally Displaced Person (IDP)

A civilian forced to flee their home due to conflict, violence, or natural disasters yet who remains within the borders of their own country. Unlike refugees, IDPs do not have special status under international law.

Radical Right-Wing Populism

A political ideology that often emphasizes nationalism, anti-immigration policies, and skepticism of

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[1] United Nations. (1951). Convention relating to the Status of Refugees. In *United Nations Conference Of Plenipotentiaries*. https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.23_convention%20refugees.pdf

[2] UNHCR, & Guterres, A. (2011). *THE 1951 CONVENTION relating to the Status of Refugees AND ITS 1967 PROTOCOL*. UNHCR. https://www.unhcr.org/sites/default/files/legacy-pdf/4ec262df9.pdf

[3] *The year of elections: The rise of Europe's far right*. (z.d.). https://www.ibanet.org/The-year-of-elections-The-rise-of-Europes-far-right

[4] UNHCR - The UN Refugee Agency. (n.d.). *Global Trends report 2023 | UNHCR*. UNHCR. https://www.unhcr.org/global-trends-report-2023

globalization. Right-wing populist movements have significantly influenced debates on asylum and immigration in many countries.

Non-Refoulement
A principle in international refugee law forbidding States to return an asylum seeker or refugee to a country where he or she has a well-founded fear of persecution, torture, or inhuman treatment.

Safe Third Country Agreement
Bilateral or multilateral agreements mandating asylum seekers to seek protection in an officially designated "safe" country before applying for asylum in another country. These agreements control migration, but some raise concerns on access to asylum.

Asylum Seeker
A person who has left their country and is seeking protection from another country, but who has not yet had their application for refugee status determined. Unlike recognised refugees, asylum seekers enjoy limited legal rights.

Externalization of Borders
Policies where asylum-seeker management is outsourced by the country through agreements or funding mechanisms with third countries or regions. This has widely been pursued as an effort to control migration, while also being criticized for undermining asylum rights and responsibilities

General Overview

Historic Background and Legal Framework
The right of asylum is deeply rooted in the protection principle of a humanitarian nature. First codified in the aftermath of mass displacements following the Second World War, the 1951 Refugee Convention was the first legally binding instrument for asylum seekers. It defines a refugee as a person with a well-founded fear of persecution for reasons of "race, religion, nationality, membership in a particular social group, or political opinion," and it outlines responsibilities for protection to be afforded by the host country. The 1967 Protocol expanded the Convention's temporal and geographic scope to adapt it to refugees from any region of the world.

The principle of non-refoulement-that is, not returning people to places where they would be persecuted or harmed-enshrines one of the cornerstones of asylum law. This principle has evolved into a keystone of refugee protection and constitutes customary international law. Asylum rights are considered multilayered for displaced persons in relation to international, regional, and national legal regimes that have enshrined them over successive decades.

Contemporary Challenges to the Right of Asylum
During the last years, many factors have combined to push the asylum system under increased pressures. Among them are mass displacements due to conflicts, the rise of nationalist politics, changing public attitudes towards migration, and increased use of measures for deterrence by governments.

1. Rising Global Displacement
Forced displacement in the world has attained record levels because of protracted conflict, state repression, and climate change among other factors. By 2023, the United Nations High Commissioner for Refugees reported that over 100 million people[5] had been forcibly displaced worldwide, including

[5] *Global Appeal 2023*. (n.d.). Global Focus. https://reporting.unhcr.org/globalappeal-2023#:~:text=117.2%20million%20people%20will%20be,2023%2C%20according%20to%20UNHCR's%20estimations.

close to 30 million classified as refugees. The dimension of displacement due to the conflict was such that it overwhelmed asylum systems in the regions surrounding Syria, Afghanistan, and South Sudan. The inability of so many countries to process claims of asylum in a timely manner has translated into burgeoning refugee camps, inordinately long wait times, and various pressures on public services.

2. The Rise Of Populism

Asylum policies have greatly been driven recently by the rise of populist movements throughout Europe and parts of the world, including the United States. Many such parties run on a nationalistic approach for elections based on calls for national sovereignty, security, and identity, which they define as being threatened by immigration and asylum. Border controls are made to be more difficult, with less access to asylum and externalization of asylum procedures to third countries.

In Hungary, Italy, and the United States, policies have been made available by right-wing governments to try to reduce asylum applications[6].

The Hungarian fence-building and firm stance on immigration illustrate something much bigger in Europe. In turn, the U.S. under Trump's administration implemented policies such as making people "Remain in Mexico" and moved to block asylum claims at the southern border. But the success of populist rightists in forming public opinion and policy underlines a growing tension between humanitarian obligations and national interests.

3. Economic and Social Strains

The large-scale arrival of asylum seekers often creates formidable economic and social challenges for the host countries. In some instances, the influx of refugees may even strain housing, healthcare, education, and welfare systems-particularly those with limited resources.

This has fired up anti-immigrant sentiment, emboldened political movements that seek to cut asylum admissions, and is seen by many critics as proof that asylum systems, as currently constituted, are unsustainable and need the international responsibilities and burden-sharing to be rethought in a much fairer way.

4. Security Concerns and National Sovereignty

Another major driver influencing the future of asylum is the growing concern over national security. Where terrorist attacks have occurred in large parts of the world, some governments have associated asylum and immigration policies with potential security threats, thus justifying increased vetting and a generally more restrictive asylum policy.

These fears have been exploited by right-wing movements through branding asylum seekers and refugees as potential threats to society. This has resulted in increased border policing, criminalization of irregular migration, and asylum policies often shunted aside in favor of national security.

5. Climate Change and Environmental Displacement

Another challenge now is the impact of climate change to cause displacement. Extreme weather events,

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[6] Amnesty International. (2024, 23rd July). *Joint Statement: The future EU must uphold the right to asylum in Europe*. https://www.amnesty.org/en/latest/research/2024/07/joint-statement-the-future-eu-must-uphold-the-right-to-asylum-in-europe/

rising sea levels, and environmental degradation have been forcing millions[7] of people to flee increasingly from their homes. Yet, current asylum laws, in a word, do not explicitly recognize individuals displaced by environmental factors as refugees under the 1951 Refugee Convention.

This protection gap now creates a significant difficulty for the future of asylum, as climate-related displacement is set to increase in the coming decades. The international community will have to debate how to adapt the existing legal frameworks to deal with this new form of displacement.

Legal and Policy Responses

In response to these challenges, a range of legal and policy measures has been proposed or implemented. Some countries have legislated more restrictive asylum laws, which narrow the possibilities of asylum seekers to enter or stay on their territory. One such measure refers to safe third country agreements. These agreements reduce the burden on asylum systems but at the same time raise questions concerning fairness of such arrangements, especially when these third countries have weaker asylum protections. The second is externalization of asylum, whereby countries outsource responsibility for the processing of asylum claims to other countries or regions.

The European Union has negotiated agreements with third-party countries, such as Turkey[8], to block migrants from arriving on European shores. In a somewhat different vein, Australia sends asylum seekers to remote islands while their claims are processed under the policy of offshore processing. Though these policies have proved more effective in staunching migration flows, they have found serious criticism on grounds of violation of international refugee law and leaving asylum seekers in dangerous conditions. At the international level, efforts have been made towards better burden-sharing and more effective asylum mechanisms. The Global Compact on Refugees[9] of the UN General Assembly in 2018, for instance, strives to enhance international cooperation on refugee crises in ways that would go further to share responsibilities in a fairer manner. But such initiatives depend upon political will by states really to implement these measures in meaningful ways.

Future Prospects

The fate of the right to asylum in the future will be determined by various complex political, economic, legal, and social influences. On the one hand, there is more recognition of the fact that the current system of asylum is at a breaking point and needs reform. On the other hand, new right-wing populism, more displacement, and changes in public attitudes towards refugees will mean that asylum policies will be moving further in a more restrictive direction in the coming years. On the other hand, and at the international level, there is a desire to preserve and strengthen the right of asylum as well as protection for the vulnerable person.

How these contending pressures are tacked by governments, international organizations, and civil society will determine the future of asylum. In a world where global displacement continues to grow and the political debates about migration hots up, balancing the humanitarian commitment with concerns related to security, sovereignty, and economic sustainability will be the challenge.

Conclusion

It is at this very juncture that the right of asylum literally finds itself between a rock and a hard place.

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[7] Siegfried, B. K. (2023, 27th November). Climate change and displacement: the myths and the facts. *UNHCR*. https://www.unhcr.org/news/stories/climate-change-and-displacement-myths-and-facts

[8] European Parliament. (n.d.). *EU-TURKEY STATEMENT & ACTION PLAN | Legislative train schedule*. https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan\

[9] UNHCR - The UN Refugee Agency. (n.d). *The Global Compact on Refugees | UNHCR*. UNHCR. https://www.unhcr.org/about-unhcr/overview/global-compact-refugees

For even while it remains an indispensable tool in protecting those who have fled persecution, it has an uncertain future considering the new challenges piling up. What the international community will do to adapt and save this right in the changing world will be the main issue to prevail in the coming years.

Major Parties Involved

Governments of Host Countries

Governments lie at the heart of the development of asylum policies and of political framing of refugee flows. Their role is to apply international law commitments, process asylum claims, and allocate appropriate resources to support the refugees. They have to address some hard choices in balancing humanitarian obligation with concerns about national sovereignty, security, and economic strain. Most importantly, political dynamics have deeply marked the way that governments approached asylum issues, especially the emergence of right-wing populist movements.

Asylum Seekers and Refugees

Asylum policies are first and foremost for the benefit of asylum seekers and refugees who seek protection against persecution, violence, or other life-threatening conditions in their home countries. Very often, their experiences underline gaps in existing systems, such as high wait times, unsafe living conditions, or even deportation. As primary stakeholders, their plight underlines the call for the establishment of just and effective asylum mechanisms.

International Organizations

Its management is left to organizations such as the United Nations High Commissioner for Refugees and the International Organization for Migration. The UNHCR works toward the implementation of the 1951 Refugee Convention, defense of rights of displaced people, sheltering them on legal grounds, and giving them options of resettlement. These organizations also foster cooperation internationally and give technical support to governments.

Civil Society and NGOs

NGOs, advocacy groups, and local community organizations are of great importance and undertakings in offering support to asylum seekers and refugees. Such agencies make available legal aid, shelter, medication, education, among other meaningful services. Beyond just providing basic needs, they speak out for humane asylum policies, mobilize against restrictive measures, and often speak out vociferously on the plight of the displaced. Their grassroots presence is quite essential in filling specific gaps in either government or international responses.

Countries of Origin

The governments and situations of the origin countries are important to understand in the wider asylum issue. Human rights abuses, driven by critical conflict and authoritarian regimes, are some of the major underlying drivers for displacement. Such states, while not being asylum process actors, create push factors for migration through their policies and conditions, which may include persecution or state collapse. Finding root causes on such premises may more often than not be a long-term solution to bringing asylum pressures down globally.

Timeline of Events

1919: The League of Nations deals with refugee questions arising out of the First World War, especially with those dealing with Russians and Armenians.

1948: The Universal Declaration of Human Rights, passed by the United Nations, provides at Article 14 that everyone has the right to seek asylum from persecution.

1951: Geneva adopts the Refugee Convention, which defines who a refugee is and enunciates the principle of non-refoulement. This instrument initially had a limited mandate related to post-World War II European refugees.

1967: The Protocol Relating to the Status of Refugees removes the Convention's geographical and temporal limitations, rendering the Convention universally applicable.

1980s: The Indochinese refugee crisis leads to regional devices and the creation of orderly resettlement programs.

1990: The Dublin Convention is signed by European states to determine the responsible country for dealing with asylum applications with the view of preventing "asylum shopping."

1994: The Rwandan genocide[10] creates one of the largest refugee crises of the 20th century, moving millions of people into neighboring countries.

2001: In the face of the 9/11 terrorist attacks, global security becomes a great concern. Many countries restrict asylum policies, relating migration with potential security risks.

2011: A civil war breaks out in Syria, causing a massive displacement crisis. Over 13 million people[11] have been displaced so far, of which 6 million are refugees.

2015: The European migrant crisis reaches its zenith, with over a million refugees and migrants crossing into Europe; the majority of these people are fleeing conflict in Syria, Afghanistan, and Iraq. The crisis stretches the European Union's asylum systems to a breaking point and contributes to political polarization.

2016: The EU-Turkey deal takes effect wherein Turkey is to stem the flow of refugees into Europe in return for financial-aid and other concessions.

2017: Under the Trump administration, the US initiates harsher asylum policies involving the "Remain in Mexico" program and the expansion of travel bans covering several countries.

2018: Global Compact on Refugees- United Nations General Assembly, creating an international partnership to better manage refugee crises.

2020: The COVID-19 pandemic leads to the closure and delay of asylum processes globally, making life even more miserable for already displaced persons.

2021: The fall of Kabul and the return of the Taliban to power send a new wave of asylum seekers mainly to Afghanistan's neighbors and Western countries.

2022: The Russian invasion of Ukraine causes Europe's worst refugee crisis since World War II, forcing millions into neighboring countries, especially Poland, Romania, and Hungary.

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[10] United Nations. (n.d.). *Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations*. https://www.un.org/en/preventgenocide/rwanda/historical-background.shtml

[11] *Syria situation*. (n.d.). Global Focus. https://reporting.unhcr.org/operational/situations/syria-situation

2023: Displacement due to climate change has gained international attention after extreme weather events displaced millions of people amid growing demands to extend legal frameworks to include environmental refugees.

Possible Solutions

Global Burden-Sharing Mechanisms

The comprehensive international framework could ensure fair responsibility-sharing by placing demands on countries for financial support, resettlement opportunities, and logistics to accommodate large populations of refugees. This would prevent the high burden currently experienced by frontline states and ensure shared responsibility for global displacement.

Reform and Expansion of Legal Frameworks

Building on the 1951 Refugee Convention and its 1967 Protocol to include those displaced by climate change, environmental disasters, and other contemporary causes would address some of the gaps in current asylum laws. Strengthening asylum procedures to cut delays and inefficiencies would similarly guarantee timely, fair access to protection and make the system more relevant to contemporary realities.

Regional Solutions and Development Initiatives

This could be helped a little by fostering regional partnerships to address the root causes of displacement: conflict, poverty, and environmental degradation. This would call for investment in development projects and stabilization efforts at the country-of-origin level, creating conditions whereby people can stay safely at home, where the challenges of asylum are ultimately addressed at their source.

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