ASSIGNMENT

**IRD 406: Human Rights.**

***Topic:* Do you think that developed countries in Europe and North America are protecting the rights of refugees?**

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400 Level

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**INTRODUCTION**

Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. As a fundamental right, granting it is an international obligation, first recognized in the 1951 Geneva Convention on the Protection of Refugees. In the European Union, an area of open borders and freedom of movement, countries share the same fundamental values and States need to have a joint approach to guarantee high standards of protection for refugees. Also, procedures must at the same time be fair and effective throughout the EU and void of abuse. With this in mind, the EU States have committed to establishing a Common European Asylum System although asylum flows are not constant, nor are they evenly distributed across the region. They have, for example, varied from a peak of 425,000 applications for EU-27 States in 2001 down to under 200,000 in 2006. In 2012, there were 335,895. It is evident therefore and imperative that EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar.

In North America, the United States has long been a global leader in the resettlement of refugees. The country has long accepted refugees fleeing persecution or war. Over the years from taking in hundreds of thousands of Europeans displaced by the Second World War (WWII) to welcoming those escaping from Communist regimes in Europe and Asia during the Cold War, to protecting those running from ethnic, sectarian and national violence, strife and civil wars in countries like Mexico, Africa and other countries in the Middle East. Since 1980, more than two million refugees have arrived in the United States. From 2005 to 2007, approximately 40,000 refugee seekers per year were accepted into the United States, compared to about 30,000 per year in Britain and 25,000 per year in Canada. The United States accounted for about 10% of all refugee-seeker acceptances in the OECD (Organization for Economic Cooperation and Development) countries in 1998-2007. (International Migration Outlook, 2009).

Over the past decade, the number of refugees around the world who are fleeing violence or persecution in their home countries in search of safety abroad has grown dramatically. 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 the Second World War (WWII) as well as the refugee crises of the interwar years that preceded it. For instance, 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 however, 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.” (Article 22(7), American Convention on Human Rights). Nevertheless, 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 serve as a somewhat overarching convention as it establishes the definition of a refugee as well as the principle of non-refoulement and the rights afforded to those granted refugee status. However, though 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. Or instance, 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. Despite differences at the national and regional levels, the overarching goal of the modern refugee regime is to provide protection to individuals forced to flee their homes because their countries are unwilling or unable to protect them.

It is against this backdrop that this paper seeks to analyze the extent to which developed countries in Europe and North America are protecting the rights of refugees.

**CONCEPTUAL CLARIFICATION**

**DEVELOPED COUNTRIES**

A developed can simply be defined as a sovereign state that has a developed economy and advanced technological infrastructure relative to other less industrialized nations. Most commonly, the criteria for evaluating the degree of economic development are gross domestic product (GDP), gross national product (GNP), the per capita income, level of industrialization, amount of widespread technologically advanced infrastructure and general standard of living (Investopedia, 2020). Furthermore, a strong industrialized base and Human Development Index (HDI) are two characteristics of a developed country. The Human Development Index (HDI) is a measure developed by the United Nations (UN) to measure human development in a country where the higher the HDI, the more prosperous the country is. Also, when considering HDI for developed countries, access to good health care and child mortality rate at birth is considered while access to quality and free education, years spent in school and the ability to incorporate learned knowledge to real-life situations are considered.

**REFUGEES**

Article 1(A)(2) of the 1951 Convention defines a refugee as an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group. 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 to an individual who “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, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” Moreover, the African Union is unique in having a convention that specifically addresses the protection needs of IDPs. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. Finally, the United Nations High Commissioner for Refugees (UNHCR) provides protection to IDPs and stateless individuals in addition to 1951 Convention refugees.

**ASYLUM SEEKER**

An asylum seeker refers to a person within a State 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.

**RIGHTS OF REFUGEES**

Refugee law and international human rights law are important in the protection of the rights of refugees. This is because these refugees are fleeing governments that are either unable or unwilling to protect their basic human rights and also, in cases where the fear of persecution or threat to life or safety arises in the context of an armed conflict, refugee law in consonance with international humanitarian law helps protect and ensure the rights of refugees. The following are some of the rights of refugees.

**NON-REFOULEMENT**

This can be referred to as the basic principle of refugee law. Non-refoulement refers to the obligation of States not to “refoule”, or put simply, 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 22(8) of the American Convention on Human Rights and Article 3 of the Convention against Torture. In addition, both regional and domestic courts have interpreted the rights to life and freedom from torture to include a prohibition against refoulement. Moreover, the principle of non-refoulement prohibits not only the removal of individuals but also the mass expulsion of refugees [e.g., African [Banjul] Charter on Human and Peoples’ Rights, art. 12(5)].

However, 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)].

**FREEDOM OF MOVEMENT**

The rights to seek asylum and freedom of movement 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. [African (Banjul) Charter on Human and Peoples’ Rights, art. 12(1) and (3); American Convention on Human Rights, art. 22]. Freedom of movement, however, is also a key right for refugees within their host country [e.g., 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 [U.S. Comm. for Refugees & Immigrants, World Refugee Survey 2009 (2009)]. For instance, countries such as Kenya and Ethiopia specify in their national laws that the movement of refugees throughout the country may be restricted and that refugees may be limited to living in designated areas, namely refugee camps. National Refugee Proclamation, No. 409/2004, art. 21(2) (Eth.); Refugees Act (2014) Cap. 173 § 12(3) (Kenya).

**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 [e.g., 8 CFR § 235.3(c) (U.S.); Refugees Act (2014) Cap. 173 § 12(3) (Kenya)]. However, 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 the European Union 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 (United Nations High Commissioner for Refugees) representative or information about how to apply for asylum while in detention. Furthermore, the European Court of Human Rights (ECHR) has held in a number of cases that the conditions in the Greek detention centers violate individuals’ rights to human treatment and dignity under the European Convention on Human Rights (ECtHR, M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011, Judgment of 21 January 2011).

**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 [e.g. 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)]. 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). However, should that individual’s refugee status be terminated, the status of dependent relatives will also be terminated.

Of note is that 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)].

**OTHER RIGHTS**

The 1951 Convention also protects other rights of refugees, such as the rights to education, access to justice, employment, and other fundamental freedoms and privileges similarly enshrined in international and regional human rights treaties. In their enjoyment of some rights, such as access to the courts, refugees are to be afforded the same treatment as nationals while with others, such as wage-earning employment and property rights, refugees are to be afforded the same treatment as foreign nationals. For instance, Article 16 of the 1951 Convention states that refugees are to be granted equal access to the courts, Article 17 states refugees are to be afforded the same access to wage-earning employment as foreign nationals, Article 13 states refugees are to be afforded the same rights to moveable and immoveable property as foreign nationals.

**CONCLUSION**

**ARE DEVELOPED COUNTRIES IN NORTH AMERICA AND EUROPE PROTECING THE RIGHTS OF REFUGEES?**

Despite the aforementioned rights being protected in the 1951 Convention and under human rights treaties, refugees in various countries do not enjoy full or equal legal protection of fundamental privileges. Ethiopia, for example, made reservations to Article 22 (public education) and Article 17 (wage-earning employment), treating these articles as recommendations rather than obligations [World Refugee Survey 2009: Ethiopia (2009)]. Furthermore, although not a party to the 1951 Convention, Lebanon is host to a large population of refugees, predominately Palestinians. Therefore, restrictive labor and property laws in Lebanon prevent Palestinians from practicing professions requiring syndicate membership, such as law, medicine, and engineering, and from registering property [Human Rights Watch, World Report 2014: Lebanon (2014)].

In North America, in 2017 and 2018 in the United States of America, President Trump’s administration implemented immigration policies that have caused catastrophic irreparable harm to thousands of people, refugees and asylum seekers. These policies have spurned and manifestly violated both US and international law, and appeared to be aimed at the full dismantling of the US asylum system. Those policies and practices have included, among others mass illegal pushbacks of asylum-seekers at the US–Mexico border; thousands of illegal family separations, through which the Trump administration has deliberately and purposefully inflicted extreme suffering on families, ill-treatment which rose to the level of torture in some cases and increasingly arbitrary and indefinite detention of asylum-seekers, without parole, constituting cruel, inhuman or degrading treatment or punishment (ill-treatment) which is absolutely prohibited in international law. Based on public statements by United States government officials, those policies and practices were indisputably intended to deter asylum-seekers from requesting protection in the United States, as well as to punish and compel those who did seek protection to give up their asylum claims.

Furthermore, these are not isolated aberrations. The United States Department of Homeland Security (DHS) has implemented these interrelated policies in unison, closing the borders to asylum-seekers, and pushing them back into harm’s way; and making life so intolerable in immigration detention facilities that asylum-seekers would think twice before requesting protection in the United States. Fuelling these policies of cruelty with discriminatory and demonizing rhetoric, President Trump and his cabinet members have routinely called asylum-seekers “criminals,” and denounced international standards on refugee protection as legal “loopholes” and “magic words” that the administration has professed its intention to abolish. The Trump administration is waging a deliberate campaign of human rights violations against asylum seekers, in order to broadcast globally that the United States no longer welcomes refugees. Simultaneously, the Trump administration is seeking to dismantle the United States asylum system, including by narrowing definitions of who qualifies for protection, in violation of international law. Setting a dangerous precedent, the United States government’s abrogation of its obligations under human rights and refugee law is undermining the international framework for refugee protection, grossly violating the right to seek asylum, and is inviting a race to the bottom by other countries.

In the European Union, a lack of leadership, vision, and solidarity based on human rights principles have been at the core of the Union’s dismal response to refugee and migration challenges over the years. The mismanagement and politicization of a surge in boat migration in 2015, when over one million migrants and asylum seekers traveled to the EU by sea, further led to a humanitarian and political crisis largely of the EU’s own making that prompted the urgent need to be addressed. Also, chaos characterized the response of the EU and its member states in the year 2015, wrong-headed and rights-abusing policies have defined 2016. Moreover, instead of providing for safe and orderly channels into the EU for asylum seekers and refugees and sharing responsibility for them equitably, the EU and its member states have endorsed policies designed to limit arrivals and to outsource responsibility to regions and countries outside of the EU. The deeply flawed deal with Turkey and problematic cooperation with the Libyan authorities reflect this approach.

In addition, individual member states have rolled back asylum rights at a national level and the European Commission has proposed an overhaul of the common European asylum system that is more informed by a logic of deterrence than a commitment to basic human rights. Far from ensuring the right to family reunification, numerous EU countries have restricted the right to bring family members to safety, and there is a discernible trend towards granting subsidiary, temporary, protection over refugee status. Proposed changes to the EU directives governing procedures, qualification for asylum, and reception conditions include some positive measures but also measures to punish asylum seekers for moving from one EU country to another, obligatory use of “safe country” and “internal flight alternative” concepts to deny protection, and compulsory reviews to enable revoking refugee status and subsidiary protection. The European Commission has also advocated changes to EU aid and foreign policy that would direct them towards migration control objectives rather than improving respect for human rights. In 2016, over 343,000 managed to reach European shores by sea, while at least 4,646 died or went missing at sea. A substantial proportion of those arriving came from refugee producing countries such as Syria, Afghanistan and Iraq. Such people were fleeing generalized violence, war, and serious human rights abuses. Many others were seeking to escape economic deprivation and did not qualify for asylum. In November 2015, Human Rights Watch urged the EU and its member states to take concrete actions to reduce the need for dangerous journeys, address the crisis at Europe’s borders, fix the EU’s broken asylum system, and ensure that EU cooperation with other countries improves refugee protection and respect for human rights. However, evidence has shown that the EU has gone in the opposite direction.

From the foregoing, it is therefore evident that in recent times, especially within the last decade, developed countries in North America and Europe have not helped in protecting the rights of refugees. It is important to note that protecting refugees is both a moral and a legal obligation. Although it is not an easy task, yet it is not impossible. Therefore, countries in North America especially the United States of America, and Europe, must do more to protect those who flee wars and persecution. With political will, however, they all can hold true to their values of the freedom, liberty and dignity of human beings.

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