



THE
1951 **REFUGEE**
CONVENTION

QUESTIONS & ANSWERS

The 1951 Convention was designed partly to solve the problems of the many World War II refugees still scattered across Europe.

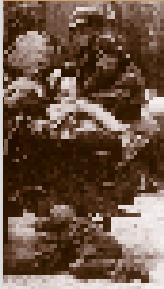


THE 1951 REFUGEE CONVENTION

QUESTIONS & ANSWERS

Cover:

Young World
War II refugees
await help.



@BPK/DEU/1945

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ARNT/UN ARCHIVES/CH-2365

In the beginning: The Refugee Convention was adopted on 28 July 1951 and opened for signature.



THE PROCESS OF DEVELOPING a body of international law, conventions and guidelines to protect refugees began in the early part of the 20th century under the League of Nations, the predecessor of the United Nations. It culminated on 28 July 1951, when a special UN conference approved the Convention relating to the Status of Refugees.

The Convention clearly spells out who is a refugee and the kind of legal protection, other assistance and social rights he or she should receive from states parties to the document. Equally, it defines a refugee's obligations to host governments and certain categories of persons, such as war criminals, who do not qualify for refugee status.

THE UNITED NATIONS WANTS
TO "ASSURE REFUGEES
THE WIDEST POSSIBLE
EXERCISE OF...
FUNDAMENTAL RIGHTS
AND FREEDOMS."

*Preamble
to the 1951 Convention*



Several months before the Convention's passage, the fledgling United Nations High Commissioner for Refugees had begun its work on 1 January 1951. In the subsequent decades, the document has been the foundation of the agency's efforts to help and protect more than 50 million refugees.

This first instrument was limited to protecting mainly European refugees in the aftermath of World War II, but a 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. The original document also inspired regional instruments such as the

1969 OAU Refugee Convention in Africa and the 1984 Latin American Cartagena Declaration.

A total of 146 states have acceded to one or both of the UN instruments (*see page 17*). But as the pattern of global migration changed and the number of people on the move increased dramatically in recent years, the relevance of the 1951 Convention has been called into question.

UNHCR currently helps more than 20 million people of whom around half are refugees or asylum seekers, and the Convention, which has proved to be remarkably flexible in rapidly changing times, continues to be the cornerstone of refugee protection. Following are some of the most common questions about the Convention.

"CONTRACTING STATES
SHALL APPLY THE
PROVISIONS OF THIS CONVENTION
TO REFUGEES WITHOUT
DISCRIMINATION..."

Article 3

WHO IS A REF

■ Why is the Convention important?

It was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic human rights which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and the necessity of international cooperation, including burden sharing among states, in tackling the problem.

■ What is contained in the 1951 Convention?

It defines what the term 'refugee' means. It outlines a refugee's rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents, but it also underscores a refugee's obligations to a host government. A key provision stipulates that refugees should not be returned to a country where they fear persecution. It also spells out people or groups of people who are *not* covered by the Convention.

Article 1 of the Convention defines a refugee as

A PERSON WHO IS OUTSIDE HIS/HER COUNTRY OF NATIONALITY OR HABITUAL RESIDENCE; HAS A WELL-FOUNDED FEAR OF PERSECUTION BECAUSE OF HIS/HER RACE, RELIGION, NATIONALITY, MEMBERSHIP IN A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION; AND IS UNABLE OR UNWILLING TO AVAIL HIMSELF/HERSELF OF THE PROTECTION OF THAT COUNTRY, OR TO RETURN THERE, FOR FEAR OF PERSECUTION.

■ What is contained in the 1967 Protocol?

It removes the geographical and time limitations written into the original Convention under which mainly Europeans involved in events occurring before 1 January 1951, could apply for refugee status.



UGEE?



International protection is the key to UNHCR's efforts to help millions of refugees. A field officer helps a newly returned Guatemalan couple in 1996 with their papers and documentation.



UNHCR/L. TAYLOR/DIMAGIN/2001

Refugees crises continue to erupt in many parts of the world.

■ What is protection?

Governments are responsible for enforcing a country's laws. When they are unable or unwilling to do so, often during a conflict or civil unrest, people whose basic human rights are threatened flee their homes, often to another country, where they may be classed as refugees and be guaranteed basic rights.

■ Who protects refugees?

Most governments are primarily responsible for protecting refugees and the 146 parties to the Convention and/or the Protocol are obliged to carry out its provisions. UNHCR maintains a 'watching brief', intervening if necessary to ensure bona fide refugees are granted asylum and are not forcibly returned to countries where their lives may be in

danger. The agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their homeland or, if that is not possible, through resettlement in 'third' countries.

■ Is the Convention still relevant for the new millennium?

Yes. It was originally adopted to deal with the aftermath of World War II in Europe and growing East-West political tensions. But though the nature of conflict and migration patterns have changed in the intervening decades, the Convention has proved remarkably resilient in helping to protect more than 50 million people in all types of situations. As long as persecution of individuals and groups persists, there will be a need for the Convention.

STATES
"SHALL NOT IMPOSE
PENALTIES, ON ACCOUNT OF THEIR
ILLEGAL ENTRY
OR PRESENCE, ON
REFUGEES..."

Article 31

■ Is the Convention meant to regulate migratory movements?

No. Millions of 'economic' and other migrants have taken advantage of improved communications in the last few decades to seek new lives in other, mainly western, countries. However, they should not be confused, as they sometimes are, with bona fide refugees who are fleeing persecution and not merely economic hardship. Modern migratory patterns can be extremely complex and contain a mix of economic migrants, genuine refugees and others. Governments face a daunting task in separating the various groupings and treating genuine refugees in the appropriate manner – through established and fair asylum procedures.

STATES "SHALL ACCORD TO REFUGEES THE SAME TREATMENT AS IS ACCORDED TO NATIONALS WITH RESPECT TO ELEMENTARY EDUCATION."

Article 22

UNHCR/A. HOLLMANN/CHE2210



The search for asylum is often complicated by the movement of millions of economic migrants. A Nigerian awaits his fate at Zurich airport.

Number of People of Concern to UNHCR: annual totals worldwide

[AS AT 1 JAN. OF EACH GIVEN YEAR]

These figures may be presented as 31 Dec. figures in other UNHCR documents. Includes revised end-year figures.

REFUGEES	YEAR	TOTAL POPULATION OF CONCERN
8, 455, 000	1981	-
9, 714, 000	1982	-
10, 319, 000	1983	-
10, 621, 000	1984	-
10, 728, 000	1985	-
11, 864, 000	1986	-
12, 634, 000	1987	-
13, 128, 000	1988	-
14, 347, 000	1989	-
14, 733, 000	1990	-
17, 396, 000	1991	-
16, 855, 000	1992	-
17, 838, 000	1993	-
16, 326, 000	1994	-
15, 754, 000	1995	-
14, 896, 000	1996	-
13, 357, 000	1997	-
12, 015, 400	1998	20, 047, 700
11, 480, 900	1999	20, 124, 700
11, 687, 200	2000	20, 821, 800
12, 129, 600	2001	22, 006, 100
12, 116, 800	2002	20, 028, 900
10, 594, 100	2003	20, 892, 500
9, 680, 300	2004	17, 101, 300
9, 559, 100	2005	19, 518, 400
8, 394, 400	2006	20, 751, 900

TABLE 1



UNHCR/PAI. KOBAYASHI/DIA/TMP-1999

UNHCR helps several million internally displaced persons, including safeguards for this 'category' of uprooted people.

■ How are refugees and economic migrants different?

An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the circumstances then prevailing.

"EVERY REFUGEE HAS DUTIES TO THE COUNTRY IN WHICH HE FINDS HIMSELF..."

Article 2



ing these people in Timor, but there are no specific legal

■ Does the Convention cover internally displaced people?

Not specifically. Refugees are people who have crossed an international border into a second country seeking sanctuary. Internally displaced persons (IDPs) may have fled for similar reasons, but remain within their own territory and thus are still subject to the laws of that state. In specific crises, UNHCR assists several million, but not all of the estimated 23.7 million IDPs worldwide.

There has been widespread international debate on how this group of uprooted people can be better protected and by whom.

■ Can the Convention resolve refugee problems?

People become refugees, either on an individual basis or as part of a mass exodus, because of political, religious, military and other problems in their home country. The Convention was not designed to tackle these root causes, but rather to alleviate their consequences by offering victims a degree of international legal protection and other assistance and eventually to help them begin their lives anew. Protection can contribute to an overall solution, but as the number of refugees increased dramatically in recent decades, it has become clear that humanitarian work cannot act as a substitute for political action in avoiding or solving future crises.

■ What obligations does a refugee have?

Refugees are required to respect the laws and regulations of their country of asylum.

■ **Is a Convention signatory required to give permanent asylum to all refugees?**

The Convention does not provide automatic or permanent protection. There will be situations where refugees will integrate permanently in their country of asylum, but alternatively a person may cease to be a refugee when the basis for his or her refugee status ceases to exist. Voluntary repatriation of refugees to their country of origin is UNHCR's 'preferred' solution, but only when conditions in that state permit their safe return.

Voluntary repatriation, in this case to Laos, is the 'preferred' solution to end crises.



UNHCR/J.M. MICAUD/DOI/ALAO-1991



Asylum seekers should never be forcibly returned while their

"NO CONTRACTING STATE SHALL EXPEL OR RETURN...
A REFUGEE... TO THE FRONTIERS OF TERRITORIES WHERE HIS LIFE...
WOULD BE THREATENED..."

Article 33



© S. SALGADO

homelands are in chaos, as Rwanda was in 1995 after that country's infamous genocide.

■ Can non-Convention countries refuse to admit would-be refugees?

The principle of *non-refoulement* – the non-forcible return of people to countries where they face persecution – is part of customary

international law and is binding on all states. Therefore no government should expel a person in those circumstances.



Kosovar refugees arriving in the United States where they received 'temporary' protection in 1999.

■ Who is *not* covered by the Convention?

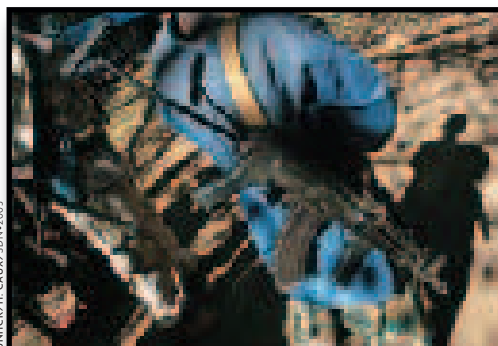
Persons who have committed crimes against peace, a war crime, crimes against humanity or a serious non-political crime outside the country of refuge.

■ Who or what is an ‘agent of persecution’?

This refers to a person or organization – governments, rebels or other groups – which force people to flee their homes. The origin of the persecution, however, should not be decisive in determining whether a person is eligible for refugee status. What is important is whether a person deserves international protection because it is not available in the country of origin.

■ Can a soldier be a refugee?

A refugee is a civilian. Former soldiers may qualify, for instance, but a person who continues to take part in military activities cannot be considered for asylum.



UNHCR/H. CAUX/SDN+2005

Gunmen or soldiers are NOT covered by the Convention.

■ What is ‘temporary protection’?

Nations at times offer ‘temporary protection’ when they face a sudden mass influx of people, as happened during the conflict in the former Yugoslavia in the early 1990s, and their regular asylum systems would be overwhelmed. In such circumstances people can be speedily admitted to safe countries, but without any guarantee of permanent asylum. Thus ‘temporary protection’ can work to the advantage of both governments and asylum seekers in specific circumstances. But it only complements and does not substitute for the wider protection measures, including full refugee status, offered by the Convention.

■ Are some countries, such as those in Europe, being swamped by asylum seekers?

Countries around the world, including some in Europe, believe they are being overwhelmed by asylum seekers. The global number of asylum seekers did increase in the 1980s and 1990s, but then decreased sharply during the first years of the new millennium. The concerns of individual states are relative. The bottom line is that some nations in Africa and Asia – states with far fewer economic resources than industrialized countries –

STATES "SHALL ISSUE
IDENTITY PAPERS
TO ANY REFUGEE IN THEIR
TERRITORY..."

Article 27

sometimes host larger numbers of refugees for far longer periods of time.

■ But does the very fact of accession to the Convention provide a 'pull' factor for increasing numbers of asylum seekers?

No. Some states hosting the largest refugee populations are not parties to refugee instruments. Geopolitical considerations or family links play a more crucial role as far as 'attractiveness' of destination is concerned.

■ Date of entry into force:
22 April 1954
[Convention],
4 October 1967
[Protocol]

■ At 1 July 2006:
Total number of States Parties to the 1951 Convention: 143

■ Total number of States Parties to the 1967 Protocol: 143

■ States Parties to both the Convention and Protocol: 140

■ States Parties to one or both of these instruments: 146

■ States Parties to the 1951 Convention only: Madagascar, Monaco, Saint Kitts and Nevis

■ States Parties to the 1967 Protocol only: Cape Verde, United States of America and Venezuela



UNHCR/C. SCHUBERT/CHIE-29/02

Some European countries claim they are 'swamped' by asylum seekers. Swiss soldiers helped process large numbers of asylum seekers, including this youngster from the Balkans, in the late 1980s.

States parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees

[LIST OF 146 STATES AT 1 JULY 2006]

Afghanistan	Djibouti	Latvia	Samoa
Albania	Dominica	Lesotho	Sao Tome and Principe
Algeria	Dominican Republic	Liberia	Senegal
Angola		Liechtenstein	Serbia
Antigua and Barbuda	Ecuador	Lithuania	Seychelles
Argentina	Egypt	Luxembourg	Sierra Leone
Armenia	El Salvador		Slovakia
Australia	Equatorial Guinea	Macedonia	Slovenia
Austria	Estonia	(former Yugoslav Rep. of)	Solomon Islands
Azerbaijan	Ethiopia	Madagascar	Somalia
		Malawi	South Africa
Bahamas	Fiji	Mali	Spain
Belarus	Finland	Malta	Sudan
Belgium	France	Mauritania	Suriname
Belize		Mexico	Swaziland
Benin	Gabon	Moldova	Sweden
Bolivia	Gambia	Monaco	Switzerland
Bosnia and Herzegovina	Georgia	Morocco	
Botswana	Germany	Mozambique	Tajikistan
Brazil	Ghana		Tanzania (United Republic of)
Bulgaria	Greece	Namibia	Timor-Leste
Burkina Faso	Guatemala	Netherlands	Togo
Burundi	Guinea	New Zealand	Trinidad and Tobago
	Guinea-Bissau	Nicaragua	Tunisia
Cambodia		Niger	Turkey
Cameroon	Haiti	Nigeria	Turkmenistan
Canada	Holy See	Norway	Tuvalu
Cape Verde	Honduras		
Central African Republic	Hungary	Panama	Uganda
Chad		Papua New Guinea	Ukraine
Chile	Iceland	Paraguay	United Kingdom
China	Iran (Islamic Republic of)	Peru	United States of America
Colombia	Ireland	Philippines	Uruguay
Congo	Israel	Poland	
Costa Rica	Italy	Portugal	Venezuela
Côte d'Ivoire			
Croatia	Jamaica	Romania	Yemen
Cyprus	Japan	Russian Federation	
Czech Republic		Rwanda	Zambia
	Kazakhstan		Zimbabwe
	Kenya	Saint Kitts and Nevis	
Democratic Rep. of the Congo	Korea (Republic of)	Saint Vincent and the Grenadines	
Denmark	Kyrgyzstan		

■ Does accession infringe upon state sovereignty?

Sovereignty is never absolute. International relations imply a reasonable and acceptable level of compromise. The refugee instruments reconcile state interests with protection. The granting of asylum, for instance, has not been incorporated into the refugee instruments and continues to be at the discretion of individual governments.

■ Can any country be declared 'safe' in the sense that it cannot produce refugees?

No. Even in states where there is generally no serious risk of persecution, claims by nationals must still be considered. These may be channeled through an 'accelerated procedure' provided that the asylum seeker is given a fair hearing.

■ How can accession be presented to a concerned government or local population?

Some domestic concerns are linked to a misreading or misconception. The Convention and Protocol are nothing more than a general legal framework on which states can build their refugee policy, and obligations

imposed on governments are not as constraining as often suggested. Just to tolerate refugees instead of giving them legal existence might create a 'grey zone' which could fester and turn into a serious security or political problem.

REFUGEES WILL BE ACCORDED
THE SAME FREEDOM AS NATIONALS "TO PRACTICE
THEIR RELIGION... [AND] THE RELIGIOUS
EDUCATION OF THEIR CHILDREN."

Article 4



UNHCR
The UN Refugee Agency

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Media Relations
and Public
Information Service

P.O. Box 2500
1211 Geneva 2
Switzerland

www.unhcr.org

For information
and inquiries,
please contact:

Media Relations
and Public
Information Service
hqpioo@unhcr.org

**Going home
is always the
best solution
for refugees
worldwide.**

