



# Refugees in International Law

By

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# 1. INTRODUCTION

- 'Refugee' in international legal system is a 'status'. When a person or an 'asylum seeker' is granted this status he/she enjoys protection under a special branch of international law known as international refugee law, the centre piece of which is the 1951 Convention, as amended by its 1967 Protocol.
- IHL and IHR may also afford protection to refugees – the former applies at all times and the latter may provide refugees with protection in time of armed conflicts
- Islamic legal system also contains provisions governing the status of refugees and offers a number of mechanisms for their care and protection.
- But before we discuss the Islamic perspective of refugee protection it would not be out of the scope of my presentation to discuss briefly the term refugees in general and the protection afforded to them by the international refugee law.

## 2. Definition and clarification of terms

- It is important to define who is a 'refugee' and also to make it clear that this term by no means is the same as an 'asylum seeker', 'IDP' and a 'migrant'.
- The laws governing these three divergent categories of people are not generally the same
- The discussion will focus on refugees but for the sake of clarity it is essential to distinguish the term refugee from other closely related terms.

## 2.1 DEFINITION OF REFUGEE

- A refugee is a 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

(Article 1A(2) of the Refugee Convention)

## 2.2 Clarification of Terms

Most of often the term 'refugee' is confused with the following terms:

### Refugees

- A refugee is a person who has **crossed an internationally recognized border (EDP)**
- **Fulfilled the criteria of refugee-hood**
- His/her **status** as a refugee is **individually determined**
- Individual determination in case of **mass movement** of people may not be practically possible – so they are often declared **prema facie refugees**
- Entitled to international refugee law protection
- **Refugee status and protection not available to those who are guilty of serious international crimes**, serious non-political crimes or are guilty of acts contrary to the purposes and principles of the UN

### Asylum Seekers

- A person who has sought protection as a refugee, but whose claim for refugee **status** has **not yet been assessed**.
- U/r IHRL everyone has the **right to seek asylum** from persecution but the **right to grant asylum rest with the states**.
- An asylum seeker who is granted asylum or who is found to be a refugee is entitled to international protection and assistance.
- An asylum seeker who is found not to be a refugee can be **sent back** to his/her country of origin
- Types of asylum: **TTA & DA**

### IDPs

- IDPs are "persons or groups of persons who have been forced ... to flee ... their homes ... as a result 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 border."
- Guiding Principles on Internal Displacement, 1998
- Like all human beings, IDPs enjoy human rights that are articulated by IHRL & IHL.

### Migrants

- A migrant is a person who makes a **conscious choice** to leave their country to **seek a better life elsewhere**.
- Before they decide to leave their country, migrants **can seek information about their new home, explore employment opportunities, plan their travel, take their belongings with them and say goodbye to their loved ones**. They are **free to return home** at any time if things don't work out as they had hoped, if they get homesick or if they wish to visit family members and friends left behind.)
- **But refugees** don't have the luxuries migrants enjoy. Refugees are **forced to flee** and **their journey to safety is fraught with hazard** and many refugees risk their lives in search of protection. They cannot return unless the situation that forced them to leave improves



# 3. Legal Framework for Refugee Protection

- Article 14 of the UDHR 1948 recognizes the right of persons to seek asylum from persecution in other countries
- But the centre piece of international refugee protection is the United Nations Convention relating to the Status of Refugees, adopted in 1951 and entered into force on 22 April 1954
- The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe.
- Fortunately in 1967 a Protocol was adopted which amended the 1951 Convention and removed the geographical and temporal limits of the Convention
- The 1967 Protocol by removing the two limitations **gave the Convention universal coverage.**
- As of now 148 states are States Parties to either the Convention or its Protocol or both.
- The Convention has since been supplemented by refugee protection regimes in several regions (e.g., OAU Refugee Convention), as well as via the progressive development of international human rights law.
- UNHCR is tasked with, among others, promoting international instruments for the protection
- of refugees, and supervising their application.

## 4. Protection of Refugees under the 1951 Convention

- The 1951 Con. recognizes certain fundamental principles essential for the protection of refugees & lays down basic minimum standards for their humane treatment.

# 4.1 Fundamental Principles:

## 1. The principle of non-discrimination:

- Art. 3, 1951 Con: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”
- Art. 3 applies to discrimination that affects the enjoyment of rights guaranteed by the Convention and those provisions that establish obligations of a progressive nature.
- For instance, if a Contracting state grants the right to family union for group of refugees it has a *prima facie* duty to grant to all refugees. Similarly, if a state allows one group of refugees to right to permanent settlement it should not deny the same opportunity to other groups of refugees on discriminatory grounds
- Right to non-discrimination in general, is a fundamental human rights –Art 26 of the ICCPR

## 2. The principle of non-penalization

Art. 31, 1951 Con. provides that, subject to specific exceptions (i.e. restriction of freedom of movement until the determination of refugee status),

- refugees **shall not be penalized for their illegal entry** or stay (i.e. refugees are not accountable for breach of immigration rules)
- refugees cannot be charged with immigration offences relating to the seeking of asylum or being arbitrarily detained purely on the basis of seeking asylum

## 3. The principle of non-refoulement

-Art. 33, 1951, Con. Make this principle so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return (“*refouler*”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

-Art. 34, 1951 Co. prohibits the expulsion of refugees. No refugee shall be expelled



## 4.2 Minimum Standards Of Treatment (Mst):

- Refugees, u/r the 1951 Con, are entitled to enjoy basic MST in their host countries including rights
  - to freedom of religion (Art. 4)
  - to have access to court (including legal aid),
  - to primary education (Art .22)
  - to work (or wage-earning & self employment (Arts. 17 & 18) , and
  - to practice their profession (Art. 19)
  - to intellectual property (Art. 14)
  - to own private property (Art. 13)
  - to freedom of movement & residence (Art. 26)
  - to travel document (Art. 28 - the so called Nansen Passport)

## 5. The Islamic Perspective Of Refugee Protection

- Islamic legal system also provides certain fundamental principles essential for the protection of refugees and lays down basic standards for their human treatment:

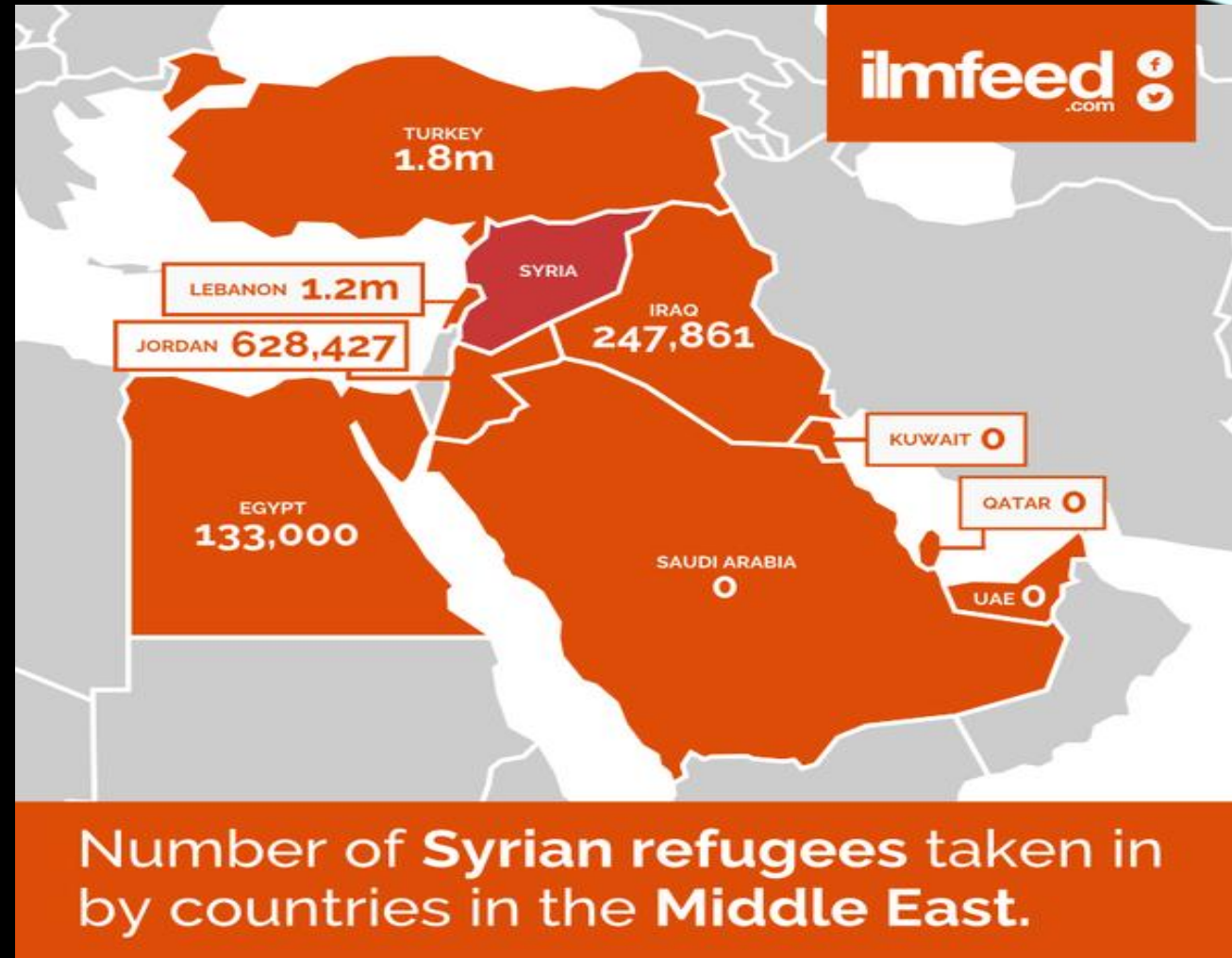
1. Treaties (conventions)
2. Hijrah
3. Non-discrimination
4. Aman (Safeguard)
5. Standards for refugees treatment

The above principles and standards are discussed in the following slides

# 5.1 TREATIES

- The Holy Quran, which is one of the primary source of Islamic law, requires Muslims and that certainly include Muslim states parties to an international treaty or convention, like the 1951 Convention relating to the status of refugees or its 1967 Protocol, to comply with their obligation under the treaty. As the Holy Quran provides in the following verses:
  1. “O you who believe, fulfill any obligations (you may make) (5:1) .”
    - يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ
  2. “And perform your Covenant [treaty]; verily the Covenant shall be enquired of [you shall be responsible for it].” *Surat al-Israa* 17:34
    - وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا
  3. “Every time they make a Covenant, some party among them throws it aside. Why, most of them are faithless.” *Al-Baqarah*, 3: 100.
    - أَوْ كَلَّمَا عَلَيْهِمْ عَهْدًا نَبَذَهُ فَرِيقٌ مِّنْهُمْ بَلْ أَكْثَرُهُمْ لَا يُؤْمِنُونَ
- Based on the above qur'anic verses and also the principle of pact sunt servenda as enshrined in Art. 26 of the VCLT Muslim states are bound to implement the provisions of the 1951 Convention in favour of refugees.

- Sadly, however, not all Muslim states are parties to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol.
- Only 23 Muslim states, most of them poor, are parties to either of these treaties\*. The rest of the Muslim States, mostly the rich ones, are yet to accept these treaties.
- For instance, the "six Gulf countries — Qatar, United Arab Emirates, Saudi Arabia\*\*, Kuwait, Oman and Bahrain, are not parties to the refugee treaties, This could be the reason why these countries failed to admit and provide protection to Syrian Refugee (AI report)



\*Muslim states parties to the 1951 Convention or the 1967 Protocol or both include: Afghanistan , Albania, Algeria, Azerbaijan, Bosnia and Herzegovina, Chad, Egypt, Iran (Islamic Republic of), Kazakhstan, Kyrgyzstan, Mali, Mauritania, Morocco, Niger (the), Nigeria, Sierra Leone, Somalia, Sudan (the), Tajikistan, Tunisia, Turkey, Turkmenistan and Yemen

\*\*A spokesman for UNHCR [told Bloomberg](#) that there are roughly 500,000 Syrians living in **Saudi Arabia**, though they are not classified as refugees and it isn't clear when the majority of them arrived in the country.



## 5.2 HIJRAH (ARABIC: هِجْرَة)

- The term hijrah, mentioned 27 times in the Holy Quran – so important that marks the beginning of Islamic Era, It is associated with the migration of P. Mohammad (pbuh) & his companions from Makkah to Yethrib (Madinah) in September 622 – the migrants were known as Muhajirin and the helpers were known Ansars
- What is Hijrah?
- Well, the term 'hijrah' is derived from the Arabic verb '**hajara**' which means '**to abandon**', **to migrate**, **to break ties with someone** (may be with persecutors or waring parties)
- Seeking refuge, especially against religious persecution, is obligatory upon the able Muslims: The Holy Quran Provides in Surah An Nisa verse 97:
- *Verily! As for those whom the angels take (in death) while they are wronging themselves (as they stayed among the disbelievers even though emigration was obligatory for them), they (angels) say (to them): "In what (condition) were you?" They reply: "We were weak and oppressed on earth." They (angels) say: "Was not the earth of Allah spacious enough for you to emigrate therein?" Such men will find their abode in Hell - What an evil destination! (As for) those whom the angels cause to die while they are unjust to themselves, (the angels) will say: What were you doing? They will say: We were weak in the earth. (They will) say: Was not Allah's earth spacious, so that you could have migrated therein? So these it is whose refuge is hell -- and it is an evil rest.*
- إِنَّ الَّذِينَ تَوَقَّاهُمْ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَئِكَ مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا



- As a principle of immigration, **Hijjarah** entitles individuals with the **rights to seek asylum and be granted asylum**
- It also **offers a broader definition of a refugee by giving individuals the right to determine refugee status or to grant asylum to an asylum seeker.**
- This is not the case with modern international law. Under contemporary IL determination of refugee status or the right to grant asylum rest with the States.
- But in Islam, as reflected in the principle of hijrah, individual Muslims are required to accept and protect refugees for as long as they seek protection.
- Sadly, however, today Muslim states rarely invoke the principle of hijrah or making it operation even though it is of significance in Islam.
- Nevertheless, the principle is here with us we promote it hoping Muslims states would one day have sufficient political will to implement and to widen their acceptance and protection of refugees.

## 5.2 AMAN (SAFEGUARD)

- Aman is an Arabic term which refers to **'safe conduct'** or **'assurance of protection' or refuge**
- (safeguard) is the term Islamic law uses to refer to refuge offered to non-Muslims. Such refuge remains inviolate even if the person being offered protection is in a conflict against Muslims. (Quran 9:6)
- The assurance of protection to a refugee or asylum seeker may be given by a Muslim citizen or by an imam or his deputy to a private person or group of persons coming from a non-Muslim country

- وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ