

# No refuge in the whole wide world

HASSAN AI-Kontar, a Syrian asylum seeker who is stranded in the transit lounge of Kuala Lumpur International Airport since March 7, is a victim of the armed conflict in his country. The conflict in Syria began in 2011 when peaceful protests were met with violent crackdowns by security forces. The brutal conflict has continued until today.

Like many Syrians, he abhors the war. After all, it is not his war. He does not want to join a war that kills his own people. To him, war solves no problem. Thus, he refused to join the Syrian army not because he is a coward, but because he does not believe in war. This is a political opinion which he has the right to express and uphold.

He considers the war in his country as an unjust one and should be brought to an end. Until then, he needs surrogate protection somewhere in this vast world that consists of over 200 sovereign states, 193 of them members of the United Nations.

The Office of the United Nations High Commissioner for Refugees in Kuala Lumpur is aware of Hassan's plight, but is powerless to render any meaningful assistance, as the right to grant asylum rests with sovereign states. Therefore, he cannot leave the airport as all states apparently shut their borders to him and none has expressed its willingness to grant him asylum.

Asylum refers to the protection which a state grants on its territory to a person who comes to seek it, refrains from extraditing the person, abstains from prosecuting, punishing or otherwise restricting the person's liberty.

Contemporary international law recognises individual's right to seek asylum, as this human right is listed in several international and regional human rights instruments. This right can be claimed by a political offender or a victim of persecution.

Hassan is eligible to claim this right or seek asylum because he is outside his country for political reasons and is not a suspected criminal.

However, seeking asylum and granting asylum are two different things. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, which are the principal international instruments relating to the protection of refugees, do not provide an individual with a right to be granted asylum.

These instruments merely define the term "refugee" and provide a number of provisions of which the enjoyment of most by a refugee depends on whether he is granted asylum. This means asylum seekers cannot enjoy the protection under the 1951 Refugee Convention until they are granted refugee status or asylum.

The right to grant asylum rests with sovereign states. In the exercise of its discretion, a sovereign state may grant asylum to whoever it wishes. This discretionary right flows from its territorial integrity, which is a pillar of international law.

States uphold this principle without compromise and this is the main reason why Hassan and other asylum seekers like him find it extremely difficult to find a place of refuge.

It rather encourages asylum seekers to smuggle themselves to developed countries, shut at the borders, drowned in the Mediterranean Sea, or walk for thousands of miles to be illegals only to have a chance to seek asylum and, if granted, can then enjoy the protection under the 1951 Refugee Convention.

Asylum seekers may nevertheless invoke the principle of non-refoulement as enshrined in Article 33 of the 1951 Refugee Convention to demand that they should not be forcibly returned to their state of origin where their lives would be in danger or they would be subject to persecution.

Although asylum seekers have no right to be granted permanent asylum, a right not to be returned to a place where they fear persecution is implied in the principle of non-refoulement.

This is the closest that an individual comes to a right to asylum in international law. This means that asylum seekers have the right not to be rejected at the frontier or intercepted at the airport. They have an implied right to be allowed to enter the territory of the state from which they have sought refuge and this right is accompanied by the corresponding duty of the state to determine the merits of their request for asylum.

Hassan is a prima facie refugee who needs protection. He is entitled to receive it for as long as necessary to ensure that he will not be exposed to the risk of persecution in his state of origin. Although states have discretionary powers to grant asylum, that power cannot legitimately be exercised prior to the determination of the merit of an asylum seeker's claim.

Hassan's case should be heard, but that is legally possible only when he is allowed to enter a country that is a party to the 1951 Refugee Convention. Hassan's situation is depressing. He is tired, lonely and jobless. He urgently needs surrogate protection, but that is not forthcoming.

Currently, some kind hearted people in Canada are trying to get him asylum there, but they have yet to succeed. He is in dire need of protection which has to be provided to him, otherwise the usefulness of the international community would be questioned.

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