THE 1951 REFUGEE CONVENTION

QUESTIONS & ANSWERS

UNHCR
The UN Refugee Agency

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

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A young Hungarian refugee in 1956.

IOM/HAT0085

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as of 1 September 2007

UNHCR/UN/AUT•30415

ARNI/UN ARCHIVES/CH-2265

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 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 the states that have signed up to it. The Convention also defines a refugee's obligations to host governments and certain categories of people 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 was agreed, the fledgling Office of the United Nations High Commissioner for Refugees (UNHCR) had begun its work on 1 January 1951. In subsequent decades, the document has been the bedrock of the agency's efforts to help and protect well over 50 million refugees.

Initially the 1951 Convention was more or less limited to protecting European refugees in the aftermath of World War II, but a 1967 Protocol expanded its scope as the problem of displacement spread around the world. Together, they have also helped inspire important regional instruments such as the 1969 OAU Refugee Convention in Africa and the 1984 Latin American Cartagena Declaration.

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

Article 3

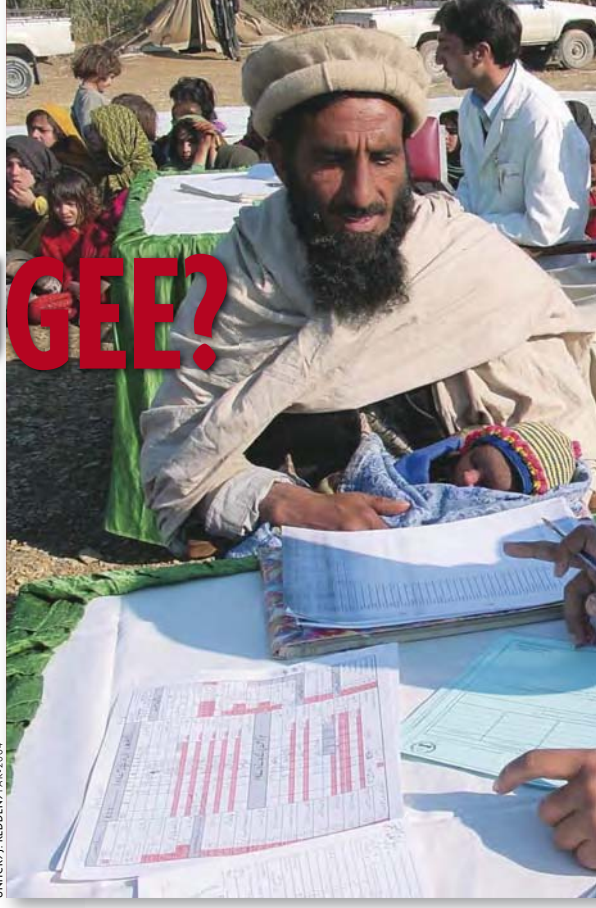
A total of 147 states have acceded to one or both of the UN instruments *(see page 17)*. But, in recent years, as the pattern of global migration has changed and the number of people on the move has increased, the relevance of the 1951 Convention has sometimes been called into question.

UNHCR currently helps just under 33 million people of whom close to 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. Some of the most common questions about the 1951 Convention are listed on the following pages.

WHO IS A REFUGEE?

Article 1 of the Convention defines a refugee as

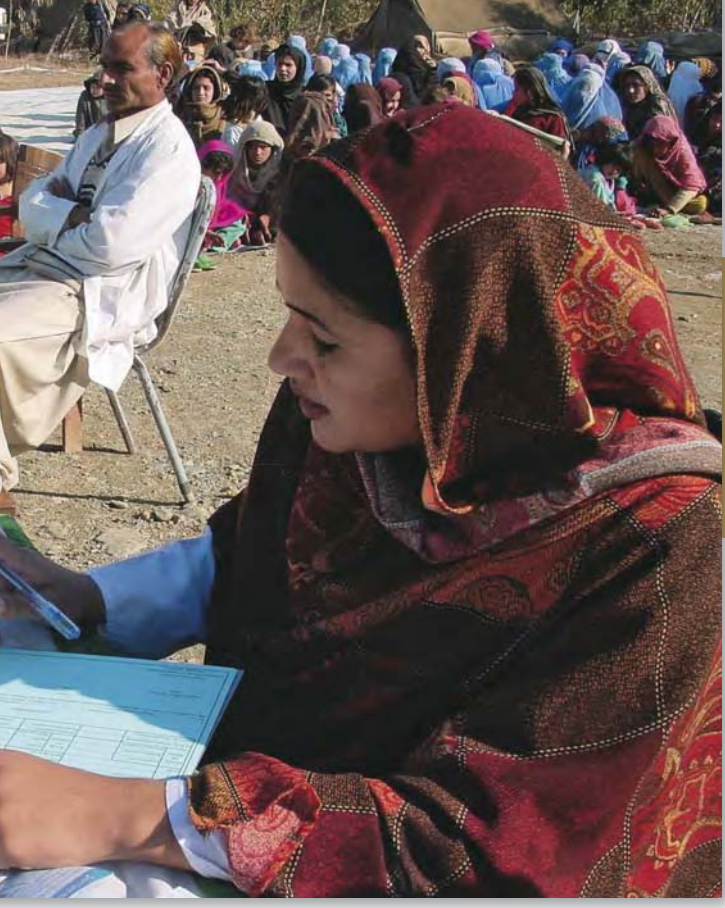
A PERSON WHO IS OUTSIDE HIS OR HER COUNTRY OF NATIONALITY OR HABITUAL RESIDENCE; HAS A WELL-FOUNDED FEAR OF PERSECUTION BECAUSE OF HIS OR HER RACE, RELIGION, NATIONALITY, MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION; AND IS UNABLE OR UNWILLING TO AVAIL HIMSELF OR HERSELF OF THE PROTECTION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



UNHCR/J. REDDEN/PAK•2004

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 need for international cooperation, including burden sharing among states, to tackle the problem.



A one-week-old Afghan boy is registered in Pakistan. Ensuring refugees have proper documentation is a key component of UNHCR's efforts to protect millions of refugees around the world.

What is contained in the 1951 Convention?

It defines what the term 'refugee' means. Then 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. It also underscores, in turn, refugees' obligations towards their host governments. A key provision stipulates that refugees should not be returned to a country where they fear persecution. It also spells out individuals or groups of people who are not covered by the Convention.

What is contained in the 1967 Protocol?

It removes the geographical and time limitations written into the original Convention under which for the most part only Europeans involved in events occurring before 1 January 1951, could apply for refugee status. As a result it turned the Convention into a truly universal instrument that could benefit refugees everywhere. Three-quarters of the world's states have signed up to both the 1951 Convention and its Protocol *(see p. 17)*.

Two out of two million: Iraqi refugees at the border with Syria.

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

Article 31

What is 'protection?'

A properly functioning government provides its citizens with a range of civil, political, economic, cultural and social rights and services including, for example, protection by the police, legislation and courts from crime and persecution. If that system of 'national protection' breaks down – either because the country is at war or is suffering from serious unrest, or because the government is itself persecuting certain categories of citizens – then people may flee to another country. Those among them who qualify as refugees are then entitled to receive 'international protection.'

Who protects refugees?

Host governments are primarily responsible for protecting refugees and the 147 states that have ratified the Convention and/or the Protocol are obliged to carry out its provisions. UNHCR maintains a 'watching brief,' intervening if necessary to ensure 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.

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

Article 22

Is the Convention still relevant in the 21st century?

Yes. It was originally adopted with the aftermath of World War II in Europe and growing East-West political tensions in mind. But though the nature of conflict and migration patterns have changed over the last half century, the Convention has proved remarkably resilient in helping to protect more than 50 million people in a wide variety of situations. As long as persecution of individuals and groups persists, there will be a need for the 1951 Convention.

Is the Convention meant to regulate migratory movements?

No. Millions of 'economic' and other migrants have taken advantage of improved communications in recent years to seek new lives in more developed countries. However, they should not be confused (as they often are) with refugees, who are fleeing persecution or war – rather than moving for financial or personal reasons. Modern migratory patterns can be extremely complex and contain a mix of economic migrants, refugees and others. Separating genuine refugees from the various other groups through fair asylum procedures, in accordance with the 1951 Convention, can be a daunting task for governments.

Refugees' efforts to find asylum is often complicated by the movement of millions of economic migrants. Here, a woman asylum seeker awaits her fate in a detention centre in Slovakia.

UNHCR/B. SZANDELSZKY/SVK•2006

UNHCR/P. SANDS/SYR•2007

UNHCR helps several million internally displaced people, including these women in Chad, but there are no firm legal safeguards for this category of uprooted people.

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 1951 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 new lives. Protection can contribute to an overall solution, but humanitarian work cannot act as a substitute for political action to prevent or solve crises.

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

Article 2

UNHCR/H. CAUX/TCD•2006

■ Does the Convention cover internally displaced people?

No. The act of crossing a border is one of the key triggers for setting the machinery of 'international refugee protection' into motion. Internally displaced people (IDPs) may have fled for the same reasons as refugees, but remain inside their own country and are therefore still subject to its laws, rather than to international refugee law. There has been widespread debate on how this group of uprooted people can be better protected, and by whom. For its part, UNHCR is now officially involved with half of the estimated 24.5 million IDPs worldwide – a big increase compared to previous years.

■ How are refugees and economic migrants different?

Economic migrants normally leave their country voluntarily to seek a better life. If they choose to return home they will continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes unless there is a fundamental shift in the situation (for example a durable peace agreement or change of government).

TABLE 1

Refugee numbers worldwide

[AS OF 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
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
9, 877, 000	2007	32, 900, 000

Refugees returning voluntarily from Bangladesh to Myanmar.

UNHCR/A. HOLLMANN/MMR•1997

What obligations does a refugee have?

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

Does the Convention oblige states to give permanent asylum to all refugees?

The Convention does not provide automatic protection for all time. Many refugees have integrated permanently in their country of asylum, but some stop being a refugee when the basis for their original asylum claim ceases to exist. Voluntary repatriation of refugees to their home country is UNHCR's 'preferred' solution – and indeed is the commonest outcome – but only when conditions make it possible for them to return home safely.

A 43-kilometre column of Rwandans

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

Article 33

UNHCR/R. CHALASANI/TZA•1996

heading home in 1996. Refugees should never be forced home against their will when their country is unsafe.

■ Can non-Convention countries refuse to admit refugees?

The principle of *non-refoulement* – the idea that people should not be forced to return to countries where they face persecution – has become part of customary international law and is binding on all states. Therefore no government should expel a person in those circumstances.

■ Who is *not* covered by the Convention?

A person who has committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside the country of asylum.

■ Who or what is an 'agent of persecution?'

This refers to an individual or organization – government, rebels or another group – which forces people to flee their homes. The identity of the agent of persecution, however, should not be decisive in determining whether or not a person is eligible for refugee status. The key factor is whether a person deserves international protection because it is not available in his or her home country.

UNHCR/P. JAXA/HND•1987

What is 'temporary protection?'

Nations sometimes offer 'temporary protection' when they experience a sudden mass influx of people, and their regular asylum systems face being overwhelmed (as happened during the conflict in the former Yugoslavia in the early 1990s). In such circumstances people can be speedily admitted to safe countries, but without any guarantee of long-term 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 1951 Convention.

Can a soldier be a refugee?

A refugee is a civilian. Former soldiers may qualify, but a person who continues to take part in military activities is not eligible for refugee status.

Above: **Salvadoran refugees in Honduras in the 1980s.** During the Central American wars, 'agents of persecution' included both government and opposition forces.

UNHCR/H. CAUX/CAF•2007

Right: **Gunmen or soldiers are NOT** covered by the 1951 Convention.

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

Article 27

■ Are some countries 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, Asia and the Middle East – states with far fewer economic resources than the major industrialized countries – sometimes host much larger numbers of refugees over much longer periods.

■ Doesn't the mere fact that a state has signed the Convention act as a 'pull' factor, causing the numbers of asylum seekers to soar?

No. Some of the states hosting the largest refugee populations are not parties to the 1951 Convention. Historical, geographical or family links are more likely to influence the choice of destination.

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

■ **As of 1 September 2007: Total number of States Parties to the 1951 Convention:** 144

■ **Total number of States Parties to the 1967 Protocol:** 144

■ **States Parties to both the Convention and Protocol:** 141

■ **States Parties to one or both of these instruments:** 147

■ **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/A. DI LORETO/ITA•2007

Some Europeans feel their countries are being 'swamped' by asylum seekers. Here, the Italian coastguard rescues people (who could be refugees or illegal migrants) near the island of Lampedusa.

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

[LIST OF 147 STATES AS OF 1 SEPTEMBER 2007]

Afghanistan
Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan

Bahamas
Belarus
Belgium
Belize
Benin
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Bulgaria
Burkina Faso
Burundi

Cambodia
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China
Colombia
Congo
Costa Rica
Côte d'Ivoire
Croatia
Cyprus
Czech Republic

Democratic Rep. of the Congo
Denmark
Djibouti
Dominica
Dominican Republic

Ecuador
Egypt
El Salvador
Equatorial Guinea
Estonia
Ethiopia

Fiji
Finland
France

Gabon
Gambia
Georgia
Germany
Ghana
Greece
Guatemala
Guinea
Guinea-Bissau

Haiti
Holy See
Honduras
Hungary

Iceland
Iran (Islamic Republic of)
Ireland
Israel
Italy

Jamaica
Japan

Kazakhstan
Kenya
Korea (Republic of)
Kyrgyzstan

Latvia
Lesotho
Liberia
Liechtenstein
Lithuania
Luxembourg

Macedonia
(former Yugoslav Rep. of)
Madagascar
Malawi
Mali
Malta
Mauritania
Mexico
Moldova
Monaco
Montenegro
Morocco
Mozambique

Namibia
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway

Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal

Romania
Russian Federation
Rwanda

Saint Kitts and Nevis
Saint Vincent
and the Grenadines
Samoa
Sao Tome and Principe
Senegal
Serbia
Seychelles
Sierra Leone
Slovakia
Slovenia
Solomon Islands
Somalia
South Africa
Spain
Sudan
Suriname
Swaziland
Sweden
Switzerland

Tajikistan
Tanzania (United Republic of)
Timor-Leste
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Tuvalu

Uganda
Ukraine
United Kingdom
United States of America
Uruguay

Venezuela

Yemen

Zambia
Zimbabwe

Does accession infringe upon state sovereignty?

Sovereignty is never absolute. The refugee instruments reconcile state interests with human rights 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. *Refoulement*, on the other hand, is clearly prohibited *(see p. 13)*.

Can any country be declared 'safe' on the grounds that it does not produce refugees?

No. Even asylum claims from nationals of states where there is almost no risk of persecution should be considered, because aberrations can occur in even the most benevolent of societies. Such claims can, however, be channelled through an 'accelerated procedure' under which the asylum seeker should still receive a fair hearing.

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

Some domestic concerns are linked to misperceptions. The Convention and Protocol simply provide a general legal framework on which states can build their own refugee policy, and obligations imposed on governments are not as constraining as sometimes suggested. Merely tolerating refugees, without fixing a legal basis for their presence, can create a 'grey zone' which may fester and lead to problems both for the refugees and their host society.

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

Article 4

UNHCR/L. TAYLOR/LAO•1998

Refugees shortly after their return to Laos. Going home is the commonest – and usually the best – solution for refugees.

UNHCR
The UN Refugee Agency

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Back cover:
Essential papers: a travel document and a copy of the 1951 Convention relating to the Status of Refugees.
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FINAL ACT
OF THE
CONVENTION RELATING
TO THE STATUS OF REFUGEES
ACTE FINAL
DE LA
CONVENTION RELATIVE
AU STATUT DES RÉFUGIÉS