

PROTECTING REFUGEES: THE ROLE OF PARLIAMENT

"Everyone has the right to seek and to enjoy in other countries asylum from persecution."

Universal Declaration of Human Rights, Article 14⁽¹⁾

Introduction

Arguably Europe's greatest trial this century, the surge in refugee numbers has exposed problems in policy and governance that has left both refugees and Europeans facing hardship and strife.

While certainly a complex issue with very little objectivity and no quick fix, officials – especially parliamentarians – have a plethora of tools at their disposal to foster normalization and create an amicable resolution.

This brief explains the legal framework governing refugees and identifies actions parliamentarians can take to guarantee their protection while ensuring Europeans remain informed and represented.

Background

Since the close of 2014, Europe has seen an influx of asylum seekers, largely as a result of political turmoil, upheaval and endemic violence across the Middle East and North Africa. While instability in Afghanistan, Eritrea, Libya and Syria - where civil war has left nearly 400.000 people dead and caused nearly 5 million to flee the country since 2011 – among others has caused the largest refugee crisis since the Second World War.¹ While the majority of those displaced have fled to neighboring countries, hundreds of thousands have embarked on a treacherous journey for salvation to the relatively safe havens of European Union member states. With their homelands stricken with violence and poverty, the nations of the EU present the refugees with a chance to rebuild a life in a stable and promising land. The road is not an easy one, and mere arrival does not guarantee an immediate chance at normalization.

¹ "Why Is EU Struggling with Migrants and Asylum?" BBC News. September 21, 2015. Accessed November 10, 2015. <http://www.bbc.com/news/world-europe-24583286>.

The crisis is also difficult for the EU member states themselves, although for largely different reasons. The sheer number of refugees alone overburdens nations on the front line in almost every possible manner and has sometimes incited governmental responses that have drawn the ire of the international community.

Such instances have highlighted the tremendous strain upon EU states on the frontlines, while the plight of the refugees has also been well documented with the publication of countless tragedies as a result of their desperation to reach more hospitable European nations.

As the strife in the Middle East and North Africa begins to affect Europe, the current situation serves as an indictment of the European Union's policies governing migration and asylum policy. As the systems in place are partially responsible for the current difficulty in accommodating the high volume of refugees, it is essential to examine what steps the EU parliament and those of its member states are taking and could potentially take in the future to alleviate the crisis.

Legal framework and classifications

The migration crisis is a complex issue, though one that the world has dealt with before. In the wake of the unprecedented displacement as a result of the Second World War, the international community adopted a charter that governs states' responses to large scale refugee crises. These international refugee laws are rules and procedures that strive to protect and provide a distinct set of guarantees for both persons seeking asylum from persecution and those recognized as refugees as per definition in relevant conventions.

The main regulations of refugee law are derived from a series of treaties, beginning with the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention)², its 1967 Protocol, and customary international law – law that applies to all states irrespective of their status as a signatory of relevant treaties. Regional conventions represent a further set of protections, particularly the 1969 Organization of African Unity Convention (for Africa) and, although it is not formally legally binding, the 1984 Cartagena Declaration (for Latin America).

As the first internationally recognized treaty on the matter, the 1951 Refugee Convention remains the primary framework that governs international law on refugees. In July 1951, a diplomatic conference in Geneva adopted the Convention in order to regulate the status of displaced peoples who were either unwilling or unable to return home, and to assure that discord on the scale of the refugee crisis of the Second World War would not occur again. The convention is both ethically and politically important as its primary functions are to guarantee the basic and inalienable rights of displaced peoples by assuring states maintain proper and fair mechanisms and high standards in order to fulfill the mandates of the convention.

To this day, the 1951 Refugee Convention is still the preeminent doctrine on the protection of displaced persons as its tenets are binding to the 148 signatory states. Despite being originally drafted to protect European refugees displaced during the Second World War, it is universally recognized as the legal framework governing all refugees as its 1967 Protocol was added to remove the previously stated geographical and temporal restrictions.

According to the 1951 Refugee Convention, a “refugee” is any person "... owing to a 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country."³

The Organization of African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa⁴, a regional treaty adopted in 1969, added to the definition found in the 1951 Refugee Convention to include a more objectively based consideration, namely “Any person compelled to leave his/her country 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 nationality⁵.”

It is important to stress that the term “asylum seekers” refers to persons who have applied for asylum but whose refugee status has not yet been determined.

During debates about refugee protection and crisis management, the term “migrant” is often used rather synonymously, however, one shouldn’t combine or confuse them. A migrant is a person who, in contrast to a refugee, has left their country of origin for reasons unrelated to their safety or political opinion, though generally in search of greater financial, social, educational and work opportunities. Moreover, migrants are generally protected by their own countries while they are living abroad, while the refugees’ main threat is from their native country.

While all the aforementioned provisions are varyingly applicable to all nations of the world, signatory states, or regions, it is important to examine specific treaties that form European Union policy, given the location of the current refugee crisis.

Legal Framework

In addition to the International Humanitarian Law the following treaties, conventions and protocols regulate the issue of refugees:

- ✓ 1951 Convention relating to the Status of Refugees
- ✓ 1967 Protocol relating to the Status of Refugees
- ✓ 1954 Convention relating to the Status of Stateless Persons
- ✓ 1961 Convention on the Reduction of Statelessness
- ✓ 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa
- ✓ 1984 Cartagena Declaration on Refugees

³ Convention relating to the Status of Refugees 1951: Article 1.A.2

⁴ Legally binding only to regional refugees

⁵ [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa 1969: Article 1.2

While very wide reaching, the 1951 Refugee Convention and its 1967 Protocol are not applicable to every person who flees his or her country. "Persons who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside their country of refuge; or Persons who are guilty of acts contrary to the purposes and principles of the United Nations", forfeit their protections.

However, the 1951 Refugee Convention also mandates "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever 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".

International Humanitarian Law (IHL) applies the protections previously granted to refugees in many treaties and conventions, such as in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) which contains an article pertaining specifically to refugees and displaced persons (Article 44). The Additional Protocol I (1977) to the fourth Geneva Convention provides refugees and stateless persons protection under the provisions of Parts I and III of the Fourth Geneva Convention.

The current EU policies regarding immigration are defined by the [Dublin Regulation](#), provisions designed to prevent asylum seekers from submitting applications to multiple member states by stipulating that they must be processed by the country in which they arrived. However, in the case of mass influx, this policy has the propensity to place great strain upon the frontline EU member states by forcing them to deal with more applicants than they are able to. The Dublin Regulation includes a provision that allows an asylum seeker to request that a different member state to 'take charge' of processing their application, after which the member state has 2 month to reach a decision. For security measures, the regulation stipulates that in the absence of information or fingerprint evidence the member state can require interviews. Finally, it is possible to appeal the final decision of the asylum request within 15 days.^{6,7}

Attempts to integrate European asylum policy were also made between 1999 and 2005 when the European Union Commission attempted to create a Common European Asylum Plan. In 2008, the Commission adopted the policy plan on asylum, including revisions to the Dublin Regulation that creates provisions to detect problems with national legislation on immigration and asylum processing as well as regulations between states. Additionally, the EU has created a 'temporary protection directive' to create a fairer and quicker form of asylum seeker resettlement.⁸

However, this initiative was undertaken in the wake of the breakup of Yugoslavia, and was thus tailor-made to deal with a similar crisis. While the series of conflicts combined saw almost 4,000,000 people displaced over the course of almost a decade, they did not see such massive

⁶"Dublin III Regulation." Citizens Information. December 17, 2015. Accessed November 10, 2015. http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/the_asylum_process_in_ireland/dublin_convention.html.

⁷ "Dublin Regulation." European Council on Refugees and Exiles. Accessed November 10, 2015. <http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html>

⁸ "Common European Asylum System." DG of Migration and Home Affairs. June 23, 2015. Accessed November 10, 2015. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

numbers of people pouring into Europe in the span of mere months. Furthermore, the Dublin Regulation does not have any specific legislation other than the aforementioned provisions for assessing national policies. Therefore, the sheer numbers of asylum seekers means that the countries on the frontlines - Italy, Greece, Hungary and Croatia - are all dramatically overburdened, and thus are unable to process the asylum seekers quickly, leading to more deaths and hardship as well as security lapses. The blistering escalation of the crises has essentially nullified any provisions under the revised Dublin Regulation on crisis assessment, and the lack of a supranational mechanism has left the frontline states over run with the larger, more capable states legally obligated to send asylum seekers back to register with the states in which they arrived.

While obviously a system that is unfit for the current scale of immigration, it must be noted that a crises of this scale was unthinkable even two years ago, as migration numbers had not increased dramatically in the immediate wake of the Arab Spring and only really started to noticeably surge towards the end of 2014. This perhaps explains the inaction in the years leading up to the current surge, as the conflicts in Syria and Libya are nothing new, and yet it is only recently that there have been remarkably high numbers of asylum seekers fleeing to Europe.⁹

International Response

“The Conference urges the international community to provide timely and speedy humanitarian assistance and support to countries affected by an influx of refugees and displaced persons, and to help them particularly with the care and maintenance of large populations.”

99th Conference of the Inter-Parliamentary Union, April 19

The international community – specifically the world’s parliaments – has been called into action on the issue of refugees on multiple occasions. The Inter Parliamentary Union (IPU), an international forum for cooperation and knowledge sharing has issued several appeals for all parliaments to pass legislation to ensure proper and expeditious treatment of refugees.

To read about directives issued by the Inter Parliamentary Union (IPU) on refugee protection, click [here](#)

In an effort to give asylum seekers better care and quicker processing, the Parliament of the European Union in September passed a plan to relocate refugees so as to provide them with better care but also to relieve the beleaguered frontline states whose resources are stretching increasingly thin.

⁹ "Why Is EU Struggling with Migrants and Asylum?" BBC News. September 21, 2015. Accessed November 10, 2015. <http://www.bbc.com/news/world-europe-24583286>.

The decision was reached through a mechanism known as the ‘urgency procedure’ – a veritable fast tracking of legislation on issues deemed crucial to the integrity of the European Union. While reserved for only the most extreme of scenarios, under the procedure, the issue comes to the floor and takes precedent over other issues, has a curtailed voting and debate procedure, and does not require a dialect concerning amendments with either council or the commission. Therefore, the process is streamlined and allows for directives to be put forth much quicker, essential when considering the numbers of refugees and the urgency of the situation.

However, there is an even greater potential pitfall resulting from urgency procedure: a deficit of democracy.

In recent weeks, public support for the acceptance of more refugees has waned. While this is old news in the smaller states on the frontlines of the crisis, large groups are emerging in Germany and Sweden – the champion states of asylum seekers – that actively, sometimes violently, oppose the government’s willingness to allow increasing numbers of refugees into the country.

Public outcry against granting the asylum seekers shelter is nothing new even for states as welcoming as Germany and Sweden, but recent polls show that these sentiments are surging, and fast gaining ground in national parliaments as well.

These developments may serve as an indictment of the use urgency procedure in the future. While this sort of executive action may be acceptable from an executive branch, one must certainly question if the same is true for a parliament.

This example of the paradox between swift and democratic parliamentary action attests to the quandary of the issue of migration as a whole. It introduces a further layer of complexities to the current refugee crisis in Europe and may make it appear to be an issue too large or nuanced to tackle at a parliamentary level. Indeed, the issue is quite convoluted, although categorization of possibilities reveals there are many avenues parliaments can take to create meaningful change with respect to their representative mandate.

Taking Parliamentary Action

As the European Union’s representative institution, Parliament has the ability to serve as a forum for dialogue and information in order to foster understanding between both refugees and Europeans. Parliament also has the ability to pass legislation that will create sustainable integration that will ultimately lead to normalization.

Identified below are several action points parliamentarians can take to ensure refugees’ rights are ensured and that they are given opportunities for communal acceptance.

1. Parliamentarians should encourage governments to become signatories of the 1951 Refugee Convention and its 1967 Protocol and to other related international and regional agreements that have yet to be ratified.

2. After the government's signing of any treaty or convention related to the refugee issue, MPs should vote in favor of prompt ratification.
3. In the absence of supranational legal primacy, parliaments should draft, oversee and incorporate the international law regulations related to refugees in the national legislation.
4. The State Parties to the 1951 Refugee Convention have agreed to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention. MPs are requested to follow this rule and present their national laws to the UN Secretary General.
5. The issue of refugees is often a topic during parliamentary election campaigns, with some parties advocating for better protection of refugees. Therefore it is the role of the parties supporting refugees to keep to their tolerant stance and educate the citizens about the refugee's rights and share the party's future refugee.
6. Parliamentarians should use various media platforms to raise awareness of refugee issues with constituents and voting bases.
7. MPs are expected to review and amend the national legislations, procedures and instruments periodically to adjust to the current situation.
8. Parliamentarians should examine all avenues of passing legislation – such as urgency procedure – on a case by case basis to promptly and safely resettle refugees.
9. Article 35 of the 1951 Refugee Convention and Article II of the 1967 Protocol contain an agreement for States Parties to cooperate with United Nations High Commissioner for Refugees (UNHCR) in exercising its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties. Thus the MPs and governments should assist the UNHCR in conducting their work in the country without restrictions.
10. UNHCR has a close working relationship with the [Inter-Parliamentary Union \(IPU\)](#). The IPU encouraged parliaments to take an interest in and contribute to consolidating the international refugee protection regime by a strengthened and more effective implementation of the Convention.
11. Due to their vulnerability, refugees are often targets of sexual violence, extortion, and hate crimes in many countries. As international refugee law does not afford them protection from such acts, Parliaments should make meaningful change by passing legislation to protect refugees from such attacks.

12. Many countries that host refugees are facing significant financial challenges. MPs should work to avoid reaching a critical financial situation by allocating a considered percentage of the national budget to international non-governmental organizations and domestic support of refugees.

13. To speed up normalization for refugees, MPs should pass legislation to help integrate refugees into society. Giving refugees the right to work, offering integrated schooling, language classes and freedom of movement are all essential steps towards normalization.

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