

ODUMUNC 2015 Issue Brief for the Human Rights Council



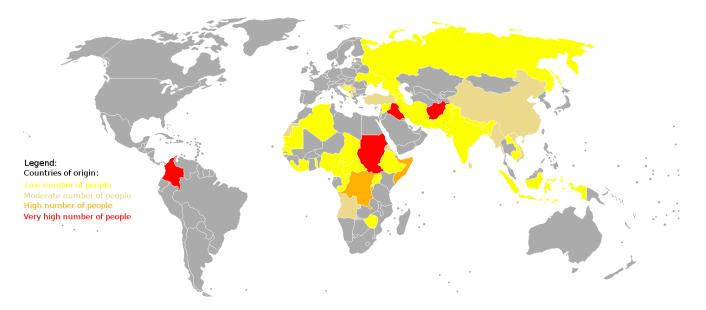
Rights of Refugees, the Internally Displaced, and Asylum Seeking People

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A central practice to the United Nations is the protection of humanitarian rights. Article 14 of the Universal Declaration of Human Rights of 1948 it reads "Everyone has the right to seek and to enjoy in other countries asylum from persecution,"¹ and from this declaration the United Nations' commitment to the protection and assistance of refugees, displaces persons, and asylum seekers began. According to the United Nations' High Commissioner for Refugees there are 51 million forcibly displaced people worldwide, all of whom have been uprooted from their homes and must seek asylum elsewhere. This is the most since the end of the Second World War seventy years ago. Such numbers testify to the several problems of internal warfare and armed conflict in countries as diverse as Afghanistan, Central African Republic, Democratic Republic of Congo, Colombia, Iraq, Libya, Myanmar, South Sudan, Sudan and Syria.

Figure 1. Leading sources of refugees and IDPs



Source: Wikipedia

While humanitarian obligations are universally accepted, their interpretation depends not only on international law, but also on domestic law of welcoming countries as well as their government policies. Virtually all states say they respect the needs and rights of refugees and internally displaced people. But the willingness to accept refugees varies greatly. Countries like Ethiopia, Germany, India, Kenya, Jordan, Pakistan, Russia, Sweden, Turkey and Ukraine, for example, are

¹ UN. "The Universal Declaration of Human Rights, UDHR, Declaration of Human Rights, Human Rights Declaration, Human Rights Charter, The Un and Human Rights." UN News Center. <u>http://www.un.org/en/documents/udhr/</u>

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widely recognized for their willingness to accept refugees. Countries like Australia and the United States have more complicated polices and take far fewer.

Forcibly displaced people globally are categorized as being either internally displaced, asylum seeking, or a refugee. The definition of each category according to the UN High Commissioner for Refugees (UNHCR) is as follows:

- *Refugees* the definition of a refugee was determined in the 1951 Convention relating to the Status of Refugees, it was decided to be someone who "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."² International refugees are under the authority of international treaties and the UN High Commissioner for Refugees (UNHCR). The Convention of 1951 and the Protocol of 1967 will both be discussed in more detail in later sections.
- *Asylum Seekers* Asylum seekers are people who self-identify as refugees. The difference is they have not been processed through the host state's national asylum systems to have been deemed a refugee. This means that any asylum seeker deemed to not be a refugee may be deported by the country they denied seeker resides in.³
- *Internally Displaced Persons (IDPs)* Internally displaced persons are people who have fled their homes to find safety to avoid persecution or out of necessity like a refugee, but they have not crossed an international border. This means they remain under the jurisdiction of their home country (even if their country is the persecutor) and retain the same rights that the country that they are citizens of guarantees.⁴ They are not under the responsibility of international law or international institutions like UNHCR.

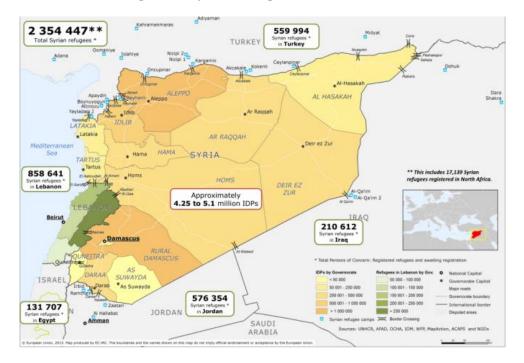
These displaced people are the inevitable result from any armed conflict, large scale natural disaster, or oppressive government. These people have largely no voice, and the United Nations and its member states are tasked with protecting their basic rights.

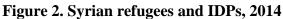
² UNGA. 1951, 1967. *Convention and Protocol relating to the Status of Refugees*. <u>http://www.unhcr.org/3b66c2aa10.html</u>

³ UNHCR. "Asylum-Seekers." UNHCR. <u>http://www.unhcr.org/pages/49c3646c137.html</u>

⁴ UNHCR. "Internally Displaced People." UNHCR. <u>http://www.unhcr.org/pages/49c3646c146.html</u>

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Source: European Commission Humanitarian Aid

Background and History

The international protection of displaced persons and refugees began with the precursor of the United Nations, the League of Nations. The League of Nations was created following the First World War in order to prevent another global scale war and to deal with the war's post war challenges. The first major wave of refugees of the 20th century was one such challenge. The League's involvement with refugees begins in 1921. As a result of World War One and the several wars following it between one and two million Russians fled Russia for areas in Eastern Europe and Western Asia. Responding to this refugee crisis was originally the responsibility various charities, specifically organizations like the International Committee of the Red Cross (ICRC). Because these organizations can only respond to these crises and not take many preventative measures, the ICRC held a conference in February of 1921 to draft a proposal to the League of Nations' Council (which was similar in function and purpose to the UN's Security Council) concerning long term action of the behalf refugees. The conference decided to "invite the Council to appoint a High Commissioner to define the status of refugees, to secure their repatriation or their employment outside Russia, and to coordinate measures for their assistance." The Council responded by adopting what was basically the original proposal created by the ICRC's convention⁵. The responsibility of appointing a High Commissioner was let to the

⁵ Gilbert Jaeger. 2001. "On the History of the International Protection of Refugees" *International Review of the Red Cross, No. 843*. Geneva: International Committee of the Red Cross

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President of the Council, who appointed Dr. Fridtjof Nansen, an Arctic explorer, humanitarian, and doctor of Zoology.

This began the relationship between intergovernmental organizations (IGOs) and the protection of displaced peoples. After this first conference concerning Russian refugees the League of Nations amped up its involvement in humanitarian affairs. One major development to the rights of refugees that originated with the first High Commissioner Dr. Nansen was the first internationally recognized refugee passport. This passport was known as a Nansen passport, and was recognized by over 50 countries as official travel documents. Seeing as there were about 80 sovereign states in the world at the time, that level of cooperation was unprecedented. The League established several bodies underneath the High Commissioner to further deal with refugees; these bodies include the Nansen International Office for Refugees (established 1931), the Office of the High Commissioner for Refugees coming from Germany (established 1933), the Intergovernmental Committee on Refugees (established 1938), and the Office of the High Commissioner of the League of Nations for Refugees (established 1939). All of these bodies did not last longer than ten years. The largest development for refugee rights under the League of Nations was the Convention relating to the International Status of Refugees of 1933. In this convention the questions relating to the administration of aid, labor rights, legal issues, welfare, education, and allowed for the league to create specific committees to answer refugee crises⁵. This convention and most other advancement in refugee rights were flawed because they only focused on select groups of refugees. Because of this the League had to convene different bodies every time there was a crisis, and that the way of responding to each crisis was done on a case by case basis. The League of Nations did of course eventually fail, thus paying the way for the United Nations to take its place. What the League of Nations did succeed in doing however is to organize the major powers of the world to protect and promote human rights and those specifically of refugees.

The United Nations following its establishment in 1945 created its first body addressing refugees in 1946, the International Refugee Organization (IRO). This organization was dismantled about a year behind when it was originally designed to be, and replaced with the current agency in charge of refugee relief, the United Nations High Commissioner for Refugees (UNHCR). The fact that the refugee crisis in Europe following the Second World War would not be solved quickly and that refugee crises will always arise the UN convened for one of the most important conventions on human rights ever, the 1951 Convention Relating to the Status of Refugees.

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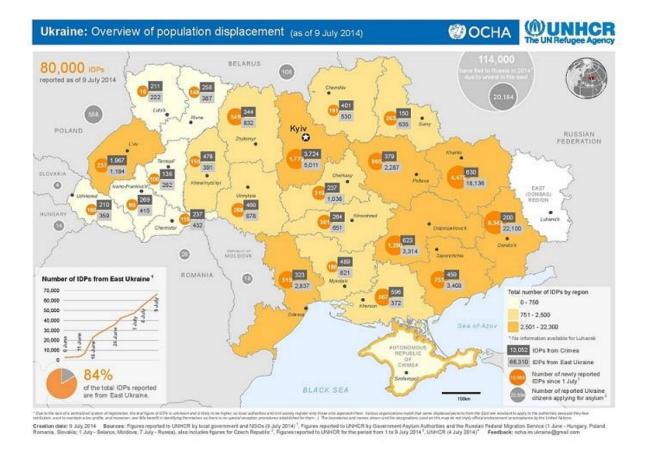


Figure 3. Refugees and IDPs, Ukraine 2014

1951 Convention Relating to the Status of Refugees and the 1967 Protocol

This treaty is split into 6 chapters that cover the topics, general provisions regarding refugees, juridical status of refugees, the right to gainful employment, welfare, administrative measures to be taken by the host state, executory and transitory provisions, and final clauses. Each chapter is made of articles and within these the rights of refugees were enumerated.

The general provisions section of the treaty enumerates the basic rights of a refugee and establishes what a refugee actually is. The convention defines a refugee as "As a result of events occurring before 1 January 1951 and 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." The inclusion of the section about occurring *before* 1 January 1951 would become an issue later on because new refugee crises arise and these same rights would be applied to them. This part of the definition was taken out at the second convention

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relating to the status of refugees in 1966. This chapter goes on to enumerate several key rights, they include: refugees are to be granted the same rights as aliens, the ability to live under the same circumstances as though they were not a refugee, protection against discrimination, a refugee is obliged to abide by the laws and customs of their host state, and guarantees the right to freely practice religion. The following chapter addresses the judicial rights of refugees, and inside of the chapter the rights to have access to courts, they have the same protection of their intellectual and personal property as anyone else, and the right to free association. Chapter three focuses only on gainful employment. In short refugees have the right to work in any way they wish as long as they follow the laws of the country of residence. Chapter four focuses on welfare. Refugees must receive a food ration and the option of public education; otherwise they are to be treated as any other alien would. The rest of the chapters are pointed directly at the states on the administrative side of refugee relief and making sure that a system is in place to actually make sure these refugees can be helped. The rights given in the convention were not extended to those who were deemed to be against the United Nation's principles and this includes committing crimes against humanity, war crimes, crimes against peace, or serious nonpolitical crimes. One topic central to the convention was the prevention of the process called refoulement. Refoulement is the deportation of asylum seekers, sending them back to their original country when they still are in danger⁶.

Most of the world has signed either the convention of 1951's treaty or the protocol from 1967, but a few key states failed to. These states are Jordan, Pakistan, India, Syria, Iraq, Lebanon, Oman, the U.A.E., Cuba, Indonesia, most of Indochina excluding Cambodia, Uzbekistan, Mongolia, Nepal, Bangladesh, Siri Lanka, Surinam, Bahrain, Kuwait, Bhutan, North Korea, and Eritrea.

Issues Facing the Body

The three types of displaced people have their own unique problems. A few issues with each of the three categories follow:

Internally Displaced People

One of the biggest issues with the international protection of IDPs is that the UNHCR does not have them in their purview. The UNHCR still sometimes aid IDPs, but technically the practice is out of the mandate for the UNHCR. The main issue with the UN becoming involved with IDPs is that they are still under the jurisdiction of their home country. The UNHCR would therefore be violating a state's sovereignty by watching after the state's nationals while they remain inside their original country. Another issue facing IDPs is the fact that none are registered. Asylum seekers and refugees, except in certain cases, are required to have gone through a state's asylum system. An IDP, because they never crossed an international border, has

⁶ . Convention and Protocol relating to the Status of Refugees

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no such required registration. As a result of this the exact number of IDPs is almost entirely impossible to determine, making the aid process much more challenging⁷.

Asylum Seekers

The problems facing asylum seekers stem from the fact that many states are reluctant to grant them asylum for a variety of reasons. One major problem comes from how different states define a "social group." The phrase was intentionally vague, but where does its purview end? One major question with social groups is if the persecution of Lesbians, Gays, Bisexuals, and Transsexuals (LGBTs) is categorized inside the social group section. The definition of a refugee does not include persecution based on gender, but often LGBTs when applying for asylum cite being an LGBT as being a member of a social group. Often asylum programs do not allow this logic to stand, and as a result LGBT refugees are sent back to their original countries. Sometimes the idea that LGBTs can simply live discreetly or hide their gender is why they are not taken seriously by asylum systems⁸. The number of asylum seekers in the first half of 2014, January through June, when compared to the same time period last year rose 24%. It is likely that by the end of this year the number of new asylum seekers will have been higher than it has the last decade or so⁹. With the increased number of asylum seekers comes the increased strain on the asylum systems of host countries. Some countries have structured their international and domestic policies to limit immigration; those places are often the same as those who are reluctant to allow an asylum seeker to lodge in their country. Each state separately determines if an asylum seeker is a refugee or not, which means that each asylum system may have separate standards. This makes denying entry to states that are unfriendly towards immigration or refugees much easier, even when an asylum claim is legitimate.

Refugees

Some issues facing refugees and their guaranteed rights are a direct result of many of the host states in the world either not abiding by the 1951 convention or the 1967 protocol or not even being a signing party of the treaties. Major hosts in the world like Pakistan, Jordan, and Lebanon never signed either version of the treaty. This means the three states are not required to follow any of the guidelines of the convention. Another issue with refugees is that when large waves of asylum seekers enter a country it is assumed they all originate from the same crisis and are automatically given asylum. These groups are called "prima facie" (meaning something that is assumed as fact until it is shown to be incorrect) refugees. Many members of these large groups are impossible to process, and are therefore unregistered¹⁰. When refugees are unregistered it is easy for them to fall through the cracks of the system, and greatly increases

 ⁷ UNHCR. "Internally Displaced People." UNHCR. <u>http://www.unhcr.org/pages/49c3646c146.html</u>
⁸ Lundgren, Kelsey. "International Protection for a Newly Surfacing Refugee Community." migrationpolicy.org. <u>http://migrationpolicy.org/article/international-protection-newly-surfacing-refugee-community</u>

⁹ UNHCR. "Mid-Year Trends, June 2014." UNHCR. <u>http://www.unhcr.org/5423f9699.html</u>

¹⁰ UNHCR. "Asylum-Seekers." UNHCR. <u>http://www.unhcr.org/pages/49c3646c137.html</u>

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their chances of not leaving the refugee camps until the situation that they fled ends. This takes away their chances of being resettled in another country.

Current Situations

Currently there are a multitude of refugee crises happing. Some of the most urgent situations and some of largest host country situations are as follows:

Host States:

The diverse nature of country responses to refugee issues are illustrated by a few prominent examples. While virtually all countries have accepted some refugees or IDPS, the issues of refugee status is especially controversial in countries like these:

Australia

Australian politics have usually maintained a strict immigration policy, and that is not changed when it comes to asylum seekers. Beginning in 2008 Australia's government resumed the operation of its offshore asylum processing centers in Nauru, Papua New Guinea, and on Christmas Island (an island northwest of Australia owned by Australia). When an asylum seeker is taken in by Australia they are moved to one of the three offshore processing centers while they await their status. The government then made a deal with the Cambodian government to allow for the resettlement of refugees from these offshore processing centers into Cambodia. In 2013 the Australian government began a program titled Operation Sovereign Borders to address maritime asylum seekers. Sri Lankan, Afghani, Iranian, and Iraqi asylum seekers commonly make the dangerous voyage via boat to Australia, and under this program the processing of these maritime asylum seekers was placed into the hands of the Australian navy. Under this policy the Australian navy has been towing boats of asylum seekers back to their place of origin. In September of 2014 alone 12 boats filled with asylum seekers were towed back¹¹. The international community has responded by accusing the Australian government of *refoulement*, a practice that has been combated internationally since the League of Nations.

Ethiopia

Ethiopia in 2014 overtook Kenya as the country with the most refugees in Africa. By the end of July Ethiopia became host to over 620,000 refugees. Most of these new refugees are from a growing situation in South Sudan. Ethiopia is also a major host for Somali and Eritrean refugees who make up the second and third most refugee numbers in the country¹². Unlike the previously mentioned hosts, Ethiopia has signed the convention and protocol for refugees.

Jordan

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¹¹ BBC News. "Australia asylum: Why is it controversial?" BBC News. <u>http://www.bbc.com/news/world-asia-</u> 28189608

¹² UNHCR News. "Ethiopia overtakes Kenya as Africa's biggest refugee-hosting country." UNHCR News. <u>http://www.unhcr.org/53f31ebd9.html</u>

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Jordan has been one of the most impacted host states in the world. 20% of their resident population is Syrian, and over two million *registered* Palestinian refugees live in Jordan. This does not account for the huge numbers of unregistered people who are in the country, and only a fraction of those registered have a place in a refugee camp. The fourth largest city in Jordan is a refugee camp. One huge issue with having Jordan as a major host country is that they never signed the Convention or Protocol Related to the Status of Refugees. This means that none of the refugees in the country are guaranteed the same rights as participating states. The largest section of the convention that Jordan ignores is not allowing the refugees in their country legally work. Much of the population still does, but none of this can be formal employment and none of it is therefore in positions higher than street sweeper, cooks, or store clerks. Because of the enormous burden of having several million people who are not allowed to work a strain has been put on the Jordanian economy. As of now the government largely survives on international contributions¹³.

Lebanon

Lebanon currently is host to over 1,000,000 *Syrian* refugees, and that's just the registered number of refugees in the country and does not count the huge number of refugees from other countries. Lebanon is situated between the Syrian, Iraqi, and the Palestinian refugee crises. While the country has staggering numbers concerning the amount of humanitarian support it gives to their refugees, the budget for their refugee program is more than 800 million dollars short of the needed amount of funds¹⁴. The lack of funds and widespread international support like what is given to Jordan has put enormous strain on Lebanon and its people.

Pakistan

The Afghan refugee crisis is the "largest protracted refugee situation globally." Over 3.5 million refugees have been successfully returned to Afghanistan from Pakistan since 2002, which accounts for nearly one fourth of the population of Afghanistan. Currently Pakistan is host to 1.6 million *registered* Afghan refugees. Like Jordan, Pakistan has not signed the Convention of 1951 or the Protocol of 1967. Pakistan is also a refugee situation itself, with over 43,000 refugees originating from Pakistan. The government of Pakistan despite never signing the convention of 1951 or the protocol of 1967 has been working with the UNHCR to an impressive extent. Over 5 million Afghans have been successfully resettled into their place of origin since 2001¹⁵.

Ongoing Crises:

¹³ UNRWA. "Jordan | UNRWA." UNRWA. <u>http://www.unrwa.org/where-we-work/jordan</u>

¹⁴ UNHCR. "UNHCR Syria Regional Refugee Response." UNHCR Syria Regional Refugee Response. <u>http://data.unhcr.org/syrianrefugees/country.php?id=122</u>

¹⁵ UNAMA. "United Nations Assistance Mission in Afghanistan." United Nations Assistance Mission in Afghanistan. <u>http://unama.unmissions.org/default.aspx?ctl=Details&tabid=12254&mid=15756&ItemID=37287</u>

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Afghanistan

The UNHCR calls the Afghan refugee crisis the most prolonged one in the world because of the persistence of the refugee crisis for over forty years. Over 5 million refugees from Afghanistan, most feeing the war led by the United States since 2001, have been successfully resettled by Pakistan and the UNHCR. A majority of the refugees from Afghanistan flee to either Pakistan or Iran, and as a result these two countries have some of the highest numbers of refugees currently in the world. In May of 2012 Geneva hosted an international conference on Afghan refugees. This conference adopted the Afghan Solutions Strategy which called for increased international support of the host countries and for mechanisms to increase the sustainability of the resettlements into Afghanistan¹⁶.

Somalia

Somalia has one of the worst displacement crises in the world. Over two million Somalis have been forcibly displaced. Approximately one million of these are internally displaced, and the other million or so are mostly spread about its neighbors, Kenya, Ethiopia, and Yemen. With a mix of political instability and famine nearly a million more Somalis are at risk. The government that assumed power in 2012 exercises next to no power in the "state" and the country is either run by the extremist organization Al Shabab, regional war lords, or by de facto independent states such as Somaliland¹⁷. The humanitarian situation in Somalia seems to only be deteriorating as the amount of Somalis at risk for famine is rising and the pressure the situation is placing on Somalia's neighbors grows.

Syria

The Syrian Civil War has been raging since 2011, and since then an estimated 9 million Syrians have either been internally displaced or have fled to neighboring countries as asylum seekers. The crisis has put enormous strain on the asylum systems of states worldwide. 2.5 million Syrians have fled Syria to its immediate neighbors and over 6 million Syrians are internally displaced. Even though the Syrian refugees are in huge numbers only around 100,000 have been lodged in Europe. In the mid-year report from the UNHCR out of the 44 developed countries selected for the study almost all of them had Syrians as the most numerous nationality applying for asylum in their country¹⁸. What makes this situation worse is that no end is clearly visible, and the international community will be dealing with the fallout of this war for a very long time.

Ukraine

¹⁶ "Solutions Strategy for Afghan Refugees." unhcr.org. <u>http://www.unhcr.org/afghanistan/solutions-strategy.pdf</u> ¹⁷ Refugees International. "Somalia | Refugees International." Somalia | Refugees International. http://refugeesinternational.org/where-we-work/africa/somalia ¹⁸The European Union. "Hello, World!." Syrian Refugees. <u>http://syrianrefugees.eu/</u>

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The crisis in Ukraine over the summer of 2014 turned into a true war. The number of internally displaced people in Ukraine doubled between August 2014 and the beginning of September 2014. The UNHCR estimates that around 260,000 people are internally displaced in Ukraine as of September 2014. The number of asylum seekers fleeing from Ukraine's eastern region where most of the fighting into Russia is estimated by the Russian government as nearing one million¹⁹. The region of Ukraine most affected is also the region with the highest number of ethnic Russians, making Russia the ideal place to run to.

Country/Region Positions

Africa

Africa is both the origin of major refugee crises and the home of several major hosts in the world. Nearly all of the continent's countries have signed the convention of 1951 and the protocol of 1967. Because of the gap in wealth and development between places like North America or Europe and Africa refugees put far more of a strain on the governments of African countries. African countries that are host to refugees are usually hosts because of proximity and many of the refugees wish to seek asylum in more developed areas around the world or on the periphery of Africa (meaning South Africa or countries on the Mediterranean coast of Africa).

The European Union

Beginning in 1999 the European Union (EU) created a Common European Asylum System (CEAS). Between 1999 and 2005 the EU's CEAS was gradually finalized. The EU has also adopted several directives to ensure that the asylum system would be fair and open and so that asylum seekers would be treated by the standards the 1951 protocol guarantees. This includes the establishment of the European Asylum Support Office in Valetta, Malta²⁰.

Pakistan

As a major host country to refugees Pakistan understands extremely well the strain having a large population of refugees places on a state's asylum systems and the country as a whole. As a result of this in current legislation such as the Solutions Strategy for Afghan Refugees Pakistan has been placing a greater emphasis on international support for host countries.

Russian Federation

Russian involvement with the protection of displaced people began with the collapse of the Soviet Union. Since then legislation has been passed in Russia to set up a national asylum system and to allow for citizens of the Russian Federation in former Soviet Union states to return

¹⁹ UNHCR News. "Number of displaced inside Ukraine more than doubles since early August to 260,000." UNHCR News. <u>http://www.unhcr.org/540590ae9.html</u>

²⁰ The European Union. "Common European Asylum System." DGs. <u>http://ec.europa.eu/dgs/home-affairs/what-</u> we-do/policies/asylum/index_en.htm

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to Russia. Now with the Ukrainian crisis Russia is welcoming thousands of asylum seekers. They have undertaken a process of resettlement throughout Russia, turning their border refugee camps into transportation hubs. The resettling of refugees throughout Russia far increases the chances that the refugees would assimilate into Russian society and not return to Ukraine. In refugee crises before this Russia was reluctant to accept asylum applicants into the country. Numbers of accepted asylum seekers were incredibly low before the Ukrainian crisis, but the UNHCR has previously stated that the asylum system of the country was improving²¹. The widespread persecution of members of the Russian LGBT community makes the Russian government strong opponents to any recognition of LGBT protection under the 1951 convention.

The ODUMUNC Agenda

Major approaches to refugee issues for ODUMUNC include:

- Establish new re-settlement and financial obligations for the international community to accept refugees from armed conflict, to insure more equitable sharing of the burdens of international humanitarian obligations.
- Focus on specific conflict and refugees in those situations.
- Focus not on refugees *per se*, but resolution of conflicts creating the greatest refugee problems, including post-conflict resettlement of refugees and IDPs.

²¹ Roth, Andrew. "Shellshocked Ukrainians Flee to New Lives in Russia." *The New York Times*. <u>http://www.nytimes.com/2014/09/05/world/europe/shellshocked-ukrainians-flee-to-a-new-life-in-russia.html? r=0</u>

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