

**DEFINITIONS OF PERSONS IN NEED OF  
PROTECTION  
AND  
RESPONSES TO THE QUESTION : WHY TO  
PROTECT REFUGEES?**

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# **TERMS, DEFINITIONS – A CLOSER LOOK**

## Terms - definitions

asylum seeker – refugee

asylum – refuge

(others) of concern (to UNHCR)

returned refugees

internally displaced persons

returned IDPs

stateless persons

other various groups

## Definitions

### Geneva Convention relating to the status of refugees – 1951

#### Article 1. *Definition of the term “refugee”*

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee ...[according to the interwar arrangements and the IRO constitution]

(2) 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.

## Definitions

### Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

#### **Article 1**

Definition of the term "Refugee"

1. [ Geneva definition]

2. The term "refugee" shall also apply to every person who, 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 nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

# Definition

## **Cartagena Declaration on Refugees,**

### **Colloquium on the International Protection of Refugees in Central America, Mexico and Panama**

Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984.

The Colloquium adopted the following conclusions:

.....

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, **in addition to** containing the elements of the **1951 Convention** and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened **by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.**

# Definition

## EU Temporary Protection Directive

(Council Directive 2001/55/EC OJ L 212/14)

### Article 2

For the purposes of this Directive:

- (a) 'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;
- (b) ...
- (c) 'displaced persons' means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:
  - (i) persons who have fled areas of armed conflict or endemic violence;
  - (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights

# Definitions – EU

## Council Directive

**2004/83/EC** of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304/12 2004 09 30,)

## EU Qualification Directive

**2004/2011**

DIRECTIVE **2011/95/EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

**Art 2** 2004:(e) 2011: (f)

„person eligible for subsidiary protection” [means someone], „who **does not qualify as a refugee** but in respect of whom **substantial grounds have been shown for believing** that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, **would face a real risk of suffering serious harm** as defined in Article 15, .....is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

**Art 15** (in both)

Serious harm consists of:

- (a) **death penalty or execution**; or
- (b) **torture or inhuman or degrading treatment or punishment** of an applicant in the country of origin; or
- (c) **serious and individual threat** to a civilian's life or person by reason of **indiscriminate violence in situations of international or internal armed conflict”**



# Why to protect refugees?

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## **POSSIBLE ARGUMENTS**

**SUPPORTING THE VIEW THAT REFUGEES ARE (SHOULD  
BE) ENTITLED TO PROTECTION EVEN IN TIMES OF  
IMMIGRATION CONTROL**

## Why not everyone who is in need?

- Migration Without Borders – would allow
  - Arguments for the exceptional treatment
    - Refugee law: part of the political struggle – yes
      - alleviating poverty etc. – not (Price)
    - Centrality of the human right violated (J. Hathaway)
    - Communitarianism – migration would put qualitatively larger pressure on the community than refugee admission (M. Walzer)
  - In fact:
    - root causes,
    - human security,
    - moral duty of development assistance
- lines of thinking all wish to address this, assuming the existence of the moral duty

# The scholarly context of the arguments for refugee protection

Essentially

liberal universalism (cosmopolitan, or impartialist approach)

v.

communitarian (/ethno/nationalist, partialist) approach

The two most engaged authors (C. Boswell and M Gibney) find the liberal universalist approach practically untenable

Christina Boswell's answer: overcome the dichotomy of liberal and nationalist ethical claims, by „abandoning the universalist foundations of liberalism” and basing the mobilisation on the Western liberal states' own tradition, on the „group's pride in affirming shared liberal values” (Boswell, 2006, p. 676)

## The scholarly context of the arguments for refugee protection

Matthew J. Gibney's answer is „humanitarianism” or „humanitarian principle”

„Humanitarianism can be simply stated: the principle holds that states have an obligation to assist refugees when the costs of doing so are low. This responsibility recognises, like impartial theories, the existence of duties that stem from membership in a single human community, However, it is less comprehensive in scope than most impartial theories – specifying obligations only to those in great need” (Gibney, 2004, p. 231)

# Identity

Brubaker and Cooper: Identity: overburdened – three clusters of meaning

A) *Identification and categorization (pp.14-16)*

*External categorisation (e.g. by the state) or self identification*

*Relational (e.g. kinship) categorical (e.g. profession)*

B) *Self-understanding and social location*

„It is a dispositional term...one's sense of who one is, of one's social location, and of how (given the first two) one is prepared to act.” (p. 17)

C) *Commonality, connectedness, groupness (part of self understanding)*

„'Commonality' denotes the sharing of some common attribute, "connectedness" the relational ties that link people. Neither commonality nor connectedness alone engenders "groupness" – the sense of belonging to a distinctive, bounded group involving both a felt solidarity or oneness with fellow group members and a felt difference from or even antipathy to specified outsiders.” (p. 20.)

## Identity based I. Shared identity (imagined community)

1. global: altruism – member of human race (liberal egalitarian arguments)
2. ethnically/culturally determined „one of us” (communitarian, ethno-nationalist)
3. „The bank of history” repaying historic debt accumulated by own community (remembering predecessor refugees who found asylum)

## Identity based II.

Construction of the self (identity) by seeing the refugee or her persecutor as „the other”

### Constructing the self

- by helping the refugee (the other)
- or protecting the refugee as one of us escaping the persecutor, which is then „the other”



## Identity based II.

Construction of the self (identity) by seeing the refugee or her persecutor as „the other”

4. Indigenous – foreigner (hospitality)

5. Rich – poor

6. Democratic, law respecting –  
persecutory, totalitarian

## Reciprocity – Utilitarian

7. Reciprocity („insurance policy”) Today’s refugee may become tomorrow’s asylum provider and vice versa

**This is a utilitarian, rational choice approach.**

- Europe, last 80 years:

Spanish, French, Germans, Austrians, Baltic people, Italians, Polish, Greek, Hungarians, Czechs and Slovaks, Romanians, Russians, Moldavians, Armenians, Azerbaijanians, Georgians, Croats, Bosnians, Serbs, Albanians, Ukrainians (and other nationalities) had to flee

## Political calculation – Utilitarian, political choice

8/a conflict prevention / domestic political pressure

8/b window dressing

(utilitarian, state level)

## Historical – national responsibility

9. If persons were persecuted by a given state or because of the acts of a given state, then the state who is responsible for the persecution ought to offer protection

(Germany before and after WWII; US, Australia - South Vietnamese)

## Semi legal - non-refoulement

10. A wider conception of non-refoulement based on the prohibition to expose to ill treatment by way of return (Article 3 of the ECHR as interpreted by the EctHR and beyond.)

## **PURELY LEGAL APPROACH**

- Duty only to the extent of
- undertaken treaty obligations
  - binding customary law
  - European law
  - national rules

## Exclusion of refugees

In order to argue in favour of limiting the arrivals/excluding refugees the actor must:

- be consequently **egoist** (welfare chauvinist)
- have **no historic memory**
- blindly **trust stability**
- be a **realist** in IR sense (willing to violate law if it is in the perceived national interest and no sanctions threaten or interests outweigh harm caused by sanctions)

Reminder: Council of Europe (All EU members are members of it)

**Statute, 1950, preamble:**

Convinced that the pursuit of **peace based upon justice** and international co-operation is vital for the **preservation of** human society and **civilisation**;

Reaffirming their **devotion to the spiritual and moral values which are the common heritage of their peoples** and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, **for the maintenance and further realisation of these ideals** and in the interests of economic and social progress, there is a need of a closer unity between all like-minded countries of Europe;

## Hints for further reading

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# Thanks!

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