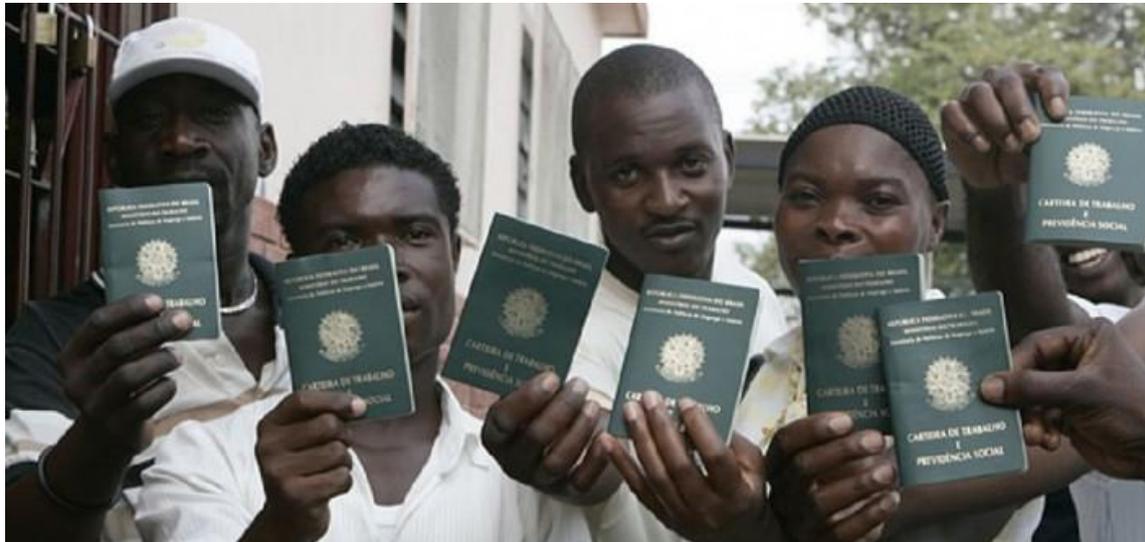


The International European Model United Nations 2018



Human Rights Council

Topic A: Humanitarian Visas



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Welcome letter by the chairs

Dear delegates,

On behalf of The European International Model United Nations, we would like to welcome you to the Human Rights Council. We look forward to being your chairs and making your Model United Nations experience worth remembering!

Participating as a delegate in TEIMUN may be a challenging, but definitely rewarding experience for you. We are certain that this Council will present opportunities for each and every delegate to learn, excel, and broaden their horizons. In and out of session, you will be pushed to consider innovative solutions to modern issues facing the international community. Outside of the committee room, you will have the opportunity to interact while making friends from around the world.

With the challenges concerning human rights growing increasingly pressing, the HRC's responsibilities have increased dramatically over the past years. More than any other Council, HRC faces the immense task of uniting nations to solve problems truly global in scope. At the same time, regional issues, smaller in scope yet just as pressing, demand solving, too. As such, as your chairs we expect you, delegates of HRC, to give your best effort while respecting the rules of procedure and your fellow delegates. We hope that TEIMUN will be an amazing experience for all of you, and that besides the challenging debates and having a blast, you will make connections and friends that will last for a lifetime. We are very much looking forward to meeting you in The Hague come July 2018!

Your chairs,

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Introduction

States are under an international obligation to ensure the protection of refugees.¹ However, in some cases, States are unable to execute this obligation as a result of the failure of an individual to satisfy the refugee criteria.² This is despite them likely to face persecution in their countries of origins. The concept of humanitarian visas allows States to fulfil their international law obligation towards persons who do not satisfy the refugee criteria but require protection.

The Principle of Non-Refoulement

The principle of non-refoulement is one that is widely known to be customary international law. It is defined as a State's obligation not to 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.³ This principle arose in the efforts to advance human rights for persons seeking refuge as well as creating obligations to States.⁴

Actions of refoulement include;

- i. Expulsion/deportation orders,
- ii. Returning of refugees to countries of origin or unsafe third countries,
- iii. Electrified fence to prevent entry,
- iv. Non-admission of asylum seekers,
- v. Interdictions on the high seas.⁵

¹ UNHCR, 'Protecting Refugees: Questions and answers' <http://www.unhcr.org/publications/brochures/3b779dfe2/protecting-refugees-questions-answers.html> accessed on 3/05/2018.

² UNHCR, A State of the World's Refugees: A Humanitarian Agenda' Chapter 5 <http://www.unhcr.org/3eb7ba414.pdf> accessed on 3/05/2018.

³ Article 33(1), Convention Relating to the Status of Refugees 1951.

⁴ Weissbrodt David, 'The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties' (1999) http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles accessed on 15/11/2017.

⁵ UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement, November 1997 <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html> accessed on 15/11/2017.

This principle provides a primary base for the discussion of humanitarian visas by the Human Rights Council.

Exceptions

The benefit of the *non-refoulement* principle may not be claimed by a refugee '*whom there are reasonable grounds for regarding as a danger to the security of the country or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country*'.⁶ Refugees can therefore be returned on two grounds;

- (i) threat to the national security of the host country;
- (ii) Criminal nature and record constitute a danger to the community. The various elements of these extreme and exceptional circumstances need, however, to be interpreted.⁷

These exceptions allow States to factor in maintenance of security in the refugee protection process.

Background

At the 1892 Geneva Session of the Institut de Droit International (Institute of International Law) it was formulated that a refugee should not by way of expulsion be delivered up to another State that sought him unless the guarantee conditions set forth with respect to extradition were duly observed.⁸ The concept of refugees dates back to before the World Wars. The Refugee Convention was created as a result of the influx of refugees forced to flee their homes after World War I and World War II. The Refugee Convention which provides for the principle of non-refoulement was a major step made by the General Assembly in enhancing human rights.

The amount of refugees and migration in general have increased as a result of various factors such as natural or ecological disasters and extreme poverty. As a result, many of today's refugees do not fit the definition contained in the Convention relating to the

⁶ Article 33(2), Convention Relating to the Status of Refugees 1951.

⁷ Ibid.

⁸ Molnar Tamas, 'The Principle of non-refoulement under international law: Its inception and evolution in a nutshell' http://unipub.lib.uni-corvinus.hu/2402/1/COJOURN_v1n1_TamasMolnar.pdf accessed on 15/11/2017

Status of Refugees.⁹ The definition refers to victims of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

On 3 December 1949, the UNGA by Resolution 319 (IV) decided to establish a High Commissioner's Office for Refugees whose mandate was providing international protection of refugees and the seeking of permanent solutions for their problems.¹⁰

Timeline of the Problem

The issue of refugees and non-refoulement has been one that is recognisable from the 20th century. However, very recently conflict in the Middle East, with a majority of the cases from Syria, Iraq and Afghanistan, has resulted in an increase in refugee numbers.¹¹ UNHCR reports illustrate that there exist more than 65 million refugees and displaced person around the world.¹² Syrian refugees constitute about 10 million.¹³ Also, various African countries have faced an influx of refugees such as Uganda and Kenya, who are hosting millions of refugees.

The conflicts in the Middle East and various parts of North Africa have played a strong part in the influx of refugees.¹⁴ In addition to that, certain unforeseeable acts have resulted in people to flee their homes. Natural disasters such as earthquakes, hurricanes, mudslides and floods have created environmental refugees. Ordinarily, such persons cannot claim refugee status under the 1951 Convention.¹⁵ It is with this regard that humanitarian visas will advance efforts to protect persons from returning back to their damaged homes.

⁹ Fact Sheet No.20, Human Rights and Refugees

<http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf> accessed on 15/11/2017.

¹⁰ UNGA, Resolution 319(IV), Refugee and Stateless Persons (1949).

¹¹ UNHCR, 'Factsheet: Timelines and Figures' <http://www.unhcr.org/5245a72e6.pdf> accessed on 29/11/2017.

¹² United Nations, 'Refugees' <http://www.unhcr.org/figures-at-a-glance.html> accessed on 28/3/2018.

¹³ United Nations, 'Refugees' <http://www.unhcr.org/figures-at-a-glance.html> accessed on 28/3/2018.

¹⁴ United Nations, 'Refugees' <http://www.un.org/en/sections/issues-depth/refugees/> accessed on 4/04/2018.

¹⁵ Ibid.



Image retrieved from: *The East Africa*, 'Somaliland struggles to stem youth migration ahead of election' <https://www.allestafrica.com/2017/08/05/somaliland-struggles-stem-youth-migration-ahead-election/> on 30/04/2018

Past United Nations Actions

Since the wake of the World War, the UN has initiated various actions to facilitate the protection of refugees and displaced persons. The following are the major actions initiated by the UN;

i) United Nations High Commission for Refugees

The UNHCR was established in 1950 by the UNGA for a three year mandate to undertake its duties. This is agency is guided by the 1951 Convention Relating to the Status of Refugees. Despite the duration of its mandate elapsing, the UNGA extended its mandate to be one that is permanent in nature.¹⁶

ii) United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

The UNRWA was established in 1949 and is the main provider of basic services such as education, health, relief and social services to registered Palestine refugees in the Middle East. When the Agency began operations in 1950, it was responding to the needs of about 750,000 Palestine refugees.¹⁷

¹⁶ United Nations, 'Refugees' <http://www.un.org/en/sections/issues-depth/refugees/> accessed on 28/03/2018.

¹⁷ United Nations, 'Refugees and Migrants' <http://refugeesmigrants.un.org/global-response> accessed on 29/11/2017.

iii) 1951 Convention Relating to the Status of Refugees (Refugee Convention)

See description above

iv) 1966 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR provides for State obligations, as interpreted by the Human Rights Committee, not to extradite, deport, expel or otherwise remove a person from their territory, if there is reason to believe there is a real risk of irreparable harm.¹⁸

v) New York Declaration for Refugees and Migrants

Formed by Resolution 71/1 in 2016, this Declaration seeks to address the issues that cause people to migrate and the ways this movement can be ensured to be dignified and humane.¹⁹

Concept of Humanitarian Visa

Humanitarian visas are issued by states in order to achieve their human rights obligation to protect refugees and other persecuted persons that do not fall under the refugee definition.²⁰ This concept has been embraced in various countries and regions such as the European Union, the United States of America, Australia and Canada. In the European Union, the humanitarian visa was brought up in the Visa Code via an EU Directive²¹ after the refugee influx.²² The Code states that Member States can issue humanitarian visas on humanitarian grounds, for reasons of national interest or because of international obligations.²³ Regardless, EU States can be granted a margin

¹⁸ UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

¹⁹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20 accessed on 28/3/2018.

²⁰ Red Cross, 'Humanitarian visa in practice' <https://redcross.eu/projects/humanitarian-visas-in-practice> accessed on 1/4/2018.

²¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

²² Ibid.

²³ European Parliament, Director General of Internal Affairs. Humanitarian Visa: Option or obligation.

of appreciation in the issuing of humanitarian visas. The granting of the visas usually functions on a case by case basis.

In Australia, the Special Humanitarian Programme is an initiative taken by the Australian government offering people who, while not being refugees, are subject to substantial discrimination and human rights abuses in their home country.²⁴

The concept is still underutilised, however, it can be deemed to be a step in the right direction in the protection of the rights of refugees.

Benefits of the Humanitarian Visa

Humanitarian visas can be used by States in the efforts of fulfilling their international obligation. The following are some of the benefits that are attributed to the Visa;

i) Curbs Migrant Smuggling



Image retrieved from: <https://www.spectator.co.uk/2017/04/are-we-helping-desperate-migrants-or-just-people-smugglers/>

Migrant Smuggling ‘*involves the illegal, facilitated movement across an international border for profit. While it may involve deception and/or abusive treatment, the purpose of migrant smuggling is to profit from the movement, not the eventual exploitation as in the case of trafficking*’.²⁵ In migrant smuggling, persons who are desperate to flee their homes because of certain circumstances seek illegal methods of

²⁴ Australian Government Department of Home Affairs, ‘Refugee and Humanitarian visa’ <https://www.homeaffairs.gov.au/trav/refu/offs/refugee-and-humanitarian-visas> accessed on 1/4/2018.

²⁵ Ibid.

crossing borders with the help of people smugglers and traffickers. The trafficking takes place in the form of sexual exploitation, forced labour at mines, in agriculture and in domestic work, forced begging and organ trafficking.²⁶ Following the influx of migration and refugees, illegal migration has been on the rise. This has led to the increase in international criminal syndicates operating human trafficking rings. According to the United Nations Office on Drugs and Crime, migrant trafficking is an issue of great concern for persons fleeing their homes. There has been widespread backlash on Libya for its territory being a hub of human trafficking. In addition to that, there have been cases of slave trade of migrants by Libyan nationals.²⁷ Europol estimates that people smuggling is a growing and lucrative criminal enterprise. It estimates that the figure of global profits from smuggling to be around €22 billion a year.²⁸

The UNHCR is involved in the prevention of human trafficking through awareness-raising activities to disseminate information among refugee populations and other persons of concern. The aim is to alert them to the different modalities of human trafficking and the associated risk.²⁹ The Humanitarian Visas thus provide migrants to a better alternative hence they are less vulnerable and unlikely to be taken advantage of by migrant smugglers.

ii) Decrease dangerous migration routes

²⁶ United Nations Office of Drugs and Crime, ‘Human Trafficking and smuggling migrants’ <https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TIPSOM/Human-trafficking-and-smuggling-of-migrants.html> accessed on 4/04/2018.

²⁷ Aljazeera, ‘UN considers sanctions to curb Libya Slave Trade’ <http://www.aljazeera.com/news/2017/11/considers-sanctions-fight-libya-slave-trade-171128183838460.html> accessed on 29/11/2017.

²⁸ Raol Wallenberg Institute of Human Rights and Humanitarian Law, Humanitarian Visas Key to Improving Europe’s Migration Crisis.

²⁹ UNHCR, Human Trafficking and Refugee Protection: UNHCR Perspective <http://www.unhcr.org/protection/operations/4ae1a1099/human-trafficking-refugee-protection-unhcrs-perspective.html> accessed on 29/11/2017.



Image retrieved from: <https://www.thegospelcoalition.org/article/9-things-you-should-know-about-refugees-in-america/>

Migrants undergo various routes in order to get to various safe countries. Some of these routes are considered to be extremely dangerous. A study by the International Organization of Migration shows that thousands of people die from using dangerous sea routes such as the Mediterranean.³⁰ Issuing humanitarian visas will prevent migrants from undertaking dangerous migration routes such as crossing dangerous seas and jungles.

iii) Cheaper for countries to process

The cost per case in issuing humanitarian visas is lower than that of the traditional asylum system. The traditional asylum system may result a country to bear high costs in detention, return assistance and forced removal.³¹ The long term economic effects with regards to rejected asylum applications can be avoided by implementing the humanitarian visa.

It is evident that the issuing of humanitarian visas prevents migrants and refugees from facing inhumane and degrading conditions while trying to get to safe countries. Also it provides economic incentives to receiving States.

Conclusion

³⁰ International Organization for Migration, 'Human Trafficking and Modern Slavery' <https://unitedkingdom.iom.int/human-trafficking-and-modern-slavery> accessed on 4/04/2018.

³¹ Raol Wallenberg Institute of Huma Rights and Humanitarian Law, Humanitarian Visas Key to Improving Europe's Migration Crisis

Following the increase in migration as a result of persecution and threat to life or limb, the possible consideration of humanitarian visas by States can aid. The international community has taken big steps over the recent years to migration in general. However, a wise man once said insanity is doing the same thing over and over again, expecting different results. The international community must therefore consider looking into different mechanisms to ensure they fulfil their international obligation with regards to refugees and migrants in general.

Questions Resolution must Answer

- i. Is the Humanitarian Visa a viable option for tackling the ongoing humanitarian situations?
- ii. Would a national or an international approach be preferred in the embracing (or rejection) of the Humanitarian Visa?
- iii. What are the precise conditions that should warrant the granting of the Visa, and how would its use be regulated, provided it is deemed an acceptable solution?

Bibliography

Aljazeera, ÚN considers sanctions to curb Libya Slave Trade' <http://www.aljazeera.com/news/2017/11/considers-sanctions-fight-libya-slave-trade-171128183838460.html> accessed on 29/11/2017.

Australian Government Department of Home Affairs, ‘Refugee and Humanitarian visa’ <https://www.homeaffairs.gov.au/trav/refu/offers/refugee-and-humanitarian-visas> accessed on 1/4/2018.

Convention Relating to the Status of Refugees (1951).

European Parliament, Director General of Internal Affairs. Humanitarian Visa: Option or obligation.

Fact Sheet No.20, Human Rights and Refugees <http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf> on 15/11/2017.

International Organization for Migration, ‘Human Trafficking and Modern Slavery’ <https://unitedkingdom.iom.int/human-trafficking-and-modern-slavery> accessed on 4/04/2018.

http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles on 15/11/2017.

<http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html> accessed on 15/11/2017.

<http://www.unhcr.org/figures-at-a-glance.html> on 28/3/2018.

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20 on 28/3/2018.

Molnar Tamas, ‘The Principle of non-refoulement under international law: Its inception and evolution in a nutshell’ http://unipub.lib.uni-corvinus.hu/2402/1/COJOURN_v1n1_TamasMolnar.pdf on 15/11/2017.

Raol Wallenberg Institute of Human Rights and Humanitarian Law, Humanitarian Visas Key to Improving Europe’s Migration Crisis.

Red Cross, ‘Humanitarian visa in practice’ <https://redcross.eu/projects/humanitarian-visas-in-practice> accessed on 1/4/2018.

United Nations Human Rights Office of the High Commissioner, Human Rights and Trafficking, Fact Sheet 36, Geneva, 2014.

United Nations, ‘Refugees and Migrants’ <http://refugeesmigrants.un.org/global-response> accessed on 29/11/2017.

UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

UNHCR, Human Trafficking and Refugee Protection: UNHCR Perspective <http://www.unhcr.org/protection/operations/4ae1a1099/human-trafficking-refugee-protection-unhcrs-perspective.html> on 29/11/2017

UNHCR, 'Factsheet: Timelines and Figures' <http://www.unhcr.org/5245a72e6.pdf> accessed on 29/11/2017.

UN High Commissioner for Refugees (UNHCR), UNHCR Note on the Principle of Non-Refoulement, November 1997 'Rights Treaties' University of Minnesota Law School.

United Nations, 'Refugees' <http://www.un.org/en/sections/issues-depth/refugees/> accessed on 28/03/2018.

United Nations Office of Drugs and Crime, 'Human Trafficking and smuggling migrants' <https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TIPSOM/Human-trafficking-and-smuggling-of-migrants.html> accessed on 4/04/2018.

Weissbrodt David, 'The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human.