

## THE ILC BACKGROUND GUIDE



The ILC Commissioners shall be debating on *“The International legal framework of refugee protection provides de jure protection for asylum seekers and refugees, however it is up to States in exercise of their national sovereignty, to guarantee de facto refugee protection.”* Anonymous.

**SHOULD INTERNATIONAL LAW IMPOSE A LEGAL (AS OPPOSED TO A POLITICAL OR MORAL) OBLIGATION ON STATES TO ACCEPT INTO THEIR BORDERS AND/OR TAKE POSITIVE STEPS SUCH AS OFFERING AID AND PROTECTION TO REFUGEES AND ASYLUM SEEKERS?**

This background is meant to act as a guide for the Commissioners as they do their research since it offers a basic understanding of the topic at hand. Commissioners are to be guided by it and do further in-depth research on the topic. Therefore, the dais and entire ILC bureau expects to receive well drafted Draft Articles and to witness Commissioners engaging in informed debate.



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**TOPIC:** *“The International legal framework of refugee protection provides de jure protection for asylum seekers and refugees, however it is up to States in exercise of their national sovereignty, to guarantee de facto refugee protection.” Anonymous.*

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### **BRIEF HISTORY AND CURRENT SITUATION**

The issue of refugees and asylum seekers has been a contentious one for the longest time. Numerous efforts have been made by the international community, for example, through the creation of the Geneva Convention on refugees and the accompanying protocols which provide the legal framework for the protection of refugees and asylum seekers.

Despite all the efforts made, states have the final say on who can enter their territory since International law only obligates them to consider refugees and asylum seekers but it does not compel/obligate them to accept them. States are thus the sole judge of the grounds upon which they will extend protection to asylum seekers and refugees which gives them wide discretionary powers on who they can admit into their territories.

However, in the exercise of their sovereign powers and discretion, states have abused their discretion in the admittance or non-admittance of refugees and asylum seekers into their territories by imposing unreasonable restrictions, for example, Australia has a policy requiring denial of refugee status to persons who enter their territory as an unlawful maritime arrivals (UMAs).

Emergence of new reasons as to why people may seek refugee or asylum status have also not been included in the existing international law provisions and this has empowered states to be more rigid on the reasons for admitting refugees and asylum seekers into their territories. Some of these emerging reasons include economic where there has been an increase in the number of people leaving their countries to seek better job and economic prospects in another country (situation in Iran where migrants seek to cross the English Channel). This situation has caused confusion in Europe where there is a

challenge in distinguishing between economic migrants and refugees and this had led to countries like Italy and Malta closing their rescue harbours to prevent such migrants from reaching the soil. Another class of migrants are those displaced by adverse climatic conditions and natural disasters; refugees fleeing from terrorism and its effects and even those fleeing from organized crime. Further, criticism has been that states offer protection to asylum seekers and refugees based on their own interests.

Calls have been made to legally compel states to accept refugees and asylum seekers into their territories. However, opponents of this have stated that this may infringe on states' sovereignty and may also raise issues of its legality among other reasons. International law instruments and its various principles such as the principle of non-refoulement have been criticised as falling short in the protection of refugees and asylum seekers as many states successfully find legal lacunas to enable them circumvent their duties. Should reforms be made on the reasons that one may be granted refugee status on? What will be the impact of such an imposition on states vis a vis its legality?

### **RELEVANT UN ACTION**

In furtherance of the protection of refugees and asylum seekers, the international human rights regime has been adopted to counteract the challenges posed by the existing refugee protection legal framework, for example in countering effect of revoking the principle of non-refoulement, provisions of human rights instruments like article 3 of the Convention against Torture. Moreover, the UN Human Rights Committee stresses that article 2, 6, and 7 of the ICCPR place a higher threshold on the expulsion of refugees and that states should adhere to the human rights of all persons in their territory.<sup>1</sup>

### **EXPECTATION FROM THE DIAS**

Commissioners while conducting their research and coming up with their Draft Articles, are expected to show instances where State sovereignty (and the wide discretionary powers given to States) has been abused. The commissioners should also discuss on whether imposing a legal obligation on States to admit refugee and asylum seekers into their territory would be a solution to the abuse of discretionary power of states and assess the legality of such a measure.

### **DRAFT ARTICLE RULES**

The format for drafting a Draft Article is to be communicated by your PILC at your chapter level in advance. However, the Chair of the International Law Commission **MAY** decide to send the Rules for the Draft Articles depending on the need that may arise. That notwithstanding, the Draft Articles should be submitted to the email address herein

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<sup>1</sup> Colin Harvey (2015), Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law, 34(1) Refugee Survey Quarterly (<https://doi.org/10.1093/rsq/hdu018>) 43-60.

being ([pilc@kenyamodelun.or.ke](mailto:pilc@kenyamodelun.or.ke)) two days before the actual day of conference and for the avoidance of doubt the **20<sup>th</sup> March 2021 by 5pm**. The font type should be **Book Antiqua**, with a **font size of 12, spacing of 1.5**. Ideally the Draft Article should consist a minimum of 8 pages with no limit as to the maximum amount of pages.

### **CLOSING REMARKS**

From the dais, we wish you the very best as you embark on your research and hope to see you at the Conference. We are looking forward to a fruitful day full of vigor, fun and most importantly quality debate.