

**AMELIORATING THE PROTECTION OF THE HUMAN RIGHTS OF  
REFUGEES AND ASYLUM SEEKERS – WHAT IS IN PLACE WITHIN  
THE UN SYSTEM AND WHAT SHOULD BE IMPROVED?**

By

Ana Gudadze

Master of Laws in Human Rights Programme – Thesis

SUPERVISOR: Dr Inga T. Winkler

Department of Legal Studies

© Central European University

Vienna, Austria

17 June 2022

## ABSTRACT

Every day somebody makes a tough decision to leave their home and take the long way to a safer place. While states might eschew or fail to meet their responsibilities to protect people seeking asylum for a plethora of reasons, international organizations have a strong stand to remind states of their obligations toward protecting the human rights of those displaced. The present thesis seeks to comprehend how the refugee protection systems work on an international level, what is in place and what could be done to improve the protection situation.

The thesis overviews the competence of the UN High Commissioner for Refugees (UNHCR) and analyses the supervisory role of UNHCR primarily based on the Conclusions of the Executive Committee, 1951 Convention Relating to the Status of Refugees (1951 Geneva Convention), and the founding resolution of UNHCR. The analysis demonstrates that the absence of the state reporting and individual complaint mechanisms under the 1951 Geneva Convention undermines the protection of the human rights of refugees and asylum seekers.

The thesis also aims to demonstrate, based on the analysis of resolutions, recommendations, the adopted views and other relevant materials, that there are mechanisms available within the UN system, especially within the UN Human Rights Council, which could be utilised for addressing protection issues of refugees and asylum seekers. The thesis, therefore, shows that designating a special rapporteur on the human rights of refugees and asylum seekers could advance the overall protection situation significantly.

**Keywords:** UNHCR, Human Rights Council, regular migration, forced migration, refugees, asylum seekers, regular migrants, the human rights of refugees, special rapporteur.

## ACKNOWLEDGMENTS

I would like to express my deepest appreciation and sincere gratitude to my supervisor, Professor Inga Winkler, whose guidance and insightful comments were tremendous support while working on this thesis. Her professionalism, dedication and diligence will inspire me in future while pursuing my professional and academic endeavours. Moreover, I would like to express my deepest appreciation and gratitude to Professor Boldiszár Nagy for his comments and for supporting me in acquiring substantial knowledge regarding refugee policy and law.

I would also like to express my deepest gratitude to the late Professor Oswaldo Ruiz-Chiriboga, from whom I learned a lot while studying at Central European University.

Special thanks to Professor Mathias Möschel and Professor Eszter Polgári for their engagement, dedication and a wonderful academic experience.

I dedicate this thesis to my Ukrainian friends and their bright future.

# TABLE OF CONTENTS

<b>ABSTRACT .....</b>	<b>2</b>
<b>ACKNOWLEDGMENTS.....</b>	<b>3</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>6</b>
<b>INTRODUCTION .....</b>	<b>7</b>
<i>i. Thesis Objective .....</i>	<i>7</i>
<i>ii. Research Methodology .....</i>	<i>9</i>
<i>iii. Structure of the Thesis .....</i>	<i>11</i>
<b>CHAPTER 1.....</b>	<b>13</b>
<b>REGULAR MIGRATION AND FORCED MIGRATION .....</b>	<b>13</b>
1.1. Overview Of The International Legal Framework For The Protection Of Refugees .....	13
1.2. Difference Between Regular Migration and Forced Migration and Its Importance .....	16
<b>CHAPTER 2.....</b>	<b>19</b>
<b>WHAT THE UNHCR IS RESPONSIBLE FOR?.....</b>	<b>19</b>
2.1 The Mandate Of UNHCR.....	19
2.1.1 The Competencies of UNHCR.....	19
2.1.2 The Supervisory Role of UNHCR.....	21
2.1.3 The Executive Committee .....	22
2.1.4 Close Cooperation with States – Advantage or Limitation? .....	26
2.2 Room for Improvement.....	27
2.2.1. The State Reporting Mechanism .....	27
2.2.2. Individual Complaint Mechanism .....	30
<b>CHAPTER 3.....</b>	<b>33</b>
<b>THE UN HUMAN RIGHTS SYSTEM AND THE PROTECTION OF THE HUMAN RIGHTS OF REFUGEES .....</b>	<b>33</b>
3.1 The Treaty Bodies .....	33
3.2 The Mandate of the Human Rights Council .....	35
3.3 The Human Rights Council's Role in Refugee Protection .....	36
3.3.1 The 2015-2016 Refugee Crisis .....	36
3.3.2 The Sessions Of Human Rights Council In 2015-2016 Years .....	38
3.4 The Procedures and Mechanisms within the Human Rights Council Relevant to Refugee Protection .....	41
3.4.1 The Universal Periodic Review (UPR) and the Protection of Refugees .....	41
3.4.2 The Special Procedures and the Protection of Refugees.....	49

<b>CONCLUSION .....</b>	<b>55</b>
<b>BIBLIOGRAPHY .....</b>	<b>57</b>

## LIST OF ABBREVIATIONS

1951 Geneva Convention	The 1951 Convention Relating to the Status of Refugees
1967 Protocol	Protocol Relating to the Status of Refugees
CAT	Committee against Torture
CSO	Civil Society Organization
ECHR	European Convention on Human Rights
EU	European Union
Human Rights Council	United Nations Human Rights Council
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
Persons of concern	Refugees and asylum seekers
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
WWI	World War I
WWII	World War II

# INTRODUCTION

## *i. Thesis Objective*

The 1951 Convention Relating to the Status of Refugees (1951 Geneva Convention) was adopted subsequent to the massive refugee displacement that unfolded as a consequence of World War II (WWII), which was the reason for the temporal and geographic limitations envisaged by the Convention.<sup>1</sup> However, subsequent developments revealed that such limitations had to be abolished by acknowledging the fact that the displacement of the people seeking asylum was a global issue and not merely the consequence of the WWII, which eventually led the States parties to the 1951 Geneva Convention to remove temporal and geographic limitations by adopting 1967 Protocol to the Convention.<sup>2</sup> Ever since no major amendments were made to the 1951 Geneva Convention.

The refugee flow and the dramatic number of deaths in the Mediterranean Sea, which peaked in the years 2015 and 2016, amounting to 3,771 and 5,096 deaths respectively, according to UNHCR,<sup>3</sup> revealed the obvious systemic deficiencies in the current refugee protection system. The present thesis is concerned with understanding the protection system on an international level and in that sense, it seeks to identify what are the systemic deficiencies that hold the UNHCR back in addressing the human rights issues of persons of concern (refugees and asylum seekers). The thesis contributes to understanding the deficiencies in the modern refugee protection system in the context of the 1951 Geneva Convention, exploring the available mechanisms within the UN

---

<sup>1</sup> THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS, p. 4, available from <https://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>.

<sup>2</sup> THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS, p. 4.

<sup>3</sup> The Statistics of Mediterranean Sea and Land Arrivals in Europe (UNHCR), available from <https://data2.unhcr.org/en/situations/mediterranean>.

system, which could be utilised for addressing the refugee-related concerns, and offers the possible ways of tackling the protection issues.

The thesis aims to demonstrate that the absence of state reporting and individual complaint mechanisms under the 1951 Geneva Convention are significant deficiencies, which undermine the protection of the human rights of refugees and asylum seekers. Therefore, the supervisory role of UNHCR fails to substitute the advantages associated with the state reporting mechanism. The thesis argues that, while the state the reporting and individual complaint mechanisms are envisaged by several international conventions, it should be as well envisaged by the 1951 Geneva Convention.

On the other hand, particular Treaty Bodies deal with the individual communications submitted by refugees and asylum seekers. However, as it will be explained in Chapter 3, these communications are examined in the context of the respective conventions and none of the Treaty Bodies deals with the individual communications under the 1951 Geneva Convention.

The Human Rights Council and the mechanisms available within its system, on the other hand, can contribute to the advancement of the protection situation of refugees and asylum seekers, especially until the state reporting and individual complaint mechanisms are envisaged by the 1951 Geneva Convention. The present thesis delineates based on the relevant resolutions and the UPR recommendations that the Human Rights Council is dealing with the refugee-related issues to quite a large extent and it could act as a venue for bringing up the refugee-related concerns before the international tribunal.

The thesis also aims to explain the conceptual differences between regular migration and forced migration, and why these two dimensions of migration cannot be treated similarly. In that sense, the thesis argues that the special procedures within the Human Rights Council could be a



significant tool for the advancement of the protection situation of refugees and asylum seekers, and a special rapporteur on the human rights of refugees and asylum seekers shall be designated.

## ***ii. Research Methodology***

The present thesis is based on the analysis of a meticulously selected set of UN documents. The competence of UNHCR is analysed based on the founding resolutions and the 1951 Geneva Convention. To understand the broader picture of the supervisory role of UNHCR, all 11 conclusions mentioning the supervisory role of UNHCR, which covered the period from 1989 to 2008 is analysed.<sup>4</sup>

In the context of the Human Rights Council and the relevant mechanisms, the scope of the thesis is limited to the arrivals of the refugees through the Mediterranean Sea in the years 2015-2016, when the highest number of deaths of refugees in the Mediterranean Sea were recorded, according to the statistics of UNHCR and the International Organisation for Migration (IOM),<sup>5</sup> and when the grave human rights violations took place, which even challenged the asylum system of the EU Member States.<sup>6</sup> Moreover, 88 resolutions adopted by the Human Rights Council in 2015, and 100 resolutions adopted by the Human Rights Council in 2016 are analysed in this thesis to establish the extent of engagement of the Human Rights Council with the 2015-2016 crisis.<sup>7</sup>

---

<sup>4</sup> See UN High Commissioner for Refugees (UNHCR), A Thematic Compilation of Executive Committee Conclusions (7th Edition, 2014), available from <https://www.refworld.org/docid/5698c1224.html>.

<sup>5</sup> See The Statistics of Mediterranean Sea and Land Arrivals in Europe (UNHCR), available at: <https://data2.unhcr.org/en/situations/mediterranean>. See also International Organization for Migration (IOM), Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079 (January 6, 2017), available from <https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079>.

<sup>6</sup> Dogachan Dagi, 'Refugee Crisis in Europe (2015-2016): The Clash of Intergovernmental and Supranational Perspectives', *International Journal of Social Sciences* Vol. VI (1): 5–6, <https://doi.org/10.52950/SS2017.6.1.001>.

<sup>7</sup> The United Nations Human Rights Council, Regular Sessions, available from <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/regular-sessions>.

In the context of UPR, three countries, Greece, Italy, and Spain were selected for the analysis of the UPR process. The rationale behind this choice relies on the statistics of the UNHCR and the International Organization for Migration (IOM), according to which, the highest number of the sea arrivals (Mediterranean Sea) in both years was recorded in Greece, Italy, and Spain; Particularly, in 2015 and 2016 years, 856,723 and 173,561 migrants arrived at the seashores of Greece respectively; In the same years, 153,842 and 181,436 migrants arrived in Italy; and 4,408 and 8,162 migrants arrived at the seashores of Spain, respectively.<sup>8</sup>

Therefore, 4 reports from 2015-2016 of the UN Special Rapporteur on the Human Rights of Migrants are analysed in the thesis to explore to what extent the Special Rapporteur addressed the human rights violations of refugees and asylum seekers in 2015-2-16 years.<sup>9</sup>

As regards the UN Treaty Bodies, 19 adopted views of the Committee against Torture (CAT) from the years 2018-2019,<sup>10</sup> and 20 adopted views of the Human Rights Committee from the years 2017-2019<sup>11</sup> are analysed in the thesis. The selected timeframe aimed to identify individual communications, which were submitted by applicants in 2015-2017 years and to understand to what extent the Committees engage with the human rights of refugees and asylum seekers.<sup>12</sup>

---

<sup>8</sup> See The Statistics of Mediterranean Sea and Land Arrivals in Europe (UNHCR), available from <https://data2.unhcr.org/en/situations/mediterranean>. See also International Organization for Migration (IOM), Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079 (January 6, 2017), available from <https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079>.

<sup>9</sup> Annual Reports, Special Rapporteur on the Human Rights of Migrants, available from <https://www.ohchr.org/en/special-procedures/sr-migrants/annual-reports>.

<sup>10</sup> Adopted Views (Committee against Torture (CAT), 2018-2019, available from <https://juris.ohchr.org/search/results>.

<sup>11</sup> Adopted Views (The Human Rights Committee (CCPR), 2017-2019, available from <https://juris.ohchr.org/search/results/4?typeOfDecisionFilter=0&countryFilter=0&treatyFilter=0>.

<sup>12</sup> The Committee on Migrant Workers is not mentioned in the thesis, because Article 77 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families envisages individual complaints mechanism, however, the mechanism is not yet into force, as it becomes operative after 10 States make declaration under Article 77. See <https://www.ohchr.org/en/treaty-bodies/cmw/communications-procedures>.

Moreover, two interviews were conducted with the representatives of UNHCR and an implementing partner organisation of UNHCR, based in Tbilisi, Georgia. The interviews contributed to the preparatory work for this thesis and will not be cited in the thesis.

The thesis also relies on other primary sources, such as conventions, protocols, and the founding resolutions of the relevant UN bodies. The analysis of the above-mentioned primary sources will be complemented by the relevant secondary resources, such as books, scholarly articles, the opinions of experts, and other relevant publications.

### ***iii. Structure of the Thesis***

Chapter 1 starts with a discussion on the differences between regular migration and forced migration. The aim of discussing these two dimensions of migration is to establish the context of migration and delineate the conceptual differences between regular migration and forced migration, based on which, in Chapter 3, it will be explained why designating a separate special rapporteur on the human rights of refugees and asylum seekers would be beneficial for the advancement of the protection situation.

Chapter 2 of the thesis is dedicated to understanding the competence of UNHCR and its supervisory role. The discussion will be concluded by summarizing the room for improvement in the protection mechanisms and explaining why the state reporting and individual complaint mechanisms should be envisaged under the 1951 Geneva Convention.

Chapter 3 is dedicated to the protection mechanisms available within the UN system, with special emphasis on the Human Rights Council and its mechanisms. The discussion also covers the individual communications examined by two UN Treaty Bodies, CAT and the Human Rights Committee. In the context of the Human Rights Council, the discussion covers the relevant

resolutions adopted by the Human Rights Council, as well as the UPR proceedings. Chapter 3 delineates the importance of a special rapporteur on the human rights of migrants and explains why a special rapporteur on the human rights of refugees and asylum seekers should be designated, which relates to the discussion from Chapter 1.

Based on the materials analysed, a concise summary of the findings of research and the recommendations on how to advance the protection situation of the human rights of refugees and asylum seekers will be provided in the conclusion section.

# CHAPTER 1 - REGULAR MIGRATION AND FORCED MIGRATION

The phenomenon of migration is as old as the history of humankind. However, until the 20<sup>th</sup> century, society was blithe about human rights, due to the absence of a codified and internationally recognised human rights protection system. Nor existed the refugee status determination proceedings, and thus, the admission of refugees was not dependent on the credible or mendacious content of their application, but rather on the goodwill of the crown, church, and municipalities.<sup>13</sup>

The history of migration demonstrates that people either abandon the place of origin in search of better and prosperous lives or when there is simply no other choice than to flee to preserve one's life and security. Considering this, migration can be understood as an umbrella concept, which covers two core dimensions – regular migration and forced migration. This Chapter seeks to establish the context of migration and to create a basis for the discussion in Chapter 3 on the importance of designating a special rapporteur on the human rights of refugees and asylum seekers.

## **1.1. Overview Of The International Legal Framework For The Protection Of Refugees**

The era after WWII demanded the international society to come together and jointly address the challenges generated from the war, including the refugee issues. The attempts of the international community to tackle the refugee issues that emanated from the war, culminated in establishing the United Nations High Commissioner for Refugees (UNHCR) as of 1951, which

---

<sup>13</sup> Gil Loescher, *The Origins of the International Refugee Regime, in Beyond Charity: International Co-Operation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993), 33.

was followed by the signing of the Convention on 28 July 1951.<sup>14</sup> The 1951 Geneva Convention entered into force on 22 April 1954, and it represents the core international instrument adopted for the protection of refugees. However, States agreed upon setting a limitation to the events occurred before the 1<sup>st</sup> of January 1951, which was mainly derived from the fact that the intention of the states essentially was to tackle the consequences of WWII.<sup>15</sup> Nevertheless, the post-war era demonstrated that refugee issues were borderless and could not be limited to the events that had taken place before the 1<sup>st</sup> of January 1951. Thus, the States decided to amend the Convention through the 1967 Protocol to remove the limitations from the Convention and make it applicable to all individuals, regardless of the events and timing.<sup>16</sup> Thus, the modern refugee protection system is largely based on the 1951 Geneva Convention and its 1967 Protocol and has not undergone major changes ever since.

The further international legal framework that could be applied to the refugees and asylum seekers is, *inter alia*, the Universal Declaration of Human Rights (UDHR), which primarily refers to the term “asylum” and stipulates that everyone has the right to seek and enjoy asylum from persecution in other countries,<sup>17</sup> the International Covenant on Civil and Political Rights (ICCPR), 1966,<sup>18</sup> and the International Covenant on Economic, Social, and Cultural Rights (ICESCR),

---

<sup>14</sup> James C. Hathaway, *The Rights of Refugees under International Law*, 2nd ed. (Cambridge: Cambridge University Press, 2021), 27.

<sup>15</sup> See foreword Convention Relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, No. 2545 p. 137, available from [https://treaties.un.org/pages/ViewDetailsII.aspx?src=IND&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=IND&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en).

<sup>16</sup> See foreword Protocol Relating to the Status of Refugees, New York, 31 January 1967, United Nations, Treaty Series, vol. 606, No. 8791, p. 267, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=V-5&chapter=5&clang=_en).

<sup>17</sup> UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A (Paris, 1948), <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>18</sup> International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, Vol. 999, No. 14668, p. 171 and Vol. 1057, p. 407, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en).

1966.<sup>19</sup> While the Covenants do not explicitly mention that refugees are beneficiaries of either of them, they are as well applicable to refugees, as the Covenant rights apply to everyone regardless of their nationality or statelessness (with very few exceptions such as the right to vote).<sup>20</sup> Moreover, Article 13 ICCPR refers to the lawful presence of a foreigner in a given state and guarantees the rights that a foreigner has amid expulsion.<sup>21</sup> Other international legal instruments can be applied to refugees and asylum seekers as well, particularly, the International Convention of Elimination of All Forms of Discrimination against Women, 1979,<sup>22</sup> the Convention on the Rights of the Child, 1989,<sup>23</sup> as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984<sup>24</sup> can be applied to refugees and asylum seekers.<sup>25</sup> Additionally, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2014, shall be applied to refugee and asylum seeker women accordingly.<sup>26</sup>

---

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, United Nations, Treaty Series, Vol. 993, No. 14531, p. 3, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3&chapter=4&clang=_en).

<sup>20</sup> Vincent Chetail, *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud, and Jillyanne Redpath-Cross (Cambridge: Cambridge University Press, 2012), 60.

<sup>21</sup> See Art. 13, International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999, No. 14668, p. 171 and vol. 1057, p. 407.

<sup>22</sup> Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, United Nations, Treaty Series, Vol. 1249, No. 20378, p. 13, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-8&chapter=4&clang=_en).

<sup>23</sup> Convention on the Rights of the Child, New York, 20 November 1989, United Nations, Treaty Series, Vol. 1577, No. 27531, p. 3, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=_en).

<sup>24</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, No. 24841, Vol. 1465, p. 85, available from [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&clang=_en).

<sup>25</sup> Chetail, *Foundations of International Migration Law*, 60.

<sup>26</sup> The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Pub. L. No. ISBN 978-92-871-7990-6 (2014).

## 1.2. Difference Between Regular Migration and Forced Migration and Its Importance

Migration emanated a long time ago, when *Homo Sapiens* migrated north to the Levant approximately 100,000 years ago, the exact grounds of which are unknown to scholars.<sup>27</sup> It could be conflicts, concerns related to the climate, or other biological reasons.<sup>28</sup> People tend to migrate regularly for various reasons, which makes migration studies complex and intersectional, and requires not only legal, but also political, sociological, psychological, and overall, interdisciplinary approaches to properly understand its origin and purpose. Yet the history of migration makes one thing quite clear – people either leave their countries of origin voluntarily or they flee.

Russell King concludes that migration has many dimensions that could be internal, international, temporary, permanent, regular, or irregular.<sup>29</sup> He stresses that, depending on the purpose and the reason for leaving the country of origin, we can *ergo* distinguish between regular migrants and refugees.<sup>30</sup> The notion “voluntary” is key to the definition of regular migration, whereas forced migration is fundamentally based on the “well-founded fear of persecution.”<sup>31</sup> Forced migrants are “refugee and other forcibly displaced populations, which may be primarily due to war and conflict, but also can be due to political, religious, and other persecution; national or manmade disasters; development-induced displacement; smuggling and human trafficking; and environmental displacement.”<sup>32</sup>

---

<sup>27</sup> Yuval Noah Harari, *Sapiens, A Brief History of Humankind*, Cloth edition published 2014 (United Kingdom, Israel: Harvill Secker, Kinneret, Zmora-Bitan, Dvir, 2011), 22.

<sup>28</sup> Yuval Noah Harari, *Sapiens, A Brief History of Humankind*.

<sup>29</sup> Russell King, ‘Theories and Typologies of Migration: An Overview and A Primer’, *Willy Brandt Series of Working Papers in International Migration and Ethnic Relations* 12 (1 January 2012): 8.

<sup>30</sup> King, ‘Theories and Typologies of Migration: An Overview and A Primer’, 1 January 2012.

<sup>31</sup> James Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd edition (Cambridge: Cambridge University Press, 2014), 91.

<sup>32</sup> Guo et al., ‘Understanding the Global Refugee Crisis: Managerial Consequences and Policy Implications’, *Academy of Management Perspectives*, no. 34 (November 2020): 531.



The 1951 Geneva Convention and the 1967 Protocol, determine that the term refugee applies to any person who has a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion.<sup>33</sup> What constitutes persecution, is not exactly defined by the Convention, however, scholars have developed particular approaches to defining this vague term. Hugo Storey explains that to define the notion of “persecution” we might look at the national law definitions, dictionary definitions, hermeneutical and enumerative definitions, or human rights definitions.<sup>34</sup> According to Hathaway, persecution implies serious harm that a refugee faces in the country of origin, and therefore, the state fails to protect them (or sometimes a state is a perpetrator itself), and the well-founded fear entails that the refugee is facing the “terror of persecution” and their fear is reasonable and consistent.<sup>35</sup> In other words, to qualify as a refugee, fleeing the country on the grounds of fear and persecution is quintessential. It is not a choice, but rather an absolute necessity to save one’s life.

Conversely, regular migrants (immigrants and emigrants)<sup>36</sup> leave their countries (or move inside the country) voluntarily and not due to fear of persecution. What drives individuals when they migrate differs per person. From the perspective of neoclassical economics, the motivation for migration might be related to employment conditions and “income maximization.”<sup>37</sup> Another argument is a “push-pull” framework, which entails that, migrants are pushed from their countries owing to the destitute environment, poor living conditions, unacceptable political systems, etc. and

---

<sup>33</sup> See Article 1(A) Convention Relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, Vol. 189, No. 2545 p. 137 and Article 1 Protocol Relating to the Status of Refugees, New York, 31 January 1967, United Nations, Treaty Series, vol. 606, No. 8791, p. 267.

<sup>34</sup> Hugo Storey, ‘What Constitutes Persecution? Towards a Working Definition’, *International Journal of Refugee Law* 26 (2014): 274–79.

<sup>35</sup> Hathaway and Foster, *The Law of Refugee Status*, 91.

<sup>36</sup> Deirdre Hughes et al., ‘Migration: Theory, Research and Practice in Guidance and Counselling’, *British Journal of Guidance & Counselling* 47, no. 1 (2 January 2019): 1, <https://doi.org/10.1080/03069885.2018.1564898>.

<sup>37</sup> Douglas S. Massey et al., ‘Theories of International Migration: A Review and Appraisal’, *Population and Development Review* 19, no. 3 (1993): 432, <https://doi.org/10.2307/2938462>.

pulled to the countries where they can build up a decent and acceptable living environment.<sup>38</sup> Conversely, from the perspective of “new economics of migration,” migration can stem from not only labour but a wide range of markets.<sup>39</sup> Obviously, the reasons for people to abandon their permanent residence and deploy to other destinations are not limited to economic dynamics and might be generated from cultural, social, and other factors.<sup>40</sup>

Based on the key differences discussed above, migration is an umbrella notion, which includes voluntary migration and forced migration. The very nature of regular migration and forced migration, as well as their causes, vary drastically and it is inevitably erroneous to look at migrants and refugees from the same perspective. Therefore, the safeguard mechanisms, both at national and international levels, must be guaranteed separately to regular migrants and refugees.

---

<sup>38</sup> Russell King, ‘Theories and Typologies of Migration: An Overview and A Primer’, 13.

<sup>39</sup> Massey et al., ‘Theories of International Migration: A Review and Appraisal’.

<sup>40</sup> Massey et al.

## CHAPTER 2 - WHAT THE UNHCR IS RESPONSIBLE FOR?

On 3 December 1949, the UN General Assembly adopted a Resolution, according to which, the High Commissioner's Office for Refugees was to be established as of 1 January 1951.<sup>41</sup> The UNHCR was created for performing humanitarian and social activities to protect refugees through close cooperation with states. Furthermore, Article 35 of the 1951 Geneva Convention stipulates the duty of UNHCR to supervise the application of the provision of the Geneva Convention in the Contracting States.<sup>42</sup>

The present Chapter aims to overview the key aspects of the competence of UNHCR and understand the meaning of its supervisory role. Therefore, the Chapter seeks to identify the systemic deficiencies within UNHCR, which undermine the protection of the human rights of refugees. For this purpose, the Conclusions of the Executive Committee referring to the supervisory role of UNHCR, adopted in 1998-2008 years are analysed in the Chapter. As well, the absence of the state reporting and individual complaint mechanisms under the 1951 Geneva Convention is discussed and explained, why it is important to envisage such mechanisms to advance the protection situation of refugees and asylum seekers.

### ***2.1 The Mandate Of UNHCR***

#### **2.1.1 The Competencies of UNHCR**

In the founding Resolution adopted on 3 December 1949, the UN General Assembly stressed that the scope and nature of the competence of the High Commissioner would be utterly

---

<sup>41</sup> UN General Assembly, Refugees and Stateless Persons, Pub. L. No. A/RES/319 (1949).

<sup>42</sup> See Art. 35 'Convention Relating to the Status of Refugees', 189 UNTS 137 § (1951).

non-political and assigned the High Commissioner to closely cooperate with governmental and intergovernmental authorities.<sup>43</sup> The Resolution on establishing the High Commissioner's Office was followed by adopting a Statute of the Office of the United Nations High Commissioner for Refugees on 14 December 1950, which reiterated the non-political nature of the High Commissioner's work, and further specified that the competence of the High Commissioner shall be limited to humanitarian and social activities.<sup>44</sup> The 1951 Geneva Convention further specified the competencies of the United Nations High Commissioner for Refugees and charged the Office with the task of supervising international conventions providing for the protection of refugees.<sup>45</sup>

The humanitarian character of UNHCR was reiterated in the Resolution adopted by the UN General Assembly on 18 December 2009, according to which the international protection of refugees is a core mandate of UNHCR, which entails, inter alia, facilitating admission, reception, and treatment of refugees and ensuring durable solutions.<sup>46</sup> However, the "mandate" and "competence" of UNHCR are not necessarily identical notions. If this were the case, the UNHCR would be limited by the scope of the resolutions, however, the competence of the UNHCR and the accumulated practice over the years are more far-reaching depending on the circumstances.<sup>47</sup> For instance, when the UNHCR assists persons who are affected by natural disasters, such assistance does not fall within the mandate of UNHCR per se, however, it is a part of the activities the UNHCR exercises in such circumstances.<sup>48</sup>

---

<sup>43</sup> See Art. 8 and Art. 8 (a), Refugees and Stateless Persons, Pub. L. No. A/RES/319 (1949).

<sup>44</sup> Statute of the Office of the United Nations High Commissioner for Refugees, Pub. L. No. A/RES/428(V) (1950).

<sup>45</sup> See Art. 35 and Preamble to Convention Relating to the Status of Refugees.

<sup>46</sup> Resolution Adopted by the General Assembly on 18 December 2009 [on the Report of the Third Committee (A/64/431)], Pub. L. No. A/RES/64/127 (2010).

<sup>47</sup> Alexander Aleinikoff, 'The Mandate of the Office of the United Nations High Commissioner for Refugees', in *Chetail Vincent - Balauz, Céline (Eds.) Research Handbook on International Law and Migration*, 2014, 392.

<sup>48</sup> Aleinikoff, 'The Mandate of the Office of the United Nations High Commissioner for Refugees'.

While the humanitarian and social activities are quintessential parts of UNHCR's operation, the UNHCR's role is not limited to performing humanitarian activities. The supervisory role of UNHCR, which is envisaged by both, the 1951 Geneva Convention and the Statute, is also a quintessential part of its mandate, which requires more consideration and scrutiny to understand the systemic shortcomings.

### 2.1.2 The Supervisory Role of UNHCR

Article 35 of the 1951 Geneva Convention stipulates two significant responsibilities of UNHCR and the Contracting States: the duty of UNHCR to supervise the application of the provision of the Geneva Convention in the Contracting States, and the responsibility of the Contracting State, respectively, to facilitate this duty of UNHCR by reporting to the General Assembly and providing UNHCR with all the necessary information regarding the condition of refugees, the implementation of the 1951 Geneva Convention, and the legislative acts adopted relating the refugees.<sup>49</sup>

Neither Statute nor 1951 Geneva Convention nor the founding Resolutions define what exactly the supervisory role of UNHCR entails and how it reconciles with the non-political and humanitarian nature of UNHCR. As Volker Türk concludes, the supervisory role of UNHCR consists of monitoring States' practices and reporting on them.<sup>50</sup> It also entails an advisory role within states, which implies but is not limited to, participating in refugee status determination

---

<sup>49</sup> See Art. 35 Convention Relating to the Status of Refugees.

<sup>50</sup> Volker Türk, 'The UNHCR's Role in Supervising International Protection Standards in the Context of Its Mandate', in *The UNHCR and the Supervision of International Refugee Law*, J. Simeon (Cambridge University Press, 2013), 50–51.

proceedings, or being notified about the asylum applications, which are important tools for executing supervising duty of UNHCR.<sup>51</sup>

However, it is questionable whether the reports provided by UNHCR, as significant as they are, are indeed enough to grasp the comprehensive picture of the protection of refugees in the Contracting States, and whether they are effective in terms of following up on the challenges disclosed in the reports and further improvement of the protection of the persons of concern. These reports are prepared by the UNHCR, not by the States. As a result, these reports are not publicly available and there is no opportunity for civil society organisations, that work closely with refugees and asylum seekers, to engage in the reporting process, which generally plays a crucial role in presenting another side of the story before the international authorities.<sup>52</sup>

### 2.1.3 The Executive Committee

The Executive Committee is composed of the UN Member States (which interestingly might not be the signatories to the 1951 Geneva Convention), non-member observers (such as the UN agencies and other organisations), and representatives of civil society organisations.<sup>53</sup> The Executive Committee is labelled as the quintessence of the supervisory role of UNHCR, which was established by the General Assembly in 1957 based on Resolution 1166/(XII).<sup>54</sup>

---

<sup>51</sup> Volker Türk, 'The UNHCR's Role in Supervising International Protection Standards in the Context of Its Mandate'.

<sup>52</sup> Eve Lester, 'A Place at the Table: The Role of NGOs in Refugee Protection: International Advocacy and Policy-Making', *Refugee Survey Quarterly* 24, no. 2 (2005): 127.

<sup>53</sup> Allison Corkery, 'The Contribution of the UNHCR Executive Committee to the Development of International Refugee Law', *Australian International Law Journal* 13, no. 1 (2006): 109–11.

<sup>54</sup> UN High Commissioner for Refugees (UNHCR), Proposed Measures to Extend the Personal Scope of the Convention Relating to the Status of Refugees of 28 July 1951 (Submitted by the High Commissioner in Accordance with Paragraph 5 (b) of General Assembly Resolution 1166 (XII) of 26 November 1957), 12 October 1966, A/AC.96/346, available from: <https://www.refworld.org/Docid/3ae68be8a.html>.

It was not until 1962 that the international protection competence of the Executive Committee was mentioned for the first time, which was followed by the establishment of the Sub-Committee on the Whole on International Protection during the 26<sup>th</sup> Session of the Executive Committee in 1975.<sup>55</sup> The Executive Committee adopts the documents as a result of its deliberations referred to as “Conclusions”, which are not mandatory and thus, do not entail any mechanisms of implementation.<sup>56</sup> The Conclusions of the Executive Committee are utilised by UNHCR while implementing its supervisory role.<sup>57</sup>

### 2.1.3.1 The Conclusions Referring to the Country Reports

Under the 1951 Geneva Convention, the Contracting States do not have reporting obligations on the situation of asylum seekers and refugees in countries of asylum neither before the UNHCR nor before any other UN bodies. The only reporting mechanism available within the framework of the 1951 Geneva Convention, is the reporting on states undertaken by UNHCR. The state reporting emerged in 1989 when the Executive Committee assigned the High Commissioner to prepare a detailed report regarding the implementation of the Geneva Convention and its 1967 Protocol.<sup>58</sup> It was followed by another Conclusion dated 1990, where the Committee encouraged States to respond to the questionnaire on the implementation of the 1951 Geneva Convention and 1967 Protocol circulated by the High Commissioner, which would support the High Commissioner

---

<sup>55</sup> Corkery, ‘The Contribution of the UNHCR Executive Committee to the Development of International Refugee Law’, 105.

<sup>56</sup> Corkery, ‘The Contribution of the UNHCR Executive Committee to the Development of International Refugee Law’.

<sup>57</sup> Bryan Deschamp and Rebecca Dowd, ‘Review of the Use of UNHCR Executive Committee Conclusions on International Protection’, *ACNUR. Serviço de Departamento Político e Avaliação*, 2008, 14.

<sup>58</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.57 (XL) – 1989.

in submitting a report on the implementation of the Convention.<sup>59</sup> The Conclusion from 1991 delineates the aspiration of the Executive Committee to make the state reporting process transparent and publicly available, particularly, according to the paragraph (m), the Executive Committee requested UNHCR to “accord public access” to the replies of the States to the questionnaire as per agreement with the States.<sup>60</sup> This request should be noted as an expression of willingness and perhaps even a hope that one day the state reports would become part of the monitoring process under the 1951 Geneva Convention.

In 1992, that is, two years after the first request to fill out the questionnaire provided by the UNHCR, the Executive Committee repeatedly urged States to do so and stressed the significance of the state reporting on the implementation of the 1951 Geneva Convention and 1967 Protocol.<sup>61</sup> There was a delay in responding to the questionnaire from the States’ side, as the Executive Committee had called upon the States to do so over the course of two years until 1992.

The final Conclusion related to state reporting was adopted in 2010 in the context of the protection of the refugees with disabilities, where the Executive Committee requested UNHCR to provide the Member States with periodic updates on the follow-up of the Conclusion, including relevant financial data.<sup>62</sup> To the author’s best knowledge, after analysing subsequent Conclusions, this was the last time the Executive Committee adopted a Conclusion mentioning state reporting.

---

<sup>59</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.61 (XLI) – 1990.

<sup>60</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.65 (XLII) – 1991.

<sup>61</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.68 (XLIII) – 1992.

<sup>62</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.110 (LXI) – 2010 – Refugees with Disabilities and other persons with disabilities.



### 2.1.3.2 The Conclusions Referring to the Supervisory Role of UNHCR

The first reference to the supervisory role of UNHCR in the Conclusion of the Executive Committee was made in 1989 when the Executive Committee recalled Article 35 of the 1951 Geneva Convention, which required states to provide UNHCR with respective information to facilitate UNHCR's supervisory role.<sup>63</sup> In 1994, the Executive Committee reaffirmed UNHCR's supervisory role under Article 35 of the Geneva Convention and stressed the importance of the Geneva Convention and 1967 Protocol as regards the protection of persons of concern.<sup>64</sup> In 1996 the Executive Committee reminded states of their undertaking to provide UNHCR with respective information and underlined the importance of UNHCR's supervisory competence.<sup>65</sup>

The Conclusion from 1997 extended its language to urge states to protect refugees and ensure compliance with national legislation with international human rights and humanitarian law standards.<sup>66</sup> Therefore, the Committee called upon states to cooperate with UNHCR and facilitate its supervisory role in terms of the application of the Geneva Convention.<sup>67</sup> In the Conclusion from 2002, the Executive Committee points to the "responsibility" and "burden-sharing" of states and strengthening the capacity of states with limited resources to receive asylum-seekers and find durable solutions for persons of concern under the supervision of UNHCR.<sup>68</sup>

The final Conclusion, which mentions the supervisory role of UNHCR is dated 2008.<sup>69</sup> In this Conclusion, the Executive Committee welcomed the development of asylum legislation and

---

<sup>63</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.57 (XL) – 1989.

<sup>64</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.74 (XLV) – 1994.

<sup>65</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.79 (XLVII) – 1996.

<sup>66</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.81 (XLVIII) – 1997.

<sup>67</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.81 (XLVIII) – 1997.

<sup>68</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.93(LIII) – 2002.

<sup>69</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.108 (LIX) – 2008.

refined the refugee status determination process. Therefore, the Committee reminded states of their “duty to cooperate” with UNHCR, while providing humanitarian protection to the persons of concern.<sup>70</sup>

The Conclusions show that the Executive Committee reiterates the UNHCR’s role in supervising the application of the 1951 Geneva Convention and calls upon the states to cooperate with UNHCR, however, no specific framework of cooperation is envisaged neither by the 1951 Geneva Convention nor the Conclusions of the Executive Committee. The supervisory role remains subject to interpretation and under no circumstances imposes it responsibility on the States to report before the UNHCR on the protection situation in the countries concerned the same manner, as the mechanism of the state reporting would do.

#### **2.1.4 Close Cooperation with States – Advantage or Limitation?**

The 1951 Geneva Convention, as well as the Statute, stipulate that the UNHCR and states are in close cooperation with each other. The Executive Committee refers to the “duty to cooperate” with UNHCR from the states’ side as mentioned in the previous paragraph.<sup>71</sup> While the states are responsible to provide all the necessary information to UNHCR following Article 35 of the Geneva Convention and thus, facilitate the supervisory role of the UNHCR, the UNHCR also needs to cooperate with the states to perform the activities under its mandate.

Granting access to reception and detention facilities, the presence in fieldwork, participating in refugee status determination proceedings, the opportunity of discussing legal and practical protection deficiencies with the government authorities and suggesting amendments to

---

<sup>70</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.108 (LIX) – 2008.

<sup>71</sup> A Thematic Compilation of Executive Committee Conclusions (7th Edition), June 2014, no.108 (LIX) – 2008.

laws or modifying practices, conducting awareness-raising campaigns and sharing their expertise with the administrative authorities of the states, and many other directions of UNHCR's operation require close cooperation with governments, without which it would be impossible for UNHCR to implement the duties under its mandate.<sup>72</sup>

Having such close ties with governments is concomitantly a flourishing advantage and a vivid detriment for UNHCR. This collaborative relationship could, to some extent, affect UNHCR's independence and preclude it from taking a critical stance to maintain close ties with the government, let alone publicly and explicitly criticizing the government. The humanitarian and non-political character of UNHCR, and the collaborative relationship with governments, does not and should not prevent UNHCR from taking a human rights-based stance and advocating the strengthening of the monitoring mechanisms.

## **2.2 Room for Improvement**

### **2.2.1. The State Reporting Mechanism**

As mentioned previously, the Contracting States do not have reporting obligations on the situation of asylum seekers and refugees in countries of asylum neither before the UNHCR nor before any other UN bodies. This means that there is no international reporting mechanism available, which focuses on the rights of refugees or asylum seekers. Obviously, assigning reporting obligations to the Contracting States under the 1951 Geneva Convention was not the

---

<sup>72</sup> Brian Gorlick, 'Human Rights and Refugees: Enhancing Protection through International Human Rights Law', *Nordic Journal of International Law* 69, no. 2 (2000): 124–25, <https://doi.org/10.1163/15718100020296224>.

intention of the States when drafting the Convention, as it was not mentioned in *travaux préparatoires* of the Convention either, let alone in the body of the Convention itself.<sup>73</sup>

State reporting is a well-established practice within the UN Treaty Bodies system as well as within the UN Human Rights Council through the Universal Periodic Review (UPR).<sup>74</sup> Currently, there are nine Treaty Bodies within the UN, before which the States are responsible to present periodic reports.<sup>75</sup> The core idea and the self-reporting process aim to monitor States' performance per the provisions of the respective treaties, support states in following up on their progress as regards the compliance with treaties, engaging different actors, such as the UN agencies, civil society organisations in the reporting process that would enable the respective UN Treaty Body to scrutinize the state performance and provide pertinent feedback for improvement, and all this through the “constructive dialogue” with States.<sup>76</sup> The criticisms are related to the politicization of the UN system itself,<sup>77</sup> the recommendatory (unenforceable) character of the concluding observations that might simply remain as talk and not be implemented by the states,<sup>78</sup> as well as the potential fatigue of the States due to the significant number of reports they are expected to submit before international venues.<sup>79</sup> However, Creamer and Simmons suggest that an

---

<sup>73</sup> ‘THE TRAVAUX PRÉPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS, available from: <https://www.unhcr.org/Protection/Travaux/4ca34be29/Refugee-Convention-1951-Travaux-Preparatoires-Analysed-Commentary-Dr-Paul.Html>.

<sup>74</sup> The Universal Periodic Review (UPR) and thus, the inter-state reporting context will be discussed separately in the following Chapter.

<sup>75</sup> ‘A Simple Guide to the UN Treaty Bodies’ (International Service for Human Rights, 2015), 36, <https://ilga.org/wp-content/uploads/2016/02/The-Simple-Guide-to-Treaty-Bodies.pdf>. These Treaty Bodies are: CERD, CESC, HRC, CEDAW, CAT, CRC, CMW, CRPD, CED.

<sup>76</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press, 2020), 200.

<sup>77</sup> Valentina Carraro, ‘The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?’, *Human Rights Quarterly* 39, no. 4 (2017): 943.

<sup>78</sup> Bantekas and Oette, *International Human Rights Law and Practice*, 203–4.

<sup>79</sup> Cosette D. Creamer and Beth A. Simmons, ‘The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties’, *The American Society of International Law* Vol. 114:1 (2019): 3, <https://doi.org/10.1017/ajil.2019.70>.

international reporting mechanism even in the framework of a “constructive dialogue” is an important venue for scrutinizing States’ practices and capturing a comprehensive context of the actual human rights protection situation.<sup>80</sup> In this process, shadow reporting by civil society organisations plays a pivotal role in terms of having an alternative opinion in addition to the original reports of the states in place.<sup>81</sup> In the context of the 1951 Geneva Convention and the protection of refugees, state reporting and visibility could draw attention to the situations that all too often remain out of the public eye, as refugees (in camps or otherwise) often exist at the margins of society. Moreover, establishing a state reporting mechanism would allow civil society organisations to provide reports, which would be a valuable source for comprehending the actual protection situation in States and eventually, it would lead to adopting country-focused concluding observations that would, in perspective, support improving the protection of persons of concern.

The last time, when establishing a state reporting system under the 1951 Geneva Convention was discussed, was in 2001 during the 50<sup>th</sup> anniversary of the Convention.<sup>82</sup> Volker Türk reflects on the idea of establishing the state reporting mechanism. He resists launching such a mechanism and takes the creation of the Human Rights Council and the Universal Periodic Review (UPR) as a point of reference,<sup>83</sup> arguing that an additional state reporting mechanism would be a “burdensome, resource-intensive and not necessarily the most effective means of ensuring norm compliance.”<sup>84</sup> In response to this argument, establishing a state reporting

---

<sup>80</sup> Creamer and Simmons, 16.

<sup>81</sup> Further on this topic Rachel Brett, ‘Chapter 5 State Reporting: An NGO Perspective’ (Leiden, The Netherlands: Brill | Nijhoff, 2000), 57–62, [https://doi.org/10.1163/9789004502758\\_009](https://doi.org/10.1163/9789004502758_009).

<sup>82</sup> Türk, ‘The UNHCR’s Role in Supervising International Protection Standards in the Context of Its Mandate’, 54. See also, ‘Declaration of States Parties to the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, Switzerland, 12–13 December 2001’ (2002), HCR/MMSP/2001/09.

<sup>83</sup> Türk, ‘The UNHCR’s Role in Supervising International Protection Standards in the Context of Its Mandate’, 55.

<sup>84</sup> Türk, 55.

mechanism, which would make States responsible for reporting before UNHCR and support scrutinizing States' commitments and compliance with the 1951 Geneva Convention with a well-defined focus on refugees and asylum seekers, cannot be marked as resource-intensive and less effective, but rather an important monitoring mechanism for tracking the States' protection progress. The idea of establishing a state reporting mechanism was also suggested by Walter Kälin within the expert report submitted during the Global Consultations on International Protection, organised by UNHCR in 2000-2002, however, the initiative was disregarded on the grounds of avoiding to impose additional burdens on the States.<sup>85</sup>

The only reason, which could explain the non-existence of such a mechanism would be the lack of political will of the States. It has been more than two decades, since establishing a state reporting mechanism was discussed upon the initiative of UNHCR and it is time for UNHCR to reopen this discussion and advocate for establishing the mechanism, which should have been established a while ago. It is very unlikely that the States ever initiate such a discussion, thus, it is UNHCR's place to intervene and take the lead to facilitate dialogue and convince the States to establish a state reporting mechanism.

### **2.2.2. Individual Complaint Mechanism**

The individual complaint (or individual communications) is an important instrument, which enables individuals or groups of individuals to bring their cases before international authorities, such as Treaty Bodies, the Human Rights Council, or the Special Procedures.<sup>86</sup>

---

<sup>85</sup> See Walter Kälin, 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond' (Cambridge University Press, June 2003), 653–54, <https://www.refworld.org/docid/470a33c00.html>.

<sup>86</sup> Bantekas and Oette, *International Human Rights Law and Practice*, 214–15.

Moreover, the law-developing aspect of the recommendations on individual communications plays a pivotal role in establishing human rights-based interpretation of the norms and practices of states.<sup>87</sup> Even though such views do not entail enforcement mechanisms, they are still important from the perspective of the “*implied power*” of international organisations to “monitor and implement their views.”<sup>88</sup> Similar to state reporting, an individual complaint mechanism is missing in the 1951 Geneva Convention.

Establishing an individual complaint procedure under the 1951 Geneva Convention was discussed alongside the state reporting mechanism in 2001.<sup>89</sup> Volker Türk opposes establishing such a complaint procedure by arguing that it would require adopting an additional protocol to the Convention that could cause a “fragmentation of the Convention” as it would be each member State’s discretion to accept such a mechanism.<sup>90</sup> However, the lack of the political will of states to accept such a mechanism would be a real issue, not the fragmentation of the Convention. Even if the number of ratifying states were low, it would still contribute to the enhancement of the protection standards for refugees. There are always States, which distance from undertaking additional responsibilities, and it should not become a preventive measure for advancing and refining protection mechanisms. For instance, 72 countries have not yet taken any actions to ratify/accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), however, this fact has not prevented the other 114 State Parties to ratify the Optional Protocol and to accept the individual complaint mechanism.<sup>91</sup>

---

<sup>87</sup> Bantekas and Oette, 214–15.

<sup>88</sup> Markus G. Schmidt, ‘Follow-up Procedures to Individual Complaints and Periodic State Reporting Mechanisms’ (Leiden, The Netherlands: Brill | Nijhoff, 2001), 202, [https://doi.org/10.1163/9789004478886\\_013](https://doi.org/10.1163/9789004478886_013).

<sup>89</sup> Türk, ‘The UNHCR’s Role in Supervising International Protection Standards in the Context of Its Mandate’, 55.

<sup>90</sup> Türk, 55.

<sup>91</sup> See Status of Ratification, available from <https://indicators.ohchr.org>.

Similar to a state reporting mechanism, establishing an individual complaint mechanism under the 1951 Geneva Convention is unlikely to happen upon States' initiative due to the lack of political will of the States. In the battle between strengthening the monitoring and protection mechanisms for the human rights of refugees and the political will of the States, the latter has been prevailing so far. Thus, as it was the case for establishing the state reporting mechanism, the UNHCR should take the lead, call upon the States to reopen the discussion and attempt to convince the States on establishing an individual complaint mechanism.



## CHAPTER 3 - THE UN HUMAN RIGHTS SYSTEM AND THE PROTECTION OF THE HUMAN RIGHTS OF REFUGEES

After describing the systemic deficiencies under the 1951 Geneva Convention, in the present Chapter the mechanisms available within the UN human rights system, which are dealing with the human rights concerns of refugees and asylum seekers under their competence will be analysed. Therefore, the adopted views by two Treaty Bodies, which are dealing with a significant number of applications of refugees and asylum seekers, that is, the Human Rights Committee and the Committee against Torture (CAT) will be analysed. Special emphasis will be placed on the UN Human Rights Council and its mechanisms.

The present Chapter aims to delineate that particular UN instruments are dealing with the human rights concerns of refugees and asylum seekers, which is a significant advantage, especially until the 1951 Geneva Convention establishes the mechanisms described in Chapter 2. However, these instruments are far from perfection, and they are either limited in scope, or they require improvements on their own.

The Chapter will also outline the importance of the special procedures, and in reference to Chapter 1, that is, the difference between regular migration and forced migration, designating a special rapporteur on the human rights of refugees and migrants will be suggested.

### ***3.1 The Treaty Bodies***

So far, the UN Treaty Bodies and most frequently, the Human Rights Committee and the Committee against Torture (CAT) deal with individual complaints, where the applicants are either

refugees or asylum seekers.<sup>92</sup> As both Treaty Bodies examine the cases within the scope of the respective Conventions, that is, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, none of them is entitled to examine the refugee and asylum-related issues in the context of the 1951 Geneva Convention, as it is beyond the scope of their competence.

Among the most recent adopted views of the Human Rights Committee over the period of 2017-2019 years, 20 adopted views overall, the absolute majority of them are related to allegations of cruel, inhuman or degrading treatment, non-refoulement and expulsion, and thus, the applications were examined according to Article 7 and/or Article 13 ICCPR.<sup>93</sup>

The analysis of 19 adopted views during the 2018-2019 years by the Committee against Torture (CAT) revealed that the applications submitted by refugees/asylum seekers were mostly based on Article 3 (non-refoulement), Article 14 (redress and compensation), and Article 16 (state responsibility and preventing measures) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.<sup>94</sup> It is noteworthy that none of the applicants in the analysed documents had any connection with the critical situation in the Mediterranean Sea in 2015-2016 years. There is only one application lodged with CAT in 2016, where the applicant argued on Italy's failure to meet the basic needs of asylum seekers and to ensure their access to healthcare and medical services due to the Mediterranean crisis, and the Committee established violation of Article 3, however, no reference was made to the Mediterranean crisis.<sup>95</sup>

---

<sup>92</sup> Saul Takanashi, 'Recourse to Human Rights Treaty Bodies for Monitoring of the Refugee Convention' 20, no. 1: 55.

<sup>93</sup> Adopted Views (The Human Rights Committee (CCPR), 2017-2019, <https://juris.ohchr.org/search/results>.

<sup>94</sup> Adopted Views (Committee against Torture (CAT), 2018-2019), available from <https://juris.ohchr.org/search/results>.

<sup>95</sup> Adam Harun, No. CAT/C/65/D/758/2016 (Committee Against Torture 6 December 2018), pp. 5, 13-14.

The aim of bringing up the UN Treaty Bodies' engagement in individual applications was to illustrate that even if the applications submitted by refugees/ asylum seekers are examined by the Treaty Bodies, the context, the legal framework, and the point of reference are different from the intention of 1951 Geneva Convention. The Treaty Bodies can play significant role in tackling the concerned refugees' application, but only in the context of the respective Conventions. Regardless of the importance of the Treaty Bodies and the pivotal role they play in the context of the relevant Conventions, the refugee protection under the 1951 Geneva Convention remains without any tangible monitoring mechanisms and there is no international procedure available where refugees could bring complaints based on their protection status guaranteed under the 1951 Geneva Convention.

### **3.2 The Mandate of the Human Rights Council**

The United Nations Human Rights Council is a relatively new subsidiary body within the UN system, which was established by a Resolution adopted by the General Assembly in 2006.<sup>96</sup> The principal competence of the Human Rights Council, as determined by the Resolution, is promoting and protecting human rights for all, and in that sense, the Human Rights Council is expected to address violations of human rights (including gross and systematic violations) worldwide and issue recommendations accordingly.<sup>97</sup> The core mechanisms within the Human Rights Council, which keep the Council abreast of the human rights developments worldwide and

---

<sup>96</sup> Bantekas and Oette, *International Human Rights Law and Practice*, 162–63.

<sup>97</sup> UN General Assembly, Human Rights Council: Resolution / Adopted by the General Assembly, 3 April 2006, A/RES/60/251, § 2 and § 3.

represent the fundamental parts of its operation comprise Advisory Committees, Special Procedures, the Universal Periodic Review (UPR), and the complaint procedure.<sup>98</sup>

The Human Rights Council, as a political body, has the capacity to engage in political discourse and react to human rights violations, *inter alia*, grave and systemic violations, unlike UNHCR, which is intrinsically a non-political organisation with a strong humanitarian focus on the protection of persons of concern. Hence, the Human Rights Council has a broader competence and a duty for addressing human rights violations under its competence. The question is, however, to what extent does the Human Rights Council actually engage with the protection of refugees and asylum seekers under its mandate and raise voice when grave human rights violations take place.

### 3.3 The Human Rights Council's Role in Refugee Protection

#### 3.3.1 The 2015-2016 Refugee Crisis

In 2015 Europe faced a migration flow with more than 1.25 million refugees arriving at the border of the EU, peaking in 2016, which at the time was the biggest flow of refugees after WWII, superseded by the military attack on Ukraine by the Russian Federation in 2022.<sup>99</sup> The 2015-2016 refugee flow had challenged the domestic and external policy of the EU and even triggered the nationalistic discourse in Europe.<sup>100</sup> How promptly and effectively did the Human Rights Council

---

<sup>98</sup> Daniel P.L. Chong, 'Is the United Nations Human Rights Council Effective?', in *Debating Human Rights* (Lynne Rienner Publishers, 2014), 54.

<sup>99</sup> See 'After a Month of War, Ukrainian Refugee Crisis Ranks among the World's Worst in Recent History' (Pew Research Center, 25 March 2022), available from <https://www.pewresearch.org/fact-tank/2022/03/25/after-a-month-of-war-ukrainian-refugee-crisis-ranks-among-the-worlds-worst-in-recent-history/>.

<sup>100</sup> Esther Greussing and Hajo G. Boomgaarden, 'Shifting the Refugee Narrative? An Automated Frame Analysis of Europe's 2015 Refugee Crisis', *Journal of Ethnic and Migration Studies* 43, no. 11 (18 August 2017): 1749–50, <https://doi.org/10.1080/1369183X.2017.1282813>.

react to the crises caused by the refugee flow in Europe, especially when an important political actor such as the EU was engaged in the matter?

According to UNHCR, in 2015, the number of individuals arriving in EU states amounted to 1,032,408; in 2016, a total of 373,652 migrants reached the EU.<sup>101</sup> In both years, the top three countries of origin were the Syrian Arab Republic, Afghanistan, and Iraq. The situation was especially dramatic in the Mediterranean Sea. The number of deaths in the Mediterranean Sea peaked in the years 2015 and 2016, amounting to 3,771 and 5,096 deaths, respectively, according to UNHCR.<sup>102</sup> Overall, between the years 2014-2021, a total of 22,527 individuals lost their lives in the Mediterranean Sea or have gone missing. These are not merely numbers, but the lives of human beings lost in search of safety and a dignified future.

Considering that the asylum seekers' destination countries mostly were the EU Member States, these States were to tackle the situation in a spirit of burden-sharing, solidarity, and cooperation following EU legislation.<sup>103</sup> It is important to scrutinize how the Human Rights Council reacted to the refugee crisis in the two most critically important years 2015 and 2016 when the number of asylum seekers and persons dying in the Mediterranean Sea reached its peak.

---

<sup>101</sup> The Statistics of Mediterranean Sea and Land Arrivals in Europe, available from <https://data.unhcr.org/en/situations/mediterranean/> (UNHCR, n.d.).

<sup>102</sup> The Statistics of Mediterranean Sea and Land Arrivals in Europe.

<sup>103</sup> The key EU legal framework for the international protection comprises, but is not limited with the revised Dublin Regulation (OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU), Qualification Directive (OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU), Return Directive (OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC), and Procedures Directive (OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU).

### 3.3.2 The Sessions Of Human Rights Council In 2015-2016 Years

In 2015, the Human Rights Council held three sessions.<sup>104</sup> The analysis of the 34 resolutions adopted by the Human Rights Council on the 28<sup>th</sup> session revealed that there was not a single reference to the significant number of refugees arriving at the borders of the European Union through the Mediterranean Sea.

On the 29<sup>th</sup> session of the Human Rights Council, which took place from 15 June 2015 to 3 July 2015, the Human Rights Council adopted 25 resolutions.<sup>105</sup> Again, none of them referred to the atrocious situation at the borders of the EU and the people dying in the Mediterranean Sea. The situation in the Mediterranean was only mentioned by the President of the Council during an informal Council briefing, alongside the other topics, such as Burundi, Tunisia, the migration crisis in South-East Asia, and South Sudan.<sup>106</sup> In this informal briefing, the President expressed an “acute concern” regarding the migrants dying in the Mediterranean. The President referred to the EU and its responses to the crisis mostly in the context of fighting against smugglers and the resettlement proceedings and stressed that the enforcement actions against smugglers must be in line with the international human rights standards.<sup>107</sup> The President, however, did not mention anything about the refugees dying at the Mediterranean Sea. First, making statements only within an informal briefing, secondly, restricting the discourse mainly to smugglers and resettlement, thirdly, referring to refugees as “migrants” generate the impression that the Human Rights Council deliberately

---

<sup>104</sup> The United Nations Human Rights Council, Regular Sessions, available from: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/regular-sessions>.

<sup>105</sup> 29th Session of the Human Rights Council (15 June to 3 July 2015), available from: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session29/res-dec-stat>.

<sup>106</sup> Human Rights Council Informal Briefing on Burundi, Tunisia, Migration Crises in Europe and South-East Asia, and South Sudan, 26 May 2015, available from: <https://www.ohchr.org/en/statements/2015/05/human-rights-council-informal-briefing-burundi-tunisia-migration-crises-europe?LangID=E&NewsID=16012>.

<sup>107</sup> Human Rights Council Informal Briefing on Burundi, Tunisia, Migration Crises in Europe and South-East Asia, and South Sudan.

avoided holding a comprehensive discussion on the conditions at the borders of the EU and the way the EU Member States handled the critical situation.

During the third 30<sup>th</sup> session in 2015, the Human Rights Council adopted 29 resolutions.<sup>108</sup> Interestingly, again none of the resolutions was adopted regarding the refugee crisis and the continuing deaths in the Mediterranean Sea. The only reference to this topic was made by the UN High Commissioner for Human Rights during his opening statement.<sup>109</sup> The language was mostly politically correct rather than critical, however, the High Commissioner stressed that even though border control is a sovereign right of states, international human rights law, as well as refugee law and humanitarian law shall be respected.<sup>110</sup> To establish the political context behind this statement in the context of Europe, starting from 2015 onwards, several EU Member States launched border control proceedings and strengthened passport controls, both at the internal and external borders.<sup>111</sup> Furthermore, several European states, such as Bulgaria, Greece, Hungary, Macedonia, Slovakia, and Turkey erected fences to protect their borders.<sup>112</sup>

The next cycle of analysis is related to the three sessions of the Human Rights Council in 2016. During the 31<sup>st</sup> session, the Human Rights Council adopted 37 resolutions.<sup>113</sup> None of these resolutions addressed the situation at the borders of the EU, nor did they make any reference to the situation in the Mediterranean Sea and the overwhelmed asylum systems of the EU Member States.

---

<sup>108</sup> 30<sup>th</sup> Session of the Human Rights Council (14 September to 2 October 2015), available from: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session30/res-dec-stat>.

<sup>109</sup> Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 30<sup>th</sup> Session of the Human Rights Council, 14 September 2015, available from: <https://www.ohchr.org/en/statements/2015/09/opening-statement-un-high-commissioner-human-rights-zeid-raad-al-hussein-30th?LangID=E&NewsID=16414>.

<sup>110</sup> Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 30<sup>th</sup> Session of the Human Rights Council.

<sup>111</sup> Synnøve K. N. Bendixsen, 'The Refugee Crisis: Destabilizing and Restabilizing European Borders', *History and Anthropology* 27, no. 5 (19 October 2016): 540, <https://doi.org/10.1080/02757206.2016.1221407>.

<sup>112</sup> Melina Duarte et al., 'Introduction to the Thematic Issue "Refugee Crisis: The Borders of Human Mobility"', *Journal of Global Ethics* 12, no. 3 (1 September 2016): 246, <https://doi.org/10.1080/17449626.2016.1253034>.

<sup>113</sup> 31<sup>st</sup> Session of the Human Rights Council (29 February to 24 March 2016), available from: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/res-dec-stat>.

Resolution 31/17 is the only one, which made reference to Syrian refugees, but in the context of the human rights situation in Syria and encouraged “countries outside the region” to provide protection and humanitarian assistance to Syrian refugees.<sup>114</sup>

During the following 32<sup>nd</sup> session, among 33 adopted resolutions, one resolution was dedicated to the “human rights of migrants including in large movements.”<sup>115</sup> The text of the resolution is mostly focused on migrant workers, rather than on the refugees who flee their countries on the grounds of persecution or humanitarian catastrophe.

The final session of 2016 took place from 13 to 30 September 2016 where 30 resolutions were adopted in total.<sup>116</sup> Similar to the previous sessions, no reference to the situation of refugees was made this time either. It is also noteworthy that none of the Special Sessions within the Human Rights Council were dedicated to the refugee crisis and the atrocious situation in the Mediterranean Sea.<sup>117</sup>

The analysis of the resolutions adopted by the Human Rights Council delineates that the Council is not distanced from addressing the protection challenges of refugees and asylum seekers, however, it is therefore obvious that the discussions regarding deaths in the Mediterranean Sea did not take much time for discussions during the sessions, and not even special sessions were dedicated to this grave and urgent human rights violations. Therefore, none of the above-mentioned documents singled out the particular EU Member States, whereas, the asylum systems and protection standards in the countries like Greece, Italy, and Spain, for instance, were already on the edge of failure. Thus, the Human Rights Council has a potential to address the human rights

---

<sup>114</sup> Human Rights Council, A/HRC/RES/31/17 (Apr. 8, 2016), § 35.

<sup>115</sup> Human Rights Council, A/HRC/RES/32/14 (July 15, 2016), § 14.

<sup>116</sup> See 33<sup>rd</sup> Session of the Human Rights Council (13 to 30 September 2016), available at: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session33/res-dec-stat>.

<sup>117</sup> See Human Rights Council, Special Sessions, available at: <https://www.ohchr.org/en/hr-bodies/hrc/special-sessions/special-sessions>.



concerns of refugees and asylum seekers in a broader manner, but in order to unleash its full potential, the Human Rights Council should pay attention to the human rights violations and dedicate special sessions to the most urgent issues.

### ***3.4 The Procedures and Mechanisms within the Human Rights Council Relevant to Refugee Protection***

#### **3.4.1 The Universal Periodic Review (UPR) and the Protection of Refugees**

The Universal Periodic Review (UPR) is a milestone mechanism created under the same General Assembly Resolution, which established the Human Rights Council in 2006.<sup>118</sup> According to the founding Resolution, the UPR mechanism is designated to review states' performance regarding the protection of human rights, which is based on an interactive dialogue and cooperation.<sup>119</sup> The UPR mechanism is not limited to one particular dimension of human rights protection (unlike the Treaty Bodies) and thus, its scope of review is quite broad, which provides leverage in terms of tracking the protection situation in the reporting states.

Three important aspects should be outlined about the UPR: first, the reporting process implies not only reviewing the human rights protection situation in the respective states, but it also entails monitoring the implementation progress of the recommendations that were adopted within the previous review cycles.<sup>120</sup> Secondly, alongside states and other UN entities, stakeholders, such as non-governmental organizations are also welcome to present their reports.<sup>121</sup> Thirdly, even

---

<sup>118</sup> G.A. Res. 60/251, ¶ 5(e) (Mar. 15, 2006).

<sup>119</sup> G.A. Res. 60/251, ¶ 5(e) (Mar. 15, 2006).

<sup>120</sup> Jane K. Cowan and Julie Billaud, 'Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review', *Third World Quarterly* 36, no. 6 (3 June 2015): 1178, <https://doi.org/10.1080/01436597.2015.1047202>.

<sup>121</sup> Cowan and Billaud, 1178.

though States have to actively accept recommendations, there are no enforcement mechanisms prescribed for failing to implement recommendations, and the UPR is relying on “naming and shaming” and “peer pressure” strategies.<sup>122</sup>

The UPR can play a pivotal role in addressing global refugee-related challenges, especially amidst the absence of a relevant treaty body, and therefore, a reporting mechanism within the UN system, which would be solely focused on the human rights of refugees and asylum seekers. There is a potential for UPR to become a potent human-rights-based mechanism within the Human Rights Council, however, due to the overt political influences, the States are seemingly holding themselves back to express criticism against the States, which are on the frontline of the massive influx and are primarily “inflicted” by the overwhelming number of refugees arriving either by land or by sea.

For the purpose of the thesis, which puts special emphasis on the years 2015-2016, that is, the most critical and exigent period recording hundreds and thousands of deaths of migrants in the Mediterranean Sea, three countries, Italy, Greece, and Spain were selected for the analysis of the UPR process. The rationale behind this choice relies on the statistics of the UNHCR and the International Organization for Migration (IOM), according to which, the top three receiving countries as regard the arrivals through the Mediterranean Sea in both years were Greece, Italy, and Spain. In 2015 and 2016, 856,723 and 173,561 migrants arrived at the seashores of Greece respectively; In the same years, 153,842 and 181,436 migrants arrived in Italy; and 4,408 and 8,162 migrants arrived at the seashores of Spain, respectively.<sup>123</sup>

---

<sup>122</sup> Elvira Dominguez-Redondo, ‘The Universal Periodic Review - Is There Life beyond Naming and Shaming in Human Rights Implementation’, *New Zealand Law Review* 2012, no. 4 (2012): 673–74.

<sup>123</sup> See International Organization for Migration (IOM), *Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079* (January 6, 2017). UNHCR, *Mediterranean Sea Arrivals - 2015 Data - by Location, Country of Arrival, Demographic and Country of Origin* (January 22, 2016).

### 3.4.1.1 Greece

Owing to the geographic location, Greece was one of the EU Member States, which had to deal with the overwhelming number of migrants arriving at its seashores. The Moria camp on Lesbos, a tightly populated refugee camp, is also situated in Greece. The living conditions in the camp have always been a subject of harsh critics from the human rights organizations.<sup>124</sup> The director of the Moria Camp responded to critics in 2019 in the following way: “Anyone who thinks they can do better than us is welcome to try.”<sup>125</sup>

The last two reviews of Greece under the UPR proceedings, which are the most relevant for the thesis, took place within the second cycle in 2016 and the third cycle in 2021.

In the national report, submitted to the Human Rights Council within the second cycle in 2016, the Greek authorities dedicated a separate paragraph to the challenges associated with asylum seekers and refugees under the section – Asylum seekers, irregular migrants.<sup>126</sup> The Greek officials described Greece as being in a difficult situation, almost *in angustis*, and stressed that the country faced “a particularly migratory pressure due to its geographic position.”<sup>127</sup> Therefore, they acknowledged the poor reception services and infrastructure alongside the ongoing economic crisis and financial difficulties.<sup>128</sup> Moreover, the Greek government made reference to the position of CSOs, as regards the lack of the means and the concerns related to the detention and the

---

<sup>124</sup> See ‘Amnesty International Criticizes Greek Migrant Camps’ (ANSA, 2018), available from <https://www.infomigrants.net/fr/post/7523/amnesty-international-criticizes-greek-migrant-camps>. See also, ‘Greece: Camp Conditions Endanger Women, Girls Asylum Seekers Lack Safe Access to Food, Water, Health Care’ (Human Rights Watch, 2019), available from <https://www.hrw.org/news/2019/12/04/greece-camp-conditions-endanger-women-girls>.

<sup>125</sup> See Claire Paccalin, “Anyone Who Thinks They Can Do Better than Us Is Welcome to Try,” Says Director of Moria Camp on Lesbos, Infomigrants (Apr.10, 2019), <https://www.infomigrants.net/en/post/16018/anyone-who-thinks-they-can-do-better-than-us-is-welcome-to-try--says-director-of-moria-camp-on-lesbos>.

<sup>126</sup> Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/39/GRC/1, (May 2-13, 2016), 8-9.

<sup>127</sup> HRC, A/HRC/WG.6/39/GRC/1, (May 2-13, 2016), § 25.

<sup>128</sup> HRC, A/HRC/WG.6/39/GRC/1, (May 2-13, 2016), § 25.

detention conditions, again affected by the lack of resources.<sup>129</sup> The Greek authorities also acknowledged the challenges related to the “pushback” practices and elucidated that the disciplinary measures of the personnel are in place as a coping mechanism.<sup>130</sup> The concerns raised by non-governmental organizations, such as JS1, and Amnesty International (AI), included, among others, poor reception facilities, pushbacks, migrant integration, and the dangerous sea routes.<sup>131</sup> It was only Amnesty International (from both government officials and other stakeholders), which mentioned the deaths of migrants in 2015.<sup>132</sup>

The analysis of 45 recommendations submitted by States as regards migration delineates that States tend to keep their recommendations fairly broad, such as calling upon Greek authorities to cope with the xenophobic and racist attitudes, as well as hate speech against refugees without further specifying how and through which particular steps.<sup>133</sup> Only some of the recommendations concerned (e.g., from Sweden, Norway, and Finland) the improvement of the poor reception facilities and detention centres, however, no specific actions were advised on how Greece could ameliorate the critical conditions, especially amid the continuing economic crisis in the country.<sup>134</sup> None of the recommendations included anything about the migrants’ deaths and coping mechanisms at the Mediterranean Sea. To some degree, the responses by States were even less

---

<sup>129</sup> HRC, A/HRC/WG.6/39/GRC/1, (May 2-13, 2016)’, § 25 and § 29.

<sup>130</sup> HRC, A/HRC/WG.6/39/GRC/1, (May 2-13, 2016)’, § 31.

<sup>131</sup> Human Rights Council, Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21, A/HRC/WG.6/25/GRC/3 (May 2-13, 2016), § 64 and § 65.

<sup>132</sup> Human Rights Council, Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21, A/HRC/WG.6/25/GRC/3 (May 2-13, 2016)’, § 64.

<sup>133</sup> See ex. ‘Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/39/GRC/1, at 8-9 (May 2-13, 2016)’, § 134.40, § 134.42, § 134.45, § 134.46, § 134.47.

<sup>134</sup> See ex. ‘Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/39/GRC/1, at 8-9 (May 2-13, 2016)’, § 134.131, § 134.133, § 134.145, § 134.148.

critical than Greece itself in the national report, when acknowledging the poor conditions owing to the overwhelmed system and the lack of financial resources.

During the third review cycle in 2021, Greece reported having achieved significant progress as regards the mixed migration arrivals and indicated that: “Greece had clearly condemned the cruel instrumentalization of human beings as immoral and against the Convention relating to the Status of Refugees (1951).”<sup>135</sup>

Greece communicated that the reception system was transformed accordingly and asylum seekers were treated efficiently and pledged their readiness for further improvement.<sup>136</sup> The country was even praised (among others) by Finland, Norway, and the Philippines for advancing the migration policy.<sup>137</sup> Furthermore, while summarizing the implementation of the recommendations from the previous cycles, very little was mentioned about the concrete steps taken by Greece to cope with migration-related concerns, and nothing was mentioned about the continuing deaths at the Mediterranean Sea.<sup>138</sup> By contrast, the consolidated reports from CSOs were not that optimistic about the advancement of Greece’s migration policy and the improvements in reception facilities. The reports elucidate that the situation in reception facilities remained poor, decreasing the number of the reception centres triggered homelessness, and overcrowded reception facilities on the islands offered poor conditions to the inhabitants, including lack of food, water and sanitation, poor access to education and mistreatment of women and

---

<sup>135</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/49/5 (Jan. 6, 2022), 5.

<sup>136</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/49/5 (Jan. 6, 2022)’, § 69.

<sup>137</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/49/5 (Jan. 6, 2022)’, § 34, § 38, § 106.

<sup>138</sup> See Chapter II ‘Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*, A/HRC/WG.6/39/GRC/1 (Aug. 11, 2021)’.

LGBTQI+ community members.<sup>139</sup> The concerns were expressed again regarding pushbacks and poor conditions in the detention facilities, which juxtaposed the optimistic description of the situation by several countries.<sup>140</sup> Approximately 30 recommendations were adopted by states concerning detention and reception facilities, pushbacks, and the migration policy, however, the vast majority of these recommendations remained broad in the formulation and lacked advice on particular measures that Greece could adopt to cope with the continued violation of the human rights of refugees.<sup>141</sup>

### 3.4.1.2 Italy

Italy underwent the third cycle review in 2019,<sup>142</sup> that is, 3-4 years after the peak of deaths in the Mediterranean Sea. Given this timing, it was expected that only a little attention would be given to this matter in the national report, which proved to be true. Italy's opening remark in the section related to migrants, refugees, and asylum seekers was as follows: "No country can tackle this challenge by itself."<sup>143</sup> Italy has a point here. Coping with the refugee flow requires cooperation and solidarity among states, especially in the context of the EU. Whether this cooperation (whatever it means) was achieved or not, is another research question. What matters in this context is how frank and critical, and at the same time supportive states were during the

---

<sup>139</sup> Human Rights Council, Summary of Stakeholders' Submissions on Greece, A/HRC/WG.6/39/GRC/3 (Aug. 12, 2021), § 68.

<sup>140</sup> Human Rights Council, Summary of Stakeholders' Submissions on Greece, A/HRC/WG.6/39/GRC/3 (Aug. 12, 2021), § 73.

<sup>141</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/49/5 (Jan. 6, 2022), 9-22.

<sup>142</sup> The second cycle was completed in 2014 and thus, it is irrelevant to the research question.

<sup>143</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 75.

proceedings, and whether Italy was given sensible advice on avoiding mistreatment of refugees and precluding human rights violations.

While the national report praises the achievements of Italy in terms of contributing to the EU budget and establishing decent reception facilities, the consolidated report of the stakeholders argues that the principle of non-refoulement was regularly violated by the Italian authorities whilst performing expulsion proceedings; It also raised concerns regarding appeal proceedings of the applications on international protection, the abolishment of “humanitarian protection” so that previously regular refugees became irregular immigrants, as well as regarding detention centres and border police stations.<sup>144</sup>

In the concluding report, Albania praised Italy’s efforts in tackling “the influx of migrants and refugees from 2014 to 2019.”<sup>145</sup> Indonesia did the same in promoting migrants’ and refugees’ rights.<sup>146</sup> Saint Kitts and Nevis commended Italy for “remarkable” efforts while dealing with the massive influx of refugees.<sup>147</sup> The Russian Federation was content with Italy’s achievements in providing equal opportunities for all.<sup>148</sup> Serbia praised Italy’s efforts for protecting the rights of refugees and migrants.<sup>149</sup> This is not an exhaustive list and many other countries provided similar recommendations.

Overall, several recommendations adopted within the third cycle of the review concerned the protection of refugees (and migrants); however, the language and the formulations adopted by states were not that different from the ones in the case of Greece. The states mainly urged Italy to

---

<sup>144</sup> Human Rights Council, Summary of Stakeholders’ Submissions on Italy\*, A/HRC/WG.6/34/ITA/3 (Aug. 14, 2019), § 85, § 87, § 90, § 91.

<sup>145</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 23.

<sup>146</sup> HRC, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 75.

<sup>147</sup> HRC, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 119.

<sup>148</sup> HRC, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 117.

<sup>149</sup> HRC, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 121.

enhance the inclusion and integration of refugees and migrants, dedicating utmost attention to vulnerable migrants, observing the principle of non-refoulement, improving the standards of detention centres, etc.<sup>150</sup> Overall, the recommendations are there, however, they lack sharpness and omit the important considerations, such as human rights violations due to the collapsed asylum system in Italy.<sup>151</sup>

### 3.4.1.3 Spain

The third cycle of the review of Spain took place in 2019. The Spanish government seemed less preoccupied with the flow of asylum-seekers and refugees compared to Greece and Italy, even though Spain was one of the three countries, whose seashores were approached the vast majority of refugees and was one of the top three receiving countries, according to the database of UNHCR and IOM.<sup>152</sup>

Only a few paragraphs were dedicated to asylum seekers, refugees, and migrants in the national report, the overwhelming number of which concerned purely legal issues.<sup>153</sup> By contrast, the consolidated report of the CSOs' submissions delineates several issues in the field of refuge and asylum, such as the conditions of individuals approaching southern Spanish borders and the practices of mass returns.<sup>154</sup> The stakeholder report also raised concerns regarding refusals on entry

---

<sup>150</sup> See ex. HRC, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019), § 148.97, § 148.264, §148.281, § 148.139.

<sup>151</sup> See e.g. Adam Harun.

<sup>152</sup> See International Organization for Migration (IOM), Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079 (January 6, 2017). UNHCR, Mediterranean Sea Arrivals - 2015 Data - by Location, Country of Arrival, Demographic and Country of Origin (January 22, 2016).

<sup>153</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, Spain, A/HRC/WG.6/35/ESP/1 (Nov. 12, 2019), 9-10.

<sup>154</sup> Human Rights Council, Summary of Stakeholders' Submissions on Spain\*, A/HRC/WG.6/35/ESP/3 (Nov. 18, 2019), § 88.



at the border and hindering enjoyment of the right to seek asylum, deficiencies of the refugee status determination proceedings, the reception conditions, poor access to education, healthcare, etc.<sup>155</sup>

The report of the working group includes quite a few recommendations related to “refugees” and relatively more on “migrants”. Interestingly, the contextual scrutiny reveals that the term migrant can as well be expanded to refugees. Predominantly, it is a matter of a terminological inconsistency among states, which creates this confusion. For instance, Malaysia called upon Spain to ensure access to healthcare services for minorities, including migrants, which very likely applies to refugees and asylum seekers as well.<sup>156</sup>

In total, 43 recommendations were addressed to migrants and refugees, which mainly concerned integration and ensuring access to rights for migrants (occasionally refugees and asylum seekers are mentioned separately), adopting policies and methods for unaccompanied children. Overall, the vast majority of recommendations concerned socio-economic provisions for migrants, and no single recommendation was issued regarding the border control and pushbacks of the refugees. Only two recommendations were issued addressing the conditions in the reception facilities in Austria and Afghanistan.<sup>157</sup>

### **3.4.2 The Special Procedures and the Protection of Refugees**

#### **3.4.2.1 The Mandate of a Special Rapporteur**

---

<sup>155</sup> HRC, A/HRC/WG.6/35/ESP/3 (Nov. 18, 2019), 10-11.

<sup>156</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review\*, Spain, A/HRC/44/7 (Mar. 18, 2020), § 150.253.

<sup>157</sup> HRC, A/HRC/44/7 (Mar. 18, 2020), § 150.251, § 150.265.

The special procedures are one of the most significant mechanisms created within the UN human rights system. The special rapporteurs, which are the experts appointed by the Human Rights Council, benefit from the complete substantive independence from the UN system.<sup>158</sup> The mandate of a special rapporteur includes important tools, such as preparing reports and adopting recommendations, performing country visits, setting norms, examining petitions and communications, and engaging in interactive dialogues and media relations.<sup>159</sup>

The special rapporteur on the human rights of migrants was appointed by the Commission on Human Rights based on resolution 1999/44.<sup>160</sup> The founding resolution refers to the general term “migrant” and assumes the special rapporteur to examine the obstacles against the effective protections of migrants as a “vulnerable group” including the return of undocumented/irregular migrants to their home countries.<sup>161</sup> The legal framework, within which the Commission enabled the special rapporteur to operate, was defined as the Universal Declaration of Human Rights (UDHR) and other international instruments.<sup>162</sup> Thus, a special rapporteur was granted almost an unlimited opportunity to interpret the term ‘migrant’ and the applicable international legal framework thereto.

---

<sup>158</sup> Joanna Naples-Mitchell, ‘Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights’, *The International Journal of Human Rights* 15, no. 2 (1 February 2011): 232–33, <https://doi.org/10.1080/13642987.2011.537468>.

<sup>159</sup> Marc Limon and Ted Piccone, ‘Human Rights Special Procedures: Determinants of Influence’ (Universal Rights Group, 2014), 23.

<sup>160</sup> Human Rights of Migrants’, Pub. L. No. 1999/44 (1999), available from: [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4660](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4660).

The mandate of the Special Rapporteur has been extended by Commission on Human Rights resolutions 2002/62 and 2005/47; and Human Rights Council resolutions 8/10, 17/12, 26/19, 34/21, and most recently 43/6, each for a period of three years.

<sup>161</sup> *Ibid.*, Article 3.

<sup>162</sup> *Ibid.*, Article 5.

In the years 2015-2016, the Special Rapporteur on the human rights of migrants presented four annual thematic reports to the Human Rights Council and the General Assembly.<sup>163</sup> The overview of these reports demonstrates, how a special rapporteur can speak out and take a clear stance regarding the grave human rights violations.<sup>164</sup>

The first report from 2015, which is related to the external borders of the European Union and its impact on the human rights of migrants, was presented during the 29<sup>th</sup> Session of the Human Rights Council by Special Rapporteur François Crépeau.<sup>165</sup> Unlike the Human Rights Council's resolutions adopted in this period, the Special Rapporteur explicitly made reference to the developments taking place in the asylum system of the EU and the people dying in the Mediterranean Sea.<sup>166</sup> The report includes, inter alia, critiques of the EU policy on smugglers and resettlement, where the Special Rapporteur stressed the possibility of mobilizing resources by the global North states to provide refuge for 1 million refugees displaced by the Syrian and other major conflicts as a durable solution.<sup>167</sup> The Special Rapporteur also suggests concrete recommendations addressed to EU institutions, the Council of Europe, the European Union Agency for Fundamental Rights, and the European Ombudsperson.<sup>168</sup>

---

<sup>163</sup> Annual Reports, Special Rapporteur on the Human Rights of Migrants, available from: <https://www.ohchr.org/en/special-procedures/sr-migrants/annual-reports>.

<sup>164</sup> It is noteworthy that Special Rapporteur undertook a mission to Greece and the report covers interesting details regarding the protection situation in Greece. The report does not put particular emphasis on the deaths in the Mediterranean Sea though. See Report of the Special Rapporteur on the Human Rights of Migrants on His Mission to Greece, 24 April 2017, A/HRC/35/25/Add.2.

<sup>165</sup> Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau (Human Rights Council, 2015), available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/092/48/PDF/G1509248.pdf?OpenElement>.

<sup>166</sup> It is noteworthy that in that context mostly the term “migrant” is mentioned in the report. See for instance, the Preamble and § 9 of the report.

<sup>167</sup> Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, § 68. Therefore, Special Rapporteur stresses that “one cannot expect Syrians to live in camps or cities in Jordan, Lebanon or Turkey indefinitely, with no prospects for a better life.”

<sup>168</sup> Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, 21-22.

The second report of the Special Rapporteur from 2015, presented to the 70<sup>th</sup> session of the General Assembly, tackles the recruitment practices of migrant workers, exploitation, and the ethical system of the recruitment in general. The report does not include references to the situation of refugees and asylum seekers and is purely focused on migrant workers.<sup>169</sup>

The first report from 2016, which was presented within the 32<sup>nd</sup> session of the Human Rights Council, concerns the bilateral and multilateral trade agreements on the human rights of migrants.<sup>170</sup> In this report, the Special Rapporteur is focused on the trade, economic and social welfare aspects of migrants in general without any specific reference to refugees and asylum seekers and the actual situation in the EU asylum system and the Mediterranean Sea. The analysis of the report showed that “migrant” refugees and asylum seekers are not included when using the term “migrant”. It relates to the discussion in Chapter 1, which explains that there is a substantial difference between regular migration and forced migration, thus, the indiscriminate use of the term “migrant” creates confusion and there should be a clear distinction between terminologies.

The second report from 2016, which was presented to the 71<sup>st</sup> Session of the General Assembly, concerns developing the global compact of migration.<sup>171</sup> This report, which is aimed to ensure the inclusion of a human-rights-based approach amidst demographic, economic, social, political, and cultural challenges, makes reference to refugees and asylum seekers on several occasions. The report includes important statements, such as acknowledging migrants as “human

---

<sup>169</sup> Report of the Special Rapporteur on Recruitment Practices and the Human Rights of Migrants (70th Session of the General Assembly, 2015), available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf?OpenElement>.

<sup>170</sup> Report of the Special Rapporteur on Impact of Bilateral and Multilateral Trade Agreements on the Human Rights of Migrants (32nd Session of the Human Rights Council, 2016), available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/19/PDF/G1609119.pdf?OpenElement>.

<sup>171</sup> Report of the Special Rapporteur on Global Compact of Migration (71st Session of the General Assembly, 2016), available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/248/76/PDF/N1624876.pdf?OpenElement>.

beings with rights” and calling upon states to replace the term “burden” with “responsibility.”<sup>172</sup>

The report also provides an overview of important issues, such as the detention of migrants, return of refugees, smuggling, and other important topics related to the protection of the refugees and asylum seekers.<sup>173</sup>

#### **3.4.2.2 Why Do We Need a Special Rapporteur on the Human Rights of Refugees and Asylum Seekers?**

The role of a Special Rapporteur in the modern UN system is exceptionally important. The analysis of how the UNHCR and the Human Rights Council operate, demonstrates that the role of an impartial expert, appointed by the Human Rights Council, but still having substantial independence of raising the voice on grave human rights violations worldwide, is crucial for protecting and promoting human rights. The mandate of a special rapporteur on the human rights of migrants, however, as significant as it is, should be reconsidered and a separate special rapporteur on the human rights of refugees and asylum seekers should be designated.

As described in Chapter 1, regular migration and forced migration are fundamentally different concepts, they fall under the scope of different international conventions and yet, quite frequently, regular migration is mixed with forced migration as regards the terminology and substance. The topic of forced migration and displacement as a result of warfare, humanitarian catastrophe, or persecution, requires an exclusive and divergent approach, which shall not be mixed and lost within voluntary migration, in the context of which the notion of fleeing is irrelevant.

---

<sup>172</sup> Report of the Special Rapporteur on Global Compact of Migration, § 34.

<sup>173</sup> Report of the Special Rapporteur on Global Compact of Migration, § 13, § 34, § 88, § 99.

Considering the modern challenges and the consistent refugee flows, putting all the burden of reporting on both dimensions of migration on one expert simply will not do. Designating a separate special rapporteur on the human rights of refugees and asylum seekers could contribute to the advancement of the protection of the human rights of refugees and asylum seekers. The country visits, reports, and adopted recommendations by an independent expert affiliated with the UN system could support states in addressing refugee-related exigencies. Therefore, it would make the UN institutions more mindful of the States' practices that could shift the entire UN policy on the protection of refugees to an advanced level.

## CONCLUSION

The present thesis delineated the protection mechanisms, which are in place within the modern UN human rights system and identified system deficiencies under the 1951 Geneva Convention, which undermines the protection of the human rights of refugees and asylum seekers. Therefore, the thesis elucidated that regular migration and forced migration are two distinct dimensions of migration, which due to their nature, cannot be treated similarly.

The thesis described the competence of UNHCR and its supervisory role based on the Conclusions adopted by the Executive Committee and the relevant scholarly materials. Therefore, the thesis identified that there are no international mechanisms available within the current UN system, which would be merely focused on the protection of the human rights of refugees unlike other dimensions of human rights protection. Thus, two significant mechanisms are missing under the 1951 Geneva Convention, that is, state reporting and individual complaint mechanisms, which shall be addressed in order to advance the protection of human rights of refugees and asylum seekers. Therefore, as thesis elucidated, due to the lack of political will of the States, it is very unlikely that the States will ever initiate the additional responsibilities to be imposed on them, unless the UNHCR takes the lead, calls upon the States to have a similar discussion as it was conducted in 2001 and convinces the States to establish such mechanisms under 1951 Geneva Convention.

Furthermore, the UN Human Rights Council and the mechanisms available within its system, are more engaged in the protection of refugees and asylum seekers than expected. The resolutions of the Human Rights Council, as well as the country reviews of Greece, Italy, and Spain within the UPR procedure revealed that the Human Rights Council could play an important role in voicing the concerns related to the protection of human rights of refugees and asylum

seekers. Therefore, the political nature of the Human Rights Council should not undermine its obligation envisaged by the founding resolution to promote the protection of human rights and the Council shall be louder when the human rights of refugees and asylum seekers are concerned. Therefore, the possibility for Human Rights Council to dedicate special sessions to the most urgent human rights abuses shall be utilised more effectively.

Finally, the special procedures could play a pivotal role in advancing the protection situation of refugees and asylum seekers. Even though a special rapporteur on the human rights of migrants is designated, considering the broad nature of migration as described in this thesis, and the substantial differences between regular migration and forced migration, tackling the migration-related issues worldwide under one mandate would make it unrealistic to cover human rights issues in both dimensions in a comprehensive manner. Thus, a special rapporteur on the human rights of refugees and asylum seekers shall be designated, which could guarantee a steady and tailor-made emphasis on the protection situation of the refugees and asylum seekers, which could significantly improve the protection situation.



## BIBLIOGRAPHY

- 29th Session of the Human Rights Council (15 June to 3 July 2015).  
<https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session29/res-dec-stat>.
- 30th Session of the Human Rights Council (14 September to 2 October 2015).  
<https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session30/res-dec-stat>.
- 31st Session of the Human Rights Council (29 February to 24 March 2016).  
<https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session31/res-dec-stat>.
- 33rd Session of the Human Rights Council (13 to 30 September 2016).  
<https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session33/res-dec-stat>.
- A Simple Guide to the UN Treaty Bodies. ed. Collister, Heather. Helm, Thomas. Patel, Pooja. Starrenburg, Olivia. International Service for Human Rights, 2015. <https://ilga.org/wp-content/uploads/2016/02/The-Simple-Guide-to-Treaty-Bodies.pdf>.
- Adam Harun, No. CAT/C/65/D/758/2016 (Committee Against Torture December 2018).
- Adopted Views. The Human Rights Committee (CCPR), 2019 2017.  
<https://juris.ohchr.org/search/results/4?typeOfDecisionFilter=0&countryFilter=0&treatyFilter=0>.
- Adopted Views. Committee against Torture (CAT), 2019 2018.  
<https://juris.ohchr.org/search/results>.
- ‘After a Month of War, Ukrainian Refugee Crisis Ranks among the World’s Worst in Recent History’. Pew Research Center, 25 March 2022. <https://www.pewresearch.org/fact-tank/2022/03/25/after-a-month-of-war-ukrainian-refugee-crisis-ranks-among-the-worlds-worst-in-recent-history/>.
- Aleinikoff, Alexander. ‘The Mandate of the Office of the United Nations High Commissioner for Refugees’. In *Chetail Vincent - Balauz, Céline (Eds.) Research Handbook on International Law and Migration*, 389–416, 2014.
- ‘Amnesty International Criticizes Greek Migrant Camps’. ANSA, 2018.  
<https://www.infomigrants.net/fr/post/7523/amnesty-international-criticizes-greek-migrant-camps>.
- Annual Reports, Special Rapporteur on the Human Rights of Migrants.  
<https://www.ohchr.org/en/special-procedures/sr-migrants/annual-reports>.

- Bantekas, Ilias, and Lutz Oette. *International Human Rights Law and Practice*. Cambridge University Press, 2020.
- Bendixsen, Synnøve K. N. 'The Refugee Crisis: Destabilizing and Restabilizing European Borders'. *History and Anthropology* 27, no. 5 (19 October 2016): 536–54. <https://doi.org/10.1080/02757206.2016.1221407>.
- Brett, Rachel. 'Chapter 5 State Reporting: An NGO Perspective', 57–62. Leiden, The Netherlands: Brill | Nijhoff, 2000. [https://doi.org/10.1163/9789004502758\\_009](https://doi.org/10.1163/9789004502758_009).
- Carraro, Valentina. 'The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?' *Human Rights Quarterly* 39, no. 4 (2017): 943–70.
- Chetail, Vincent. *Foundations of International Migration Law*. Edited by Brian Opeskin, Richard Perruchoud, and Jillyanne Redpath-Cross. Cambridge: Cambridge University Press, 2012.
- Chong, Daniel P.L. 'Is the United Nations Human Rights Council Effective?' In *Debating Human Rights*, 53–64. Lynne Rienner Publishers, 2014.
- Claire Paccalin, "Anyone Who Thinks They Can Do Better than Us Is Welcome to Try," Says Director of Moria Camp on Lesbos, Infomigrants (Apr.10, 2019), <https://www.infomigrants.net/en/post/16018/anyone-who-thinks-they-can-do-better-than-us-is-welcome-to-try--says-director-of-moria-camp-on-lesbos>.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, No. 24841, Vol. 1465, p. 85', [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en).
- Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, United Nations, Treaty Series, vol. 1249, No. 20378, p. 13, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en).
- Convention on the Rights of the Child, New York, 20 November 1989, United Nations, Treaty Series, vol. 1577, No. 27531, p. 3. [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en).
- Convention Relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, Treaty Series, Vol. 189, No. 2545 p. 137. [https://treaties.un.org/pages/ViewDetailsII.aspx?src=IND&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=IND&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en).

- Corkery, Allison. 'The Contribution of the UNHCR Executive Committee to the Development of International Refugee Law'. *Australian International Law Journal* 13, no. 1 (2006): 97–128.
- Cowan, Jane K., and Julie Billaud. 'Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review'. *Third World Quarterly* 36, no. 6 (3 June 2015): 1175–90. <https://doi.org/10.1080/01436597.2015.1047202>.
- Creamer, Cosette D., and Beth A. Simmons. 'The Proof Is in the Process: Self-Reporting Under International Human Rights Treaties'. *The American Society of International Law Vol.* 114:1 (2019): 1–50. <https://doi.org/10.1017/ajil.2019.70>.
- Dagi, Dogachan. 'Refugee Crisis in Europe (2015-2016): The Clash of Intergovernmental and Supranational Perspectives'. *International Journal of Social Sciences Vol.* VI(1) (n.d.): 1–8. <https://doi.org/10.52950/SS2017.6.1.001>.
- Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, Switzerland, 12–13 December 2001 (2002). HCR/MMSP/2001/09.
- Deschamp, Bryan, and Rebecca Dowd. 'Review of the Use of UNHCR Executive Committee Conclusions on International Protection'. *ACNUR. Serviço de Departamento Politico e Avaliação*, 2008.
- Dominguez-Redondo, Elvira. 'The Universal Periodic Review - Is There Life beyond Naming and Shaming in Human Rights Implementation'. *New Zealand Law Review* 2012, no. 4 (2012): 673–706.
- Duarte, Melina, Kasper Lippert-Rasmussen, Serena Parekh, and Annamari Vitikainen. 'Introduction to the Thematic Issue "Refugee Crisis: The Borders of Human Mobility"'. *Journal of Global Ethics* 12, no. 3 (1 September 2016): 245–51. <https://doi.org/10.1080/17449626.2016.1253034>.
- G.A. Res. 60/251, ¶ 5(e) (Mar. 15, 2006).
- Gorlick, Brian. 'Human Rights and Refugees: Enhancing Protection through International Human Rights Law'. *Nordic Journal of International Law* 69, no. 2 (2000): 117–77. <https://doi.org/10.1163/15718100020296224>.
- 'Greece: Camp Conditions Endanger Women, Girls Asylum Seekers Lack Safe Access to Food, Water, Health Care'. Human Rights Watch, 2019. <https://www.hrw.org/news/2019/12/04/greece-camp-conditions-endanger-women-girls>.
- Greussing, Esther, and Hajo G. Boomgaarden. 'Shifting the Refugee Narrative? An Automated Frame Analysis of Europe's 2015 Refugee Crisis'. *Journal of Ethnic and Migration*

*Studies* 43, no. 11 (18 August 2017): 1749–74.  
<https://doi.org/10.1080/1369183X.2017.1282813>.

Guo, Grace Chun, Akram Al Ariss, and Chris Brewster. ‘Understanding the Global Refugee Crisis: Managerial Consequences and Policy Implications’. *Academy of Management Perspectives*, no. 34 (November 2020).

Hathaway, James C. *The Rights of Refugees under International Law*. 2nd ed. Cambridge: Cambridge University Press, 2021.

Hathaway, James, and Michelle Foster. *The Law of Refugee Status*. 2nd edition. Cambridge: Cambridge University Press, 2014.

Hughes, Deirdre, Füsün Akkök, Gideon Arulmani, and Helmut Zelloth. ‘Migration: Theory, Research and Practice in Guidance and Counselling’. *British Journal of Guidance & Counselling* 47, no. 1 (2 January 2019): 1–5.  
<https://doi.org/10.1080/03069885.2018.1564898>.

Human Rights Council, A/HRC/RES/31/17 (Apr. 8, 2016).

Human Rights Council, A/HRC/RES/32/14 (July 15, 2016).

Human Rights Council Informal Briefing on Burundi, Tunisia, Migration Crises in Europe and South-East Asia, and South Sudan, May 2015.  
<https://www.ohchr.org/en/statements/2015/05/human-rights-council-informal-briefing-burundi-tunisia-migration-crises-europe?LangID=E&NewsID=16012>.

Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*, A/HRC/WG.6/39/GRC/1 (Aug. 11, 2021).

Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*, Italy, A/HRC/WG.6/34/ITA/1 (Aug. 7, 2019).

Human Rights Council, National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*, Spain, A/HRC/WG.6/35/ESP/1 (Nov. 12, 2019).

Human Rights Council, Report of the Working Group on the Universal Periodic Review, A/HRC/49/5 (Jan. 6, 2022).

Human Rights Council, Report of the Working Group on the Universal Periodic Review\*, Spain, A/HRC/44/7 (Mar. 18, 2020).

Human Rights Council, Summary of Stakeholders' Submissions on Greece, A/HRC/WG.6/39/GRC/3 (Aug. 12, 2021).

Human Rights Council, Summary of Stakeholders' Submissions on Italy\*, A/HRC/WG.6/34/ITA/3 (Aug. 14, 2019).

Human Rights Council, Summary of Stakeholders' Submissions on Spain\*, A/HRC/WG.6/35/ESP/3 (Nov. 18, 2019).

Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/39/GRC/1, at 8-9 (May 2-13, 2016).

Human rights of migrants, Pub. L. No. 1999/44 (1999).  
[https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=4660](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4660).

International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999, No. 14668, p. 171 and vol. 1057, p. 407,  
[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en).

International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 993, No. 14531, p. 3,  
[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en).

International Organization for Migration (IOM), Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079 (January 6, 2017), <https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079>.

Kälin, Walter. 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond'. Cambridge University Press, June 2003.  
<https://www.refworld.org/docid/470a33c00.html>.

King, Russell. 'Theories and Typologies of Migration: An Overview and A Primer'. *Willy Brandt Series of Working Papers in International Migration and Ethnic Relations* 12 (1 January 2012): 1–43.

Lester, Eve. 'Theories and Typologies of Migration: An Overview and A Primer', 'A PLACE AT THE TABLE: THE ROLE OF NGOS IN REFUGEE PROTECTION: INTERNATIONAL ADVOCACY AND POLICY-MAKING'. *Refugee Survey Quarterly* 24, no. 2 (2005): 125–42.

Limon, Marc, and Ted Piccone. 'Human Rights Special Procedures: Determinants of Influence'. Universal Rights Group, 2014.

- Loescher, Gil. *The Origins of the International Refugee Regime, in Beyond Charity: International Co-Operation and the Global Refugee Crisis*. Oxford: Oxford University Press, 1993.
- Massey, Douglas S., Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, and J. Edward Taylor. 'Theories of International Migration: A Review and Appraisal'. *Population and Development Review* 19, no. 3 (1993): 431–66. <https://doi.org/10.2307/2938462>.
- Naples-Mitchell, Joanna. 'Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights'. *The International Journal of Human Rights* 15, no. 2 (1 February 2011): 232–48. <https://doi.org/10.1080/13642987.2011.537468>.
- Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 30th Session of the Human Rights Council, September 2015. <https://www.ohchr.org/en/statements/2015/09/opening-statement-un-high-commissioner-human-rights-zeid-raad-al-hussein-30th?LangID=E&NewsID=16414>.
- Protocol Relating to the Status of Refugees, New York, 31 January 1967, United Nations, Treaty Series, Vol. 606, No. 8791, p. 267, Available From', n.d. [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=V-5&chapter=5&clang=_en).
- Refugees and stateless persons, Pub. L. No. A/RES/319 (1949).
- 'Report of the Special Rapporteur on Global Compact of Migration'. 71st Session of the General Assembly, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/248/76/PDF/N1624876.pdf?OpenElement>.
- 'Report of the Special Rapporteur on Impact of Bilateral and Multilateral Trade Agreements on the Human Rights of Migrants'. 32nd Session of the Human Rights Council, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/19/PDF/G1609119.pdf?OpenElement>.
- 'Report of the Special Rapporteur on Recruitment Practices and the Human Rights of Migrants'. 70th Session of the General Assembly, 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/251/38/PDF/N1525138.pdf?OpenElement>.
- 'Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau'. Human Rights Council, 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/092/48/PDF/G1509248.pdf?OpenElement>.
- 'Report of the Special Rapporteur on the Human Rights of Migrants on His Mission to Greece', April 2017.

Resolution adopted by the General Assembly on 18 December 2009 [on the report of the Third Committee (A/64/431)], Pub. L. No. A/RES/64/127 (2010).

Schmidt, Markus G. ‘Follow-up Procedures to Individual Complaints and Periodic State Reporting Mechanisms’, 201–15. Leiden, The Netherlands: Brill | Nijhoff, 2001.  
[https://doi.org/10.1163/9789004478886\\_013](https://doi.org/10.1163/9789004478886_013).

Special sessions (n.d.). <https://www.ohchr.org/en/hr-bodies/hrc/special-sessions/special-sessions>.  
 Statute of the Office of the United Nations High Commissioner for Refugees, Pub. L. No. A/RES/428(V) (1950).

Storey, Hugo. ‘What Constitutes Persecution? Towards a Working Definition’. *International Journal of Refugee Law* 26 (2014): 272–85.

Takanashi, Saul. ‘Recourse to Human Rights Treaty Bodies for Monitoring of the Refugee Convention’ 20, no. 1 (n.d.): 53–74.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Pub. L. No. ISBN 978-92-871-7990-6 (2014).

‘The Statistics of Mediterranean Sea and Land Arrivals in Europe’. UNHCR,  
<https://data2.unhcr.org/en/situations/mediterranean>.

THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS, Available at: <https://www.unhcr.org/protection/travaux/4ca34be29/Refugee-Convention-1951-Travaux-Preparatoires-Analysed-Commentary-Dr-Paul.html>.

The United Nations Human Rights Council, Regular Sessions. <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/regular-sessions>.

Türk, Volker. ‘The UNHCR’s Role in Supervising International Protection Standards in the Context of Its Mandate’. In *The UNHCR and the Supervision of International Refugee Law*, J. Simeon., 39–58. Cambridge University Press, 2013.

UN General Assembly, Human Rights Council Resolution / adopted by the General Assembly, 3 April 2006, A/RES/60/25, <https://www.refworld.org/docid/4537814814.html>.

UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A (Paris, 1948), n.d.  
<http://www.un.org/en/universal-declaration-human-rights/>.

UN High Commissioner for Refugees (UNHCR), A Thematic Compilation of Executive Committee Conclusions (7th Edition) (2014).  
<https://www.refworld.org/docid/5698c1224.html>.

UN High Commissioner for Refugees (UNHCR), Proposed measures to extend the personal scope of the Convention relating to the Status of Refugees of 28 July 1951 (Submitted by

the High Commissioner in accordance with paragraph 5 (b) of General Assembly Resolution 1166 (XII) of 26 November 1957), 12 October 1966, A/AC.96/346, available at: <https://www.refworld.org/docid/3ae68be8a.html>.

UNHCR, Mediterranean Sea Arrivals - 2015 Data - by Location, Country of Arrival, Demographic and Country of Origin (January 22, 2016).

Yuval Noah Harari. *Sapiens, A Brief History of Humankind*. Cloth edition published 2014. United Kingdom, Israel: Harvill Secker, Kinneret, Zmora-Bitan, Dvir, 2011.