

GÖMMUN

STUDY GUIDE

UNITED NATIONS HUMAN RIGHTS COUNCIL
(UNHRC)



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Göttingen Model United Nations
13th June -16th June

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Letter of Welcome by the Chairs

Dear Delegates,

We are Alessandro Giacardi and Federica De Lollis and we are delighted to be your chairs during the GöMUN 2019 Conference. Both of us would like you to have the best experience possible and we are eager to learn from each other.

I am Alessandro, second year student of International Relation at the University of Turin, in northern Italy. Before that, I attended the humanistic High School, an enriching environment that made me fall in love with history, culture and human relations. I started my MUN conference journey with the beginning of my studies in 2017, and I attended the huge New York CWMUN conference (IAEA), then with the MSOI delegation the SGMun (European Council) and HamMUN (UN Women) both in 2018. Once more, within MSOI Torino's historical Simulation Game, I had the possibility to represent the UK in the UNSC. This year's edition of GöMUN will be my first chairing experience, and I couldn't be more excited for. Next semester I am going to be an Erasmus student at Science Po Lille and hopefully, my MUN experience will continue in that environment.

I am Federica, a Law student in my fourth year at the University of Turin, now attending my Erasmus program here in Göttingen. As far as my MUN experience as a delegate is concerned, I took part twice in EU Model Torino (organized by the Turin Section of the Students' Movement for International Organisation - MSOI Torino), respectively as a member of the European Parliament in 2016 and Minister of the Council of the European Union in 2017. Once more, I was a member of the General Assembly of the United Nations in CWMUN 2018, held at the UN HQ in New York City. After those precious experiences, I could finally fulfil my curiosity for the role of Chair: in EU Model Torino 2018 as Vice-chair for the Presidency of the European Parliament and in MSOI Torino's historical Simulation Game 2018 as Chairperson. Thanks to GöMUN 2019, I will play the chairing role abroad for the first time, providing my exchange program with a significant added value.

These times are crucially significant for our history. After two World Wars and numerous other conflicts, among which the tragic events held in the late 90s/00s, it seems that the powerful "Never again"s are losing their meaning day by day. Discriminations and injustice against targeted groups of people are still the order of the day. The work of International Organizations and national institutions all over the world is tirelessly intense, but it needs to be upheld by a social basis with a strong, informed and universalistic conscience. That is why at the UNHRC committee we will be tackling the political participation of states and the protection of human rights.

We hope that this experience in the UNHRC at GöMUN 2019 will provide you with a deeper knowledge of these topics and a fueled enthusiasm for the environment of International Organizations, giving also the right space to networking and fun.

Honourable delegates, are you ready to face this challenge? We are looking forward to working with you!

Alessandro Giacardi and Federica De Lollis

Committee Overview

The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and to address human rights issues. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva¹.

The Human Rights Council replaced the former United Nations Commission on Human Rights (UNCHR).

The Council is made up of 47 United Nations Member States which are elected by the majority of members of the UN General Assembly. The General Assembly takes into account the candidate States' contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments in this regard.

The Agency publishes an annual report on the situation of refugees worldwide. Resolutions are adopted via the General Assembly's Third Committee. The UNHRC has built a network: it has developed partnerships with more than 900 partners, including NGOs, governmental institutions and other UN agencies.

In these days we are going to consider the refugees' situation.

A refugee has to be considered as “any person who (...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (Art. 1, Refugee Convention, UN). People falling under the definition get special protection and must not be sent back to a country where their life or freedom is being threatened (principle of non-refoulement).

Thus, at this point, it is necessary to highlight the specific distinctions between refugees and migrants, since migrants and refugees are two different groups of people. Migrants leave their country because of economic reasons; therefore, they do not receive the same amount of international protection refugees get. Migrants fall under the mandate of the International organisation for Migration and other institutes.

Nowadays, we are facing one of the most critical times of our history: the progress we have been knowing since the ending of the Cold War has come to extreme effects and revealed that some Countries got left behind.

¹In order to gain a complete history of this Committee, please check the institutional website <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

As a natural consequence, this process brought to several breaches of the conventions concerning Human Rights.

Based on this idea, the chosen topics, which are expected to be analysed and which we would like to propose an effective solution, are both the LGBTIQ Refugees' problems in entering the EU area and the Syrian Crisis linked with the refugees routes towards Europe.

Topic A LGBTIQ Refugees in access to EU countries

Introduction

Nowadays we are facing a refugee struggle in different regional areas, such as in Africa (especially with Burundi, DC Congo, South Sudan and Nigeria), the Asian region (the Rohingya province and the Middle-east crisis in Syria, Iraq and Yemen) and Venezuela. It seems to be a matter of places, but it's a matter of violations of fundamental human rights.

By reaffirming that human rights do include the right “to have control over and to decide freely and responsibly on matters relating to sexuality, including sexual and reproductive health, free of coercion, discrimination and violence, and that equal relationships in matters of sexual relations and reproduction, including full respect for dignity, integrity and bodily autonomy, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences”² the HRC 39th meeting on 27 September 2018 considers the sexuality-related problems as one of the human rights in the humanitarian settings.

Thus, homophobia and transphobia are an increasing fear amongst people in different parts of the world. People flee their homes for different reasons, oftentimes because of economic and political inequalities. Today, there are still 78 countries that have criminalised same-sex relationships. Seven of these countries apply the death penalty for consensual same-sex conduct³. In many more countries, sexual and gender minorities (SGMs) regularly face harassment, arrest, interrogation, torture and beatings, kidnapping and even murder (e.g. some, like in Russia, in the Chechen Republic, are targeted by extremists or criminal gangs).

Stated this, we should not forget that in this region people escape because of the “sexuality dilemma” too.

Calls upon States to support gender equality and women's rights through awareness' initiatives, including in schools and refugee camps, especially education and public awareness-raising, including through the media and online should be considered as an important achievement. Including the prevention of sexual and gender-based violence and discrimination by ensuring universal access to a sexuality education has been already introduced in the Assembly⁴, but tangible applications are still missing all around the world.

Definitions

Since we are going to tackle difficult situations in the international scenario, it is absolutely necessary to keep in mind some of the most important keywords:

² General Assembly, Official Records

Seventy-third Session Supplement No. 53 A (A/73/53/Add.1), NY 2018

³ HDI analysis compared with the S. JANSEN & T. SPIJKERBOER, *Fleeing Homophobia*, COC Nederland, Amsterdam, Sept. 2011 (see below, suggested reading)

⁴⁴ General Assembly, Seventy-third Session.

- LGBTQIA = Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual
- Responsibility to Protect (R2P) The Responsibility to Protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing has emerged as an important global principle since the adoption of the UN World Summit Outcome Document in 2005.
- International Humanitarian Law (IHL) is the law that regulates the conduct of war (jus in bello). It is that branch of international law which seeks to limit the effects of armed conflict by protecting persons who are not participating in hostilities, and by restricting and regulating the means and methods of warfare available to combatants.
- Human trafficking is a crime involving the exploitation of an individual for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion. This meaning is reflected in international law, specifically in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol), the first global instrument to recognize the crime of human trafficking, which has 170 State parties.
- Migrant smuggling occurs when a person voluntarily enters into an agreement with a smuggler to gain illegal entry into a foreign country and is moved across an international border. It is defined in the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Migrant Smuggling Protocol), supplementing the United Nations Convention against Transnational Organized Crime. Migrant smuggling often involves procuring fraudulent documents and transportation across a country's border, although in some countries it can also include transportation and harboring once in the destination country. The migrant consents to being moved and the transaction between the migrant and the smuggler is typically over once he or she has crossed the border and the smuggler has been paid in full.⁵

Historical background

People applying for asylum in EU Member States are lesbian, gay, bisexual, trans or intersex (LGBTI). Some of them flee persecution unrelated to their sexual orientation or gender identity (e.g. their political activity) while others are at risk of persecution precisely because of their sexual orientation or gender identity. In both cases, their sexual orientation or gender identity can be a ground for protection under the Refugee Convention and under EU asylum law, depending on the situation in their home country and on their case.

Roughly 60% of UN Members (113 of 193) has abolished (and a few never had) legislation criminalizing same-sex sexual acts between consenting adults, while roughly 40% (78 of 193) still

⁵ Definitions got by the U.S Department of State - in order to see and read the full article, please check the institutional website <https://www.state.gov/j/tip/rls/fs/2017/272005.htm>

clings to it in a misguided – as well as criminal – attempt to preserve their “cultural identities” in the face of globalization⁶.

On top of that, LGBTI asylum seekers are often at risk of additional danger during their journey and upon arrival in the country where they seek asylum, which can take the form of harassment, exclusion, sexual violence, or other forms of violence. Often but not always, they qualify as vulnerable persons with specific needs in terms of legal assistance, reception conditions, healthcare, etc.

They are overall regional trends, basing on the analysis conducted by ILGA and scholars from different international organizations until 2014, are:

- Africa: Political and State-Sponsored Homophobia on the increase in the last decade. Thirty-six countries in Africa have laws criminalizing homosexuality, some with the death penalty, and many more with harsh jail sentences. By far, it's the continent with the worst laws on the books when it comes to homosexuality and other sexual minorities, a phenomenon which is in part rooted in bad colonial-era laws and political situations, religious autonomy, strong negative belief in cultural and family values, and the evil of patriarchy.
- Asia & Middle East: Half of the Asian countries still criminalize homosexuality. As we see a growing wave of intolerance, homophobic attacks and clamp downs from governments, some LGBT organizations have had their work cut out for them this past year.
- Europe: Progress and backlash. The only territory in Europe where consensual sexual acts between adults (men only) are still criminalized is Northern Cyprus, making Europe a region that stands out in this report. It does not mean, however, that LGBT people in Europe live their lives free from discrimination.
- America Latina & Caribbean: Regarding actions in favor of the rights of the LGBTI community. In Latin this region there are international regulations of relevance. Anyway, the importance of the church, conservative fundamentalism and the failure to consider the social demands of the lesbian trans, gay, bisexual, intersex movements emphasizes the lack of legislation to repeal the existing repressive norms.
- Oceania: Different stages in the reform of homophobic laws. However, despite having a similar seed for homophobic sentiment, the islands in this region are different and they have to consider

Furthermore, we have to consider the important differences between trafficking and smuggling. The English language allows us to make a clear distinction between two phenomena that have different results in the life of the people.

⁶ State-sponsored Homophobia: a world survey of laws criminalising same-sex sexual acts between consenting adults

Normally, the journey of refugees and migrants is considered to be the same in every part of the world, but it does not happen the same way.

To point this out, two examples can help figuring this out:

- African - especially Nigerian, Senegalese and Benin young girls - arrive in Europe through a long journey, crossing the Sahara desert and the Mediterranean Sea, after escaping multiple obstacles in Libya in order to achieve what they call “the European dream”. This is an example of human trafficking: criminal organizations, clearly bounded with the local southern European ones, set everything up for free and, once people get in Europe (e.g: Italian coasts), they have to pay off the expensive debt (around 30000 euros).
- Southern Asian people - Bangladeshis especially - arrive in Europe through a long and difficult journey, but they have to pay it in advance, or totally or partially. Once in Europe, they are free and no obligations are pending with their “drivers”. This is smuggling, the so called activity to earn money from a big flow of people around the world.

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ⁷ provides the basic guidelines of the Office on the interpretation of the refugee definition and should be referred to for a full understanding of the UN Refugee Agency’s views on various interpretative issues. From the 1979 edition (first one) to the re-edited one of 1992, it has been a useful guide for government officials and UNHCR staff and courts determining refugee claims.

Key Issues and Threats

Persecution, for the purposes of refugee status determination, is nowhere defined in international law. Some commentators argue that no definition was felt necessary as its meaning was well-understood from previous instruments and experience, others suggest it was deliberately left undefined in order that newly emerging forms of persecution would be covered. Whatever the reasons, the fact that the Convention⁸ does not legally define persecution is a strong indication that, on the basis of the experience of the past, the drafters intended that all future types of persecution should be encompassed by the term ⁹.

One sphere in which the membership of a particular social group ground has been much discussed is that of gender-related persecution. Since neither “sex” nor “gender” is listed as one of the Convention grounds in Article 1, it is sometimes argued that persons who suffer gender-related persecution can never be covered by its terms, or that the only possible ground for recognition must always be “particular social group.”

Persecution may be gender-related in the sense that the method used to achieve the persecution is related to sex or to gender roles. For example, women of a certain ethnic group may be subjected

⁷ *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1979*
(see link below, suggested reading)

⁸ Convention Relating to the Status of Refugees (1951)

⁹ Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees

to rape as a form of persecution, not for reasons related to sex or gender, but of nationality or religion.

At the same time, the underlying causes of persecution that appears, because of gender roles in that society, to be on account of sex or gender may, in fact, be based on one or more of the other four grounds. An example of this might be the refusal to wear clothing or to behave in ways prescribed for women. This may be objectionable for the authorities not because of the sex of the individual who is refusing to behave in the prescribed fashion, but because the refusal indicates an “unacceptable” religious or political opinion.

Persecution may be gender-related in the sense that it is experienced on account of a person’s sex, sexual orientation or gender role, this could be because of membership in a particular group. Credibility represents a very complex and challenging area of refugee law and status determination. Research and practice have shown that it is a core element of the adjudication of asylum applications. The assessment of credibility plays a central role in the determination of an applicant’s needs for international protection. The UNHCR has noted a common trend across European Union Member States whereby negative decisions on applications for international protection often seem to be made on credibility grounds without the application of the criteria of the Qualification Directive to the facts of the application. In addition, notwithstanding the different legal traditions in the EU, UNHCR has noted that a common understanding and approach to credibility assessment is still lacking among its Member States.

The credibility assessment involves a determination of whether and which of the applicants statements and other evidence can be accepted, and therefore may be taken into account in the analysis of well-founded fear of persecution a real risk of serious harm.

Actors Involved / Block Positions

1. European Union

Many LGBTI asylum applicants come from countries where their sexual orientation or gender identity is criminalised. This may take different forms. Same-sex sexual activity between consenting adults may be a criminal act; ‘unnatural’ acts may be criminalised, and this may be used against trans people or people having sex with a person of the same gender. LGBTI applicants from such countries are denied asylum even when these criminal law provisions are enforced. In most other countries, enforced criminalisation (prosecution) is sufficient for recognition as a refugee in theory. Analysis of the cases:

- In Italy, the mere fact of criminalisation is sufficient for granting refugee status. The situation in the other European countries, however, remains problematic. On the basis of Article 4(3)(a) of the Qualification Directive, the fact that a certain sexual orientation or gender identity is criminalised in a country should mean that LGBTI

applicants fleeing from those countries have a well-founded fear of being persecuted on account of their sexual orientation or gender identity.

- Some Member States have also explicitly added gender identity as a persecution ground in their national legislation (Portugal, Spain) or policy documents (Austria, the United Kingdom); the Qualification Directive may well be amended so as to include gender identity.
- In four Member States (Denmark, as well as in Norway, Spain and Bulgaria) even the existence of enforced criminalisation in the country of origin seems to be insufficient for recognition as a refugee
- Thus, there are countries in which the practice is not clear, such as the Czech Republic, Slovakia, Portugal and Romania

2. Africa and Islamic states

A growing number of Islamic scholars, mainly in the West, have started re-examining Islamic teachings on same-sex relationships and whether a blanket condemnation of LGBTQ people is a misinterpretation. Transgender men and women are recognised and accepted in many Islamic cultures around the world. As a matter of fact, the idea of a man or woman identifying as a member of the opposite gender is more likely to be accepted than that of a man or woman expressing sexual desire for someone of their own gender. Especially important could be the point that many LGBTQI refugees come from those states. A separate finding, closely connected to the issue of criminalising countries of origin, is the practice in some Member States to use lists of so-called ‘safe countries of origin’¹⁰. These are countries of origin considered to be safe: that leads to less chance of being granted protection. While in some of these countries the lists are not publicly available, researchers have found the following countries on such lists¹¹: Botswana, Burkina Faso, Gabon, Ghana, India, Kenya, Madagascar, Mali, Mauritius, Moldova, Nigeria, Senegal, Tanzania. In some of these countries same-sex sexual acts are criminalised (Botswana, Ghana, Kenya, Mauritius, Nigeria, Senegal, Seychelles, Tanzania) while in others the general climate seems to be homophobic and/or transphobic.

3. Africa and Oceania

At the same time it is interesting to notice a paradoxical development in several states of Southern Africa and the Indian Ocean (Botswana, Mozambique, Mauritius and Seychelles),

¹⁰ Eddie Bruce-Jones and Lucas Paoli Itaborahy: State-sponsored Homophobia, A world survey of laws prohibiting same-sex activity between consenting adults, ILGA, May 2011,

¹¹ Lists of safe countries containing homophobic countries were reported from: Czech Republic, France, Germany, Malta, Slovakia, Spain, Switzerland and the UK.

where parliaments adopt legislation to prevent discrimination on grounds of sexual orientation in workplaces, while at the same time their respective penal codes retain provisions to punish those who engage in same-sex sexual acts among consenting adults – one would hope that it is only a matter of time before these very parliaments acknowledge this contradiction and proceed as soon as possible with an update of their penal codes.¹² In India same-sex sexual acts are criminalized partly.

Main Measures Already Adopted (Resolutions, Documents...)

However, the reality is somehow different for a considerable proportion of refugees and migrants. The European Parliament EU (2015/2325(INI)) called on all its Member States to adopt asylum procedures and endeavour to develop training programmes, which are sensitive to the needs of Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

Highlighting good practices is important too. In May 2014, ILGA Europe (International lesbian, gay, bisexual, trans and intersex association) issued a compilation of good practices in relation to LGTBI asylum applicants, including conditions in reception facilities. Good practices were found in Austria, Belgium, the Netherlands, Norway, and the United Kingdom.

The Reception Directive does not include provisions specific to LGBTI applicants, but some of its general provisions do apply to this group. In particular, all forms of violence in accommodation facilities, including gender-based violence, are to be prevented.

Possible Measures to be Adopted

Facing sexuality-related problem is not that easy, even in a system that already copes with asylum practices or migrants.

Since many homophobic and transphobic incidents are reported in reception, accommodation and detention centres, relevant special needs relating to sexual orientation and gender identity should be explicitly addressed in the drafting of a new Reception Directive, while prevention and protection from homophobic and transphobic assaults should be ensured in reception centres. Member States, especially the European ones, must put in place proper and effective complaint systems for dealing with harassment and violence against lesbian, gay, bisexual, trans and intersex applicants in reception, accommodation and detention centres.

Lesbian, gay, bisexual, trans and intersex applicants must be given the possibility of moving to a single room or to another accommodation if they are facing harassment or violence in the original location; or the perpetrators must be transferred to another accommodation.

Member States in the EU should facilitate lesbian, gay, bisexual, trans and intersex organisations to work in reception, accommodation and detention centres. Even if Europe seems to have a more

¹² Data from the ILGA report by Lucas Itaborahy (see bibliography for the full note)

uniform approach, both legally and socially to this matter, two examples can show directly how many problematic and logistic issues are the LGBTI refugees facing in most of the cases:

- LGBTI-specific training for asylum officers varies across EU Member States. In general, where officers are trained, the training is usually not regular and does not cover a sufficient number of officers. Officers who participate in such training events often already acknowledge the importance of paying specific attention to LGBTI applicants.
- However, hormonal treatment for transgender persons is very difficult to access. In most EU Member States, there are no uniform guidelines regarding the provision of such treatment to persons who already started treatment in their country of origin. The interruption of hormonal treatment in such cases can have severe consequences.

Trying to imitate example coming from different part of the world, as in Nairobi. The work of community-based organisations led by and in support of lesbian, gay, bisexual, trans*, intersex and queer (LGBTIQ) refugees in Nairobi, Kenya, provides important insights into how humanitarian agencies can form effective partnerships that help to ensure access to services for all.

LGBTI groups should receive immigration training: more and more LGBTI specialist organisations are being called upon to help LGBTI migrants with immigration cases with very little training. This change seems to be driven by LGBTI migrants feeling more comfortable receiving support from those who understand their sexual or gender identity rather than specialist immigration organisations. Flexibility will need to be ensured by offering both face to face and online training. Immigration support organisations and immigration solicitors should receive training to increase their LGBTI sensitivity. Professional need to be able to identify and overcome language and cultural barriers in order to make migrants aware of the possibility to claim international protection as LGBTI per se and that they are aware of the legal and cultural contexts of migrants' countries of origin as far as LGTBIs are concerned.

There is a growing LGBTIQ+ refugee population in Canada as individuals and couples flee from countries with anti-gay laws and persecutory environments. The LGBTIQ+ Refugee Digital Storytelling Project was carried out in 2016 as part of a broader community-based research study with Metropolitan Community Church (MCC) of Toronto exploring how God and religion are tied up in transnational pro- and anti-gay LGBTIQ+ social movements. The project aimed to provide a space for refugees to narrate their own stories in their own way to make sense of the experiences with others facing similar challenges. Drawing on theories of transnational social exclusion and inclusion, borders as processes and trauma narratives, this paper explores whether the LGBTIQ+ Digital Storytelling Project facilitated inclusionary processes that drew refugees into the MCC in valued roles and whether the discursive moments the border narratives produced by this project offered were inclusionary and/or exclusionary.

Questions That Should be Addressed in a Final Resolution

- Who are LGBTI asylum seekers?
- What can be done to improve the integration of LGBTIQ refugees into national programs?
- How can contact between LGBTIQ refugees and the rest of society be promoted?
- Which role should the protection of refugees' health - specifically against sexually transmitted diseases - play in the Global Compact for Refugees? Does the existing draft tackle the issue in an appropriate way?
- How member states can put an end to the dearth of research and evidence-based knowledge about LGBTI migrants and refugees?
- Is help donated more by governmental institutions or by LGBTI organisations?
- Relationship occurring between the Islamic religion and LGBTI people that became refugees
- Should Lesbian, gay, bisexual, trans and intersex applicants not be required to invoke State protection against non-State actors of persecution when in the country of origin sexual orientation or gender identity are criminalised? Even when authorities are homo-or transphobic?
- Should the European Asylum Support Office give priority to promoting and coordinating the identification and pooling of good practices regarding the examination of lesbian, gay, bisexual, trans and intersex asylum applications?

Suggested Readings

The most important and useful readings for you should include the following:

S. JANSEN & T. SPIJKERBOER, *Fleeing Homophobia*, COC Nederland, Amsterdam, Sept. 2011
It is a project of COC Netherlands and VU University Amsterdam, in cooperation with the Hungarian Helsinki Committee, Avvocatura per i diritti LGBT/ Rete Lenford, and the European Council on Refugees and Exiles.

DR. THEO GAVRIELIDES, Editor Director of Epsilon Project, *Supporting and Including LGBTI Migrants - Needs, Experiences & Good Practices*

S.JANSEN, *Good practices related to LGBTI asylum applicants in Europe*, Sep. 2014 - ILGA Europe Report edited by Joël Le Déroff

UNHCR Observations in the cases of *Minister voor Immigratie en Asiel v. X, Y and Z (C-199/12, C-200/12, C-201/12)* regarding claims for refugee status based on sexual orientation and the interpretation of Articles 9 and 10 of the EU Qualification Directive
<https://www.refworld.org/docid/5065c0bd2.html>

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees - HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, <https://www.unhcr.org/4d93528a9.pdf>

LGBTQ Issues (mainly South America focus)
[https://www.reuters.com/article/us-latam-lgbt-immigration/fleeing-persecution-lgbt-migrants-
seek-refuge-in-south-america-idUSKBN1O11MV](https://www.reuters.com/article/us-latam-lgbt-immigration/fleeing-persecution-lgbt-migrants-seek-refuge-in-south-america-idUSKBN1O11MV)

The International Protection of Refugees: Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees -UNHCR Geneva April 2001

Report of the Human Rights Council - Thirty-ninth session (10–28 September 2018)
[https://documents-dds-
ny.un.org/doc/UNDOC/GEN/G18/317/36/PDF/G1831736.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/317/36/PDF/G1831736.pdf?OpenElement)

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3. International legal frameworks for humanitarian action: Topic guide. Birmingham, UK: GSDRC, University of Birmingham
4. ITABORAHY, Lucas P, State-sponsored Homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults, 2012 ILGA (The International Lesbian, Gay, Bisexual, Trans and Intersex Association) - www.ilga.org
5. Global Centre for the responsibility to protect - <http://www.globalr2p.org>
6. FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
<https://fra.europa.eu/en/publication/2017/march-monthly-migration-focus-lgbti>
7. Russia: Gay man who alleges abuse in Chechnya vows to seek justice at European Court
<https://www.refworld.org/topic,50ffbce4c9,50ffbce4fc,5c34a77b6,0,,,html>
8. Hester KV MOORE, Lessons from LGBTIQ refugee-led community-based organisations
<https://www.fmreview.org/economies/moore>

Topic B The Syrian crisis and refugees routes towards Europe

Introduction

For almost two decades, the countries of the Middle East are being afflicted by a deep instability, characterized by recurring governmental crises, civil wars and interventions of external actors.

The area, well known for its strategic position and its richness in energy resources, is one of the most targeted by the World's Superpowers which aim at exercising their control on it.

Moreover, the lack of democracy, poverty, and the failure of the so-called Arab Spring, a protest-movement which aim was to bring democracy in the States of Arab culture, have left a lot of Mediterranean and Central-African countries in the hands of provisional regimes or armed groups, which have triggered a massive migratory exodus towards Europe and an increasing number of internally displaced persons.

This Council will discuss the topic concerning the Syrian crisis, with particular focus on the treatment of asylum seekers fleeing towards Europe, in order to shape up a possible responsibility of Syria and/ or the receiving States for violations of Human Rights.

Asylum seekers and refugees are entitled to all the rights and fundamental freedoms that are written in international human rights instruments. The protection of refugees must, therefore, be seen in the broader context of the protection of human rights. The creation by States, in the aftermath of the Second World War, of two separate organizations to deal with human rights and refugees respectively (United Nations Human Rights Council and United Nations High Commissioner for Refugees), does not mean that these issues are not interrelated.

Definitions

Refugee - "Someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is forced to flee the country of his/her nationality and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or unwilling to return to it"¹³

Asylum seeker - An asylum seeker is an individual who is seeking international protection. In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker.¹⁴

¹³ Further information concerning the Status of Refugee: 1951 Geneva Convention relating to the Status of Refugees, Art. 1; 1967 additional Protocol

¹⁴ Further information concerning the Status of Asylum Seeker: Amnesty International, What's the difference between a Refugee and an Asylum Seeker?, 24 January 2019 - <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/>

Non refoulement-principle - Dury for the receiving State of not returning (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened to owe to his race, religion, nationality, membership of a particular social group or political opinion.

This principle shall not find application in the case there are reasonable grounds to consider a refugee as a danger to the security of the country in which he is.¹⁵

Crimes against humanity - Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [SEP]murder; [SEP] extermination; [SEP] enslavement; [SEP] deportation or forcible transfer of population; [SEP] imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; [SEP] torture; [SEP] rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; [SEP] persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law; [SEP] enforced disappearance of persons; the crime of apartheid; [SEP] other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.¹⁶

Historical Background

Since the beginning of civilization, the Middle East has always been the point of convergence between East and West, and thus always under the control of the most powerful Empires that succeeded in the time. After World War II, these States were politically unstable, because of the interference of western States. Between the 40s and the 60s, the Ba'th Ideology started to grow and spread all over the region. Muhammed Atrash speaks of 'a mish-mash of metaphysical nonsense', adding with some justice that the same applies to many other political philosophies including Western liberal democratic philosophies.¹⁷ The Ba'th Ideology (or Ba'thism) is a political ideology that mixes the desire of creating a unique Arab State with a socialist structure and, most of all, it is a laical movement. The Ba'thism allowed some States, including Syria and Egypt, to install alliances, but the project failed soon.

After Syria has nationalized the production of petrol, Al Assad (father of the incumbent Bashar al-Assad) became the head of the Ba'th Syrian State, while Saddam Hussein took control on Iraq. The two kinds of Ba'th regimes were so different, that the region was divided into the pro-Syria States and the pro-Iraq States. During the Cold war, Al Assad's regime knew a strong Shia Islamic opposition. However, the majority of the population belonged to the Sunni branch and started a revolution which was immediately and cruelly suffocated. In 2000 Bashar al-Assad succeeded his father and after a first period of stability, he started prosecutions against his political opponents.

¹⁵ Further information concerning the Principle of Non Refoulement: 1951 Geneva Convention relating to the Status of Refugees, Art. 33

¹⁶ Further information concerning Crimes Against Humanity: 1998 Rome Statute of the International Criminal Court, Art. 7

¹⁷ David Roberts, The Ba'th and the Creation of Modern Syria (RLE Syria), 1987, Routledge, London

In 2011 the Arab Spring movement spread all over North Africa and the Middle East, trying to bring democracy within the Arab region. Bashar al-Assad repressed the protesters of the uprising Arab Spring with violence and was responsible for thousands of deaths. These events triggered a huge civil war with numerous factions: the Shia branch of Islam, upheld by the government and the laic people, and the Sunni branch of Islam, backed by the Free Syrian Army and the so-called “Opposition”, a big coalition between al-Assad’s political rivals.

The use of chemical weapons against civilians in 2014 took to the intervention of the USA against the Syrian regime. At that time, the US Army was already contrasting ISIS, which was fighting against Assad’s opponents and Kurds. Then, Russia intervened declaring the intent of bombing ISIS, but the attacks were actually directed to the regime’s rebels. In 2017 Assad conducted the second chemical attack against civilians, triggering the reaction of Donald Trump, who sent missiles against a Syrian airbase. This is the first time that the US directly attacked Assad’s regime. The events related to the civil war caused the massive migratory flow that we all know and that is still without control and a predictable end.

Key Issues and Threats

As far as the work of this Council is concerned, the delegates are always more frequently called to find answers to some crucial questions.

In the first place, who is a refugee and what are his or her rights under international law? Can the international community deny protection to those who claim not to receive protection from their country of origin?

Moreover, what exactly is the link between violations of human rights and movements of refugees? To what extent are those violations the causes of mass exoduses? In what ways can the rights of refugees be violated in the process of asylum-seeking in host countries?

Finally, what is the relationship between repatriation and human rights? Can repatriation be truly voluntary when the country of origin is unable, or unwilling, to guarantee respect for the civil, political, economic, social and cultural rights of its citizens?

Among the effects of the Syrian war, one in particular needs to be mentioned and analyzed: the flow of millions of civilians towards Europe. Syrian asylum seekers, due to the current war, try to flee their country following the so-called “Aegean route”, the smallest passage that separates Greece from Turkey. Most of them drown in the sea because of the makeshift means they are given to sail through the Aegean or are forced to stop in provisional refugees camps and get trapped by human traffickers. An unforgettable symbol of this reality is the 3-years-old Alan, photographed with his body washed up on the shore and his face on the sand.

An Are You Syrious Special reports that the refugee camps in which the migrants are hosted do not comply with the legal standards of security and hygiene, letting them live in dramatic conditions for months. Some of these camps are Oinofyta, Moria or Samo, in the Aegean sea, where at the moment there are 4.600 hosts in a structure that can take a maximum of 650 people. Moreover, these camps don’t offer any kind of protection for people with specific needs, such as not-accompanied minors, nor educational activities and medical assistance.

Actors involved/Block Positions

Beyond the events analyzed above, it is necessary to clarify which parts are involved not only in Syria's civil war, but also in the Aegean route.

The main destination of the people who try to flee their home country is Europe. How does the EU act towards the migratory phenomenon? Since 1999 the European Union has a common asylum system in order to coordinate the work of the Member States. The Dublin regulation (Reg. No 604/2013) establishes the Member State responsible for the examination of the asylum application. The criteria for establishing responsibility run, in hierarchical order, from family considerations to recent possession of visa or residence permit in a Member State, to whether the applicant has entered EU irregularly, or regularly. For this reason, it is necessary to consider a possible responsibility of the European Union - or the single Member States - for their inability in eradicating the human traffickers from the refugee camps in the Aegean sea.

However, the role of NGOs in this scenario shouldn't be forgotten. Is it possible to shape up a responsibility of those actors under International Law?

Last, Syria and all the actors backing or fighting the regime are evidently part of this crisis, since the massive migration finds its origin in the civil war and in the continuous violations of human rights against civilians. How can their actions be considered under International Law?

Main Measures Already Adopted (Resolutions, Documents...)

SC-RES 2449/2018 - [https://undocs.org/S/RES/2449\(2018\)](https://undocs.org/S/RES/2449(2018)) stating the concern about the insufficient implementation of the previous resolutions (listed in the present link) and calling upon the international community to increase the humanitarian aid in Syria;

^[L]_[SEP] SC-RES 2401/2018 - [https://undocs.org/S/RES/2401\(2018\)](https://undocs.org/S/RES/2401(2018)) - ordering a cessation of hostilities without delay (except for the military operations against ISIL) and asking the Parties to allow the access to humanitarian convoys;

^[L]_[SEP] SC-RES 2393/2017 - [https://undocs.org/S/RES/2393\(2017\)](https://undocs.org/S/RES/2393(2017)) - stating the duty of all the parties to comply with their obligation under International law, International Humanitarian law and International Human Rights law and calling upon the implementation of the previous resolutions (listed in the present link).

^[L]_[SEP] (It is recommended to gather further information from previous resolutions)

Possible Measures to be Adopted

After different reforms of the Dublin Regulation (until its incumbent form, the Dublin Regulation III) it is reasonably possible to believe that the asylum policy in Europe will be subject to evolutions in order to implement a faster and fairer scheme in distributing the refugees among the Member States without neglecting their needs, such as the familiar unity (also stated in Art. 7 Charter of fundamental rights of the European Union - 2000/ C 364/01 - and Art. 8 European Convention on

Human Rights and Fundamental Freedoms). A reform in these terms remains however in the domain of the European Union legislative organs' competence.¹⁸

It is also possible to shape up a strengthening of the NGOs activities providing asylum seekers with humanitarian aid through bilateral agreements between States and such NGOs.

Questions That Should be Addressed in a Final Resolution

The aim of the debate is to find solutions regarding the violations of human rights which are perpetrated against asylum seekers.

The critical aspects of the issue that should come out from the debate are: why can't the migrants reach a safe place where to be recognized as refugees? Why the intervention of the States and NGOs seems to be still insufficient to handle the emergency? Who are the responsible of this lack of protection, which every refugee is entitled to?

The delegates are called to write a resolution which answers to some key-questions, such as the ones below:

- Whether the Republic of Syria is responsible for violations of Human Rights - in occasion of the chemical attacks in 2014 and 2017 - causing the escape of civilians from its territory;
- Whether the receiving States - and/or the European Union as a whole - are responsible for violations of Human Rights for what concerns the refugees' recognition and treatment;
- Whether the NGOs are responsible for the casualties in the sea and/or on the land, including the the events reported inside the refugees' camps;
- Whether the role of NGOs in giving assistance to asylum seekers should be revised;

(The delegates can feel free to modify the questions above or to provide new ones in compliance with the topic)

Suggested Reading

1. DAVID ROBERTS, *The Ba'th and the Creation of Modern Syria* (RLE Syria), 1987, Routledge, London;
2. Independent Volunteers working with Are You Syrious team, *AYS SPECIAL—THE CASE OF OINOFYTA: From one hell to another— island to mainland*, 2nd January 2019 - <https://medium.com/are-you-syrious/ays-special-the-case-of-oinofyta-from-one-hell-to-another-island-to-mainland-5e7fcf3d190e>

¹⁸ Further information concerning possible reforms of the Dublin Regulation III: DIRECTORATE GENERAL FOR INTERNAL POLICIES, *The reform of the Dublin III Regulation - Study for the LIBE Committee*, 2016 - https://serval.unil.ch/resource/serval:BIB_4270B596AA2A.P001/REF.pdf

3. UNHCR Statistics - The World in numbers (interactive map) - <http://popstats.unhcr.org/en/overview>
4. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), World Migration Report 2018, 2017 - https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf

Bibliography

1. #WHYMAPS, Why Syria?, 1st December 2015 - <https://www.youtube.com/watch?v=fzI3uZskzI8>
2. VOX, Syria's war: who is fighting and why, 7th April 2017 - <https://www.youtube.com/watch?v=JFpanWNgfQY&t=3s>
3. Dublin regulation - https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en
4. 1951 Geneva Convention relating to the Status of Refugees (supra footnote nr. 1) - <https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfce1d47>
5. 1998 Rome Statute of the International Criminal Court, Art. 7 (supra footnote nr. 4) - <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatutengl.pdf>