

## **The Afghan Crisis and Afghan Refugees, Challenges and Solutions from the Perspective of International Law**

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### **Abstract:**

Based on the Doha Agreement signed on February 29, 2020 between the Taliban and the United States of America, the two parties committed to stopping attacks on each other. The United States committed to withdrawing all its military and civilian forces and those of its allies from Afghanistan within 14 months. The Taliban also pledged to cut off cooperation with terrorist groups, including al-Qaeda, and pledged to reduce the intensity of its attacks and to advance peace talks with the Afghan government.

While this agreement was expected to end nearly two decades of military conflict in Afghanistan. However, the Taliban's increased attacks on military and civilian targets have continued to the point where Afghan cities have fallen one after another; The then Afghan president fled to Abu Dhabi, and Kabul fell to the Taliban within hours. Meanwhile, despite assurances issued by the Taliban, many Afghans were trying to leave the country.

This has caused the world to once again face an international refugee crisis, raising the question of how international law can manage such a situation; what are the commitments of member states of the international community, and what are the potential gaps and challenges.

**Key words:** Afghanistan, refugees, Taliban, America, International Law

### **Introduction**

Before answering these questions, it is first necessary to point out that the United Nations Convention Relating to the Status of Refugees (1951) and its Additional Protocol (1967), as the only international treaties containing strict obligations, do not contain any provisions on the obligations of States in relation to the influx of asylum seekers.

Therefore, possible solutions should be sought in other international instruments, including documents and guidelines prepared by the United Nations High Commissioner for Refugees (hereinafter: UNHCR), resolutions issued by its Executive Committee, resolutions of the United Nations General Assembly, and some initiatives taken by States.

It is also important to note that the term “asylum seekers” in this article refers to all individuals who, based on their employment history, personal experiences, religious beliefs, sexual orientation, and gender identity, etc., do not consider Afghanistan safe for them to continue living

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in, despite the guarantees provided by the Taliban forces. Whether or not their fear of facing persecution by the Taliban forces is recognized as justified during individual trials.

## **1. Granting refugee status on a group basis<sup>1</sup>**

The 1996 Handbook on Principles and Criteria for Determining Refugee Status, which is one of the most important supplementary instruments to the 1951 Convention and the 1967 Protocol, recommends that States, when faced with situations of large numbers of asylum seekers, where it is not practicable to determine the status of individuals individually, resort to group determination of refugee status. Thus, each member of the group of asylum seekers was recognized as a refugee *prima facie*<sup>2</sup> (i.e., in the absence of evidence to the contrary).<sup>3</sup>

According to the UNHCR Guidelines on International Protection (2015), granting this type of asylum is appropriate in cases where either the number of asylum seekers in need of international protection at international borders is so large that it is not possible to respond to their individual claims in the short term, or the asylum seekers, although not very numerous, are composed of individuals who are all exposed to the same risk. They have, which can be due to ethnicity, gender, religion, age, place of residence, political activity, or a combination of these; something that currently also seems to be relevant to the situation of Afghan refugees.<sup>4</sup>

However, the point that may raise doubts about the adoption of this approach towards Afghan asylum seekers by neighboring countries is that (unlike temporary protection, which will be discussed below) individuals who are recognized as refugees in this way enjoy all the rights set out in international instruments (and regional ones, if any), and their refugee status cannot be terminated except in accordance with the provisions of those instruments. Documents are not available.<sup>5</sup>

## **2. Temporary protection for asylum seekers**

The UNHCR Guidelines on Temporary Protection or Provisions for Refugees, 2014, for situations such as large-scale inflows of asylum seekers, large-scale border movements, and transitional or fluid situations (such as in Afghanistan, where the crisis has just begun and the nature of the movements is unclear) and generally for situations where the determination of the In the event that the situation of individuals is impossible or unworkable, temporary protection or provisions for short-term stay of asylum seekers in the border areas of neighboring countries are envisaged.<sup>6</sup>

These guidelines require States to accept refugees or vulnerable populations into their territories, make necessary and immediate arrangements for their resettlement, and ensure their access to

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<sup>1</sup> group-based protection.

<sup>2</sup> *prima facie* refugees.

<sup>3</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, para 44.

<sup>4</sup> UNHCR, Guidelines on International Protection No. 11 : *Prima Facie* Recognition of Refugee Status, 24 June 2015, HCR/GIP/15/11, paras. 9, 10, available at: <https://www.refworld.org/docid/555c335a4.html> [accessed 20 August 2021].

<sup>5</sup> *Ibid*:para7.

<sup>6</sup> UNHCR, Guidelines on Temporary Protection or Stay Arrangements, February 2014, paras. 9, 10, available at: <https://www.refworld.org/docid/52fba2404.html> [accessed 20 August 2021].

security, education, health care, food, and shelter, and to continue to support them until the situation in the country affected by the crisis has calmed down or the population has found durable solutions.<sup>1</sup>

This type of protection, which is also referred to in some documents <sup>2</sup>as temporary asylum<sup>3</sup> (1) (2), is also a precedent for states; In the case of Cambodian refugees (1979), Costa Rica and Honduras (1981), Guatemalan refugees (1985), and Tamil refugees (1985), some jurists refer to it as a norm of customary international law (Fitzpatrick Hartman, 1986, 89). Iran also used this method to support Afghan refugees during the US invasion of Afghanistan. (Kihanlu, 151, 2003),

### **-3 State initiatives, individual approaches**

In addition to the two approaches above, in some cases, states have taken their own initiatives to support specific grievances of individuals. For example, in the 1970s, following the fall of Saigon in 1975, the US government deported Vietnamese asylum seekers from Vietnam and resettled most of them in the US on special immigrant visas.<sup>4</sup> (3) A similar approach was taken in 2008 to deport Iraqi translators from that country and transfer them to the US. Apparently, the US government intends to use this method to deport those Afghans who have cooperated with them for at least two years during their presence in Afghanistan. About twenty thousand Afghans have been issued special immigrant visas, and it is estimated that another seventy thousand Afghans are eligible to apply for this type of visa. ( Runde, 2021 ).

Similarly, in April 2021, England adopted a policy of relocation and assistance to Afghans in order to remove those who are in a position to do so from Afghanistan.<sup>5</sup> 4. The difference between adopting such policies and previous cases is that, according to the original news, the individuals who have been removed from Afghanistan by US forces have been resettled in other countries such as Uganda, Albania, Macedonia, and Kosovo, not in the United States. Apparently, this measure was taken at the request of the United States and is only for a limited period of time. (ISNA News, 2021). However, since the aim of these measures is to protect the target groups from potential dangers, they cannot be considered contrary to the commitments of the United States.

## **Conclusion**

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<sup>1</sup> Ibid., paras. 13, 16, 21; See also Protection of Asylum-Seekers in Situations of LargeScale Influx No. 22 (XXXII) 1981, available at:

<https://www.unhcr.org/excom/exconc/3ae68c6e10/protection-asylum-seekerssituations-large-scale-influx.html>[accessed 20 August 2021]; UNHCR, The scope of international protection in mass influx EC/1995/SCP/CRP.3, 02 June 1995, available at:

<https://www.unhcr.org/excom/scip/3ae68cc018/scope-international-protection-massinflux.html> [accessed 20 August 2021]; UNHCR, Global Consultations on InternationalProtection/Third Track: Protection of Refugees in Mass Influx Situations: Overall Protection Framework, 19 February 2001, EC/GC/01/4, available at :<https://www.refworld.org/docid/3bfa83504.html> [accessed 20 August 2021].

<sup>2</sup> Temporary refuge.

<sup>3</sup> See for example: UNHCR Executive Committee, Conclusion 19 (XXXI), 1980.

<sup>4</sup> Special Immigrant Visa.

<sup>5</sup> Afghan Relocations and Assistance Policy: further information on eligibility criteria and offer details (updated 4 June 2021), available at: <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance>, [accessed 21 August 2021].

According to what has been said, there is no clear approach in international treaties to deal with crises such as the current Afghan refugee crisis. However, from the documents and guidelines of the UNHCR and the practices of the states, two approaches can be taken: granting group asylum to asylum seekers or providing them with temporary protection, both of which are based on humanitarian considerations.

Thus, under the current circumstances, it seems that the main burden of responsibility for helping Afghan asylum seekers lies with that country's neighbors. These countries could help to alleviate the crisis by opening their borders, as recommended by the UNHCR<sup>1</sup> (1), and by granting group asylum or providing temporary support. In parallel with these measures, the United States, Britain and other countries that are seeking to remove certain groups from Afghanistan should negotiate with the Taliban forces to Expedite, give greater speed and order to the exit process.

In addition, considering the emphasis of international instruments on the need to prevent the imposition of severe pressures on host communities and the participation of all member states of the international community in sharing the responsibilities and burdens arising from the influx of refugees, other countries should also provide material and non-material assistance to Afghanistan's neighbors in fulfilling their duties as best as possible in a safe and secure environment in accordance with The human dignity of asylum seekers should be supported. UNHCR can be the best point of contact for coordinating such assistance.

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