

# NEW ANALYSIS OF INTERNATIONAL PROTECTION OF REFUGEES

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## Abstract

*Throughout the entire world and along centuries, the human beings lived within states, under whose protection, as citizens, they exercised the entirety of the fundamental rights and liberties recognized to them on the grounds of this legal status. In spite of the increasingly accentuated development of the international regulations in the matter of the protection of human rights, even now, in the whole world is abundant in refugees<sup>1</sup>, determining a constant concern of the international community in the area of their protection.*

**Keywords:** *Statue of refugees, asylum, international protection, asylum-granting procedures, regulations.*

## Introduction

The paper „New analysis of International Protection of Refugees” aims to analyse in an interdisciplinary manner the tendencies and causes of the increase of the refugee phenomenon and to conduct a preliminary delineation of the concepts that govern this area.

Also, the aims of this study is to analyse the content of the international protection of refugees and to present special cases of refugees.

In our days, when the phenomenon of globalization is more and more actual and has many social implications, I consider that the study of this subject s very important and actual. This idea is sustains from many specialists, professors and practitioners and also from the number of studies realized by international authorities and institutes involved.

Considering that the topic of the international protection of refugees has been and still remains a crucial issue of humanity, in the paper at hand, we aim to analyze some of the most important elements necessary for outlining an overview of the current process of the international protection of refugees.

But, what determines a person to leave his/her own country? The fear of persecution, torture, prison or even death, represented the reason why the citizens lacking the fundamental human rights and liberties were forced to seek protection and assistance in a state other than their country of origin. In this situation, the protection of refugees has proven to be the responsibility of the host states; however, while the individuals were determined in increasingly large numbers to flee from the path of the dangers threatening their lives, liberty or dignity, the governments of the host countries started to face, more and more often, economic problems. Thus, the states found themselves forced to allow the performing of different activities by means of which the international organizations to be able to grant socio-legal and material assistance to the individuals who found refuge on their territory.

Although, nowadays, the tendency is to place the equal sign between the international protection of refugees and the system based on the UN Convention of year 1951, respectively the Protocol of year 1967 regarding the statute of refugees, in reality, the problem of the international protection of refugees emerged much earlier, at the end of the First World War, and continues to exist afterwards, determining the adoption of numerous instruments applicable at the regional level.

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<sup>1</sup> In year 2008, approximately 10 million persons of the 31 million persons of interest for the United Nations High Commission for Refugees needed international protection under the benefit of the statute of refugee;

## 1. CONCEPTUAL OUTLINING REGARDING THE STATUTE OF REFUGEES

Establishing the fact that, within the national regulations adopted in the matter of refugees, there is the tendency to put the equal sign between the state of the refugee, the statute of the immigrant and the statute of the asylum seeker<sup>2</sup>, the analysis of the international protection of refugees based on the UN Convention of year 1951 cannot be debated correctly and comprehensively without making a precise outline of the concepts governing this field.

Thus, a first step in the analysis of the problematic of the international protection of refugees will be represented by the differentiation of the statute of refugee in the wider frame of the migration process and in comparison to the right to asylum.

Population mobility at the world level is an economic and social phenomenon which has significantly increased in the last decade of the 20<sup>th</sup> century. Thus, at the level of the European continent, the fall of the Iron Curtain in year 1989 and the breaking of the Soviet Union in year 1991 marked the best moment in which men, women and children chose to leave their own countries and to migrate towards the western states. Faced with the numerous waves of migrants, the western states were forced to adopt a new policy regarding the statute of aliens, characterized by the diminishing of the number of assistance programs for the refugees, which no longer allowed for a clear differentiation between them and migrants. From the interpretation of the dispositions comprised in the UN Convention of year 1951 regarding the conditions a person must fulfill in order to be granted the statute of refugee and, implicitly, in order to benefit from international protection<sup>3</sup>, it is derived the fact that the persons willingly leaving their country of origin as a result of economic conditions, famine, natural disasters, cannot benefit of this statute. Therefore, while the majority of migrants travel in order to improve their life standard, level of education, or in order to join their family members, the refugees are those who were forced to leave their countries of origin, because of the persecutions they were subjected to. We consider, however, that, when they can demonstrate the fact that the precarious economic situation in which they lived in their country of origin is a result of the persecution resulted from discrimination, oppression or breach of human rights, capable of putting their life or liberty in danger, the migrants can be granted the statute of refugees.

The statute of the refugee must not be mistaken for that of the asylum petitioner or for the right to asylum, per say. The refugee is the person who, recognized through the prism of „justified fears of being persecuted due to the race, religion, nationality, belonging to a certain social group or his/her political opinions, is outside the country whose citizenship he/she holds and who cannot or, because of this fear, does not wish to have the protection of that country; or who, not having any citizenship and being outside the country where he/she had his/her usual residence as a consequence of such events, cannot or, because of the respective fear, does not wish to return”<sup>4</sup>, benefits of the right to asylum. The right to asylum is recognized at the international level as having a special importance in the field of refugees because it ensures both a framework for protection, and the guarantee that solutions will be sought with respect to their situation. If the statute of the refugees is regulated at the international level by means of the UN Convention of year 1951, which comprises dispositions regarding the procedure for granting the statute, the refugee’ rights and obligations, the termination, withdrawal or annulment of the privileged statute, the asylum institution is regulated only at the national level and in some regional conventions<sup>5</sup>. However, it must be mentioned that the granting of the statute of refugee and of the right to asylum does not automatically derive from the

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<sup>2</sup> According to Law no. 122/2006 regarding asylum in Romania, published in the Official Gazette no. 428 of May 18<sup>th</sup>, 2006, rectified in the Official Gazette no. 68 of January 29<sup>th</sup>, 2007, last modified through Law no. 280/2010, published, in its turn, in the Official Gazette no. 888 from the date of December 30<sup>th</sup>, 2010, which regulates the statute of refugees;

<sup>3</sup> See *infra* p. 25-29;

<sup>4</sup> According to art. 1 letter A para. 2 of the UN Convention of year 1951;

<sup>5</sup> According to art. 22 para. 7 of the American Convention of Human Rights, art. 27 of the American Declaration on the Rights and Duties of Man, art. 12 para. 3 of the African Charter on Human and Peoples’ Rights;

fulfillment of the conditions listed in art. 1 letter A para 2. of the UN Convention of year 1951. Thus, any person who has committed a crime against peace, a war crime or a crime against humanity, a serious common law crime outside the recipient country, respectively facts contrary to the UN goals and principles, will be excluded from the protection granted on the basis of this international document<sup>6</sup>.

On the other side, the asylum seeker is a generic term which designates the person who has not yet benefitted from a final decision regarding his/her application to determine the statute of refugee; the term can include either a person who has not submitted an application yet, or a person who submitted an application and is waiting for an answer. In spite of the fact that the asylum seeker is not recognized as refugee, in his/her favour is consecrated the principle of not returning as derived from the dispositions of the UN Convention of year 1951, principle which will be detailed in the pages that follow. Therefore, the asylum seeker benefits from the right to not be returned from the moment of submitting the petition and until when it will be examined equitably.

Therefore, in order to benefit of the international protection consecrated by the UN Convention of year 1951, a person, who is not on the territory of the country whose citizenship he/she holds or on whose territory he/she has his/her usual residence, as a consequence of a justified fear of being persecuted due to the race, religion, nationality, belonging to a certain social group or as a result of his/her political opinions, must go through the following steps: asylum seeker, refugee, beneficiary of the asylum right.

## **2. THE CONTENT OF THE INTERNATIONAL PROTECTION OF REFUGEES**

### **2.1. Access to the territory and access to asylum-granting procedures**

At the international level, an important role in the protection of human rights belongs to the activities performed by the High Commission.

According to art. 35 of the UN Convention of year 1951 and to art. 2 of the Protocol of year 1967 regarding the statute of refugees in the burden of the signing states is established the obligation to apply the dispositions of the Convention and of the Protocol, under the careful supervision of the High Commission. The persons of interest for the High Commission, for whom it is obligated to ensure the fundamental rights, are both the refugees and the related groups, such as the asylum seeker or the voluntarily repatriated refugee. The practical modalities for achieving this objective start with the safe admission to the territory of a state of the asylum seeker, where he/she can exercise his/her right to have access to the procedures for granting asylum and continue with the identification of sustainable solution such as local integration, resettlement, or voluntary repatriation. In this sense, the Executive Committee of the High Commission acknowledged the need for the national governments, the High Commission, respectively the entire international community to continue to answer to the need for asylum and assistance of refugees, until finding sustainable solutions<sup>7</sup>.

The access to the territory of a signing state of the UN Convention of year 1951 is performed, as previously indicated, on the basis of the principle of non-return, non-discrimination, respectively family unity. What needs certain nuances and explanations in this matter is the access to the asylum granting procedure. Although there is no unitary legislation at the level of the signing states and the UN Convention of year 1951 does not expressly regulate the procedure for granting asylum, the High Commission has issued certain recommendations. In this sense, it was established that within the asylum granting procedure, an essential element is represented by the personal documents with the role of proving the identity and statute of the protected person. From this point of view, the asylum applicants must benefit of legal assistance and representation, in order to submit the asylum petition as soon as possible. On the basis of the asylum petition, the applicants will benefit of an identity document and of the proof to have submitted the petition, which will allow them access to the

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<sup>6</sup> According to art. 1 letter F of the UN Convention of year 1951;

<sup>7</sup> UNHCR, Conclusion on International Protection, (Geneva, 2000), p.1

territory of the asylum state until the making of a final decision with respect to the application submitted. In spite of this need, the asylum seekers face difficulties, most times, in submitting the application within a reasonable time, as a result of the psychological traumas suffered in the country of origin or as a consequence of their inability to find or pay legal assistance in the matter. Once the asylum application is submitted, both the petitioners and the asylum country gain if it is rapidly examined, such as the people in need of protection to be able to benefit from it, and those who cannot be classified in the statute of refugee to benefit of the procedures made available to the immigrants. Before the authority competent to grant or refuse the statute of refugee makes a decision in the first stage, it is important that the applicant is able to personally defend his/her case before a qualified worker entrusted with analyzing the data and making an objective and impartial decision. At the same time, the asylum seekers whose petition was rejected must be given the right to formulate recourse in view of the re-examination of the application before an authority independent and impartial from the one who first decided the matter.

Following the granting of the statute of refugee, the role of the recipient states to protect the persons in question extends beyond the obligation to have access to the territory and to the asylum granting procedures, targeting, mainly, the discovery of sustainable solutions, either in the countries of origin, or in the countries of asylum or the states of resettlement.

## 2.2. Voluntary repatriation

At the international level, the return to the country of origin represents for the great majority of refugees the best solution to end their tragic situation. For this reason, voluntary repatriation is the sustainable solution enjoying the greatest support both from the countries of asylum and from the international community. In this sense, the Executive Committee of the High Commission established that while „voluntary repatriation, local integration and resettlement are traditional sustainable solutions for refugees ... voluntary repatriation is the preferred solution”<sup>8</sup>.

As derived from the conclusion of the Executive Committee, international support is given not to the process of voluntary resettlement or of repatriation, but only the voluntary repatriation process. From this point of view, we believe that we must outline the three concepts, such as to not be mistaken one for another, since they have numerous common elements.

Therefore, voluntary resettlement presupposes the return of the refugee in the country of origin, following a free decision, in spite of the fact that the risk of being persecuted still persists. Given the fact that the country of origin is not capable of offering the adequate living conditions, we consider that resettlement in the country of origin cannot be considered a sustainable solution with respect to the refugee, but only from the perspective of the host country, the protection obligation ceasing with the refugee's decision to assume the risks in the state of origin. The refugee's possibility to resettle voluntarily in the country of origin comes from the interpretation of art. 1 letter C point 4, according to which the UN Convention will cease to apply to persons who benefit of the statute of refugee, if they willingly return to their country of origin, in view of resettlement. Since the refugees benefit of the right to establish when they do and don't need international protection, the state of asylum cannot intervene in the refugee's decision to return to the country of origin, in spite of the dangers he/she is subjected to. Most times, the states of asylum can only offer refugees current and clear information regarding the condition in the country of origin. For this purpose, the refugees' representatives can benefit of the possibility to make visits in the country of origin and to present the reports drafted to the refugees in the asylum communities.

On the other hand, repatriation targets the return of the refugee in the country of origin, but, this time, against his/her will, with the mention that the risk to which he/she was subjected in country of origin ended. According to art. 1 letter C points 5-6, the Convention provisions will not apply in case the circumstances that led to the granting of the statute of refugee ceased and the person in

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<sup>8</sup> UNHCR Executive Committee, Conclusion on International Protection, (Geneva, 2000), p.2;

question benefits of the protection of the state of origin. When these conditions are fulfilled, the state of asylum has the right to ask the refugee to leave its territory, even if the only option the latter has is to return to the territory of the state of origin. In order for the previous provision to be invoked, in the doctrine it was established that the change occurred at the level of the state of origin must fulfill three conditions: to be truly fundamental, to be long-lasting, to presuppose not only the elimination of the justified fear of being persecuted, but also the re-establishment of protection<sup>9</sup>.

In what concerns voluntary repatriation, it is similar to the voluntary resettlement and is different from repatriation through the fact that the return to the country of origin is performed following a free decision; it is different from the voluntary resettlement and similar to repatriation through the fact that the risk to which the person was subjected in the country of origin has ceased to exist. Hence, by voluntary repatriation we understand the return of the refugee to the country of origin as a consequence of a freely expressed decision, at the moment when the danger of persecution ends, and the country of origin is capable of offering national protection.

Voluntary repatriation is guaranteed through a tripartite agreement concluded between the state of asylum, the state of origin and the High Commission, which undertake different international obligations, in view of the refugee's return in safety and dignity. If the asylum state and the state of origin have the obligation to contribute to the promotion of voluntary repatriation as a sustainable solution, respectively the obligation to allow its citizens to return safely, without fear of harassment or discrimination, the role of the High Commission can be summarized in terms of promotion and facilitation of voluntary repatriation. Thus, in case the asylum state cannot achieve voluntary repatriation due to the high costs it cannot cover, it can resort to the high Commission, in order to organize transport and to provide assistance necessary for reintegrating the refugees in their country of origin.

Therefore, voluntary repatriation is not limited to the process of returning to the country of origin, the High Commission also having the obligation to ensure refugees access to material resources, opportunities and services in condition equal to the other citizens, from the social, economic and cultural point of view.

### 2.3. Local integration

In search of sustainable solutions for the refugees, when voluntary repatriation is not possible, at the international level there is mentioned the possibility of local integration. In spite of the fact that this concept does not differ much from the states' obligation to observe the refugees' rights, established through the UN Convention of year 1951, once the right to asylum is granted, the person in question benefits from the possibility to remain in the asylum state for undetermined time, without feeling marginalized.

The rights enjoyed by the refugees in the asylum country differ from one region to another, depending on their level of development. Thus, the less developed regions do not put at the disposal of refugees the same material and social advantages of which benefit refugees in states belonging to Western Europe, North America or Australia. Therefore, most refugees targeting other sustainable solutions, such as those made available by member states, are those who have as asylum state a country in the less developed areas. Hence, in order for the integration process to be successful, it is necessary that at the international level responsibilities are divided, in view of increasing the capacity of less developed states to help refugees interact as equal members to the citizens of the host country.

On the other side, in the developed areas, the integration programs, such as foreign languages classes, professional training and the occupation of the work force, housing, have allowed refugees and their children to adapt, weakening their desire to return to the country of origin. The refugees' desire to remain in the developed countries for undetermined time was also consolidated by other

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<sup>9</sup> James Hathaway, *The Rights of Refugees under International Law*, (New York: Cambridge University Press, 2005), p.922

factors, such as the states' practice of not withdrawing the right of stay to persons whom asylum was granted or the low number of voluntary repatriation programs made available. Although the UN Convention regulates the possibility of the signing states to withdraw the statute of refugee in case the respective person has the possibility to safely return to the country of origin, the developed states did not apply this disposition, not even in what concerns the refugees from countries where the persecution regime was replaced with a democratically elected government<sup>10</sup>.

The national policies of local integration make available to the refugees a wide range of rights, such as the freedom of movement, access to education and to the labour market, which, on the long term determines the refugees to become less dependent on the state aid and to contribute to the development of the state of asylum.

Since local integration targets, first of all, the obligation of the states to respect all refugees' rights, as regulated by the UN Convention of year 1951, we consider that in this section of the paper the focus must be placed on art. 34<sup>11</sup> which establishes the possibility of the refugees to gain the citizenship of the asylum state. The granting of the citizenship of the asylum state implies both the end of the refugee statute, with all its advantages and disadvantages, and the benefit of all rights recognized to the state's own citizens. For example, the naturalized refugee will be granted the right to participate to the political life of the asylum state, right which is not recognized today through the UN Convention of year 1951.

In spite of the fact that it is not expected for the states to proceed to the granting of citizenship in mass or to substantially reduce the requirements necessary for granting the statute of citizen, art. 34 institutes two specific forms by means of which this process would be facilitated for the refugees. Therefore, it is expected that the states accelerate the process of analyzing the naturalization applications submitted by the refugees and reduce the fees and costs for such as procedure, as much as possible.

Therefore, the process of local integration of refugees represents a sustainable solution combining three dimensions. Firstly, it is an economic process through which is aimed to ensure to the refugees subsistence means and a level of living comparable to the citizens of the asylum state. Secondly, it is a social and cultural process of adaptation and acceptance in the social life of the host country and of living without fear of discrimination. Thirdly, it is a legal process by means of which the refugees have a wide range of rights in the asylum state, reaching the point when they are ensured all economic, social and political rights, as a consequence of naturalization.

#### 2.4. Resettlement

In case a refugee cannot be voluntarily repatriated and not even naturalized in the country where he/she found refuge, at the international level was developed a third sustainable solution meant to protect the persons in a situation so difficult, by granting them the possibility to transfer to another state which accepted to receive and protect them.

As refugee, a person first requires a country of asylum, which to ensure conditions of safety; however, in numerous situations, the state where he/she goes first is not capable or is unwilling to offer him/her the protection he/she needs. Therefore, the causes that determine a refugee's resettlement to a third country target either the refugee's special needs, which cannot be fulfilled in the country that granted the right to asylum, or the state's refusal to grant protection, since the acceptance of the refugees would determine a threat to national security or public order. For instance,

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<sup>10</sup> UNHCR, *The State of The World's Refugees 1995: In Search of Solutions*, Chapter 2, (Oxford University Press, 1995), p.18;

<sup>11</sup> The contracting states will facilitate, as much as possible, the assimilation and naturalization of refugees. They will especially try to accelerate the naturalization procedure and to reduce, as much as possible, the fees and costs of this procedure.

since Turkey does not acknowledge non-Europeans as being refugees, settlement into a third country has long represented the only viable solution for the refugees from Iran<sup>12</sup>.

The UN Convention of year 1951 indirectly regulates the possibility of the refugee to resettle in a third country in art. 30<sup>13</sup> which recognized to him/her the right to transfer the assets he/she introduced on the territory of the state he/she reached first, to the territory of another state, which admitted him/her in view of resettlement. Taking into account the fact that in year 2001 almost two third of the countries identified by the High Commission as being asylum states are between the first 40 countries identified through the UN Development Program as being the poorest in the world, their inability to offer long-term sustainable solutions determines the need to resettle refugees with the aid of the High Commission, to states which are capable and willing to commit national financial resources in order to integrate refugees<sup>14</sup>.

The refugees' resettlement process presupposes a close cooperation between the state on the territory of which the refugee first fled, the resettlement third state, and the High Commission, for the purpose of sharing the responsibilities of the refugees; protection between the countries throughout the world, signatories of the UN Convention of year 1951 and of the UN Protocol of year 1969.

According to art. 2 letter f of the Statute of the High Commission, the state on whose territory the refugee arrives first must issue travel permits and other documents in view of facilitating the resettlement of the refugees. In what concerns the role of the High Commission, it targets, among other things, the capacity to encourage states to develop resettlement programs, to introduce more flexible resettlement criteria. On the other hand, the third state, although it uses its own criteria to establish who is eligible to resettle on its territory, must take into consideration the proposals made by the High Commission and analyze each separate case.

The resettlement countries benefit, however, of the possibility to refuse certain resettlement cases, as a consequence of the problems and special needs of the refugees, which would require costs much higher than the funds available. In spite of these factors, there are third parties motivated in resettling refugees difficult to place, both for humanitarian, and for economic, social, cultural reasons. Therefore, on the long term, the refugees can have an important contribution at the level of the resettlement society as a consequence of creating new enterprises and jobs, of improving productivity, the intellectual, social and cultural capacity specific to their area of origin.

### 3. SPECIAL CASES

#### 3.1. The international protection of female refugee

The female refugees have, to a high extent, the same protection needs against forced repatriation, armed attacks and other violence, prolonged and unjustified detention, similar to all other refugees. In comparison with men, the women refugees have also a series of specific needs resulted from their vulnerable physical and psychic condition<sup>15</sup>. The High Commission, recognizing the fact that the statute of refugee has different effects on women, compared to men, prepared in year 1991 the document entitled „Guidelines on the Protection of Refugee Women”, with the role of

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<sup>12</sup> Simeon James, *Critical Issues in International Refugee Law*, (New York: Cambridge University Press, 2000), p.194;

<sup>13</sup> „A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted”;

<sup>14</sup> UNHCR, *Refugee Resettlement: International Handbook to Guide Reception and Integration*, (Geneva, 2002), p.7;

<sup>15</sup> UNHCR, *Guidelines on the Protection of Refugee Women*, (Geneva, 1991), p.3-4;

identifying the problems and risks that women refugee face, in view of outlining specific measures which can be taken in order to improve their protection.

The document adopted by the High Commission targets first the problems faced by women refugee in the asylum state and does not regulate to the same extent the risks to which they are subjected at the moment of reintegration in the country of origin, as a result of repatriation. Since the risks to which women are subjected as a consequence of reintegration cause the same massive breaches of human rights as the risks to which they are subjected in the asylum country, in the paper at hand we attempt to analyze the problems and the risks, respectively the applicable measures, in view of reducing them from the two possible perspectives.

Once arrived in the asylum state, the women refugees are, most times, separated from the male family members, as a result of the chaos or as a consequence of their death during the hostilities in the country of origin, which makes the women refugees susceptible of sexual aggressions or other forms of violence. The authors of the acts of violence can be represented either by the military staff of the male citizens of the asylum state, or by the male refugees. For example, in case in the refugee camps a certain group of men control the distribution of aid, women can find themselves forced to have sexual intercourse in order to obtain food for themselves, respectively for their more vulnerable family members, such as children and the elderly, left in their care. In case a woman refugee from Somalia is subjected to rape, she will be a victim of both the attack itself, and of the social values in the country of origin which condemn a raped woman to living her entire life in shame. Also, there are cultures that establish that women cannot feed until the men have ensured all necessary surpluses, and in the refugee camps where supplies are limited, women end up insufficiently hydrated, which may lead, in certain cases, even to death<sup>16</sup>. In spite of the fact that women are accompanied by male family members, they can still be subjected to aggressions, either of a psychic nature, or of a physical nature. For instance, in case the man's application for asylum was rejected, the woman refugee has the possibility to submit a separate application, as a result of the sexual persecution in the country of origin. At the moment when the person before who the woman refugee must have her interview for granting the right to asylum is a man, the mentioning of the aspects of a sexual nature may determine a psychic aggression, as a consequence of the details means to affect her honour. Even if sex is not explicitly mentioned in the UN Convention of year 1951 as representing grounds for justified fear of persecution, at the international level, many times, the applications for granting the statute of refugee for reasons pertaining to sex which presuppose acts of sexual violence, genital mutilation of the woman, force family planning, were accepted. In addition, some women refugees, together with their male family members, in Nepal, found themselves forced to accept to continue to live together with them, in spite of the violent and abusive relations exhibited, because the internal law presupposed that the food products and the other aids destined to refugees be distributed through the male family members<sup>17</sup>.

In order to protect women refugees before sexual aggressions or other forms of violence, the High Commission, targets, among other things, the identification of the aggressors and their criminal prosecution, for the crimes committed. Also, the women refugees subjected to aggressions of any kind may resort to social counselors and psychologists made available to them by the high Commission. We believe that this mechanism is not efficient in the protection of female refugees because it presupposes the punishment of the aggressors as a consequence of a previous breach of the rights of women refugees, respectively the aiding of women already assaulted, and not the prevention of such criminal facts. From this point of view, the mechanisms proposed by the High Commission evolved towards a preventive system, which starts with the persons targeted by aggressors. Thus, the education of female refugees with the help of non-governmental organizations regarding their rights, guaranteed both in the national and in the international system, which not all women refugees end up

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<sup>16</sup> Hathaway, *The Rights of Refugees under International Law*, p. 475;

<sup>17</sup> Hathaway, *The Rights of Refugees under International Law*, 476;

knowing, may often represent a solution to the problem of aggressions to which they are subjected<sup>18</sup>. For example, in Pakistan, the High Commission, with the help of the local partners, established a legal assistance service of which to benefit, mainly, the female refugees, and, also, is constantly supporting workshops regarding human rights, including women's rights. In order to ensure that women refugees are not forced to offer sexual favours for the purpose of obtaining food, it is targeted that they benefit from the direct distribution of food. Also, the High Commission targets the reunification of separated families, such as the number of unaccompanied women to be reduced, and the number of women subjected to sexual assault or to other forms of violence to implicitly decrease.

The return of the female refugees to their country of origin does not represent, most times, the best applicable sustainable solution. In some situations, the female refugees must repatriate as a consequence of the decisions made for them by the male family members, and in other situations the absence of information regarding the situation in the country of origin determines them to make the decision to repatriate without knowing the real situation<sup>19</sup>. Since the problems women refugee face are not reduced only to the period during which they are on the territory of the asylum country, once returning to their country of origin, the women refugees risk becoming again targets of sexual aggressions or of other physical or psychic violence. For instance, they can be subjected to aggressions by the Government, the army or other persons, due to revenge for having fled the country of origin or they can be susceptible of sexual blackmail, in exchange for material assistance or in view of obtaining the documents required by the governmental officials<sup>20</sup>. From this perspective, the High Commission wishes to ensure women refugees equal access to the repatriation procedures, such as those who fear the situation existing in the country of origin to be protected on the grounds of art. 33 para. 1, which forbids the return. In order to allow women refugees the knowing of the situation existing in the country of origin and in order to help them make a correct choice regarding voluntary repatriation, they will be given correct and current information.

Since the role of the High Commission is to supervise the protection of refugees both in the asylum country and in the country of origin, in case of repatriation, the female refugees will benefit of international protection regardless of the country on whose territory they are, providing them legal, material and social assistance, meant to prevent possible physical or psychic aggressions.

### 3.2. The international protection of children refugees

As a consequence of their dependence on parents or on other adults capable of supplying them all needed for survival, as well as of their development needs, which make them more vulnerable to certain breaches of human rights, the children refugees, as the women refugees, need special protection and care. In this sense, the High Commission and the entire international community developed a multitude of international norms and policies in order to protect children refugees, both in the asylum country and in the country of origin, in the situation in which they are repatriated. The treaty establishing the standards applicable to children is the UN Convention of year 1989 regarding children's rights. In spite of the fact that this treaty does not target expressly the refugee children, the obligation of the signing states to apply it to persons under the age of 18, without any discrimination, determines the High Commission to consider the Convention regarding human rights and being the reference normative act for its actions<sup>21</sup>. Recognizing the fact that the statute of refugee has different effects on children, compared to adults, the High Commission prepared in year 1994 another special document called „Refugee Children: Guidelines on Protection and Care”.

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<sup>18</sup> UNHCR, Guidelines on the Protection of Refugee Women, paragr. 52;

<sup>19</sup> UNHCR, Guidelines on the Protection of Refugee Women, paragr. 68;

<sup>20</sup> UNHCR, Sexual Violence Against Refugee: Guidelines on Prevention and Response, (Geneva, 1995), paragr. 1.4;

<sup>21</sup> UNHCR, Refugee Children: Guidelines on Protection and Care, (Geneva, 1994) 19;

The risks to which children refugees are subjected in the asylum country vary from the ones of psychological nature, such as the act of suddenly leaving the country of origin, the leaving behind of family and friends, until those of social nature, such as the forced interruption of education, the lack of time or places for play, the pressures for recruitment from the armed groups. For the children separated from their family, these risks amplify, in comparison to the other children refugees. In a new society with different cultural characteristics, children refugees learn to adapt with the help of their parents, separation from one or the other of the parents depriving the child from the right to have a model in life<sup>22</sup>. The absence of either parent determined the children refugees to undertake many of the parents' responsibilities, their development needs being ignored. For instance, in case a female child refugee is in the asylum country with her brother and other smaller siblings, the daughter is forced to replace her mother in the process of caring for her siblings, thus being deprived of her right to play or to go to school. Also, female children refugees often face protection problems greater than the male children. In some societies, girls being considered inferior to boys, they risk being subjected to neglect and, in more serious cases, even to physical or sexual abuse.

The protection and assistance of children refugees before the above-mentioned dangers follows the „triangle of rights” regulated by the Convention regarding the rights of the child (the rule of the best interests, non-discrimination and participation), by promoting both the direct aiding actions and the indirect aiding actions, through the families and the entire asylum community.

The activities by means of which the direct protection of children refugees is targeted may comprise the creation of play spaces, the establishment of support groups, the granting of the right to participate in making the decisions regarding their future. In the healthy development of a child, an important place is represented by the possibility to play. Therefore, the refugee camps or the refugee admission centers must put at the disposal of the children refugees places for play, without danger, which to help their integration in the community together with the citizens' children. The establishment of support groups allows the children refugees to understand that they benefit of moral support from the persons before who they can express their thoughts and can search for advice for the problems troubling them. Together with the development of the children refugees, it is important that those who can formulate their own opinions have the opportunity to express them and to have them taken into account, and in case when the depression specific to the statute of refugee prevents them to make objective decisions, they must benefit of professional counseling.

Considering the fact that, usually, children refugees are dependent on the adults, both for physical survival and for their psychic and social welfare, one of the most beneficial protection modalities includes indirect protection by means of the family and of the asylum community. Therefore, the High Commission aims, first of all, to prevent the separation of children refugees from their families and to promote family unity. In the situation when the family members have already been separated, there are developed programs for the search and re-establishment of the contact between them. The identification of the parents or of other relatives is very important for children refugees because it offers them the hope of reuniting the family. The role of the community in the protection of children refugees derives, first of all, from the granting of the right to education, school proving to be one of the best solutions in the creative stimulation of children, respectively the development of their social skills<sup>23</sup>. The quality of education for the children refugees must be, though, of the same quality as that supplied for citizens of the same age. For example, in year 2004, many of the 65,000 Sudanese children refugees discovered in Uganda what in their country of origin proved to be a luxury for the majority of them, namely free primary education.

In spite of the fact that voluntary repatriation also represents in case of children refugees the sustainable solution that enjoys the greatest support at the level of the international community, the return to the country of origin does not imply the cease of the obligation of the High Commission

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<sup>22</sup> UNHCR, *Refugee Children: Guidelines on Protection and Care*, 31;

<sup>23</sup> UNHCR, *Refugee Children: Guidelines on Protection and Care*, 45;

to offer protection and assistance. Once returned, the children refugees must have access to basic resources and services, enjoying the fundamental rights and liberties to the same extent as their fellow countrymen. Hence, it is essential that the High Commission establishes partnerships with the social assistance services, the governmental and non-governmental organizations in the country of origin, in order to ensure the welfare of children refugees after their return. In this sense, there must be intensified the activities for tracing the parents or other relatives of the children refugees separated in the country of origin. In addition, since access to education represents one of the most important measures allowing children refugees to reintegrate, the High Commission must contact the Ministry of Education in the country of origin, such as upon their repatriation their studies completed in the asylum country are recognized.

In conclusion, the obligation to protect children refugees exceeds the territory of the asylum state at the moment when they are repatriated, being ensured legal, material and social assistance, meant to prevent the possible physical or psychic aggressions, regardless of the country of whose territory they are.

### 3.3. The international protection of elderly refugees

In spite of the fact that there is no express definition of the notion of elderly refugee, since the age starting with which persons can be classified in this category varies between 40 years old in some countries in Africa and 70 years old in certain states of Latin America, the older refugees wherever face common problems, both in the asylum country, and in the country of origin, following repatriation.

Elderly refugees are more difficult to integrate in the asylum country. While youngsters leave the refugee camps searching for jobs, the elderly refugees are most often left behind, abandoned by the family members who feel they do not have the resources necessary for caring for them. Because of their age, they have reduced access to the forms of occupation or the work force, to the information regarding the rights, services and facilities placed at their disposal by the national or international legislation. Often, the older refugees are not even aware of the existence of the High Commission or of the agencies entrusted with their protection or, in the situation in which they are aware of the existence of these services, they do not feel confident enough to resort to them<sup>24</sup>. Therefore, the elderly refugees end up facing in the asylum country extreme situations such as marginalization as beggars, horrible life conditions, absence of medical care making them vulnerable to different illnesses.

In order to avoid such situations, the High Commission must, first of all, take into account the special needs of the elderly refugees when elaborating social and legal assistance programs. The reduction of the vulnerability characteristic to the elderly refugees does not necessarily target the creation of special services for them, but it aims to ensure equal access with the other refugees to the services vital for them<sup>25</sup>. Since the elderly refugees may often have difficulties in accessing the clinical services or the food and aid distribution points, as a result of mobility problems, the High Commission may conclude partnerships with non-governmental organizations in sectors such as health, law, professional training in the asylum countries, through which to ensure that the elderly refugees receive the care they need. The most beneficial modality of helping the elderly refugees in the local integration process remains, however, the granting of the possibility to become involved in the projects at the level of the asylum community. In this sense, the elderly refugees can be involved in the process of teaching or caring for children. The active persons should, also, be included in non-formal educational programs or in professional training programs.

In spite of the efforts made at the level of the asylum states, the older persons are most affected by the phenomenon of social disintegration, often being forced to repatriate. Once in the

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<sup>24</sup> UNHCR, *Protecting Refugees: A Field Guide for NGOs*, (Geneva, 1999), 62;

<sup>25</sup> UNHCR, *Policy on Older Refugees*, (Geneva, 2000), paragr. 14;

country of origin, the problems of the elderly refugees are not solved, in many cases these persons remaining dependent on the High Commission for long periods of time. Therefore, upon repatriation, the High Commission must first facilitate the reunification of the family when needed, requesting the support of the countries of origin in the process of local reintegration. For example, in Croatia, the vast majority of the elderly refugees who repatriated contributed to the peace and reconciliation measures at the community level.

Thus, the goal of the High Commission in what concerns the elderly refugees is to offer them the possibility to live their last years in dignity and security, regardless of the country on whose territory they are, either by means of an active contribution within the asylum community, as much as possible, or by offering case and support when they become fragile from the physical or psychic viewpoint<sup>26</sup>.

### Conclusions

As a consequence of the research performed in view of achieving this paper, we can state that the adoption of the UN Convention of year 1951 regarding refugees represented an important moment within the process of the international protection of refugees, marking both the codification of all international norms in the matter, until that date, and their development by means of elaborating new rules. The character of fundamental norm of the international protection that the UN Convention of year 1951 enjoys could not, however, prevent the adoption of complementary regulations at the regional and national level.

In spite of all efforts made at the international, regional, respectively national level, the regulation of the statute of refugee experiences even today numerous gaps that determine a weak quality of the protection granted on long or short term to persons exiled from their country of origin as a result of fear of persecution.

On the one hand, we can state that through the adoption of the UN Convention of year 1951 it was not created the desired unitary international system which to allow all needy persons equal access to international protection.

First of all, the dispositions of the international document generated from the moment of the adoption and until today a variety of interpretations in the national doctrine and jurisprudence, the imprecision of the language often preventing the attorneys or judges to argue their pleas or decisions. An eloquent example is represented by art. 1 letter F of the UN Convention of year 1951, which regulates the institution of the exclusion from international protection. In the absence of express definitions, in the text of the international document, regarding fundamental notions of the process of exclusion from protection, such as crime against peace, war crime, crime against humanity etc., the interpretation of the international dispositions in the matter may differ radically at the level of the signing states, by granting extended senses, as a consequence of the national interest. Therefore, the applicant for international protection may be deprived of his/her rights recognized by the UN Convention of year 1951 and may even be forcefully returned to the state of origin, where there is a risk of persecution. An important role in the unification of the interpretations of the dispositions in the matter belongs to the United Nations High Commission for Refugees, since the documents adopted by it have a guiding role for the domestic doctrine and jurisprudence of the signatory states. Still, we believe that this guiding character is not sufficient in order to completely unify the international system of refugees' protection and, in this sense, we would propose an obligatory character of the documents for the signatory states. We consider that together with the international obligations undertaken as a consequence of signing UN Convention of year 1951, the obligatory character of the documents adopted by the United Nations High Commission for Refugees would place refugees' protection in the foreground, and the national interest would not prevail.

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<sup>26</sup> UNHCR, Policy on Older Refugees, paragr. 11;

Secondly, in spite of the increasing number of states parties to the UN Convention of year 1951, respectively to the Protocol of year 1967, at the international level there continue to exist numerous states that did not undertake the international obligation to protect refugees. It is also true that some states host the largest part of refugees without being party to the international mechanisms regarding the refugees, but this fact does not ensure the observance of all right that this social category should enjoy. In this sense, we can take into account the case of India, which, although it is not a party to the UN Convention of year 1951, stated, through its representatives that it has always been generous with the refugees. In spite of these declarations, analyzing the legislation regarding aliens at the level of the Indian state, we will see that in order to enter the Indian territory, the foreign citizens must present at the border a valid passport and a proper visa, documents that, most often, the refugees do not have, and, therefore, their entry into India is denied. In the situation in which the refugees are able to enter the Indian territory, they can resort to the regional office of the United Nations High Commission, located in New Delhi, the refugee certificates issued by it being actually recognized by the Indian government. Still, the United Nations High Commission is not allowed to perform its activity in other regions of India, except for New Delhi and Tamil Nadu, and, therefore, the refugees located in remote parts of the country do not have access to international assistance, risking to be returned, since the Law regarding aliens, ignoring the principle of non-return, recognized both at the level of the international legal instruments, such as the UN Convention of year 1951, and at the level of custom, allows the Indian government to return aliens, including the applicants for the statute of refugee. We believe that these situations should be avoided, the United Nations High Commission having the obligation to positively influence the states in expressing their consent for becoming parties to the UN Convention of year 1951.

On the other hand, the UN Convention of year 1951 can be considered inefficient, since it is not flexible before new risks to which the refugees are subjected. From this point of view, we believe that the dispositions of the UN Convention of year 1951 are not eternal, such as, in order to not become obsolete and a relic of the Cold War, they should be modified in view of adapting to the new socio-legal conditions met today at the international level. The necessary direction for developing a system of refugees' protection by means of which to provide answers to the new requirements in the matter must be given by the High Commission as international organization with the role of searching for sustainable solutions regarding the statute of refugees.

First of all, we consider that the definition offered to the notion of refugee, based on the justified fear of persecution due to race, religion, nationality, belonging to a certain social group or political opinion, is incomplete before the new flows of refugees. Starting with year 1980, the refugee movements had a new basis, namely certain civil wars, ethnic conflicts, generalized violence, which put numerous applicants in impossibility to prove their justified fear, as regulated by art. 1 of the UN Convention of year 1951. Moreover, of the international protection promoted by the UN Convention of year 1951 can only benefit the persons outside their country of origin, thus ignoring the needs of the persons displaced internally, which are often of the same nature as that of refugees. In this sense, we can remember the millions of people relocated as a result of the civil war in Sudan and in the Democratic Republic of Congo.

Secondly, the UN Convention of year 1951 is the only major treaty regarding human rights which does not benefit of a mechanism for promoting the obligations undertaken by the states, by establishing an independent organism at the international level, with the role of contentious court. We consider that the role of the United Nations High Commission for Refugees, which targets exclusively the supervision of the observance of the dispositions comprised in the UN Convention of year 1951 is not sufficient and it should be extended such as to have elaborated a mechanism by means of which to facilitate the access of the refugees whose rights recognized by the UN Convention of year 1951 have been breached. In this sense, Government would be under the obligation to justify the measures taken, and in case of breach of the convention dispositions, to by applied drastic sanctions, in the form of money, which to enter the budget of the High Commission.

We believe that in this way would be ameliorated another important problem seen at the level of the international protection of refugees, namely the increase of the financial funds, insufficient at present, in order to find and apply sustainable solutions.

Therefore, we consider that the establishment of the international system of refugees' protection represents an important step in the development of humanitarian law and, therefore, must be properly appreciated since the first regulations and until the advanced system based on the UN Convention of year 1951, respectively on the complementary and additional regional regulations. Still, without denying the role played on the scene of the international protection of refugees and taking into account the historical changes, the UN-based system must not remain static, but must evolve in parallel with the different needs of the persons of interest to the United Nations High Commission for Refugees.

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