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## THE REFUGEE STATUS UNDER INTERNATIONAL LAW AND SOME IMPRESSIONS FROM THE EUROPEAN UNION

### *A CONDIÇÃO DE REFUGIADO NO DIREITO INTERNACIONAL E ALGUMAS IMPRESSÕES DA UNIÃO EUROPEIA*

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#### **ABSTRACT**

**Objective:** This essay aims to reexamine the asylum institute, one of the greatest dilemmas that the contemporary world faces. With regard to the specific objective, it pursues to demonstrate how asylum seekers may be protect according to International Law and European Law and the main obstacles to make it more effective.



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**Methodology:** The methodology is based on legal dialectics, accompanied by doctrinal bibliographic research, as well as European and international legal instruments that allow a better perception on the development of International/Regional Refugee Law.

**Results:** The present article reaches the conclusion that asylum demands do not affect States uniformly and for this reason it is important to reinforce solidarity, tolerance, justice and respect for human rights among European Union Member States.

**Contributions:** The study contributes to report several difficulties faced by asylum seekers in the international and European perspectives and shows the need to keep improving mechanisms to protect this group.

**Keywords:** Right of asylum; International Refugee Law; European Union; Forced Migration.

## RESUMO

**Objetivo:** O presente artigo visa reexaminar o instituto do direito de asilo para os refugiados, um dos maiores dilemas que o mundo contemporâneo enfrenta atualmente. No que se refere ao objetivo específico, visa demonstrar como os solicitantes de refúgio podem ser protegidos de acordo com o Direito Internacional e o Direito Europeu, bem como os principais obstáculos para tornar a proteção mais eficaz.

**Metodologia:** A metodologia baseia-se na dialética jurídica, acompanhada de pesquisa bibliográfica doutrinal, bem como de instrumentos jurídicos europeus e internacionais que permitem uma melhor percepção sobre o desenvolvimento do Direito Internacional/Regional dos Refugiados.

**Resultados:** O presente manuscrito chega à conclusão de que os pedidos de refúgio não afetam os Estados de forma uniforme e, por este motivo, é importante reforçar a solidariedade, a tolerância, a justiça e o respeito pelos direitos humanos entre os Estados-Membros da União Europeia.

**Contribuições:** O estudo contribui para relatar várias dificuldades enfrentadas pelos requerentes de refúgio na perspectiva internacional e europeia e mostra a necessidade de continuar a aprimorar os mecanismos de proteção ao referido grupo.

**Palavras-chave:** Direito de Asilo; Direito Internacional dos Refugiados; União Europeia; Migração Forçada.



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## 1 INTRODUCTION

The phenomenon of migration flows has been going on for several years, since the primitive period when the human beings realized that the land that used to provide all necessary means was already exhausted. Therefore, it was time to look other regions for new fields of supply.<sup>1</sup>

This movement still remains today, since migratory flows manifests intensely. This fact has provoked contrary manifestations from various segments of civil society, being certain that this occurs more frequently in some regions, especially due to the outbreak of civil wars, ethnic and religious problems, armed conflicts and also environmental issues.

The protection of refugees as it stands today is enshrined in International Law mainly after the end of World War II. However, even before it can be noted initial efforts from international community to find long-term solutions for this group in such vulnerability. Likewise, European institutions have also taken on a prominent role in the protection of refugees and asylum seekers.

Taking into account the growing demand that is current in several European Union Member States, the present article aims to start from brief considerations on how the development of asylum around the world was and, subsequently, within its territory.

## 2 A BRIEF HISTORICAL BACKGROUND

The protection granted to individuals who suffers from various forms of persecution is not contemporary. Rodrigues (2016, p. 66-67) points out that before becoming the competence of civil power, people in this condition, during the Middle Ages, for example, fled from the persecution of the State and sought protection within places considered sacred, such as church temples.

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<sup>1</sup> For further information on this matter, check out the studies produced by GUERRA, Sidney; EMERIQUE, Lilian. Right of minorities and vulnerable groups. Ijuí: Unijuí, 2008.



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The asylum institute nowadays encompasses several situations that deal with persecutions for reasons of race, religion, nationality, social group or political opinions that contradict the interests of groups that are at the head of the State. But until this level of protection was reached, it was evident that the occurrence of conflicts served as leverage to the development of the matter.

This institute arises in the context of major international conflicts produced in the course of the twentieth century, due to territorial disputes and the need to establish new frontier landmarks that have caused several issues for civil society (GUERRA, 2017).

As the First World War ended, the project to create the League of Nations was conceived, which aimed to create a permanent intergovernmental organization, based on the principles of collective security and equality between States. The essential duties of that organization were based on three main pillars: *i)* international security; *ii)* economic, social and humanitarian cooperation; and *iii)* the implementation of the Versailles Treaty, which ended that conflict (TANAKA, 2018).

The League of Nations has established some interesting assumptions for International Law, starting with its preamble, which states that Member States must: *i)* accept certain obligations not to resort to war; *ii)* openly maintain international relations based on justice and honor; *iii)* strictly observe the prescriptions of international law, henceforth recognizing it as an effective rule of government procedures; *iv)* make justice reign and scrupulously respect all treaty obligations in the mutual relations of organized peoples.

In addition, it also proposed strategies for the maintenance of collective peace and security, also indicating mechanisms for the settlement of disputes in a peaceful manner, in particular arbitration. Furthermore, it established general predictions regarding human rights, with emphasis on those aimed at the mandate system of the League, the system of minorities and the international parameters of labor law - by which States were committed to ensuring fair and dignified working conditions for men, women and children.

It is important to highlight the immense efforts of the League of Nations, predecessor to the United Nations, in 1921, when it was called upon to assist, at the



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request of the International Committee of the Red Cross, more than one million Russian displaced people by the Russian civil war. Hence, the League of Nations appointed a famous polar explorer, Fridtjof Nansen, as High Commissioner to address the problems of Russian refugees and the exodus of nearly 2 million refugees from the war between Greece and Turkey (PSOMIADES, 2011).

In this sense, it is worth mentioning the importance of Fridtjof Nansen, who was awarded the 1922 Nobel Peace Prize, for his fruitful and successful work with refugees. His legacy is described in the famous publication of Nguyen Dinh, Patrick Daillier and Alain Pellet (2003, p. 691):

*Em 1921, o Alto Comissariado para os Refugiados Russos viu a luz do dia no seio da Sociedade das Nações. Ele tomou a responsabilidade pelos refugiados do Próximo Oriente em 1928. Nansen, o seu Diretor, inventou o célebre título especial de viagem que devia levar o seu nome (passaporte Nansen) entregue pela Sociedade das Nações, permitindo aos seus detentores circular entre os Estados que reconhecessem a sua validade. A partir de 1933, os refugiados alemães vieram engrossar em massa as filas de protegidos desse organismo. Mesmo antes da Segunda Guerra Mundial, a UNRRA (United Nations Relief and Rehabilitation Administration) foi criada para se ocupar das 'pessoas deslocadas', termo novo designando as gentes que tinham sido deportadas durante as hostilidades. A tarefa principal desse organismo era facilitar o seu repatriamento. Como mais de um milhão de pessoas se recusou a regressar ao seu lar, era necessário ajudá-los a encontrar uma terra de acolhimento onde pudessem se instalar. Face a esse novo problema foi estabelecida uma verdadeira organização internacional: a Organização Internacional dos Refugiados (OIR) ligada à ONU como instituição especializada (Resolução n. 62, de 15 de dezembro de 1946). De 1946 a 1950, ela repatriou com sucesso 70.000 refugiados e instalou no seu país de acolhimento mais de um milhão de outros. Em 1950, a OIR foi substituída pelo Alto Comissariado das Nações Unidas para Refugiados, que continua em funções.*

In spite of this, the issue of refugees began to gain breadth as a result of the events produced during the Second World War, in which thousands of people were displaced from their home States, producing a very adverse scenario, especially in Europe.

Thus, the action taken by the States, even before starting the work of the United Nations, resulted in the creation, in 1943, of UNRRA (United Nations Relief and Rehabilitation Administration). In the year of 1947, therefore, already in force of the United Nations, there was the transfer of duties and assets to an international



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organization constituted with the purpose of taking care of the matter related to refugees: the International Refugee Organization (IRO).<sup>2</sup>

The IRO was headquartered in Geneva and managed to achieve good results despite its short existence, notably with regard to the resettlement of approximately one million people and the repatriation of more than sixty thousand people.<sup>3</sup>

In fact, due to the low adhesion by the IRO Member States, it was decided that a new agency should be created to deal with this concern. Thus, on 3 December 1949, the United Nations High Commissioner for Refugees (UNHCR) was created, whose statute was approved on 14 December 1950, with the purpose of finding lasting solutions to the refugee issue.<sup>4</sup>

According to its statute, UNHCR's basic assignment is to provide international protection to refugees, that is, to people who cannot enjoy protection in their home countries. Thus, UNHCR works to ensure that those individuals remain in a State by obtaining special status and treatment – for example, assuring the prohibition of forced repatriation –, as well as tasks to assist refugees with financial support until they can maintain themselves in the hosting State.

### 3 THE LEGAL FRAMEWORK FOR REFUGEE PROTECTION ACCORDING TO INTERNATIONAL LAW

Preliminarily, it should be noted that after the end of the Second World War, even before a specific instrument of protection for refugees was created, the international community showed its concern for people seeking international

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<sup>2</sup> For further information, check out the following reference: UNITED NATIONS. Constitution of the International Refugee Organization. Available at: <<https://www.refworld.org/docid/3ae6b37810.html>>. Access: 22 May 2020.

<sup>3</sup> For further information, check out the following reference: UNITED NATIONS. The history of resettlement - celebrating 25 Years of the ATCR. Available at: <https://www.unhcr.org/5d1633657.pdf>. Access: 02 Jun. 2020.

<sup>4</sup> For further information, check out the following reference: UNITED NATIONS. Statute of the Office of the United Nations High Commissioner for Refugees. Available at: <https://www.unhcr.org/3b66c39e1.pdf>. Access: 22 May 2020.



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protection by informing, in Article 14(1) of the Universal Declaration of Human Rights (UDHR), adopted on December 10, 1948, the following: “everyone has the right to seek and to enjoy in other countries asylum from persecution”.

However, as well pointed out by Goodwin-Gill and McAdam (2007, p. 172), the UDHR was not sufficient to guarantee refugee protection, since States have not demonstrated in practical actions their intention to assume a moral obligation to reverse the situation of these people.

In this sense, it is important to point out that the international document that first managed to define the global criteria for granting asylum according to contemporary understanding was the 1951 Convention relating to the Status of Refugees.

According to Guido Soares (2004, p. 396) concern the 1951 Convention and the difficult context in which it arose, the author emphasized that there was a need to recognize the situation of people who had benefited from the League of Nations rules. Furthermore, it was also necessary to clarify the situation of those people to whom it was not possible to apply the rules of the International Refugee Organization, but whose rights to recognition of refugee status were not excluded.

On this matter, it is also important to mention the geographical and time limits of 1951 Convention. In other words, basically only victims of the Second World War that where in Europe could be recognized as refugees. In this sense, the Article 1 defines refugee as any person who:

2. As a result of events occurring before 1 January 1951 and 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; 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, owing to such fear, is unwilling to return to it. (...)

1. For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either a) “events occurring in Europe before 1 January 1951”; or b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention (UNITED NATIONS, 1951).





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In effect, the concept established for refugees, as advocated by the 1951 Convention, ended up becoming obsolete over the years and, therefore, it was extended in order to shelter under the referred international document people seeking protection. In this sense, it is worth mentioning the 1967 Protocol Relating to the Status of Refugees, which ended the geographic and temporal limitations in force until then.<sup>5</sup>

Therefore, the classic and extended concepts of the institute under analysis must be complementary and not antagonistic, as taught by Talavera and Moyano (2002, p. 317):

*El concepto de refugiado tal como es definido en la Convención y el Protocolo constituye una base legal apropiada para la protección de los refugiados a través del mundo. Esto no impide la aplicación de un concepto de refugiado más amplio. Ambos conceptos de refugiados no deberán ser considerados como mutuamente excluyentes. El concepto ampliado deberá ser más bien considerado como un instrumento técnico efectivo para facilitar su amplia humanitaria aplicación en situaciones de flujos masivos de refugiados.*

In addition, it is important to mention that Goodwin-Gill and McAdam (2007, p. 51) stress that a person becomes a refugee from the moment he or she satisfies the criteria established in the 1951 Generation Convention, which allows us to affirm that determination of status holds a declaratory nature.

In the search for international protection, the performance of the European Union should be remembered, since its procedure is being confronted with one of its greatest dilemmas with regard to the reception and relocation of refugees and migrants, as we shall see below.

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<sup>5</sup> The 1967 Protocol extended the definition of the term “refugee” in Article 1(2) and (3): “2. For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words ‘As a result of events occurring before 1 January 1951 and...’ and the words ‘...as a result of such events’, in article 1 A (2) were omitted. 3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol”.





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#### 4 REFUGEES IN THE LIGHT OF EUROPEAN LAW

Initially, it must be considered that the most significant change in European legislation took place from the 1990s, when the member states of the European Single Market began to outline the creation of the European Union (EU). However, the idea of a united region, as highlighted by Bacaian (2011, p. 23), the Member States needed to harmonize their domestic laws, including in terms of migration of people, in which refugees are also included.

During that time, one of the most important Community documents in the field of asylum was the Dublin Convention, which entered into force on September 1, 1997. This document aimed to determine which Member State was responsible for examining a given application for recognition of refugee condition would be one where entry control (or country of first entry) was carried out. Further, this dynamic also sought to stop the phenomenon known as asylum shopping.<sup>6</sup>

However, due to the difficulty of bringing a lasting solution to the refugee plight, on February 18, 2003, Member States signed the Dublin II Regulation, whose objective was, among others: *i)* to reinforce some principles of the Dublin Convention; *ii)* to improve the fight against the phenomenon of asylum shopping; *iii)* to solve the issue of “refugees in orbit”, that is, asylum seekers pursuing recognition of their condition in several EU Member States since none of them considers themselves responsible to analyze the request.

In despite of having achieved some success, it is possible to observe that such Regulation made it difficult the possibility of filing an appeal in the face of a decision that determined the transfer of the applicant and also made harder the local integration of the applicants, due to forced transfer to another Member State that was not initially desired by asylum seekers (AMORIM, 2018).

In the wake of the revision of the aforementioned document, the Dublin III Regulation, of 26 June 2013, in force until the present day, appeared in order to reformulate the standard and mechanisms for determining the Member State in

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<sup>6</sup> On this matter, asylum shopping happens when the same individual requests simultaneously the recognition of refugee status in several EU Member States (CIERCO, 2010).



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charge of examining an inquiry for international protection submitted in one of the Member States by a third-country national or stateless person (EUROPEAN UNION, 2013).

In fact, the changes did not occur in a structural way, but EU tried to end the ambiguity about the treatment of unaccompanied minors, as well as guarantee certain benefits in the treatment of these asylum seekers.

In practical terms, the aforementioned Regulation allowed: *i*) the definition of concepts hitherto imprecise in the other two Regulations (Dublin I and II), such as "representative" and "risk of absconding" (Article 2); *ii*) for the first time in the Dublin Regulations, the transfer of asylum seekers to the Member State initially designated responsible for examining the application was expressly prohibited if there is a risk of inhuman or degrading treatment (Article 3, n. 2, second part); *iii*) the broadening of the notion of "family member", favoring mainly unaccompanied minors as it allowed them to be reunited with their grandparents, uncles or aunts who are legally resident in one of the Member States (Article 8, n. 2); *iv*) the delimitation of deadlines and costs for the Member State involved in examining the asylum application (Articles 29 and 30); *v*) the creation of an early warning, preparedness and crisis management mechanism based on information collected by the European Asylum Support Office (EASO), whose aim is to create prior measures to prevent the collapse of the common asylum system applied by a Member State, as has occurred in Greece since the beginning of the recent migratory wave (Article 33); among other improvements.

However, Piçarra (2016, p. 28) highlights three negative implications of this document. The first is that the Dublin III Regulation does not base its application on a quota policy that considers aspects such as tax revenue or the population of the Member State.

As a result, it is possible to note, in fact, the dissatisfaction of many Member States with this reception policy that they believe not to distribute asylum seekers equally. As a consequence, these States begin to take actions contrary to regional and international commitments on matters related to refugee protection.



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In Italy, for example, the former Minister of the Interior, Matteo Salvini, caused concern by promising to close the country's ports to NGO ships that rescue people in the Mediterranean Sea. The former minister claimed that the rules of the Dublin Regulation needed to be revised, because, according to him, Italy is unable to support this demand alone (ZUNINO, 2018).

Still according to Piçarra (2016, p. 29), the second implication of this Regulation is the resistance on the part of some applicants who are not heard about their preference about the Member State that will analyze their request. In any case, it is important to mention that this does not apply to unaccompanied minors and applicants who have any family member legally present in one of the Member States.

Regarding this, there is no obstacle in noting that such resistance can have negative effects. On the other hand, it cannot be neglected that leaving the choice of the Member State responsible for examining the application to the applicant could overburden the common reception system of some Member States, such as Germany, which due to its strong economy has attracted the attention of a large number of asylum seekers.<sup>7</sup>

Finally, the third consequence introduced by Piçarra (2016, p. 29) would be the disproportionate responsibility assumed by some Member States on the basis of the Member State's criterion of first entry.

In any case, it is worth mentioning that some measures have been taken in order to try to rebalance the cooperation of Member States in matters of migration and asylum. The most important was the mitigation of the criteria for determining the Member State responsible for examining an application for international protection submitted by a third-country national and the approval of the 2016 agreement between the European Union and Turkey.

In addition to the idea of harmonizing domestic laws and creating minimum standards for the reception of refugees, EU legislation has also created programs for

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<sup>7</sup> In this regard, note that at the height of requests between the fourth quarter of 2017 and the fourth quarter of 2018, Germany was the Member State of the European Union with the largest number of asylum seekers who made the request for the first time (EUROPEAN UNION. Asylum applicants, Q4 2017 – Q4 2018. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Table\\_2\\_-\\_Asylum\\_applicants,\\_Q4\\_2017\\_%E2%80%93\\_Q4\\_2018.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Table_2_-_Asylum_applicants,_Q4_2017_%E2%80%93_Q4_2018.png). Access: 20 Apr. 2020).



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the resettlement and relocation of refugees and migrants from the Middle East and Africa arriving in the old continent, the vast majority, in clandestine vessels and overcrowded reception centers without equipment, unable to meet the demand. Although some States as Greece and Italy, due to strategic location, has been struggling to control migration flows, the European Border and Coast Guard Agency (Frontex) identified in 2020 seven migration routes: Western African; Western Mediterranean; Central Mediterranean; Eastern Mediterranean; Western Balkan; Eastern borders and the route from Albania to Greece.<sup>8</sup>

The resettlement policy aims at the admission into the territory of the Member States of third-country nationals who are in need of international protection and who have been displaced outside, or within, their country of origin, in order to provide them with shelter. Resettlements agreed under this program have focused on people in Turkey, Jordan and Lebanon.<sup>9</sup>

The European Union Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, declared in the ninth progress report on the EU's emergency relocation and resettlement schemes:

The past months have seen progress on both relocation and resettlement. But for our efforts to match the scale of the challenge in both the EU frontline Member States as well as our neighbourhood, more needs to be done, and faster. Relocating all those eligible in Italy and Greece is possible but it takes political will, commitment and perseverance of all Member States to make it happen.<sup>10</sup>

The relocation regime was created by decision of the Council, which establishes provisional measures adopted by Member States to receive people under international protection, who are already in European territory, especially in Italy and

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<sup>8</sup> For further information on this matter, check out: EUROPEAN UNION. Migratory Map. Available at: <<https://frontex.europa.eu/along-eu-borders/migratory-map/>>. Access: 15 Dec. 2020.

<sup>9</sup> On this matter, see the Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) N. 516/2014 of the European Parliament and the Council. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0468&from=PT>>. Access: 20 Apr. 2020

<sup>10</sup> For further information on this matter, check out: EUROPEAN UNION. Relocation and Resettlement: Member States need to build on encouraging results. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_218](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_218)>. Access: 15 Dec. 2020.



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Greece (EUROPEAN UNION, 2015). In this sense, one hundred and twenty thousand people are included in the relocation program and must be distributed among Member States, based on a quota system, taking into consideration aspects as population and country's wealth.

However, the most visible divergence regarding the relocation of refugees fell to the Visegrad Group<sup>11</sup> - Czech Republic, Slovakia, Hungary, and Poland - added to Romania and Bulgaria, although these States are submitted to it, by virtue of supranationality, which imposes decisions approved by a qualified majority of Member States.

It is important to note that the resistance of some Member States occurred, even in the legal-procedural context, since Slovakia (Case C-643/15) and Hungary (Case C-647/15), for example, filed an appeal to the Court of Justice of the European Union (CJEU) in order to annul the content of the sharing decision in the relocation system (EUROPEAN UNION, 2017).

Although the initiative was denied by CJEU, Slovakia based its petition on the violation of the essential formalities provided for in Articles 78(3) and 293, both of the Treaty of the Functioning of the European Union (TFEU), and Articles 10(1)(2) and 13(2), the Treaty on European Union (TEU). Furthermore, it raised a violation of the general principles of the European Union, such as proportionality, representative democracy, institutional balance and good governance.

On the other hand, Hungary's appeal argued that Article 78(3) of the TFEU does not guarantee a legal basis for the Council to force Member States to follow this orientation and, in addition, raised a violation of the principles of necessity, proportionality, legal certainty and regulatory clarity.

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<sup>11</sup> The Visegrad Group, also known as the Visegrad Four or V4, is an alliance made up of four countries located in central Europe: Hungary, Slovakia, Poland and the Czech Republic. The group was established at the summit held in Visegrad, Hungary, on 15 February 1991. It is important to mention that Slovakia joined the group in 1993. The main objectives are: to enable the insertion of EU Member States through integration and definition of common strategies; create mechanisms to enable economic cooperation among Member States; establish strategies and actions aimed at cooperation in the field of science and exchange of information (VISEGRAD GROUP. About the Visegrad Group. Available at: <<http://www.visegradgroup.eu/about>>. Access: 02 Jun. 2020).



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In any case, it is important to clarify that the referred decision received influence by the Council Decision (EU) 2016/1754 of 29 September 2016 which: *i)* inserted a new item to Article 4, informing that Member States may choose to fulfill their commitment through the admission to their territory of Syrian nationals present in Turkey under national admission regimes or multilateral legal frameworks for people with a clear need of international protection “other than the resettlement scheme which was the subject of the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015”; and *ii)* allowed the possibility of applying financial support “every such legal admission leading to a reduction of the relocation obligation” (EUROPEAN UNION, 2016).

Although there is a binding force that obliges Member States to comply with such Decision, its success cannot be understood as absolute, as until 2017 the number of relocations was still very low due to bureaucratic obstacles and, as mentioned by Piçarra (2016, p. 36), in some cases the reason for the inefficiency may be the result of the resistance of asylum seekers against their forced relocation.

On the subject, it is important to pay attention to the fact that both, the resettlement program and the relocation program in the European Union, have not evolved satisfactorily. Furthermore, it should be noted by analyzing those EU legal instruments that resettlement is about receiving people who are in third countries and have been sheltered by neighboring States, such as Turkey, in the wake of the Syrian war, while the relocation aims to distribute, through a quota scheme, migrants and asylum seekers who managed to enter into European territory, especially through Greece and Italy.

Despite of the efforts of European Union as an institution, it is perceived that EU unable to manage this crisis because it lacks support from some Member States that refuse to receive asylum seekers and forbid their entry. In this sense, it might be wondered, after all, are we addressing the discourse to the same Europe of the 1960s, which intended to create an area of peace, respect and dignity after the horrendous scenario created by two great wars?

Meanwhile, refugees wait, resilient and without options, for solutions so that they can finally enjoy the protection guaranteed by International Law.





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Notwithstanding, if it depends on agreements like the one signed by the EU and Turkey in April 2016, we are still a long way from solutions that respect the values listed in Article 2 of the Treaty on European Union (ACCIOLY, 2016).

## 5 CONCLUSIONS

In spite of actions that are developed in favor of asylum seekers, such as those currently developed within the European Union, the reality is often completely different as to the application of the referred protection should be. Unfortunately, it happens because the State might completely ignore the situations that justify the recognition of refugee status and do not comply with the rights introduced by the 1951 Convention Relating to the Status of Refugees.

Certainly, asylum demands do not affect Member States uniformly. Therefore, in order to improve the reception of these people, it would be interesting to ponder aspects such as: *i)* encouraging mechanisms to ensure that Member States fulfill minimum standards of treatment and protection in the field of migration and asylum; *ii)* reinforcement of solidarity among Member States facing an emergency situation in their territory due to the increase in asylum requests, as well as the tightening of sanctions for Member States that refuse to share responsibility for reception; and *iii)* the incitement for modification of the Dublin III Regulation in order to mitigate the rules for analyzing asylum applications in the EU, also considering aspects such as the number of inhabitants of the country and its Gross Domestic Product (GDP).

In this search for protection and recognition of rights, there are still new categories of forced migrants, such as those who emerge from natural disasters, the so-called environmental refugees (GUERRA, 2008). There is an urgent need for solutions to be found for those who need to flee to other country in order to save their lives or preserve their freedom. For this, greater concertation by the international community is required, with a great deal of compassion, solidarity, cooperation and non-indifference.





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