INTERNATIONAL REFUGEE LAW AND HUMAN RIGHTS
(A Study of the Status of Refugees in North-East India)

ABSTRACT
ABSTRACT

The human graduation to civilization was central to its inception and *primum mobile* of its existential survival on this planet. Subsequently, human needs and development propelled the universality of a better *modus vivendi* in deference to the basic paradigms and principles of equality, liberty and fraternity. Therefore, human mobility has become quintessential in a society adhered to certain values and norms of rule of law, democracy and human rights. Thus, human mobility is dictated by certain positive and negative factors. These factors have produced some specific groups of people having peculiar requirements. At the positive side of argument, migration takes place due to economic reasons and in search of employment from rural to urban places, which is, generally, known as *economic migration*. On the other hand, at the negative side of the argument human exodus from one place to another is caused by the rapid and reckless incentives and enterprises taken by the state and its instrumentalities.

The humanity since its existence on this planet has been a story of power struggles, confrontations and armed conflicts between nations, peoples and individuals which rendered millions of people homeless and forced to seek shelter in another country or another place within the country. The refugee problem is a phenomenon of our age. It is the product not only of the most destructive and diabolical wars of history, two World Wars, of modern dictatorial regimes, and of the national awakening of the peoples, but also of the closed frontiers which was a characteristic of the 20th century. There were refugees in earlier centuries but no refugee problem in the modern sense, for the involuntary migrant could merge with those who by choice sought new homes elsewhere. In our time, the refugee problem has been distinguished from refugee movements of earlier days by its scope, variety of causes, and difficulty of solution.

An ideogenetic attempt has been made in this study while examining and analysing the international refugee law issues in the light of contemporary refugee problems in India in general and in northeastern part of the country in particular. The study of refugee crises in its entirety based on present day needs and reformulation of international refugee definition, laws (substantive and procedural)
and instruments based on existing realities coupled with a catena of pragmatic suggestions have been put forward for humanitarian and legal perusal so that a legal surgical exercise could be completed for once and all. The present study has been completed in ten chapters apart from introduction, conclusion, suggestions and appendixes therewith.

Modern democracies espouse these actions in the name of welfare, human rights, social justice, irrigation, rural and urban development and in the garb of affirmative action such as swift industrialization, indiscriminate colonization, noxious nuclear catastrophes, obnoxious environmental pollution, construction of big dams, tampering with the eco-systems, atomic radio activation, morbid gaseous emissions, inconsiderate deforestation, depletion of ozone layer, industrial disasters, hexicological imbalances and perfunctory mining activities in the seismological prone areas are the few manifestations of human mobility & displacement apart from terrorism, insurgency, civil strife, cultural intolerance and armed conflict of national and international ramifications suscitated by a terra firma of persecution owing to race, religion, nationality, political opinion, ethnic tensions, socio-economic disparities, membership of a social group, out of national residence and lack of national legal protection.

Hence, there is no dearth of sedimentary instances, which have aggravated human sufferance. Industrialization has disturbed the sociometry and produced familial instability and social disorder. Deforestation and industrial accidents like Chernobyl Atomic disaster in Russia, dropping of atom bomb on Hiroshima and Nagasaki in Japan and Union Carbide Corporation accident at Bhopal in India etc. have led to global warming resulting in the depletion of ozone layer thereby countries like Maldev and other Island Nations may not have their territorial existence in future. India’s littoral area is also shrinking due to the same reasons. Big dams like Tehri Dam project and Narmada Valley project etc have caused a huge human displacement. Militancy and insurgency in Jammu and Kashmir and North East India have displaced a large chunk of local population forcing them to move in other parts within the country. These developments have contributed the
human displacement in various parts of the world making millions of people homeless and stateless.

Modern refugee movements, beginning in Europe and subsequently becoming world-wide, have given rise to a new class of people who are homeless and stateless and who live in a condition of constant precarity which erodes human dignity. They have caused grave political and economic problems for the countries of temporary reception, problems which have proved burdensome for the administrative facilities and financial resources of private organizations and national governments. The refugee problem has, thus, transcended national jurisdiction and institutions.

In South Asia, waves of people flow through porous borders into neighbouring states to swell trans-border population movement of refugees and migrants. In these post-colonial nation states in the making, people cross over to neighbouring states to escape violence or the denial of basic human rights, including the right to food, water and shelter.

In India there are 51,000 Chakmas and 56,000, Sri Lankan refugees. In Nepal, there are 75,000 southern Bhutanese of Nepalese origin who fled ethnic persecution. A million people of Bangladeshi origin have got lost in the by lanes of Karachi, and 2,38,000 unwanted Biharis are “stateless” in Bangladesh. And as many as 47,000 Rohingya-Burmese refugees in Bangladesh await imposed repatriation, more are fleeing Burma. In Sri Lanka a million or more are internally displaced.

Who is a political refugee and who is an economic refugee or migrant? Who is voluntary and who is an involuntary refugee or migrant? Are issues of utmost significance and are to be probed in. It is a distinction not easy to make in a region where migration is complicated by the fact that governments or majority groups do systematically deny relief and violate the human rights of these affected communities. The influx of 40,000 Chin-Burmese into Mizoram is rooted in the traditional migratory routes of trans-border communities in the Tri-junction of Bangladesh-Burma-India. But equally, ethnic Chins in Burma are victims of
persecution by *majoritarian* Burmese state. It is an army of *illegals* beyond the reach of law and thus protection, which has been criminalized due to want of a legal right to stay. Even those who fall within the internationally accepted definition of refugees – who flee *owing to well-founded fear of being persecuted* – find protection is less an issue of law and policy than political judgement. **It is indeed a matter of great distress that no south Asian state signed the UN Convention on Status of Refugees.**

The Africa and the Americas have been trailblazers and harbingers in crafting a regional response to the situation and problems of refugees and migrants in their regions. But in Asia and especially South Asia, few social scientists or policy makers have cared to tackle the problem of trans-border influx of *illegals*. **This complete juristic apathy has resulted in non-availability of any substantial literature on the subject.**

Furthermore, while in its earlier stages the refugee problem was seen as a temporary and limited phenomenon and recurring. In response to this challenge the international community has developed a complex mechanism of world-wide cooperation involving a tripartite partnership of national governments, private agencies, and international organisations; no longer confined by strict definition of the “refugee”, it is prepared to approach the problem in all its various aspects– political, social, economic and humanitarian. **Thus, the role of United Nations High Commission for Refugees (UNHCR) has assumed an added significance.**

The Office of the United Nations High Commissioner for Refugees (UNHCR) has been charged with the functions of providing international protection to refugees, under the auspices of the United Nations, and of seeking solutions to refugees, under the auspices of the United Nations, and of seeking solutions to refugee problems. These functions include ensuring, with and through governments, the legal and practical protection of refugees, mobilizing and coordinating the deployment of the resources required to ensure their survival and well-being, and promoting conditions in countries of origin that will be conducive
to the ideal solution of voluntary repatriation and help in preventing further refugee problems.

Since the creation of Bangladesh and Burma, infiltration of their people, particularly in Assam and Northeast India is continuing unabated despite all precautions and talk of constructing a barbed wire fencing along the Indo-Bangladesh border. These people are known as Chakma-Hojang, Chins and Rohingyas refugees living in the Northeastern region of India. They are languishing between India, Bangladesh and Burma. Their country of origin does not show any inclination to welcome them back. Even some of them were recently repatriated to Bangladesh and Burma.

Although, those who participated in the Bangladesh War and supported Pakistan, which led to the independence of Bangladesh, are still stranded in Bangladesh and they also wish to leave for Pakistan but later is quite reluctant due to its own domestic political ramifications. Moreover, UNHCR has been denied its due role in the entire episode and no respect is paid to the International Refugee Conventions and International Legal Standards.

While the vulnerable Dhubri and Cachar-Karimganj districts of Assam are the favourite entry points for infiltration, Kishenganj sub-division of Katihar district of Bihar and eastern borders of the 24 Parganas, Murshidabad and Nadia district of West Bengal are among the more favoured areas for both Bangladeshis and so-called Biharis, that is non-Bengali speaking Muslims of Bangladesh who have been stranded in that country and should have been transferred to Pakistan after the formation of Bangladesh.

However, the response of Indian Government on such an important issue has been far from satisfactory. Following will throw ample light in this regard:

“—a good number of foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on or after March 25, 1971 by taking advantage of the circumstances of such migration and their ethnic similarities and other connection with the people of India and without having in their possession any lawful authority to do so illegally remained in India” —
The paragraph quoted above is actually from the Preamble of Illegal Migrants (Determination by Tribunals) Bill, 1983, passed by the Lok Sabha on December 15, 1983 the Rajya Sabha on December 19, 1983, and assented to by the President on December 25, 1983. It is now an Act of Parliament.

This Bill has been passed in order “to provide for the establishment of the Tribunals for the determination, in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India and for matters connected therewith or incidental thereto” as “the continuation of such foreigners in India is detrimental to the interest of the public of India” and “on account of the number of such foreigners and the manner in which such foreigners have clandestinely been trying to pass off as a citizen of India…”.

The migration of East Bengalis, mostly Muslims, to Assam, particularly fertile Brahmaputra Valley, began on a large scale under the patronage of Sir Mohd. Saadullah, PM (CM) of Assam after the 1937 elections. But census reports in the earlier decades too had noticed a sharp-rise in the population in many districts of Assam, for more than what natural reasons would warrant.

The 1911 census had estimated 882,068 immigrants in Assam. The 1921 census said 1,290,157 immigrants while 1931 census revealed 1,408,763 persons in Assam who were born outside. There were no detailed tabulation in 1941 but, in 1951, there were 1,344,003, immigrants to 45,287 immigrants from Assam. Out of these immigrants, who constituted 14.4 percent of the total population, 833,299 were born in Pakistan, 63,301 in countries beyond India and the rest in other states and censured in Assam (These extracts from the Census Reports have been quoted by the All Assam Students’ Union (AASU) in its publication.)

The infiltration in Assam (India) has been taking place not only from Bangladesh, but also from Nepal. A very large number of Nepalese regularly leave their country in search of work and in this state, they settle along the foothills and usually take to either farming or cattle rising.
The British had also encouraged the more educated Bengali Hindus to settle in Assam for about a hundred years till independence, and no one finds that a sizable segment of the population in Assam consists of Bengali Hindus. Moreover, the continuous and what appears to be a planned immigration by Bangladeshis into Assam both Muslims and Hindus, infiltration by the Nepalese and even people from Burma, coupled with the strained relationship between Assamese Hindus and Bengali Hindus, created a fear psychosis among the Assamese that they would soon become a minority community in their own state and their language and culture would be suppressed by the non-Assamese people. This gave birth to such organisations as the All Assam Students' Union (AASU), All Assam Ganga Sangram Parishad (AAGSP) etc. and also to the language riots in 1960 and 1970, and, a sporadic and ubiquitous ethnic carnage from 1980 to 1996, which is still going on in the entire Northeastern India.

The Chakmas live in fear and face intimidation and threats from the Arunachalese. The concern is growing over their future. But one must take into consideration too, the concerns of the local people who find themselves saddled with a problem which they did not create, with a group of people they do not want, with the Indian government unwilling to push out the settler, and a growing anger at their own helplessness in changing the situation. The conditions appear right for a fresh confrontation but cooler heads must counsel restraints and negotiations.

The Chin nationals, recognised by the United Nations as “indigenous peoples”, fled their homeland in Burma to escape widespread and systematic persecution at the hands of the country’s ruling junta, the State Law and Order Restoration Council (SLORC). The atrocious human rights record of SLORC regime requires no reiteration here. Often reformed to as one of the worst human rights abuses in the world, the SLORC is repeatedly admonished by the international community.

UN Special Rapporteur to Myanmar (Burma), Yozo Yakota, has documented the absence of any progress towards SLORC compliance with UN General Assembly Resolutions and UN Commission on Human Rights
Resolutions. Since the well-publicized pogrom of pro-democracy activists in 1988, fear of forced labour, arbitrary detention extra-judicial executions, and torture drove the Chins in ever increasing numbers from Burma to Mizoram in India.

In this backdrop, it is axiomatic that no-major work has been done with regard to the plight, agonies and durable and permanent solutions of the refugee problems. They are destined to carry the stigma of being refugees. They are victim of cynicism of Indian government at one hand and on the other no international attention is being paid in a pragmatic sense.

So it is ventured upon to cajole this terra incognita of International Refugee Law while keeping in view International Human Rights Norms and Standards. This study will limit itself mainly to the refugees in North East India and their problems in the light of contemporary International Law Issues and International Refugee Law in the age of Human Rights.

But as long as man remains intolerant of his fellow men, flight will continue to be the only alternative of the persecuted. Those denied at the essential liberties of life will pull up their roots and look elsewhere for freedom. They leave their community and seek admittance to another, to live and work in peace. Few such persons, however, consider their abode a permanent one and, however, long their exile may last, their hope of return is never extinguished. They are the international refugees, fleeing from their country, where they fear or have suffered oppression.

Human Rights are those minimum rights which are available to an individual by virtue of his being a member of human family i.e. right to life is a minimum and most fundamental human right. Today, human rights should be recognised as central to the entire refugee issue. As has repeatedly been affirmed by the international community during the last five decades, they express the values and principles, which constitute the foundation of freedom, justice and peace in the world. As such they are as centrally relevant to the refugee issue as they are to any other major social issue today.
ABSTRACT

The discernible and distressing feature of all refugees is the lack of national protection of their fundamental rights and freedoms, which creates a need for international protection in order to secure the enjoyment of those rights. The vulnerabilities and needs of refugees are vast and various in scope, ranging from the need for personal security and means of subsistence, through legal status and respect for fundamental human rights, to finding durable solutions to their plight. Whilst the needs and corresponding content of international protection vary according to the circumstances, the universal and paramount objectives of international protection, as contained in the fundamental refugee instruments, are admission to a country of refuge, security from forcible return and respect for basic human rights without discrimination.

In the area of human rights, the Supreme Court of India has delivered a number of important judgements and has reprimanded the state for not taking adequate steps for safeguarding citizens’ rights. In the State of Arunachal Pradesh v. Khudiram Chakma (1994), the issue of citizenship of the Chakmas has conclusively been determined and it is, therefore, held that since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the state, if they so desire.

In National Human Rights Commission V. State of Arunachal Pradesh (1996), the Supreme Court of India has held that even the non-citizens are entitled to “right to life” under Article 21 of the Constitution of India and “therefore” the State is bound to protect the life and liberty of Chakma refugees (foreigners) who migrated to India from East Pakistan (now Bangladesh) and residing in the Arunachal Pradesh. The APSU had threatened to expel them forcibly from the State of Arunachal Pradesh.

In the past there was a tendency, at times, to see refugee law as a branch of law quite separate from that of human rights. This was, perhaps, part of a more
general tendency during the post-war period to compartmentalise law, breaking it up into different and even autonomous branches, so much so as almost to suggest that there was no one law but only a number of different and separate laws. This view, of course, was an over-simplification, as the human rights instruments contain no limitations excluding their application to the refugee situation but, to the contrary, contained provisions, which were either explicitly or implicitly applicable to that situation. Such a separation of refugee law from human rights law was unfortunate, and inevitably it had pernicious effects. Basically, it overlooked the fundamental principle that the refugee, like every other category of human being, is ultimately a person possessing, as such, basic rights which are independent “positive” refugee law for their application.

By the beginning of the present century a number of national and voluntary organisations existed with the purpose of assisting refugees in other countries. International recognition of the need for global coordinated action on behalf of refugees arose principally from the problems created by World War I. The contemporary UNHCR was established in 1950, which came into effect in next year i.e. 1951. Now the Statute of the Office of the UN High Commissioner for Refugees (UNHCR) and 1951 Convention Relating to the Status of Refugees, with its Protocol of 1967, is the principal international instrument relating to the refugees.

The gaps in legal protection afforded to all categories of refugees under the principal instruments have necessitated efforts to broaden the scope of international protection, involving broadening of the mandate of High Commissioner, reliance on regional instruments and ad hoc arrangements. Resort must also increasingly be had to international law instruments and mechanisms not specifically designed for the protection of refugees and displaced persons.

International refugee law rests on a humanitarian premise. It is a premise tragically inadequate for our time, but one, which remains a terra incognita despite the frequency and enormity of contemporary
refugee crises. The problem of the refugee is today profoundly different. The persecutors are not defeated and defunct regimes. Instead persecutors are existing governments, able to insist on the prerogatives of sovereignty while creating or helping to generate refugee crises. When labelled as persecutors, they react as governments always react. They assert their sovereignty and castigate as politically motivated the human rights claims made against them. To censure these governments as persecutors is often the surest route to exacerbating a refuge crisis because it diminishes the opportunity to gain their necessary cooperation. In the face of dramatically and cataclysmically changed social and economic conditions, States felt obliged to abandon the centuries-old practice of permitting the free immigration of persons fleeing threatening circumstances in their home countries. In an effort to limit the number of persons to be classified as refugees while still offering sanctuary to those in greatest need, international legal accords were enacted which imposed conditions requisite to a declaration of refugee status.

Refugee status, then, is an extremely malleable legal concept, which can take on different meanings as required by the nature and scope of the dilemma prompting involuntary migration. If properly defined, refugeehood enables to maintenance of a delicate balance between domestic policies of controlled immigration and the moral obligation of the international community to respond to the plight of those forced to this role, the definitional framework must, as during the period analysed here, evolve in response to changing social and political conditions.

The definition of the term "refugee" given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today’s refugee problem, which are primarily problems of refugee
groups. Despite the character of the problem of the refugee, contemporary efforts to improve international refugee law continue to address the problem as essentially a problem of human rights. Indeed, commentators who argue for expanding the capacities of the international community to deal with refugee crises generally insist on enlarging the human rights basis of international refugee law. They see such a development as part of the broader mission of contemporary human rights advocacy to define international law as establishing the rights of individuals as well as states. They reject out of hand as retrogressive and as an anathema the more traditional confinement of international law to inter-state rights and obligations. However, an agreement on a more precise and inclusive definition by Western States and India would ameliorate a number of serious problems because the context in which refugee problems because the context in which refugee problem rise these days is becoming increasingly complex. Tremendous migratory pressures have emerged, provoking large movements of people between countries in the South from the large movements of people between countries in the South to the North, and from the East to the West, even the concept who is a refugee requires new clarification and formulation. Though, it may be noted that the convention may not provide an answer to many of today’s problems, which have an adverse bearing on the refugee situation. But it should not be a reason for questioning its basic value in the sphere for which it was intended and directed at. The Convention should not be blamed for failing to resolve problems with which it was never supposed to deal. It should never be forgotten that the Convention is an essential and sine-qua-non part of our humanitarian heritage for the international protection of refugees who do not want to be refugees.

But this more traditional concept of international law is a key to the problem of the refugee. It is the thesis of this study that the
humanitarian premise of refugee law seriously limits, and even undermines, constructive response to the problem of the refugee and that the problem becomes more manageable the more it is treated as a problem of relations and obligations among states. This study calls for a new foundation for refugee law, but a foundation built on traditional principles, as the means to achieve significant progress in dealing with the most critical aspects of the problem of the refugees.

It is evident that the concept of “refugee” and that of “asylum” are complementary; the one does not exist without the other. Asylum on the territory of a state is, of course, what interests most refugees. This, however, implies at least three conditions of first importance-admission to the territory, a durable stay and the assurance of a certain protection, of basic rights opening the way back to normal life. Thus, it is absolutely true that, asylum, in the core sense of admission to safety in another country, security against “refoulement” and respect for basic human rights, is the heart of international protection. Without asylum, the very, survival of the refugee is in jeopardy.

Refugee law thus reaches a dead-end as human rights law because it collides with the principle of national sovereignty. Sovereign authority in regard to expulsions is no less jealously insisted upon than the right of states to deny asylum, both being theoretically and practically based on the same “undisputed rule of international law” that every state has exclusive control over the individuals within its territory. Human rights law is consistently compromised by this reality. Indeed, even the prohibition of mass expulsion contained in the Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms is seriously limited by concession to sovereign prerogative. Article 15 of this Convention effectively negates the prohibition by providing that the humanitarian provisions of the Convention may be derogated from in time of war or other public
emergency threatening the life of the nation. Obviously public emergency is a convenient classification for a government interested in mass expulsion. In oft-quoted dicta in the *Barcelona Traction* case, the International Court of Justice went some distance in articulating a concept of human rights obligations owed by states to the International community generally. But beyond rhetorical condemnation, the concept never has been the basis for any imposition of sanctions or for the realization of a state obligation vis-à-vis an international institution in cases of mass expulsion.

The principle of "non-refoulement" is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in countries asylum from persecution, this principle reflects the concern and commitment of the international community to ensure to those in need of protection, the enjoyment of fundamental human rights, including the rights to life to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is forcibly returned to persecution or danger. The principle of non-refoulement was given expression in Article 33 of the 1951 Convention. It has since been consistently reaffirmed as a basic principle of state conduct towards refugees. It would be patently impossible to provide international protection to refugees if states failed to respect these paramount principles of refugee law and of human solidarity. Unfortunately, this basic tenet of refugee protection has not always been observed in practice. A number of countries, where the admission or presence of certain groups of refugees have been perceived as incompatible with national interests or domestic concerns, have ignored or undermined the principle of non-refoulement.

The institutional apparatus for dealing with refugee crises suffers from the same infirmities, as do the substantive principles of
international refugee law. The Office of the UN High Commissioner for Refugee (UNHCR) is the most prominent and extensively operating refugee agency and embodies the same humanitarian premise that underlies international refugee law. The keynote of the UNHCR expressly proclaimed in article 2 of the Statute, is that the agency is "humanitarian". Accordingly, the UNHCR operates under a wholly recommendatory and non-binding legal mandate. In a tenuous sense state obligation resides in the undefined duty of states to "cooperate" with the UNHCR. But there is no expressly recognized obligation of states to address impending or ongoing refugee problems to the UNHCR or any other international institution, or to abide by particular procedure. The Statute of the UNHCR establishes the agency as a protector of human rights, and this circumscribes its legal status. Thus, it is said: In exercising international protection on behalf of refugees, the international agency asserts the rights of the refugees.

The 1951 United Nations Refugee Convention was the culmination of an important historical development in the definition on the international plane of basic minimum legal standards for the treatment of refugees. It also constituted a beacon for the future. The adoption of a conceptual definition of the 'refugee' in the convention definition, which is essentially the same as that in the UNHCR Statute — was regarded as a major step forward, compared with the definitions by categories in the Pre-war refugee instruments and in the constitution of the International Refugee Organization. Until recently this definition was readily accepted as a basis for identifying those refugees who were to be benefited from international protection and assistance.

The definition of the term 'refugee' given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today's refugee problem, which are primarily problems of refugee
groups. Because, a prima facie group determination of refugee character does not mean that each and every member of the group would satisfy the test of well-founded fear of persecution, if his or her case were individually determined. Group determination by its nature concentrates on the objective situation in the country of origin. However, in order to deal with these new refugee situations the High Commissioner, with the approval of the General Assembly, developed and applied the 'good offices' procedure. This procedure was originally employed to with respect to refugees outside the competence of the United Nations, specifically, the Chinese refugees in Hong Kong and Tibetan refugees in India, for whom the High Commissioner was called upon to act in a limited manner, namely, for the transmission of contributions. Thereafter, in the new refugee situations in Africa, the 'good offices' was used to enable High Commissioner to assist refugee groups under his regular programme. In making this *prima facie* determination of refugee character, the High Commissioner used broad criteria based on the objective situations existing in the country of origin.

International refugee law is largely indifferent to the question as to whether refugees return to their original homes or relocate to another place within their country of origin. Both return and relocation are considered to be "durable solutions", which in UNHCR terminology is the threshold beyond which an individual ceases to be defined as a refugee, and therefore no longer requires the protection of the 1951 Convention. Because international refugee law is humanitarian in purpose, and the mandate of UNHCR is one of protection, the responsibility of the international community ceases once the refugee settles in a place of safety. A purely localised risk of persecution is not in general sufficient to ground refugee status, provided that flight to another part of the country is reasonable and safe. The courts of a
ABSTRACT

number of States, including Germany, use this principle of the “international flight alternative” in their interpretation of the 1951 Convention, according to which refugees not considered to be refouled contrary to the Convention if there is any place within their country of origin where they can go without risk of persecution.

The provision of assistance to refugees is a humanitarian and non-political matter, which should not be hindered by political considerations, despite the fact that refugee situations themselves are inherently political in character. The need to give greater attention to questions of assistance arises primarily from the scale of practical humanitarian problems, which remain to be solved. Moreover, a strictly positive law approach does not seem desirable in this field since many states are still not parties to the relevant international instruments relating to refugees.

While drawing conclusions on India’s refugee assistance policy the first question for consideration is which category of refugees can expect to get refugee assistance? India has provided assistance to refugees from Tibet, Bangladesh and Sri Lanka who were recognized as refugees by the Government. In the case of Afghan and Bhutanese refugees, who have not been recognized as refugees, are being treated as foreigners temporarily residing in India. No assistance is being provided to them. In the absence of any law regarding determination of the status of refugees, situations arise whereby a particular category of refugees is given assistance whereas other refugees similarly placed may well be denied such assistance. The recognition of refugee status has hitherto been based on geo-political considerations. Does it mean that recognition as refugees and entitlement for assistance is dependent on the country of origin of refugees? Does it mean that in future also if refugees originate from Bangladesh and Sri Lanka they would be given
recognition as refugees, as it has been done in the past and provided with assistance? There is no clear policy in this regard and perhaps such a decision will be taken on political considerations and expediency in the given situation. But one thing can be clearly stated that it would be increasingly difficult to take decision in future as to whether to allow assistance or not in the absence of objective criteria. Recognition as such of refugees may be a precondition for refugee assistance in the normal circumstances but when recognition itself is based on political expediency and not based on any legislation is it really consistent to link recognition as precondition for refugee assistance? It appears to be inconsistent to deny assistance when the refugees like Afghans are being treated as de facto refugees and are recognised Afghans as refugees and its providing assistance but in the case of Bhutanese refugees no assistance is being provided either by the UNHCR or by the Government.

In general, the Government considers the stay of refugees in India as a temporary phase and they are expected to go back to their country upon return of normalcy. As the Government considers the stay of refugees temporary the need for shelter is met in temporary camps, temporary structures, government buildings, etc. Provision of drinking water, sanitation facilities, and medical facilities are also met. Refugees are provided with free rations, and other essential requirements, like clothing, utensils, blankets, etc. In addition, refugees are provided with cash grants. The government also takes special care to meet the need of refugee women and children in a limited way. Special nutrition programmes are launched to meet the need of the expecting mothers and malnourished children. Vocational training is also arranged for refugee women so that they can acquire some skills and can earn some living. For recreation, radio sets are also provided in camps. Certain refugee
camps, which are in the nature of permanent camps, have fully developed infrastructure with permanent buildings, electricity, drinking water, sewage system, elementary schools and hospitals. Temporary arrangements of stay for refugees in camps over the years acquire a permanent character as it happened in the case of Chakma refugees who were staying in 6 camps in Tripura for more than ten years. Unless the facilities in such temporary camps are constantly augmented life becomes difficult with the passage of time. In any refugee situation in India, the local population has played a very important role. In major refugee situations like the refugees from Bangladesh in 1971 an overwhelming response from the population of the entire country could be seen. The Government always encourages such participation of the population in providing assistance to the refugees. The refugees are, however, not permitted to work in India. But, some of the refugees do manage to get work and earn some living to supplement the assistance provided by the Government.

Refugee repatriation as a concept and process has evolved over the years and helped in finding durable solution for millions of refugees. This is the solution, which needs to be pursued vigorously with the cooperation of all concerned. It will require intense involvement and commitment of the country of origin, the country of asylum and the international community. The international community has also to address the causes of the refugee flow and adopt a pro-active role to bring about peace and reconciliation. Adequate and timely reintegration assistance play a very important role in the successful repatriation and therefore, should get the due attention of the international community.

The necessary reformulation of international refugee law can be accomplished both in the working out of particular crises and the articulation of generally applicable rules and procedures. It should be possible to elaborate a set of principles and procedures that states are
ABSTRACT

obligated to follow both to prevent and ameliorate refugee flow. This is precisely the sort of elaboration that ought to occur, but it is being addressed only within the current conceptual framework, which retards and ultimately prevents such development. Even the Federal Republic, while noting the refugee flow has become a problem of international order, assumes the present legal framework is suitable. This assumption must be reversed before significant progress can be achieved.

The virtue of any legal system must be how well it responds to the realities of conflict and change. International refugee law, born of a time when the critical refugee question before the international community was how to revive victims of World War II, has not accommodated the contemporary realities of mass exodus. Now that refugee flow is pre-eminently a matter of economics and governmental political strategies, the question is how, in such a world, does the international community best discourage such strategies, yet maximize asylum opportunities. The answer does not require abandoning the values currently embodied by the human rights principles of international refugee law. Refugee crises are nationally infused with the rhetoric of human rights. But we must recognize that these human rights principles embody ends, not means, and their misuse as the exclusive legal basis for dealing with mass exodus leads only to unproductive rhetoric and recrimination.

Refugee flow is a problem of inter-state relations. This is the crux of the refugee problem today. Accordingly, a truly relevant and secure foundation for refugee law must be based on inter-state principle in India. Building on traditional principles of inter-state obligation also accommodates the realities of domestic politics in asylum states. Where the problem of the refugee is perceived today as clear and present danger. Imprecations about the human rights aspects of refugee flows are falling on deaf ears, as potential asylum states retrench and
ABSTRACT

withdraw. It is time to manage the problem instead of expressing forlorn faith that the better side of human nature will save a generally desperate situation. There is a humane task to be done. Doing, not preaching will be affirmation enough.

In this conspectus, it is evident that the time is ripe for South Asia and India to abdicate their pusillanimity and xenophobic proclivity. Must dispel the sense of precarity among the refugees and address their problems and repinements while demonstrating the political temerity of having a law on refugees at national and regional levels as well as acceding to the minimalist international protection available to the refugees under 1951 Convention Relating to the Status of Refugees with its Additional Protocol of 1967 in the interest of humanity. However, prior to such policy and legislation, national governments of South Asia must evolve and conceptualise some sort of unanimity, wherewithal and apparatus to arrive at a Regional Covenant dealing with refugees of the sub-continent.
INTERNATIONAL REFUGEE LAW AND HUMAN RIGHTS
A Study of the Status of Refugees in North-East India

THESIS
SUBMITTED FOR THE AWARD OF THE DEGREE OF
Doctor of Philosophy
IN
LAW

BY
NAFEES AHMAD

DEPARTMENT OF LAW
ALIGARH MUSLIM UNIVERSITY
ALIGARH (INDIA)
2004
Dedicated to
my Parents
and
my Life Companion
Aaisha Khan
and
my Son
Shezan
Whose Love knows no Limits
ACKNOWLEDGEMENTS

Gratitude is a noble narration and reverential response of one's soul to kindness grace and help magnanimously rendered by another and its acknowledgement is a duty, probity and joyance. So I express briefly my debt to those who bestowed upon me their valuable time and support in different colours and shades which enriched and illuminated the canvass of my intellectual inquisition and eventual completion of the present study.

All Encomiums, Genuflexions and Prostrations to Almighty Allah who is the Most Merciful and Most Benevolent and the Messenger of Allah, the Prophet Muhammad (PBUH) whose Mercy, Benedictions and Blessings have enabled me to accomplish this study in its present visage.

My first obligation, irredeemable by oral averments, is to my ever venerable and pristine institution of educational excellence and currently convulsive – the Aligarh Muslim University, Aligarh – yet august, majestic, a synchronisation of tradition and modernity, and ubiquity with unity with vast verdant campus and the Selection Committee whose generous choice has gained, gleaned and glorified for me a humble hub in the perennial procession of AMU Academicians. Who am I in the cosmogony of legal luminations, juridical jurisprudence and justices of justice but an infant vying for concern, care and compassion, a pilgrim peregrinating to pursue human rights, human dignity and human justice and a friend fanning the flames of equality, liberty and fraternity to the global refugee community often dismissed, deprived and denied the basic conditions of life deviant to divinity, equality and universality of human rights. I shall ever remain grateful to you for the diligent distinction imbued in your decision.

I express my deepest sense of overflowing gratitude, overwhelming obligation and sublime submission to Prof. (Dr.) Akhlaq Ahmad Sahib, Dean & Chairman, Faculty of Law, AMU, Aligarh. I also
navigate my nethermost feeling of acknowledgment, avouchment and appreciation with all humility at my command to you Sir for having bestowed upon me a brolly of guidance, inspiration and support which was the bedrock of the present research work. Prof. Akhlaq Ahmad Sahib – Sir – with his astute, liberal, meticulous and unobtrusive style of functioning has granted me leverage to handle and attend things in my own stride yet he was always at hand to lend an audience and show me way out of the maze and legal labyrinth. It was his legal gumption, which made the supplication of this research work possible despite his Administrative engagements, Proctorial pre-occupations and persuasions of infrastructural emplacements in and around the Faculty of Law. He has provided me an indelible compass of thoughts, legal scholarship, judicial sagacity and juridical statesmanship coupled with compassionate light and every stage of this research study otherwise this work would not have witnessed the light of the day. Kindly, Sir, accept my heart-felt obeisance and thanks. Once again thank you Sir! Thank you very much.

I am at loss of words in expressing my indebtedness and gratitude to my learned teacher Prof. (Dr.) Saleem Akhtar, Ex-Dean & Chairman, Department of Law, A.M.U., Aligarh who has guided and navigated my carrier by shaping my confidence, art of pedagogy and research. He has encouraged me a lot and admonished at the same time, which proved to be an actuating force. I pay my regards for his able stewardship.

I pay my heart melt homage to my learned teacher late Prof. Shareeful Hasan Farooqui, late Prof. Mustafa Ali Khan, late Mr. Mushir Alam, (Reader) and late Mr. Shahiduddin, (Lecturer), Department of Law, AMU, Aligarh for their teaching, care and guardianship.

I put to recognition my reverence and regards to Prof. Ghulam Ahmad Khan, Prof. M. Zakaria Siddiqui, Prof. Anwarul Yaqin and Prof. Nazeer Hasan Khan for their academic excellence, analytical
appreciation and pragmatic pursuits provided during teaching and tutorials.

I am grateful to Prof. (Dr.) Mohd. Shabbir, Department of Law & Incharge, Dr. Ambedkar Chair of Legal Studies and Research for his compassion and cooperation.

I ventilate my sense of obligation to my learned teacher Prof. Ishaq Qureshi, Department of Law, A.M.U., Aligarh who has always been there to provide me his support and sustenance and immensely helped me in my academic pursuits. He has provided me sage, sapience and wisdom in action. He has always been a source of inspiration to me.

I am beholden to my revered teachers Dr. M. Afzal Wani, Reader and Mr. Javed Talib, Reader, Department of Law for their being affable and constantly supportive in my academic endeavours.

I am thankful to my learned teachers Dr. Faizan Mustafa, Reader, and Dr. Iqbal Ali Khan, Reader, Department of Law, for their encouragement and cooperation during my research work.

I register my thanks to my esteemed teachers Dr. Zaheeruddin, Dr. Zubair A. Khan, Dr. Mohd. Shakeel Ahmad Samdani, Dr. Badar Ahmad, Dr. Mohd. Ashraf, Mr. Zakiuddin Khairoowala and Mr. Fareed Zaidi for their valuable cooperation and support during the course of this study.

I put to record my sincere acknowledgements to Miss Sumbul Rizvi Khan, Advocate, High Court of Delhi and Senior Legal Protection Officer, UNHCR, New Delhi, Prof. B.S. Chimni, Centre for International Legal Studies, J.N.U, New Delhi, Prof. Manoj Kumar Sinha, Indian Society of International Law, New Delhi, Prof. K.Vijay Kumar, Refugee Chair, National Law School of India University, Bangalore and Dr. Umesh Kadam, Legal Protection Officer, International Committee of Red Cross (ICRC), New Delhi for their scholarly suggestions, intellectual
ACKNOWLEDGEMENTS

deliberations and pragmatic advices which proved to be immensely useful for the instant study.

My grateful acknowledgements to my Babuji Mr. Naseeruddin Ansari and Ma Mrs. Sabara Ahmad Ansari for their love, guidance and benedictions from cradle to this day and inculcating a sense of aplomb coupled with self-reliance.

I put to record my requital to my Papa Mr. Wajid Ali Khan & Ammi Mrs. Asfand Ara Khan for their eulogium, encomiums, everlasting moral support and academic avouchment.

I feel being privileged in extending my sense of ovation to my glittering galaxy of pals and colleagues Dr. Zafar Eqbal, Dr. Mohd. Wasim Ali, Mr. Hashmat Ali Khan, Mr. Mohibul Haque, Mr. Narendra Pal Singh Tomar, Mr. Ishrat Husain and Dr. Kalimullah, Dr. Rahmatullah Dr. F.R Gauhar and Dr. (Miss) Tanzeem Fatima for giving me emotional as well as moral support at every turn of life in the Department especially, during this study. They have always provided me a spirit of camaraderie, care and comfort. Indeed, without you guys the life would not have been as wonderful and meaningful as it is. Yes, I ever find all of you as my best friends.

I welcome and appreciate the magnanimity, assiduity and avidity of my life companion Aaisha Khan who read the proofs infallibly and taken care of everything from dawn to dusk despite being preoccupied with her studies. Nevertheless, she honoured every wish of mine during the course of this study. The chirping, giggling and tickling of Shezie (Shezan), my son, have filled in me fragrance of happiness who maintained my nerve and verve and enjoyed the cozy laps of his Nanijani & Khalajani.

I acknowledge the good wishes, help and support rendered by a coterie of cronies Miss Arjuman Khan, Mr. Shadab Ansari, Mr. Majid Ali
ACKNOWLEDGEMENTS

Khan, Miss Seema Khan, and specially Mr. Shavez Ansari who has really done a lot for me during my entire research engagement.

I am also grateful to Mr. S. Mehrul Hasan, Mr. Ali Nawaz Zaidi, Mr. Masood Ahmad, Mr. S. Kashif, Mr. Aneesul Haque and Mr. Shashank Sharma for their help and cooperation in the completion of this work.

I whole-heartedly express my thanks to Mr. Abdul Quadir who typed entire thesis immaculately and ably. I applaud his keen interest in my research work and cooperation rendered during the completion of this study.

And Finally, I am profoundly thankful to the office staff, Faculty of Law, Naeem Bhai, Shareef Bhai, Zubair Bhai, Yaseen Bhai and Dear Shahnawaz. I am also thankful to Seminar Staff Anwar Bhai, Roshan Bhai, Sabir Bhai, Farhat, Arshad and Rehan for their valuable support, help and cooperation in the completion of the present study.

I am a human being and nothing pertaining to a human is alien to me. So I am thankful to those also who could not get a mention here. Once again, thanks to all of you for making it materialised.

Commissions & Omissions are mine.

(Naeem Ahmad)
CONTENTS

ACKNOWLEDGEMENT i–iv

INTRODUCTION 1–25

CHAPTER-I 26–69

REFUGEE LAW: HISTORICAL RETROSPECT

1. AN OVERVIEW
2. THE CONCEPTUAL FRAMEWORK
   A. International Instruments
   B. Definitional Dilemma: Perspectives
      (a) Before 1951
         (i) Juridical
         (ii) Social
         (iii) Individualist
         (iv) International
      (b) After 1951
         (i) The Statute of UNHCR and the Mandate thereunder
         (ii) The 1951 Refugee Convention
   C. The 1967 Additional Protocol
   D. The Impact of the Additional Protocol on Refugees

3. EVOLUTION, DEVELOPMENT AND EXPANSION OF THE REFUGEE CONCEPT
   A. Cumulative Competence of the United Nations High Commissioner For Refugees (hereinafter referred to as UNHCR)
   B. U.N. Convention on Territorial Asylum

4. DEFINITION OF REFUGEE UNDER VARIOUS REGIONAL AND RELATED REGIMES
   A. The Organisation of African Unity (OAU)
   B. The Organisation of American States (OAS)
   C. The Council of Europe Instruments
   D. The Bangkok Principles, 1966
   E. The Cartagena Declaration, 1984

5. REFUGEES UNDER MUNICIPAL JURISDICTIONS
   F. United States of America (USA)
   G. Australia
   H. Canada
   I. United Kingdom (U.K.)
   J. Switzerland
   K. Asia
   L. South Asia
   M. Refugee Status in India

6. RECAPITULATION
CHAPTER-II 70 – 120

HUMAN DISPLACEMENT AND HUMAN RIGHTS

1. AN OVERVIEW
2. THE REFUGEE CONCEPT UNDER INTERNATIONAL LAW
3. LAW OF ASYLUM AND NON-REFOULEMENT
   A. Admission and Asylum
   B. Non-refoulement and Other Rights
4. INTERNATIONAL DISPLACEMENT
   A. Sri Lanka’s Tamil Refugees in India
   B. Myanmar’s Chin Refugees in India
   C. Bangladesh’s Chakma Refugees in India
   D. Tibetan Refugees in India
   E. Bhutanese Refugees in India
   F. Afghan Refugees in India
   G. The Palestinian Refugees
5. NATIONAL DISPLACEMENT
   Refugees From Kashmir
6. ENVIRONMENTAL DISPLACEMENT
   A. The Minimalists
   B. The Maximalists
   C. Environmental Degradation and Development Process
   D. Dichotomy between Refugees and Migrants
7. PROTECTION TO REFUGEES UNDER HUMAN RIGHTS TREATIES
8. PROTECTION TO REFUGEES UNDER CUSTOMARY INTERNATIONAL LAW
9. THE CONTEMPORARY REFUGEE DILEMMA
10. RECAPITULATION

CHAPTER-III 121 – 190

DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

1. AN OVERVIEW
2. REFUGEES AND HUMAN RIGHTS
3. SOVEREIGNTY AND HUMAN RIGHTS
4. PERSECUTION AND THE LAW OF HUMAN RIGHTS
5. HUMAN RIGHTS LAW, HUMANITARIAN LAW AND REFUGEE LAW: A SYNTHESIS
6. DETERMINATION OF REFUGEE STATUS
   A. Criteria for the Determination of the Refugee Status
      (i) General Principles
      (ii) Interpretation of terms.
         a. “events occurring before 1 January 1951”
b. "well-founded fear of being persecuted"
c. "for reasons of race, religion, nationality, membership of a particular social group or political opinion"
d. "is outside the country of his nationality"
e. "and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country"
f. "or who, not having a nationality and being outside the country of his former habitual residence as result of such events, is unable or, owing to such fear, is unwilling to return to it"

(iii) Dual or Multiple Nationality
(iv) Geographical Scope
(v) Exclusion of Certain Persons
   a. Persons already receiving United Nations Protection or Assistance
   b. Persons not considered to be in need of international protection
   c. Persons considered not to be deserving of international protection

(vi) Special Category of Persons
   (a) War Refugees
   (b) Fugitives and Evaders of Conscription
   (c) Persons having resorted to force or committed acts of violence

(vii) The Principle of Family Unity & Re-unification

B. Procedure for the Determination of Refugee Status
   (i) General Principles
   (ii) Establishing the Facts
   (iii) Cases of Special Problems in Establishing the Facts

7. TERMINATION OF REFUGEE STATUS
8. DESIDERATA FOR BETTER GUARANTEE OF HUMAN RIGHTS
9. RECAPITULATION

CHAPTER-IV

INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

1. AN OVERVIEW
2. THE DEFINITION OF THE TERM INTERNALLY DISPLACED PERSONS
   A. Efforts to find a Working Definition for the term Internally Displaced Persons
   B. Should National and Ecological Disasters be Included?
CONTENTS

C. Internally Displaced Persons: Is it a mass phenomenon?

3. INTERNALLY DISPLACED PERSONS: LEGAL DEFICIENCIES
   A. The Law Applicable to Internally Displaced Persons
   B. The Existing Law needs to be extended

4. THE RIGHT TO A HOME AS THE BASIS OF AN INTERNATIONAL PROTECTION REGIME FOR INTERNALLY DISPLACED PERSONS

5. INTERNATIONAL PROTECTION FOR INTERNALLY DISPLACED PERSONS AND ITS IMPLEMENTATION
   A. The Role of UN, ICRC and UNHCR in providing International Protection to Internally Displaced Persons
   B. International Instruments for Protection and Aid to Internally Displaced Persons in the Area of Human Rights Law, International Humanitarian Law and International Refugee Law
   C. Humanitarian Intervention, Right to Interfere or Right to Provide Humanitarian Aid to Internally Displaced Persons: Scope and Extent

6. RECAPITULATION

CHAPTER -V

NATIONALITY AND STATELESSNESS

1. AN OVERVIEW

2. INTERNATIONAL LAW ON STATELESSNESS: HISTORICAL DEVELOPMENT

3. NATIONALITY AND STATELESSNESS: PROBLEMS AND PROSPECTS
   A. Open Questions in the context of International Law
   B. Nationality and Statelessness: Definition and Meaning


5. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)'S INVOLVEMENT IN NATIONALITY AND STATELESSNESS MATTERS

6. STATELESSNESS: A GLOBAL VIEW
   A. Statelessness in South Asia
   B. Statelessness in North East India and National Legal Protection

7. DIVINE LAWS ON NATIONALITY AND STATELESSNESS

8. RECAPITULATION
CHAPTER-VI

STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

1. AN OVERVIEW
2. STATE RESPONSIBILITY
   A. The Responsibility Towards Individuals
      a) Refugee: Term and its Scope
      b) Action Imputable to the State
      c) Violation of an International Obligation
      d) The Legal Consequences Flowing from a Violation of Human Rights Obligation
         (i) Individual Human Rights Entitlements under International Law
         (ii) An Individual Right to Reparation
      e) A Mass-Scale Problem – The Refugees
   B. The Responsibility Towards States
      a) States Directly Injured
         (i) Human Rights Obligations
         (ii) Prohibitions Regarding Population
         (iii) Causality
         (iv) Cessation and Reparation
         (v) Precept and Practice
      b) State Acting as Guardians of International Legality
   C. The Responsibility Towards the International Community
3. LIABILITY WITH ACCOUNTABILITY
4. RECAPITULATION

CHAPTER-VII

THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

1. AN OVERVIEW
2. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW
   A. Fundamental Principles of International Law
   B. Basic Standards of Treatments
   C. Rights under the Convention
   D. The Principle of Humanity
   E. The Principle of Rule of Law
   F. Permanent Solutions
3. THE INTERNATIONAL REFUGEE REGIME
   A. The origins of the contemporary international refugee’s regime
      (i) Organizational Expansion into the Third World
      (ii) The Refugees Outflows from Western Rivalry and Regional Conflicts
CONTENTS

Regional Conflicts
(iii) Refugee’s Problems in the Post-Cold War Era

B. The Challenges Before UNHCR: Institutional
Constraints and Potential Problems
(i) The challenges of Working in Internal Conflicts
(ii) The Inadequacy of the Existing Resource Base
(iii) The Inadequacy of Existing Mandate in
International Humanitarian Law

C. The Way Ahead: The Need For New Alliance and New
Actors
(i) Department of Humanitarian Affairs
(ii) Co-coordinating Relief and Development
(iii) Greater Human Rights Monitoring and
Enforcement
(iv) Military Involvement in Future Refugee
Emergencies

D. Future International Cooperation and the Global
Refugee Problem

4. RECAPITULATION

CHAPTER-VIII

THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

1. AN OVERVIEW
2. RESORTING TO HUMAN RIGHTS TO ENHANCE THE PROTECTION OF REFUGEES
3. NATIONAL HUMAN RIGHTS INSTITUTIONS AND REFUGEE PROTECTION
4. REFUGEE ASSISTANCE AND INDIA’S POLICY, PRINCIPLE AND PRACTICE
   A. India’s Refugee Assistance Policy
   B. Tibetan Refugees
   C. Bangladesh Refugees
      i) Medical Relief and Health Care
      ii) Civil Supplies
      iii) Education
      iv) Assistance inter- alia Foreign Assistance
   D. Sri Lankan Refugees
   E. The Chakma Refugees
      i) The Genesis of the Crises
      ii) Relief Assistance to Chakma Refugees
      iii) The Repatriation of Chakma Refugees
5. THE UNATTENDED REFUGEES IN INDIA
   A. Afghan Refugees
   B. Bhutanese Refugees
6. RECAPITULATION
CHAPTER-IX

INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. AN OVERVIEW
2. INTERNATIONAL ASSISTANCE FOR REFUGEES
3. THE ESTABLISHMENT OF THE UNHCR
   A. The Refugee Crisis
   B. The Role of the UNHCR
   C. Jurisdiction and Persons of Concern
   D. Statute, Mandate and Operation Framework
   E. Responsibilities of the UNHCR
   F. Resources and Administration
   G. How UNHCR is funded?
4. THE AID, ASSISTANCE AND ACTION OF THE UNHCR
   A. The Policy of Material Aid and Assistance
   B. Main Aspects of the UNHCR Material Aid and Assistance
   C. Co-operation and Co-ordination with other Agencies
   D. Some Recent Aspects of Aid and Assistance
5. THE TERRITORIAL AID AND ASSISTANCE PROGRAMMES OF THE UNHCR
   A. Africa
   B. America and the Caribbean
   C. Europe
   D. Asia and Oceana
   E. South West Asia, North Africa and the Middle East
6. THE ROLE OF INTER-GOVERNMENTAL ORGANISATIONS
7. THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS
8. REFUGEES AND INTERNATIONAL RELATIONS
9. UNHCR ON THE PRESENT REFUGEE SITUATIONS
10. RECAPITULATION

CHAPTER-X

THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

1. AN OVERVIEW
2. THE STATUS OF REFUGEES IN THE

...
CONTENTS

COUNTRY OF ASYLUM
A. Travel Documents for Refugees
B. Right of Family re-unification

3. THE NATIONAL IMPLEMENTATION OF THE INTERNATIONAL NORMS OF REFUGEE LAW

4. THE INDIAN PRACTICE OF INTERNATIONAL REFUGEE LAW
A. Subject Matter Relating to International Convention -
   B. Treatment of Persons Granted Asylum in India -
      (a) National treatment
         (i) Equal Protection of Law
         (ii) Freedom of Religion
         (iii) Right to Life and Liberty
         (iv) Right to Social Security
         (v) Educational Rights
      (b) Treatment to foreigners
         (i) Right to Employment
         (ii) Freedom of Movement and Residence
         (iii) Right to Housing
         (iv) Right to Form Association
         (v) Right to Property
      (c) Special treatment
         (i) Exemption From Penalties
         (ii) Identity and Travel Documents

5. THE RESPONSE OF THE INDIAN JUDICIAL SYSTEM TO THE REFUGEE PROBLEM
A. The Boarder, Immigration Authorities and the Police
B. Administrative Policies and Directions
C. The Courts
D. Legal Framework For Refugee Protection in India

6. THE LEGAL POSITION VIS-À-VIS SPECIFIC INTERNATIONAL REFUGEE LAW ISSUES IN INDIA
   (A) Refugees' Definition
   (B) Admission
   (C) Non-Refoulement
   (D) Illegal Entry
   (E) Non-Discrimination
   (F) Repatriation

7. CHALLENGES OF VOLUNTARY REPATRIATION AND NEW INITIATIVES
A. Return in Safety and with dignity
B. The Voluntary Character of Repatriation

THESIS
VIII
CONTENTS

C. Logistics and Administrative Measures
D. Post-Return Monitoring and Re-integration Assistance

8. CO-OPERATION WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEE
9. THE VULNERABILITY OF ASYLUM-SEEKERS IN INDIA
10. RECAPITULATION

CONCLUSION
SUGGESTOPAEDIA
TABLE OF CASES
BIBLIOGRAPHY
APPENDICES
APPENDIX-I
STATUE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
APPENDIX-II
U.N. CONVENTION RELATING TO THE STATUS OF REFUGEES, 1951
APPENDIX-III
ADDITIONAL PROTOCOL RELATING TO THE STATUS OF REFUGEES OF 31 JANUARY 1967
APPENDIX-IV
PRINCIPLES CONCERNING TREATMENT OF REFUGEES
APPENDIX-V
THE CARTAGENA DECLARATION ON REFUGEES, 1984
APPENDIX-VI
GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT
APPENDIX-VII
MODEL NATIONAL LAW ON REFUGEES
APPENDIX-VIII
LEGISLATIONS PASSED DURING AND AFTER 1950

ix
INTRODUCTION
INTRODUCTION

The human graduation to civilization was central to its inception and *primum mobile* of its existential survival on this planet. Subsequently, human needs and development propelled the universality of a better *modus vivendi* in deference to the basic paradigms and principles of equality, liberty and fraternity. Therefore, human mobility has become quintessential in a society adhered to certain values and norms of rule of law, democracy and human rights. Thus, human mobility is dictated by certain positive and negative factors. These factors have produced some specific groups of people having peculiar requirements. At the positive side of argument, migration takes place due to economic reasons and in search of employment from rural to urban places, which is, generally, known as *economic migration*. On the other hand, at the negative side of the argument human exodus from one place to another is caused by the rapid and reckless inceptives and enterprises taken by the state and its instrumentalities.

The humanity since its existence on this planet has been a story of power struggles, confrontations and armed conflicts between nations, peoples and individuals which rendered millions of people homeless and forced to seek shelter in another country or another place within the country. The refugee problem is a phenomenon of our age. It is the product not only of the most destructive and diabolical wars of history, two World Wars, of modern dictatorial regimes, and of the national awakening of the peoples, but also of the closed frontiers which was a characteristic of the 20th century. There were refugees in earlier centuries but no refugee problem in the modern sense, for the involuntary migrant could merge with those who by choice sought new homes elsewhere. In our time, the refugee problem has been distinguished from refugee movements of earlier days by its scope, variety of causes, and difficulty of solution.

An ideogenetic attempt has been made in this study while examining and analysing the international refugee law issues in the light of contemporary refugee problems in India in general and in northeastern part of the country in
particular. The study of refugee crises in its entirety based on present day needs and re-formulation of international refugee definition, laws (substantive and procedural) and instruments based on existing realities coupled with a catena of pragmatic suggestions have been put forward for humanitarian and legal perusal so that a legal surgical exercise could be completed for once and all. The present study has been completed in ten chapters apart from introduction, conclusion, suggestions and appendixes therewith.

Modern democracies espouse these actions in the name of welfare, human rights, social justice, irrigation, rural and urban development and in the garb of affirmative action such as swift industrialization, indiscriminate colonization, noxious nuclear catastrophes, obnoxious environmental pollution, construction of big dams, tampering with the eco-systems, atomic radio activation, morbid gaseous emissions, inconsiderate deforestation, depletion of ozone layer, industrial disasters, hexicological imbalances and perfunctory mining activities in the seismological prone areas are the few manifestations of human mobility & displacement apart from terrorism, insurgency, civil strife, cultural intolerance and armed conflict of national and international ramifications suscitated by a terra firma of persecution owing to race, religion, nationality, political opinion, ethnic tensions, socio-economic disparities, membership of a social group, out of national residence and lack of national legal protection.

Hence, there is no dearth of sedimentary instances, which have aggravated human sufferance. Industrialization has disturbed the sociometry and produced familial instability and social disorder. Deforestation and industrial accidents like Chernobyl Atomic disaster in Russia, dropping of atom bomb on Hiroshima and Nagasaki in Japan and Union Carbide Corporation accident at Bhopal in India etc. have led to global warming resulting in the depletion of ozone layer thereby countries like Maldev and other Island Nations may not have their territorial existence in future. India’s littoral area is also shrinking due to the same reasons. Big dams like Tehri Dam project and
INTRODUCTION

Narmada Valley project etc have caused a huge human displacement. Militancy and insurgency in Jammu and Kashmir and North East India have displaced a large chunk of local population forcing them to move in other parts within the country. These developments have contributed the human displacement in various parts of the world making millions of people homeless and stateless.

Modern refugee movements, beginning in Europe and subsequently becoming world-wide, have given rise to a new class of people who are homeless and stateless and who live in a condition of constant precarity which erodes human dignity. They have caused grave political and economic problems for the countries of temporary reception, problems which have proved burdensome for the administrative facilities and financial resources of private organizations and national governments. The refugee problem has, thus, transcended national jurisdiction and institutions.

In South Asia, waves of people flow through porous borders into neighbouring states to swell trans-border population movement of refugees and migrants. In these post-colonial nation states in the making, people cross over to neighbouring states to escape violence or the denial of basic human rights, including the right to food, water and shelter.

In India there are 51,000 Chakmas and 56,000 Sri Lankan refugees. In Nepal, there are 75,000 southern Bhutanese of Nepalese origin who fled ethnic persecution. A million people of Bangladeshi origin have got lost in the by lanes of Karachi, and 2,38,000 unwanted Biharis are “stateless” in Bangladesh. And as many as 47,000 Rohingya-Burmese refugees in Bangladesh await imposed repatriation, more are fleeing Burma. In Sri Lanka a million or more are internally displaced.

Who is a political refugee and who is an economic refugee or migrant? Who is voluntary and who is an involuntary refugee or migrant? Are issues of utmost significance and are to be probed in. It is a distinction not easy to make in a region where migration is complicated by the fact that
governments or majority groups do systematically deny relief and violate the human rights of these affected communities. The influx of 40,000 Chin-Burmese into Mizoram is rooted in the traditional migratory routes of trans-border communities in the Tri-junction of Bangladesh-Burma-India. But equally, ethnic Chins in Burma are victims of persecution by majoritarian Burmese state. It is an army of illegals beyond the reach of law and thus protection, which has been criminalized due to want of a legal right to stay. Even those who fall within the internationally accepted definition of refugees – who flee owing to well-founded fear of being persecuted – find protection is less an issue of law and policy than political judgement. It is indeed a matter of great distress that no south Asian state signed the UN Convention on Status of Refugees.

The Africa and the Americas have been trailblazers and harbingers in crafting a regional response to the situation and problems of refugees and migrants in their regions. But in Asia and especially South Asia, few social scientists or policy makers have cared to tackle the problem of trans-border influx of illegals. This complete juristic apathy has resulted in non-availability of any substantial literature on the subject.

Furthermore, while in its earlier stages the refugee problem was seen as a temporary and limited phenomenon and recurring. In response to this challenge the international community has developed a complex mechanism of world-wide cooperation involving a tripartite partnership of national governments, private agencies, and international organisations; no longer confined by strict definition of the “refugee”, it is prepared to approach the problem in all its various aspects-political, social, economic and humanitarian. Thus, the role of United Nations High Commission for Refugees (UNHCR) has assumed an added significance.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has been charged with the functions of providing international protection to refugees, under the auspices of the United Nations, and of seeking
solutions to refugees, under the auspices of the United Nations, and of seeking solutions to refugee problems. These functions include ensuring, with and through governments, the legal and practical protection of refugees, mobilizing and coordinating the deployment of the resources required to ensure their survival and well-being, and promoting conditions in countries of origin that will be conducive to the ideal solution of voluntary repatriation and help in preventing further refugee problems.

Since the creation of Bangladesh and Burma, infiltration of their people, particularly in Assam and Northeast India is continuing unabated despite all precautions and talk of constructing a barbed wire fencing along the Indo-Bangladesh border. These people are known as Chakma-Hojang, Chins and Rohingyaas refugees living in the Northeastern region of India. They are languishing between India, Bangladesh and Burma. Their country of origin does not show any inclination to welcome them back. Even some of them were recently repatriated to Bangladesh and Burma.

Although, those who participated in the Bangladesh War and supported Pakistan, which led to the independence of Bangladesh, are still stranded in Bangladesh and they also wish to leave for Pakistan but later is quite reluctant due to its own domestic political ramifications. Moreover, UNHCR has been denied its due role in the entire episode and no respect is paid to the International Refugee Conventions and International Legal Standards.

While the vulnerable Dhubri and Cachar-Karimganj districts of Assam are the favourite entry points for infiltration, Kishenganj sub-division of Katihar district of Bihar and eastern borders of the 24 Parganas, Murshidabad and Nadia district of West Bengal are among the more favoured areas for both Bangladeshis and so-called Biharis, that is non-Bengali speaking Muslims of Bangladesh who have been stranded in that country and should have been transferred to Pakistan after the formation of Bangladesh.
INTRODUCTION

However, the response of Indian Government on such an important issue has been far from satisfactory. Following will throw ample light in this regard:

"---a good number of foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on or after March 25, 1971 by taking advantage of the circumstances of such migration and their ethnic similarities and other connection with the people of India and without having in their possession any lawful authority to do so illegally remained in India---"

The paragraph quoted above is actually from the Preamble of Illegal Migrants (Determination by Tribunals) Bill, 1983, passed by the Lok Sabha on December 15, 1983 the Rajya Sabha on December 19, 1983, and assented to by the President on December 25, 1983. It is now an Act of Parliament.

This Bill has been passed in order "to provide for the establishment of the Tribunals for the determination, in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India and for matters connected therewith or incidental thereto" as "the continuation of such foreigners in India is detrimental to the interest of the public of India" and "on account of the number of such foreigners and the manner in which such foreigners have clandestinely been trying to pass off as a citizen of India...".

The migration of East Bengalis, mostly Muslims, to Assam, particularly fertile Brahmaputra Valley, began on a large scale under the patronage of Sir Mohd. Saadullah, PM (CM) of Assam after the 1937 elections. But census reports in the earlier decades too had noticed a sharp-rise in the population in many districts of Assam, for more than what natural reasons would warrant.

The 1911 census had estimated 882,068 immigrants in Assam. The 1921 census said 1,290,157 immigrants while 1931 census revealed 1,408,763 persons in Assam who were born outside. There were no detailed tabulation in 1941 but, in 1951, there were 1,344,003, immigrants to 45,287 immigrants from Assam. Out of these immigrants, who constituted 14.4 percent of the total
INTRODUCTION

population, 833,299 were born in Pakistan, 63,301 in countries beyond India and the rest in other states and censured in Assam (These extracts from the Census Reports have been quoted by the All Assam Students’ Union (AASU) in its publication.)

The infiltration in Assam (India) has been taking place not only from Bangladesh, but also from Nepal. A very large number of Nepalese regularly leave their country in search of work and in this state, they settle along the foothills and usually take to either farming or cattle rising.

The British had also encouraged the more educated Bengali Hindus to settle in Assam for about a hundred years till independence, and no one finds that a sizable segment of the population in Assam consists of Bengali Hindus. Moreover, the continuous and what appears to be a planned immigration by Bangladeshis into Assam both Muslims and Hindus, infiltration by the Nepalese and even people from Burma, coupled with the strained relationship between Assamese Hindus and Bengali Hindus, created a fear psychosis among the Assamese that they would soon become a minority community in their own state and their language and culture would be suppressed by the non-Assamese people. This gave birth to such organisations as the All Assam Students’ Union (AASU), All Assam Ganga Sangram Parishad (AAGSP) etc. and also to the language riots in 1960 and 1970, and, a sporadic and ubiquitous ethnic carnage from 1980 to 1996, which is still going on in the entire Northeastern India.

The Chakmas live in fear and face intimidation and threats from the Arunachalese. The concern is growing over their future. But one must take into consideration too, the concerns of the local people who find themselves saddled with a problem which they did not create, with a group of people they do not want, with the Indian government unwilling to push out the settler, and a growing anger at their own helplessness in changing the situation. The conditions appear right for a fresh confrontation but cooler heads must counsel restraints and negotiations.
INTRODUCTION

The Chin nationals, recognised by the United Nations as “indigenous peoples”, fled their homeland in Burma to escape widespread and systematic persecution at the hands of the country’s ruling junta, the State Law and Order Restoration Council (SLORC). The atrocious human rights record of SLORC regime requires no reiteration here. Often referred to as one of the worst human rights abuses in the world, the SLORC is repeatedly admonished by the international community.

UN Special Rapporteur to Myanmar (Burma), Yozo Yakota, has documented the absence of any progress towards SLORC compliance with UN General Assembly Resolutions and UN Commission on Human Rights Resolutions. Since the well-publicized pogrom of pro-democracy activists in 1988, fear of forced labour, arbitrary detention extra-judicial executions, and torture drove the Chins in ever increasing numbers from Burma to Mizoram in India.

THE PRESENT STUDY

In this backdrop, it is axiomatic that no-major work has been done with regard to the plight, agonies and durable and permanent solutions of the refugee problems. They are destined to carry the stigma of being refugees. They are victim of cynicism of Indian government at one hand and on the other no international attention is being paid in a pragmatic sense.

So it is ventured upon to cajole this terra incognita of International Refugee Law while keeping in view International Human Rights Norms and Standards. This study will limit itself mainly to the refugees in North East India and their problems in the light of contemporary International Law Issues and International Refugee Law in the age of Human Rights.

But as long as man remains intolerant of his fellow men, flight will continue to be the only alternative of the persecuted. Those denied at the essential liberties of life will pull up their roots and look elsewhere for freedom. They leave their community and seek admittance to another to live and work in peace. Few such persons, however, consider their abode a permanent one and,
however, long their exile may last, their hope of return is never extinguished. They are the international refugees, fleeing from their country, where they fear or have suffered oppression.

Human Rights are those minimum rights which are available to an individual by virtue of his being a member of human family i.e. right to life is a minimum and most fundamental human right. Today, human rights should be recognised as central to the entire refugee issue. As has repeatedly been affirmed by the international community during the last five decades, they express the values and principles, which constitute the foundation of freedom, justice and peace in the world. As such they are as centrally relevant to the refugee issue as they are to any other major social issue today.

The discernible and distressing feature of all refugees is the lack of national protection of their fundamental rights and freedoms, which creates a need for international protection in order to secure the enjoyment of those rights. The vulnerabilities and needs of refugees are vast and various in scope, ranging from the need for personal security and means of subsistence, through legal status and respect for fundamental human rights, to finding durable solutions to their plight. Whilst the needs and corresponding content of international protection vary according to the circumstances, the universal and paramount objectives of international protection vary according to the circumstances, the universal and paramount objectives of international protection, as contained in the fundamental refugee instruments, are admission to a country of refugee, security from forcible return and respect for basic human rights without discrimination.

In the area of human rights, the Supreme Court of India has delivered a number of important judgements and has reprimanded the state for not taking adequate steps for safeguarding citizens’ rights. In the State of Arunachal Pradesh v. Khudiram Chakma, the issue of citizenship of the Chakmas has conclusively been determined and it is, therefore, held that since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights
except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the state, if they so desire.

In *National Human Rights Commission v. State of Arunachal Pradesh*, the Supreme Court of India has held that even the non-citizens are entitled to "right to life" under Article 21 of the Constitution of India and "therefore" the State is bound to protect the life and liberty of Chakma refugees (foreigners) who migrated to India from East Pakistan (now Bangladesh) and residing in the Arunachal Pradesh. The APSU had threatened to expel them forcibly from the State of Arunachal Pradesh.

In the past there was a tendency, at times, to see refugee law as a branch of law quite separate from that of human rights. This was, perhaps, part of a more general tendency during the post-war period to compartmentalise law, breaking it up into different and even autonomous branches, so much so as almost to suggest that there was no one law but only a number of different and separate laws. This view, of course, was an over-simplification, as the human rights instruments contain no limitations excluding their application to the refugee situation but, to the contrary, contained provisions which were either explicitly or implicitly applicable to that situation. Such a separation of refugee law from human rights law was unfortunate, and inevitably it had pernicious effects. Basically, it overlooked the fundamental principle that the refugee, like every other category of human being, is ultimately a person possessing, as such, basic rights which are independent "positive" refugee law for their application.

By the beginning of the present century a number of national and voluntary organisations existed with the purpose of assisting refugees in other countries. International recognition of the need for global coordinated action on behalf of refugees arose principally from the problems created by World War I. The contemporary UNHCR was established in 1950, which came into effect in next year i.e. 1951. Now the *Statute of the Office of the UN High Commissioner for Refugees (UNHCR) and 1951 Convention Relating to the*
Status of Refugees, with its Protocol of 1967, is the principal international instrument relating to the refugees.

The gaps in legal protection afforded to all categories of refugees under the principal instruments have necessitated efforts to broaden the scope of international protection, involving broadening of the mandate of High Commissioner, reliance on regional instruments and ad hoc arrangements. Resort must also increasingly be had to international law instruments and mechanisms not specifically designed for the protection of refugees and displaced persons.

SELECTION OF THE AREA

The refugees of northeastern India are facing a catena of hardships, which the “proposed study” plans to examine and evaluate the entire International Refugee Regime with regard to the status of the refugees thereof. They are gripped by a fear psychosis, which stems from their present modus vivendi and created innumerable problems for them. A Damocles’ sword is hovering over them. They are destined to face social, economic, political and psychological problems, which they did not create. Even they lack essential amenities for life.

Their women are forced to live in highly unhygienic conditions in the refugee camps. These women do not get proper sanitary pads and their pregnancies are aborted due to deteriorating health and work pressures. Moreover, they get highly meagre allowance from UNHCR because at no stage the plight of their flight is being espoused and advocated properly. The condition of camps is no better. No drinking water is provided to them. No fuel is available to them. Their children do not have any schooling at any stage and they are discriminated against in admissions. These children are victims of malnutrition even their camps and bodies waft a stench which is typical of being latrinated.

The shabbily clad men are an embodiment of vulnerability with no retaliation. They dash out from their dingy and muggy camps for livelihood and
face contemptuous gazes of natives. They are engaged in every kind of menial work. In the absence of education they do not find any respectable job. On the other hand, those who are, fortunately or unfortunately, educated face a stigma of being an alien and question of nationality is always posed in interviews for jobs. Moreover, it seems that even God has not been kind and merciful enough to them. Nature pranks with them in the form of rains, floods, cyclones, hurricanes and seismological imbalances. So, the problem of the refugees is today profoundly different. In an age when national boundaries are losing their meaning and human behaviour is being propelled by a universal agenda of human rights, refugees’ rights gained an added importance and their rights to be expanded re-defined and re-formulated. It is, now, axiomatic from the “proposed study” that International Refugee Law rests on a humanitarian premise. It is a premise tragically inadequate for our time, but one, which remains a terra incognita despite the frequency and enormity of contemporary refugee crises. So, refugee problem needs global political solutions.

The aforesaid issues pertaining to refugees in the north-eastern region of India need to be rummaged and examined and national and international NGOs at one hand and governmental and United Nations Instrumentalities inter- alia diplomatic avenues be activated and galvanised de nova.

Refugee law is a new branch of International law based on human rights and humanitarian laws. The fundamental motto of refugee law is to protect and ensure the basic human rights of refugees. Refugee law derives its conceptual life from egalitarian values that is why it maintains a balance between protection and solution of refugee problem. The “Voluntary repatriation (non-refoulement) or naturalization, rehabilitation and reconciliation are the indispensable principles of refugee law whereby viable peace is accomplished.

International Refugee law has evolved in the last fifty years of out of an humanitarian action based on 1951 Convention Relating to the Status of Refugees with its additional Protocol of 1967. Therefore, refugee law, humanitarian law and human rights law are one and cannot be segregated.
These are inter-woven and aim to achieve a common and noble object *id est* betterment of humanity as a whole. Though, this trichotomy of *humanitarian assistance to humanity in distress* owes its genesis to the proper understanding of their plight of flight and consequential integrated humane treatment in a compartmentalized fashion. But in India refugee law has been a *terra incognita*. Nevertheless there is emerging jurisprudence of refugee law in India dealing with their issues and problems in the contemporary perspective. Supreme Court of India is an harbinger of human rights and defended and protected them through Public Interest Litigation (PIL) and handed down landmark judgements thereon.

On the other hand, no universally accepted an applied defmition of human rights can be arrived at due to socio-economic hiatus and geo-political apartheid in an international unipolar order. Definition and interpretation of human rights must be buttressed on anthropological, sociogenetical, functional and sociological foundations so that development of genekind could be endowed with moral, ethical and intellectual accomplishments at the pedestal of equality in any republican democracy glued to good governance.

Therefore, socio-economic conditions and tergiversations of any geo-political entity guide its human agenda envisaging the norms and standards of human rights and fundamental freedoms. Hence, the existing definition of refugee has not delivered the desired results. Article 1 of the Refugee Convention defines a refugee as under:

"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 of 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 result of such events, is unable or owing to such fear, is unwilling to return to it."

It can aptly be pointed out that the aforementioned definition does not address the specific groups of refugees such as victim of generalised &
organised violence, women (*homemakers*), persons unwilling to return to their country of origin, persons affected by foreign aggression, internal conflicts, children, elderly people (*senior citizens*), physically and mentally disabled people (*otherwise abled people*) and internally displaced persons (IDPs). Rather it demands the crossing of an international border to be qualified and treated as a refugee.

This is inhuman and insensitive premise and scrapples the entire philosophy of humanitarian assistance. It must be dispensed with as refugees are being regarded as a subject of international law and national boundaries are losing their relevance today. Human rights of an individual are getting due place in domestic legal systems and precedence over state sovereignty. Moreover, International Conventions and legal documents on refugees have a male oriented vocabulary, which negates the philosophy of gender equality and equilibrium. Even other international human rights instruments are also slanted in favour of mankind, which further pushes the judicial interpretation of these instruments in favour of male members. Therefore, *proper human rights vocabulary* must be brought in at appropriate places therein while lexicographig requisite terminology.

It is, now, axiomatic that these activities resulted in an inhuman displacement of alarming magnitude and produced the following classes of people namely Economic Refugees, Environmental Refugees, Humanitarian Refugees and Political Refugees.

But these classes of refugees have not been included in the *existing definition* of refugee provided by the Article 1 of the 1951 *Convention relating to the Status of Refugees*. It is the basic legal instrument with its *Additional Protocol of 1967* available for the protection and solution of refugee problem. United Nations High Commission for refugees (UNHCR) is the principle organisation established in 1950 by the UN General Assembly to protect, assist and solve refugee problems.
Economic refugees are those people who voluntarily move from one place to another to eke out an honourable existence in the society. These people include migrant workers within the country and expatriates abroad. The inhuman economic liberalization and globalisation has compounded their woes and contributed their flight for greener pastures though sometimes in vain. The laws of their country of origin and reception regulate their movements. Meaning thereby, they get national as well as international legal protection. Generally, their brolly of human rights is not protected properly. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is not at all adhered to by the respective national governments. They are subjected to racism, xenophobia and other forms of discriminations rendering them in refugee-like situations.

Environmental degradation has caused a displacement of appalling and gruesome nature. Human beings could not adhere to the laws of nature and has been playing havoc thereon. Big dams are being constructed, speedy industrialization is being facilitated without meeting the norms and standards set by experts and policy makers rather political considerations have entered into the whole process which paved the way for the emergence of a new class of people known as environmental refugees who do not enjoy any legal protection. Even United Nations 1951 Convention Relating to the Status of Refugees and its Additional Protocol of 1967 do not define an “environmental refugee”. Moreover, a cumbersome mechanism of compensation and rehabilitation is there in municipal legal systems, which has only created a catena of unending legal labyrinth and litigation.

Humanitarian and political refugees can be clubbed together because of certain similarities in their problems and hardships. The prisoners of war (PoWs) and civilians who are hostaged and captured during hostilities can be addressed as humanitarian refugees. Their rights and problems are protected by the Law of Geneva or Red Cross Law i.e. The four Geneva Conventions of August 12, 1949. These conventions envisage general obligations of humane
treatment to the wounded, sick, shipwrecked persons, prisoners of war and civilians. Although it is the political dichotomy and ideology which drives an political movement in a country leading to migration therefrom fearing persecution and oppression. International armed conflict and non-international armed conflict are always considered to be the root causes of human displacement and refugee movements, which are consequential to political cleavages. This proposition also includes terrorism, insurgency and cultural intolerance resulting in internal displacement of the people within their own country. This class of refugee only find a word of protection in Article 1 of the 1951 Convention of Refugees and its Additional protocol of 1967.

Political Refugee is a person who owes his or her persecution to political heterodoxy. Political refugee is not necessarily a product of civil strife, armed conflict, insurgency, hostilities or war; he may be at peace while averring his/her political mind. Political opinions which are iconoclastic in taste and substance are, generally, fulminated and repulsed by the luddite political governance of any country by employing predatory tactics, tormentation and tyrannical measures. Although, in an age of human rights political opinion and its free expression is a sina-qua-non of a thriving democracy. The universal value of democracy is being recognised across the globe. The totalitarian regimes are tottering under their own weight. Moreover, persecutions on the ground of political opinion and protection therefrom have also been made available under Article 1 of the Refugee Convention.

Constitution of India is the best guarantee for protection of rights of citizens and aliens alike and protect rights of all “persons” including refugees and Indian Courts have in a number of decisions provided reliefs to refugees under these guarantees. In Luis de Readt v. Union of India the Supreme Court reiterated the principle that protection of life and liberty are guaranteed rights of even aliens in Indian territory. The Court did not hesitate to extend the right to a large number of refugees who were threatened of forcible eviction by organized local population with support of local government. The Court declared that the
"quit India” notices issued by the Students Union of Arunachal Pradesh amounted to a threat to life and liberty and that the Chakma refugees could not be evicted from their homes except in accordance with the procedure established by law. It asked the Government to protect the refugees with all the might at its command against the imminent force threatened by the local population.

India is also a party to the Bangkok Principles concerning the treatment of refugees evolved under the auspices of the Asian-African Legal Consultative Committee (1966). The asylum policies and practices of India have been more than generous which resulted in giving protection to over 20 million refugees for varying periods in the last 50 years. Today there are nearly 300,000 refugees from half of a dozen countries still residing in India. These include not only those who have fled their countries because of persecution but for all types of other reasons. The concept is taken too broadly and there has been no attempt to give a narrower definition to avoid responsibility. Perhaps a statute, if attempted, may adopt a restrictive definition. The principle of non-refoulement is very much part of Indian law and practice.

Though the right to asylum is internationally recognized, the content and scope of the right in terms of universal enforceability are not defined. Individual countries have in turn evolved their own approaches in deciding who is a refugee and under what conditions duty of non-refoulement will apply. Many industrialized countries adopt subtle ways of exclusion through stricter visa controls, all types of border restrictions, sanctions against carriers, interdiction at high seas, projection of safe third country concept and declaring areas within the country as international territory! On the other hand, there is increasing reluctance on the part of these countries to sharing the burden internationally on acceptable lines. They spent a disproportionate share of the available money on the so-called determination procedures leaving little for actual protection.
INTRODUCTION

It is surprising to note that the country could provide asylum in the process to over 20 million people of several nationalities. The country had to impose fresh taxation at one stage to support mass exodus of people who came from the former East Pakistan. The Tibetan migration continues to exact a heavy price on the meagre resources of the country apart from unexpected political hostility. In fact, the economic concerns, the socio-cultural implications and the environmental challenges in mass migratory flows have been so great that there have been resentments in different localities against the policies of the government. Of late, the problems of internally displaced people have added to these tensions and concerns.

The externally assisted terrorism combined with illegal narcotic trade has been causing havoc in several parts of India. The migratory flows have been mixed up with trained terrorists, mercenaries and extremist elements threatening security, peace and development. India has been a notoriously soft State, which, some sections believe, has been taken advantage of by hostile elements wanting to disrupt social harmony and create law and order problems endangering life and security of people.

The peculiar circumstances in which the sub-continent were divided and which generated mutual suspicions and hostilities do play a part in the country’s adoption of an approach of caution in refugee laws. There are sensitive minority issues, which has potential to generate ethnic conflicts and disturb peace and security. The culture of the region is extension of hospitality to aliens irrespective of whether they are genuine refugees or illegal migrants. Only when the country’s security is endangered or law and order problems arose, the State stepped in to impose restrictions. The situation is changing because of externally sponsored terrorism, increased illegal trafficking in cross-border narcotics trade and tendency of ethnic groups to integrate and permanently settle within the country.

Examining individual claims through elaborate machinery set up according to due process of law is an expensive and time-consuming affair,
however desirable that be. It is all right when the flow is marginal. When the flow is massive and the threats are imminent countries have to adopt administrative measures, which are not arbitrary but at the same time constitute departure from normal practice. Judicial review provides minimum guarantees. There is need to revisit traditional mechanisms of control and management including the laws on the subject. *The right not to be a refugee is as important as right to seek asylum* in other countries.

International migration has risen rapidly to the top of the agenda for both foreign and domestic policy of the all-national jurisdictions. As a foreign policy challenge, migration has joined a list of critical global issues that includes the environment, population, and the international economy. Human dramas involving millions of refugees from Rwanda, Haiti, Cuba, Bosnia, Palestine, Congo, Angola, Ethiopia, Iran, Iraq, Bangladesh, Bhutan, Tibet, Afghanistan are on move across the world, among many others, have been the focus of much media attention, and internationals migration has also become a decisive element in the domestic politics of different countries including India.

**HYPOTHESIS**

The gaps in legal protection resulted from an experience of last more than fifty years have necessitated efforts to broaden the scope of international protection involving broadening of the mandate of UNHCR based on the contemporary refugee problems. The present International Refugee law is not sufficient to cater the needs of contemporary refugee movements. There is no universally accepted definition of *refugee* applicable to all refugees and refugee like-situations devoid of geo-political, ethno-religious and Lego-political demarcations. The definition of refugee as contained in Article 1 of 1951 U.N, Convention Relating to the Status of Refugees requires to be *re-defined and re-structured inter-alia reformulation of the entire refugee law* in conformity with present day realities of the refugee problems.
METHOD OF STUDY

Methods and application thereof is *sine qua non* of any research endeavour for realising the objectives envisioned in the hypothesis. Primarily it is a doctrinal research study keeping in view the socio-economic and geopolitical conditions of region and of refugees. It was also incumbent to undertake this research while taking into account the gravity and enormity of the refugee problem in the northeast region of India. Therefore, doctrinal method of study has been resorted to complete the present research study. Primary as well as secondary sources of studies *inter-alia* Books, Newspapers, Magazines and Lok Sabha Debates have also been consulted and examined which has helped in identifying the gaps, inadequacies and obstacles in the contemporary Lego-institutional framework meant for the protection of refugees and human rights thereof which proved to be of immense importance and paved the way towards the *reformulation of the existing international law* which was hitherto oblivious of the deficiencies and dimensions of the problem. Thus, doctrinal research methodology has proved to be the bedrock of the present study.

PRESENTATION OF THE STUDY

The present study is a *terra firma* of ten chapters *inter-alia* Introduction, Conclusion, Suggestopaedia and Appendixes having a synchronisation of issues, systematisation of problems, schematisation of normative framework and thematisation of a trajectory of treatment with a catena of cases. The presentation of the research study is an act of supreme satisfaction, celestial celebration and intellectual inquisition percolating from a confluence of cogitation, cohesion and cogency of perennial pursuit for exalted excellence and unbridled understanding of the issues and formulations adumbrated in the hypothesis. A synthesis of anatomical structure of the refugee law and jurisprudential autopsy conducted thereon and results therefrom have been culled as *infra*. 
INTRODUCTION

The Chapter-I has been designated as Refugee Law: Historical Retrospect wherein normative and conceptual framework of refugee law under various perspectives is traced and subsequent evolution, development and expansion of refugee concept and reception thereof under international legal regime and under regional legal arrangements have been analysed. The issue of definition of refugee is a contention, which is transcending and pervading all the juridical, social, individualist and international statesmanship. No legal scholarship of national or transnational manifestation has been able to evolve a universally accepted and adhered definition of refugee. Thus, a new formulation of refugee law and definition thereof has been critically analysed and contemplated thereunder.

The Chapter-II has been captioned as Human Displacement and Human Rights whereunder issue of human displacement has been addressed which results in violating an important human right not to be displaced. The intellectual premise of human displacement in an age of human rights advocacy has been examined under international and national perspectives. The refugees flows and exoduses in India from neighbouring countries and reception thereof by the administrative and executive establishment of India while taking into consideration the issue of contributory factors for human displacement inter alia environmental displacement within the home country have been critically analysed. The dichotomy between refugees and migrants and protection available to them under human rights treaties and customary international law have been discussed while appreciating the intricacies of contemporary refugee dilemma.

The Chapter-III has been titled as Determination of Refugee Status and Human Rights whereat issues and concerns arising out of the process of determination of refugee status have been investigated and entire criteria for determination and termination of refugee status on the basis of the determinants enumerated in the definition of refugee under Article 1 of the 1951 Convention Relating to the Status of Refugees have been given a jurisprudential analysis.
Moreover, exclusion of certain persons and special category of persons has also been identified for being determined as refugees or not. The procedures for determination of refugee status in specific cases have also been evaluated.

The Chapter-IV has been devoted to as *Internally Displaced Persons and International Refugee Law* whereunder issue of protection of internally displaced persons (IDPs) under the existing international refugee law and deficiencies thereof have been rummaged and examined while taking into consideration the entire gamut of the problem since they are not protected under the international refugee law. *Even right to a home* as a human right is denied to them. The dichotomy between IDPs and refugees must also be obliterated in a new formulation of refugee law. The extent and scope of humanitarian intervention and aid to IDPs have also been analysed.

The Chapter-V has been conceived as *Nationality and Statelessness* whereunder issues pertaining to the nationality and statelessness under the institutional framework of UNHCR have been discussed. The statelessness has denied the vehicle for access to fundamental rights; access to protection and access to expression as persons under the law and it has been coherently cajoled. Moreover, divine laws have also been invoked to appreciate the problem of statelessness and what remedial measures can be taken up has also been visited in cogent and cohesive manner.

The Chapter-VI has been visited upon as *State Responsibility, Human Rights and the Country of Origin*, which critically evaluates the issues of mass-exoduses and their arrivals in the country of refuge from country of origin. The responsibility towards individuals and responsibility towards states and human rights breaches thereunder have also been cajoled. An attempt has also been made to arrive at the fixity of responsibility vis-à-vis responsibility towards the international community in refugee situations and preservation of individual and collective human rights entitlements have also been pragmatised.

The Chapter-VII has been mooted as *International Humanitarian Assistance For Refugees: The Working of the United Nations High
Commissioner For Refugees which critically examines the entire working of UNHCR as a principle operational agency dealing with the problem of refugees at global level while taking into account the concept and issue of material assistance to the refugees at international level including India and its coordination with other agencies have also been analysed. The role, power, functions and jurisdiction of the UNHCR inter-alia issue of funding have been researched and prospects with pragmatism have also been envisioned.

The Chapter-VIII has been crowned as The Human Rights of Refugees and International Refugee Regime whereat promotion and preservation of human rights of refugees and reception thereof under the contemporary refugee law have been critically evaluated and the resultant inadequacies thereof have also been identified while examining the institutional challenges before the UNHCR. The future international cooperation and the global refugee problem and the issue of inadequacy of the existing mandate of the UNHCR have been probed in and the need for new alliances and actors has also been justified.

The Chapter-IX has been expounded as The Status of Refugees in the Northeast: International Principles and Practice in India whereunder status of refugees in the northeast India has been traversed in the light of international principles and implementation thereof in India on the basis of human rights premise. The issue of assistance to refugees and India’s policy, principles and practice formulations alongwith those refugee situations where no assistance is provided by the Government of India have been pursued upon the foundation of legislative debates and institutional statesmanship.

The Chapter-X has been anatomised as The Emergence of Refugee Jurisprudence and Human Rights in India whereby a jurisprudential canvass of the national implementation of the international norms of refugee law in the absence of any national legislation thereon by the highest judicial establishment of the country has been scanned on the edifice of human rights philosophy. The treatment of refugees by the administrative and immigration authorities has
INTRODUCTION

been ferreted out. The legal position vis-à-vis specific international refugee law issues in India have also been addressed. The challenges of voluntary repatriation and new initiatives and the issues of return in safety and with dignity and post-return monitoring and re-integration assistance have also been examined on the basis of juridical autopsy. The issue of vulnerability of asylum-seekers in India has also been perused while taking into consideration the co-operation with the UNHCR in a desideratum of treatment of persons who have been granted asylum in India.

At last, the entire presentation of study is followed by the Conclusion and Suggestopaedia whereunder reformulation of the contemporary international refugee law in conformity with the present day realities and metamorphosis coupled with a new definition of refugee devoid of any geopolitical, ethno-religious, socio-economic andLegacy-political dichotomies as propounded inter-alia suggestions based on pragmatism under the suggestopaedia must be emplaced respectively.

The Table of Cases and statutory material have been attached herewith as Appendixes alongwith a Bibliography for the substantiation of the hypothesis of the present study.
NOTES AND REFERENCES

2. 1994 AIR SCW 904.
3. 1996 AIR SC 1234
8. Supra note 2.
CHAPTER-I

REFUGEE LAW:
HISTORICAL RETROSPECT
REFUGEE LAW: HISTORICAL RETROSPECT

1. AN OVERVIEW

The growing worldwide flow in the number of people leaving their country has created a major challenge to India and other population-receiving countries*. These flows are largely the consequence of pejorative and deteriorating political and economic conditions among many countries in the Third World, in the former Soviet Union, and among states that were within the Soviet, African and Indian Sub-Continental orbit. In our world of sovereign states, a refugee is defined in international law as a person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group(s) or political opinion is outside the country of his nationality and is unable to 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 ...is unable or unwilling to return to it.

With the help of the above concept, it is aptly submitted that the “refugee” is an international term defined in the Statute of the Office of the United Nations High Commissioner for Refugees as any person who is outside the country of his/her nationality or, if he/she has no nationality, the country of his/her former habitual residence, because he/she or had well-founded fear of persecution by reason of his/her race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself/herself of the protection of the government of the country of his/her nationality or if he has no nationality, to return to the country of his/her former habitual residence.

* Population receiving countries as studied in this work are: USA, Australia, Canada, UK, Switzerland, Pakistan and India.
Moreover, the Universal Declaration of Human Rights (UDHR) proclaims that:

Article 13 (2):

"Everyone has the right to leave any country, including his own, and to return to his country".

Article 14

(1) Everyone has the right to seek and enjoy in other countries asylum from persecution.

(2) This right way not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Thus, it is axiomatic from the mandate of the UDHR that the freedom of movement to every individual is an indispensable right.

The Declaration on Territorial Asylum recognises that the grant of asylum by a state to persons entitled to invoke Article 14 of the UDHR is a peaceful and humanitarian act and that, as such it can not be regarded as unfriendly by any other state. It recommends that states should base themselves, in their practices relating to territorial asylum, on the following principles:

Article 1.1 Asylum granted by a state, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the UDHR, including persons struggling against colonialism, shall be respected by all other states.

2. The right to seek and to enjoy asylum may not be involved by any person with respect to whom these are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the state-granting asylum to evaluate the grounds for the grant of asylum.

Article 2.1 The situation of persons referred to in article 1, paragraph 1, is without prejudice to the sovereignty of states
REFUGEE LAW: HISTORICAL RETROSPECT

and the purposes and principles of the United Nations, of concern to the international community.

2. Where a state finds difficulty in granting or continuing to grant asylum, states individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to heighten the burden on that state.

Article 3.1 No person referred to in article 1 paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any state where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a state decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another state.

Article 4. States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

The concept of refugee and that of asylum are complementary; the one does not exist without the other. Asylum on the territory of a state is, of course, what interests most refugees. This, however, implies at least three conditions of first importance – admission to the territory, a durable stay and the assurance of a certain protection, of basic rights opening the way back to normal life. Thus, it is true that asylum in the core sense of admission to safety in another country, security against and respect for basic human rights, is the heart of international protection. Without asylum, the very survival of the refugee is in jeopardy. The overwhelming majority of states continue to adhere to generous asylum policies, affording refuge to persons in need of protection until a solution can be achieved.
2. THE CONCEPTUAL FRAMEWORK

The media, politicians and the general public to describe anyone who has been obliged to abandon his or her usual place of residence frequently use the word \textit{refugee}. Normally, when this is used in this general manner, little effort is made to distinguish between people who have had to leave their own country and those who have been displaced within their homeland. Much attention paid to the causes of flight whether people are escaping from persecution, political violence, communal conflict, ecological disaster or poverty, they are all assumed to qualify for the title of \textit{refugee}.

\textit{Refugee} is not a concept of customary international law. Therefore, refugee has not been defined thereunder. Refugee has been the subject of treaties and other international agreements. So, it is impossible to give one single definition, which could be used in all circumstances. As Prof. Goedhart rightly observed that:

"A sociological definition of the term "refugee" differs from a legal one; the definition drafted for the purpose of the binding international agreement will look very different from the definition adopted by an association with a humanitarian aim."

However, in general terms, a "refugee" is usually thought of a person compelled to flee his state of origin or residence due to political troubles, persecution, famine or natural disaster. A man's status as a refugee is determined first and foremost by the factors which led to his condition: expatriation and the breaking of the ties that bound him to the states of his nationality. A refugee is distinguished from an ordinary alien because of the lack of normalcy of relationship between him and the authorities of his state of origin, arising from the fear of political persecution upon his return. The refugee is distinguished from a stateless person because he, unlike the stateless person, may still have a \textit{de jure} national status. As Sir John Hope Simpson defined:
REFUGEE LAW: HISTORICAL RETROSPECT

“The essential quality of a refugee is that he has sought refuge in a territory other than that in which he was formerly resident as a result of political events which render his continued residence in his former territory impossible or intolerable.”

However, the main problem with refugees, is, they are a persistent embarrassment to the international legal community. The tension between the refugees and the conventional international order is the distinctive political dynamic of refugee status. It renders protection of the refugees a unique challenge for law and legal process, particularly once the refugee is in the state where he seeks refuge and protection.

A. International Instruments

There was and is no single definition of “refugee” suitable for all purposes. When associated with humanitarian aims, the connotation of the term differs from that used in international agreements since the human aspects of the refugee problem are clearly distinct from the question of a refugee’s status in any given situation. However, all refugees have in common these characteristics: - they are uprooted, they are homeless and they lack national status and protection. The refugee is an involuntary migrant, a victim of politics, war, or natural catastrophe. Every refugee is naturally a migrant, but not every migrant is a refugee. A migrant is one who leaves his residence owing to economic reasons in order to settle elsewhere, either in his own or in another country. A refugee movement results when the tensions leading to migration are so acute that what at first seemed to be a voluntary movement becomes virtually compulsory.

On the other hand, the social crises brought on by the de facto immigration of so many refugees convinced governments that their laws would have to recognise the reality of forced international movements of people. As political and other disruptions would inevitably induce involuntary migration, policies of selecting immigrants on the basis of national advantage alone were obliged to yield in such circumstances:
indeed, in some instances, the nation concerned had no practical power to control the flow of humanity.

B. Definitional Dilemma: Perspectives

(a) Before 1951

An intellectual autopsy and analysis of the international refugee regimes concluded between 1920 and 1950 divulges trichotomical perspectives with regard to refugee definition. Each of these perspectives juridical, social and individualist – was dominant during a part of the initial decades of refugee law. These are as under:

i) Juridical

The initial series of international refugee definitions were primarily concerned with the juridical phenomenon of refugee hood, that is, with the motion that the refugee is a member of a group that has no freedom of international movement because its members have been effectively deprived of the formal protection of their governments. The purpose of refugee status conceived in juridical terminology is to facilitate the international movement of persons who find themselves abroad and unable to resettle because no nation is prepared to assume responsibility for them. These initial and first definitions of refugee were formulated in response to the international legal dilemma caused by the denial of state protection.

The withdrawal of de jure protection by a state, whether by way of dematerialisation or the withholding of diplomatic facilities such as travel documents and counsellor representation, results in a malfunction in the international legal system. As the then existing international law did not recognise individuals as subjects of international rights and obligations, the determination of responsibilities or the international place felt to the sovereign state whose protection are enjoyed. When the bond of protection between citizen and state was severed, no international entity could be held
accountable for the individual's actions. The result was that states were reluctant to admit to their territory individuals who were not the legal responsibility of another country.\textsuperscript{13}

The most fundamental form of \textit{de jure} withdrawal of state protection is, of course, denaturalisation. It was the general policy of the League of Nations to extend protection to groups of persons whose nationality had been involuntarily withdrawn. As well, the league recognised that persons who could not obtain valid passports were entitled to international protection. Both of these groups were bestowed upon League of Nations identity certificates which contracting states agreed to recognise as the operational counterpart of passports till the durable solutions were found.

The definitions of this era contained a criterion of ethnic or territorial origin coupled with a stipulation that the applicant not enjoys "\textit{de jure}" national protection. Only persons applying from outside their country of origin were eligible for refugee recognition. This is consistent with the motion of the refugee as an international anomaly: while the unprotected individual remained within the boundaries of her home state. There was no question of another country being confronted with a person outside the bounds of international accountability and, accordingly, no need to include her within the scope of League of Nations protection.\textsuperscript{14}

\textbf{ii) Social}

The social approach to refugee definition was dominant between 1935 and 1939. Refugees defined from the social perspective are the helpless casualties of broad based social or political occurrences which separate them from their home society.\textsuperscript{15} Assistance in migration is afforded to refugees not from the juridical perspective with a view to correcting an anomaly in the international legal system, but rather in order to ensure the refugees safety or well-being.
REFUGEE LAW: HISTORICAL RETROSPECT

In contrast, the refugee definitions established between 1935 and 1939 reflect a significantly stronger orientation to respond to the social phenomenon of refugeehood. The categories of persons eligible for international assistance encompassed groups adversely affected by a particular social or political event, not just those united by a common status vis-à-vis the international legal system. The essence of this second definitional approach was to continue to assist persons without formal national legal protection, but to assist as well the victims of social and political events which resulted in a de facto, if not a de jure loss of state protection. For the most part, these agreements sought to protect persons caught up in the upheaval and dislocation caused by the National Socialist regime in Germany.

The substantive scope of this era's definitions was defined by an en bloc reference to general and situation specific categories of persons affected by adverse social or political phenomenon. Meaning thereby, the second phase in the evolution of the international refugee definition was characterised by a move away from the earlier preoccupation with loss of de jure state protection. The new definitions were designed to encompass the victims of broad based social and political upheaval, whether or there were problems of international legal status.

iii) Individualist

The third stage in the development of international refugee definition is distinguished by its move away from concern with group disenfranchisement, whether de jure or de facto, and toward a consideration of the relationship between a particular individual and his state. The essential characteristic of the refugee came to be the existence of fundamental incompatibility between the claimant and his government. Thus, refugees were defined in primarily individualistic terms between 1933
and 1950. A refugee by individualist standards is a person in search of an escape from perceived injustice in his state of origin.

A refugee distrusts the authorities who have rendered continued residence in his home state either impossible or intolerable and desires the opportunity to build a new life abroad. Refugee status glanced from this perspective is a means of facilitating international movement for those in search of personal liberty and freedom. Consequently, this individualist attitude, initially cast a shadow on the determination procedure regarding decision as to whether or not a person was a refugee and his status as a refugee was no longer determined exclusively on the basis of political and social categorisation. Rather, the accords of the immediate post war era prescribed an examination of the merits of each applicant’s case.

Moreover, the step to a more personal conception of refugeehood altered substantive motions. The essence of refugee status came to be schism between the individual refugee applicant’s personal characteristics and convictions and the tenets of the political system in his country of origin. The international community did not universally embrace the subjective concept of a refugee. Therefore, it was contested disastrously and in futility that (political) émigré who had sustained no personal prejudices and predilections ought not to be protected as refugees under the auspices of international community as a whole but should instead seek the assistance of those states who are sympathetic to their political preferences, ideological orientations and peerage pursuits.

The tremendous individualisation of refugee law was witnessed from 1938 to 1950, which was dictated, by the voting strength and influence of the western alliance. However, this led to a movement away from a focus or group de jure or de facto disfranchisement and toward a personalised evaluation of incompatibility between state of origin and refugee claimant in search of personal freedom and liberty. Hence, this initiative to define the
REFUGEE LAW: HISTORICAL RETROSPECT

refugee concept in a manner consistent with the ideology of the more powerful states set the stage for the development of contemporary international refugee law.

iv) International

Safeguarding human rights is the best way to prevent conditions that force people to become refugees. Respect for human rights is the key element in the protection of refugees in their country of asylum. Improved observance of human rights standards is often critical for the solution of refugee problems, enabling refugees to return home safely. Therefore, it is essential that the international community affirm and defend vigorously and vehemently the right of the people to remain peacefully in their homes and homelands because when people are forced to leave their homes, a whole range of rights is threatened, including the right to life, liberty and security of the person.

In this conspectus, organised international action on behalf of refugee begin in the year when the League of Nations was faced with the problem created by about the million refugees who had left Russia in consequence of Bolshevik Revolution. The International Red Cross Committee appealed to the Council of the League of Nations in February 1921 to take action on behalf of the Russian Refugees scattered throughout Europe without Legal protection or representation. The decision of the Red Cross to address the refugee crises in juridical rather than strictly humanitarian terms prompted positive response from the council. On June 27th 1921, the Council of the League of Nations decided to appoint a High Commissioner for Russian Refugees whose duty would be to co-ordinate the assistance given to those refugees by various countries. Dr. Fridtjof Nansen was appointed High Commissioner on 20th August 1921 for the task as given below:

a) to define the legal status of refugees,
b) to organise their repatriation,
REFUGEE LAW: HISTORICAL RETROSPECT

c) to allocate refugees to various countries,
d) to undertake relief work amongst them with the aid of philanthropic societies.$^18$

The mandate of the High Commissioner was extended to Armenian Refugees in 1924 and to Assyrian, Assyro - Chaldean and Turkish refugees in 1928$^19$. Between 1924 and 1929, tasks of the High Commissioner in the field of relief of refugees were entrusted to the International Labour Office while their protection remained his main responsibility. In 1929, both tasks were again combined in the office of the High Commissioner, which was placed under the authority of the Secretary General of the League of Nations.$^20$

However, the first international instrument to deal with the legal status of these refugees was sealed and signed at Geneva on June 30, 1928. This agreement was in the general words in the form of resolutions recommending that the states accepting it should adopt certain measures for the protection of the Russian and American refugees. This temporary arrangement was supplanted by the regular convention pertaining to the International Status of Refugees signed at Geneva on October 28, 1933. It was also extended to other groups of refugees referred to supra while taking into consideration the international perspective and character of the problem.

In 1936, when the Provisional Agreement concerning the status of Refugees coming from Germany was adopted, the term “refugee” covered all persons coming from Germany. However, a person did not qualify for convention refugee status if he had left Germany “for reasons of purely personal conveniences” and seeking greener pastures due to economic consideration. During the conference $^21$ in 1938, the term “refugee covers inter alia:

a) Persons possessing or having possessed German nationality
and not possessing any other nationality who are proved
REFUGEE LAW: HISTORICAL RETROSPECT

not to enjoy, in law or fact, the protection of the German Government.

b) Stateless persons not covered by previous conventions or agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government.

However, after a gap of more than five years at Bermuda Conference in 1943 it was resolved that the protection should be extended to persons who –

"As a result of events in Europe, have had to leave, or may have to leave, their countries of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs."\(^{22}\)

The first formal reference to persecution as part of the refugee definition came in 1946 constitution of the International Refugee Organisation (IRC). The original and operative part of the Constitution reads:

"Persecution or fear based on reasonable grounds of persecution because of race, religion, nationality or political opinions, provided these opinions are not in conflict with the principles of the United Nations, as laid down in the Preamble of the charter of the United Nations."\(^{23}\)

Refugees as engrafted and defined by the Constitution of the IRC included victims of the notorious Nazi, fanatic Fascist, and quagy Quashing regimes which had vehemently opposed the United Nations, certain persons of Jewish origin, or foreigners or stateless persons who had been victims of Nazi persecution, as well as persons considered as refugees before the outbreak of the Second World War for reasons of race, religion, nationality, political opinion or social origin.

Therefore, at this stage it must aptly be observed that the movement of refugee law away from principles of humanitarianism intensified between 1938 and 1950. In particular, the determination of refugee status on the basis of a broadly defined lack of protection came to an end. No longer was
it suffice to be a member of a group of displaced or stateless persons rather a particularised analysis of each claimants’ motives for flight was requisite to recognition as a refugee. 24

(b) After 1951

i) The Statute of UNHCR and the Mandate thereunder:

The primary standard of refugee status today is that derived from the “1931 Convention Relating to the Status of Refugee” 25 It was sequel to some of the major attempts by the United Nations to define a refugee which were made in 1950 in drafting the Statute of the office of the United Nations High Commissioner for Refugees 26 and in 1951 when the United Nations Conference of Plenipotentiaries adopted the Convention Relating to the Status of Refugees. 27 In both cases a reasoned attempt was made to revise and consolidate previous instruments relating to the status of refugees. To this end both definitions begin by recognizing as refugees persons so recognised by various pre-war Arrangements and conventions. 28

In accordance with the statute, the work of the High Commissioner is humanitarian and social and of an entirely non-political character. Article I. Of the statute provides that the United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection under the auspices of the United Nations, to refugees who fall within the scope of the present statute and of seeking permanent solutions for the problem of refugees by assisting Governments and subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

Article 6 (A) of the Statute of the UNHCR stipulates that the competence of the High Commissioner shall extend to:

(1) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under
REFUGEE LAW: HISTORICAL RETROSPECT

the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation.

(2) Any person who, as a result of events occurring before January 1, 1951 and owing to well founded fear of being presented for reasons of race, religion, nationality or political opinion is outside the country of his nationality and is unable or owing to such fear or for reasons other than personal commence, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Article 6 (B) of the Statute supra envisages as follows:

Any other person who is outside the country of nationality, or if he has no nationality, the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race religion, nationality or political opinion and unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or if he has no nationality, to return to the country of his former habitual residence.

This description is of universal application, containing neither temporal nor geographical limitations. However, the UNHCR statute contains an apparent contradiction on the one hand, it affirms that the work of the office shall relate, as a rule, to groups and categories of refugees. On the other hand, it proposes a definition of the refugee, which is essentially individualistic, requiring a case-by-case examination of subjective and objective elements.29

(ii) The 1951 Refugee Convention

In the 1951 Convention relating to the Status of Refugees30 and for the purposes of that convention, the term “refugee” has been defined under Article 1 thereunder.31

Article 1 (A) of the 1951 Convention covers two groups, two groups of persons who are considered or refugees for the purpose of its application.
REFUGEE LAW: HISTORICAL RETROSPECT

The First group could be called "Statutory refugees i.e. persons who have already been considered as refugees under previous international agreements or under the Constitution of the IRO. The second group embraces persons who are accorded the status of a "refugee" for the first time. It consists of two sub-groups, one possessing a nationality and the other without a nationality. There are two conditions applicable to both groups:

(a) They must be outside the country of their nationality or of their habitual residence, and
(b) They must be there as a result of events, which took place before January 1, 1951.

Persons with a nationality meeting these two tests are to be considered as refugees only if they are outside the country of their nationality owing to well-founded fear of being persecuted for reasons enumerated under Article 1 of the 1951 Convention. Persons without nationality, meeting the first two tests, are considered refugees if they are unable or, owing to well-founded fear of persecution, unwilling to return to the country of their former habitual residence. The Convention excludes from its purview two groups – those persons who receive protection or assistance from organs or agencies of the United Nations, other than the High Commissioner, during the time of the existence of such protection or assistance; these persons who, although they would normally come under the definition of a "refugee" are not deemed worthy of international protection.

(C) The 1967 Additional Protocol

The Convention relating to the Status of refugees done at Geneva on July 28, 1951, covers only those persons who have become refugees as a result of events occurring before January 1, 1951. But new refugee situations have risen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the 1951 convention. Therefore, it is desirable and incumbent that all refugees covered by the definition in the convention irrespective of the dateline 1 January 1951
REFUGEE LAW: HISTORICAL RETROSPECT

should enjoy equal status. As a result, a Protocol relating to the Status of Refugees was prepared and submitted to the United Nations General Assembly in 1966. In Resolution 2198 (XXI) of 16 December, 1966, the General Assembly took note of Protocol and requested the Secretary-General to submit this text thereof to states, to enable them to accede. The authentic text of the Protocol was signed by the President of the General Assembly and the Secretary General in New York on 31 January 1967 and transmitted to Governments. It entered into force on 4 October 1967, upon the deposit of the sixth instrument of occasion.

By occasion to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter but without simulation of date. Although related to the Convention in this way, the Protocol is an independent instrument, occasion to which is not limited to States parties to the Convention.

The Convention and the Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognised internationally. The U.N. General Assembly has frequently called upon States to become parties to these instruments. Accession has also been recommended by various regional organisations such as the council of Europe, the Organization of African Unity, and the organisation of American States. As of December 2002 there were 130 states parties to one or both of these instruments. Under the Protocol, contracting states undertake to cooperate with the Office of UNHCR in the exercise of its functions and, in particular, to facilitate its specific duty of supervising the application of the provisions of these instruments.

D. The Impact of the Additional Protocol on the Refugees

Realising the necessity of protecting the new refugees whose fear of persecution is not related to the events occurred before 1951, a Protocol
REFUGEE LAW: HISTORICAL RETROSPECT

relating to the Status of Refugees was adopted and opened for signature in 1967, which omitted temporal and geographical limitations on the definition of the term “refugee” under the 1951 Refugee Convention.\(^{33}\)

Article I of the 1967 Protocol defined a refugee as person who:

“Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of protection of that country; or who not having a nationality and being outside the country of his former habitual residence, owing to such fear, is unwilling to return to it.”

Thus, the Protocol had been set up to cope with the problem of the limitation of the personal scope of the 1951 Convention, as it was felt desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the definition of January 1, 1951.

However, the definition contained in 1951 Convention does not clearly cover everyone outside his or her country, in a situation of distress, and unable to return home. People may be unwilling or unable to return to their own country due to circumstances such as national disasters – famines, floods and earthquakes – which have rendered life there impossible. These circumstances, however, are not included within the criteria specified in the Convention definition. Hence, people in these situations are not refugees within the ambit of that definition.\(^{34}\)

Of Course, it is to be impressed upon that the 1951 Convention was primarily examined to deal with the condition of displaced persons in Europe immediately after the Second World War and to provide protection for those persons. The States acceding to the Convention were anxious to make their obligations specific and to ensure that those obligations could not be extended indefinitely. Today, circumstances have changed and many people who need international protection of the kind provided by the
Convention do not fall within its ambit. Thus, 1967 Protocol achieved the formal but not the substantive universalisation of the Convention definition of refugee status. The obvious restriction in the Convention definition — the requirement that the claim relate to a pre-1951 event in Europe — was prospectively eliminated by the Protocol. However, there was no review conducted of the substantive content of the definition.

Even after the elimination of temporal and geographic limitations, only persons whose migration is prompted by a fear of persecution on the ground of civil or political status come within the scope of the convention based protection system. This means that most third world refugees remain de facto excluded, as their flight is more often prompted by natural disaster, war or broadly based political and economic turmoil and tribulation than by "persecution", at least as that term is understood in the western context. While these phenomena undoubtedly may give rise to genuine fear and hence to the need to seek safe haven away from one's have, refugees whose flight is not motivated by persecution rooted in civil or political status are excluded from the rights regime established by the Convention.

3. EVOLUTION, DEVELOPMENT AND EXPANSION OF THE REFUGEE CONCEPT

The Convention concept of refugee has been expanded in practice through the evolution of the institutional competence of the United Nations High Commissioner for Refugees, the effort to prepare a United Nations Convention on Territorial Asylum, the establishment of regional refugee protection arrangements and the practice of states. While these developments do not constitute formal amendments to the convention definition, they are nonetheless indicative of a widening of the circumstances in which persons may be addressed genuinely to be direly in need of institutional international protection.
A. Cumulative Competence of the UNHCR

Developments in the refugee definition employed by the UNHCR are salient particularly because the same organs of the United Nations drafted this institutional definition and the convention definition simultaneously. Since the adoption of the 1967 Protocol, moreover, the two definitions are quite identical. The individualistic nature of the refugee definition contained in the 1950 UNHCR statute made it difficult initially for the organisation to respond in a pragmatic manner to the needs of refugees outside Europe. Since refugees in Africa and Asia tend to move in large groups, the type of individualised, case-by-case application of a refugee definition contemplated by the statute, like the convention, was simply not a practical possibility.

The UNHCR was, thus, technically unable to exercise its universal mandate, and sought the authority to deal with refugee situations outside Europe in more collective fashion that would not involve a process of individualised assessment. UNHCR has been authorised to aid the full range of involuntary migrants, including the victims of all forms of both man-made and natural disaster. Moreover the organisation has been requested to assist refugees who remain within their country of origin and to contribute to the resettlement of refugees who are returning home.35

The essential criterion of refugee status under UNHCR auspices has come to be simply the existence of human suffering consequent to forced migration. While this cumulative definition is coterminous primarily to competence and eligibility for material assistance, UNHCR has also been authorised with augmented frequency to extend international legal protection to persons within its wider mandate. In functional terms and specialisation, few distinctions are now made between the role of UNHCR in regard to refugees within its statutory mandate and those within its extended and cumulative competence.
B. U.N. Convention on Territorial Asylum

A second indication of the expanded scope of refugee status derives from the abortive effect to draft a convention to define the circumstances in which territorial asylum should be guaranteed to refugees. The need for such a convention stems from the failure to include in the convention any obligation beyond non-refoulement i.e. the duty to avoid the return of a refugee to a country where he/she faces a genuine risk of serious harm.

While willing to provide emergency protection against return to persecution the states that participated in the drafting of the convention insisted that they be allowed to decide who should be admitted to their territory, who should be allowed to remain there, and ultimately who should be permanently resettled. In view of this deficiency in the convention, and in an effort to effectuate the right to seek and enjoy asylum contained in the United Declaration of Human Rights (UDHR) and the Declaration on Territorial Asylum, a draft convention on territorial asylum was prepared and submitted to a conference of plenipotentiaries in 1977.

The purpose of the proposed accord was essentially to enhance the scope of protection available to convention refugees, its most noteworthy achievement may in fact have been the degree of consensus attained on changes to the definition to the definitional standard derived from the Convention, as amended by the Protocol. Clarifications of the nations of “political opinion” to include opposition” to embrace prosecution grounded in persecutory intent were proposed.

During the meeting of the ninety-two states, moreover, it was agreed inter alia that asylum should be accessible also to persons at serious risk of persecution due to kinship or as a result of foreign occupation, alien domination, and all forms of racism. An important clarification of the definition agreed to by delegates was the replacement of the “owing to a well-founded fear of persecution convention based standard with a
REFUGEE LAW: HISTORICAL RETROSPECT

requirement that a refugee be faced with a definite possibility of persecution. The expanded scope of protection as a whole, including both the expert group and conference amendments, which was approved by 47 votes to 14 with 21 abstentions, provided that:

"Each contracting state may grant the benefits of this convention to a person seeking asylum, if he, being faced with a definite possibility of (a) Persecution for reasons of race, colour, national or ethnic origin, religion, nationality, kinship, membership of a particular social group or political opinion, including the struggle against colonialism and “apartheid”. Foreign occupation, alien domination and all forms of racism; or (b) Prosecution or punishment for reasons directly related to the persecution set forth in (a); is unable or unwilling to return to the country of his nationality or, if he has no nationality, the country of his former domicile or habitual residence". 38

Therefore, the drafting of the territorial asylum convention ended in an impasse, the affirmative vote in favour of an expanded definition of refugee status is nonetheless indicative of a willingness on the part of the international community to conceive the refugee concept more broadly than as elaborated in the convention and Protocol. In contrast to the concern in 1967 to avoid the reassessment, a majority of the ninety-two states that attended the conference on territorial Asylum agreed to update the definition in ways that were responsive to refugee movements in the developing world, and which recognised the collective nature of many refugee-producing phenomena. But, unfortunately, no binding and conventional commitment was institutionalised toward refugee within this revised concept, the work of the 1977 conference still remains the most recent expression of international consensus on the appropriate and plausible province of refugee status in international law.
4. DEFINITION OF REFUGEE UNDER VARIOUS REGIONAL AND RELATED REGIMES

Hitherto the 1951 U.N. Convention and the 1967 Protocol remains the principal international instruments whereunder refugees are protected and the definition, which they offer, has expressly been adopted in a variety of regional arrangements directed at further improving the condition of recognised refugees.

A. The Organisation of African Unity (OAU)

The first regional arrangement was established by the Organisation of African Unity (OAU) in 1969 in Africa where the international community was confronted with the most intricate and complex challenge and to which it had to devote a gigantic and colossal share of its social and economic wherewithal. The flow of refugees in Africa became an acute problem in the 1960's coinciding with the struggle for an attainment of independence by most African States. Since the establishment of the Organisation of African Unity the refugee question has been of concern to the organisation. Therefore, it was decided to draw up a convention, which should reflect and resolve the specific concerns of the African refugee problem. In October 1967 a conference on Legal, Economic and Social aspects of African Refugees Problems was held in Addis Ababa. However, the recommendations on the matter adopted by the Conference only stated that:

“In addition to the definition contained in the 1951 United Nations Convention relating to the Status of Refugees, as extended by the United Nations Protocol of 1967, African States should take into account the specific aspects of African refugee situations with regard in particular to the definition of an African refugee.”

In June 1968, the OAU Refugee Commission met in Addis Ababa in order to complete a final draft of an African Refugee Convention, which was finally adopted by the Assembly of Heads of State and Government in
REFUGEE LAW: HISTORICAL RETROSPECT

September 1969. This is the first internationally accepted agreement which issues absolute and unqualified requirements stipulating that no refugee shall be subjected to measures, such as rejection at the frontier, which might compel him to return or remain in a territory where life, physical integrity or liberty would be threatened.40

The most interesting aspect of the OAU Convention is its two-fold definition of a "refugee". It incorporates the same definition as in the 1951 convention without the dateline and without the possibility of geographical limitation. At the same time it includes explicitly person who are victorious of manmade disasters like international armed conflicts or civil wars etc. whether or not they can be said to fear persecution. It runs as follows:

The term "refugee" shall also apply to every person who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.41

Therefore, it is axiomatic that the unlike the two universal conventions, this one does not speak of subjective conditions and fear of the individual, but refers only to the objective conditions prevailing in the country of the refugee. This standard represents an important conceptual adaptation of the convention refugee definition, in that it successfully translates the core meaning of refugee status to the reality of the developing world. From its inception, refugee status has evolved in response to changing social and political conditions – the initial concern with "de jure" statelessness shifted to embrace "de facto" unprotected groups and further to protect individuals at ideological odds with their state.

The common thread is a recognition that it is reasonable for groups and individuals to disengage from fundamentally abusive national communities, at which point refugee law exists to interpose protection by the international community whether the particular form of abuse consists of a
 REFUGEE LAW: HISTORICAL RETROSPECT

denial of formal protection, a campaign of generalised disfranchisement,
refusal to allow individuals political self determination, or calculated acts of
deliberate harm, the definitional framework of international refugee law has
evolved to respond to the imperative to protect involuntary migrants in
flights from states which fail in their basic duty of protection.

The OAU definition accepts this rationale for refugee status. It does
not, for example, suggest that victims of national disasters or economic
should become the responsibility of the international community, as a shift
away from concern about the adequacy of state protection in favour of a
more generalised humanitarian commitment might have dictated. Rather,
the OAU definition recognises that four important modifications of the
convention definition are required in order to accommodate the specific
context of abuse or states of the developing world.

First, the OAU definition acknowledges the reality that fundamental
forms of abuse may occur not only as a result of the calculated acts of the
government of the refugee’s state of origin, but also as a result of that
government’s less of authority due to external aggression, occupation, or
foreign dominators. The anticipated harm is no less wrong because it is
inflicted by a foreign power in control of a state rather than by the
government of that state per se. This modification simply recognises that
need to examine or refugee claim from the perspective of the de facto rather
than the formal, authority structure within the country of origin.42

Second, the OAU definition reverts to the pattern of pre-world war II
refugee accords in recognising the concept of group disfranchisement. By its
reference to persons who leave their country in consequence of broadly
based phenomenon such as external aggression. occupation, foreign
domination, or any other event that seriously disturbs public order, the OAU
recognises the legitimacy of flight in circumstances of generalised danger.
While the accommodation of abuse at the hands of or de facto government is
REFUGEE LAW: HISTORICAL RETROSPECT

little more than an extrapolation from the intent of the convention definition, and while group-based refugee determination has its historical antecedents in European practice, there are two additional features of the OAU definition that are unprecedented in international refugee law.43

The convention definition and all of its predecessors link refugee status to the prospect of above resulting from some form of personal or group characteristic. The OAU definition, on the other hand, leaves open the possibility that the basis or rationale for the harm may be indeterminate. So long as a person “is compelled” to seek refuge because of some anticipated serious disruption of public order, she need not be in a position to demonstrate any linkage between her personal status and the impending harm.

The OAU convention also extends international protection to persons who seek to escape serious disruption of public order “in either part or the whole” of their country of origin. This, too, represents a departure from past practice in which it was generally assumed that a person compelled to flight should make reasonable efforts to seek protection within “safe part of her own country before looking for refuge abroad. There are at least three reasons why this shift is contextually sensible. First, issues of distance or the unavailability of escape routes may foreclose travel to or safe region of the refugee’s own state.44

Underdeveloped infrastructure and inadequate personal financial resources may reinforce the choice of a more easily reachable foreign destination. Second, the political instability of many developing states may mean that what is a “safe” region today may be dangerous tomorrow. Rapid shifts of power and the consequent inability to predict accurately where safe haven is to be found may lead to a decision to leave the troubled state altogether.45
REFUGEE LAW: HISTORICAL RETROSPECT

Ultimately, the artificiality of the colonially imposed boundaries in Africa has frequently meant that kinship and other natural ties stretch across national frontiers. Hence, persons in danger may see the natural safe haven to be with family or members of their own ethnic group in an adjacent state. The relevance of the OAU definition to conditions in the developing world has made it the most influential conceptual standard of refugee status apart from the convention definition itself.

B. The Organisation of American States (OAS)

The American states have a long tradition of providing humanitarian treatment to persons seeking protection and asylum. A century ago, the "Treaty of International Penal Law" was signed in Montevideo on January 23, 1889 on the occasion of the first South American Congress on Private International Law.\(^{46}\) It contains the first provision on Asylum in International Treaty Law with a stipulation to the effect that Asylum for persons persecuted for political crimes is inviolable."\(^{47}\) Thus, in recognition of the inadequacy of the convention definition to embrace the many involuntary migrants from generalised violence and oppression in Central America, the state representatives agreed to a refugee definition that is similar to that enacted by the Organisation of African Unity. In addition to convention refugees, protection as refugees was extended to:

---Persons who have fled their country because their lives, safety, or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order".\(^{48}\)

This definition was approved by the 1985 General Assembly of the Organisation of American States, which resolved, "to attend the plight of flight of humanity. The OAS definition shares some of the innovative characteristics of the OAU convention. First, it acknowledges the legitimacy of claims grounded in the actions of external powers by virtue of its
reference to flight stemming from foreign aggression. Second, it offers a
qualified acceptance of the nations of group determination and claims in
which the basis or rationale for harm is indeterminate.

The qualification stems from the fact that while generalised
phenomenon are valid basis for flight, and while acceptance of a claim is not
premised on any status or characteristic of the claimant or a group to which
he/she belongs, all applicants for refugee status must nonetheless show that
"their lives safely or freedom have been threatened." This requirement that
the putative refugee be demonstrably at risk due to the generalised
disturbance in his/her country contracts with the OAU convention's
deferece to individuated perceptions of peril. Finally, the OAS definition,
unlike its African counterpart, does not explicitly extend protection to
persons who flee serious disturbance of public order that affects only part of
their country.49

Any situation of interval conflict would surely "disturb public order"
and hence be included within the general language of both the OAU and
OAS definitions. Moreover, while the granting of refugee status based
simply on the existence of massive violations of human rights would have
been a major innovation, this ground of claim as codified adds little to the
convention definition in view of the obligation of refugee dominants to show
that their lives, security and freedom have been threatened by such human
rights violations and excesses.

Moreover, the OAS definition of refugee status marks something of a
compromise between the convention parameter and standard and the very
wide OAU conceptualisation. It expands the "persecution" concept and
standard of the convention to take into consideration that can result from
socio-political turmoil and tribulation in developing countries, yet
constraints are there in the protection obligation to cases where it is possible
to show that there is some real risk of harm to the persons similarly situated
to the refugee claimant.

C. The Council of Europe Instruments

The Council of Europe adopted several instruments concerning
refugees and their protection safeguards thereunder. Some of the most
important are:

i. European Agreement on the Abolition of visa for Refugees
   (1959);
ii. Resolution 14 (1967) on Asylum to persons in danger of
    persecution;
iii. European Agreement on Transfer of Responsibility for
    Refugees (1980);
iv. Recommendation on the Harmonization of National
    Procedures Relating to Asylum (1981);
v. Recommendation on the Protection of Persons satisfying the
    criteria in the Geneva Convention who are not formally
    Refugees (1984); and

The Council of Europe has also introduced standards of refugee
protection that go beyond the convention definition, although the changes
and metamorphosis are significantly more modest than those of the OAU or
OAS. In the Parliamentary Assembly’s recommendation 773 in 1976, the
Council of Europe expressed its concern in regard to the situation of “de
facto” refugees that is, persons who either have not been formally
recognized as convention refugees (although they meet the convention’s
criteria), or who are “unable or unwilling for —other valid reasons to return
to their countries of origin”. Member governments were insisted to “apply
liberally the definition” refugee in the convention and “not to expel de facto
refugees unless they will be admitted by another country where they do not
run the risk of persecution.”

53
REFUGEE LAW: HISTORICAL RETROSPECT

But, unfortunately, this recommendation has been only partially implemented. While the Committee of Ministers has stipulated that convention refugees not formally recognized as such should be protected from return, no text has been concluded dealing with the rights of the broader class of refugees outside the scope of the convention definition. At this stage, it can apathy be summed up that the council of Europe has acknowledged the legitimacy and sanctity of the claim to protection of an expanded class of refugees whose status and rights have not been standardized and formalized.

D. Bangkok Principles

The definition of the term “refugee” under the Bangkok Principles made applicable to:

“A person who owing to persecution or well founded fear of persecution for reasons of race, colour, religion, political belief or membership of a political social group—

(a) leaves the state of which he is a national, or the country of his nationality, the state or country of which he is a habitual resident; or

(b) being outside such state or country is unable or unwilling to return to it or to avail himself of its protection.”

Two explanations assident to the Article supra state which are as under:

i) the dependents of a refugee shall be deemed to be refugees; and

ii) the expression ‘leaves’ includes voluntary as well as involuntary leaving.

E. The Cartagena Declaration, 1984

The process was advanced further with the holding of a colloquium in Cartagena Declaration on Refugees” which contains or set of Principles and Criteria for the protection of and assistance to refugee was adopted.

Recognising the particular characteristics of the flow of displaced persons in the region, the Cartagena Declaration extends the motion of
refugees to include apart from those covered by the universal refugees concept, also other externally displaced persons who are in need of protection and assistance. Consequently, the Declaration also considers as refugee persons who have fled their country because their lives, security or liberty have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously affected public order.\textsuperscript{52}

However, the Cartagena Declaration taken the individual’s need for international protection and in particular, the need to protect the physical integrity of the person as the starting point for developing the refugee definition; it is the “right to life, security and liberty of a person including the right not to be subjected to arbitrary arrest or detention or to torture as defined and protected in international law. Although the Cartagena Declaration is not a legally binding instrument for states, it is nevertheless of fundamental importance as it reflects consensus on particular principles and criteria and has guided states in their treatment of refugees for the last five years. In fact, the Declaration revitalised the tradition of Asylum in America while aiming at consolidating a regional custom for the treatment of refugees and displaced persons.\textsuperscript{53}

5. REFUGEES UNDER MUNICIPAL JURISDICTIONS

The conventional obligation to protect political refugees is undertaken by a large number of countries. However, the obligation to protect humanitarian refugees is still moral and humanitarian for a large number of countries. In some cases, the principle of asylum for refugees is expressly acknowledged in the constitution. In others, ratification of the 1951 convention and the 1967 Protocol may have directed effect in local law, while in still other cases, ratifying states may follow up their acceptance of international obligation by the enactment of specific refugee legislation or by the adoption of appropriate administrative procedures.\textsuperscript{54} For example, the
definition of refugee in the 1951 convention and Protocol have been
enshrined in the domestic laws of Denmark, France, Germany, Norway and
Sweden. The United States of America and United Kingdom have partially
based their Immigration Laws on these instruments though the institution of
asylum in the West is in serious crises.\textsuperscript{55}

The number of asylum seekers has over-burdened most refugee
determination systems in developed countries, undermining their
effectiveness, putting in doubt their procedural fairness and objectivity and
prompting many governments to consider the revision of their procedures.
But, unfortunately, one is compelled to recognise that whatever be the
international law on this aspect of refugee problems, states will, in reality,
shape and formulate their policies by their ideological affiliation and
commitment. They may even put to record the existence of the international
legal rules just mentioned, while at the same time finding expenses and
pretexts for procrastination such as the need to support freedom movement,
combating communism and fighting colonialism in the garb of self-
determination.

A. United States of America

So far the United States is concerned, it is mentioned in the
Department of\textsuperscript{56} "Justice Immigration and Nationalisation service Regulations
on Refugees and Asylum Procedures," that regardless of any convention
definition, "before the beginning of each fiscal year, the President
determines the number and allocation of refugees who are of special
humanitarian concern to the United States and who are to be admitted during
the succeeding twelve months. Any alien who believes he/she is “refugee”
defined in the Refugee Act, 1980. It is included in a refugee group of
special humanitarian concern as designated by the President may apply for
admission to the United States in accordance with the Regulations.
REFUGEE LAW: HISTORICAL RETROSPECT

For the purpose of the Act, the term "refugee" covers:

"persons outside their own country, or if stateless outside the because of the fear of persecution on account of religion, nationality, or political belief and the like – that is to say for reasons mentioned in the 1951 convention and the Protocol thereto."

Further, the Act provides that the President may, for the same reasons, classify as a refugee any person within his national territory, or, if stateless, his place of habitual residence.

With the passage of the 1980 Refugee Act, the legal basis of refugee admissions to the United States changed from political realism to humanitarian principle. The Act eliminated the geographical (Europe and the Middle East) and ideological (anti-communist) grounds for granting refugee status. Actual practice, however, changed very little. In 1993 the overwhelming majority of U.S. resettlement place for refugees from abroad still went to people from the former Soviet bloc and Indochina, relatively few of whom would meet the international standard for a claim on international protection.

The drafters of the 1980 Refugee Act took up the topic of asylum as an afterthought. The focus of the bill was to regularise refugee resettlement in the United States from overseas camps. The instigating issue was the Indo-Chinese refugees admitted through a controversial use of parole, an immigration law provision intended for emergency temporary admissions, but frequently used since the Hungarian rebellion in 1956 to admit refugees. Hundreds of thousands of Indo-Chinese had been admitted/paroled in 1975 and 1976 and Vice-President Walter Mondale, as head of the U.S. delegation to a Geneva refugee conference in 1979, promised that the United States would admit up to 144,000 a year outside of congressional authorization to help respond to the Vietnamese boat people issue. Since the Refugee Act of 1980 amended and supplemented the Immigration and Nationality Act of
REFUGEE LAW: HISTORICAL RETROSPECT

1952 so as to provide the first permanent and systematic procedure for the admission and resettlement of refugees of special humanitarian concern to the United States. The Act established a definition of the term "refugee" that conformed to the 1967 U.N. Protocol Relating to the Status of Refugees and made clear the distinction between refugee and asylee status. Thus, the passage of the Refugee Act 1980 has changed the composition of refugee admissions to the United States.

B. Australia

In Australia, no distinction exists in law between convention and other refugees as a result of which persons displaced by serious disturbances of public order may benefit from asylum. People migrate to seek a better job or a better life, or they migrate because they are in danger and migration provides a safety valve, or they migrate to join family members. International law guarantees people the right to leave their country as well as to return to it while no country has a legal obligation to receive refugees or migrants, most developed countries have recognised a moral obligation to do so. The most experienced refugee - receiving countries - the United States, Canada and Australia - rightly see their policies as in an enlightened humanitarian tradition. But, Australia as a country has never considered itself consumer of immigration is now compelled to define its approach to intending immigrants and asylum seekers.

C. Canada

Canada’s Immigration Act 1976 has adopted the definition of the 1951 convention and has spelled out detailed rules for the determination of refugee status. Here it may be mentioned that Canada is also prepared to grant refugee status to persons who have not left home, but who fear they may be persecuted or because they may be described as “self induced” refugees by virtue of changing their own political opinions.
Moreover, Canada is addressing a shared challenge that requires cooperation with other countries to deal with smuggling rings, multiple applications to many countries by asylum seekers, and sequential applications by asylum seekers after being denied in one country.

D. United Kingdom

Although the convention and Protocol are not formally incorporated in United Kingdom law, the rules adopted for implementation of the Immigration Act, 1971 which make express reference to the convention definition in the context of applications for entry, for extensions of stay, and against deportation. On October 22, 1992, the United Kingdom Government published its Asylum and Immigration Appeal Bill. If it enters into force, it will be the first piece of Legislation focusing almost exclusively on Asylum. However it has been argued that, in the absence of specific legislation, U.K. system is simply an informal administrative process.

But, recently, the British Prime Minister Mr. Tony Blair has advocated a liberal refugee policy while addressing the Labour Party Conference in Bournemouth. He said, "reform of asylum law is the best way of helping the genuine refugees" He further stressed the need of more liberal immigration laws in Britain for helping the really persecuted of the world and victims of the racism. Britain should be a safer place for the asylees in the entire world.

E. Switzerland

In Switzerland, a clear distinction is made between convention refugees and persons having fled from civil war, internal disturbance or famine. The later category of persons does not enjoy any protection against expulsion or deportation. Australia has also admitted a large number of humanitarian refugees under special arrangements. A recent Portuguese Law on asylum provides for a grant of asylum to persons not qualifying as
REFUGEE LAW: HISTORICAL RETROSPECT

refugees under the 1951 Refugee Convention Relating to the Status of Refugees.

F. Asia

In Asia, there has so far been no such regional imitative, nor virtually any appropriate domestic legislation, except, of course, that imposing restrictions on unwanted new arrivals. Though the Asian region has a large share of the global refugee problem, there is a low rate of accession among Asian countries to the international refugee instruments – the 1951 Convention and the 1967 Protocol. In addition, although African States have utilized regional arrangements such as the OAU to provide coordinated and integrated responses and a legal framework for the refugee problems experienced there, the Asian region has not entered into similar regional arrangements still today.

G. South Asia

In South Asia, refugee and migratory movements are rampant due to various reasons but, unfortunately, no country has acceded to the 1951 convention on neither Refugee nor its additional Protocol of 1967. Nor is there a regional legal mechanism or covenant on refugees in South Asia. Today there are 136 countries who are parties to these international instruments on refugees and the same are applicable in this part of the world. Nevertheless, Asian governments are not sensitive enough to human rights issues.

South Asia is a region where and harried and terrified refugee movements took place owing to ethnic tensions, socio-economic problems, political cleavages and religious persecution since times immemorial. Indeed, some of the biggest, largest and diabolical movements of refugees in human history have taken place this region of the world. Since 1947 around 40 million people have crossed international borders in South Asia region as displaced persons or refugees. India and Pakistan experienced a heart-
wrenching spectacle of partition and resultant migration, scars of which are still fresh and haunting the people of, even of, ephemeral memory.

In Pakistan, an estimated 10 million Muslims arrived from India in the wake of partition. These people were governed under the "Registration of Claims (Displaced Persons) Act, 1956" and "Displaced Persons (Compensation and Rehabilitation) Act 1958" wherein procedures for allotment and transfer of evacuee property were land down in favour of refugees. But, besides partition Pakistan had to welcome Bihari Muslims in the aftermath of the emergence of a new independent and sovereign nation Bangladesh on world political map in 1971. Today, there are one-lac refugees from Afghanistan alone followed by Bangladesh, Bosnia Herzegovina, Iran, Iraq, Kashmir (India), Philippine, Sri Lanka and Somalia. Moreover in Afghanistan there were 300,000 internally displaced persons (IDPS) as on January 2000 as reported by UNHCR. But, unfortunately, Pakistan does not have any legislation with regard to refugees nor it has signed any international treaty on the subject. Consequently, refugees in Pakistan are not being treated according to the international humanitarian and legal mandate.

In Bangladesh, there are recurrent flights of the 50,000 Chin and Rohigyas refugees from Myanmar and 238,000 unwanted Bihari Muslims are stateless and await imposed repatriation. Bangladesh is also confronted with the problem of internal displacement besides refugee influx from Myanmar, Nepal and Bhutan.

In Nepal, there is one-Lac Bhutanese of Nepali origin who fled ethno-religions persecution but Tibetans are the oldest refugees in Nepal since 1959 and are residing in various parts of the country in refugee camps. Apart from these two significant refugee groups, there are various other refugees who are hiding from the glare of governmental and international agencies. These refugees are Myanmarese, Kashmiris from India, and
REFUGEE LAW: HISTORICAL RETROSPECT

Pakistan, Tamil from Sri Lanka refugees from North East India, Chinese (non-Tibetans), Iraqis, Somalis, and Afghan refugees.

In the absence of national and international legal protection regime in South Asia, governments of the region adopted the theories of “push back and” imposed repatriation” while dealing with refugees and their problems. Thus, doing the above issues and facts, South Asian countries must evolve or sub-regional approach towards refugees while keeping in mind common problems and issues pertaining to citizenship laws, asylum policies, determination criterion of refugee status and colonial and post-colonial borders making between India, Pakistan, Nepal and Bangladesh. As we all know that states policies have always being instrumental in producing refugees and refugee-like situations such as internal displacement, ethnic strife, civil disturbance, communal riots, breakdown of law and order, denial of human rights and deprivation of food, land, water & health care must also be kept in mind prior to the adoption of a Regional Protection Mechanism.

II. Refugee Status in India

It is distressing to note and historical fact too that India as a country born with refugee problem even then India has not signed 1951 Refugee Convention nor its 1967 Additional Protocol nor does she have domestic laws on refugees. Refugees are those people who are persecuted and hounded in their country of origin and are, therefore, compelled to flee. The reasons are always social, political, religions, ethnic war, armed conflict and insurgency, which may endanger the life. Moreover, today our country must be a signatory to the “1951 Convention Relating to the Status of Refugees” and additional protocol of 1967 to endorse its international concerns.

Under the present circumstances, protecting and defending rights of refugees have become an uphill task as India is being preferred as a destination of hope and peace in South Asia by the refugees from Afghanistan, Bangladesh, Burma (Myanmar), Bhutan, Iran, Iraq, Nepal, Sri
REFUGEE LAW: HISTORICAL RETROSPECT

Lanka, Sudan and Tibet. It is, now, incumbent upon the government of India to abandon its marmoreal silence over having refugee's law. India can no longer depend and continue to deal with problems and issues of refugees by resorting to the archaic 19th century principles enshrined in the outdated "Foreigners Act of 1946" and "Extradition Act of 1962". Recently, UNHCR had reported that India has more than 2.5 Lac refugees as on February, 20,2000. The maximum numbers of refugees are from Tibet around one Lac from Sri Lanka, 46,000 from Bangladesh, 18,607 from Afghanistan and 1037 from other countries. But Bangladeshis are not treated as refugees but as economic migrants. Lack of or legal framework poses a major petulance in the protection of their basic and fundamental freedoms and rights. In the absence of adequate laws refugees suffer and do not get charity, mercy and humanitarian treatment of which they are entitled to.

In spite of the fact that India is one of the most important founding members of the United Nations Organisation and signatory to the Universal Declaration of Human Rights but has not acceded to the 1951 Convention. Although India honoured its various international obligations and commitments by signing various International Human Rights "Instruments" such as "International Convention on Elimination of All Forms of Discrimination Against Women, U.N. Convention on Political Rights of Women, Convention on the Suppression and Punishment of the Crime of Apartheid and Convention on the Prevention and the Punishment of the Crime of Genocide etc. Therefore, it is encouraging to see that Supreme Court of India is preserving and protecting human rights and civil liberties of refugees by way of judicial activism and creativity. We can rightly recall the Supreme Court first INTER-ALIA restraining the forced expulsion of Chakma refugees from North Eastern part of the country.
6. RECAPITULATION

In the face of dramatically and cataclysmically changed social and economic conditions, States felt obliged to abandon the centuries-old practice of permitting the free immigration of persons fleeing threatening circumstances in their home countries. In an effort to limit the number of persons to be classified as refugees while still offering sanctuary to those in greatest need, international legal accords were enacted which imposed conditions requisite to a declaration of refugee status.

The initial approach was to offer assistance only to these groups considered to be international anomalies because they backed the *de jure* protection of any state. Refugee status was conceived as a means of providing international freedom of movement to persons who would otherwise have been unable to migrate by reason of the principles of international accountability. This view of refugeehood was replaced by a socially based philosophy of the refugee, which accorded status to those groups, which were in fact, if not in law, without state protection. The object of international refugee assistance was to facilitate the migration of groups whose personal safety or basic human rights were seriously jeopardised by the actions of their governments. The third phase in the definitional evolution consisted of a shift away from the approach of definition by group. The refugee was instead viewed as an individual whose beliefs or personal characteristics brought him into a situation of fundamental conflict with the government of his home state. A person was declared to be a refugee in order to permit him to migrate in search of freedom of expression and action.

Over the course of more than 50 years, three quite distinct approaches to refugee definition were evident. While each was designated to facilitate involuntary migration, the precise approach was determined by the perceived nature of the international community. The presence of masses of
stateless and undocumented aliens who wanted to migrate in search of decent living conditions in the years following the end of the World War-I dictated a refugee definition founded upon considerations of formal legal status. The exodus of persons fleeing Nazi Holocaust and persecution in the 1930’s called for the extension of refugee protection to all members of the groups targeted, tortured, victimised and abused. Ultimately the inception of the institutionalised ideologies to which many individuals were unable and unwilling to emulate in the wake of World War-II suggested an approach to refugee definition, which accorded relief to these persons for whom continued residence in their own countries, was unthinkable.

Refugee status, then, is an extremely malleable legal concept, which can take on different meanings as required by the nature and scope of the dilemma prompting involuntary migration. If properly defined, refugeehood enables to maintenance of a delicate balance between domestic policies of controlled immigration and the moral obligation of the international community to respond to the plight of those forced to this role, the definitional framework must, as during the period analysed here, evolve in response to changing social and political conditions. The definition of the term “refugee” given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today’s refugee problem, which are primarily problems of refugee groups.

However, an agreement on a more precise and inclusive definition by Western States and India would ameliorate a number of serious problems because the context in which refugee problems because the context in which refugee problem rise these days is becoming increasingly complex. Tremendous migratory pressures have emerged, provoking large movements of people between countries in the South from the large movements of people between countries in the South to the North, and from
the East to the West, even the concept who is a refugee requires new clarification and formulation. Though, it may be noted that the convention may not provide an answer to many of today’s problems, which have an adverse bearing on the refugee situation. But it should not be a reason for questioning its basic value in the sphere for which it was intended and directed at. The Convention should not be blamed for failing to resolve problems with which it was never supposed to deal. It should never be forgotten that the Convention is an essential and *sina qua non*-part of our humanitarian heritage for the international protection of refugees who do not want to be refugees.
REFUGEE LAW: HISTORICAL RETROSPECT

NOTES AND REFERENCES

3. Adopted by the U.N. General Assembly.
4. Ibid.
6. The refugee is perceived as an involuntary migrant, a victim of circumstances, which force him to seek sanctuary in a foreign country - (The Oxford English Dictionary, 1989).
14. Ibid.
21. Article 1 of the 1938 Convention Concerning the Status of Refugees coming from Germany: 191 LNTS. No. 4461. The definition was subsequently extended to cover persons coming from Austria.
25. See, supra note, 1.


31. See, supra note, 1.

32. See, supra note, 1.


36. See, supra note. 3.


43. Ibid.


45. Ibid.

46. The Montevideo Treaty on International Penal Law, 1889 (It was the first regional instrument, which dealt with Asylum. See, OAS Official Records OEA/Ser. X/I

47. Article 16, Montevideo Convention on International Penal Law, 1889.


49. Supra note. 42.

50. Marcus, M., "The Unwanted: European Refugees in the Twentieth century, pp. 6-7.


52. Cartegena Declaration, 1984, Part-III.


55. This view was expressed by Mr. Sadako Oghata, Former United Nations High Commissioner for Refugees, at Seminar on "Refugee Policy to 1992 and beyond". In Brussels on 20-21 June 1991.


61. Supra note. 13.
63. BBC News Channel (Live Telecast), September 30, 2003, at 7.54 p.m. IST.
65. Ibid.
66. Ibid.
CHAPTER-II

HUMAN DISPLACEMENT AND HUMAN RIGHTS
1. AN OVERVIEW

The refugee phenomenon is one of the most tangible manifestations of the aftermath of the Cold War. In the context of increased international migration and new political and diplomatic affiliations, relationships, immigrants and asylum seekers pose *rara avis* situations and unique challenges to national governments. Human rights and national interests are juxtaposed which heralds a new polemical debate between Sovereignty and Human rights.

This chapter examines the nature of displacements of the people vis-à-vis human rights *inter-alia* current dilemmas in refugee protection. It has also been discussed what kind of protection is available to them under human rights treaties. The crucial issue of displacement and the rights of the displaced within their countries have also been dealt with.

An unprecedented number of refugees are fleeing persecution – approximately 20 million, according to the United Nations High Commissioner for Refugees (UNHCR). An additional 25 million people are displaced within their home countries, due to armed conflict or forced relocation. These are only parts of the estimated 100 million migrants worldwide who move for a variety of reasons, ranging from poverty and economic insecurity to population growth and environmental degradation.

Individuals who are driven from their places of origin, but do not cross a national boundary – *internally displaced persons* – cannot appeal to international legal standards governing refugees, even if they fear persecution or other serious harm. Thus, while often outnumbering and having similar protection needs as refugees, *internally displaced persons* have no guarantee of freedom from forced return nor any of the civil, social and economic entitlements and rights set forth in the refugee treaties. These rights include non-discrimination, practice of religion, retention of property, freedom of association, access to courts, employment, entitlements to share
in any rationing schemes, housing, public education, public assistance, social security, freedom of movement, identity papers, travel documents, transfer of assets and facilitation of naturalization.

Yet increasing numbers of commentators and advocates view the international treaty regime that protects refugees — of which 123 states are now members\textsuperscript{5} as inadequate to ensure respect for the basic human rights of those forced to migrate. A more comprehensive and effective international refugee regime is needed to address such desperate elements of the present dilemma as guaranteeing initial asylum to those in flight from persecution and violence, respecting the human rights of asylum — seekers (including the right to be free from arbitrary detention), determining equitably who is entitled to protection and resettling refugees in need of new permanent homes (including repatriation and/or resettlement in another country). Many countries, however, far from wanting to develop a new regime, do not even adhere to the existing standards.\textsuperscript{6}

2. THE REFUGEE CONCEPT UNDER INTERNATIONAL LAW

Traditionally and by definition, therefore, refugee protection is reserved for those who have left their countries of origin. The decision to leave and cross a national border transforms an individual into an object of international concern under refugee law when he or she lost, or been deprived of, protection under law in the country of origin, and is in need of another source of protection from persecution.\textsuperscript{7}

Occasionally, however, at the request of the Secretary-General and, or, the General Assembly of the United Nations the Office of the United Nations High Commissioner for Refugees extends its mandate to such displaced persons under \textit{good offices} jurisdiction, which is based on the UNHCR statute. UNHCR provided humanitarian assistance, as directed by the resolutions 39/106 and 40/136 of the United Nations General Assembly to displaced persons in Chad, Sudan, Guinea-Bissau, Mozambique, Angola,
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Laos and Ethiopia. A recent extension of UNHCR's mandate regarding assistance to internally displaced persons concerns the former Yugoslavia.

The Statute provides UNHCR with a mandate for assistance and protection outside the framework of international refugee treaties. Acting through the United Nations, governments have also established special authorities to assist displaced persons, such as the United Nations Border Relief Operation (UNBRO). UNBRO was created in 1982 along the Thai-Cambodian border to coordinate assistance to Cambodians held in border camps.

In addition, those individuals who cross a border while fleeing war or civil disturbance are outside the scope of international refugee law; they are also denied legal protection from return and the other rights promulgated in the treaties. Such persons are considered not to have a sufficiently individualized fear of persecution. Member states of the Organization of African Unity (OAU), however, subscribe to a broadened refugee definition, which includes those displaced by war and civil disorder.⁸

In general, movements of people caused by deforestation, desertification and other environmental factors would not be covered by either the expanded or conventional refugee definitions. Governments and refugee experts in Latin American and Asia⁹ also recognise the merit of a broadened definition addressing causes such as external aggression or civil conflict. But even in these regions, such arrangements have not yet been adopted. However, environmentally displaced persons may be included within the existing definition of refugees in 1951 Refugee Convention with its Additional Protocol of 1967.

3. LAW OF ASYLUM AND NON-REFOULEMENT

A. Admission and Asylum

For refugees to enjoy basic protection, it is essential that they be admitted into the territory of a State and granted at least temporary asylum.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

The main international refugee instruments, however, contain no provisions dealing directly with admission and asylum. The closest they come to addressing the issue is in their non-refoulement provisions that protect a refugee from forceful return to a country where he or she may face persecution, as well as in articles that hold that refugees should not be penalized for having entered the territory of a State in an illegal manner if they come directly from their country of origin.

The Universal Declaration of Human Rights embodies the principle that everyone has the right to seek and enjoy in other countries asylum from persecution. A similar provision is contained in the 1967 United Nations Declaration on Territorial Asylum, contained in General Assembly resolution 2312 (XXII) of 14 December 1967. Asylum remains, however, an attribute of State sovereignty and the right to be granted, as opposed to seeking asylum, has not been translated into a binding international legal norm.

Given the absence of firm legal obligations to grant asylum, it is encouraging to note that many States continue liberal asylum policies. Whether persons flee their countries for fear of persecution in the sense of Article 1 of the United Nations Convention of 1951 Relating to the Status of Refugees, or as a result of armed conflict, foreign aggression or occupation, gross violations of human rights or internal upheavals, there is widespread recognition that they should be admitted and granted at least temporary asylum. Thus, the majority of today’s asylum-seekers continue to be admitted into the territory of States and granted, de jure or de facto, some form of asylum. It should be noted that the majority of these countries—particularly those accommodating large scale influxes—are among the world’s poorest.

If the overall situation with respect to admission and asylum remains on the whole positive, some worrying trends need to be highlighted. One of
these involves asylum seekers who sought asylum in countries far away from their own. Sometimes they travelled uninterruptedly from their country, travelling through some other States to a third country. In other instances, they travelled from a country where they might appear already to have found protection, in order to seek asylum or a durable solution in another State, without first obtaining the consent of the authorities of the State. In many instances, the concerned asylum-seekers, in addition, travelled on forged documents and/or destroyed their documents on route with a view to misleading the authorities and frustrating their efforts to return the asylum-seekers to an intermediate country.

Partly as a result of these movements, a growing number of states introduced, or further reinforced, measures aimed at restricting the entry of asylum-seekers. These included: visa restrictions for growing numbers of nationalities, penalties on airlines carrying insufficiently documented asylum-seekers, penalties on persons assisting in organizing the illegal entry of asylum-seekers into the territories of States, screening procedures at national borders, restrictions in assistance and the right to work, and systematic and prolonged detention of asylum-seekers.

At the same time, some States also continued to resort to much stricter interpretations of the notion of a refugee, as defined in the United Nations Convention of 1951 Relating to the Status of Refugees and its 1967 Protocol. Some of these States, furthermore, required that asylum-seekers meet unduly high or unrealistic standards of proof. The combined effect of such measures was that large numbers of persons were frustrated in their efforts to seek asylum from persecution and, even, when fulfilling refugee criteria in the sense of the United Nations Convention of 1951 Relating to the Status of Refugees, were denied the protection stipulated in that Convention.
An equally worrying trend consisted in the practice of some States to refuse admission to asylum-seekers on the grounds that they could, or should, have sought it elsewhere. In some instances*, this led to the creation of "orbit" situations, some of which eventually resulted in refoulement. In one particular case involving asylum-seekers travelling by small boats, a comparable practice adopted by one country was reported to have resulted in the deaths of more than 100 persons.

A fundamental tenet of the international system for providing protection to refugees is that the granting of asylum is a peaceful and non-hostile act. Nevertheless, in one instance, as a result of the pressure exerted on neighbouring countries by one particular State, refugees from that country could not, for reasons of national security, be granted asylum in those former countries. Other States in the region offered asylum, however, and several hundred asylum-seekers were relocated to these States during the reporting period.

Upon leaving his or her country, a refugee becomes subject to the jurisdiction of the authorities in the country of reception. Under international refugee law, refugees have no categorical right to asylum. The term "asylum is not defined in the refugee treaties, but one may understand it to mean the act of providing protection" to refugees seeking entry to a territorial jurisdiction.13 Although, the "right to seek and to enjoy in other countries asylum from persecution" is proclaimed without elaboration in Article 14 of the Universal Declaration of Human Rights which was adopted and proclaimed by the United Nations General Assembly resolution 217 (A) (III) on 10 December 1948.

Nevertheless one may interpret the concept of "protection" again not defined in the refugee treaties – as the act of upholding fundamental human rights, such as the core rights declared in the covenants on civil and political

* The case of Vietnamese Boat People.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

rights\(^{14}\) and on economic, social and cultural rights.\(^{15}\) There are human rights, from which no derogation may be made by treaty, or which have achieved the status of customary international law, are ordinarily considered “basis” “core” or “fundamental” rights.

B. Non-refoulement and Other Rights

The most fundamental of protection principles and the first of refugee rights is that of non-refoulement, which provides that no person shall be subjected to measures such as rejection at the border, or; if already in the territory of a country of refuge, expulsion or compulsory return to any country when he or she may have reason to fear persecution or danger to life, liberty or freedom because of reasons pertinent to refugee status. Apart from being embodied in a large number of international treaties and declarations, this principle is today considered as part of general international law.\(^{16}\)

As in previous years, most States continued to adhere to the principle of non-refoulement. Nevertheless, the reporting period also saw several noteworthy exceptions. Thus, some countries continued their practice of pushing back asylum-seekers. Other States occasionally resorted to the refoulement of larger groups of asylum-seeker and even some recognized refugees.\(^{17}\) The total number of refugees and asylum-seekers who were subject to refoulement during the reporting period exceeded several thousand. This constitutes an extremely worrisome and noteworthy deterioration in recent years.

Another basic principle of refugee protection embodied in article 32 of the 1951 United Nations Convention prohibits States from expelling refugees who are lawfully in their territory except on grounds of national security or public order. During the reporting period, expulsions in disregard to article 32 were limited in number but nevertheless affected several groups
of refugees. In one instance, many of the expelled refugees were allowed to return to the asylum country concerned after seeking judicial remedy.

Unjustified detention of refugees and asylum-seekers is contrary to basic principles of refugee protection. It will be recalled that, in 1986, the Executive Committee of the Programme of the High Commissioner, at its thirty-seventh session, adopted a conclusion on this matter. Through this conclusion, the members of the Executive Committee confirmed that detention of refugees and asylum-seekers should only be resorted to if necessary and only on grounds prescribed by law for certain purposes. Those purposes were defined as being to verify identity; to determine the elements on which the claim to refugee status was based; to deal with cases where refugees and asylum-seekers have destroyed their travel and/or identity documents or have used false documents; and to protect national security or public order.

Even so, many hundreds of refugees and asylum-seekers were detained during the reporting period for no other reason than illegal entry from having overstayed the validity of their entry visa. Such detentions were in violation of article 31 of the United Nations Convention of 1951 Relating to the Status of Refugees and disregarded the fact that their illegal entry or presence was the entirely to the need to find asylum. In several instances detention measures were enforced as a means of discouraging further arrivals and were part of a deliberate governance policy to deny asylum to persons coming from certain countries or regions. In some instances, the conditions of detention gave rise to particular concern, as they did not meet internationally recognised minimum standards of detention. Also worrisome were the facts that many refugees and asylum-seekers had to spend considerable periods in detention, sometimes exceeding one year, with no possibility of judicial or administrative review of the detention.
measure, and that detention measures were applied equally to refugee children.

Economic and Social rights of refugees are important, not only so as to facilities their integration, but also to preserve their dignity and self-respect; these latter reasons applying equally to asylum-seekers and those who have only received temporary asylum. The most fundamental of these rights—the right to gainful occupation which is reflected in both the United Nations Convention of 1951 Relating to the Status of Refugees and in other international instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.¹⁹

The enjoyment by refugees of economic and social rights is, however, fraught with limitations. In some situations, this is due to the absence of specific programmes aimed at assisting refugees to find work, obtain trainings and other facilities, all of which may be required in countries with high rates of unemployment. In some countries, the sheer number of refugees makes the enjoyment of these rights meaningless as no employment is to be found. The difficulty of finding work may be further increased by the absence of appropriate mechanisms whereby refugee status can be recognized, thereby putting the refugees at par with ordinary aliens or illegal immigrants. As regards asylum-seekers whose status had not been determined, their situation was even more difficult, particularly in countries, which introduced or strengthened already existing restrictions on their right to work.

Limitations also existed on the refugees' right to education. Many countries do not have enough educational institutions to meet the needs of their own citizens let alone these refugees and asylum-seekers. Special assistance programmes have gone a long way to meet the basic education
HUMAN DISPLACEMENT AND HUMAN RIGHTS

needs of refugees living in settlements and camps, whereas the needs of refugees living in urban centres were largely unmet.

At its thirty-eight session, the Executive Committee of the Programme of the High Commissioner considered the issue of Convention travel documents. Although the great majority of States parties to the United Nations Convention of 1951 Relating to the Status of Refugees follow the provisions of article 28 of Convention on the issuance of such documents, certain problems remained. These are relating to particular to the issuance and renewal of Convention travel documents, their geographic or temporal validity, their recognition for visa and admission purposes and the transfer of responsibility of their issue. In its conclusion on travel documents for refugees, the Executive Committee, inter alia, urged States parties to the United Nations Convention of 1951 Relating to the Status of Refugees and its 1967 Protocol to take appropriate legislative or administrative measures to implement effectively the provisions of these instruments concerning the issue of Convention travel documents.

Many States continued to issue identity documents to refugees during the reporting period, sometimes with UNHCR assistance. In most instances, these documents attested not only to the holders' identity but also to their refugee status, thereby enabling them to benefit from various rights of refugees.

The minimum content of the international protection of refugees consists in the enjoyment of fundamental human rights necessary for survival, safety and dignity. This implies, as the non-refoulement principle recognizes, protection from loss of life, injury and other bodily harm as well as from any other action that might endanger, or threaten endanger, the safety and dignity of refugees. As a fundamental element of this protection, the right of refugees to security is fully recognized in international law.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

At its thirty-eight session, the Executive Committee, for the sixth consecutive year, considered the problem of military and armed attack on refugee camps and settlements. The Executive Committee adopted a conclusion on this subject which, inter alia, condemned all violations of the rights and safety of refugees and asylum-seekers and, in particular, military and armed attacks on refugee camps and settlements; urged States to abstain from these violations, which are against the principles of international law and cannot, therefore, be justified; called upon States and competent international organizations to provide all necessary assistance to relieve the plight of the victims of such attacks; and urged States to take every possible measure to prevent the occurrence of attacks, including measures to ensure that the civilian and humanitarian character of refugee camps and settlements are maintained.

In some refugee situations, the security of refugees is jeopardized through their forced recruitment into armed groups, guerrilla bands and regular armies. Such practices continued during the reporting period and affected considerable numbers of young male refugees. Coercing refugees to take part, as active combatants in an armed struggle, amounts to a clear threat to their survival and integrity, is incompatible with their status as refugees and undermines their access to international protection. Furthermore, these violations are contrary to the concept that refugees are civilians as reconfirmed by the Executive Committee in its conclusions on military and armed attacks on refugee camps and settlements, that such camps and settlements have a strictly civilian and humanitarian character and that it is essential that States of refuge do all within their capacity to ensure that this character is maintained.

Further examples of violations of the security of refugees were found in the waters of South-East Asia where pirates continued, during the reporting period, to attack asylum-seekers travelling in boats. Efforts to
HUMAN DISPLACEMENT AND HUMAN RIGHTS

curb such attacks were maintained under the Anti-Piracy Programme previously established by the Royal Thai Government, in co-operation with UNHCR and funded by several donor countries. Similarly, the Rescue at Sea Resettlement Offers (RASRO) scheme and the Disembarkation Resettlement Offers (DISERO) scheme benefited large numbers of asylum-seekers in distress at sea. Elsewhere, national authorities and UNHCR increased their vigilance along flight routes to ensure that refugees in search of protection were not killed, injured, raped or abducted. Even so, during the period under review, several reports reached the Office of violation of refugees’ right to security.  

A host country’s treatment of refugees must respect these basic rights, including the right not to be returned to a territory where one may be subjected to persecution. This right embodied in the concept of non-refoulement. Non-refoulement imposes a duty upon host governments to protect refugees present within their borders. This limit or sovereign prerogative is the foundation of, virtually; all refugee protection. Non-refoulement provisions are also included in several U.N. documents, including the 1951 Convention and its 1967 Protocol (Article 33). A similar provision is also in Article 3 of the Declaration of Territorial Asylum, which was adopted by UN General Assembly resolution 2313 (XXII) on 14 December 1967. U.S. domestic law also reflects this policy. Even states not parties to U.N. instruments are bound to respect non-refoulement as a fundamental principle of customary international law.

At times, countries have instituted policies towards asylum-seekers specifically designed to discourage those who would seek refuge within their borders. But host countries’ failure to provide tolerable conditions of asylum can force refugees to return prematurely and thus undermine the cardinal principle of non-refoulement. The governmental Executive Committee, which oversees the work of UNHCR, stresses that all individuals given
refuge be allowed to enjoy human standards of treatment. Refugees thus should be permitted to remain in the host country, at least temporarily, under having conditions that meet their essential humanitarian needs. The principle of non-refoulement prevents states from turning away refugees at a border and in certain circumstances may even limit a country’s power to intercept refugees en route to its territory and return them to their place of origin.

Regardless of whether host governments recognize persons seeking asylum as ‘refugees’ or classify them somewhat more pejoratively as illegal aliens, states must provide essential legal protection and respect basic individual rights. The standard of treatment to which non-citizens are entitled is generally the same as that applied to a state’s treatment of its own nationals. Whether a non-national’s entry into a state was lawful affects only his or her claim to immigration status or other benefits above and beyond the right to essential protection to which all persons within a state’s borders are entitled.

4. INTERNATIONAL DISPLACEMENT

International or external displacement embodies migration from one country to another or where an international border is crossed and refuge is sought in the reception country. International displacement is caused by civil disorder and armed conflict. The international refugee law protects such displaced people and they can appeal to international legal standards regulating the refugees.

India continues to host a large refugee population from different countries of the region. It has remained particularly hospitable to 1,10,000 Tibetan refugees as reported by the State of World Refugees, 2000, UNHCR, Geneva. Although some refugees have been allowed to approach the UNHCR mission in New Delhi for protection and humanitarian assistance, the government of India does not allow the representatives of the UNHCR and other international humanitarian organisations like the
ICRC to visit refugee camps in the country. There have been complaints that India has used coercive measures to send Sri Lankan Tamil refugees back to Sri Lanka. Afghan, Iranian and Myanmar refugees have not also made similar complaints. India is not a party to 1951 Convention and nor signed the 1967 Protocol. *India also has no National Law for Refugees.* However, the Indian Supreme Court judgements and several other judicial orders passed by Indian courts provide some legal protection and security to refugees in India.

In 1999 India hosted more than 2,92,000 refugees. This includes 16,000 persons from Afghanistan, 65,000 Chakmas from Bangladesh, 30,000 Bhutanese of Nepali origin, 50,000 Chin indigenous people from Myanmar and nearly 300 former pro-democracy student activist from Rangoon and the Mandalay region of Myanmar, 1,10,000 Sri Lankan Tamils (70,000 in camps and 40,000 outside), 1,10,000 Tibetans and some 700 refugees from other countries. More than 5,20,000 people are internally displaced in India due to political violence, including some 3,50,000 Kashmiris and more than 1,70,000 others of various ethnicities displaced in northeast India.  

A. Sri Lanka’s Tamil Refugees in India

In this connection, Tamil people’s exodus from Sri Lanka to India is a glaring instance of international displacement. The recent escalation of violence in Sri Lanka has thrown a spanner into the Indian Government’s repatriation scheme for Tamil refugees. The past four years have seen marked decline in the hospitality extended to Sri Lankan Tamils in Tamil Nadu, India, fleeing from the ethnic violence in their island home. Though the refugees were originally welcomed to Tamil Nadu, the assassination of Rajiv Gandhi by a suspect of Liberation of Tamil Tigers Ealam (LTTE) suicide bomber turned public sentiment and government authorities against them. Subsequently, India commenced a program of voluntary repatriation.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Over 23,000 refugees were repatriated without the benefit of international supervision. It is now apparent that most of those refugees were coerced in various overt and covert ways to leave the refugee camps in Tamil Nadu. Consequently a court order forced the government to halt the repatriation program and gave the United Nations High Commissioner for Refugees (UNHCR) the right to interview the returnees. However, UNHCR is not allowed access to the camps and cannot speak to the refugees until they have already consented to leave India.29

The fact that the Indian Government has not acceded to the Refugee Convention means that refugees are subject to the whims and megrims of the party in power. The Tamil Nadu Government, though originally sympathetic to the refugee’s cause, has failed on numerous fronts to maintain the refugee camps in accordance with well-recognised international standards. Camp conditions vary from district to district depending on the sympathies of local officials. The camps closest to Madras are, for the most part, well-maintained, while in Pooluvapath Camp near Coimbatore, 4,700 refugees are using eight latrines. Accumulated waste, cramped quarters, lack of electricity and sanitation all contribute to the degraded state of the camps. The health of the refugees has significantly deteriorated since NGOs were banned from entering the camps. Previously, NGOs had been allowed to provide primary health care and supplement the meagre government rations. The Government of Tamil Nadu is supposed to provide monthly stipends and food subsidies. However, the rations, which consist of rice, sugar and kerosene, are insufficient. Most refugees are forced to spend what little money they have on black market food because payment of the stipend rarely coincides with the arrival of rations. Camp officials are known to use the stipends and rations as bargaining chips, telling the refugees that they will only receive their stipends if they agree to leave the country. Obtaining permission to leave the camps often depends on the vagaries of the camp authorities. Travel restrictions also make visits to the offices of the UNHCR
or the Sri Lankan Deputy High Commissioner in Madras virtually impossible for refugees confined to outlaying camps.

In addition to the regular refugee camps, the state government has established several so-called “Special Camps” in former jails. Since 1990, hundreds of refugees have been detained in these facilities. The National Human Rights Commission (NHRC) of India has compiled numerous reports of non-militant refugees, particularly young Tamil males, being arrested and detained under the Foreigners Act 1946. Many of these individuals have been languishing in detention facilities for more than two years and still do not know why they were arrested. When pressed, the government justifies these Special Camps as necessary measures to deal with LTTE terrorists. Though some detainees have agreed to repatriation, Mr. Anis Uddaula, a repatriation officer with UNHCR in Madras says that the UNHCR had blocked similar repatriation on the ground that it is impossible to “voluntary” opt for repatriation when the alternative is prolonged detention.\(^\text{30}\)

Most reports of overt coercion ceased about the time the UNHCR was allowed to participate in the repatriation program. Nevertheless, reports of coercion continue, despite government claims to the contrary. In February 1995, the Principle commissioner for Revenue and Refugee Rehabilitation Mr. Bugenga Rao denied that refugees had been forcibly repatriated. He said the conditions in the camps were so good that “he himself was wishing to be a refugee.” It is patently obvious that the policies of India and the State of Tamil Nadu contravene the Refugee Convention and a host of other international conventions and standards, not to mention well-established customary international law regarding refoulement.\(^\text{31}\)

Now UNHCR, used to treading lightly in India where it is not an officially recognised U.N. agency, should arm itself with the international conventions to which it owes its creation and take a more pro-active role in
HUMAN DISPLACEMENT AND HUMAN RIGHTS

the protection of the Sri Lanka refugees. Executive Committee of the UNHCR should make it difficult for India to justify abuses of refugee conventions, whether they have acceded to them or not.

It is estimated that 1,10,000 Sri Lankan Tamil Refugees were still living in India to the end of 1998. Of these, approximately 70,000 were in camps where they received some assistance from the Indian government and the local authorities while the rest were living outside the camps without any governmental support. According to local NGOs the number of Sri Lankan Tamil refugees living outside the camps was substantially higher. In 1998, according to the UNHCR, 3,839 Tamil Refugees fled to India and sought admission to refugee camps. It was not known how many unregistered Sri Lankans might have fled to India. A report of desperate asylum seekers drowning in the Palk straits is a grim reminder of the continuing influx. On July 26, 1998, 40 Sri Lankan asylum seekers drowned in the Palk Strait when the boat carrying them from Sri Lanka to India capsized in stormy waters. Only 10 passengers survived.32

From 1983 to 1990, waves of Sri Lankan Tamil refugees fled to India. The first wave commenced on July 24, 1983 and continued till 1987. These were the refugees of the First Eelam War, numbering about 1,34,953. Following the signing of the India-Sri Lanka accord of 1987, approximately 25,000 camp and non-camp refugees returned to Sri Lanka. The Second Eelam War triggered the next wave of refugees in August 1989 to 1990 when 1,22,000 refugees crossed over to India. Of these 1,16,000 were housed in government run camps in Tamil Nadu. From January 1992 to March 1995 some 54,188 refugees were repatriated to Sri Lanka.33

Initially the Indian authorities, the government of the state of Tamil Nadu and the local people were sympathetic to the Sri Lankan Tamil Refugees. There were 122 refugees’ camps in the southern state of Tamil Nadu for whose maintenance the government incurred annual expenditure of
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Rs. 150 million. The camp residents were given cash grants and provided with some non-food items at subsidised rates. A few camps were well maintained which other lacked proper housing and sanitation facilities. The refugees were allowed to work outside the camp but some restrictions were imposed on their movements in and out of the camps. UNHCR and other international groups were not allowed regular access to the camps.

However, the attitude of the Indian authorities towards the Sri Lankan Tamil refugees changed substantially following the involvement of LTTE in the assassination of former Indian Prime Minister Rajiv Gandhi in 1991. Sri Lankan Tamils overnight became unwelcome in Tamil Nadu. The movement of the refugees in and out of the camps was completely restricted and all refugees living outside the camps were ordered to register with the local police stations. Several were subjected to arbitrary arrest, detention and coercion. Local humanitarian organizations that were running schools for small children in the camps and providing health services were harmed from entering the camps. The Tamil Nadu government stepped up pressure to get the refugees repatriated to Sri Lanka.

Repatriation: Forced or Voluntary?

When the government of India in January 1992 resumed the repatriation of Tamil Refugees there was criticism that India was pressuring the refugees to leave. Indian and International human rights organisations complained that camp officials were forcing the refugees to put their signature on option forms printed in English, which most refugees could not read. They also pointed out that due to Rajiv Gandhi’s assassination food rations in the camps were drastically reduced to punish the Sri Lankan Tamil Refugees. Even these meagre quantities were often withheld to pressurise the refugees to return voluntarily.

In the face of International criticism, India temporarily halted the repatriation program. It was resumed again in 1993 after India agreed to
permit the UNHCR to interview refugees before their departure, to ensure that they were being repatriated voluntarily. UNHCR was not allowed to interview the refugees in the camps. They talked to them on the ships, which were talking the refugees back to Sri Lanka. According to local NGOs, after the UNHCR became involved, the authorities stopped using overtly coercive tactics to promote repatriation, but continued to pressurise the refugees by deliberately allowing conditions in the camps to deteriorate. A total of 54,059 refugees were repatriated to Sri Lanka between 1992 and 1996. Some of the returnees benefited from the UNHCR’s Special Program for returnees and IDPs in Sri Lanka. According to the UNHCR 7,464 persons were staying in UNHCR supervised government centres as of April 30, 1996, while the remainder had returned to their home areas in Sri Lanka. 

India does not allow the UNHCR regular access to the camps. Beginning in 1993, India also barred NGOs from assisting the refugees. However, the following a change of government in India in February 1998 the restriction was lifted. The UNHCR sought access to the camps but was denied. Apparently, the government did not grant UNHCR access for fear that it would be critical of conditions in the camps; that it might encourage the free movement of refugees which the government views as a security threat and also because the UNHCR’s presence in the camps might make refugees more resistant to repatriation. But India did permit the UNHCR a limited role with refugees wishing to be repatriated. According to the UNHCR, 14 Tamils were repatriated with UNHCR assistance in 1998. An estimated 100 others may have repatriated by their own means.

B. Myanmar’s Chin Refugees in India

The Chin nationals, recognised by the United Nations as “indigenous peoples”, fled their homeland in Burma to escape widespread and systematic persecution at the hands of the country’s ruling junta, the State Law and Order Restoration Council (SLORC). The atrocious human rights record
of the SLORC regime requires no reiteration here. Often re-forced to as one of the worst human rights abuses in the world, the SLORC is repeatedly admonished by the international community. UN Special Rapporteur to Myanmar, Yozo Yakota, has documented the absence of any progress toward SLORC compliance with UN General Assembly Resolutions and UN Commission on Human Rights Resolutions. Since the well-publicized pogrom of pro-democracy activist in 1988 fear of forced labour, arbitrary detention extra-judicial executions, and torture drove the Chins in ever increasing numbers from Burma to Mizoram in India.\textsuperscript{35}

The state government of Mizoram in North-Eastern India and the Union government of India initiated a campaign to expel from Mizoram 40,000, Chin refugees. Order No. 37 of the Champhai sub-Divisional office of the government of Mizoram officially closed the Myanmarese refugee camp at Champhai on 1 June 1995. This abrupt closure left thousands of Chins without housing or adequate provisions.

Additionally, a Task Force under the Chairmanship of the Deputy Commissioner has already been created for the express purpose of crafting effective and efficient plan for the mass expulsion of the Chins. The first batch of refugees was sent back from India to Burma in September and October 1994. At least 1000 refugees, with estimates ranging up to 10,000 were expelled from India over a one-month period. Myanmar military personnel received these repatriated refugees whereupon the deportees were jailed pending hearings to be scheduled before military tribunals. Reports indicate that the returnees endured six months of pre-trial detention followed by grossly unfair military trials.'

The Government of India temporarily discontinued this repatriation programme in October 1994 only to reinitiate the deportation of Chin refugees as of 15 June 1995. The present repatriation takes place in the wake of Indo-Myanmar meetings on border trade at Rihkhawdar village,
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Myanmar. The trade pact established said meeting included on informal understanding calling for the repatriation of Chin refugees to Burma as well as joint Indo-Myanmar operations to quell both the domestic insurgency movements in North-East India and the Burmese democratic forces currently living in India. The armies of India and Burma have begun on 12 April 1995 a series of Joint-military campaigns code named Operation Golden Bird.

The Government of India maintains that members of the Chin National Front (CNF) have joined forces with domestic insurgent groups, the United Liberation Front of Assam (ULFA) and the People’s Liberation Army (PLA). However, no evidence of this collaboration exists and the military commander of ULFA, Paresh Barua, has repeatedly denied any CNF involvement. The substance of the border trade agreement and the details of the military encounters under the Operation Golden Bird point to a different rationale. The Government of India seeks the cooperation of the SLORC in combating insurgency groups from the Northeast who are based on the Burmese side of the border. In return, the Government of India agreed to deport not less than 30 persons per week as part of a larger cooperative effort between the two countries to eradicate their respective insurgency movements.

The Chin National Front, it must be remembered, is a pro-democracy movement resisting one of the most brutal regimes in the world and, at most, comprises only a very small percentage of the 40,000 Chins in India. The SLORC will receive deportees from Thingsai Village, Lunglei district at Thatpang, Myanmar and deportees from Chakkhang, Chlimtuipui district at Hwawngthang, Myanmar.36

At present, these refugees are denied the international legal protections embodied in the Convention Concerning the Status of Refugee. Remarkably, the Government of India has not as yet certified the Chin as refugees. The predicament of the 40,000 Chins in this regard is gravely
complicated by the fact that the Government of India also denies UNHCR access to the seven states of the Northeast including Mizoram. The UNHCR has certified the refugee status of over 2000 Burmese who were able to reach New Delhi to apply in person; however, this strategy is simply unworkable for the vast majority of the refugees. Following the closing of the Champhai refugee Camp, nearly 600 families who were unable to assimilate swiftly and directly into the Mizo community have been left for dead without food, shelter, or medical provisions. Despite such unforgiving conditions, the Chin refugees will not voluntarily return to Myanmar.\(^{37}\)

Following the 1998 military coup, an estimated 1000 Burmese pro-democracy student activities took refuge in the northeastern states of Mizoram and Manipur in India. Indian authorities did not welcome them and some 80 students including young girls were forcefully sent back to Myanmar. It is reported that the Myanmar Army arrested a few of these deportees on the border and their fate remains unknown. The other deportees sneaked back into India.\(^{38}\)

Eventually, late in 1988, Indian authorities opened a camp in Leikhun in Manipur and another in Champai in Mizoram for Burmese student activists who had entered India. The government did not permit the UNHCR or any other international organisation to visit these camps. Indian authorities provided small quantities of rice, dal, salt and mustard oil for the inmates of the camps. Health care facilities were not provided. The camps had very poor housing and sanitation. Some of the inmates said they felt like prisoners of war as the Indian Army and other security forces constantly surrounded them. Some of the Burmese students sneaked out of these camps and were able to reach Delhi. They contacted the office of the Chief of Mission of the UNHCR in India and applied for refugee status. A few were arrested on their way to Delhi and sent back to Manipur where they were jailed for violation of the Foreigner’s Act, 1946.
In addition, an estimated 50,000 Chin indigenous people from the Chin state of Myanmar are living in India’s Mizoram state in refugee-like circumstances. Some have been living in India for as long as 44 years and may have initially left Myanmar primarily for economic reasons. However, after the military crackdown in 1988, a large number of Chin people fled Myanmar to escape religious persecution, summary arrests, extortion and forced labor. The majority of the Chin indigenous people are Christians.

The Indian government does not recognise the Chins as refugees. Most of the Chin refugees are working as weavers, housemaids and porters in Mizoram. Some of them were able to find better-paid jobs as schoolteachers. The Mizo and Chin peoples belong to a common ethnic and linguistic group—Zo. However, the xenophobic groundswell, which was sweeping across the northeast states in Mizoram, targeted the Chins. In August 1994, in response to an anti-foreigner campaign started by the local Mizo politicians and youth, the local government of the state of Mizoram arrested approximately 5000 Chins and deported them to Myanmar. In 1995 India and Myanmar entered into a border trade agreement. Three trading posts were created on Mizoram’s borders with Myanmar. Chin National Front, the political organisation of the Chin nationalists, called for an economic blockade of Myanmar and the closure of these trading posts. This angered the local Mizo population, which expected to benefit from this trade. There were clashes between groups of Mizos and members of Chin National Front. A Mizo youth leader and a village pastor were killed. The government of Mizoram arrested several Chin refugees on suspicion of being members of Chin National Front. Chin refugees claim that under the pretext of handing over “wanted criminals” the government of Mizoram has turned over several hundred Chin refugees to the Myanmar Army. They fear that the Myanmar Army executed most of these deported persons.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Other refugees from Myanmar, particularly the former student activists, feel insecure in India particularly after the Indian government has mended its fences with the military regime in Myanmar. There is concern that UNHCR will not be able to protect them against deportation by Indian authorities. In August 1996, a few recognised refugees and others whose applications were pending with the UNHCR, were handed over to the Myanmar Army by the Indian authorities. Ten of these deportees were deserters from the Myanmar Army who had fled Myanmar and joined the pro-democracy groups in India. They had applied to the UNHCR in Delhi for refugee status. Along with these 10 persons six other Burmese refugees recognised by the UNHCR were also deported. According to reliable sources, these 10 persons were taken to Mizoram from Delhi by a unit of Indian military intelligence and handed over to the Myanmar Army. The entire operation was done in a clandestine manner and it has been reported that a senior member of the Burmese government in exile was forced to cooperate with the Indian intelligence agency, which conducted this operation. According to reliable sources inside Myanmar, one student activist who was handed over to the Myanmar Army has become paralysed from waist down due to severe torture. Of the 10 Army deserters six were sentenced to death and the rest were convicted to life. No other incident of such deportation or handing over Burmese refugees has been reported since 1996.

C. Bangladesh’s Chakma Refugees in India

Since the creation of Bangladesh, its people are infiltrating in India. These people are known as Chakma refugees. They are living in the Northeastern region of India. As we have seen above that India’s record with regard to refugees has not been very appreciative. Meaning thereby, Chakma refugees are also being treated very badly. They are languishing between India and Bangladesh. Their country of origin does not show any
inclination to welcome them back. Even then some of them recently repatriated to Bangladesh. Although, those who participated in the Bangladesh War and supported Pakistan, which led to the independence of Bangladesh are still stranded in Bangladesh and they also wish to leave for Pakistan but later is quite reluctant due to its own domestic political ramifications. But UNHCR has been denied its due role in the entire episode and no respect is paid to the international refugee conventions and international legal standards.

There are an estimated 50,000 Chakmas who have fled persecution in their native Chittagong Hill Tracts after the flooding caused by the Kaptai project. This group is said to be about 40,000 strong in Arunachal Pradesh, lightly organised and outnumber the local and traditional communities of the area. The original inhabitants, the Singpyos, are not more than 5,000 and these groups are located in eastern Arunachal Pradesh. The Chakmas are being denied their basic rights: health, rations and education even after being there for 32 years. They remain stateless although many have been born in India. And the problem seen nowhere near a solution within demands by the powerful students union and all political parties for their ouster.

The Chakmas live in fear and face intimidation and threats from the Arunachalese. The concern is growing over their future. But one must take into consideration too, the concerns of the local people who find themselves saddled with a problem they did not create, with a group of people they do not want, with the Indian Government unwilling to push out the settler, and a growing anger at their own helplessness in changing the situation. The conditions appear right for a fresh confrontation but cooler heads must counsel restraint and negotiations.

In early 1986, 51,000 refugees belonging to ethnic and religious minority groups, mostly Buddhist Chakmas (one of the several ethnic groups that comprise the Jumma people) fled the Chittagong Hill Tracts (CHT)
HUMAN DISPLACEMENT AND HUMAN RIGHTS

region of Bangladesh. They ran away from alleged massacre, gang rape, arson and harassment by security forces and the Muslim Bangladeshis settlers in the Chittagong Hill Tracts by the Bangladesh Army and the settlers to suppress the Jumma peoples’ demand for regional autonomy. There was fighting between Bangladesh security forces and the Shanti Bahini, a Jumma insurgent group. The number of Chakma/Jumma refugees increased to 70,000 in June 1989 when the former President, Mr. R. H. Ershad held elections to constitute three “district councils” in Chittagong Hill Tracts.43 The refugees were sheltered in six camps in India’s remote northeastern state of Tripura. Although India allowed them to stay on, it did not permit the UNHCR or any other international agency to visit the refugee camps. The government and local authorities assisted the refugees but the conditions in the camps were bad. Food distribution was often delayed and medical facilities were “practically non-existent”. Education facilities were minimal. During the eighties and early nineties Bangladesh government sources claimed the Indian intelligence agencies were supplying arms and providing military training to the cadres of Shanti Bahini, the armed wing of Parbotiya Chattagram Jana Sanghati Samiti, the political organisation of the hill tribes spearheading the regional autonomy movement.

Since 1993, India has been pressurising the Chakma refugee leadership and the government of Bangladesh to arrange for the return of the refugees. In 1994 an agreement was reached. The government of Bangladesh agreed to take them back. The returnees were to be provided assistance for re-integration. The government also promised to remove the settlers from the land of the returnees. Over 5028 refugee families comprising more than 25,000 Chakmas returned home in two phases. However, in March 1995 when the refugee leaders visited the returnees they found that very little was done for the rehabilitation of the returnees. The refugee leadership felt that the government led by Begum Khaleda Zia and her Bangladesh National Party which was close to severe right wing political groups, was not serious
about the return and resettlement of the Jumma refugees. Consequently, the repatriation process was suspended.

Two years later, under the leadership of the newly elected Awami League government led by Begum Hasina, the dialogue was resumed. In March 1997, a 12-member, high level Bangladesh team led by Bangladesh Parliament chief whip Abul Hasnat Abdullah visited the six refugees camps in south Tripura and held talks with both the refugee leaders and Indian officials at the Takumbari camp in south Tripura. After a series of close-door meetings, the Bangladesh government and the Chakma refugee leaders signed a treaty for the repatriation of 43,000 refugees who had been sheltered in six camps in Tripura for the past 11 years. Under the agreement, each of the repatriated family was to be provided with a total of 15,000 Taka (nearly US $375) as house building and agricultural grants, free ration for nine months and an additional 10,000 Taka for the purchase of a pair of bullocks. The repatriation programme began on March 28, 1997.

On June 17, 1997, Mr. Ranjit Narayan Tripura leader of the Chakma refugees informed the Indian and Bangladesh authorities that the refugees had decided not to return to the Chittagong Hill Tracts as the Bangladesh government was not implementing the provisions of the 20-point programme of resettlement. They said that of the 1244 families, who had returned to CHT in June 585, had yet to receive their land. The Bangladesh government rejected the demand of the refugees that UNHCR and ICRC be asked to supervise the rehabilitation of the returnees. On December 2, 1997, Bangladesh signed a peace agreement with the armed wing, the Shanti Bahini, following which all the remaining Chakma refugees in India were to be repatriated. Immediately, following the agreement, some 13,500 Chakma returned home in December 1997 and within three months the remaining Chakma refugees repatriated to Bangladesh.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

About 65,000 stateless persons belonging to Chakma and Hajong tribes are still living in India’s northeastern state of Arunachal Pradesh. These people had migrated to India in 1964 from erstwhile East Pakistan (present Bangladesh). Their villages and farmlands had gone under the reservoir of the Kaptai Dam that was built in the Chittagong Hill Tracts by the Pakistan government. The Indian government gave them shelter and settled them on lands near the sensitive Indo-Chinese border of India’s northeast. The area was then known as Northeast Frontier Agency (NEFA) and was under the control of the central government of Delhi. Later NEFA was granted “STATEHOOD” UNDER THE Indian Constitution and renamed as Arunachal Pradesh. Arunachal Pradesh has its own state government and a Legislative Assembly. The Chakma and Hajong tribes people have become the target of local political parties of Arunachal Pradesh which have been threatening for forcibly drive out “foreigners who are occupying their land and eating up their resources”. Despite giving these asylum seekers shelter nearly 25 years ago, the Indian government has yet to grant these stateless people citizenship. The Supreme Court of India has upheld the rights of these stateless people. On the appeal of the National Human Rights Commission in 1995, the Supreme Court directed the state of Arunachal Pradesh to ensure the life and personal liberty of every Chakma and Hajong.

D. Tibetan refugees in India

Tibetan refugees first fled to India in 1959 when they refused to accept Chinese sovereignty over Tibet. Subsequently, thousands more arrived. More recently, refugees have come seeking a traditional Tibetan education or religious life, which they are allegedly unable to pursue freely in Tibet. Tibetan refugees have to undertake a perilous journey over the Himalayan Mountains in Nepal to reach India.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Within three years of the arrival of the first batch of Tibetan refugees in India, China and India were at war with each other. Inevitably Sino-Indian relations have hemmed in the Tibetan refugee question in India. Initially the government of India allowed the UNOHCR to assist the Tibetan refugees in India. However, after the entry of Mainland China into the United Nations, the UNHCR unilaterally withdrew its support to the Tibetan Refugees. This soured India-UNHCR relationship.

According to the office of the Dalai Lama there are more than 1,10,000 Tibetan refugees in India although this figure varies from year to year as new refugees arrive and old ones leave for resettlement in other countries. Some 3,100 Tibetans came to India in 1998 via Nepal. The Tibetan refugees are scattered throughout India but most of them live in and around Dharamsala, the home of the Dalai Lama, the spiritual leader of the Buddhists of Tibet and the seat of the principal Tibetan political and relief organization. The Indian government has been generous to the Tibetan refugees. It has given them residential permits and work permits along with identity documents to travel in and out of the country. Though refugees in general are not allowed to be involved in politics, the government of India has tacitly tolerated the Tibetan refugees’ campaign for the freedom of their country from Chinese domination. The Indian government recognizes Tibet as a part of China. Officially the Tibetan refugees are not allowed to engage in political activities against China from inside India. Nonetheless, the Dalai Lama has been permitted to run a de facto Tibetan government in exile from Dharamsala. This government is also not recognized by the government of India.

Although India has been yielding and flexible toward the Tibetans, refugee leaders worry that a constant increase in the Tibetan refugee population could eventually strain relations with their hosts. Many Tibetans in India have achieved economic self-sufficiency, but some, including
elderly persons, women-headed families, and recent arrivals are struggling. Also the substantial improvement in India’s relations with China has impacted on its attitude of the Tibetan refugee community in India. It is noticeable that while the Indian authorities have been continued to permit Tibetan refugees to enter, most of those who have arrived in recent years have not been granted legal residence. In January and February 1998, 21 Tibetans were arrested in Dharamsala for not holding valid residence permits. Tibetan advocacy groups feared that India might be signalling a change in policy toward Tibetan refugees. The detainees were released after a few days. No further arrests were made during the year. Apparently, the arrests were prompted by the Indian authorities’ concern for the security and safety of the Dalai Lama in the wake of reports about Chinese authorities sending infiltrators to Dharamsala.

E. Bhutanese Refugees in India

More than a hundred thousand ethnic Nepalese inhabitants of Bhutan fled to India in the beginning of 1991. These persons who claimed to be a bona fide citizens of Bhutan said that they were running away from a reign of terror let loose in south Bhutan by the government of Bhutan in an apparent effort to make them leave the country. India’s central government and the state governments of West Bengal and Assam were not sympathetic to the fleeing Bhutanese refugees of Nepali ethnicity as they were afraid that these persons would swell the ranks of the existing Nepali population in their territories. They were afraid that if these people settled down on the Indian Territory adjacent to Bhutan, it would adversely affect the fragile demographic balance of the region, which was hemmed in by Bhutan and Nepal. As a result, bulk of these refugees from Bhutan, about 100,000 were obliged to move on to Nepal and seek refuge in that country. Nepal and Bhutan do not share a common border.
India, therefore, was the first country of asylum for the Bhutanese refugees. However, not all of the Bhutanese refugees crossed over to Nepal from India. About 30,000 of these refugees settled down close to India’s border with south Bhutan, in the states of West Bengal and Assam. Under the terms of the Indo-Bhutanese friendship Treaty of 1949, India allows Bhutanese citizens to live and work freely in India. Therefore, Indian government did not provide the refugees any assistance nor did it require them to live in camps.\(^{49}\)

Between 1996 and 1997, Bhutanese refugees from camps in Nepal exercising the right to return to one’s own country undertook a series of Peace Marches of Bhutan. Indian authorities intercepted the Peace Marchers at the Indo-Nepal border on the bridge on river Mechi. Prohibitory orders under Section 144 Cr. Pce were promulgated despite the fact that the refugees were traversing the same land route that they had taken while fleeing from Bhutan. The Bhutanese refugees were arrested and detained in Siliguri, Jalpaiguri and Berhampur in West Bengal. Also, the Indian police deported those Peace Marchers who had succeeded in entering Bhutan, first to India by Bhutanese forces and then to Nepal.

F. Afghan Refugees in India

An estimated 16,000 Afghan refugees still remain in India. Most of the Afghan refugees are Hindu, Sikhs, and Punjabi speaking people of Indian origin who had settled in Afghanistan. The majority of them were engaged in business, while a few were in service. They fled when fighting broke out between rival Afghan factions vying for power. They have been recognised as refugees by the UNHCR. The majority of Afghan refugees live in Delhi. While the Hindu and Sikh refugees from Afghanistan have benefited from the support of the local people, ethnic Afghan refugees in India face many difficulties. They are debarred from seeking employment or conducting any business. They are solely dependent on the meagre monthly...
HUMAN DISPLACEMENT AND HUMAN RIGHTS

subsistence allowance provided to them by the UNHCR. As the UNHCR has been cutting down on its financial support programme, the ethnic Afghan refugees have been hit badly.

G. The Palestinian Refugees

War began in Palestine on November 29, 1947 when the U.N. General Assembly voted in four for a plan to partition Palestine into separate states, one Jewish and the other Arab.\textsuperscript{50} In Cairo, the Ulema of the Al-Azhar Moslem University declared jihad (holy war) against the Jews and Arab riots against Jews spread throughout Palestine.\textsuperscript{51} In its opening phase, the conflict was characterised mainly by Arab attacks on Jewish convoys destined for Jerusalem and outlying settlements in Galilee and the Negra. Through December, an average of fifty Jews per week were killed, mainly when travelling in unprotected convoys.\textsuperscript{52} Although the British continued to search Jewish convoys for arms, the mandatory government refused to provide escorts for the convoys because as a senior government official informed the Jewish Agency on December 3, “that might be interpreted as British implementation of partition”.\textsuperscript{53}

The Jewish offensive against Jaffa, the largest purely Arab city in Palestine, began on April 25. On the 28\textsuperscript{th} British artillery began shelling Jewish positions, and British troops moved into positions, between Jewish and Arab lines, thereby creating a deadlock, which lasted until their final evacuation on May 12. When the British finally did depart, nearly the whole of the Arab population left with them. Of the city’s 70,000 Arab inhabitants, less than 4,000 remained behind.\textsuperscript{54}

The British mandate over Palestine ended on May 14 when there were already some 200,000 Arab refugees. The following day, the Jewish community of Palestine proclaimed the state of Israel, and with that the regular armies of Egypt, Iraq, Syria, Lebanon and Trans Jordan entered Palestine. In the ensuing “official” war, nearly the entire Palestine Arab
community was swept away. In Jewish-controlled areas, where according to one estimate some 7000,000 to 900,000 Arabs had lived, only some 170,000 Arabs remained.\textsuperscript{55}

In the aftermath of the exodus of refugees, each side caused the other of having caused the Palestinian flight by calculated means. On one side it was argued that Arab leaders themselves encouraged the refugees to leave in order to clear the way for the advancing Arab armies and to demonstrate their opposition to the establishment of a Jewish state, while, on the other side, it was alleged that refugees were driven from their homes by Jewish terrorism as part of a “campaign calculated to make Palestine as free of its Arab population as possible”. Although the first theory (which ironically seems to have originated among the Arabs themselves) has by now been generally discounted the belief persists that the refugees were expelled and, if it were true, would undoubtedly provide a moral argument for repatriation and arguably a legal one as well.

In 1975 the UN General Assembly established a 20 member Committee on the Exercise of the Inalienable Rights of the Palestinian People\textsuperscript{56} to prepare a program of implementation to enable the Palestinians to exercise the rights recognised in Resolution 3226 adopted by the General Assembly the previous year.\textsuperscript{57} Among the rights affirmed in that resolution is “the inalienable rights of the Palestinians to return to their homes and property from which they have been displaced and uprooted...” The Committee’s report\textsuperscript{58} and recommendations were completed and submitted to the Secretary General for transmittal to the Security Council in June 1976.\textsuperscript{59}

The Committee recommended a Palestinian return in two phases. The first phase would involve refugees of the six Days War of 1967 who had fled areas of the West Bank and Gaza now occupied by Israel. In the second phase, Arab refugees would be permitted to return to areas in Israel from
which they had fled during the original hostilities of 1947-48. The “Palestinian refugee problem” includes, therefore, both “old” refugees, who fled in 1947-49, and “new” refugees of the 1967 war. Many of the “New” refugees, however, fled their homes twice in their lives and in so far as they may wish to return to their former places of residence in Israel, they may be considered “old” refugees as well.60

5. NATIONAL DISPLACEMENT

Individuals who are made to leave their places of origin within the boundary of their country are called *internally displaced persons*. They do not have any right to appeal to international legal standards governing refugees, even if they fear persecution or other serious harm. Moreover, internally displaced persons have not been accorded any civil, social and economic rights enumerated in the refugee treaties. Although internal displacement is caused by insurgency, civil strife and civil disorder. But in a multi-religious country like India, it is also caused by communal riots and caste riots. Furthermore, in developing countries, internal displacement is necessitated by major industrialisations, construction of big dams and bridges and even India is not an exception to it. These displaced persons can be termed as *environmental* refugees.

Refugees From Kashmir

Kashmir is highly infested with insurgency which is being facilitated by our adjacent. Kashmir once known for its scenic beauty and centre of tourism now acquired a name for assassinations, abductions, extortions, diabolical carnage and terrorism, which made thousands of Kashmiri Pandits to leave their beautiful place of origin and sought shelter in Delhi and other parts of the country. They are living a very miserable and squalid life. Although Government of India is striving hard to create a conducive environment to start a political process so that state of J & K could limp
back to normalcy. But there are certain human rights violations and excesses committed by the Para-military forces.

The Indian Government’s recent decision to allow the International Committee of Red Cross (ICRC) to visit detainees in Jammu and Kashmir is a welcome step towards transparency. On 22 Jun 1995, ICRC signed a memorandum of understanding (MoU) with the Government of India, laying down the procedure for visits to Kashmir. The memorandum states that the visits are to be conducted in an independent, impartial, and constructive spirit. The government says that it has agreed to the ICRC’s presence in the Valley on purely humanitarian grounds to provide access to ICRC to visit persons in detention centres, arrested in connection with the situation prevailing in Jammu and Kashmir. The ICRC will not perform a vigilant role, but will look at humanitarian aspects with an eye on the victims of terrorism as well. It also added that safeguards would prevent the misuse of the organisation for external propaganda.61

In February 1994, the Indian Government stated, before the U.N. Commission on Human Rights in Geneva, that it has always worked in a spirit of openness and transparency in Jammu and Kashmir. It further stated that the ambassadors of a number of countries had been allowed to visit Kashmir and that the ICRC would be allowed to conduct an assessment of humanitarian relief work in the Valley by March 1994. Though the government is yet to keep its promise to ICRC, no international non-governmental organizations, apart from the International Commission of Jurists (ICJ), has been permitted to visit the Kashmir Valley so far. Amnesty International has been repeatedly denied permission to visit the Valley since 1990. The UN Special Rapporteur on Torture, and Special Rapporteur on Summary and Arbitrary Executions had also conveyed to the government their interest in visiting Kashmir to evaluate the situation, but to date no invitation has been extended.62
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Notwithstanding, internally displaced persons have a moral right to approach UNHCR on the humanitarian ground for the redressal and mitigation for their woes, plights, hardships and resettlement. But Government of India did not allow to these displaced persons to appeal to the office of the United Nations High Commissioner for Refugees. Though the Statute provides UNHCR with a mandate for assistance and protection outside the framework of international refugee regime.

6. ENVIRONMENTAL DISPLACEMENT

The concept of “environmental refugees” is of recent origin and gaining gradually currency at the global level due to environmental awakening. The “environmental refugees” have made their appearance in the academic literature and public discourse, accompanied by widely diverging definitions and predictions. Some scholars fear environmental degradation will produce “waves of environmental refugees” with destabilizing effects at home and abroad. Much of the focus is on Africa presumably the most vulnerable area, where, some argue, the general pressure of people on land and, in particular, deepening desertification have displaced millions of people and will displace more in years to come.

The consequences of environmental change are particularly severe – and the problems most acute – in poor agricultural communities, where production systems are heavily dependent on natural cycles and means to insure against disasters are lacking. “When natural or man-made disasters disrupt the delicate balance between agricultural productivity and survival needs, the results are famine, disease and death.

Common forms of environmental degradation associated with out-migration include desertification, land degradation, deforestation and rising sea levels induced by global warming. Recognising the importance of these processes, the 1992 United Nations Conference on Environment and Development identified four fragile ecosystem: regions with severe
deforestation, regions with severe desertification, low-lying coastal areas and "vanishing" islands in the Indian and Pacific oceans. There is considerable effect of migration on the environmental, including urban pollution attributable to migration – related growth and deforestation caused by new settlers. Yet two different and opposing perspectives can be discerned. In one, which can be called the minimalist view, environmental change is a contextual variable that can contribute to migration, but analytical difficulties and empirical shortcomings make it hazardous to draw firm conclusions. The other perspective sets out a maximalist view, which posits that environmental degradation is a direct cause of large-scale displacement of people.66

A. The Minimalists

The minimalists are primarily the migration experts. In the general migration literature, environmental change does not figure as a separate, casual variable although older theories did include natural disasters in the category of “physical” factors. Among demographers, the case-study literature fares little better. For instance, after observing the recent sharp increase in migration in Indonesia, the eminent demographer Graeme Hugo concluded, “Employment – related motives predominate in shaping how many people move, who moves, where they move from and where they move to.67

In India there is a considerable migration of population from rural areas to big cities due to poverty and unemployment. Yet common sense, as well as catastrophes such as the drought in the Sahel of northern Africa, tells us that environmental change can cause out-migration by affecting structural economic conditions. Environmental change such as the recurring, devastating floods in Bangladesh and India also can be the proximate cause of population displacement. One solution Richard Bills Borrow suggests is to treat the environment as a contextual factor that influences the decision
making of the potential migrant. Land degradation, for instance, can lead to reduced income; frequent flooding brought about by upstream deforestation translates into higher risk for families living downstream.

More narrowly, Mary Kritz focuses on climate change as a cause of migration. Reviewing a series of contemporary case studies from the developing world, she finds it difficult to demonstrate that climate change is a primary engine of migration. For rural people, migration is one of several coping strategies to economic and political conditions.

B. **The Maximalists**

The Maximalists, by contrast, tend to extract the environmental variable from a cluster of causes and proclaim the associated out migration to be a direct result of environmental degradation. Evidence of this appears in the early writings of environmental analysts and has been echoed in popularised versions. “Drought in Africa and deforestation in Haiti have resulted in waves of refugees” a recent article in Time proclaimed.

The Maximalists produced the first generation of literature on what they call “environmental refugees”. In a now-classic study prepared for the United Nations Environment Program in 1985, Essam El-Hinnawi wrote that “all displaced people can be described as environmental refugees, having been forced to leave their original habitat (or having left voluntarily) to protect themselves from harm and, or, to seek or better quality of life.” He then identified three sub-categories: those who temporarily have had to leave their traditional habitat due to a natural disaster or similar event; those who have been permanently displaced and resettled in a new area; and those who have migrated on their own.

A 1988 paper on “environmental refugees” written by Jodi Jacobson for the World Watch Institute dramatized the problem and was given wide publicity. Like El-Hanwani, Jacobson based her analysis on a very general
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Notion of refugees – *people fleeing from environmental decline* – and made no distinction between *internally and internationally displaced persons*. Nevertheless, the paper moved the debate forward by identifying major types of *unnatural disaster* leading to displacement of people, namely flood, droughts, toxification, desertification, deforestation and rising sea levels. At about the same time, the report of the *International Panel on Climate Change* focused international attention on the greenhouse effect and rising sea levels, suggesting that tens of millions of people might eventually be displaced.⁷⁴

C. Environmental Degradation and Development Process

In a broader development perspective, environmental degradation appears as a proximate cause of migration, while the underlying factors are population pressures and the patterns of resource use. These interact so as to occasionally produce large out-migrations.

In Haiti, deforestation is most fundamentally a result of population and a political economy characterized by systematic oppression, inequality and gross corruption. Deforestation in turn, has led to soil erosion, which has an independent and accelerating effect on poverty. This has contributed to a sustained and substantial out-migration from the island for many years.⁷⁵

In the Sahel—a broad belt running from the Sudan in eastern Africa to Mauritania in the West commodity production has encroached on the land traditionally used pastoralists, steadily forcing them into smaller areas. In parts of northeast Brazil the progressive conversion of land use from small-scale, subsistence agriculture to cattle ranching has meant reduced ground cover by the *caatinga* plant, known for its ability to recover after long dry spells.⁷⁶ The same applies to the oft-cited *environmental refugees* from Bangladesh’s littoral areas. Because of demographic pressures, population concentration, develop in marginal areas, where people are vulnerable to even small changes in the environment and risk forcible displacement.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

Environmental degradation caused by fire, bonfire and conflagration owing to the reckless development process has also resulted in the human displacement in the some of the countries of South-east Asia i.e. Indonesia and Malaysia on one hand. On the other hand highly developed countries are also prone to such type of fires. Recently, France, Canada and some Latin American countries have also witnessed wide spread fires in their jungles resulting in the death and destruction of valuable resources which are indispensable for the human existence. This kind of fire has enveloped the entire populace under a canopy of haze whereunder even respiration is not possible.


The Draft Declaration is the first international instrument that comprehensively addresses the linkage between human rights and the environment. It demonstrates that accepted environmental and human rights principles embody the right of everyone to a secure, healthy and ecologically sound environment. The Draft Declaration describes the environmental
HUMAN DISPLACEMENT AND HUMAN RIGHTS

dimension of established human rights, such as the rights to life, health and culture. It also describes the procedural rights, such as the right to participation, necessary for realization of the substantive rights. The Draft Declaration also describes duties that correspond to the rights – duties that apply to individuals, governments, international organizations and transnational corporations.

In India, the construction of big dams like Sardar Sarovar Dam in Gujarat and Tehri Dam in Uttar Pradesh resulted in the migration of a considerable population from the places of their origin. Moreover in the state of Punjab, agricultural modernization since the early 1970s has created such severe salinity problems that the entire region appears as a disaster area on a recent soil map. At the same time, Punjab’s rapid economic growth has given the state one of the heaviest in migration rates in all of India, both on a regional and permanent basis.\(^77\)

D. Dichotomy Between Refugees and Migrants

The distinction between migrants and refugees is controversial yet essential because it corresponds to common sociological and legal categories. The reason why the term refugee has been attached to a number of environmentally related population flows is grounded in sociological, not legal, reasoning. In both the arts and the social scientific literature, a refugee is understood as someone who is forced to flee involuntarily.\(^78\) This process over which the refugee has little control, leaves the refugee powerless and vulnerable. Migrants, by contrast, more by their own volition, although in response to disagreeable conditions (“push” factors) as well as anticipation of a better life (“pull” factors). Having somewhat greater control over the timing and direction of their movement, migrants have more power and are less vulnerable than are refugees.\(^79\)
7. PROTECTION UNDER HUMAN RIGHTS TREATIES

In addition to the U.N. Charter and related treaties a number of human rights treaties – which speak in broad terms of minimum standards of treatment for all persons extend to refugees seeking asylum, who are still entitled to fundamental rights although they have left their home countries. Concern with basic individual rights is clearly expressed by the Universal Declaration does not contain a specific provision regarding treatment of non-nationals, it can be inferred that they are covered, because the Declaration is couched in universal terms which either state affirmatively that “everyone” shall be subjected to a particular deprivation. It follows that, except for those provisions, which explicitly grant benefits solely to nationals, the Declaration extends its protection to refugees. Furthermore, in 1985, the U.N. General Assembly adopted the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live, guaranteeing security of person and freedom from arbitrary arrest or cruel, inhumane or degrading treatment.

Although the United Nations has not adopted a declaration dealing specifically with refugees who are women or children, several instruments extend protection to them. The UNHCR Executive committee has noted that most of the world’s refugees are women and children, and has recognised that female refugees are particularly vulnerable to physical violence, sexual abuse and discrimination. Accordingly, UNHCR recommended that states establish programs to ensure their physical safety and equality of treatment. In 1974, the General Assembly drafted a Declaration on the Protection of Women and Children in Emergency and Armed Conflict, which proclaims populations affected by such disorders shall not be deprived of shelter, food, medical and or other fundamental rights, in accordance with the provisions of human rights treaties.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

While the Declaration seeks specifically to address the risks to women and children in their places or origin families that have been forced to flee their homes due to persecution in wartime also clearly require protection. So do refugee population encamped in border areas next to war torn territories that are frequently subjected to military aggression. Thus, the group for which the General Assembly intended to provide essential protection includes refugee and internally displaced women and children.88

The view that refugee children should be protected by the countries to which they have fled can also be inferred from the Declaration of the Rights of the Child. The Declaration recognizes that children shall enjoy special protection and that “the child shall in all circumstances be among the first to receive protection and relief." The United Nations Convention on the Rights of the child, adopted by the General Assembly in 1989, made this protection requirement still more explicit.89

8. PROTECTION TO REFUGEES UNDER CUSTOMARY INTERNATIONAL LAW

Countries not under treaty obligations are nevertheless still bound to deserve them insofar as these instruments reflect customary international law. For example, the Universal Declaration of Human Rights,91 the International Covenant on Civil and Political Rights92 and the Standard Minimum Rules for the Treatment of Prisoners93 prohibit arbitrary prolonged detention. The International Court of Justice has cited the Charter of the United Nations, as well as the Declaration of Human Rights, in holding that such confinement violates international law by depriving persons of freedom of movement and by detaining them in conditions of hardships. The plethora of legal instruments condemning arbitrary and prolonged detention under inhumane conditions, widely adopted by the international community and recognized by the International Court of Justice, demonstrates that customary international law prohibits such
HUMAN DISPLACEMENT AND HUMAN RIGHTS

confinement. Therefore, normative precepts of international human rights law protect refugees as they do all other persons.\(^5\)

9. THE CONTEMPORARY REFUGEE DILEMMA

The United Nations or regional intergovernmental organizations expand treaty protections and strengthen enforcement mechanisms; governments may still reduce the protection of refugees and displaced persons through various approaches that have been recently attempted. The end of the Cold War changed the context in which refugees’ protection is conceived. Contemporary policy makers often discuss one or more of three possible approaches to refugees’ emergencies. First is a strategy of refugee containment, including the organization of internal safety areas by governments such as those made in 1991 for Kurds in Northern Iraq and the implementation of humanitarian assistance programs in Somalia and the former Yugoslavia, sometimes with provisions for military escort. Second is the concept of burden sharing, or shifting, from one to another country of asylum including regional screening arrangements such as those made in 1989 by governments under United Nations auspices for Vietnamese and Laotian asylum seekers in Asia. Third is the collective effort by states to deter asylum-seekers, occurring recently in Western Europe and elsewhere.\(^6\)

Refugees thus enjoy rights as a result of both specific refugee and human rights treaties and customary international law. These traditional sources of protection, including the remedy of non-refoulement, must be respected. Human rights law, both treaty-based and customary in character, protects refugees, along with displaced persons and other non-nationals. But the mechanisms to enforce human rights law, largely founded on monitoring and reporting activities, are not well established at the international level. Apart from the question of coverage under the refugee treaties i.e. conventional refugee law, there are serious issues regarding state compliance with treaty obligations. Instances of non-compliance—which can be assessed

113
by considering a wide variety of refugee circumstances—including the forced return of refugees to places where they may experience persecution harsh treatment or detention of asylum-seeker or undue restriction of access to asylum. Governments of developed countries frequently devise such measures to deny or deter the entry of asylum-seekers from less developed countries. The UNHCR, in conjunction with governments, intergovernmental groups and NGOs should launch or international campaign to secure full compliance with refugee treaty obligations.

The need of strengthening refugee protection at the international level is pressing. Governments, acting through the United Nations and regional intergovernmental organizations, must not only expand the coverage of international law, but also improve its enforcement. Recent approaches by states to cope with asylum-seekers, whether unilateral or collective in character, that violate refugees human rights must be curbed. Until governments establish comprehensive international standards and meaningful mechanisms, differential treatment of those in need of protection will continue. Many asylum-seekers will simply remain insecure and subject to human rights violations. The international community in its widest sense must, therefore, act immediately to secure protection for the world’s dispossessed.

10. RECAPITULATION

It is evident that the concept of “refugee” and that of “asylum” are complementary; the one does not exist without the other. Asylum on the territory of a state is, of course, what interests most refugees. This, however, implies at least three conditions of first importance-admission to the territory, a durable stay and the assurance of a certain protection, of basic rights opening the way back to normal life. Thus, it is absolutely true that, asylum, in the core sense of admission to safety in another country, security against “refoulement” and respect for basic human rights, is the heart of
The overwhelming majority of states continue to adhere to generous asylum policies, affording refuge to persons in need of protection until a solution can be achieved. Of course, Art. 14 of the UDHR of 1948 recognised the right of a persecuted person to seek and enjoy asylum, but did not recognise his right to have it granted. At the same time, refugee status according to the 1951 Convention corresponds adequately to the rights of asylum, with the exception, however, of admission to the territory of a state. On the point Convention is entirely silent. Article 53 of the 1951 Convention, which forbids the return of a refugee “to the frontiers of territories where his life or freedom would be threatened” is not a substitute for the right of asylum. It often happens that persons whose refugee status is not known are refused admission, even to states, which have ratified the convention.

As per present practices of states, denial of access to a country of asylum continues to take various forms, including outright rejection at frontiers, interceptions, push-offs, and forcible return of asylum-seekers to persecution or danger. Denial of access to safety in another country can also occur as a result of the application of legal and administrative measures that present asylum-seekers from reaching the frontiers of asylum countries, refuse them admission to procedures, or fail top provide adequate procedural safeguards against the inadvertent or indirect return of refugees to their country of origin or other places where they will not be protected. Whether direct or indirect, such practices violate the most basic principles of international protection.

The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in countries asylum from persecution, this principle reflects the concern and
HUMAN DISPLACEMENT AND HUMAN RIGHTS

commitment of the international community to ensure those in need of protection, the enjoyment of fundamental human rights, including the rights to life to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is forcibly returned to persecution or danger.

The principle of non-refoulment was given expression in Article 33 of the 1951 Convention. It has since been consistently reaffirmed as a basic principle of state conduct towards refugees. It would be patently impossible to provide international protection to refugees if states failed to respect these paramount principles of refugee law and of human solidarity. Unfortunately, this basic tenet of refugee protection has not always been observed in practice. A number of countries, where the admission or presence of certain groups of refugees have been perceived as incompatible with national interests or domestic concerns, have ignored or undermined the principle of non-refoulement.

However, attempts by people with no valid claim to international protection to take advantage of asylum procedures has created serious problems for the governments concerned as well as for bona fide asylum seekers by clogging procedures for the determination of refugee status and by contributing to both popular and official confusion between refugees and illegal immigrants. The challenge for the international community into limit the possibilities for abuse while maintaining safeguards fully adequate to ensure that no refugee is returned to danger. Whenever refugees are subjected, either directly or indirectly, to rejection, expulsion and return to territories where their life or freedom are threatened, in violation of the principle of non-refoulement as well as considerations of basic humanity, the response of the international community must be clear and fortnight. The principle of non-refoulement is the foundation for protecting the human rights of refugees and must be reaffirmed and defended.
HUMAN DISPLACEMENT AND HUMAN RIGHTS

NOTES AND REFERENCES

1. See Chapter IV, infra


3. Ibid.

Your 2000).

5. UNHCR, List of State Parties to the 1951 Convention/and or the 1967 Protocol Relating to
the Status of Refugees, 30 September, 1993.


7. Ibid, p.381.

8. Article 1 (2), OAU Convention Governing the Specific Aspects of Refugee Problems in
Africa, adopted by the Assembly of Head of State and Government at its Sixth Ordinary
Session on No. 14691, p. 45; text in UNHCR (1979), p. 193.

AND ASSISTANCE TO CENTRAL AMERICAN REFUGEES, RETURNEES AND
DISPLACED PERSONS IN LATIN AMERICA”, International Journal of Refugee Law,
2, (1990), p.83.


11. Ibid, p.1253

12. Ibid.

13. Supra note 6.


15. International Covenant on Economic, Social and Cultural Rights, adopted by UNGA


17. Supra note 10.

18. Supra note 10.


20. Supra note 10, p. 1260.


22. A. C. Heltan, “"ASYLUM AND REFUGEE PROTECTION IN THAILAND”,


24. Conclusion No. 19 (XXXI) on TEMPORARY REFUGEE, adopted by the UNHCR
Executive Committee in 1980, states: "The Executive Committee (a) Reaffirmed the
essential need for the humanitarian legal principle of non-refoulement to be scrupulously
observed in all situations of large-scale influx; —(b) Took note of the extensive practice
of granting temporary refuge in situations involving a large-scale influx of refugees; —(c)
Stressed the exceptional character of temporary refugee and the essential needs for persons
to whom temporary refuge has been granted to enjoy basic humanitarian standards of
HUMAN DISPLACEMENT AND HUMAN RIGHTS


27. Ibid. p.42.


30. Ibid.

31. Ibid.

32. Supra note. 28 p. 24.

33. Supra note. 28 p. 24.

34. Supra note. 28 p. 25.

35. Supra note. 29.

36. Supra note. 29.

37. Supra note. 29.

38. Supra note. 28 p. 29.

39. Supra note. 28 p. 29.

40. Supra note. 28 p. 30.

41. See Chapter –V infra.

42. Supra note. 29.

43. Supra note. 28.


45. Ibid.


48. Supra note. 28 p. 23.

49. Supra note. 28 p. 28.


52. Sykes, infra note 30, at 395.

53. Bell, supra note 9, at 76.

54. Bell, supra note 9, at 113.


HUMAN DISPLACEMENT AND HUMAN RIGHTS


59. The recommendations of the Committee were submitted to the Security Council in the form of a draft resolution, which, however, failed of adoption by the Council because of a U.S. veto. UN Doc S/PV. 1938 at 52 (1976).


61. Supra note 29.

62. Supra note 29.


71. El-Himani, p.4

72. Supra note 68.

73. Jacobson, p.6

74. Supra note 66.


79. Supra note 66.

80. U.N. Charter, Articles 1,2,55.56.

81. Supra note 26.

83. Other treaties include the 1996 Covenant on Civil and Political Rights, UNGA Res. 2200 (XXI): UN Doc. A/6316 (1996), which protects the right to life, to be free from cruel, inhuman or degrading treatment, punishment or torture, the right to be treated with humanity and freedom of movement; the 1969 American Convention on Human Rights: I.L.M. 1969 (1970) p. 673, which declares the right to humane treatment and that “every person has the right to have his physical, mental and moral integrity respected”. Also: American Declaration of Rights and Duties of Man, 2 Mary 1948, O.A.S. off, Rec. OEA/Ser. L/V/II. 23 Dec, 21 Rev. 6 (1979).

84. UNGA, Res. 40/144, 13 December 1985.

85. Ibid. Articles 5 and 6, respectively.

86. UNHCR Executive Committee Conclusion No. 39, note 32, para (h).


88. Supra note 6.


91. Supra note 26 Article 9.

92. Supra note 27, Article 9 (1).


95. Supra note 6, p. 387.

96. Supra note 6.
CHAPTER-III

DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS
1. AN OVERVIEW

The determination of the refugee status is necessary in order for a refugee to avail himself of the right and protection granted to refugees. For the jurist, a man's status as a refugee is determined first and foremost by the factors which led to his condition; expatriation and the breaking of the ties that bound him to the state of his nationality. The legal basis for the determination of refugee status in the context of a given legal instrument is the definition of a refugee in that instrument. So, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument whether he is formally recognized as a refugee or not. Again, the competent authority for determining refugee status will depend on the instrument under which the process of determination is conducted.

The international instruments concerning refugees until World-War II did little more in the matter of determination of the refugee status than authorizing certain officials or committees to certify the refugee status of eligible persons. Thus, under the Arrangement Relating to the Legal Status of Russian and Armenian Refugees of June 30, 1928 and the Agreement concerning the Functions of the Representative of the League of Nations High Commissioner for Refugees of June 30, 1928, the Representatives of the League’s High Commissioner in various countries performed this certification. Under the Convention relating to the International Status of Refugees of October 28, 1933 the certification was done either by the Representatives of the Secretary General of the League of Nations or by the Committees for Refugees in the various states.

The magnitude of the refugee problem in the early post-war period prompted the Allied military authorities and the United Nations Relief and Rehabilitation Administration (UNRRA) to specify criteria for refugee eligibility and establish machinery to apply them. The constitution of the International Refugee Organisation (IRO) contained a provision for
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

determining the eligibility of refugees in Annex I and provided for the creation of some special system of semi-judicial machinery.  

The Office of the United Nations High Commissioner for Refugee (UNHCR) replaced the International Refugee Organization (IRO). The eligibility provisions are omitted from the UNHCR Statute because the work of the High Commissioner generally relates to “groups and categories of refugees”, rather than to individuals. Upon receipt of a petition, the UNHCR office makes the determination of the person’s eligibility for its assistance in a manner as it thinks fit. Generally there are no set procedures for the determination of a person’s eligibility and the High Commissioner shall follow policy directives given by the General Assembly and the Economic and Social Council. The office does not issue an eligibility certificate to all refugees under its competence. It is issued only when the document is needed for a specific purpose. The certificate is, thus, merely declaratory, and not constitutive in its effect.

A person becomes eligible for the application of the UNHCR statute by meeting the requirements of Paragraphs 6 and 7 of the Statute, that is to say, when he flees his home country, or declares himself a refugee Sur place, or ceases to be subject to a suspension clause. The Refugee Convention of 1951 considers a person refugee for its purpose that satisfies the criteria laid down in Article I but it does not establish any particular procedures for his recognition. This is left to the states party to the Convention. They may establish such procedures for the purposes, as they deem fit, subject to the provisions of Art. 31(2). Since the eligibility determination is left to the States Party to the Convention, various states have adopted procedures of their own for determining it. A problem would arise as to whether such determination made by a state is binding upon other states party to the convention. The Convention contains no provision obliging the states to accept the determination made by one of them.
Determining Refugee Status and Human Rights

However, in order to determine who is a refugee, the criteria usually applied is based on the evaluation of fear and interpretation of what actually amounts to persecution. A general interpretation of definition of the term "refugee" under the 1951 Convention/1967 Protocol, along with the State practice, provides an established criteria and procedure for the determination of refugee status. The important criterion in the definition is that a person claiming refugee status should be outside the country of his origin owing to well-founded fear of being persecuted for certain specified reasons.

The phrase "well-founded fear of being persecuted" is the key phrase of the definition. It replaces the earlier method of defining refugees by categories (i.e. persons of a certain origin not enjoying the protection of their country) by the general concept of fear for a relevant motive. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant's statement rather than a judgement on the situation prevailing in his country of origin.

To the element of fear — a state of mind and a subjective condition — is added the qualification well founded. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term well-founded fear therefore contains a subjective an objective element, and in determining, whether well-founded fear exists, both elements must be taken into consideration. Examination of a claim for refugee status is thus based on two facts:

(a) fear, a state of mind, which is a subjective condition, and
(b) when fear is supported by an objective situation it becomes a well-founded one and is an objective yardstick.

In other words, when a person claims that he is subject to persecution or fears persecution in the country of origin, the authenticity of his claim for refugee
status is ascertained by examination of the general human rights situation in that country with particular reference to his claim.

Due to the importance that the definition attaches to the subjective elements, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences — in other words, everything that may serve, to indicate that the predominant motive for his application is fear. However, the word 'fear' refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution.

There is no universally accepted definition of 'persecution', and various attempts to formulate such a definition have met with little success. Canada, for example, recently included persecution on grounds of gender as a basis for asylum claims. The German Government maintains that a government must be implicated in the persecution if a claim for international protection is to be considered valid, while many other governments take a broader view of agents of persecution. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights — for the same reasons — would also constitute persecution. Fear of persecution and lack of protection are themselves interrelated elements. The core meaning of persecution readily includes the threat of deprivation of life or physical freedom. The references of 'race, religion, nationality, membership of a particular social group, or political opinion' illustrate briefly the characteristics of individuals and groups which are considered worthy of special protection. These same factors have figured in the development of the fundamental principle of non-discrimination in general
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

international law, and have contributed to the formulation of other fundamental human rights. In determining whether a political offender can be considered a refugee, regard should be had to the following elements: Personality of the applicant, his political opinion, the motive behind the act, the nature of the act committed, the nature of the prosecution and its motives, finally, also, the nature of the law on which the prosecution is based. Again, the requirement that a person must be outside of his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "Sur place". A person may become a refugee "Sur place" as a result of his own action, such as associating with refugees – already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances.

Human rights are those minimum rights which are available to an individual by virtue of his being a member of human family i.e. right to life is a minimum and most fundamental human rights. Today, human rights should be recognized as central to the entire refugee issue. As has been affirmed repeatedly by the international community during the last five decades, they express the values and principles, which constitute the foundation of freedom, justice and peace in the world. As such they are as centrally relevant to the refugee issue as they are to any other major social issue today.

2. REFUGEES AND HUMAN RIGHTS

In the past there was a tendency, at times, to see refugee law as a branch of law quite separate from that of human rights. This was, perhaps, part of a more general tendency during the post-war period to compartmentalize law,
breaking it up into different and even autonomous branches, so much so as almost to suggest that there was no one law but only a number of different and separate laws. In such a view, with its strong positivists approach, refugee law possessed its own special purposes and principles which were determined essentially by its own constituent instruments and which were thus independent of those of human rights law. This view, of course, was an over-simplification, as the human rights instruments not only contained no limitations excluding their application to the refugee situation but also, to the contrary, contained provisions, which were either explicitly or implicitly applicable to that situation.9

Such a separation of refugee law from human rights law was unfortunate, and inevitably it had harmful effects. Basically, it overlooked the fundamental principle that the refugee, like every other category of human being, is ultimately a person possessing, as such, basic rights which are independent of “positive” refugee law for their application. An absolute separation of the two is inconsistent with any principle of the fundamental unity of law in regard to its general purposes and principles; further, it served as a block to the progressive development of refugee law by closing off arbitrarily the application of general principle of law which are properly apt to fill in the lacunae of conventional refugee law. These lacunae inevitably existed by virtue of the fact that the conventional law is necessarily a product of a particular time and place and so becomes, in different or changing circumstances, incomplete, even, finally, obsolescent. Moreover, the separation served to deny refugee law a general purposive context, the absence of which threatened to make that law in different and changing circumstances both in just and impractical. With the decline of the strict positivist approach to law, which has accelerated during the last two decades, the law has been liberated from the stultifying effects of those elements of the past, which only served to act as shackles, impeding the law from responding in a just and practical way to new human and social needs.

126
Determinaton of Refugee Status and Human Rights

Now human rights conceived as general principles of law assure the continuing relevance of law to those needs.\textsuperscript{10}

From a universal perspective, traditional or conventional refugee law was seriously incomplete, even unbalanced, by reason of the fact that \textit{inter alia} it was primarily directed, and thereby limited, to the rights of the individual in relation to the receiving country. Essentially it was a law for the institutionalisation of exile. Excluded entirely from its scope were the rights of the individual in relation to the country of nationality, especially in regard to the basic aspect of freedom of movement. The latter rights were considered as belonging, for example, to human rights law, but were considered \textit{a priori} is not belonging to refugee law. In practice, they were often considered as inapplicable to the refugee situation. Although in recent years, the international community’s traditional approach, which was essentially the product of the Cold War era, has developed significantly as it has been increasingly realized that, in a changing world, it is both possible and necessary to address the refugee issue \textit{as a whole}, i.e. its causes and the aspect of solution \textit{generally}, including the primordial aspects of prevention and return as well as its principle and limited traditional focus of concern, i.e. the need for external palliative measures. This development has correspond to considerations of both justice and practically.

The development at the universal level began with the Canadian initiative within the United Nations Commission on Human Rights in 1980 to examine Human Rights and mass exoduses with a view to the elimination of the causes of exoduses, and with the concurrent measures to avert mass flows. Both these initiatives have since been joined together under the item “Human rights and mass exoduses” which is now on the agenda of both the General Assembly and the Commission on Human Rights. At the regional level, however, the necessity of a comprehensive and coherent approach has been insisted upon from the late 1940s onwards by newly independent States,
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

especially in the context of refugee situations arising from the denial of the right of self-determination. 11

At the initial debate in the Commission on Human Rights, the representative of Canada observed that the duty of expressing international solidarity in the face of the problem of massive movements was two fold to assure protection and assistance and to share the burden placed on countries of the first refuge, and to contribute to the elimination of the causes of exoduses. These two aspects, the Canadian representatives added, were inextricably linked and were to equal importance. In emphasising that international solidarity required a contribution to the elimination of the causes of exoduses, as well as to extend protection and assistance, the Canadian proposal broke significant new ground in the post-war Western thinking on the refugee issue.

In its observations to the Secretary-General on its own proposal, the German Government observed that its initiative was an integral part of a comprehensive concept transcending humanitarian action and embracing the establishment of a system of preventive measure. From the conceptual point of view, it said, the efforts of the international/community had until now centred on the humanitarian task of mitigating the consequences of flight and expulsion. Measures to eliminate the causes of flows of refugees were not seriously considered. With the inescapable recognition that the refugee issue involved basic aspects of individual human well-being as well as the aspects of peace and security, it had gradually been accepted that a comprehensive and coherent as the inter-State issues, and that it must do so in a balanced and integrated manner which reflected the fundamental interdependence of both aspects. This recognition flowed logically from the United Nations Friendly Relations Declarations of the late 1960s, which included within a general framework of basic principles, the principle that States shall co-operate in the pro-recognition which was reflected also in the 1986 report of the Group of
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Experts which was set-up by the General Assembly under the German initiative. The 1986 recommendations included two key provisions.\(^\text{12}\)

(a) In view of their responsibilities under the Charter of the United Nations and consistent with their obligations under the existing international instruments in the field of human right rights, States, in the exercise of their sovereignty, should do all within their means to prevent new massive flows of refugees. Accordingly States should refrain from creating or contributing by their policies to causes and factors which generally lead to massive flows of refugees; and

(b) States should co-operate with one another in order to prevent future massive flows of refugees. They should promote international co-operation in all its aspects, in particular at the regional and sub-regional levels, as an appropriate and important means to avert such flows.

It was with this opportunity in mind that UNHCR, in conjunction with International Institute of Humanitarian Law at San Remo, convened in 1989 a round table of experts to examine the issue of the solution of refugee problem and the protection of refugees. The stated purpose of the round table was to consider law; policy and action could be solution in a manner, which was in accord with the purposes and principles of protection. In explaining its initiative, UNHCR observed that various aspects had so far been dealt with separately but there had never been a comprehensive examination of the subject. Such an examination had become imperative as the international community was increasingly dealing with protection problems not separately but in the overall context of solutions. It said that the refugee problem should be seen as a whole and any international efforts in this regard should take into account all aspects of the problem, including the causes of refugee flows, the interim protection requirements and the solution. This round table resolved.\(^\text{13}\)

1. Solution should not be seen as an aspect independent and separate from protection. It should be seen as the final purpose of protection, and protection should be seen as governing the entire process towards solution and as determining what was or what was not a solution.
2. In broad terms, the problem of the refugee was basically that of the denial of freedom of movement to the individual by reason of conditions in the country of nationality which compelled him to depart from that country or to stay abroad and the inability or unwillingness of the individual to avail himself of the protection of the country of nationality.

3. Solution, therefore, was either the prevention of conditions occurring within the country of nationality, which compelled a national to depart or remain outside the country of nationality so that the national was without national protection or the remedying of such conditions having that effect (i.e. the "basic solution"). It was only in the eventuality that the basic problem of denial of freedom of movement could not be solved that the solution of the resulting problem (but not the basic problem) became the ennoblement of the refugee to settle in another country (i.e. the "contingent solution").

4. This concept of solution, including the two orders of solution, had import implications for law, policy and action. It was clearly impossible in the light of this definition of solution, to treat the three traditional "solutions" of voluntary repatriation, local settlement or resettlement as of equal order. Voluntary repatriation was the basic or primordial solution. Moreover, prevention was a further aspect of solution, which should not be ignored in an approach, which was comprehensive and balanced.

It seems clear that the acceptance of the refugee problem as, by and large that of coerced movement, a characterization adopted recently by the United Nations General Assembly in its consideration of the German item, poses directly the human rights issue of freedom of movement, including such particular aspects of that freedom as the right to remain in, or to return to one's country of nationality and to enjoy therein one's rights and the related prohibitions of exile, expulsion and the arbitrary deprivation of nationality.

It must be recognized that exile is generally an evil, since it is, by definition, an involuntary separation from the homeland. It should not be confused with voluntary separation from the homeland. It is not be confused with voluntary migration. While it may sometimes be the lesser of two evils nonetheless the coerced character of the movement cannot be considered unobjectionable let lone positive. In the vast majority of cases of coerced
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

movements, the individual’s decision to leave, where the individual is not actually expelled, is a difficult and painful one, frequently involving considerable risks and sacrifices. Exile necessarily involves the loss or deprivation of almost all rights that are enjoyable solely, in whole or in part, within the country of nationality.

Furthermore, conditions of exile today for most of the world’s refugees are desperately hard sometimes dire, relatively few reach heavens of peace and prosperity where they can begin a new and meaningful life. Most of them are confined in the camps on the borders of their countries of nationality, having precarious existence and dependent for their survival on outside charity. Some find themselves in situations worse than they knew at home, with no immediate hope of return. Many of them have been without a solution of their problem of de facto or de jure statelessness for decades. For most, the only solution will be their voluntary return one-day to their country of nationality, when conditions permit.

Political realism, too, requires such an approach today. The number of refugees world-wide have reached such proportions that in many cases the economies of the receiving countries are overstrained, their internal public order is endangered and international peace and security are threatened. In many cases today, the receiving countries have no political or economic interest is often seen as laying in the early return or the resettlement of the refugees else where, where that is possible.

The human and political cost of the contemporary phenomenon of exile is high. Many million of homeless people are undergoing traumatic ordeals and not only the stability and peace of regions are being affected, but also the stability and peace of the entire international community. The refugee issue now far surpasses a simple issue of charity: in every sense, it is a major international political issue. In the present situation, it is imperative that international law and cooperation be developed in a broad and balanced way so
as to meet the basic issues of freedom, justice and peace, which are directly raised by the refugee problem.

Since exile cannot be considered, either in justice or with realism, as the main solution for today’s refugee problem, the rights of the individual in relation to the country of nationality must now be examined in the specific context of the refugee issue, especially in regard to the principle of freedom of movements.

Within the Sub-Commission on Prevention Discrimination and Protection of Minorities of the United Nations Commissions on Human Rights the right of everyone to leave any country, including his own and to return to that country is now being considered for the first time within the refugee context as well as within other contexts. When the Sub-Commission first examined this subject nearly 30 years ago, the "immigration" issue was excluded from the scope of its work.

It is to be hoped that in its treatment of the aspect of return, the Sub-Commission will deal not only with the problem of deprivation of nationality but also with the problems of expulsion and exile, and that it will consider not only the problem of direct denial of rights or violation prohibition but also with the problem of indirect denial or violation. This latter aspect has largely been ignored until now but is especially relevant to the refugee problem today, and an increased understanding of its significance may lead to a major and beneficial development in international thinking in regard to human rights and state responsibility.14

3. SOVEREIGNTY AND HUMAN RIGHTS

As far as the doctrine of State responsibility is concerned, respect for human rights is, of course, an important aspect of the substance of the law. While this area of the law is still in an early state of development, the process of its codification by the International Law Commission being slow and not without difficulty, there is already a substantial and growing practice in regard
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

to its application to the refugee problem. At the formal level of codification of principles of responsibility and its consequences, the significant recommendations adopted in 1986 by the United Nations General Assembly in regard to international co-operation to avoid further mass flows of refugees could usefully be developed to cover not only the prevention of such flows but also the situation where such flows had already occurred or were still in the course of occurring. At present, principles have been adopted to cover these latter situations.

In the analysis of preventions within the General Assembly Group of Experts, a significant limitation existed in the restriction of the enquiry to the pre-flow aspects of the problem, leaving aside the consideration that prevention can be a concern not only before a flow has taken place but also during a flow. Most large-scale flows occur over a fairly extensive period of time, and in such situations the concern will not only be for a response after a flow has begun but also for a response before it could continue. The concern, therefore, will have both a remedial and a preventative dimension, which will have to be integrated in order to permit an overall, coherent and effective response. A Round Table Conference on Pre-Flow aspect of the Refugee Problem, which was convened by the International Institute of Humanitarian Law in 1982, grasped the significance of this aspect.

It is notable that within the General Assembly the general principle of international co-operation in solving refugee problem has been involved by several States in recent years in the debate on the item entitled “Development and strengthening of good neighbourliness between States”. This principle has also been implicit in a number of recent international agreements or arrangements for responding to this problem. Also of particular interest in this regard are two significant provisions, which were included in the Conclusion on Voluntary Repatriation which was adopted in 1985 by the UNHCR Executive
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Committee and which was subsequently endorsed by the General Assembly. These state: 16

(a) The existing mandate of the High Commission is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication. It is important that he establishes, wherever possible, contact with all the main parties and acquaints himself with their points of view. From the outset of a refugee situation, the High Commission should at all times keep the possibility of voluntary repatriation for all or for part of a group under active review and the High Commissioner, wherever he deems that the prevailing circumstances are appropriate, should actively pursue the promotion of this solution; and

(b) When, in the opinion of the High Commission, a serious problem exists in the promotion of voluntary repatriation of a particular refugee group, he may consider for that particular problem the establishment of an informal ad hoc consultative group which would be appointed by him in consultation with Chairman and the other members of the Executive Committee and Should principle include the Countries directly concerned. The High Commissioner may also consider involving the assistance of other competent United Nations organs.

Especially notable are that these provisions allow to the High Commission a right of initiative in promoting voluntary repatriation and in the taking of measures to achieve the goal and include also the direction that the High Commissioner should actively pursue the promotion of this solution wherever he or she deems that the prevailing circumstances are appropriate.

At the practical level, a more comprehensive and coherent approach will entail a major revision of the priorities of practical action at every relevant level, including the political, diplomatic and assistance levels. It will entail considering how international organization, whether universal or regional, can be utilized satisfactorily and low the role and responsibilities of existing bodies, such as the office of the United Nations High Commissioner for Refugees, should be seen today. It cannot aver that this revision has yet occurred or that much of the action has been adjusted in conformity with the newly emerging
DETERMINATION OF REFUGEE STATUS AND
HUMAN RIGHTS

The determination of refugee status is often

legal or policy approach. Truth requires admittance that while the principles
may have significantly changed; the practical action has barely altered.

A cardinal dimension of Refugee Law is the notion of State sovereignty.

It is the State, which decides on whether the reason given by the asylum-seeker
are in conformity with internationally recognised norms for the grant of refugee
status. In the absolutist sense, sovereignty would imply that each nation
becomes sole master of its own domain, leaving no scope whatever for
international co-operation. But sovereignty is not and never has been absolute.
Robinson Crusoe was the only man who could claim to be “a monarch of all he
surveyed” and much good did it do him.

Mercifully, we have not come to quite that pass. India, to take the most
remarkable example, has managed to remain clear of the worst problems.
Significantly, it has done so by preserving most of the shared and extended
sovereignty of Queen Victoria’s old Indian empire. In other parts of the world,
too, rather than resting upon on outmoded absolutist doctrine, people mostly
take a practical, pragmatic view of sovereignty, as something not just to had
and to defend, but to use in co-operation with others.

Thus, it is that we have been able to build, slowly, patchily, piecemeal, a
network of international treaties and agreements of codes of practice, even of
binding rules of conduct. These indeed have come to regulate most of the
economics of international life. And there we have the two great trends of this
century: the birth of ever more separate nations alongside the emergence of an
ever more unified world economy; more political authorities, less hold on the
real reins of economic power.

In truth, sovereignty, and the integrity of the nation-state, has become, is
becoming steadily less absolute. Even for a so-called superpower, as former US
Secretary of State George Shultz has explained, internationalism is
inescapable. Communications, culture, information technology, affluence,
mobility—all are competing with each other in the demolition of time and
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

We all live with one worldwide vocabulary: Chernobyl, Sarajevo, glasnost, intifada, ethnic cleansing, CNN. The kinds of technological advance that once made nation-states and empires governable are now achieving exactly the opposite effect. But these same factors can equally have a positive impact. They have helped, for example, to internationalise concern for human rights. The anti-apartheid movement offers a successful example of this. So too does Helsinki watch, with the opportunities that offered for the assertion of pan-European standards of human rights.

Notice here a paradox about the disintegration of the former "evil empire". It was Garbachev and Shevardndze who commended, astonishingly and wisely, "free choice for other nations and non-intervention by the Soviet Union in other countries; and it was that commendation of non-intervention that led to the liberation of Eastern Europe. On the other hand, it was the Helsinki Final Act, to which the Soviet Union (perhaps unwillingly) committed itself in 1995, which turned a powerful spotlight on relations between each and every European state and its own citizens. From that date on the Soviet Union was no longer able legitimately to assert that other countries' concern for human rights was on intolerable intrusion into its sovereignty; and it was that which in its own way helped to precipitate the disintegration of the Soviet Union.

Sovereignty is, now increasingly intermingled across frontiers. Now here is all this more true than in the economic and monetary sphere. Capital and cash, as easily as information, are new whisked invisibly between nations. Enterprises trading and investing across frontiers intrude upon national cultures and identities. International economic rules—even rules for free trade, especially for free trade—intrude more and more across frontiers. Internationalisation of government has been accepted in the economic sphere because it is inevitable: we see in that sense, the worldwide triumph of the market economy.\textsuperscript{19}
4. PERSECUTION AND THE LAW OF HUMAN RIGHTS

Is the international refugee definition’s focus on the existence of a "well-founded fear of persecution" of continuing relevance in the past-cold war era?

The persecution standard evolved from the legitimate concern first stated in the 1938 Convention concerning the Status of Refugees coming from Germany to exclude from protection those persons who were leaving their country for "reasons of purely personal convenience". The Constitution of the International Refugee Organisation (IRO) rephrased this principle in positive terms and required the putative refugee to show "valid objections" to returning to his or her country of origin, which might include fear of persecution. The modern Convention Relating to the Status of Refugees, in turn, adopted the basic approach of the IRO precedent, but made persecution the exclusive benchmark for international refugee status.

It is generally acknowledged that the drafters of the Convention intentionally left the meaning of "persecution" undefined because they realized the impossibility of enumerating in advance all of the forms of maltreatment, which might legitimately entitle persons to benefit from the protection of a foreign State. Bits and pieces of insight into the intended meaning of "persecution" can nonetheless be gleaned from the Convention’s drafting history.

First, the drafters clearly viewed persecution as a sufficiently inclusive concept to capture the spectrum of phenomena, which had induced involuntary migration during and immediately after the Second World War, ranging from the deprivation of life and liberty inflicted by the Nazis. From the beginning there was no monolithic or absolute conceptual standard of wrongfulness, the implication being that a variety of measures in disregard of human dignity might constitute persecution. Refugee status was premised on the risk of serious harm, but not on the possibility of consequences of life or death.
proportions. In addition to the Convention's acceptance of deprivation of basic
civil and political freedom as sufficient cause for international concern, serious
social and economic consequences were also acknowledged to be within the
purview of persecution.\textsuperscript{24}

Second, the intention of the drafters was not to protect persons
against any and all forms of even serious harm, but was rather to restrict
refugee recognition to situations in which there was a risk of a type of injury
that would be inconsistent with the basic duty of protection owed by a State to
its own population. As a holistic reading of the refugee definition demonstrates,
the drafters were not concerned to respond to certain forms of harm, \textit{per se} but
were rather motivated to intervene only where the maltreatment anticipated was
demonstrative of a break down of national protection.\textsuperscript{25} The existence of pattern
of or anticipated suffering alone, therefore, does not make one a refugee, unless
the State has failed in relation to some duty to defined its citizenry against the
particular form of harm anticipated.

These basic tenets a liberal sense of the types of past or anticipated harm
which might warrant protection abroad, and a fundamental preoccupation to
identify forms of harm demonstrative of breach by a State of its basic
obligations of protection are of continuing relevance today. For persecution to
remain a meaningful concept, it must be interpreted in the light of these
principles as they apply in modern context. As noted by the Council of Europe:

\begin{quote}
"-----the concept of persecution should be interpreted and applied
liberally and also adopted to the changed circumstances which may
differ considerably from those existing when the Convention was
originally adopted -----account should be taken of the relation between
refugee status and the denial of human rights as laid down in different
international instruments.\textsuperscript{26}"
\end{quote}

This approach will not eliminate the danger of political distortion
inherent in the retention of the persecution standard, but it may at least prevent
the Convention from becoming a mere anachronism.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Drawing on these basic precepts, persecution may be defined as the sustained or systematic violation of basic human rights demonstrative of a failure of State protection. A well-founded fear of persecution exists when one reasonably anticipates that the failure to leave the country may result in a form of serious harm which government cannot or will not prevent, including either "specific hostile acts or --- an accumulation of adverse circumstances such as discrimination existing in an atmosphere of insecurity and fear of the nature of basic human rights which constitute a State’s duty of protection, the application of these standards in a number of specific contexts and the circumstances in which a state may be said to have failed in its duty to ensure those basic human rights."

5. HUMAN RIGHTS LAW, HUMANITARIAN LAW AND REFUGEE LAW: A SYNTHESIS

It is very clear that refugee law is an inseparable part of human rights law as follows from Article 14 (1) of the Universal Declaration of Human Rights. "Everyone has the right to seek and to enjoy in other countries asylum from persecution". Persecution can be denied as a violation of basic human rights. The 1951 Convention Relating to the States of Refugee along with many other international and national legal instruments referring to or relying on it spells out in details the right to seek asylum from persecution. The 1951 Convention does not solve the problem of territorial asylum, however, it remains a fact that the definition of a refugee under the Convention revolves around our understanding of human rights.

Most of the unhappy millions who have been forced to flee their country of origin have not been exposed to direct persecution. They have been uprooted by a variety of other causes even more complex and variable than the recognised methods of persecution. This, only a minority of the world’s refugees is covered by the 1951 Convention. Still, it is an undeniable fact that they have been forced to flee. Hence the term de facto refugee, generally
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

accepted by experts all over the world, but shunned by Governments and their spokespeople in rich western countries.³⁰

The confusion in the rich countries over who the de facto refugees are in relation to the Convention refugees and to the human rights system has inspired much attention. One way to resolve this might be to see Convention refugees as victims of denial of humanitarian law protection. Though this might be helpful in some situations and it might lead to oversimplified or erroneous conclusions.³¹

If a prisoner of war is tortured because of his race or his religion, is that not a violation of both humanitarian law and human rights law?

If an ethnic minority in a remote part of a country is being persecuted by a majority and the central Government does not have the means of the power to interfere, is that a situation which generates convention refugees or de facto?

If villagers are killed, raped, robbed, by criminals, irregular armed forces or army troops gone completely out of control, those villagers are not persecuted by a Government or its agents and they are clearly entitled to protection as de facto refugees, but have their human rights not been violated at the hands of the perpetrators of these deeds?

These examples made it clear not only that humanitarian law and human rights law are branches of the same tree but also that these branches are intertwined and that they do have relevance for both categories of refugees.

There are situations where the humanitarian law criterion is not sufficient to establish refugee status. There are many examples of armed conflict or other political events causing serious and widespread environmental destruction, which uproots the local population, aggravated by political neglect or incompetence, and drives people away to safety.³² Many of these victims could and should be considered de facto refugees, but one cannot say that they have been exposed to violations of humanitarian law. So, it can be said that the key concept in the definition of a Convention refugee is a "well-founded fear of persecution" and the key to understanding that is a de facto refugee is the
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

existence of events are seriously disturbing public order. Both categories are still related to both human rights and humanitarian law just as they are sometimes intertwined in the field of practical application.

6. DETERMINATION OF THE REFUGEE STATUS

During the past few years, it has become increasingly obvious that the mass influx of refugees has outgrown the possibility of solution on the national level and has to be solved at the international and regional levels respectively.

As a consequence of recognising the urgent need to assist the hundreds to thousands of refugees from South East Asia, a number of States have recognised that granting collective asylum to the refugees from South-East Asia is a humanitarian act directly based on the prevention of further acute jeopardy to the lives and physical well-being of such refugees.

Here it may be mentioned that 1951 Refugee Convention does not apply to persons fleeing from generalised violence or internal turmoil in, rather than persecution by, their home countries. Such persons are generally considered to be humanitarian refugees rather than political or social refugees as defined in the 1951 Refugees Convention. A Practical difficulty in applying the Convention definition confronts states receiving mass influx humanitarian refugees because “there simply is no time to do the individualised screening commonly necessary to apply the Convention definition….” Recently, the Ex-United Nations High Commissioner for Refugees, Mrs. Sadako Ogata expressed her view by observing that—

“The refugee issue has become part of a much large movement of people across frontiers and within them. The mass exodus of migrant workers, evacuees, refugees and internally displaced which the Gulf-war produced represents a microcosm the kind of movements with which we are increasingly confronted as we come to the end of the twentieth century.... In many parts of the world refugees are victims of civil war and political conflict rather than of persecution... Communal strife and civil war intensify famine and food shortages forcing people to move in search of safety and survival.” 34
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

In the large-scale influx situations – the determination of individual status becomes largely impossible. Group determination is the only possible solution. Of course, in principle, there would not seem to be any objection to a group determination if conferred refugees status on all members of the group.

Here it may be noted that international bodies have already reacted to this growing problem of mass influx of humanitarian refugees. Originally, the competence of the United Nations High Commissioner for Refugees (UNHCR) was restricted to refugees as defined by the 1951 Refugee Convention, i.e., *Convention Refugees*. Since 1959, however, the UNHCR’s competence has been extended gradually to cover all refugees, including “Persons who have fled their home country due to armed conflicts, internal turmoil and situations involving gross and systematic violations of human rights.”

The Report of the working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia, 1981, noted that the definition of the term ‘refugee’ in Article I of the 1969 OAU Convention, along with the extended responsibility of the UNHCR after 1975, had the effect of including within the ambit of its protection provisions, virtually, all victims of man-made disasters, including ‘displaced persons’, and approved it in relation to the definition of the term ‘refugee’ in Asia.

The Cartagena Declaration on Refugees of November 1984 proposed an extension of the concept of *refugee* as applied to Central America, stipulating that a ‘massive violation of human rights’ should be considered as a legal basis for extended definition of *refugee*.

The requirements for the determination of refugee status envisaged that the competent immigration or border police officer should have clear instructions for dealing with refugees on the basis of adherence to the principle of *non-refoulement* and should be required to refer refugee cases to a higher authority the applicant should receive guidance on procedures to be followed, he should be given the necessary facilities including the services of an
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

interpreter, for submission of his case to the authorities as well as permission to remain in the country pending a decision on the initial request when the applicant is recognised as a refugee, he should be so informed and issued with appropriate documentation. If the applicant is not recognized as a refugee, he should be given time to appeal for reconsideration of the decision. He should be permitted to remain in the country while the appeal is pending. National Sovereignty requires that all persons, including refugees conform to the laws and regulations of the country of asylum as well as to the measures taken for the maintenance of public order.37

According to the 1951 Convention, in time of war or other grave and exceptional circumstances, a state may take provisional measures essential to national security in the case of a particular person, pending a determination by the contracting state that the person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

This provision should be read together with Article 44 of the Fourth Geneva Convention pertaining to the Protection of Civilian Persons in Time of War, of 12 August, 1949, according to which in applying the measures of control the Power in whose jurisdiction protected persons find themselves shall not treat as enemy aliens, exclusively on the basis of their nationality de jure of a enemy state, refugees who do not, in fact, enjoy the protection of any Government. This applies to aliens in the territory of a party to an international armed conflict. In the situation of belligerent occupation, Article 70 of the Fourth Geneva Convention is operative. It states that protected persons (a notion which includes refugees) shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.38

Nationals of Occupying Power who before the outbreak of hostilities sought refuge in the territory of the occupied State shall not be arrested,
prosecuted, convicted or deported from the occupied territory, except for
offences committed after the outbreak of hostilities or for offences under
common law committed before the outbreak of hostilities, which, according to
the law of the occupied State, would have justified extradition in time of
peace.\textsuperscript{39}

A. Criteria For the Determination of the Refugee Status

(i) General Principles

A person is a refugee within the meaning of the 1951 Convention as
soon as he fulfils the criteria contained in the definition. This would necessarily
occur prior to the time at which his refugee status is formally determined.
Recognition of his refugee status does not therefore make him a refugee but
declares him to be one. He does not become a refugee because of recognition,
but is recognized because he is a refugee. Determination of refugee status is a
process, which takes place in two stages. Firstly, it is necessary to ascertain the
relevant facts of the case. Secondly, the definitions in the 1951 Convention and
the 1967 Protocol have to be applied to the facts thus ascertained. The
provisions of the 1951 Convention defining who is a refugee consist of three
parts, which have been termed respectively “inclusion”, “cessation” and
“exclusion” clauses. The inclusion clauses define the criteria that a person must
satisfy in order to be a refugee. They form the positive basis upon which the
determination of refugee status is made. The so-called cessation and exclusion
clauses have a negative significance; the former indicate the conditions under
which a refugee ceases to be a refugee and the latter enumerate the
circumstances in which a person is excluded from the application of the 1951
Convention although meeting the positive criteria of the inclusion clauses.

(ii) Interpretation of terms

(a) \textit{Events occurring before 1 January 1951}

The origin of this 1951 dateline is explained in the Preamble to the
Convention. As a result of the 1967 Protocol this dateline has lost much of its
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

practical significance. An interpretation of the word “events” is therefore of interest only in the small number of States parties to the 1951 Convention that are not also party to the 1967 Protocol. The word “events” is not defined in the 1951 Convention, but was understood to mean “happenings of major importance involving territorial or profound political changes as well as systematic programmes of persecution which are after-effects of earlier changes.”

The dateline refers to “events” as a result of which, and not to the date on which he left his country. A refugee may have left his country before or after the datelines, provided that his fear of persecution is due to “events” that occurred before the dateline or to after effects occurring at a later date as a result of such events.

(b) “well-founded fear of being persecuted”

The phrase “well-founded fear of being persecuted” is the key phrase of the definition. It reflects the views of its authors as to the main elements of refugee character. It replaces the earlier method of defining refugees by categories (i.e. persons of a certain origin not enjoying the protection of their country) by the general concept of fear for a relevant motive. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin. To the element of fear—a state of mind and a subjective condition— is added the qualification well founded. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term well-founded fear therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration. It may be assumed that, unless he seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some
compelling reason. There may be many reasons that are compelling and understandable, but only one motive has been singled out to denote a refugee. The expression *owing to well-founded fear of being persecuted* – for the reasons stated – by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition. It rules out such persons as victims of famine or natural disaster, unless they also have well-founded fear of persecution for one of the reasons stated. Such other motives may not, however, be altogether irrelevant to the process of determining refugee status, since all the circumstances need to be taken into account for a proper understanding of the applicant’s case.

An evaluation of the *subjective element* is inseparable from an assessment of the personality of the applicant, since psychological reactions of different individuals may not be the same in identical conditions. One person may have strong political or religious convictions, the disregard of which would make his life intolerable; another may have no such strong convictions. One person may make an impulsive decision to escape; another may carefully plan his departure. Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences – in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable. Exaggerated fear, however, may be well founded if, in all the circumstances of the case, such a state of mind can be regarded as justified. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant’s country of origin. The
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. Knowledge of conditions in the applicant's country of origin — while not a primary objective — is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.

These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well founded. The laws of the country of origin, and particularly the manner in which they are applied, will be relevant. The situation of each person must, however, be assessed on its own merits. In the case of a well-known personality, the possibility of persecution may be greater than in the case of a person in obscurity. All these factors, e.g. a person's character, his background, his influence, his wealth or his outspokenness, may lead to the conclusion that his fear of persecution is well founded.

While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded prima facie (i.e. in the absence of evidence to the contrary) as a refugee. Apart from the situations of the type referred to in the preceding paragraph, an applicant for
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

refugee status must normally show good reason why he individually fears persecution. It may be assumed that a person has well-founded fear of being persecuted if he has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention. However, the word "fear" refers not only to persons who have actually been persecuted, but those who wish to avoid a situation entailing the risk of persecution. The expressions _fear of persecution_ or even _persecution_ are usually foreign to a refugee's normal vocabulary. A refugee will indeed only rarely invoke _fear of persecution_ in these terms, though it will often be implicit in his story. Again, while a refugee may have very definite opinions for which he has had to suffer, he may not, for psychological reasons, be able to describe his experiences and situation in political terms. A typical test of the well foundedness of fear will arise when an applicant is in possession of a valid national passport. It has sometimes been claimed that possession of a passport signifies that the issuing authorities do not intend to persecute the holder, for otherwise they would not have issued a passport to him. Though this may be true in some cases, many persons have used a legal exit from their country as the only means of escape without ever having revealed their political opinions, knowledge of which might place them in a dangerous situation vis-à-vis the authorities.

Possession of a passport cannot therefore always be considered as evidence of loyalty on the part of the holder, or as an indication of the absence of fear. A passport may even be issued to a person who is undesired in his country of origin, with the sole purpose of securing his departure, and there may also be cases where a passport has been obtained surreptitiously. In conclusion, therefore, the mere possession of a valid national passport is no bar to refugee status. If, on the other hand, an applicant, without good reason, insists on retaining a valid passport of a country of whose protection he is allegedly unwilling to avail himself, this may cast doubt on the validity of his claim to have "well-founded fear". Once recognized, a refugee should not
normally retain his national passport. There may, however, be exceptional situations in which a person fulfilling the criteria of refugee status may retain his national passport – or be issued with a new one by the authorities of his country of origin under special arrangements. Particularly where such arrangements do not imply that the holder of the national passport is free to return to his country without prior permission, they may not be incompatible with refugee status.

There is no universally accepted definition of persecution, and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well founded fear of persecution on cumulative grounds. Needless to say, it is not possible to lay
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities. Where measures of discrimination are, in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim – or potential victim – of injustice, not a fugitive from justice. The above distinction may, however, occasionally be obscured. In the first place, a person guilty of a common law offence may be liable to excessive punishment, which may amount to persecution within the meaning of the definition. Moreover, penal prosecution for a reason mentioned in the definition (for example, in respect of “illegal” religious instruction given to a child) may in itself amount to persecution. Secondly, there may be cases in which a person, besides fearing prosecution or punishment for a common law crime, may also have well founded fear of persecution. In such cases the person concerned is a refugee. It may, however, be necessary to consider whether the crime in question is not of
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

such a serious character as to bring the applicant within the scope of one of the exclusion clauses.

In order to determine whether prosecution amounts to persecution, it will also be necessary to refer to the laws of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards. More often, however, it may not be the law but its application that is discriminatory. Prosecution for an offence against "public order", e.g. for distribution of pamphlets, could for example be a vehicle for the persecution of the individual on the grounds of the political content of the publication. In such cases, due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to make decisions by using their own national legislation as a yardstick. Moreover, recourse may usefully be had to the principles set out in the various international instruments relating to human rights, in particular the International Covenants on Human Rights, which contain binding commitments for the States parties and are instruments to which many States parties to the 1951 Convention have acceded.

Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

(c) "for reasons of race, religion, nationality, membership of a particular social group of political opinion"

In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above. It is immaterial whether the persecution arises from any single one of these reasons or from a
combination of two or more of them. Often the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyse his case to such an extent as to identify the reasons in detail. It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared to decide whether the definition in the 1951 Convention is met with in his respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear.

Race, in the present connection, has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as “races” in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population. Discrimination for reasons of race has found worldwide condemnation as one of the most striking violations of human rights. Racial discrimination, therefore, represents an important element in determining the existence of persecution. Discrimination on racial ground will frequently amount to persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person’s human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights, or where the disregard of racial barriers is subject to serious consequences. The mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim to refugee status. There may, however, be situations where, due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution.

The Universal Declaration of Human Rights and the Human Rights Covenant proclaim the freedom of a person to change his religion and his
freedom to manifest it in public or private, in teaching, practice, worship and observance. Persecution for reasons of religion may assume various forms, e.g. prohibition of membership of religious community, or worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.

The term nationality in this context is not to be understood only as citizenship. It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term race. Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well founded fear of persecution.

The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of persecution or danger of persecution. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific "nationality". Whereas in most cases persons belonging to a national minority fear persecution for reason of nationality, there have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority.

A particular social group normally comprises persons of similar background, habits or social status. A claim to fear of persecution under this heading may frequently overlap with a claim to fear of persecution on other
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

grounds, i.e. race, religion or nationality. Membership of such a particular social group may be at the root of persecution because there is no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies. Mere membership of a particular social group will not normally be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground to fear persecution.

Holding political opinions different from those of the Government is not in itself a ground for claiming refugee status, and an applicant must show that he has a fear of persecution for holding such opinions. This pre-supposes that the applicant holds opinions not tolerated by the authorities, which are critical of their policies or methods. It also presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant. The political opinions of a teacher or writer may be more manifest than those of a person in a less exposed position. The relative importance or tenacity of the applicant's opinions – in so far as this can be established from all the circumstances of the case – will also be relevant. While the definition speaks of persecution for reasons of political opinion it may not always be possible to establish a causal link between the opinion expressed and the related measures suffered or feared by the applicant. Such measures have only rarely been based expressly on opinion. More frequently, such measures take the form of sanctions for alleged criminal acts against the ruling power. It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behaviour, and the fact that it has led or may lead to the persecution that he claims to fear.

Persecution for reasons of political opinion implies that an applicant holds an opinion that either has been expressed or has come to the attention of
the authorities. There may, however, also be situations in which the applicant has not given any expression to his opinions. Due to the strength of his convictions, however, it may be reasonable to assume that his opinions will sooner or later find expression and that the applicant will, as a result, come into conflict with the authorities. Where this can reasonably be assumed, the applicant can be considered to have fear of persecution for reasons of political opinion.

Where a person is subject to prosecution or punishment for a political offence, a distinction may have to be drawn according to whether the prosecution is for political opinion or for politically motivated acts. If the prosecution pertains to a punishable act committed out of political motives, and if the anticipated punishment is in conformity with the general law of the country concerned, fear of such prosecution will not in itself make the applicant a refugee. Whether a political offender can also be considered a refugee will depend upon various other factors. Prosecution for an offence may, depending upon the circumstances, be a pretext for punishing the offender for his political opinions or the expression thereof. Again, there may be reason to believe that a political offender would be exposed to excessive or arbitrary punishment for the alleged offence. Such excessive or arbitrary punishment will amount to persecution.

In determining whether a political offender can be considered a refugee, regard should also be had to the following elements: personality of the applicant, his political opinion, the motive behind the act, the nature of the act committed, the nature of the prosecution and its motives; finally, also, the nature of the law on which the prosecution is based. These elements may go to show that the person concerned has a fear of persecution and not merely a fear of prosecution and punishment — within the law — for an act committed by him.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

(d) "is outside the country of his nationality"

In this context, nationality refers to citizenship. The phrase "is outside the country of his nationality" relates to persons who have a nationality, as distinct from stateless persons. In the majority of cases, refugees retain the nationality of their country of origin. It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality. There are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country. Where, therefore, an applicant alleges fear of persecution in relation to the country of his nationality, it should be established that he does in fact possess the nationality of that country. There may, however, be uncertainty as to whether a person has a nationality. He may not know himself, or he may wrongly claim to have a particular nationality or to be stateless. Where his nationality cannot be clearly established, his refugee status should be determined in a similar manner to that of a stateless person, i.e. instead of the country of his nationality, the country of his former habitual residence will have to be taken into account.

As mentioned above, an applicant's well-founded fear of persecution must be in relation to the country of his nationality. As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country's protection. He is not in need of international protection and is therefore not a refugee. The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refugee in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so. Nationality may be proved by the possession of a national
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

passport. Possession of such a passport creates a *prima facie* presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country’s nationality, must substantiate his claim, for example, by showing that the passport is a so-called “passport of convenience” (an apparently regular national passport that is sometimes issued by a national authority to non nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant’s assertion in weighing all other elements of his story.

(e) “and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”

The present phrase relates to persons who have a nationality. Whether unable or unwilling to avail himself of the protection of his Government, a refugee is always a person who does not enjoy such protection. Being unable to avail himself of such protection implies circumstances that are beyond the will of the person concerned. There may, for example, be a state of war, civil war or other grave disturbance, which prevents the country of nationality from extending protection or makes such protection ineffective. Protection by the country of nationality may also have been denied to the applicant. Such denial of protection may confirm or strengthen the applicant’s fear of persecution, and may indeed be an element of persecution. What constitutes a refusal of protection must be determined according to the circumstances of the case. If it appears that the applicant has been denied services (e.g., refusal of a national passport or extension of its validity, or denial of admittance to the home.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

territory) normally accorded to his co-nationals, this may constitute a refusal of protection within the definition.

The term unwilling refers to refugees who refuse to accept the protection of the Government of the country of their nationality. It is qualified by the phrase owing to such fear. Where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country owing to well-founded fear of persecution. Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.

(f) “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.”

This phrase, which relates to stateless refugees, is parallel to the preceding phrase, which concerns refugees who have a nationality. In the case of stateless refugees, the country of his former habitual residence replaces the country of nationality, and the expression unwilling to avail him of the protection... is replaced by the words unwilling to return to it. In the case of a stateless refugee, the question of “availment of protection” of the country of his former habitual residence does not, of course, arise. Moreover, once a stateless person has abandoned the country of his former habitual residence for the reasons indicated in the definition, he is usually unable to return. It will be noted that not all stateless persons are refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee.

Such reasons must be examined in relation to the country of former habitual residence in regard to which fear is alleged. The drafters of the 1951 Convention as the country in which he had resided and where he had suffered or fears he would suffer persecution if he returned defined this. A stateless
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

person may have more than one country of former habitual residence, and he may have a fear of persecution in relation to more than one of them. The definition does not require that he satisfied the criteria in relation to all of them. Once a stateless person has been determined a refugee in relation to the country of his former habitual residence, may further change of country of habitual residence will not affect his refugee status.

(iii) Dual or multiple nationality

Article 1 A (2), paragraph 2, of the 1951 Convention states that:

"In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national".

This clause, which is largely self-explanatory, is intended to exclude from refugee status all persons with dual or multiple nationalities who can avail themselves of the protection of at least one of the countries of which they are nationals. Wherever available, national protection takes precedence over international protection.

In examining the case of an applicant with dual or multiple nationalities, it is necessary, however, to distinguish between the possession of a nationality in the legal sense and the availability of protection by the country concerned. There will be cases where the applicant has the nationality of a country in regard to which he alleges no fear, but such nationality may be deemed to be ineffective, as it does not entail the protection normally granted to nationals. In such circumstances, the possession of the second nationality would not be inconsistent with refugee status. As a rule, there should have been a request for, and a refusal of, protection before it can be established that a given nationality is ineffective. If there is no explicit refusal of protection, absence of a reply within reasonable time may be considered a refusal.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

(iv) Geographical Scope

At the time when the 1951 Convention was drafted, there was a desire by a number of States not to assume obligations the extent of which could not be foreseen. This desire led to the inclusion of the 1951 dateline, to which reference has already been made. In response to the wish of certain Governments, the 1951 Convention also gave to Contracting States the possibility of limiting their obligations under the Convention to persons who had become refugees as a result of events occurring in Europe.

Accordingly, Article 1 B of the 1951 Convention states that:

(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 and 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 purposes of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative

(a) may at any time extend its obligations by adopting alternative
(b) by means of a notification addressed to the Secretary General of the United Nations.

Of the State parties to the 1951 Convention, at the time of writing still adhere to alternative (a), “events occurring in Europe”. While refugees from other parts of the world frequently obtain asylum in some of these countries, they are not normally accorded refugee status under the 1951 Convention.

(v) Exclusion of Certain Persons

The 1951 Convention, in Sections D, E and F of Article 1, contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1, Section A, are excluded from refugee status. Such persons
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

fall into three groups. The first group (Article 1 D) consists of persons already receiving United Nations protection or assistance; the second group (Article 1 E) deals with persons who are not considered to be in need of international protection; and the third group (Article 1 F) enumerates the categories of persons who are not considered to be deserving of international protection.

Normally it will be during the process of determining a person’s refugee status that the facts leading to exclusion under these clauses will emerge. It may, however, also happen that facts justifying exclusion will become known only after a person has been recognized as a refugee. In such cases, the exclusion clause will call for a cancellation of the decision previously taken.

(a) Persons already receiving United Nations protection or assistance

Article 1 D of the 1951 Convention states:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

“When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention”.

Exclusion under this clause applies to any person who is in receipt of protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees. Such protection or assistance was previously given by the former United Nations Korean Reconstruction Agency (UNKRA) and is currently given by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). There could be other similar situations in the future.

With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refugee from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be
considered for determination of his refugee status under the criteria of the 1951 Convention. It should normally be sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses.

(b) **Persons not considered being in need of international protection**

Article 1 E of the 1951 Convention states:

"This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country".

This provision relates to persons who might otherwise qualify for refugee status and who have been received in a country where nationals, but not formal citizenship have granted them most of the rights normally enjoyed. (They are frequently referred to as "national refugees"). The country that has received them is frequently one where the population is of the same ethnic origin as themselves. There is no precise definition of "rights and obligations" that would constitute a reason for exclusion under this clause. It may, however, be said that the exclusion operates if a person's status is largely assimilated to that of a national of the country. In particular he must, like a national, be fully protected against deportation or expulsion. The clause refers to a person who has "taken residence" in the country concerned. This implies continued residence and not a mere visit. A person who resides outside the country and does not enjoy the diplomatic protection of that country is not affected by the exclusion clause.

(c) **Persons considered not to be deserving of international protection**

Article 1 F of the 1951 Convention states:

"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:"
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations”.

The pre-war international instruments that defined various categories of refugees contained no provisions for the exclusion of criminals. It was immediately after the Second World War that for the first time special provisions were drawn up to exclude from the large group of the then assisted refugees certain persons who were deemed unworthy of international protection. At the time when the Convention was drafted, the memory of the trials of major war criminals was still very much alive, and there was agreement on the part of States that war criminals should not be protected. There was also a desire on the part of States to deny admission to their territories of criminals who would present a danger to security and public order. The competence to decide whether any of these exclusion clauses are applicable is incumbent upon the Contracting State in whose territory the applicant seeks recognition of his refugee status. For these clauses to apply, it is sufficient to establish that there are “serious reasons for considering” that one of the acts described has been committed. Formal proof of previous penal prosecution is not required. Considering the serious consequences of exclusion for the person concerned, however, the interpretation of these exclusion clauses must be restrictive.

In mentioning crimes against peace, war crimes or crimes against humanity, the Convention refers generally to “international instruments drawn up to make provision in respect of such crimes”. There are a considerable number of such instruments dating from the end of the Second World War up to the present time. All of them contain definitions of what constitute crimes against peace, war crimes and crimes against humanity. The most
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

comprehensive definition will be found in the 1945 London Agreement and Charter of the International Military Tribunal.

The aim of this exclusion clause is to protect the community of a receiving country from the danger of admitting a refugee who has committed a serious common crime. It also seeks to render due justice to a refugee who has committed a common crime (or crimes) of a less serious nature of has committed a political offence. In determining whether an offence is “non-political” or is, on the contrary, a “political” crime, regard should be given in the first place to its nature and purpose i.e. whether it has been committed out of genuine political motives and not merely for personal reasons or gain. There should also be a close and direct causal link between the crime committed and its alleged political purpose and object. The political element of the offence should also outweigh its common law character. This would not be the case if the acts committed are grossly out of proportion to the alleged objective. The political nature of the offence is also more difficult to accept if it involves acts of an atrocious nature. Only a crime committed or presumed to have been committed by an applicant “outside the country of refuge prior to his admission to that country as a refugee” is a ground for exclusion. The country outside would normally be the country of origin, but it could also be another country, except the country of refuge where the applicant seeks recognition of his refugee status.

A refugee committing a serious crime in the country of refuge is subject to due process of law in that country. In extreme cases, Article 33 paragraph 2 of the Convention permits a refugee’s expulsion or return to his former home country if, having been convicted by a final judgement of a particularly serious common crime, he constitutes a danger to the community of his country of refuge. What constitutes a serious non-political crime for the purposes of this exclusion clause is difficult to define, especially since the term crime has different connotations in different legal systems. In some countries the word
crime denotes only offences of a serious character. In other countries it may comprise anything from petty larceny to murder. In the present context, however, a serious crime must be a capital crime or a very grave punishable act. Minor offences punishable by moderate sentences are not grounds for exclusion under Article 1 F (b) even if technically referred to as "crimes" in the penal law of the country concerned.

In applying this exclusion clause, it is also necessary to strike a balance between the natures of the offence presumed to have been committed by the applicant and the degree of persecution feared. If a person has well founded fear of very severe persecution, e.g. persecution endangering his life or freedom, a crime must be very grave in order to exclude him. If the persecution feared is less serious, it will be necessary to have regard to the nature of the crime or crimes presumed to have regard to the nature of the crime or crimes presumed to have been committed in order to establish whether his criminal character does not outweigh his character as a bona fide refugee. In evaluating the nature of the crime presumed to have been committed, all the relevant factors including any mitigating circumstances must be taken into account. It is also necessary to have regard to any aggravating circumstances as, for example, the fact that the applicant may already have a criminal record. The fact that an applicant convicted of a serious non-political crime has already served his sentence or has been granted a pardon or has benefited from an amnesty is also relevant. In the latter case, there is a presumption that the exclusion clause is no longer applicable, unless it can be shown that, despite the pardon or amnesty, the applicant’s criminal character still predominates.

Considerations similar to those mentioned in the preceding paragraphs will apply when a crime - in the widest sense -- has been committed as a means of, or concomitant with, escape from the country where persecution was feared. Such crimes may range from the theft of a means of locomotion to endangering or taking the lives of innocent people. While for the purposes of the present
exclusion clause it may be possible to overlook the fact that a refugee, not finding any other means of escape, may have crashed the border in a stolen car, decisions will be more difficult where he has hijacked an aircraft, i.e. forced its crew, under threat of arms or with actual violence, to change destination in order to bring him to a country of refuge.

As regards hijacking, the question has arisen as to whether, if committed in order to escape from persecution, it constitutes a serious non-political crime within the meaning of the present exclusion clause. Governments have considered the unlawful seizure of aircraft on several occasions within the framework of the United Nations, and a number of international conventions have been adopted dealing with the subject. None of these instruments mentions refugees. However, one of the reports leading to the adoption of a resolution on the subject states that "the adoption of the draft Resolution cannot prejudice any international legal rights or duties of States under instruments relating to the status of refugees and stateless persons". Another report states that "the adoption of the draft Resolution cannot prejudice any international legal rights or duties of States with respect to asylum."\(^{53}\)

The various conventions adopted in this connection deal mainly with the manner in which the perpetrators of such acts have to be treated. They invariably give Contracting States the alternative of extraditing such persons or instituting penal proceedings for the act on their own territory, which implies the right to grant asylum. While there is thus a possibility of granting asylum, the gravity of the persecution of which the offender may have been in fear, and the extent to which such fear is well founded, will have to be duly considered in determining his possible refugee status under the 1951 Convention. The question of the exclusion under Article 1 F (b) of an applicant who has committed an unlawful seizure of an aircraft will also have to be carefully examined in each individual case.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

It will be seen that this very generally worded exclusion clause overlaps with the exclusion clause in Article 1 F (a); for it is evident that a crime against peace, a war crime or a crime against humanity is also an act contrary to the purposes and principles of the United Nations. While Article 1 F (c) does not introduce any specific new element, it is intended to cover in a general way such acts against the purposes and principles of the United Nations that might not be fully covered by the two preceding exclusion clauses. Taken in conjunction with the latter, it has to be assumed, although this is not specifically stated, that the acts covered by the present clause must also be of a criminal nature.

The purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations. They enumerate fundamental principles that should govern the conduct of their members in relation to each other and in relation to the international community as a whole. From this it could be inferred that an individual, in order to commit an act contrary to these principles, must have been in a position of power in a member State and instrumental to his State's infringing these principles. However, there are hardly any precedents on record for the application of this clause, which, due to its very general character, should be applied with caution.

(vi) Special Category of Persons

(a) War refugees

Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol. They do, however, have the protection provided for in other international instruments, e.g. the Geneva Conventions of 1949 on the Protection of War Victims and the 1977 Protocol additional to the Geneva Conventions of 1949 relating to the protection of Victims of International Armed Conflicts. However, foreign invasion or occupation of all or part of a country can result – and occasionally has resulted
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

in persecution for one or more of the reasons enumerated in the 1951 Convention. In such cases, refugee status will depend upon whether the applicant is able to show that he has a "well-founded fear of being persecuted" in the occupied territory and, in addition, upon whether or not he is able to avail himself of the protection of his government, or of a protecting power whose duty it is to safeguard the interests of his country during the armed conflict, and whether such protection can be considered to be effective. Protection may not be available if there are no diplomatic relations between the applicant's host country and his country of origin. If the applicant's government is itself in exile, the effectiveness of the protection that it is able to extend may be open to question. Thus, every case has to be judged on its merits, both in respect of well-founded fear of persecution and of the availability of effective protection on the part of the government of the country of origin.

(b) Fugitives and Evaders of Conscription

In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader. A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution. A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for
the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.

There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience. Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution. Refusal to perform military service may also be based on religious convictions. If an applicant is able to show that his religious convictions are genuine, and that such conviction are not taken into account by the authorities of his country in requiring him to perform military service, he may be able to establish a claim to refugee status. Such a claim would, of course, be supported by any additional indications that the applicant or his family may have encountered difficulties due to their religious convictions.

The question as to whether objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in the light of more recent developments in this field. An increasing number of States have introduced legislation or administrative regulations whereby persons who can invoke genuine reasons of conscience are
exempted from military service, either entirely or subject to their performing alternative (i.e. civilian) service. The introduction of such legislation or administrative regulations has also been the subject of recommendations by international agencies. In the light of these developments, it would be open to Contracting States, to grant refugee status to persons who object to performing military service for genuine reasons of conscience. The genuineness of a person’s political, religious or moral convictions, or of his reasons of conscience for objecting to performing military service, will of course need to be established by a thorough investigation of his personality and background. The fact that he may have manifested his views prior to being called to arms, or that he may already have encountered difficulties with the authorities because of his convictions, are relevant considerations. Whether he has been drafted into compulsory service or joined the army, as a volunteer may also be indicative of the genuineness of his convictions.

(c) Persons having resorted to force or committed acts of violence

Persons who have used force or committed acts of violence frequently make applications for refugee status. Such conduct is frequently associated with, or claimed to be associated with, political activities or political opinions. They may be the result of individual initiatives, or may have been committed within the framework of organized groups. The latter may either be clandestine groupings or political cum military organizations that are officially recognized or whose activities are widely acknowledged. Account should also be taken of the fact that the use of force is an aspect of the maintenance of law and order and may by definition be lawfully resorted to by the police and armed forces in the exercise of their functions. An application for refugee status by a person having (or presumed to have) used force, or to have committed acts of violence of whatever nature and within whatever context, must in the first place – like any other application – be examined from the standpoint of the inclusion clauses in the 1951 Convention.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Where it has been determined that an applicant fulfils the inclusion criteria, the question may arise as to whether, in view of the acts involving the use of force or violence committed by him, he may not be covered by the terms of one or more of the exclusion clauses. These exclusion clauses, which figure in Article 1 F (a) to (c) of the 1951 Convention, have already been examined. The exclusion clause in Article 1 F (a) was originally intended to exclude from refugee status any person in respect of whom there were serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity in an official capacity. This exclusion clause is, however, also applicable to persons who have committed such crimes within the framework of various non-governmental groupings, whether officially recognized, clandestine or self-styled. The exclusion clause in Article 1 F (b), which refers to “a serious non-political crime”, is normally not relevant to the use of force or to acts of violence committed in an official capacity. The exclusion clause in Article 1 F (c) has also been considered. As previously indicated, because of its vague character, it should be applied with caution. It will also be recalled that, due to their nature and the serious consequences of their application to a person in fear of persecution, the exclusion clauses should be applied in a restrictive manner.

(vii) The Principle of Family Unity & Re-unification

Beginning with the Universal Declaration of Human Rights, which states that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”, most international instruments dealing with human rights contain similar provisions for the protection of the unit of a family.

The Final Act of the Conference that adopted the 1951 Convention states:

"Recommends Governments to take the necessary measures for the protection of the refugee’s family, especially with a view to:"

171
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

(1) Ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.

(2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.”

The 1951 Convention does not incorporate the principle of family unity in the definition of the term refugee. The above mentioned Recommendation in the Final Act of the Conference is, however, observed by the majority of States, whether or not parties to the 1951 Convention or to the 1967 Protocol. If the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity. It is obvious, however, that formal refugee status should not be granted to a dependant if this is incompatible with his personal legal status. Thus, a dependant member of a refugee family may be a national of the country of asylum or of another country, and may enjoy that country’s protection. To grant him refugee status in such circumstances would not be called for.

As to which family members may benefit from the principle of family, unity the minimum requirement is the inclusion of the spouse and minor children. In practice, other dependants, such as aged parents of refugees, are normally considered if they are living in the same household. On the other hand, if the head of the family is not a refugee, there is nothing to prevent any one of his dependants, if they can invoke reasons on their own account, from applying for recognition as refugees under the 1951 Convention or the 1967 Protocol. In other words, the principle of family unity operates in favour of dependants, and not against them.

The principle of the unity of the family does not only operate where all family members become refugees at the same time. It applies equally to cases where a family unity has been temporarily disrupted through the flight of one or more of its members. Where the unity of a refugee’s family is destroyed by
divorce, separation by death, dependants who have been granted refugee status on the basis of family unity will retain such refugee status unless they fall within the terms of a cessation clause; or if they do not have reasons other than those of personal convenience for wishing to retain refugee status; or if they themselves no longer wish to be considered as refugees. If the dependant of a refugee falls within the terms of one of the exclusion clauses, refugee status should be denied to him.  

B. Procedures for the Determination of Refugee Status

(i) General Principles

It has been seen that the 1951 Convention and the 1967 Protocol define who is a refugee for the purposes of these instruments. It is obvious that, to enable States parties to the Convention and to the Protocol to implement their provisions, refugees have to be identified. Such identification i.e. the determination of refugee status, although mentioned in the 1951 Convention (cf. Article 9), is not specifically regulated. In particular, the Convention does not indicate what types of procedures are to be adopted for the determination of refugee status. It is therefore, left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure. It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. Qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs should therefore examine his application within the framework of specially established procedures.

Due to the fact that the matter is not specifically regulated by the 1951 Convention, procedures adopted by States parties to the 1951 convention and to the 1967 Protocol vary considerably. In a number of countries, refugee status is
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

determined under formal procedures specifically established for this purpose. In other countries, the question of refugee status is considered within the framework of general procedures for the admission of aliens. In yet other countries, refugee status is determined under informal arrangements or ad hoc for specific purposes, such as the issuance of travel documents. In view of this situation and of the unlikelihood that all States bound by the 1951 Convention and the 1967 Protocol could establish identical procedures, the Executive Committee of the High Commissioner’s Programme, at its twenty-eight session in October 1977, recommended that procedures should satisfy certain basic requirements. These basic requirements, which reflect the special situation of the applicant for refugee status, to which reference has been made above, and which would ensure that the applicant is provided with certain essential guarantees, are the following:

(i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

(iii) There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.

(iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

(v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by the authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.  

The Executive Committee also expressed the hope that all States parties to the 1951 Convention and the 1967 Protocol that had not yet done so would take appropriate steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form. Determination of refugee status, which is closely related to questions of asylum and admission, is of concern to the High commission in the exercise of his function to provide international protection for refugees. In a number of countries, the Office of the High commissioner participates in various forms, in procedures for the determination of refugee status. Such participation is based on Article 35 of the 1951 Convention and the corresponding Article II of the 1967 Protocol, which provide for co-operation by the contracting States with the High Commissioner’s Office.

(ii) Establishing the facts

The relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant’s statements. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant’s account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant. A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. While an initial interview should normally suffice to bring an applicant’s story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner’s responsibility to evaluate such statements in the light of all the circumstances of the case.

An examination in depth of the different methods of fact-finding is outside the scope of the present Convention. It may be mentioned, however, that basic information is frequently given, in the first instance, by completing a standard questionnaire. Such basic information will normally not be sufficient
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant’s statements will be treated as confidential and that he be so informed.

Very frequently the fact-finding process will not be complete until a wide range of circumstances have been ascertained. Taking isolated incidents out of context may be misleading. The cumulative effect of the applicant’s experience must be taken into account. Where no single incident stands out above the others, sometimes a small incident may be “the last straw”, and although no single incident may be sufficient, all the incidents related by the applicant taken together, could make his fear well founded. Since the examiner’s conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding and his judgement should not, of course, be influenced by the personal consideration that the applicant may be an “undeserving case”.

After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above, it is hardly possible for a refugee to “prove” every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of doubt. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant’s general credibility. The applicant’s statements must be coherent and plausible, and must not run counter to generally known facts.
(iii) Cases of special problems in establishing the facts

It has been seen that in determining refugee status the subjective element of fear and the objective element of its well foundedness need to be established. It frequently happens that an examiner is confronted with an applicant having mental or emotional disturbances that impede a normal examination of his case. A mentally disturbed person may, however, be a refugee, and while his claim cannot therefore be disregarded, it will call for different techniques of examination. The examiner should, in such cases, whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfil the requirements normally expected of an applicant in presenting his case. The conclusions of the medical report will determine the examiner’s further approach.

This approach has to vary according to the degree of the applicant’s affliction and no rigid rules can be laid down. The nature and degree of the applicant’s “fear” must also be taken into consideration, since some degree of mental disturbance is frequently found in persons who have been exposed to severe persecution. Where there are indications that the fear expressed by the applicant may not be based on actual experience or may be an exaggerated fear, it may be necessary, in arriving at a decision, to lay greater emphasis on the objective circumstances, rather than on the statements made by the applicant. It will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere, e.g. from friends, relatives and other persons closely acquainted with the applicant, or from his guardian, if one has been appointed. It may also be necessary to draw certain conclusions from the surrounding circumstances. If, for instance, the applicant belongs to and is in the company of a group of refugees, there is a presumption that he shares their fate and qualifies in the same manner as they do.
In examining his application, therefore, it may not be possible to attach the same importance as is normally attached to the subjective element of “fear”, which may be less reliable, and it may be necessary to place greater emphasis on the objective situation. In view of the above considerations, investigation into the refugee status of a mentally disturbed person will, as a rule, have to be more searching than in a “normal” case and will call for a close examination of the applicant’s past. history and background, using whatever outside sources of information may be available.

There is no special provision in the 1951 Convention regarding the refugee status of persons under age. The same definition of a refugee applies to all individuals, regardless of their age. When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of “well founded fear” in his case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor’s own refugee status will be determined according to the principle of family unity.

The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enrol the services of experts conversant with child mentality. A child – and for that matter, an adolescent – not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor’s best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.

Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent’s maturity. It can be assumed
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

that — in the absence of indications to the contrary — a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.63

It should, however, be stressed that these are only general guidelines and that a minor’s mental maturity must normally be determined in the light of his personal, family and cultural background. Where the minor has not reached a sufficient degree of maturity to make it possible to establish well founded fear in the same way as for an adult, it may be necessary to have greater regard to certain objective factors. Thus, if an unaccompanied minor finds himself in the company of a group of refugees, this may — depending on the circumstances — indicate that the minor is also a refugee. The circumstances of the parents and other family members, including their situation in the minor’s country of origin, will have to be taken into account. If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor’s fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.

7. TERMINATION OF REFUGEE STATUS

Article I. C. (1) to (6) of the 1951 Convention spell out the conditions under which a refugee ceases to be a refugee. They are based on the consideration that international protection should not be granted where it is no longer necessary that—

Article I-C of the 1951 Convention provides that—
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

This convention shall cease to apply to any person falling under the terms of Section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the Country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuge to avail himself of the protection of the country of his nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence.

The 1951 Convention, in Sections D, E and F of Article I, contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article-I, Section A, are excluded from refugee status. Such persons fall into three groups:

The first group (Article I-D) consists of persons already receiving United Nations’ protection or assistance; the second group (Art. I-E) deals with persons who are not considered to be in need of international protection; and the third group (Art. I-F) enumerates the categories of persons who are not considered to be deserving of international protection.

Normally it will be during the process of determining a person’s refugee status that the facts leading to exclusion under these clauses will emerge. However, exclusion under the clause D of Article I applies to the persons who are in respect of protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Such protection or assistance was previously given by the former United Nations Korean Reconstruction Agency (UNKRA) and is currently given by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

8. DESIDERATA FOR BETTER GUARANTEE OF HUMAN RIGHTS

It may be inferred from the ongoing discussion that it is the human rights, which are denied in any kind of state action with regard to the internal armed conflict, deforestation, desertification, toxification and even international armed conflict. Some of the inferences are:

First, the right of an individual to assert and uphold his or her ethnic, religion, linguistic or cultural identity should be and generally is recognised in any civilized society. Such rights have been most usually declined and protected, in the first instance, in individual terms, whether by common or statute law or in a national or international bill or code of human rights enforceable through something like the ordinary court system. It includes in that context specialist’s bodies ranging from the US Equal Opportunities Commission and Canadian Provincial Human Rights Commission right through (for the UK, among others) to the European Commission and Court of Human Rights and, most recently, India’s National Human Rights Commission.

Second, the problem becomes more complex (and more dangerous) when we come to consider—in the context of a multi-ethnic society—the group exercise of these rights by those who seek quite reasonably to enjoy, practise or use their own culture, religion or language in association with each other, or in similar collective fashion to participate in public affairs. For quite soon it becomes clear that the management of this problem goes beyond the capacity of any purely legal system, even supplemented by the full range of commissions, Ambudsmen, Lokpals, Lakayuktas and the rest, which we now compete with each other to design.
So, thirdly, we move beyond the basically legal to a more political or constitutional approach. There is no limit to the range of theoretical structures that can be designed for the potentially orderly allocation, sharing or distribution of power between different groups, minorities, communities or nationalities. At one extreme there is the right of secession, as ultimately exercised by Bangladesh, Eritrea or Ukraine or, most basically, by what we now all the United States of America. Often, but happily not quite always (think of the recent “velvet divorce” between Czechs and Slovaks), secession has been followed by a bloody war of independence. Short of that, of course, there are all the options of proportional representation, federalism, intercommunal power sharing and the like. And with such objectives or solutions in mind, there have sprung into existence bodies like India’s Commission for Minorities and, in December 1992, the CSCE’s European High Commission for National Minorities. But it noted that the first of these exists within the boundaries of a single state while the role of the second extends, with their consent, to no fewer than fifty-three independent nation-states. It is notable that the United States has so far managed to avoid the need to develop any institution of this kind. It remains to be seen how far it will be able to continue to do so, given the growth of a substantial and substantially Monoglot Hispanic community in the midst of its body politics.

Lastly, however, we are all too often obliged to recognise that there is a limit to constitutional inventiveness of this kind, or at least to the willingness of our peoples to accept it (That is just as true, incidentally, for a group of governments who are striving, for example via a place called Mastricht, to move in the opposite direction). It is in just such cases that the yearning of a national or other minority for self-determination (in the old Wilsonian phrase) can sometimes take them off the map of civilized behaviour. Innocent patriotism is suddenly transformed into malignant nationalism. The secessionist all too often follows as unhappily fashionable path towards terrorism.
DETERMINATION OF REFUGEE STATUS AND
HUMAN RIGHTS

Meaning thereby, it is axiomatic that, in a broad human rights approach to the refugee problem, the emphasis on prevention and return as well as on the obligations of the country of origin or of other countries in relation to the country of origin must not detract in any way from or be allowed to undermine the responsibility of the receiving country and the fundamental importance of principles for the protection of refugees, including those of prohibiting refoulement or providing for asylum or, where necessary, the solution—the external settlement. In a broad human rights approach, it is essential to take fully into account that the refugee situation is one of exception and that international protection is necessary precisely because the individual is unable or unwilling to avail himself or herself of national protection for the reason that makes that individual a refugee. The broad human rights approach must serve, therefore, to reinforce existing principles for the protection of refugees and it will do so by developing a structure of protection, which is comprehensive and balanced.

Human Rights are an importance source for the development of the protection of the refugee within the receiving country. For example, the relevance of the prohibition of cruel, inhuman and degrading treatment to the application of the principle of non-refoulment has already been recognized by human rights bodies and by new international human rights instruments. Moreover, human rights principles are clearly applicable to procedural aspects of the determination of refugee status as well as to conditions of presence in regard to such aspects as detention and personal status. When, in 1982, the UNHCR Executive Committee adopted a significant set of minimum basic human standards for the treatment of asylum-seekers who have been temporarily admitted in a country pending arrangements for a durable solution, express reference was made within the conclusion to the fundamental civil rights internationally recognised, in particular those set out in the Universal Declaration of Human Rights.65
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

The Human Rights in the refugee situation serve to strengthen and enrich refugee law in a dynamic way by ensuring that the law responds in a humane and practical way to actual human and social needs. They ensure, too, that the refugee problem is seen, basically, as a human problem, and that it is addressed as such in a manner, which is both comprehensive and coherent. It would be inadequate to say just this, however, without adding that the realization of respect for human rights requires social and economic development at the national and international levels. Respect for human rights cannot flourish in a world where oppression, injustice and violence are widespread and endemic. Today, freedom, justice and peace should be subsumed within a larger notion of development. While respect for human rights promotes development, it is equally true that solidarity and co-operation in development promote respect for human rights.

9. RECAPITULATION

The 1951 United Nations Refugee Convention was the culmination of an important historical development in the definition on the international plane of basic minimum legal standards for the treatment of refugees. It also constituted a beacon for the future. The adoption of a conceptual definition of the ‘refugee’ in the convention definition, which is essentially the same as that in the UNHCR Statute — was regarded as a major step forward, compared with the definitions by categories in the Pre-war refugee instruments and in the constitution of the International Refugee Organization. Until recently this definition was readily accepted as a basis for identifying those refugees who were to be benefited from international protection and assistance.

It is now being said that today’s refugees are very different from the refugees of 1951. Mrs. Sadako Ogata, the Ex-UN High Commissioner for Refugees observed that—

"The context in which refugee problem rise these days is becoming increasingly complex. Tremendous migratory pressures have emerged, provoking large movements of people..."
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

between countries in the South, from the South to the North, and from the East to the West. Even the concept who is a refugee requires new clarification."

The definition of the term ‘refugee’ given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today’s refugee problem, which are primarily problems of refugee groups. Because, a prima facie group determination of refugee character does not mean that each and every member of the group would satisfy the test of well-founded fear of persecution, if his or her case were individually determined. Group determination by its nature concentrates on the objective situation in the country of origin. However, in order to deal with these new refugee situations the High Commissioner, with the approval of the General Assembly, developed and applied the good offices procedure. This procedure was originally employed to with respect to refugees outside the competence of the United Nations, specifically, the Chinese refugees in Hong Kong and Tibetan refugees in India, for whom the High Commissioner was called upon to act in a limited manner, namely, for the transmission of contributions. Thereafter, in the new refugee situations in Africa, the ‘good offices’ was used to enable High Commissioner to assist refugee groups under his regular programme. In making this prima facie determination of refugee character, the High Commissioner used broad criteria based on the objective situations existing in the country of origin.

Here it may be noted that, the 1951 Convention was primarily by Europeans about Europeans. A frequent criticism of the document is that it is too ‘Euro-Centric’. Yet Western Europe now appears among the least committed of the regions to the original humanitarian underpinnings of the Convention. This is evidenced by the restrictive interpretations of controlling legal norms adopted by Government sectors; the implementation of harsh deterrent measures, and reduced financial support for international refugee aid programme. The restrictive attitudes and practices of Western European and
North American nations make it unlikely that international agreement can be reached on a new, broader, definition of refugee.

There are many perspectives on the issue of exactly who merits protection under international refugee law. Some argue that the 1951 Convention refugee definition is too rigid to encompass all those fleeing to the west in need of protection and, therefore, that various other categories, such as de facto or 'humanitarian' refugees, are required. Others believe that the definition is sufficiently elastic, and that it can be applied in such a way as to provide international protection to those who need it. In resolving the problem of who is a Convention – refugee in Western countries, a two-fold approach is called for. First, more specific criteria must be developed, in order to eliminate the ambiguities of the Convention definition as far as possible. Second, and most importantly, the Convention definition must be applied uniformly.

However, an agreement on a more precise definition by Western States would ameliorate a number of other serious problems, including the substantial variations in acceptance rates among States, the over-legalization of many refugee determination procedures; and the diverging perceptions of evolving concepts of refugee law, the importance of which was foreseen by the drafters of the 1951 Convention.67

It may be noted that the convention may not provide an answer to many of today’s problems, which have a bearing on the refugee situation. But it should not be a reason for questioning its basic value in the sphere for which it was intended.68 The Convention should not be blamed for failing to resolve problems with which it was never supposed to deals. It should never be forgotten that the Convention is an essential part of our humanitarian heritage for the international protection of refugees.
NOTES AND REFERENCES


5. Article 3, UNHCR Statute


10. Ibid.

11. Ibid.


14. Supra note 9.

15. Supra note 9.


17. Articles 1.3 of the U.N. Declaration on Territorial Asylum.


19. Ibid.


24. Ibid.

25. This limitation on the definition of refugee owes its origin to the fact that the refugee is designated as a person who stands in need of international protection because he or she is deprived of that in his or her own country.


27. Supra note 23.

DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

31. Ibid.
32. See, Supra Chapter –2.
35. U.N. General Assembly Resolution, 3454, 30 UN GAOR Supp. (No. 34) at 92, UN Doc A/10034 (1975).
37. Igor Khokhlar, Professor, Moscow State Institute of International Relation, “The Rights of Refugees under International Law.
38. Ibid.
39. Ibid.
40. UN Document E/68 page 39.
42. Ibid.
43. Ibid.
44. Ibid.
45. Ibid.
46. Ibid.
47. See Chapter V infra.
48. In certain countries, particularly in Latin America, there is a custom of “diplomatic asylum”, i.e. granting refuge to political fugitives in foreign embassies. While a person thus sheltered may be considered to be outside his country’s jurisdiction, he is not outside its territory and cannot therefore be considered under the terms of the 1951 Convention. The former notion of the “extraterritoriality” of embassies has lately been replaced by the term “inviolability” used in the 1961 Vienna Convention on Diplomatic Relations.
50. See Chapter-V, infra
51. In elaborating this exclusion clause, the drafters of the Convention had principally in mind refugees of German extraction having arrived in the Federal Republic of Germany who were recognized as possessing the rights and obligations attaching to German nationality.
52. Supra note. 41, p. 37.
DETERMINATION OF REFUGEE STATUS AND HUMAN RIGHTS

Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 16 December 1970.


55. In respect of Africa, however, see the definition in Article I (2) of the OAU Convention concerning the Specific Aspects of Refugee Problems in Africa.


57. A number of liberation movements, which often include an armed wing, have been officially recognized by the General Assembly of the United Nations. Other liberation movements have only been recognized by a limited number of governments. Others again have no official recognition.

58. Supra note 41, p. 44.

59. Supra note 41, p. 45.


61. Supra note 41, p. 47.

62. Supra note 41, p. 49.

63. Supra note 41, p. 51.

64. Supra note 18.

65. Supra note 9.


CHAPTER-IV

INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW
1. AN OVERVIEW

Awareness of the status of the worldwide problem of refugees as one of the burning questions of our times has now spread beyond academic circles and, thanks to the efforts of groups and individuals campaigning for these floating populations into the general consciousness. Less exposure has been given to the situation of internally displaced persons (IDPs), that is, persons who have had to leave their homes involuntarily but unlike refugees, have not crossed the frontiers of the state where they live. With some 25 million people affected worldwide as reported by the State of World Refugees, UNHCR Report, 2000, Geneva, the problem of internally displaced persons far exceeds the dimensions of the world refugee problem.

The precise figure for this displaced population stood at approximately 18.25 million on 1st January 1992 (in millions: Sudan 4.5; South Africa 4; Mozambique 2; Afghanistan 2; Sri Lanka 2; Liberia 0.8; former USSR 0.75; Angola 0.7; Lebanon 0.5). This has since been increased by millions of internally displaced persons in Rwanda, Burundi, Somalia, Sierra Leone and the former Yugoslavia, to mention only those states, which are most heavily affected. The Cuenod report, on the other hand, refers to 24 million internally displaced persons.¹

Alongside the United Nations High Commissioner for Refugees (UNHCR), which is responsible for refugees, and the International Committee of the Red Cross (ICRC), with responsibility for the victims of armed conflicts and a mandate which impinges only peripherally on the problems of internally displaced persons, there is now increasing activity in this area by the human rights mechanisms of the United Nations. According to reports by the Secretary-General to the Human Rights Commission, the Commission appointed in 1992 a Special Rapporteur, Francis M. Deng, who in 1993 presented an exhaustive study on the subject of internally displaced persons with “observations from the field”.² Further reports, with “profiles in
INTERNALLY DISPLACED PERSONS AND
INTERNATIONAL REFUGEE LAW
displacement”, were submitted to the Commission on Human Rights in 1994
and 1995.3

In the course of his work, the Special Rapporteur for internally
displaced persons visited the countries of the former Yugoslavia, the Russian
Federation, Somalia, Sudan, El Salvador as well as Colombia, Burundi and
Rwanda. His third report also cites the following countries with internally
displaced persons: Afghanistan, Cambodia, Iraq, Myanmar and Zaire with in
addition Guatemala, Turkey, Colombia, Peru and Djibouti. Non-governmental
organizations (NGOs) report internally displaced persons in: Angola
Azerbaijan, Ethiopia, Georgia, Haiti, India, Liberia, Mozambique, the
Philippines, the Russian Federation (Chechnya) and Sierra Leone. It is clear
from this that the issue of internally displaced persons is a worldwide
problem, in which historical, political, social, economic and cultural factors
play a decisive role.4

Phenomena common to internally displaced persons include a variety
of types of violence and insecurity as causes and effects of displacement:
these are in an interdependent relationship with each other and their
significance is not easy to determine in any particular case. Causes which can
be differentiated cover international and non-international armed conflicts
(e.g. Burundi, Rwanda, the former Yugoslavia, Sri Lanka, Sierra Leone,
Afghanistan, Somalia), the disintegration or collapse of the state below the
level of an armed conflict (e.g. Russian Federation, Colombia) and serious
and continuing violations of human rights; an additional cause of the growing
numbers of internally displaced persons is the increasing prevalence of
refusal to grant asylum.

The consequences of displacement show in varying forms of
“insecurity” on the one hand a lack of state protection against violent attacks
by the military, paramilitary groups or other groups of the population; and on
the other hand hunger and economic hardship and threats to groups in
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

particular need of protection such women (e.g. rape) and children (e.g. lack of education). Human Rights violated by displacement include the right to food, shelter and health care, the right to life and personal integrity, the right to work, freedom of movement and the right to family, education and legal personality.5

The issue of internally displaced persons brings in a variety of legal considerations. In the following, particular attention will be given to:

1. the question of arriving at a definition of the term “internally displaced persons” which will enable the group of people involved, the subjects of a “right not to be displaced”, to be determined; this will be an important factor when a declaration or convention is drawn up;

2. the question of what law is applicable to internally displaced persons (in particular, human rights law, international humanitarian law and international refugee law) and whether this is adequate or needs to be supplemented; and finally;

3. the question of how and by whom protection and humanitarian aid for internally displaced persons can be provided. In addition to this protection and aid, there is also a need for long-term solutions to the causes behind the displacement; however, a discussion of this is beyond the scope of this study.

2. THE DEFINITION OF THE TERM INTERNALLY DISPLACED PERSONS

Any attempt to define the term internally displaced persons raises two questions in particular: whether this definition should include natural and ecological disasters and whether the displacement must be a mass phenomenon to constitute a case of internally displaced persons. First, however, the development of a working definition of the term “internally displaced persons” up to the present will be considered.

A. Efforts to Find a Working Definition for the Term Internally Displaced Persons

Within the framework of the United Nations’ human rights mechanisms, the topic of internally displaced persons was discussed in
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

Cuenod’s report. The definition applied here includes economic refugees, but does not mention natural and ecological disasters or violations of human rights as causes of the creation of internally displaced persons. The Analytical Report by the Secretary-General also took up the question of a definition of the term “internally displaced persons”: whilst this extended the definition to stipulate that a mass phenomenon must be involved and to include human rights violations and natural and ecological disasters as causes, it excluded economic refugees from the definition. According to this definition, internally displaced persons are:

“...persons who have been forced to flee their homes suddenly or unexpectedly in large numbers; as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country”.

The Comprehensive Study presented by Special Rapporteur Deng adopts this working definition.

The 1995 report makes clear that the discussion on a definition of the term internally displaced persons is still continuing. One proposal is to arrive at a determination analogous to the extended definition of a refugee used in the 1969 OAU Convention on refugees (which also recognized, in Article 1 section 2, a flight from external aggression, alien rule and serious disturbance of public order as reasons for flight) or the Cartagena Declaration of 1984 (which draws in serious violations of human rights in addition to the grounds listed in the OAU Convention), although this extended understanding of the term “refugee” has won only regional acceptance as yet. It is also proposed that internally displaced persons and refugees be given the same treatment, although this would bring into question the difference between the obligations under national and international law of the state concerned. A more far-reaching proposal suggests that any definition should be avoided, so that as many victims and phenomena as possible can be included, although a
definition of the legal subject is a basic condition of any determination of rights and obligations. These proposals should therefore be rejected.

An international meeting of experts held in Vienna in 1994 dispensed with the requirement for a mass phenomenon but retained the inclusion of natural and ecological disasters in proposing as a working definition of internally displaced persons the following:

*Persons or groups of persons* who have been forced to flee their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized state border*

B. Should Natural and Ecological Disasters to be Included?

It is a matter of dispute whether natural causes such as natural catastrophes and ecological disasters caused by man should be considered alongside human rights violations, armed conflict and civil disturbances when investigating the issue of *internally displaced persons*.

For advocates of a definition of the term *internally displaced persons* by analogy with an extended definition of refugees, an additional argument against including natural or ecological disasters derives from the fact that in a case such as this, if international borders had been crossed, recognition as a refugee would not be granted. It is only when aid is withheld or disasters are exploited for political ends that consideration may be given; however, as this amounts as a rule to the violation of human rights, the case is already included in the definition.

C. Internally Displaced Persons: Is it a Mass Phenomenon?

According to the Secretary-General’s working definition, *internally displaced persons* must be a mass phenomenon. This is intended to protect the national sovereignty of states and prevent international protection from being involved except in serious cases where a state is no longer taking responsibility for its own citizens. Against this it must however be said that the *right not to be displaced* is both an individual and a collective right which
can be asserted by individuals as well as by groups (human rights agreements, international humanitarian law and the international refugee law protect the individual). This means that the sensitive problem of demarcation, deciding at what point a mass phenomenon is involved (when 100, 1000 or 10,000 persons are affected?) can be avoided.\(^{10}\)

The term *internally displaced persons* should therefore be defined to comprise persons who have left their homes involuntarily to escape violations of human rights and the use of violence but have not crossed the borders of their state.

3. **INTERNALLY DISPLACED PERSONS: LEGAL DEFIENCIES**

This section will begin by dealing with the law applicable to internally displaced persons and its deficiencies, followed by a discussion of whether a right not to be displaced can be based on the right to a home.

A. **The Law Applicable to Internally Displaced Persons**

Standards of protection for *internally displaced persons* can be drawn primarily from human rights, international humanitarian law and international refugee law. As regards the validity of these protective regimes, it is the area of applicability in terms of their substantive, personal, territorial and temporal scope that is the determining factor. As well as this, attention needs to be given to restrictive elements such as derogation clauses in international human rights agreements.\(^{11}\)

INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

Human and People’s Rights of 27.6.1981 (AfrCHPR)]. At the same time, this protection can be limited during state of emergency by the application of derogation clauses included in international human rights agreements to the human rights minimum standard applying to states not bound by an agreement, as provided by international customary law or *jus cogens*. The core of non-derogable rights prevailing even in cases of emergency and common to all international human rights agreements extends only as far as the right to life and the banning of torture, slavery and retrospective criminal legislation. Further, there is no explicit ban on deportation or expulsion in the international human right agreements. The human rights guaranteed in the ICESCR frequently amount to clauses which are subject to extensive freedom of action on the part of the signatory state, and cannot be relied on precisely during a state of emergency.

In its substantive scope, international humanitarian law is restricted to armed conflicts. International armed conflicts are covered by the four Geneva Conventions of 1949 (GC I-IV) and Additional Protocol I of 1977 (AP I), internationalised armed conflicts by API, non-international armed conflicts by the common Article 3 of GC I-IV or in the presence of certain criteria by Additional Protocol II of 1977 (AP II). The common Article 3 of GC I-IV and AP II guarantee a minimum of humanity for those affected by the events in the conflict. Part II of AP II contains in article 4-6 protective regulations to ensure humanitarian treatment of those affected and Part IV in articles 13-18 protective regulations for the civilian population. Article 17 sec. I of AP II further includes a ban on the forced removal of the civilian population except where this is imperative for military considerations and protective regulations for cases where such removal cannot be avoided: “The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible
measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.\textsuperscript{13} This does not apply, however, to internal disturbances or tensions, which are typical of countries with serious and systematic violations of human rights, as in such cases non-international armed conflict exists, the threshold of applicability of Article 3 of the GC or of AP II is not reached and accordingly international humanitarian law is not applicable.

Article 1 sec. 2 of AP II states:

"This protocol shall not apply to situations of internal disturbances or tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."

The application of international humanitarian law to non-international armed conflicts is additionally hindered by the circumstances that the applicability of Article 3 of the Geneva Conventions depends on the judgement of the state concerned, which may refuse it for political reasons, that Article 3 includes no definition of non-international armed conflict and that no body to objectively qualify such a conflict is provided. On the other hand, international humanitarian law has the advantage that, as a law of conflict, it does not include any derogation clauses and at least GC I-IV are of universal application.\textsuperscript{14}

The international refugee law is based on the principle of non-refoulement – i.e. refugees may not be returned to areas where their life and safety are under threat. The Convention relating to the Status of Refugees (Refugees Convention) of 1951 in the wording of the 1967 Protocol on the Status of Refugees states in Article I.A paragraph 2:

For the purposes of the present Convention, the term ‘refugee’ shall apply to any person who...(2) ...owing to a well-founded fear of being persecuted for reasons of ....political opinion, is outside the country of his nationality....."
INTERNALLY DISPLACED PERSONS AND
INTERNATIONAL REFUGEE LAW

Whilst Article 33 sec. 1 of the Refugees Convention states:

No Contracting States shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Moves to develop the international refugee law to expand the definition of “refugee” or include internally displaced persons are as yet limited to efforts on a regional scale – in particular the OAU Convention on Refugees of 1969 mentioned earlier, which additionally recognises in Article 1 sec. 2 flight from external aggression, alien rule and serious disturbances of public order as reasons for flight and the final agreement from an international colloquium of experts and representatives of ten governments to discuss the protection of refugees in Central America, known as the Cartagena Declaration of 22.11.1984, which calls in sec.3 for the consideration of Article 1 sec. 2 of the OAU Convention on Refugees, with the inclusion of serious human rights violations, and in sec.9 for protection and aid for internally displaced persons.¹⁵

The current legal position of internally displaced persons is aptly summarised by the Secretary-General’s report in the words:

“The applicable law is a patchwork of customary and conventional standards…”¹⁶

B. The Existing Law need to be extended

The Special Rapporteur for internally displaced persons refers to the existence of two different approaches to the question of extending the law applying to this group. One of these considers the existing standards to be adequate and calls merely for better enforcement, whilst the other demands that the existing standards be supplemented by a separate protective regime for internally displaced persons.¹⁷ The three protective regimes relevant to internally displaced persons each show deficiencies inherent to the regime. The international human rights agreements contain derogation clauses, which
cantly involved to set aside the right to freedom of movement. Article 12 of the ICCPR, which guarantees the right to freedom of movement, includes numerous constraints in section 3. It can also be set aside completely, as it is not included in the list of non-derogable rights provided in Article 4, sec. 2 of the ICCPR and prevailing even in cases of emergency mentioned earlier.

There is in addition no ban in deportation or expulsion. International humanitarian law is not applicable in cases of internal disturbances and tensions, and the international refugee law fails to apply precisely for *internally displaced persons*.

To achieve effective protection for internally displaced persons, these gaps in the international agreements must be closed. A lowering of the threshold of applicability of international humanitarian law to include internal disturbances and tensions in its substantive scope is not in prospect, given the resistance shown by those states at the Diplomatic Conference of the Reaffirmation and Development of Internal Humanitarian Law held in Geneva 1974-7. Analogous application of the International refugee law to *internally displaced persons* would likewise meet resistance from states which reject any attempt to encroach on their sovereignty, as well as reservations by the UNHCR, which prefers to extend its brief only in a limited and ad-hoc manner.

The 1994 UNHCR report, for its part, refers to the danger:

"... that humanitarian aid in the refugees' own country may cause neighbouring countries to refuse entry even when people are fleeing not only through hunger but also for fear of persecution."

The only promising course would therefore seem to be an extension of human rights protection to cover internally displaced persons, including the setting up of a special protective regime.

This is also the view taken by the Special Rapporteur:

"Just as certain categories of vulnerable groups, such as refugees, the disabled, women and children, require special regimes for protection, so do the internally displaced"."
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

In view of the dimensions of the problem of internally displaced persons, with some 25 million affected, there is a need for a uniform protective regime for internally displaced persons, independent of the reasons for their displacement, the countries concerned and the special legal, social, political and military situations in these countries. A suitable way of proceeding, as with areas dealt with earlier (torture, “disappearing”), would be to draw up, on the basis of a summary of existing standards (for which a first draft has already been produced and is under discussion, a body of principles which can then be incorporated into a solemn declaration of the General Assembly and finally into a binding Convention. This should in particular clarify such questions as who is to be the beneficiary of a right not to be displaced and how the obligations of the states are to be constituted. The basis for this must be the particular needs of the internally displaced persons before, during and after their displacement. Finally, the matter of how and by whom this constitutional protection is to be enforced will need to be clarified.

4. THE RIGHT TO A HOME AS THE BASIS OF AN INTERNATIONAL PROTECTION REGIME FOR INTERNALLY DISPLACED PERSONS

In respect of the right not to be displaced, the question arises whether existing mechanisms can be used to provide such a right. The right to a home formulated after the Second World War in response to the expulsions of the civilian population from central and eastern Europe, would also be suitable as protection for internally displaced persons, as internal and external displacements amount to the same facts.

In considering the question of whether the right to a home exists, a distinction must be made between the right in an objective sense and the right in a subjective sense, the former being the sum of the obligations constituting this right, and the latter the entitlements due to the subject to the right.

The subject of right to a home may be an individual or a group. It should be noted that this leaves open the question of whether the internally
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

dispersed persons must constitute a mass phenomenon and whether the right to a home may be asserted only by groups or equally by an individual. Kimminich wrongly stresses that "group rights do not exclude the simultaneous existence of individual rights, and conversely, group interests may be protected by individual rights".

As to the question of what legal rules are to be encompassed by the right to a home in an objective sense, this should be determined on the basis of the needs of the internally displaced persons before, during and after their displacement. Work has only just begun in drawing up an appropriate schedule of rights and is at present directed at compiling a list of applicable standards. Accordingly, the considerations below can do no more than indicate the direction of further development of the law applying. A distinction must be made between the primary right not to be displaced and secondary claims for redress during and after the displacement. Whilst the primary right is directed at halting actions by the state (i.e. deportation and forced resettlement, along with human rights violations and military actions resulting in the flight of the persons affected) so that civil and political rights are not violated, the secondary claims calls for extensive additional action on the part of the state: a guarantee of elementary living conditions (basic provisions of food, water, shelter etc.), the assurance of social and cultural needs (education, religious teaching) and comprehensive measures to return and reintegrate the internally displaced persons with at the same time a guarantee of special procedural rights to enable these claims to be implemented.

However, it is still unclear whether the right to a home prevails in the case of a state of emergency. By analogy with international humanitarian law (Article 17 AP II), such a right could be considered to prevail during states of emergency, but subject to certain limitations. If the right to a home were to be interpreted as lapsing where a state of emergency is involved, at
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

least a restrictive interpretation of the derogation clauses should be guaranteed. This might involve a restrictive application of the features: existence of a state of emergency, proportionality of the measures and adherence to the formal guarantees of protection (proclamation and notification).

Meron, in his thoughts on closing the gaps in international human rights protection during state of emergency by analogy with international humanitarian law and drawing up a list of humanitarian rules for internal disturbances and tensions, which would prevail in these situations, takes a similar line. In 1988 Meron presented the draft for a humanitarian declaration, which includes the provision of improved protection for internally displaced persons. In 1990 an amplified version of this declaration was presented, in which Article 7 sec. 1 concerns the protection of internally displaced persons:

“The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions, which have made their displacement imperative, have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the country, subject only to the safety of the persons involved or reasons of imperative security.”

Meron, however, treats the right not to be displaced as a right, which does not yet exist, whereas in the sphere of human rights the view could be taken that the right to a home is not merely a pious hope but is already enshrined in various separate standards of international law. This is also clear from Kimminich’s exhaustive study, which leads him to the conclusion: “If it has been clearly established that expulsions are contrary to international law
 and even resettlement agreements may only be concluded where these represent the will of those affected; if the right to self-determination has been proven to be an established legal rule and no longer simply an empty principle; if the currently applying international law further promotes the instrument of protection for minorities and population groups; if deportations are banned even in time of war, why should we not then be able to say that, on the basis of international law, everyone has the right to remain in his home area?.... The right to a home is an element of existing international law.”

5. INTERNATIONAL PROTECTION FOR INTERNALLY DISPLACED PERSONS AND ITS IMPLEMENTATION

Just as important as recognising the right to a home is the question of how and by whom this right can be enforced. It is above all the UN, the ICRC and the UNHCR that come to mind here. The following, after outlining their responsibilities for internally displaced persons, will consider the different forms of protection and aid. Finally, an examination is needed of whether individual states and humanitarian NGOs could also become active on the basis of a right to humanitarian aid for internally displaced persons.

A. The Role of UN, ICRC and UNHCR in providing International Protection to Internally Displaced Persons

In regard to the protection of internally displaced persons, the UNHCR report of 1994 rightly states:

“No international organisation shall have a universal mandate or authority to care for displaced persons, even where their needs in respect of protection and aid do not differ from those of refugees...Displaced persons should not be compelled to cross a border to obtain assistance.”

The aim, therefore, is to set up complementary mechanisms of protection and aid. Possible vehicles for the international protection of internally displaced persons are the United Nations (Secretary-General and Secretariat, the General Assembly, Security Council, Economic and Social Council along with the Human Rights Commission and its Sub-Commissioner
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

for Refugees. The 1995 report mentions the following bodies and organisations, which are active on behalf of internally displaced persons: the UN Department for Humanitarian Affairs (DHA), the UN Development Programme (UNDP), UNICEF, the World Food Programme, the World Health Organisation (WHO), the International Organisation for Migration (IOM) and the High Commissioner for Human Rights. The report does however emphasise the importance of international protection for *internally displaced persons* and the growing importance of human rights. In the following it shall therefore be examined that the function of protection for *internally displaced persons* in the sphere of the UN, as guaranteed by International human rights protection is available or not.

After a long period of time during which the problem of *internally displaced persons* was given little or no attention, it is noticeable that there is now a considerably greater awareness of the dimension and significance of this issue. In its Vienna Declaration and Programme of Action in 1993, the second World Conference on Human Rights “emphasises the importance of giving special attention including through inter-governmental and humanitarian organisations and finding lasting solutions to questions related to *internally displaced persons* including their voluntary and safe return and rehabilitation.”

As long ago as 1981, the International Committee of the Red Cross looked into the problems of *internally displaced persons* at the XXIVth International Conference of the Red Cross in Manila and declared in a statement on its refugee policy: “The Red Cross should at all times be ready to assist and to protect refugees, displaced persons and returned when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under article 73 of the 1977 Protocol I additional to the Geneva Convention of 1949, or in conformity with the statutes of the International Red Cross, especially when
they cannot, in fact, benefit from any other protection or assistance, as in some cases of internally displaced persons.28

Finally, the UNHCR took up the question of internally displaced persons in Resolution No.71 of the Executive Committee, requesting the High Commissioner—

"to examine methods and means better to do justice within the regime of the United Nations to the need of persons displaced within their own state for protection under the law and for support, to promote further discussions on this high-priority issue with the Department for Humanitarian Affairs (DHA) and the Special Repporteur of the Secretary-General for persons displaced within their own state and with other appropriate international organisations and bodies, including the International Committee of the Red Cross…….29

To enable an effective position to be taken in discussions with the governments of the states involved in the problem of internally displaced persons, the activities of the UN, ICRC and UNHCR also require a recognised basis of competence.

Within the United Nations there is no body specifically concerned with internally displaced persons. The General Assembly, the Economic and Social Council, the Human Rights Commission and the Sub-commission for the Prevention of Discrimination and the Protection of Minorities have all been active in the area of internal refugee problems on the basis of the human rights protection embedded in the UN Charter. However, out of respect for the sovereignty of nation states, this protection extends only as far as serious and systematic violations of human rights; and the financial and organisational situation of the United Nations means that it can be no more than protection. Material assistance, it would seem, can be provided only by other organisations, such as the ICRC and the UNHCR. At the same time, their competence in this area would need to be given a special basis, as states often react very negatively to offers of assistance because they feel that their
sovereignty is being reduced more so than by international human rights protection, which remains external.

In the case of non-international armed conflicts, the ICRC has a right of initiative guaranteed by Article 3 sec. 2 of the Geneva Convention. For internal disturbances and tensions the ICRC has a right of initiative recognised in international customary law, with its roots in the tradition of the Red Cross, resolutions of the international conferences of the Red Cross and the statutes of the Red Cross movement and the ICRC.\textsuperscript{20} this is also the basis for the declaration on refugee policy mentioned above, in which the ICRC invoked its statutes alongside GC IV and AP I. However, any action by the ICRC still requires the approval of the affected states [as is emphasised in the declaration (chap.2), which at the same time stresses the subsidiary of aid by the ICRC (chap.3) and the basic principle of collaboration with the UNHCR and other organisations supplying aid to refugees (chap.7)].

The Statute of the office of the UNHCR in itself provides only for the Commissioner’s responsibility for refugees under the convention on refugees.\textsuperscript{31} As early as the 1970s, however, the UNHCR supplied material aid to internally displaced persons in the Sudan after being requested to do so by the General Assembly on 12.12.1972 in Resolution 2958 (XXVII). Von Glahn rightly stresses:

"As the UNHCR statute only allows it to help international refugees and not indigenous displaced persons, the resolution in the General Assembly was a condition of its involvement.\textsuperscript{32}

Although the UNHCR has reservations on a general extension of its mandate to include internally displaced persons for financial and organisational reasons, quoted above, which adds the following reasons:

1. Impairment of work with refugees,
2. Absence of a legal framework,
3. Difficulties with protection in armed conflicts,
4. Safety risks for aid workers and problems with assisting internally displaced persons and refugees at the same time, subsequent UN
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

resolutions have confirmed the general validity of such extensions of the mandate as regards humanitarian aid.

A former High Commissioner, Sadruddin Aga Khan, has also made reference to the analogous situation shared by refugees and internally displaced persons and gives a list of criteria for action by the UNHCR on behalf of internally displaced persons:

1. the assistance must consist of humanitarian aid, non-political in nature,
2. there must be a request by the government concerned and the sovereignty of the relevant state must be respected (this would apply only to material aid, however, and not to the protection of the internally displaced persons),
3. and the internally displaced persons must be in a situation analogous to that of refugees.\(^\text{33}\)

Discussions on an organisational reform, as part of which an organisation responsible solely for internally displaced persons would be set up, are as yet only beginning.\(^\text{34}\) In the meantime, there will continue to be a need for collaboration and co-ordination of humanitarian aid between the UN and its specialist organisations, the ICRC and numerous NGOs.


International human rights protection rests on two bases: the UN charter on the one hand and international human rights agreements on the other. Within the UN, the protection of human rights is principally a matter for the General Assembly (resolutions and declarations), the Economic and Social Council, the Human Rights Commission and the Sub-commission for the Prevention of Discrimination and the Protection of Minorities. The Human Rights Commission and its Sub-commission also employ Special Rapporteurs and working groups to study particular topics or countries, from whom they receive regular reports. The appointment of the Special Rapportuer for internally displaced persons also fell within this framework. This ensures at
least that the general public is kept informed of serious human rights abuses, although at the same time these procedures do not provide adequate protection to individuals.

Human Rights protection on the basis of treaties is provided mainly by the organs of such conventions as the ICCPR the ACHR and the ECHR. This is furthest advanced in the areas of the ACHR and the ECHR, whilst human rights protection in Africa, based on the AfrCHR, is still at the formative stage. The only case of expulsion so far dealt with is the Misquito Case examined by the Inter-American Commission in Human Rights (IACHR) and involving the forced relocation of 8500 Misquito Indians from the Coco River to Tasba Pri in Nicaragua in 1981. In this, report, the IACHR found that there was no breach of the ACHR, since the Misquito Indians were allowed to return home at the end of the state of emergency. The report begins by establishing that the right to freedom of movement does not subsist in an emergency situation, then confirms the existence of a state of emergency and considers the proportionality of the measures taken, adherence to the ban on discrimination and compatibility with other international obligations—all of which it confirms on the basis that the persons displaced were allowed to return home at the end of the state of emergency. A serious problem, however, was the application of the derogation clause of Article 27 of the ACHR, in view of the fact that the formal guarantees of protection, proclamation and notification of the state of emergency had not been followed by the Nicaraguan government. The ACHR considered this breach to be insignificant, even though conformity with the formal guarantees of protection is of decisive importance to restrictive application of emergency clauses in furtherance of human rights.

As regards the ability of ICRC and the UNHCR to act to assist internally displaced persons, it has proved impossible to maintain the original division of labour between these organisms (the ICRC to be responsible for
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

internally displaced persons as victims of armed conflicts, the UNHCR for refugee who have left their own state) in view of the interdependence of the causes of expulsion and flight and the consequences for internally displaced persons. Because of the many interrelationships between the problems of refugees and internally displaced persons, the distinction between protection and assistance has also broken down.

The activities of the ICRC to benefit internally displaced persons consist in the main of working for the protection of the civilian population and respect for international humanitarian law, visiting political prisoners, providing medical care and rehabilitation in cases of need, supporting public health programmes and supplying food, plus assistance in satisfying other basic needs (such as shelter and clothing). In addition to this, efforts are also directed at reuniting families and the necessary related enquiries and evacuating affected persons from danger zones. On the whole, however, the ICRC provides only subsidiary aid until the UNHCR and other aid organisations intervene. In some cases the distinction between non-international armed conflicts and internal disturbances and tensions is not made, despite it’s being of decisive importance in determining the applicability of international humanitarian law.

In 1993 the UNHCR provided aid to as many as 3.5 million internally displaced persons. In the same year guidelines for aid to internally displaced persons were adopted which provide that the UNHCR should intervene if there is a direct connection with its activities for refugees, and in particular if returning refugees are mixed with internally displaced persons and where there is a risk that internally displaced persons may become refugees. This is also the outcome of the growing efforts on prevention and early warning. The UNHCR's 1994 report notes on this point:

“For this reason, long-term strategies for aid and protection must be developed in particular for internally displaced persons who are directly threatened with a refugee’s fare.”
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

However, a precondition for this, in the view of the UNHCR, is that the following basic elements of effective protection in the land of their origin are assured:

1. Maintenance of human rights;
2. No restriction to the right to seek asylum in another country; and
3. No compulsion to stay in areas where people are under serious threat.

B. Humanitarian Intervention, Right to Interfere or Right to Provide Humanitarian Aid to Internally Displaced Persons: Scope and Extent

In addition to the UN, the ICRC and the UNHCR, individual states and NGOs may become active on behalf of internally displaced persons. This invariably raises the question of the degree to which the sovereignty of the individual states concerned, which is protected in international law, is infringed. Three different situations can be differentiated here:

1. The government of the state concerned requests international aid or at least agrees to such aid;
2. The government in question expressly refuses aid (e.g. for the protection of the Kurds in northern Iraq in 1991); and
3. A reasonable government no longer exists (e.g. in Somalia since 1992).

The latter two cases in particular raise problems where humanitarian aid is provided with the approval of the government of the state concerned (and for protection of the aid workers, and co-ordination of the aid among the governments involved, international aid organisations and humanitarian NGOs). Sandoz notes that in more than 95% of cases aid is only possible with the agreement of the governments concerned. Torrelli also stresses that any right to humanitarian aid must also take account of national sovereignty and that the agreement of the Governments concerned is a basic principle for the exercise of this right.

This is also the line taken by the General Assembly in its efforts to draw up rules for humanitarian aid supplied with the agreement of the states involved. A Resolution passed by the General Assembly in 1991, which
contains the principles of humanitarian aid, lays down that humanitarian aid must conform to the principles of humanity, neutrality and impartially. At the same time, the sovereignty, territorial integrity and national unity of the states must be preserved, in accordance with the UN Charter. Humanitarian aid should be provided with the agreement of the states affected and in principle after a request from the country itself. The first responsibility for the victims of humanitarian crises is to be borne by the victims’ own state. Finally, reference is made to the growing importance of prevention and early warning humanitarian crises. Whether this discussion will eventually lead to a convention on humanitarian aid remains to be seen.

*Internally Displaced Persons (IDPs)* are different from refugees as they are displaced from one area to another within the borders of their own country. Legally, they fall under the sovereignty of their own governments even though that government may not be able or willing to protect them. IDPs have been defined as persons who have been forced to flee their homes *suddenly* and *unexpectedly* in large numbers as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster.

According to the report by the Secretary-General Kofi Annan’s Representative in charge of monitoring the problem of *internally displaced persons* since 1993, some 20-25 million people worldwide in at least 40 countries have been uprooted from their homes exposing them to physical and psychological dangers, and depriving them of basic needs. The number of IDPs has been rising since then. It has been estimated that by the end of 2001, 50 million people around the World have lost their homes due to war and natural disasters. In India, thousands of Hindu Population of the Valley of Kashmir, namely, the Kashmiri Pandits were forced to flee from Jammu and Kashmir and Muslims of state of Gujarat were camaged in communal conflagration in the wake of Godhra incident and were forced to flee the state.
of Gujarat and have settled and sheltered in other parts of India respectively. Such persons are not refugees since Refugee Convention of 1951 defines refugees as any person who is outside the country of his nationality... They are therefore not granted the status of refugees though they have been forced to flee to another part of the country on the same grounds as refugees. Although a number of human rights violations take place when forced displacement occur, they are denied international protection as given to refugees. The main reason for this apathy is that their movement fall within the domestic jurisdiction of a State and United Nations may not intervene in matters, which are essentially within the jurisdiction of any State as per the provisions of Article 2 Para 7 of the U.N. Charter. However, if human rights violations are so grave as to create conditions, which threaten international peace and security, the Security Council may take action under Chapter VII of the U.N. Charter.

However, it was realised that IDPs require international protection because of their miserable conditions. The warring parties do not only deny them basic human rights but camps for displaced persons have been the targets of attacks. International protection is also required as their number has substantially increased and they are spread in at least 40 countries.

Although UNHCR was involved in supplying material aid to IDPs since 1970 in a few countries, in accordance with the resolutions of the General Assembly, in 1993 UNHCR established a set of Guidelines to clarify the conditions under which the Organisation shall undertake activities on behalf of the IDPs. For instance, it shall take primary responsibility when IDPs are prepared to go back to the same area from where they have fled and if IDPs are living alongside a refugee population and have a similar need for protection and assistance. Later, Guiding Principles on Internal Displacement were prepared by the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng which was submitted by him to the
Commission on Human Rights in 1996. The Commission requested the Representative to develop a normative framework to enhance the protection of IDPs in 1998 to the Commission on Human Rights.

The Guiding Principles in its introductory section defined the IDPs as persons or group of persons who have been forced to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalised violence, and who have not crossed an internationally recognised State border. It is to be noted that the definition of IDPs given in Guiding Principles is broader in scope than that given earlier by the Representative of the Secretary-General. For instance, the words *large number* as mentioned in the definition of the Representative has been omitted; the words *sudden and unexpectedly* have been omitted in the definition to include those persons as IDPs who move in a considerable period and IDPs are those who are *forced to flee* or those who are *forced to leave* their homes. Guiding Principles are divided into five main sections: general principles, principles relating to protection from arbitrary displacement, principles relating to protection during displacement, principles relating to humanitarian assistance, and principles relating to return or resettlement and integration.

It is unfortunate and heart-wrenching to note that the Guiding Principles are neither a treaty nor a declaration and they are therefore not binding on State. However, they provide practical guidance to the States who are involved with the problems of IDPs since these principles reflect and are consistent with International Humanitarian Rights in its Resolution 1998/50 took note of the stated intention of the Representative of the Secretary-General to make use of the Guiding Principles non-governmental organisations and requested him to report to the commission on the views expressed to him. These principles are likely to prove of immense value in the development of law relating to IDPs in future.
7. RECAPITULATION

To close, we deal with those cases where the governments of the states affected explicitly reject aid or where a responsible government no longer exists. The justifications given for action by individual states or NGOs are humanitarian intervention, a right to interfere (droit d'ingerence) and recently a right to humanitarian aid.

Humanitarian intervention as a mechanism to secure a minimum standard of human rights through the use of force cannot be reconciled with the peace rule in current international law. Although humanitarian intervention is now the vast majority of authors rejects once again finding support but this mechanism, as it cannot be reconciled with the UN Charter's general ban on violence and there is a risk of abuse. A right to interfere, as lately demanded by French writers is also generally rejected. In the current discussion, a right to humanitarian aid which guarantees access to the victims of humanitarian crises is not seen as a restriction on national sovereignty but, on the contrary, as reconcilable with this. This view that in cases of doubt a right to humanitarian aid could prevail over the principle of national sovereignty is still confined to a minority and is not reflected in the resolutions of the General Assembly.

Only in the Security Council is it possible, in the situations examined here, for resolutions binding on the member states to be taken on the basis of Chapter VII of the UN Charter to enable aid to be supplied to internally displaced persons, as was done in the case of the Kurdish civilian population in Iraq and in Somalia. Proceeding in this way assumes that a risk to peace has already been established; and this option is also the subject of political considerations within the Security Council. In addition, the results of the actions taken in Iraq and Somalia leave room for doubt as regards the suitability of this form of protection for internally displaced persons.
INTERNALLY DISPLACED PERSONS AND
INTERNATIONAL REFUGEE LAW

The United Nations in response to the severe crisis of IDPs has set up a new unit in the year 2002 i.e. Unit on Internal Displacement (UID) to provide expertise and to advise and support the U.N. Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordination and to guide the response of the Inter-Agency Standing Committee (IASC). The Unit will also maintain close links with the U.N. Secretary-General Kofi Annan’s Representative on internationally displaced persons, Francis Deng.

Kofi Asomani as Director and Special Coordinator on Internal Displacement will head the Unit. It shall also comprise staff seconded from various U.N. agencies dealing with refugees (UNHCR), Children (UNICEF), development (UNDP) and food security (WFP) as well as the International Organisation for Migration (IOM) and the Non-governmental Organisation (NGO) community. The Unit is located in the office for the Coordination of Humanitarian Affairs (OCHA) in Geneva.

Even in India, there is no state protection available to the “internally displaced persons” nor International NGOs as enumerated supra are allowed to visit and attend the internally displaced persons in the different parts of the country who owe their displacement to generalised violence, organised crimes, communal violence, man-made disasters, hexicological imbalances, noxious emissions, insurgency and militancy inter-alia reasons adumbrated in the definition of internally displaced persons discussed in the preceding paragraphs and grounds stipulated in Article 1 of 1951 Convention Relating to the Status of Refugees. Though, the internally displaced persons are living in the refugee-like situations and Guiding Principles on Treatment of Internally Displaced Persons recognised by the UNO are not followed by the national governments including India. Therefore, Article 1 of the 1951 Convention must be re-drafted, reformulated and re-structured while taking into consideration the ongoing debates and deliberations initiated and posed by the instant study.


6. Supra note. 1

7. Supra note. 5

8. Supra note. 4

9. Supra note. 3

10. Supra note. 4


Supra note. 11

13. At 1.1.2000, 185 states were signatories to Geneva Convention I – IV and 120 were signatories to Additional Protocol II.


15. Supra note. 5

16. Supra note 3

17. Supra note 3

18. Supra note 5

19. Supra note 5.
INTERNALLY DISPLACED PERSONS AND INTERNATIONAL REFUGEE LAW

   Lavoyer, J.P.: Refugees and Internally Displaced Persons. International Humanitarian Law


25. Supra note. 21

   United Nations World Conference on Human Rights: Vienna Declaration and Programme of

27. International Committee of the Red Cross (ICRC): ICRC Protection and Assistance

   under the Law for Internally Displaced Persons. Resolutions of the Executive Committee for
   the Programme of the High Commission for Refugees of the United Nations. Loose-leaf
   collection, 1988 ff.


30. UNHCR Statute, Chap-II, 6 (a).


32. Supra note 11

33. Supra note 4

34. Supra note 15

35. Article 22, American Charter of Human Rights.

36. International Committee of the Red Cross (ICRC): ICRC Protection and Assistance

37. Maurice, F. and J. De Copurten: ICRC Activities for Refugees and Displaced Persons, in:

38. Macalister-Smith, P.: International Humanitarian Assistance. Disaster Relief Activities in

   Plattner, D.: the Protection of Displaced Persons in Non-International Armed Conflicts, in:

40. Sandoz, Y.: “Droit” or “Devoir D’Ingerence” and the Right to Assistance: the Issues
   Stavropoulou, M.: The Right not to be Displaced in: American University Journal of

41. Torrelli, M.: From Humanitarian Assistance to Intervention on Humanitarian Grounds? In:
   IRRC, 1992.
INTERNALLY DISPLACED PERSONS AND
INTERNATIONAL REFUGEE LAW


43. See, A/Res/43/131 and A/Res./45/100.


CHAPTER-V
NATIONALITY AND STATELESSNESS
NATIONALITY AND STATELESSNESS

1. AN OVERVIEW

While statelessness has long been recognised as an important problem in international law, the desire of states to exercise control over stateless persons in their jurisdictions has prevented effective action. The 1954 Convention Relating to the Status of Stateless Persons has attracted only 27 signatories, and a mere 15 states have ratified the United Nations Convention on the Reduction of Statelessness of 1961. The indifference of national governments and the inaction of the international community has affected a large number of persons who are particularly vulnerable to oppression because they lack the protection afforded by rights of citizenship. The stateless are denied the vehicle for access to fundamental rights, access to protection and access to expression as person(s) under the law.¹

Nowhere is the problem of statelessness more acute than in South and South East Asia. Sri Lankan repatriates in India, Burmese refugees in Cambodia, and many ethnic Chinese in all parts of South East Asia are currently stateless and thus especially vulnerable to the same types of human rights abuses as those suffered by Chakmas and Hajongs of Arunachal Pradesh.² Even United Nations High Commission for Refugees (UNHCR) has been actively involved since 1991 in addressing refugee-related problems in the States of the former Soviet Union. Already, large numbers of people are on the move, either displaced by conflicts or returning to their places of origin. The new states lack the resources and the institutional capacity both to absorb flows of peoples and to deal effectively with the problems associated with population movements.

Over 200 different ethnic groups lived for centuries within the cultural mosaic of the Russian Empire. The Social Federal system that emerged from the Bolshevik revolution was based on a hierarchy of different ethnic groups, meting out cultural and linguistic rights and differences at random. Artificial borders were drawn to divide national groups, decreasing the likelihood of threats to the central government in Moscow. Stalin’s policies of relocation
and colonization still have repercussions today. Balts, Poles, Chechens, Germans, Kalmyles and the Crimean Tatars, to name a few, were among those forcibly relocated in Central Asia and Siberia. At the same time, Stalin and subsequent Soviet leaders encouraged large numbers of Russians to settle in non-Russian republics of the former USSR. These population movements had the effect of diluting the ethnic homogeneity of each republic and of reducing the titular nationality and other non-Russian minorities to *quazar-lesser status.*

2. INTERNATIONAL LAW ON STATELESSNESS: HISTORICAL DEVELOPMENT

The state is not a private club, which can induct or expel members arbitrarily. Rather, the development of customary international law has placed certain limitations upon states as regards the conferment of citizenship. The 1930 Hague Convention was one of the first documents to recognise those limitations. Article I of the Convention states:

"It is for each state to determine under its own law who are its nationals. This law shall be recognised by other states in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality."

Therefore, decisions upon the acquisition or loss of nationality will be recognised only insofar as they are consistent with contemporary legal norms. Currently, these norms are expressed in the 1954 U.N. Convention Relating to the Status of Stateless Persons (entered into force 1960) and the 1961 U.N. Convention on the Reduction of Statelessness (entered into force 1975). Prior to the 1954 Convention statelessness was viewed merely as an indication of one's status as a refugee. The mandate of the 1946 Intergovernmental Committee on Refugees did not mention statelessness at all, and thus the committee regard (ed) *de jure* and *de facto* stateless merely as one of the criteria of eligibility (for refugee status) in conjunction with others, e.g. flight into mother state as a result of racial, political or religions persecution.
As the definition of refugee was being continually narrowed during the 1940s, many stateless persons could no longer receive the protection afforded by the League of Nations High Commission for Refugees, (LNHCR), the Inter-governmental Commission for Refugees, or the International Refugee Organisation. This led the Commission on Human Rights to request that "early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality, as regards their legal and social protection and their documentation."

Seven years were to pass, however, before the U.N. was to take action upon this recommendation. During the consideration of the 1951 Convention Relating to the Status of Refugees, the problem of statelessness was put aside for lack of time. In view of the urgency of the refugee problem and the responsibility of the United Nations in this field, the Committee decided to address itself first to the problem of refugees, whether stateless or not, and to leave to later stages of its deliberations the problems of stateless persons who are not refugees.

This is a marmoreal and recurring theme central to the development of statelessness rights in international law. Moreover, the stateless persons have been neglected because their repinements, anxieties and concerns have been viewed as sequel to greater problems. These issues coupled with their ancillaries and collaterals require a diversified mechanism of investigation and redressal based on pragmatism.

The 1954 Convention Relating to the Status of the Stateless Persons was an early attempt to deal with the problem of statelessness in its own right. The Convention requires states to grant stateless persons many of the same rights accorded to citizens under national law. It also protects stateless persons from expulsions in all but exceptional circumstances. However, through an apparent oversight, no provision was made for a supervisory body similar to the U.N. High Commission for Refugees.
Additionally, the definition of a stateless person, is provided under the 1954 convention as under:

"a person who is not considered as a national by any state under the operation of its law".

The aforesaid definition is couched in general terms and excludes large numbers of persons who have no effective nationality. For example, among the massive numbers of boat people from Vietnam were ethnic Chinese who had never set foot in either Mainland China (PRC) or Taiwan (ROC). The People’s Republic does not recognize them at all, and the ROC grants them merely ‘over-seas nationality.’ Those granted overseas nationality have no necessary right of entry or residence in Taiwan. Thus, while these ethnic Chinese are technically considered national under Taiwanese law, they receive none of the benefits of citizenship and are effectively stateless. Nonetheless, they are not considered stateless persons under the 1954 Convention.

The 1961 Convention on the Reduction of Statelessness defined stateless persons in the same manner, as had the 1954 Convention. Additionally, unlike the 1951 Convention relating to the Status of Refugees, this convention was not convened for the purpose of providing assistance to a specific group of people. The authors of the Convention tended to view their work as little more than codifying existing practice regarding the recognition of nationality judgements. Further, a proposal to create an independent tribunal for stateless persons to press nationality claims was quickly squashed.

A document drafted under such conditions was not likely to greatly improve the condition of stateless persons, nor has it. However, Article 11 of the convention did provide for a relief agency to deal with the problems of the stateless, UNHCR was charged with the responsibilities of Article 11, and thus the problem of statelessness was again connected to, and to some degree overshadowed by, the concerns of refugees. For nearly 30 years following the
1961 convention, the problem of statelessness was given little attention by the international community.

The right of all persons to a nationality was reiterated in the International Convention on Civil and Political Rights and the Convention on the Rights of the Child, but again, no specific measures or procedures were mandated. And although the provisions of the 1985 Declaration on the Human Rights of Individuals who are not nationals of the country in which they live applied to stateless persons and established the fundamental rights of aliens, the declaration was addressed to aliens more generally (especially guest workers) and not elaborate upon or even mention the fundamental right to a nationality established by Article 15 of the Universal Declaration of Human Rights.\(^1^4\)

The issue of citizenship has received greater attention recently in response to the nationality legislation of the newly created states of Central Asia and the former Yugoslavia. In response to the growing numbers of stateless persons, the executive committee of the High Commissioner’s programme has recommended that UNHCR strengthen its efforts in this domain, including promoting accession to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, training for UNHCR staff and government officials, and a systematic gathering of information on the dimension of the problem and to keep the Executive Committee informed of these activities.\(^1^5\) Further, the Executive Committee has adopted or conclusion on the Prevention of and Reduction of Statelessness and the Protection of Stateless Persons which reiterates the need for UNHCR to more actively promote the welfare of stateless persons.\(^1^6\)

The United Nations former High Commissioner for Refugees has also noted that UNHCR has a special responsibility for stateless persons and that

"----- has been designed as an intermediary between states and stateless persons under the 1961 convention. Most recently, UNHCR has been requested by its executive committee to place
the matter of stateless on it's a gender. We will explore promotional and preventive activities to which UNHCR can contribute in collaboration with concerned states. There is an obvious link between the loss or denial of national protection and the loss or denial of nationality. On the plane of rights, the prevention and reduction of statelessness is an important aspect of securing minority rights.17

3. NATIONALITY AND STATELESSNESS: PROBLEMS AND PROSPECTS

The classical view is that, in principle, questions of nationality fall within the domestic jurisdiction of each state. According to Brownlie,18 the evidence is overwhelmingly in support of the view that the population follows the change of sovereignty. In view of the State practice analysed by Brownlie, there is a general presumption that persons attached to a territory will *ipso facto* lose their former nationality and acquire the nationality of the new State. Nationality would change when sovereignty changed hands. Attachment generally means or substantial connection with the territory concerned by citizenship, residence or family relations to a qualified person. The link of the people with the territory is said to be in accord with human and political reality.19

Other scholars do not share this view. O'Connel20 argues that, undesirable as it may be for any person to become stateless as a result of a change of sovereignty, it cannot be asserted with any measure of confidence that international law, at least in its present stage of development, imposes any duty on the successor State to grant its nationality. Weis21 holds the view that there is no rule of international law under which the nationals of the Predecessor State shall acquire the nationality of the Successor State. There is only a presumption in international law that the acquiring State would, through municipal law, confer its nationality on the former nationals of the predecessor state.

Looking from a different angle, Chan22 considers that, upon a change of sovereignty, all persons who have a genuine and effective link with the new
state will automatically acquire the nationality of the new state. It is within the competence of each state to determine what constitutes a genuine and effective link in the granting of its nationality, subject to the presumption of avoidance of statelessness and the duty not to apply any law on a discriminatory basis, which would be in contradiction with Article 15 (paragraph 2) of the Universal Declaration of Human Rights. It is also a settled rule of customary international law that residents of the transferred territory who have a nationality other than that of the predecessor state are not affected by the change of sovereignty.

Municipal law determines the rules of nationality. But due to the absence of uniformity and coherence in State laws pertaining to the institution of nationality, various inconsistencies and difficulties were witnessed. Consequently, marmoreal problems and issues of statelessness, double nationality and conflicting citizenship laws are arrived at. Though, in recent years, a new trend is being seen so far migration of the people is concerned. At the fag end of the twentieth century, an individual is being regarded as a subject of international law. Consequently, national boundaries are losing their meaning and human mobility is being propelled by an agenda of human rights. Because refugee problem is, primarily, a human rights issue. When democratic and republican values and principles like rule of law, equality, liberty, free speech, universal fraternity, gender justice, peace and harmony are circumvented and transgressed by and under the feet of governmental instrumentalities and executive bandicoots are become the problems and issues of human rights.

In Hagne Conference of 1930, endeavour was made to end the conflicts arriving out of divergent State Laws in respect of nationality. Consequently, a Convention on the conflict of Nationality law was singed and adopted. In this connection, an attempt was made to resolve the problems relating to nationality and Statelessness. Besides this, Convention of the Nationality of Married Women was adopted in 1957.23
NATIONALITY AND STATELESSNESS

It is now axiomatic that State laws mostly determine Nationality. *Nationality is the principle link between an individual and International law.* It shows the importance of nationality at the pedestal of international law. Under International law, nationality has often been used as a justification for the intervention of a Government to protect another country. It may, however, be noted that international law does not create a correlative right in favour of the individuals. It creates rights only in favour of the states whose nationals they are.

In Paneyezyv Saldutiskis case the Permanent Count of International Justice held

"......in taking up the case of one of its nationals, by restoring to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right, the right to ensure in the persons of its nationals, respect for the rules of international law: The right is necessarily limited to intervention on behalf of its own nationals because, in the absence of special agreement, it is the bond of nationality between the state and individual which alone confers upon the state the right of diplomatic protection,, and it is a part of the function of diplomatic protection that the right to take up a claim and ensures respect for the rules of International law must be envisaged."

The great jurist of international stature J.G. Starke also underlined the international importance of nationality in the following observations:

(I) The protection of rights of diplomatic agents are the consequence of nationality.

(II) If a State does not prevent offences of its nationals or allows them to commit such harmful acts as might affect other states, then that state shall be responsible for the acts committed by such a person.

(III) Ordinarily, states do not refuse to take the persons of their nationality. By nationality we mean loyalty towards particular state.

(IV) Nationality may also mean that the national of a State may be compelled to do military service for the state.

(V) Yet another effect of nationality is that the state can refuse to extracts its own nationals.
(VI) According to the practice of large number of states during war, enemy character is determined on the basis of nationality.

(VII) States frequently exercise jurisdiction over criminal and other matters over the persons of their nationality.

In a catena of cases it has been laid down and recommended by the Permanent Court of International Justice that State may be bilateral, trilateral or multilateral agreements take matters of nationality out of national jurisdiction to international jurisdiction for rapid pragmatic resolution.

A. Open Questions in the Context of International Law

There are various questions agitating the minds of the comity of nations requiring intensive reflection and cogitation. These questions have been identified and put into two sets in the context of public international law in the following words:

1. The first area of issues centres around international law aspects of nationality matters. In international law, is there a recognised right to a nationality? If answer is positive, which state has an obligation to grant nationality? How is the genuine link between the state and the individual established by the nationality laws? What are the contemporary functions of the law of nationality? What is the content of the right to nationality as a human right? Are there common international standards in regard to the elimination/reduction/prevention of the statelessness? How are such efforts to eliminate/reduce/prevent statelessness compatible with the concept of national sovereignty?

2. The second area of issues is related to the qualification under public international law of the disintegration of the various nations -- states and the consequences for nationality matters.

The disintegration of various nation and states raise some questions concerning its qualification under public international law. These questions are posed by the disintegration of countries like Soviet Union, Yugoslavia, and Czechoslovakia. Apart from statelessness by disintegration, statelessness in also caused by the internal civil strife, insurgency within the country, and armed conflict and rebellion. It is also known as internal displacement.

In recent years, a new class of people is emerging and attracting the attention of the refugee workers. These people are also known as internally
displaced persons (IDPs). These displacement is being caused by the environmental imbalances due to rapid and reckless industrialisation, disregard to eco-systems, depletion of ozone layer, green-houses effect, gaseous emissions, construction of gigantic thermal power projects, sporadic conflagration in the jungles of southeast Asian nations including recent fire in the Canadian jungles, and building of big dams. These actions of humanity initiated in the name of development have resulted in creating a new class of people known as Environmental Refugees which does not find any protection whatsoever in the existing definition of the word refugee as enshrined in Article 1 of the Convention of 1951 relating to the status of refugees.

These questions are highly pertinent and require to be re-visited in their entirety. Moreover, they require humanitarian solutions in consonance with the parameters set by the brolly of human rights norms and standards. Even the definition of refugee should be reformulated and re-defined accordingly.

B. Nationality and Statelessness: Definition and Meaning

A man's nationality forms a continuing state of thing and not a physical fact, which occurs at a particular moment. A man's nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other. The fundamental basis of a man’s nationality is membership of an independent political community. This legal relationship involves rights and corresponding duties upon both on the part of the citizens no less than on the part of the State.\(^{30}\) Nationality may be defined as the bond which unites a person to a given state which constitute his membership in the particular state, which gives him a claim to the protection of that state and which subjects him to the obligation created by the laws of that state.\(^{31}\) Nationality is a legal bond having as its basis a social fact of attachment, genuine connection of existence and sentiments together with the existence of reciprocal rights and duties. It may be said to constitute a juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as a result of an act of the authorities, is in fact more closely connected
with the population of state conferring nationality than with that of any other state. In United States of American V. Wong Kum Ark Justice Gray propounded that the state may determine as to what type or class of people shall be entitled of citizenship. A state can not claim that the rules, relating to acquisition of nationality, which it thus laid down are entitled to recognition by another state unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the state which assumes the defence of its citizens by means of protection as against other states. Thus, nationality may be defined "...as the legal status of membership of the collectively of individuals whose acts, decisions and policy are vouchsafed through the legal concept of the state representing those individuals.

On the other hand, problem of statelessness was considered and cogitated upon by the International Law Commission in 1954 and first Convention Relating to the Status of Stateless persons was done at New York on 28 September in the same year. A stateless person is defined under Article 1 of the aforesaid convention as under:

"the term "stateless persons" means a person who is not considered as national by any state under the operation of its law."


Thereafter, issue of reduction of statelessness was deliberated by the General Assembly and or conference was convened to conclude a Convention on Reduction of Statelessness in 1961, subsequently it was adopted in same year. Following are the main provisions of the Convention:

a) A party to the Convention shall grant its nationality to a person born in its territory who would otherwise be stateless. Such a nationality shall be granted either by birth or by operation of law.

b) A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have
been born within that territory of parents possessing the nationality of that state.

(c) For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the state whose flag the ship flies or in the territory of the state in which the aircraft is registered as the case may be.

d) A state party to the Convention shall also grant its nationality to a person who was although not born in the territory of such state party yet at the time of his birth, one of his parents was the national of that state party. Such a grant of nationality may be subject to certain conditions and may be granted either upon application or by operation of law.

e) Loss of nationality as a result of any change in the personal status of a person such as marriage, termination of marriage, and adoption, shall be conditional upon possession or acquiring of another nationality.

(f) A person shall not be deprived of his nationality, so as to become stateless on the ground of departure, residence abroad or failure to register.

g) Naturalization abroad or renunciation shall not result in loss of nationality unless the person concerned acquires another nationality.

(h) Generally, a person shall not loss the nationality of the state party to the convention if such loss renders him stateless.

Following remedial measures must be taken in order to reduce and obliterate the impediments arising out of statelessness:

(a) States party should evolve a perception of a definite nationality of a person. It may recognise such nationality or not.

(b) Hangue Convention and its subsequent improvement in the form of convention on the Reduction of the Statelessness, the states party by way of general incorporation must adhere to 1961.

(c) States must not deprive or person of his/her nationality except there is a sufficient and plausible cause backed by the due process and procedure, established by law.

(d) Universal liberty, equality and fraternity must constitute the criterion of granting nationality to the stateless persons.

(e) Stateless persons must be bestowed upon some rights through international treaties and instruments while incorporating thereof in municipal legal systems at par with nationals of their country of refuge.
NATIONALITY AND STATELESSNESS

f) Grant and bestowal of nationality must be liberal and in conformity with the mandate of International Conventions thereon INTER-ALI basic tenets of Universal Declaration of Human Rights.

g) Procedural hassles and administrative processes must be simplified and less time consuming at national and international level.

h) Statelessness issues and their solutions must be dealt with by those hands who are sensitive enough in operating the entire legal apparatuses in tune with fundamental paradigms and principles of egalitarian values and human rights norms.

i) Stateless sovereignty and demography must not come in the way of granting nationality to the stateless.

j) Stateless persons must be encouraged to contribute their professional skills, expertise and dexterity coupled with intellectual wisdom to the welfare of the country of their reception while ensuring their socio-economic upliftment by the state. Moreover, dissemination of information and awareness about their rights must also be pursued.

Thus, it is evident that there are still numerous obstacles and hurdles, which require a positive and pragmatic resolution of their hardships. The aforesaid suggestion must be taken care of an mitigating their grievances within the legal parameters of a domestic regime. Much still remains to be done. The deprivations of nationality of Ugandan-Asians and Bihari-Muslims in Bangladesh have, in recent years, attracted the attention of international community. On this, Justice V.R. Krishna Iyer has deftly remarked:

"Statelessness is sought to be minimised and grant of nationality liberalised and obligated. And if nationality is ensured to a person, he acquires political rights, which stand four squares between the offending state and the expelled. The Ugandan Asians, for instance, without complete disregard of the convention of the statelessness cannot be deported. Nor can any particular racial groups be deported on the arbitrary fiat of any rule."\(^{45}\)

5. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)'S INVOLVEMENT IN NATIONALITY AND STATELESSNESS MATTERS

UNHCR has a worldwide responsibility of solving refugee problem. But it is more and more being called to take responsibility and care for
persons having been displaced either externally or internally upon request of the United Nations Secretary General. UNHCR is presently involved in emergency operations in former USSR, Yugoslavia, and East Pakistan (now Bangladesh) where massive displacements of persons occurred in Georgia, Armenia, Azerbaijan, Tajikistan, Bosnia & Herzegovina, Croatia, Serbia, Kosovo and in Bangladesh. In these region, UNHCR is accosted with the persons who are stateless and do not have any sort of national legal protection.

In these countries, UNHCR is also frequently requested to provide support in building up legal systems aimed at protecting refugees, displaced persons and stateless persons and has been associated with the drafting process of nationality basis or amendments to the existing nationality basis. UNHCR’s mandate regarding statelessness drives from United Nations General Assembly Resolutions in this matter:

Considering the convention on the Reduction of statelessness of 28 August 1961 and, in particular, articles 11 and 20 requiring the establishment of a body to which a person claiming the benefit of the convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority,

1. Requests of the office of the United Nations High Commissioner for Refugees provisionally to undertake the functions foreseen under the convention on the Reduction of Statelessness in accordance with its Articles 11 after the convention has come into force------

The UNHCR has further been mandated to continue to perform these functions on priority basis, under the resolution. So far activities pursued under this mandate have been limited, but given the magnitude and the complexity of the problem, especially in the former USSR, it appears essential for UNHCR to strengthen and pragmatise its efforts to provide an adequate brolly of solutions. However, it would require primarily, a clearer definition of its mandate.

On the other hand, the United General Assembly should define the content of mandate entrusted with UNHCR by adopting a separate and
distinct resolution thereon, which would act as the body established under Article 11 of the 1961 convention. It would imply that UNHCR should be given a supervisory role in the implementation of that convention and to evolve a reporting system on a regular basis to the General Assembly regarding statelessness.

It would also imply giving UNHCR a similar supervisory function concerning the implementation of the 1954 Convention on the Status of Stateless Persons as both conventions are clearly interlinked. With a mere active and clear and precise mandate, UNHCR would then be given a position of being more active on the one hand to promote these two international instruments, and, on the other hand to find durable and permanent solutions to prevent and to reduce the menace of statelessness, as part of the comprehensive approach and humanitarian perception advocated in numerous instances of High Commissioner.

It will also require that the Executive Committee of the high Commissioner’s programme adopt a conclusive conclusion to strengthen the office’s mandate concerning statelessness as part of overall strategy in preventing and mitigating movements of unprotected and persecuted persons. Ultimately, it will also establish a closer link with other organs of the United Nations System dealing with nationality issues and matters and specially a link between United Nations Centre for Human Rights and International Law Commission.

6. STATELESSNESS: A GLOBAL VIEW

The family had been in exile for decades, but when the Crimean Tatars eventually returned to their ancestral homeland they dreamed of a new beginning. Instead, the Tatars found themselves virtual non-persons. The family was not allowed to own property, find work in nearby towns or fill even menial farm jobs. During the harsh winter months, four generations of the family huddled together in a single room. When the family’s father suffered a fatal heart attack searching for wild berries and roots to feed his
wife and children, there was no dignity in death' without the proper papers he
could not be officially buried.49

The Tatar family members are among countless people around the
world who do not have a country they can call home. They are persons who
are not recognised by any state as citizens. Trapped in this legal limbo, they
enjoy only minimal access to national or international legal protection or to
such basic rights i.e. health, education and political choice. Effectively, they
are contrasts from the global political system of the nation-state which has
evolved in the last century.50

The problem has been fuelled by a bewildering vortex of complex and
desperate developments ranging from sudden and sweeping political changes
such as the disintegration of the former Soviet Union and former Yugoslavia,
disagreements about descant, ownership, tribal affiliations, the role of women
and children and power balances between different ethnic groups have put
statelessness issue again on the international agenda.

The Tater family mentioned above, for instance, was among an
estimated 250,000 ethnic Crimean’s originally deported by Stalin in 1944 who
returned home following the collapse of the Soviet Union to what is modern-
day Ukraine. An estimated 17,000 Tatars come back stateless though the
majority had already acquired another nationality such as Uzbek citizenship or
were granted Ukrainian citizenship at independence in 1991. The government
faced the tricky dilemmas of how to successfully integrate large numbers of
people who, while enjoying strong historical links with the region, had few
legal ties and thus few rights such as access to work and social services. Many
returning Tatars had their own headache: whether to run the risk of
surrendering their existing citizenship with no guarantee they would obtain
Ukrainian nationality.51

When Czechoslovakia split into two sovereign states in 1992-93, some
people became caught in a strange no-man’s land. They voted in the Czech
Republic where they had lived physically for years, but overnight they were
deemed to be citizens of the neighbouring Slovak Republic. To qualify for Czech citizenship, they had first to establish their Slovak status, renounce this citizenship working themselves temporarily stateless, and then apply for Czech nationality. If they were refused, they remained stateless as happened to some Roma (gypsies) and were then dependent on Slovak authorities agreeing to reinstate their Slovak identities.⁵²

A world away in Asia, a group of several hundred ethnic Chinese who fled Vietnam to Hong Kong during the boat people exodus in the 1970’s and 1980’s remain trapped in a similar legal and politically charged labyrinth today. Hundred of thousands of Vietnamese boat people were resettled in new countries or eventually went back to Vietnam and were than a half million ethnic Chinese who fled directly to the People’s Republic were integrated there. These Chinese, however, became, in legal terms, “unclaimed”. Hanoi refused to take them back because they were not citizens, China turned them away, and they did not qualify for residency status in Hong Kong which subsequently reverted to Chinese rule.⁵³

Even if a country agrees to consider a stateless person for citizenship, rulings are often influenced by the state’s historical, political and philosophical makeup. In some cases families who have lived in a particular country for generations are refused citizenship because of their ethnicity, religion, race or even social and linguistic backgrounds. When governments change or are overthrown, people can be retroactively stripped of citizenship and property, detained and finally expelled as happened with the Asian population in Uganda when Iddi Amin seized power there in the 1970’s. During the Cold War years, Romanians, and Soviets who wanted to emigrate first had to renounce their citizenship with no guarantee they could obtain a new-nationality. Many ended up “stranded” without a country to call home.⁵⁴

Inheriting a nationality can also be problematic and in cases where a father is stateless or has divorced, another is often unable to pass her nationality on to children even though they are born in her own country.
NATIONALITY AND STATELESSNESS

Failure of refusal to register a child’s birth can result in statelessness. As the statelessness problem become more pronounced, a General Assembly resolution in 1996 mandated UNHCR to broaden its role, helping, promote the avoidance and elimination of statelessness on a global scale. UNHCR established a specific statelessness post within the organisation’s Division of International Protection and co-operated with states, international and regional organisations to help accession to existing conventions, strengthen national laws and promote new agreements. It worked with the Council of Europe on the 1997 European Convention on Nationality, the International Law Commission on the draft Declaration on Nationality following state succession, the Office of the High Representative in drafting new citizenship laws for Bosnia Herzegovina and Organisation for Security & Co-operation in Europe (OSCE) in developing programs for minorities.

UNHCR worked closely with Ukrainian authorities, launching a widespread public information campaign including television videos, posters and brochures and establishing a local non-governmental organisation named Assistance To Offer Legal Advice to the Tatars on citizenship issues. The results have been encouraging. In 1997-98, 4,500 returnees were given Ukrainian citizenship compared with 150 between 1992-96. On the other hand, the Czech Republic, with UNHCR assistance, began a process of reviewing individual cases in that country and hundreds of individual who previously were unable to acquire Czech citizenship had their cases successfully reviewed. This has a precedent for the development of similar programs in other countries.

The Universal Declaration of Human Rights (UDHR) stipulates that everyone has the right to a nationality. Each state has a nationality law and citizenship is one of the most precious gifts any governments can bestow. But in an era of increasing ethnic tension, mass migrations of people and governments even more reluctant to welcome refugee or other groups, the
number of stateless persons appears bound to continue growing for the foreseeable future.

A. Statelessness in South Asia

South Asia is a region where most harried and terrified refugee movements took place owing to ethnic tensions, socio-economic problems, political cleavages and religious persecution since times immemorial. Indeed, some of the biggest, largest and diabolical movements of refugees in human history have taken place in this region of the world. Since 1947 around 40 million people have crossed international borders in South Asia region as displaced persons or refugees. India and Pakistan experienced a heart-wrenching spectacle of partition and resultant migration, scars of which are still fresh and haunting the people even of ephemeral memory.

Statelessness in South Asia is still existent owing to the partition of the Indian sub-continent and internal armed conflict in various countries of the region. The Partition of India had displaced the Biharies in 1947. With the break up of Pakistan and the formation of Bangladesh in 1971, the Biharis were displaced a second time, giving rise to their international status as refugees. However, this status has seldom been recognised in international law. The creation of Bangladesh began a process of denationalisation of Biharis by Pakistan. In this context, the international law relating to territorial change and the deprivation of nationality of Biharis raises issues of their status as de facto stateless refugees.

The communal violence after the partition of India in 1947, preceded by the so-called "great Bihar killing" of 30,000 Muslims in October-November, resulted in a large scale movement of Muslims into the newly created province of East Pakistan. Consequently, a million refugees migrated into East Bengal in 1947. It was estimated that 95.9 per cent of these refugees came from the eastern Indian states of Bihar, West Bengal, Assam, Orrisa, Nagaland, Manipur, Tripura, and Sikkim. Although Pakistan was successful in gaining her independence as a theocratic state, it had a ethnically
NATIONALITY AND STATELESSNESS

plural society. From the beginning, the crises of national integration and the assimilation of refugees from India created more complexities than solutions, an insider vs outsider syndrome and the existential problem of lack of acceptance and assimilation of the Bihari refugees in East Pakistan.66

The culture of Bihari refugees contributed to defining the ethnic boundary between them and the majority Bengali residents. Besides, when the West Pakistan feudal elite began to capture economic and political power in East Pakistan, the Biharis, who shared the linguistic background of the elite, began to covertly identify with them. Their ethnic identity became important in various sectors of the East Pakistani economy, and the Bengali majority found the Biharis in a relatively privileged position in getting official patronage.67 In fact, Biharis acquired the nationality of Pakistan as a precondition to resettlement, and priority was given to the muhajirs (refugees called in Urdu language) by public policy measures, especially “....in railways, post and telegraph, armed forces, private industries, trade and commerce”.68

The process of disintegration of Pakistan in 1971 led to two simultaneous major refugee movements. The first was the escape of an estimated 10 million refugees into India in the aftermath of the brutal massacre of the Bengali populace. The second flight consisted of the minority Biharis into refugee camps as a result of the extermination during the liberation fervor.69 Thousands of Biharis were brutally massacred with the Bengali petty bourgeoisie and working class active in ethnic cleaning as we have recently witnessed in Kosovo also. The pogrom of Biharis was vividly described by Anthony Mascarenhas70 as under:

“Thousands of families of unfortunate Muslims, many of them refugees from Bihar ------were mercilessly wiped out. Women were raped and had their breasts torn out with specially fashioned knives. Children did not escape the horror: the lucky ones were killed with their parents’ but many thousands of others must go through what life remains for them with their eyes gauged out and limbs roughly
Nationality and Statelessness

amputated. More than 20,000 bodies of the non-Bengalis have been found in the main towns as Chittagong, Khulna and Jessore."

Since Urdu was the *lingua franca*, the Biharis had tended to associate themselves with West Pakistan. Hen the West Pakistani landlords and Urdu-speaking capitalists captured economic and political power in East Pakistan; the Biharis shared their political gain. The governmental policy of favouritism and insulation of the Bihari community from the Bengali majority led the Biharis to cast their fate with the West Pakistani political elite. A majority of them had voted for the Muslim League and Jamat-i-Islami in the elections. Besides, when the Awami League began to grow as an influential political party of the bourgeoisie and middle class, they found their West Pakistan counterparts a hindrance to their prosperity become their limited approach failed to include Bihari class-consciousness. The Bengali political elite in East Pakistan focussed on Urdu as an issue to denounce the repressive attitude of West Pakistan. While it inspired the majority in East Pakistan, it aggravated the alienation of the Biharis, which made them lean towards the West Pakistanis. The Bengalis, initially sympathetic towards the oppressed Biharis, gradually become suspicious of their exclusive attitude and political activities.\(^7^1\)

It is understood that political opinion, within substantive limitations in human rights, is any opinion on any matter in which the machinery of state, government or policy may be engaged. The political opinion of the Bihari community led it to be pursued by majority led government and its entities, particularly where the former addressed the unity of the eastern and western wings of Pakistan. The political, agenda of the Bihari community exposed it to the reality of persecution. Although political opinions may or may not be expressed, they might become the attributive features for the determination of refugee status. Since the Biharis had expressed their political will, and as a result suffered repressive measures, their well-founded fear can be clearly evidenced.\(^7^2\)
The first political step in formulating categories of non-Bengalis to be accepted in Pakistan began with the recognition of Bangladesh as an independent state. This was primarily because President Bhutto of Pakistan needed to negotiate the return of 93,000 POWs held captive in Bangladesh. However, he was equally anxious to see that the one million Biharis did not move to Pakistan. Although Pakistan agreed by the New Delhi Agreement of 28 August 1973 to transfer a substantial number of “non-Bengalis” in Bangladesh who had opted for repatriations to Pakistan, in exchange for Bengalis in Pakistan and the return of POWs. She engaged ICRC as the route for all applications for repatriation from Biharis to the Government of Pakistan. However, ICRC made it clear that “registration with the ICRC does not give a right to repatriation. The final acceptance … is with (the) Pakistan and Bangladesh governments”. Pakistan began issuing clearances in favour of those “non-Bengalis” who were either (1) domiciled in former West Pakistan, (ii) were employees of the central government and their families or (iii) were members of divided families, irrespective of their original domicile.

Second, it can be argued that the category of divided family applied by Pakistan was unilaterally determined and was more restrictive than that identified by ICRC in their letter requesting options regarding repatriation. It is estimated that 76 per cent of Bihari families stand divided because of the restrictive definition of divided families, since grandparents, parents; unmarried siblings were not considered part of the same family for the issuance of clearance documents. Bangladesh has asserted the need for the acceptance of a broader and Islamic definition of the family, since the present definition is narrow and restrictive, based on the western concept of the family. This argument upholds family reunification as one of the fundamental provisions of refugee law in any effective resolution procedure.

Third, it had been agreed between Pakistan and Bangladesh that the antecedents of the person who returned to Pakistan as a hardship case would
be examined. Were it to be established that she/he felt within the other two categories, then additional hardship cases would be included. At the outset, the definitional and numeric limits of the hardship cases have caused a legal anomaly, since it needs to be explained why Pakistan limited the number to 25,000. In reality, the hardship cases had essentially included Biharis who had been within the other two categories, and certainly not war victims, orphans or disabled persons. Over the years, Pakistan has failed to give a breakdown of the number of persons listed under the categories, and the vacancies in the hardship category. On the other hand, the repatriation figures over the last 25 years correspond to the law of diminishing returns. Till date, an estimated 178,069 Bihari refugees have returned to their country of former habitual residence. While practice has left a majority waiting to return home, Pakistan certainly needs much more to assure the Bihari refugees and the international community of the resolution of this protracted crises.

Therefore, the resort to denationalisation of Biharis by Pakistan is an abuse of human rights and fundamental freedoms under international law, constituting an attempt to throw off the duty of admission and thereby casting an illegal burden on the state of residence.

B Statelessness in North East India and National Legal Protection

Since India is also a member of civilized comity of nations, it has also proved to have human sufferance and agony. It has around 65,000 Chakmas and Hajongs refugees who are primarily stateless in the northeastern state of Arunachal Pradesh apart from some sporadic groups of Bihari Muslims in various pockets of northeast India.

The stateless persons in India do not have bright future owing to the absence of a legal structure at national level. India has not acceded to UN Convention on the Reduction of Statelessness of 1961, nor 1951 Convention with its Additional Protocol of 1967 was signed. In such a situation stateless persons have an uncertain and bleak future in India.
NATIONALITY AND STATELESSNESS

It is thus incumbent upon the Government of India to abandon its silence over laws for refugees. The country can no longer depend and continue to deal with problems and issues of refugees by resorting to the archaic 19th century principles enshrined in the outdated Foreigners Act 1946 and Extradition Act 1962. India has always been and is magnanimous in bestowing shelter and asylum to the people who are fleeing conflict. Nevertheless, as the country became a member of the UNHCR Executive Committee in 1995 and has since been playing a pivotal role to get international legal instruments 1951 Convention on refugees reformulated and redefined, by incorporating present day realities of refugees situations, it must also draft a domestic law on refugees to endorse its actions on the international form.  

7. DIVINE LAWS ON NATIONALITY AND STATELESSNESS

The individual dignity has been accorded a high status in the scheme of Islamic law and the concept of human rights fits naturally within this structure. The Islamic tradition also ordains sympathetic treatment to the rehabilitation of refugees who are forced to abandon their homes and hearths on account of persecution. Indeed, living in one’s homeland, including one’s kith and kin, is a recommended course of action for Muslims to escape persecution for protecting their religious beliefs or social traditions. According to the Holy Quran –

“those who have believed and have chosen exile, and have fought for the faith, and those who have granted them help and asylum: these are the true believers”

The Prophet (PBUH) recommended this course in the early days of his mission to the few believers facing cruelties and harassment from society, asking them to migrate to Habsha (Abyssinia) to save themselves from religious persecution. Later, the Prophet (PBUH) himself, along with his companions, migrated from Mecca to Madina, when their oppression by the Meccans became intolerable. The people of Madina received them with open
NATIONALITY AND STATELESSNESS

arms and open hearts and offered them not just shelter but also material help in the shape of land for cultivation and made them partners in their businesses. Indeed, this migration laid the foundations of the first Islamic state. Islamic traditions not only recognize the right of asylum but, in dire need, encourages people to avail it. It is, as already observed, a recommended course of action for Muslims to follow, not only to escape religious persecution but also for seeking economic development and prosperity.  

The warning against persecution occurs 299 times in the Holy Quran. The Quranic verse “La, Allah enjoineth justice and kindness” (XVI: 90) makes just standards of behaviour mandatory on all and towards all. The Arabian Muslims in their early stages had suffered gravely from the worst type of religious persecution. So, they recognised the principle of granting asylum to those who had been persecuted for their religious belief. The Holy Quran further strengthens this view by declaring:

If one amongst the pagans
Asks thee for asylum
Grant it to him
So that he may hear the Word
Of Allah and then escort him
To where he can be secure. (al-Quran, IX : 6)

Islam asks his followers to fight against religions persecution and help the persecuted by granting them safe passage and even asylum if they demand it. Because Islam preaches universal brotherhood and fraternity irrespective of geo-political demarcations. In an Islamic state every person got the right to acquire property and freedoms indispensable for a dignified survival inter-alia right to nationality.

The famous Khilafat Movement in early 1920’s of the Muslims of the sub-continent should be seen in the same perspective. There was no threat to the Muslims regarding their existence nor was there any fear of persecution at the hands and migrated to Afghanistan, simply as a protest against the
invasion of Turkey by the Allied Forces in the aftermath of First World War, and the danger this posed to the Islamic Institution of the Caliphate.83

Moreover, Universal Islamic Declaration of Human Rights adopted by the Islamic Council of Europe on 19 September 1981 declares under Article IX as to “Right to Asylum” in the following words:

(a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

(b) Al-Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

Thus, Islam as a divine law or revealed law provides a complete mechanism for the regulation of human behaviour in its numerous manifestations. Islam seeks a process of universalisation of human happiness and bravo brotherhood.

12. RECAPITULATION

It is evident from the ongoing discussions and deliberations that when a person does not possess the nationality of any State, he is referred to as a stateless person. A person may be without nationality knowingly or unknowingly, intentionally or though no fault of his own. For instance, when an illegitimate child is born in a State which does not apply jus soli to an alien mother under whose national law the child does not acquire his nationality, or where a legitimate child is born in such a State to parents who themselves have no nationality the child becomes a stateless person. Statelessness may occur after birth as well. For instance, it may occur as a result of deprivation or loss of nationality by way of penalty or otherwise.

All individuals who have lost their original nationality without having acquired another, are, in fact stateless persons. A stateless person does not enjoy those rights, which are conferred on a person. A stateless person does not enjoy those rights, which are conferred on a person in International Law. For instance, their interest is not protected by any State; they are refused by enjoyment of rights, which are dependent on reciprocity.
The Universal Declaration of Human Rights, after considering the gravity of the problem, provided under Article 15 that each person is entitled to have nationality and the nationality of any person cannot be taken or snatched arbitrarily. A Conference of Plenipotentiaries convened by the Economic and Social Council to regulate and improve the status of stateless persons adopted the Convention relating to the Status of Stateless Persons on September 28, 1954. The Convention came into force on June 6, 1960. Presently, the convention has 44 States Parties. The Convention defined the term stateless person as a person who is not considered as a national under the operation of its law. The Convention gave such persons judicial status but no provision was made to reduce or eliminate statelessness. The General Assembly expressed its desire on December 4, 1954 that an International Conference of Plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States had communicated to the Secretary-General their willingness to cooperate in such a Conference. The Conference which met at Geneva on March 24 to April 18, 1959, adopted provisions aimed at reducing statelessness at birth, but failed to reach agreement on how to limit the freedom of States to deprive citizens of their nationality. Consequently, the conference met again in New York from August 15 to 28, 1961 and adopted a Convention on the Reduction of Statelessness. The convention was opened for signature on August 30, 1961 and it came into force on December 13, 1975.

The convention under Article 1 stated that a Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless:

(a) at birth, by operation of law, or
(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned.
Para 3 of Article 1 further stated that a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of the State, should acquire at birth that nationality if it otherwise would be stateless.

The Convention followed the idea adopted by the Convention on the Conflict of Nationality Laws of 1930 by making a provision that if the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality. Article 6 of the Convention stated that if the law of a Contracting State provides for loss of its nationality by a person, spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

The above efforts to eliminate or reduce statelessness have only a limited effect in so far as the determination of nationality is still within the competence of each State. In this conspectus, it is explanatory per se that nationality and statelessness issues have acquired crises proportions under the scheme of contemporary international law. Respective governments including Government of India must strive to evolve a legal structure regarding reduction of the statelessness and formulating nationality laws on humanitarian premise. Moreover right to the country of origin or habitual residence must be respected by the national governments. Jurisdiction of the UNHCR with regard to the matters of nationality and statelessness must be expanded, re-formulated and re-defined while taking into account state concerns and individual claims in a new World Human Order.
NOTES AND REFERENCES

5. Intergovernmental Committee on Refugees, “Statelessness and some of its Causes: An outline, March 1946, p.2
6. C.A. Batchelor, supra note 1, at 240.
8. Nathan A. Limpert, supra note 2.
10. Supra note 1, at 246.
13. Batchelor, supra note 1, at 252.
14. N.A. Limpert, supra note 2, at 42-43.
26. Supra note 23.
27. Permanent Court of International Justice (P.C.I.J.) Reports, (1939), A/B No.75, p. 76.
NATIONALITY AND STATELESSNESS


30. Supra note 3, p.27.

31. Re Lynch, British Mexican claims Commission, Published in Annual Digest of Public International Law cases, 1929-1930, p. 221-228.


35. Supra note 32, pp. 4 & 23.


40. Supra note 37., Article 2

41. Supra note 37., Article 3

42. Supra note 37., Article 4.

43. Supra note 37., Article 5

44. Supra note 37., Article 7.

45. Supra note 37., Article 7


47. Supra note 3 p. 30.


51. Ibid.

52. Ibid.

53. Ibid.

54. Ibid.

55. Ibid.

56. Ibid.


58. Ibid.p.7

59. Ibid.p.7

60. Ibid.p.7

NATIONALITY AND STATELESSNESS

62. Ibid.
63. Ibid.
67. Supra note 60. p.50
69. Supra note 60, p.50.
70. Id.
72. Supra note 60, p.52.
73. Ibid. p.52
74. Ibid. p. 54
75. Ibid. p. 54
76. Ibid. p. 54.
80. Ibid. p. 34.
81. Moussa, Islam and Humanity’s Need of It” (Cairo 1966).
83. Ibid.
84. Supra note 78. p. 35.
CHAPTER-VI

STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN
1. AN OVERVIEW

The concept of State responsibility is as old as the human civilization. It has been the perennial responsibility of the State to protect the life and liberty of its citizenry. Today an individual has become central to the entire human rights discourse and is being regarded as a subject of International Law. Moreover, national boundaries are losing their meaning. Consequently a new world human order is being emplaced. The human rights of all individuals including that of refugees have become a polemical debate heralding a new premise whereat state concerns and individual rights are at loggerhead with each other. In this conspectus, it is incumbent upon the state to reconcile this paradox in an age of transnationalisation of human rights and civil liberties. Asylum countries are not as much responsible as country of origin. Thus, country of origin should squarely be held responsible for the refugees flows and it is the responsibility of the refugee generating state not to create problems of galling proportions for the other states as it is contrary to the notion of a civilized state. The responsibility of the country of origin is higher than the responsibility of state of reception under the International Law.

Since its inception back in the 1920s refugee law has considerably and invariably been perceived as a special branch of international law addressed almost exclusively to potential asylum countries. In particular, the Geneva Convention of 1951 on the Status of Refugees sets forth an elaborate regime of legal rules that create duties for States Parties having received refugees or being faced with demands for admission. Pursuant to the principle of non-refoulement which may also have acquired the legal force of international customary law, these obligations go even so far as to prohibit States from expelling or returning ("refouler") a refugee to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.
The conduct of state and its agencies, which is reflected in the programmes, policies and practices thereof, resulted in the refugee exoduses. Moreover, flows of refugees have their causes in human conduct outside the destinations to which the persons involved are heading. Under the Geneva Convention, a refugee is a person who, because of well-founded fear of political persecution, finds himself outside his State of nationality, unable to obtain the protection of that State. Thus, the country of origin, which has set in motion the tragic sequence of events, is an essential – and even the most important – actor in the complex triangular relationship whose other elements are the refugee and the receiving States. If it behaved in consonance with current human rights standards, the whole problem would simply disappear. Therefore, why should the burden be entirely on other States? Should it not in the last analysis fall back on the country of origin? This is the issue, which the present chapter will attempt to explore.

2. STATE RESPONSIBILITY

A. Responsibility Towards Individuals

a) Refugee – Term and its Scope

An examination of possible rights of individuals against a State of origin cannot take as its starting point the refugee as defined by the 1951 Geneva Convention. Article 1 of that instrument has created an extremely artful construct which, on the one hand, includes persons who may not have suffered any actual injury – because fear of persecution is sufficient to claim refugee status – and which, on the other hand, excludes persons whose human rights may have been seriously violated, for instance in a civil war. It would be extremely difficult for the purposes of the study undertaken here to follow strictly the borderlines of that definition. In order to simplify matters it would be considered whether an individual who has been coerced into leaving his or her country may have a claim against that country under general rules on State responsibility. Most refugees will fall within this category.

252
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

b) Action Imputable to the State

According to the draft articles on State responsibility, Part I, adopted by the International Law Commission (ILC) in 1980, an internationally wrongful act presupposes first and foremost that an act or omission has occurred which is imputable to the State concerned. This requirement excludes many scenarios from the scope of possible claims under the law of State responsibility. Natural disasters, famine and epidemics are not phenomena that can be directly imputed to human activity, although in many cases it might be found that preventive measures could have avoided the fatal consequences. Nor does civil war as such constitute a complex of occurrences wholly under the responsibility of a national government: it can only be made accountable for action carried out by its own troops. Lastly, it stands to reason that a State cannot be answerable if its citizens flee the country because it has become the victim of foreign aggression. However, what essentially remains as a pattern of actions susceptible of entailing responsibility is a policy that flagrantly violates human rights to the detriment of almost all citizens or a specific group of the population of the State of origin.

c) Violation of an International Obligation

An internationally wrongful act presupposes, second, a breach of an international obligation. On the reverse side, all international human rights constitute obligations for the State to which they are addressed. The most pertinent right in this connection is the right of every person to live without disturbance in his or her country. Today, there is no longer a need to rely in this respect solely on Article 13 of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights, which guarantees the right of everyone not to be deprived of the right to enter his own country and thereby implicitly recognizes a right of abode has by now (31 March 1994) been ratified by not less than 126 States. Through that wide acceptance from countries all across the globe, it has become the relevant
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

yardstick for State conduct in the field of human rights. In an event, one can
safely assume that the right of a person to stay and live in his or her country
constitutes, today, customary international law all the more so since it
reflects the traditional position that the “natural” place for an individual is the
territory of the State of nationality.

If an individual is not directly expelled, but is subjected instead to
pressure and harassment affecting his other rights under the Covenant or
customary law – his life and physical integrity, freedom from arbitrary arrest,
freedom of expression etc. – so that eventually no other option remains open
that to leave the country of residence in order to be able to lead a life in
human dignity, there is still no escaping the conclusion that the right under
Article 12 of the Covenant – or the corresponding right under general
international law – has been violated. To be sure, Article 12 (4) is a right that
may be restricted. Restrictions are permitted to the extent that they are not
“arbitrary”. In order to interpret this term, a possible option is to have indirect
recourse to the limitation clause of paragraph 3, which as such does not apply
to paragraph 4. However, although the scope of the notions set forth in
paragraph 3 (in particular: “public order (order public)” is fairly wide,
governments cannot possibly rely thereon to expel on a mass scale their own
citizens. In an individual case, to pronounce banishment against a person may
be a more humane solution than to confine him or her to a place of detention.
The tradition of ancient Greece in this respect should not be lightly discarded.
But State power, which is always governmental power, lacks the legitimacy to
push entire parts of a population out of their ancestral homes. A government
that sees no other solution than to have recourse to this extreme remedy, or
which puts is citizens under such unbearable pressure that they “voluntarily”
choose to flee, acts contrary to the basic interests of its people and thereby
breaches the covenant of trust from which it has received its authority.
d) The Legal Consequences Flowing from a Violation of Human Rights Obligations
The question is what legal consequences flow from a breach of human rights obligation? Does a person having suffered the fate of expulsion from his or her home country acquire an individual right of reparation?

(i) Individual Human Rights Entitlements Under International Law
As a general premise of this question, it would be helpful to know whether human rights establish in general a juridical relationship at the level of international law between States and individuals under their jurisdiction. In spite of many general writings on the position of the individual in international law,\textsuperscript{15} to date this issue has not been sufficiently clarified. As far as treaties for the protection of human rights are concerned, they are generally implemented by and through national authorities and become applicable to the individual by virtue of acts of domestic legal systems, which can either make those treaties part and parcel of the internal legal order by a national law of approval (continental system) or attempt to implement them on the basis of municipal legislation (British system).\textsuperscript{16} However that may be, as long as a human rights treaty is confined to substantive provisions, the individual lacks a right of action of his own within a juridical context outside the domestic legal order. It is only when such a treaty additionally provides for a remedy to be submitted to an international body that the legal relationship grows beyond the confines of national law.\textsuperscript{17} This is true of the European Convention of Human Rights, where the substantive guarantees and the individual application under Article 25 now form an integrated whole since acceptance of that remedy, although formally a distinct and separate act, is considered by the community of States associated in the Council of Europe a political obligation inextricably bound up with the ratification of the Convention itself. Under the International Covenant on Civil and Political Rights, too, the relationship has become a very close one in as much as States parties have
STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

submitted to the Optional Protocol providing for the remedy of individual communication; indeed, out of the 126 States parties, not less than 76 are at the same time bound by the Optional Protocol.

Furthermore, a relationship under international law comes into being whenever a State, through its agents, executes a policy of grave human rights violations, characterized by the international community as crimes which in no instance can be justified by domestic law and for which the authors involved incur penal liability under international law. Under such circumstances, as a necessary corollary of the absolute outlawing of the criminal action concerned, the potential victims must be deemed to enjoy a right of resistance, directly conferred upon them by the international legal order. With regard to genocide, this logic is particularly obvious. Nobody can be required by law passively to endure his or her assassination by a government that has turned into a murderous machine.

(ii) An Individual Right to Reparation

However, even if one proceeds from the assumption that human rights constitute individual entitlements under international law, at least to the extent that they are supported by an international mechanism of individual complaint or that core entitlements of the individual are arbitrarily impaired, it is by no means sure what consequences are entailed by the violation of such a right. The general proposition that a breach of an international engagement involves an obligation to make reparation, as it was formulated by the Permanent Court of International Justice in the Chorzow case, is well known and need not be repeated here. Similarly, it should be noted that under Article 6 bis of the draft articles elaborated by the ILC on the form and contents of State responsibility the injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation. However, the relevant rule has always been formulated as inter-State law governing legal relationships between States as subjects of international law. Indeed, it has
never occurred to any of the Special Rapporteurs of the ILC on the topic of State responsibility that a State could incur responsibility vis-à-vis the individuals injured in case of a breach of a human rights obligation. This finding carries all the more weight since violation of human rights is specifically mentioned in the available drafts. Article 19 of Part I, which deals with “international crimes”, devotes an entire sub-paragraph (Para 3 (c)) to “serious” breaches on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid, and Article 5 of Part II, which defines the “injured State”, refers explicitly to human rights treaties (Para 2 (e) (iii)). Thus, the existence of human rights law has by no means been overlooked. But seemingly the legal position was assessed as not conferring any right of reparation directly on an individual victim of a violation.

It is significant, in this connection that the relevant human rights treaties remain largely silent on the issue of the consequences deriving from non-compliance with its obligations by a State. The premise is always that a State must fulfil what it has formally pledged to do. Thus, to the extent that one may assume the existence of an individual entitlement under international law, there exists a right to specific performance. The individual has the right to claim that the governmental machinery he or she is confronted with behave as set forth in the relevant provisions. As far as violations of a continuing character are concerned, one may therefore speak of a right to cessation. Yet, it is less clear – or even totally obscure – whether a right to reparation proper comes into being, a right that would be designed to wipe out the consequences of the commission of the unlawful act.

The relevant stipulations of the European Convention of Human Rights are remarkably cautious. According to Article 50, the European court of Human Rights (Court) shall, “if necessary, afford just satisfaction to the injured party”, if the internal law of the State “allows only partial reparation to
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

be made for the consequences” of the unlawful conduct complained of and
found to exist. First of all, the phrase “if necessary” grants the Court a wide
margin of discretion. Second, domestic law, which ordinarily is considered
from the viewpoint of international law as a pure factual element, is
recognized as an obstacle justifying the Wrongdoing State to abstain from
restitution in kind. Thirdly, one may note that the individual is not openly
recognized as the holder of a right to “just satisfaction” in lieu of reparation in
kind; what Article 50 does, instead, is authorize the Court to grant satisfaction
as required under the circumstances. Lastly, in its jurisprudence the Court has
constantly interpreted “just satisfaction” as being tantamount to financial
compensation. Attempts by applicants to obtain a pronouncement requiring
the Defendant State to make good in kind the consequences of its unlawful
conduct have always been in vain. Thus, in the Bozano case, the applicant
had insisted on *restitutio in integrum*, namely re-surrender to French territory
from which he had been removed in disregard of applicable French
extradition procedures and therefore also in disregard of Article 5 of the
Convention (right of individual freedom). But the Court did not accede to this
demand; by avoiding to give a clear-cut-answer, it implicitly made clear that
its competence was confined to granting financial compensation.

The legal position under the American Convention on Human Rights
can be described in terms slightly more favourable to the individual. Article
63 (1) enjoins the Inter-American Court of Human Rights to rule, if it has
made a finding of a violation, *that the injured party be ensured the enjoyment
of his right or freedom that was violated*. Thus, the Court is required to bring
about cessation of the wrongful conduct complained of and found to exist.
Additionally, however, it is incumbent on the Court to rule, “if appropriate,
that the consequences of the measure or situation that constituted the breach
of such right or freedom be remedied and that fair compensation be paid to the
injured party”. Judgements, which fix compensatory damages, are enforceable.
STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

under the laws of the country concerned (Article 68 (2)). Some language in the first judgement on the merits of a case, the decision of the Court in Velasquez Rodriguez of 29 July 1988, and in the subsequent judgement on compensatory damages in that case of 27 July 1989 which was incumbent on the defendant, the State of Honduras. In fact, one may harbour serious doubts as to whether the if-appropriate clause permits to affirm the existence of an individual right proper – which could hardly be committed to the discretion of the Court. It is significant, in this regard, that the compensation due in the Velasquez Rodriguez case was to be negotiated and agreed upon between the Inter-American Commission and the government of Honduras, not by the beneficiaries themselves.

The body that has consistently shown a bold approach to the issue of reparation is the Human Rights Committee under the International Covenant on Civil and Political Rights. The Covenant itself mentions a right to compensation in two places, each time in relation to personal freedom. Article 9(5) specifies that an individual who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Similarly, Article 14 (6) sets forth that a person who has been the victim of a miscarriage of justice shall be compensated according to law. Although these two provisions are primarily intended to enjoin States to establish individual rights under domestic law by enacting the requisite legislation, they shed nonetheless some light on the Covenant as to when a situation must be considered so serious as to warrant being remedied by some compensation in money – an assessment that would seem to permit appropriate conclusions.

Notwithstanding the restrictive conception enshrined in the Covenant itself, the Human Rights Committee has not felt prevented from expressing in its final views under Article 5 (4) of the Optional Protocol fairly far reaching suggestions as to the way in which a wrong committed is to be corrected. Already in its first views on the merits of a case, brought against Uruguay, it
held that the Defendant State was under an obligation “to provide effective remedies to the victims.” In many instances, it has held that the victim of a violation was entitled to a remedy, including appropriate compensation. A culmination point of its jurisprudence was reached in a series of views addressing trials resulting in the imposition of the death penalty that had not been conducted in conformity with the procedural standards laid down in Article 14 of the Covenant. In view of the gravity of some of the procedural defects found by it, the Human Rights Committee pronounced itself for the immediate release of the convicted persons. These rulings are not understood by the Committee as the exercise of some jurisdiction ex aequo et bono. Rather, the Committee views its appeals for the liberation of the victims as a logical consequence of the breach of the obligations in issue. Indeed, one is confronted here with an ineluctable choice where questions concerning the true meaning of international human rights cannot be papered over anymore by some vague formulae. If an individual injured by a human rights obligation cannot obtain any redress for the loss suffered, the right at stake becomes almost meaningless. To buttress its line of reasoning, the committee has taken to invoking Article 2 (3) of the Covenant, which provides that an individual claiming that his or her rights under the Covenant have been violated must be given an effective remedy. The reading of the Committee, according to which remedy is equated with remedial action for the reparation of the wrong done, cannot be maintained in the light of the French and the Spanish texts, whose words do not have the same double connotation as the English word “remedy”. Thus, the only remaining explanation is an application of the general rules of State responsibility.

A leap forward in legal thinking was made by the Security Council when it determined in resolution 687 (1991) that Iraq is liable under international law for any direct loss, damage... Or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion...
and occupation of Kuwait (para 16). Here, for the first time, it was unequivocally recognized that grave breaches of international law may entail direct responsibility towards the individuals’ injured. However, resolution 687 (1991) remains an isolated precedent as yet. In no event could it be extended to any kind of human rights violation. It should also be observed that its philosophy is based on traditional concepts of the law of aliens. Only foreign nationals are mentioned as being entitled to claim reparation, whereas Iraqi citizens are not taken into account.

e) A Mass-Scale Problem – The Refugees

The ideas just developed rest on an analysis of configurations characterized by their individuality. Generally, however, refugees are not isolated individuals. When a tense political situation in a given country develops to the point of making departure an advisable option, many people will start leaving their homes at the same time. Mass migration sets in. the question is whether the large scale dimension of the phenomenon changes the terms under which it should be addressed. For the refugee himself, the best solution is normally to be able to return to his country, provided of course that the circumstances prompting his or her departure have fundamentally changed. The right to return is nothing other than the original right guaranteed under Article 12 of the Covenant and at the same time anchored in customary law. It is not a “new” right brought into being by the wrongful measures taken by the State concerned. No valid legal defence can be perceived that might be adduced to justify restrictions aimed at preventing masses of people from regaining their country of origin. In fact, the General Assembly has often asserted a right of refugees to return back home. This was done for the first time in the famous Resolution 194 (III) of 11 December 1948 on Palestine. In that resolution, the General Assembly –

“Resolved that that the refugees wishing to return to their homes and live at peace with their neighbours should be
permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible”.

Similar wording can be found in the relevant resolutions on Afghanistan and Cambodia. Recently, addressing the situation of human rights in the territory of the former Yugoslavia, the General Assembly reaffirmed—

“the right of all persons to return to their homes in safety and dignity”. and likewise the Human Rights commission stressed a few months ago – “the right of any victims (scil. of ethnic cleansing) to return to their homes”.

In all of these instances, apparently the right to return was highlighted precisely because a mass phenomenon was in issue. The General Assembly would not have pronounced itself on individual cases, and the same is true of the Human Rights Commission. Compensation for the losses suffered, by analogy to what would be regarded as the applicable rule in an inter-State relationship, may be different matter. It should first be noted that the resolutions referred to refrain generally – with the exception of the resolutions on Palestine – from dealing with this theme, confining themselves to claiming that refugees should be able to return to their homes, which implies that they have a right to recover the properties owned by them at the time of their departure. To go further than that and claim a right of compensation for the benefit of those who are forced to stay abroad transcends the original logic of an inter-State system where entities that are essentially alien to one another maintain between themselves “foreign relations”. Refugees having left their country of origin and demanding compensation lay a claim against the remainder of the population which still lives under the regime responsible for giving rise to the mass departure for other countries.
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

However, those staying back home may be exposed to even greater suffering. More often than not, refugees eventually enjoy much better opportunities for personal development than those choosing or involuntarily having to endure the mismanagement of public affairs by a government not in compliance with its human rights obligations. The complexity of this situation cannot be dealt with in accordance with relatively simple recipes of international law which seem to require full reparation for any injury caused to another nation. Within a national community, one would first have to establish a comprehensive balance sheet of all the damage resulting from the activity of a criminal regime; thereafter, one would have to make a determination on the extent to which reparation may seem feasible in light of the potential of the national economy. Lastly, it would also have to be determined how the financial burden for the damage caused should be distributed among all of the members of the national community, taking into account basic principles of just taxation.

The compensation for massive human rights violations raises a delicate problem of distributive justice. If one would grant a right of compensation to everyone having lived under an arbitrary system of governance, everyone would become debtor and creditor at the same time. Here, the model of international responsibility must yield to more subtle regimes, which many countries have conceived of when trying to cope with a past that made victims of large numbers of the population. A good case in point is the situation in South Africa. During the last decades, many black South Africans were forced to leave their country because of the brutal strategies of repression resorted to by the white minority government. On the other hand, those who stayed behind lived under the daily harassment of blatant racial discrimination. Thus, both groups of the black population were victims of measures gravely violating universally accepted human rights standards. Yet, now to make the new democratic body politic accountable for the violations
committed in the past would lead to an absurd result, since the victims would have to pay their own compensations.\(^1\)

The case of Palestine was different. Here, a national community, the Jewish people, took possession of the properties and other assets of the Arab population that had fled to neighbouring countries. Consequently, the issue of reparation could be stated in the classical terms by analogy with international law, where the simple maxim applies that a population organized as a State may not unjustly enrich itself to the detriment of another similar group so that harm done must be repaired. A similar assessment is justified in cases of *ethnic cleansing*, when a specific ethnic group is the target of persecution intended to bring about a definitive expulsion from the former community of residents.\(^2\)

**B. Responsibility Towards States**

When looking into the issue of responsibility of a State of origin towards receiving States, one should from the very outset draw a distinction between States that have suffered tangible injury by being burdened with having to take care of a substantial group of people from the relevant country of origin, and other countries that are not directly affected but may make representations and raise claims as guardians of international legality.

**a) States Directly Injured**

As already pointed out, claims under the legal heading of State responsibility presuppose in the first place that a breach of an international obligation has occurred at the hands of the State. Pursuant to the fundamental principle of sovereign equality, each State must respect the sovereign equality of its neighbours. If it pushes large groups of its own citizens out of its territory, fully knowing that the victims of such arbitrariness have no right of entry to another country but will eventually have to be admitted somewhere else on purely humanitarian grounds, it deliberately affects the sovereign
STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

rights of its neighbours to decide whom they choose to admit to their territories.43

(i) Human Rights Obligations

Things are less clear when a government conducts a human rights policy contrary to generally recognized standards, not acting, however, with the avowed or hidden purpose of coercing the victims to flee. It may then be asked whether it in fact violates its obligations vis-à-vis another State so that it may become liable to make reparation towards any such other State. It can be demonstrated, though, that human rights obligations have manifold objectives. They are not only designed to protect their immediate beneficiaries, but have from the very outset been conceived of as important elements of a state of peace in the world. In the preambles of the UN Charter and the Universal Declaration of Human Rights, as well as the two International Covenants of 196644 the close relationship between peace and human rights is formally acknowledged. Thus, without distorting the finality of human rights, one may conclude in very general terms that respect for, and full observance of, human rights are also designed to prevent any spill over effects resulting for States from unrest and turmoil in another State.

(ii) Prohibitions Regarding Population

Lastly, reference may be made to rules, which prohibit specific conduct. According to the Charter of the Newberg International Military Tribunal,45 “deportation” was considered a crime against humanity (Article 6 (2) (c)), and this rule was confirmed by the ILC in its codification project under the title Principles of International Law Recognized in the Charter of the Newberg Tribunal and in the Judgement of the Tribunal.46 However, deportation is the deliberate act of transferring human beings to a specific destination, generally to the territory of an occupying power, whereas a State generating a flow of refugees confines itself to driving people out of its territory, either coercing them to leave the country or putting them under such
pressure that they *voluntarily* choose to go away, if possible. Thus, a prohibition of deportation does not squarely address the issue of a refugee-generating policy.

The Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War goes one important step further in mentioning alongside with deportation unlawful *transfer* of a protected person (Articles 45, 49, 147). Transfer may be understood as being synonymous with removal, the connotation being that governmental authorities forcibly displace a person from his or her place of residence. Again, therefore, this definition of an unlawful act does not fully meet the specific characteristics of actions resulting in a flow of refugees. Mostly, refugees leave the country of persecution on their own initiative, although prompted to do so by strong pressure brought to bear upon them. Generally, they are neither deported nor transferred to a foreign country. In addition, the Convention only applies to armed conflict. This is also the weakness of Additional Protocol I to the Geneva Conventions (Article 84 (4) (a)).

Not even the draft Code of Crimes against the Peace and Security of Mankind, has established a clear rule enjoining States from pushing their citizens out of the national territory. Following the logic of Article 85 (4) (a) of Additional Protocol I to the Geneva Conventions, it characterizes as an unlawful systematic or mass violation of human rights *deportation or forcible transfer of population*, irrespective of the context of such measures, be it an armed conflict of an international character or another situation of anarchy or disorder (Article 21). Even here, however, the causing of a refugee problem as such is not addressed.

Thus, each situation requires careful consideration on its own merits. There exists no international legal rule, which in explicit terms puts States under an obligation not to turn themselves into a source of refugee flows. On the other hand, receiving States can rely on non-observance by a State of
STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

origin of its basic human rights obligations; they can claim, additionally, that such conduct necessarily affects their sovereign right of territorial integrity.

(iii) Causality

It might be argued that, as far as States as injured parties are concerned, a causal link was missing since every State had the sovereign right to close its borders to persons requesting admission. However, such objection would have to be dismissed. As far as refugees under the 1951 Convention are concerned, the prohibition of refoulement applies. With regard to de facto refugees, on the other hand, who attempt to escape from the horrors of civil war, in particular, States are at least under a moral obligation to demonstrate human solidarity vis-à-vis the victims. Within a civilized community, it is only natural that even those who cannot invoke an international legal instrument to their benefit should find refuge in some other country. If the dignity of the human being is proclaimed time and again as the supreme element in a hierarchy of values to be protected, a policy of shutting all doors to undesired arrivals would mean a deadly blow to the very idea of international protection of human rights. Therefore, a State refusing to bear the costs incurred by other States as a consequence of its refugee generating policies must be deemed to be stopped from claiming that to receive its citizens was an independent decision that interrupted the original chain of events. In order to set the record straight, it should be made absolutely clear that the arrival of human beings cannot as such be considered to constitute injury. It is the expenditure incurred in taking care of the refugees that is susceptible of being taken into account as a financial loss relevant under the rules on State responsibility.

(iv) Cessation and Reparation

Many consequences may derive from the commission of an internationally wrongful etc. Here, the main consequences would be twofold. First of all, there is a general obligation to cease unlawful conduct. Second,
however, to the extent that restitution in kind is impossible because the refugees concerned cannot be expected to return to conditions as bad as those prevailing when they left, a right to financial compensation comes into being.\textsuperscript{52} Here, the complexities of the internal situation in State of origin are without any legal relevance. The burden of internal unrest and strife cannot legally be shifted to other nations.

(v) Precept and Practice

Although the legal reasoning may be developed to this point without any apparent flows, one cannot ignore the fact that there is little practice confirming the existence of a duty to pay financial compensation.\textsuperscript{53} The international community has established the office of the UNHCR precisely because of its experience that source States are normally in such dire condition that any effort to squeeze the least amount of money out of them would be doomed beforehand. Germany is the one great exception to this lesson of the past,\textsuperscript{54} but it should not be overlooked that payments were made only by the new democratic regime after the fall of the Hitler dictatorship.

The same holds true with regard to the duty of cessation. It is logically most satisfactory to conclude that a government, which submits its people to such abuses of power that large groups start leaving the country is under duty to modify its conduct, returning to the path of legality. In a realistic perspective, however, one must acknowledge that to enforce such a duty belongs to the most challenging tasks ever imaginable. In a chaotic situation like the one currently prevailing in Rwanda all legal considerations have lost any real impact on the motivation of the feuding political leaders. Nothing can stop the murderous fighting other than sheer military might. In one instance only has the international community intervened with some success to stop merciless persecution of a minority. As is well known, in order to allay the plight of the Kurds in Northern Iraq the Security Council established a security zone (Resolution 688 of 5 April 1991).\textsuperscript{55} Presently, same situation is
prevailing in Congo, Iraq and Liberia. Given the many doubts concerning the role it can and should play within a new world order, the Security Council will certainly not repeat this experimental strategy in the near future.

In any event, a hard look at realities shows again that there exists a wide discrepancy between theory and practice. It is precisely in recognition of the powerlessness of the international community vis-à-vis the collapse of civilized standards of conduct in a given society that refugee law has emerged. Because of the obvious lack of effectiveness of the ordinary rules of international law in such a situation, other States step in, motivated by considerations of human solidarity for the benefit of the victims. Still, the basic parameters have changed. While 70 years ago R.Y. Jennings had to rely, in a somewhat strained fashion, on the doctrine of abuse of rights to show that States did not enjoy sovereign freedom to shove parts of their population out of their territories, well-established principles of human rights law now restrict the powers inherent in sovereign Statehood.

The lack of trust in the effectiveness of the traditional rules of international law is most conspicuously reflected in the relevant resolutions of the competent political bodies, the General Assembly and the Human Rights Commission. Regarding the situation in Bosnia-Herzegovina, in particular, although ethnic cleansing and other human rights violations are constantly deplored and unambiguously condemned, one does not find a single line that would suggest that the aggressor country involved could be under an obligation to defray at least part of the costs entailed by providing adequate care to the refugees expelled from their native towns and villages.

b) State Acting as Guardians of International Legality

Even States that have not directly been affected by a flow of refugees may have legal claims against the State of origin. The jurisprudence of the ICI on obligations erga omnes is too well known to have to be described here in any detail. What matters is the fact that according to the authoritative
pronouncement in the *Barcelona Traction case* every State has legal standing to act - in some form - for the protection of basic human rights that have been breached. Generation of refugees is of course not an element of the indicative list given by the ICJ, and it would not fit therein. The criterion chosen by the ICJ is that of particular gravity. Hence, everything depends on the specific circumstances. If, for instance, a government engages in a policy of genocide, thereby terrorizing the members of the persecuted group and inducing them to flee abroad, every member of the international community may be considered affected. The same is true with regard to a policy of *apartheid*, as explicitly emphasized by the ICJ in its advisory opinion on Namibia. In the case of more subtle harassment; however, the threshold of gravity may not have been crossed.

The dictum of the ICJ has not remained an isolated incident. According to Article 5 of Part II of the draft articles of the ILC on State responsibility, in case of a violation of a human rights obligation under customary international law or if the breach attains by its seriousness the quality of an international crime, all other States are to be considered injured; in case of a human rights obligation based on treaty law, all other States parties. This gives them legal standing to participate in the enforcement process.

Unfortunately, the precise legal meaning of the position as *defensor legis* recognized for every State has not been fully clarified as yet. The articles adopted by the ILC grant most generously all the rights to which an internationally wrongful act may give rise to the "*injured State* tout court", without drawing any distinction as to whether the State concerned has suffered tangible injury itself or whether its standing is solely justified. It is in this sense also that the special Rapporteur on the topic, Gaetano Arangio Ruiz, has suggested a new article 5 *bis* intended to do away with any legal differentiation between the two groups of States. However, while nobody would have any doubt that the minimum content of a right of response to
injury caused must include the right to make representations, it is a different
matter altogether to acknowledge for any injured state a right to obtain
compensation, as suggested by draft article 8, already adopted by the ILC.62
This enlargement of the circle of right-holders is simply wrong and would
necessarily lead to utter confusion.63

C. Responsibility Towards the International Community

One more than one occasion the General Assembly has stressed that
flows of refugees unleashed by one country affect the entire international
community.64 Indeed, this simple truth finds confirmation in the fact that
persons having lost the protection of their home State must be given a place to
stay, food, shelter and medical care. To assist national governments in
performing this task, the UN has created the office of the UNHCR, which for
its part requires to be financed by the members of the international
community.

In order to implement the responsibility of the State of origin, the
international community can make use of the powers of the Security Council,
provided that the requirements for action in accordance with Article 39 of the
UN Charter – a threat to or a breach of the peace or an act of aggression - are
met. Intervention by the Security Council can serve in particular to stop the
actions that have set in motion a mass exodus. Almost unchallengeable in
theory, this conclusion is hard to translate into concrete practice. Except in the
case of the Kurds of Iraq, the Security Council has never taken the view that
to generate a flow of refugees may constitute a threat to international peace
and security.65 The guarded language of Resolution 918 (1994) of 17 May
1994 on Rwanda is most revealing. It is certainly not be sheer oversight that
the Security Council confines itself to pointing out that the massive exodus of
refugees to neighbouring countries constitutes a humanitarian crisis of
enormous proportions.
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

It goes without saying that the international community has additionally a vivid interest in recovering from a State of origin the costs it has defrayed for taking the requisite measures of protection. First of all, recovery would help replenish the budget of UNHCR, which is constantly under threat in as much as it rests totally on voluntary contributions by interested States. On the other hand, if governments had to realize that money spent for the benefit of refugees were recoverable from them, this might act as deterrent in critical situations where fundamental policy determinations are being made. In law, a good case can be made for a claim to reimbursement. If, in accordance with the judgement of the ICJ in Barcelona Traction, generation of large-scale flows of refugees in a given situation can be evaluated as a violation of an obligation erga omnes, then the international community as such must first and foremost be considered as the injured party.

Indeed, the ICJ introduced the omnes only as a subsidiary construction to fill in the gap caused by the international community’s lack of operative institutions. The Office of the UNHCR, however, is a fully effective institution. All States with discharging the charitable functions, which in a civilized world are owed to those having lost their homes, have entrusted it. Thus, the international community is not a hollow word precisely in this connection. It has established appropriate mechanisms, and it continually spends important financial sums to counter-balance the wrongs inflicted on it by States that violate basic human rights of their citizens. Therefore, one is on safe ground in concluding that the UN, as the legal person to which UNHCR belongs, has a right to recover the costs disbursed by it from a State of origin that has wilfully caused massive departures of its citizens through a policy of systematic human rights violations.66

The same result may also be obtained through a different line of reasoning. It is arguable that the international community, by taking care of the elementary vital needs of the citizens of a given country, engages in
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

goffiorum gestio, an institution found in all major systems of law and whose
rules can therefore be characterized as general principles of law. Normally,
whoever supplies necessities to an indigent person who should have been
taken care of by the principal, has a right to be compensated for his
expenditure.\textsuperscript{67} this is precisely the situation at issue here where the
international community through UNHCR provides shelter, food and medical
care to refugees in order to save their lives and protect their physical integrity.

3. LIABILITY WITH ACCOUNTABILITY

State responsibility is not the only possible basis for a legal claim to
compensation. One could also resort to objective liability in the sense that a
State of origin, whatever its human rights record, is duty-bound to repair the
damage caused to other States by a massive influx of its nationals into their
territories. Some authors have suggested that the Trial Smelter case could be
used as the stating point for this approach.\textsuperscript{68}

The famous dictum by the arbitration tribunal to the effect that:

\begin{quote}
No State has the right to use or permit the use of its territory in
such a manner as to cause injury by fumes in or to the territory
of another or the properties or persons therein, when the case is
of serious consequence and the injury is established by clear
and convincing evidence,\textsuperscript{69}
\end{quote}
could with some hesitation be applied to refugees as well. Quite obviously, it
is rather embarrassing to compare refugees with toxic fumes, and the authors
concerned have not failed to notice the qualitative difference, presenting their
apologies for the equation. But even if one accepts that, viewed from the
angle of the receiving State, the effect may have some similarity, one must
note that to date the notion of objective liability, which does not require as one
of its constitutive elements a breach of an international obligation, has not yet
been generally accepted in international law. There is not a consistent
practice, nor does the researcher succeed in identifying a clear and
unambiguous \textit{opinio juris}. Ample proof for this lack of general consensus is
STATE RESPONSIBILITY, HUMAN RIGHTS AND THE COUNTRY OF ORIGIN

provided by the ILC's inability to agree on a set of principles to deal with the issue of liability. The topic was put on the ILC's agenda back in 1978. To date, after 16 years, no more has been produced than a set of fairly innocuous principles of prevention with regard to activities involving risk. The general feeling of uneasiness with the topic results precisely from the fact that the ILC, instead of codifying time-honoured rules, would engage in progressive development in a highly sensitive field, the available practice of State failing to furnish any consolidated guiding criteria. It would be more than hazardous, therefore, to try to derive any rule concerning refugees from the Trial Smelter precedent.

4. RECAPITULATION

The consequences of the individualisation of international responsibility for the law on state responsibility have not been addressed by the recent restatements of the law of individual responsibility and the law of state responsibility. Traditionally, international law attributes acts of individuals who act as state organs exclusively to the state. Although in factual terms states act through individuals, in legal terms state responsibility is born not out of an act of an individual but out of an act of the state. State responsibility neither depends on nor implies the legal responsibility of individuals. Responsibility of individuals is a matter of national, not international law. In this respect, the dualities between state and individual and between international law and national law are mutually supportive. Thus, the duality between state and individual is reflected in several key principles of the law of state responsibility. The invisibility of the individual in the traditional law of state responsibility did have drawback. Shielding the individual from responsibility undermined the efficacy of international law.

But the limited number of acts can lead both to state responsibility and individual responsibility resulting in the human displacement of galling and appalling proportions. These acts include planning, preparing, or ordering...
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

wars of aggression, genocide, crimes against humanity, killing of protected persons in armed conflict, Terrorism, and Torture. These acts can be attributed both to the state and the individual. Although traditional law of state responsibility makes no distinction between attribution of acts of heads of states or other high officials, on the one hand, and attribution of acts of lower ranking officials, on the other. Acts of all state organs are attributed to the state. In respect to a limited number of breaches of international law, the international community may proceed along to paths – the path of individual responsibility and the path of state responsibility. It may be possible to speak of a law of international responsibility, of which the law of individual responsibility and the law of state responsibility are component parts and which in particular cases are interrelated.

International refugee law is largely indifferent to the question as to whether refugees return to their original homes or relocate to another place within their country of origin. Both return and relocation are considered to be “durable solutions”, which in UNHCR terminology is the threshold beyond which an individual ceases to be defined as a refugee, and therefore no longer requires the protection of the 1951 Convention. Because international refugee law is humanitarian in purpose, and the mandate of UNHCR is one of protection, the responsibility of the international community ceases once the refugee settles in a place of safety. A purely localised risk of persecution is not in general sufficient to ground refugee status, provided that flight to another part of the country is reasonable and safe. The courts of a number of States, including Germany, use this principle of the “international flight alternative” in their interpretation of the 1951 Convention, according to which refugees not considered to be refouled contrary to the Convention if there is any place within their country of origin where they can go without risk of persecution.
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

NOTES AND REFERENCE

10. Article 12 (4), UN Covenant on Civil and Political Rights, 1966.
13. St. Jagerskiold, “The Freedom of Movement”, in Henlein, L. (ed.), The International Bill of Rights, New York 1981, p. 180, contends that “there was no intention here to address the claims of masses of people who have been displaced as a by product of war or by political transfers of territory or population.
17. This is also the test applied by the ICJ in the Reparation for Injuries Case, ICJ Rep. 1949, pp. 174-179.

276
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN


22. Supra note 5.


26. Inter-American Court of Human Rights, Series C: Decisions and Judgements, No. 4, p. 91 (English version).

27. Ibid. No.7, p. 33 (English version).


29. Ibid.

30. Ibid.


35. UN Compensation Commission, Provisional Rules for Claims Procedure, Doc. S/AC.26/1992/INF.1, Article-5


39. Supra note. 28, p. 70.

40. Supra note 28, p. 76.

41. Article –V (1), Principles Concerning Treatment of Refugees, (A refugee shall have the right to receive compensation from the state or the country which he left or to which he was unable to return) adopted by the Asian-African Legal Consultative Committee in 1966, Report of the Eight Session held in Bangkok, p.211.


44. Supra note. 28, p. 72.


277
STATE RESPONSIBILITY, HUMAN RIGHTS
AND THE COUNTRY OF ORIGIN

47. Supra note. 45.
49. Supra note. 28, p. 73.
51. Supra note. 6.
52. Supra note. 6.
54. Supra note. 28, p. 75.
57. UN General Assembly Resolution 48/153 of December 1993 recognizes “the right of victims of “ethnic cleansing” to receive just reparation for their losses”, para 13.
58. ICJ Report, 1970, p.3 at 32.
59. Supra note 28
60. Supra note. 28.
62. Supra note. 6.
64. Supra note. 28.
66. Supra note 43.
68. Supra note 3.
CHAPTER-VII

THE HUMAN RIGHTS OF
REFUGEES AND
INTERNATIONAL REFUGEE
REGIME
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

1. AN OVERVIEW

Poised at the inception of the 21st century, the notion of sovereignty has considerably been diluted and subsequently an individual is being regarded as a subject of international law. Refugees are also being treated as a subject of international law. The rights of the refugees have been provided under the 1951 Convention. Human Rights are the minimum and fundamental guarantees of a civil character, which are inevitable for a dignified and civilised human existence. Human Rights are central to the entire refugee issue. Primarily, becoming a refugee is simply a denial of these human rights, which are known as legal claims, entitlements, inalienable rights, non-derogable rights, inherent rights, civil liberties, and immemorial rights. Therefore, human rights are available to an individual by virtue of his being a member of human family in all-national and transnational jurisdictions and they are also the inseparable part of customary international law and jus cogens.

The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in countries asylum from persecution, this principle reflects the concern and commitment of the international community to ensure to those in need of protection, the enjoyment of fundamental human rights, including the rights to life to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is forcibly returned to persecution or danger. The principle of non-refoulment was given expression in Article 33 of the 1951 Convention. It has since been consistently reaffirmed as a basic principle of state conduct towards refugees. It would be patently impossible to provide international protection to refugees if states failed to respect these paramount principles of refugee law and of human solidarity. Unfortunately, this basic tenet of refugee protection has not always been observed in practice. A
number of countries, where the admission or presence of certain groups of
refugees have been perceived as incompatible with national interests or
domestic concerns, have ignored or undermined the principle of non-
refoulement.

The frustration of human rights proponents with this state of affairs is
reflected in the perennial calls for a multilateral treaty to prohibit mass
expulsion and for the establishment of a refugee right of asylum by
convention or some other legal articulation. However, both suggestions for
dealing with the present failure of refugee law are essentially unrealistic.
These responses to the harsh reality of national sovereignty do not
accommodate sovereignty, but depend upon fantasizing it away. In response
to recent constrictions of asylum opportunities, there also has been a call in
general terms for addressing the source of the problem, that is, conditions
existing in the expelling state. But this call always degenerates into
lamentation about the intractable and complex political, economic, and social
origins of the problem of the refugee. Moreover, any inhibition of refugee
flow at the source suggests violation of the refugee's rights to seek and enjoy
asylum, rights with strong precedents in international law. Freedom of
emigration from one's own nation is a fundamental human right and a norm
of customary international law.

The refugee crises created by forced expulsions demonstrate that
managing refugee crises depends primarily on the leverage from inter-state
relations and interests. The pressures of inter-state interests were brought to
bear, and these were the pressures that made a noticeable difference. What is
needed, therefore, is a re-formulation of refugee law, which is designed to
take advantage of the politics of sovereignty. Such a formulation would also
serve to bypass the tension between sovereignty and human rights. The
resources of international law are remarkably equal to the task. The
traditional conception of international law, as comprised of inter-state rights
and obligations, is germane and relatively unequivocal in its implications for preventing and controlling expulsions, and for regulating mass movement in general. There is no more fundamental principle of international law than the principle that every state is obligated to respect the territorial integrity and rights of other states. Territorial sovereignty includes both a state’s right to exercise exclusive jurisdiction over its own territory and its legal obligation to prevent its subjects from committing acts, which violate another state’s sovereignty. Mass expulsions clearly run against the principle of territorial sovereignty because of the burden cast on receiving states. Often refugees come despite the receiving state’s laws and policies to the contrary. Moreover, the receiving state’s capability to send back the asylum seekers is limited by humanitarian and political considerations. Indeed, a variety of reasons may make it impossible for a civilised State to exercise its right of expulsion. It should not be a novel observation that mass expulsion and the problem of the refugee bear on state-to-state relationship. After all, the impact on the territorial integrity and rights of the receiving state is unquestionably the heart of the matter in the receiving state, as evidenced by the now critical reluctance of states to accept the refugees. Massive refugee flow inevitably assumes the proportion of an international delict because of the burden imposed on receiving states.

The provision of assistance to refugees is a humanitarian and non-political matter, which should not be hindered by political considerations, despite the fact that refugee situations themselves are inherently political in character. The need to give greater attention to questions of assistance arises primarily from the scale of practical humanitarian problems, which remain to be solved. Moreover, a strictly positive law approach does not seem desirable in this field since many states are still not parties to the relevant international instruments relating to refugees.
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

2. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW

A principle of international law can be understood as a normative idea, wide in scope, usually executing that of an individual legal rule. General principle of international law reflect the essential features peculiar to this social phenomenon. Each branch of international law possesses its own set of principles.

The singularity of the International Bill of Human Rights lies apparently in the fact that nearly all the rules contained therein are in the nature of principles, developed in the various branches of which international human rights law is composed. International refugee law is viewed in the present chapter as one such branch. It too possesses its own set of principles, some of which are more imperative than other which are interconnected, and each of them is to be read in the context of all the other principles of refugee law, human rights law and international law in general.

This chapter deals with the rights of the refugees under international law. An enquiry regarding history and contemporary status of the refugee regime has been made. This chapter also provides some concrete suggestions for making the international refugee regime more efficient and therefore, better able to meet refugees’ complex needs. The limitations of and challenged faced by present international refugee regime have also been examined.

A. Fundamental Principles of International Law

(1) The leading principles of international refugee law as a branch of human rights law is that of Asylum, which is right of everyone to seek and to enjoy in other countries asylum from persecution, except prosecutions generally arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

At the universal level the right to asylum is not imperative, since it has been laid down not in a treaty but in a recommendation, i.e. the text of the
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

United Nations General Assembly resolution containing the Universal Declaration of Human Rights. In some cases the right to asylum is included in treaties with obligatory force for the contracting parties. The American Convention on Human Rights (1969), for example, not only endows this principle with imperative treaty force but also goes further than the Universal Declaration every person under the Convention has the right to be granted asylum.

(2) The right of an individual to the protection of his or her Government is so important for a person’s well-being that the absence of such protection has been considered in a number of international treaties the sole qualifying element for refugee status. Refugee law provides for the country of asylum to take upon itself the protection of the refugee. Scope for protective action has also been envisaged for international institutions. Under the Statute of Office of the United Nations High Commissioner for Refugees (Annex, Chapter 1 (1) the High Commissioner shall assume the function of providing international protection—to refugees—.

(3) Among concepts making up the substance of protection should be noted the common standard in the words of the Universal Declaration. i.e. a set of rights and prerogatives that in a refugee situation ensure the satisfaction of at least the basic needs of individuals and groups in this precarious situation.

B. Basic Standards of Treatments

The Executive Committee of the High Commissioner’s Programme has laid down the following minimum basic standards of treatment for refugees, whose situation in the country of asylum has not yet been regularized, including those in large-scale influx situations.

1. Asylum-seekers should not be penalized solely on the ground that their presence in the country is considered unlawful; they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health

283
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

and public order; they should enjoy the fundamental civil rights set out in the University Declaration of Human Rights.

2. All necessary assistance should be given to them and they should be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities.

3. Those seeking asylum should be treated as persons whose tragic plight requires special understanding and sympathy and they should not be subjected to cruel, inhuman or degrading treatment.

4. There should be no discrimination on the grounds of race, religion, political opinion, nationality, and country of origin or physical incapacity. Asylum seekers should enjoy free access to courts of law and other competent administrative authorities.

5. The location of asylum seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum-seekers should as far as possible be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State.

6. Family unity should be respected; all possible assistance should be given for the tracing of relatives, adequate provisions should be made for the protection of minors and unaccompanied children.

7. Asylum seekers should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution; they should be permitted to transfer assets, which they have brought into a territory to the country where the durable solution is obtained.

8. All steps should be taken to facilitate voluntary repatriation.

The guiding principle with regard to the standard of treatment of refugees is to accord to them the same treatment as to aliens generally, except where treaty clauses or national legislation contain more favourable provisions (Article 7. I of the 1951 Convention, relating to the Status of Refugees). The more favourable treaty provisions include enjoying granting to the refugee treatment “as to aliens generally in the same circumstances” (movable and immovable property, self-employment, liberal professions, housing, education other than elementary education, the choice of the place of residence and freedom of movement); the most favourable treatment
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

accorded to nationals of a foreign country, in the same circumstances (the right of association, wage earning employment); and as to nationals of the country of asylum (religion, artistic rights and industrial property, matters pertaining to access to the courts, rationing, elementary education, public relief, remuneration, family allowances, hours of work, overtime arrangements, holidays with pay, minimum age of employment, training, the work of women and young persons, the enjoyment of the benefits of collective bargaining and, within certain limitations, social security). No duties, changes or taxes may be imposed upon refugees other or higher than those, which are levied on nationals in similar circumstances.

C. Rights under the Convention

An essential aspect of the protection of refugees is the right granted to them directly by the 1951 Convention without reference to an analogous status of nationals or aliens. These concern such matters as the recognition of previously acquired rights especially in matters of marriage, free access to the courts of law in the territory of all contracting States, administrative assistance of the authorities of the state of residence or of international authorities, the issuing of identity papers and travel documents, and the transfer of assets.

When a decision is being made with regard to expulsion on grounds of national security or public order, the refugee lawfully in the territory of the state of asylum must be allowed to submit evidence to clear him, and to appeal to and be represented for the purpose before a competent authority. A refugee with regard to whom an expulsion decision has been taken shall be allowed a reasonable country. The right not to be returned to the country where his life or freedom would be threatened also belongs to this group of refugee rights.

Since discrimination on the grounds of race, religion, nationality, and membership of a particular social group or political opinion is a major cause of the refugee movements, it is imperative that international conventions
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME devoted to asylum should prohibit discrimination. And so they do: Article 3 of the 1951 Convention requires States to apply the instrument without discrimination as to race, religion or country of origin. UNHCR, however, proceeds from wider notions of non-discrimination, which also include political opinion, nationality and physical incapacity. This enumeration falls short of the standard laid down in Article 2 of the Universal Declaration, at least on the criterion of sex and language, but exceeds the latter by the physical incapacity elements.

Another relevant non-discrimination requirement is contained in Article 73 of Additional Protocol I (1977) to the Geneva Conventions of the 1949 relating to the protection of victims of international armed conflict, which provides that refugees shall be granted treatment not less favourable than the treatment accorded to nationals.

Refugees are entitled, in some instances, to favourable treatment, assistance and facilities, all-important aspects of the principle of protection. Favourable treatment means allowing refugees to enjoy rights with regard to the practice of religion, length of residence, ownership of property, right of association, employment, exercise of liberal professions, housing and public education. Exemptions from exceptional measures are also based on the favourable attitude towards refugees on the part of the country of asylum. Rights granted to refugees over and above those enjoyed by aliens generally are preserved by the Conventions. Direct assistance to refugees on the part of the authorities of the country of asylum or of UNHCR and other international agencies in certain administrative matters is also provided for. UNHCR in particular is empowered by its statute to facilities the voluntary repatriation of refugees.

In keeping with the provision of the Universal Declaration concerning the right of everyone to recognition everywhere as a person before the law, The 1951 Convention establishes that any refugee in the territory of a State
and who does not posses a valid travel document shall be issued identity papers. In so doing, the Convention reflects the principle that the possession of documentation is an essential requirement for the unhindered enjoyment of refugee rights. The possession of a travel document permits the enjoyment by refugees of the universal right to leave any country, as laid down in the Universal Declaration. A refugee should not be required to return to the country issuing his conventional travel document for an extension of its validity or for its renewal; this should be effect by or through diplomatic or consular representatives of the issuing state. States should extend the validity of or renew refugee travel documents until the refugee has taken up lawful residence in the territory of another state. These guidelines on identity documents were laid down in 1984 by UNHCR Executive Committee’s, Subcommittee on International Protection. Nothing in international conventions prevents a State from granting rights and benefits apart from those established therein.

D. The Principle of Humanity

The moral and legal foundation for the whole range of international refugee law is without doubt the principle of humanity, which is directed at preventing and alleviating human suffering. The case of refugees demonstrates suffering of a most acute form. The refugee suffers from the fear of being persecuted, in his own country, for reasons of his race, religion, nationality, membership of a particular social group or political opinion. His fear is sufficient to cause him to renounce the protection of the country of his nationality or not to return to the country of his habitual residence, and constitute the basis of the status of refugee. The element of human suffering is also discernible in such situations as external aggression, occupation, foreign domination and events seriously disturbing public order, recognized as valid grounds for seeking asylum by the OAU Convention.
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

Liberating a human being from the painful anxiety caused by the possibility of persecution in his country by giving him asylum elsewhere is to take another step in the realization of a human right, proclaimed in the Universal Declaration, that of freedom from fear. The principle of humanity influences all aspects of international concern for refugees and imbue it with such requirements as impartially and neutrality. The notion of impartiality presupposes that no discrimination may take place in the exercise of protective functions with regard to refugees as to nationality, race, religious belief, class or political options. One of the main purposes of protection is to relieve the suffering of the individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress. In order to enjoy the confidence of all, international humanitarian action may not take sides or engage at any time in controversies of a political, racial, religious or ideological nature. Thus can one describe the principle of neutrality. These aspects of protection are reflected in the Statute of the Office of the United Nations High Commissioner for Refugees, which requires that the work of the High Commissioner shall be of an entirely non-political character.

Among the finest creations of the spirit of humanity to be found in international treaties and one, which is steadily becoming a peremptory worm of international law is the principle of non-refoulement, by which States undertake not to expel or return a refugee to territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a social group or political opinion. This principle is to be applied irrespective of whether individuals have been formally recognized as refugees. This is one of the most resolute obligations in international refugee law and departures there from are invariably of grave concern to the international community. The principle of non-refoulement remains valid—even in situations of large-scale influx of asylum-seekers. The Declaration on territorial asylum, admitting exceptions to the principle, recommends that
refugees should be given an opportunity, whether by way of provisional asylum or otherwise, of going to another state.\footnote{19}

The previous conduct of an asylum-seeker may influence the decision concerning his refugee status, to the point of automatically excluding him from the coverage of international conventions. Such is the case if he has committed or crime against peace, a war crime or a crime against humanity, or a serious non-political crime outside the country of refugee prior to his admission to that country as a refugee, or has been guilty of acts country to the purposes and principles of the United Nations. The benefit of the principle of non-refoulement likewise may not be claimed by a refugee who on reasonable grounds is regarded as a danger to the security of the country in which he is, or, who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.\footnote{20} Serious offences such as the unlawful seizure of aircraft, the taking of hostages and murder can result in extradition of the individual.\footnote{21}

The rights accorded to refugees depend upon the desire of the individual to use them. If the refugee chooses to prolong his period of residence in the country of asylum, he becomes entitled to exemptions from legislative reciprocity or from restrictions on employment of aliens. "Everyone has duties to the community" over the Universal Declaration, Refugees are obviously no exception. The 1951 Convention stresses that every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

This strict requirement is moderated by the realities of the situation and the favourable attitude of the state of asylum towards the refugee. For instance, if a refugee fleeing a territory where his life or freedom were threatened enters the country of asylum illegally, no penalties may be imposed on that account provided he presents himself without delay to the authorities
and shows good cause for his illegal entry or presence. A person is largely free to terminate his or her refugee status. This is the if he has voluntarily re-availed himself of the protection of the country of his nationality, has voluntarily re-acquired his lost nationality, enjoys the protection of the country of his newly acquired nationality, or has voluntarily re-established himself in the country which he left.

Although the nation of family reunification does not appear in the 1951 Convention, the respect by the State of asylum of rights attacking to marriage, required by Art. 12, implicitly acknowledges this basic condition for the existence of a family which, as the natural and fundamental unit of society, is entitled to protection by society and the State according to the Universal Declaration. The UNHCR Sub-Committee on International Protection characterised family unity as the fundamental principle. Given the recognized right of everyone to leave any country including his own, countries of origin should facilitate reunification by granting exist permission to family members of refugees to enable them to join the refugee abroad.

Family unity should also be respected in cases of large-scale influx of refugees. When deciding a family reunification case, the absence of documentary proof of the formal validity of a marriage or of the filiations of children should not per se be considered on impediment. States should facilitate the admission to their territory of at least the spouse and minor or dependent children of any person to whom temporary refugee or durable asylum has been granted. During an international armed conflict States are required to facilitate in every possible way the re-union of families dispersed as a result of the armed conflict and to encourage in particular the work of the humanitarian organizations engaged in this task, in accordance with the provisions of the Geneva Conventions of 1949 and Additional Protocol I and in conformity with their respective security regulations.
E. The Principle of Rule of Law

The principle of the rule of law is as important for the international protection of refugees as any of the leading legal provisions concerning their status. In the light of international law, this principle manifests itself first and foremost in the fact that rights and duties in this area have been laid down mainly in international treaties, which are updated periodically; and their application is supervised by mechanisms appropriate to this branch of international law. There exists or are in the process of formation certain essential rules of a customary nature in these matters.

On the national level the questions concerning the treatment of refugees invariably find their reflection in the legislation of different countries, including their constitutions. Rights and duties of the protected persons and national authorities dealing with them are legal manifestations, and as such provide the necessary basis for the rule of law in the treatment of refugees at the State level.

The 1951 Convention provides, for instance, that the expulsion of a refugee on the grounds of national security or public order shall only be in pursuance of a decision reached in accordance with due process of law. As a rule, refugees must be allowed to submit evidence to clear them and to appeal to and be represented for the purpose before the competent authority or persons specially designated by the competent authority. This stipulation gives substantial effect to the requirement of the Universal Declaration of Human Rights to provide everyone with an effective remedy for acts violating the fundamental rights granted by the constitution or by law. In certain countries protection against the arbitrary expulsion of a refugee can be sought from a competent national tribunal.

F. Permanent Solutions

The protection afforded to refugees by virtue of international conventions is to a large extent solution oriented. The Statute of UNHCR
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

envisages two forms of permanent solution for the problem of refugees: voluntary repatriation or their assimilation within new national communities. The granting of provisional asylum is a temporary solution to the refugee problem, to be met, e.g. in situations of large-scale influx of refugees.

In order to facilitate the refugees decision to repatriate, they should be provided with information on conditions in their country of origin; visits there to by individual or their representatives in order to inform themselves of the situation there should not automatically involve loss of refugee’s status.

Returning refugees should not be penalized for having left their country of origin, for reasons giving rise to refugee situations. If refugees have lost their nationality, on return it should be restored to them. UNHCR, with the agreement of the parties concerned, should be able to monitor the situation of returning refugee; projects for their reintegration in their country of origin should be established.

When the circumstances in connection with which a person has been recognised as a refugee have ceased to exist, he can no longer continue to refuse to avail himself of the protection of the country of his nationality or to return to the country of his nationality or to return to the country of his former habitual residence. In such cases the 1951 Convention ceases to apply. By virtue of the same consideration the convention does not apply to persons receiving protection or assistance from organs or agencies other than UNHCR.

Thus, the question of asylum-seekers whose status has not been determined, as well as that of the physical protection of refugees and asylum-seekers, have been qualified as lacuna in international refugee law. Efforts are under way to prepare the ground for filling these legal gaps. For example, the UNHCR Executive Committee has called for the elaboration of an international instrument concerning the treatment of refugee delinquents on the basis of national regimes. Further study is also required of the practice of
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

temporary refuge, particularly in situations of large-scale influx of asylum-seekers.

3. THE INTERNATIONAL REFUGEE REGIME

International institutions traditionally have had difficulty addressing refugee problems, particularly during times of great disorder and structural change within world politics—for example, during the First World War when multinational states and empires disintegrated and after the Second World War when the global structure shifted from a multipolar to a bipolar system. Over 70 years ago, the world community established an international refugee regime to regularize the status and control of stateless people in Europe. Since then, international laws specifically pointing refugees as a unique category of human rights victims to whom special protection and benefits should be accorded have been signed and ratified by over a hundred states and enforced for several decades. Like international institutions, however, states also have been traditionally ambivalent about international cooperation over refugee issue. On the one hand, states have a fundamental, self-servicing interest in quickly resolving refugee crises: Refugee movements create domestic instability, generate inter-state tension and threaten international security. Thus, states created the international refugee regime prompted not by purely altruistic motives, but by a desire to promote regional and international stability and to support functions which serve the interests of governments.

On the other hand, state independence is also an issue: States often are unwilling to yield authority to international refugee agencies and institutions and consequently, impose considerable financial and political limitations on their activities. For example, the first inter-governmental activities on behalf of refugees during the interwar period (1921-1943) were limited to specific groups of European refugees. The series of international organizations created to deal with these situations possessed limited mandates of short duration.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

Although governments not in the early cold war period (1949-1951) to create the contemporary international refugee regime and formulate rules and decision making procedures, they sought to limit once again the regime’s responsibilities in the context of the emerging global refugee problem. The great powers were unwilling to commit themselves to indefinite financial costs and large resettlement programs.

Nonetheless, despite state reservations, significant intergovernmental collaboration on the refugee issue did in fact occur and the responsibilities accorded to the international refugee regime steadily expanded with assistance and protection granted to a progressively large number of refugees. In the post Cold War era, however, the number of displaced people in situations of internal conflict, state disintegration and environmental degradation is growing rapidly. The refugee-ill-equipped to address the cause of a crisis, the numbers caught up in it or its consequences – is once more in danger of being overwhelmed.

A. The origins of the contemporary international refugee’s regime

The contemporary international approach to refugee problems emerged fully only after UNRRA was abolished in 1945. Despite adamant opposition from the Soviet Union, Western European refugees. In 1947, the Western powers committed themselves to the creation of the International Refugee Organisation (IRO) which focused on resettling the remaining refugees and displaced persons created by the war and its aftermath. With the establishment of IRO the international community adopted for the first time a universal definition of refugee based on “persecution or fear of persecution” on the grounds of race, religion nationality or political opinion. In doing so, Western powers hoped that IRO would achieve two goals: First, to resolve effectively situations with potential to destabilise already-weakened European economies attempting to recover from the ruins of war and second to
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

"internationalise" the refugee problem by distributing refugees and refugee costs among a number of North and South American and Western European nations, as well as Australasian and a number of African countries. As such, IRO served the interests of occupied Germany and Western European countries, which were concerned about hosting refugee populations. The principal architect of the post-war refugee regime, the United States, also used IRO to its advantage by underwriting two-thirds of its costs, thereby, exercising exclusive control over its leadership.

The IRO proved to be an extremely expensive operation, and the United States and most of its Western allies became leery of making any new open-ended financial commitments to refugees. Events in India, Korea, China and Palestine, as well as along the perimeter of the Iran Curtain, had all created new refugees by the millions, convincing American and other Western officials that there was no end in right to the world refugee problem unwilling to pledge unlimited support to refugees, Western governments now actively opposed the United Nations committing itself to unspecified and future responsibilities.26

The establishment of the Office of the United Nations High Commissioner for Refugees in 1950 reflected the political and strategic interests of the European powers and specifically, the United States. By placing severe limitations on UNHCR's functional scope and authority, the United States and its Western allies sustained their desire to create an international refugee agency that would neither pose a threaten to their national sovereignty nor impose new financial obligations on them.27

The United States was the only nation capable of providing the political and financial support to make the international refugee regime function effectively. At the same time, the United States increasing preoccupation with post-war European foreign policy and the rapidly developing Cold War critically affected the less through which that country
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

viewed refugee policy. United States policy makers began to consider refugee
issues within the same policy framework as national security. To then, the
most import aspects of the newly formed refugee regime were maintaining
international attention devoted to refugees from communist countries and
minimizing international appeals for assistance funds to refugees. To this end,
the United States sought to limit severely the functional scope and
independent authority of UNHCR and instead created two new U.S. led
organizations: the Intergovernmental Committee for European Migration and
the U.S. Escape Program, both programs parallel to and outside the purview
of the United nations.28

Specially created U.N. agencies, the United Nations Works and Relief
Agency for Palestine Refugees in the Near East and the United Nations
Korean Reconstruction Agency, for example, exclusively handled refugee
populations located in such strategic conflict areas as the Middle East and
Korea-areas in which the United States and its allies were also deeply
involved. The United States funded these organizations much more
generously than it did UNHCR, and for a time these organizations provided
the United States with a pretext for withholding financial support from the
U.N. based refugee regime.

The consequences of such U.S. actions were, for UNHCR profound.
The denial of American financial and diplomatic support directly affected the
organization’s ability to define an independent role and to implement its
goals. Even five years after its founding and despite large refugee flows
around the world, UNHCR remained small and relegated simply to providing
legal protection for displaced persons not already resettled by IRO.
Eventually, however, through its rapid response to the first major Cold War
refugee crisis that erupted with the 1956 Hungarian Revolution, UNHCR
overcome U.S. opposition and, in effect, because perceived as being useful to
American foreign policy interests.
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

The Hungarian crisis presented UNHCR with the opportunity to
demonstrate that was the only agency capable of coordinating both
international refugee relief and the collection of funds for emergency material
assistance. To extend aid to fleeing Hungarians, the organization made no
try to judge individual motives for flight but approved all Hungarians in
Austria and Yugoslavia as prima facie refugees. With the Hungarian
operation, the funding capacities and operational services of UNHCR grew;
the High Commissioner, August Lindt, won the confidence of both the United
States and communist authorities in the Eastern bloc for his repatriation
efforts; and UNHCR became the centrepiece of the international refugee
regime.²⁹

(i) Organizational Expansion into the Third World

The third period of organizational growth for the international refugee
regime came during the 20 years period from the late 1950s to the late 1970s
when the rules, operational capacity and geographic outreach of the
international refugee regime expanded due to the pressures, demands and
burdens placed upon it by refugee crises in the third world. For UNHCR, this
was a period of organizational take off as it evolved into a firmly established
organizational with a broader mandate and capacity to provide material
assistance on a global level to a greater number of people in refugee and
refugee-like situations.

During the late 1950s, as out less of refugees from Eastern Europe
waned, the international refugee regime shifted its focus to the third world.
With rapid decolonisation, the character of refugee problems changed, and the
regime came under mounting pressure to adapt its programs and policies to
give greater priority to third world refugees.³⁰ they typically arrived in large
groups, were destitute and in need of a wide variety of special kinds of
emergency assistance. The central concern regarding the international refugee
regime was its ability to respond effectively to these new kinds of refugees
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

and its applicability to third world states in dealing with these problems. In
their attempt to respond effectively to these new refugees groups, signatures
to the international refugee instruments were compelled to adjust the
geographical and timeless limits of the refugee definition contained in the
1951 refugee convention, expand the assistance capacities of the High
Commissioner and reorient the programs and priorities of the regime from
Europe to the third world.

Thus, for the next two decades, Western Governments were willing to
turn to UNHCR whenever its services could be usefully applied to meet the
needs of these men and different groups of refugees and displaced persons.
Through a service of resolutions, conventions and declarations, the definition
of refugee was broadened considerably in a de facto/40 manner. The
international refugee regime was now empowered to provide assistance to the
vast majority of the world’s refugees and displaced persons without having to
make individual determinations of their eligibility.

Western governments were willing politically and financially to
support UNHCR’s operational expansion into the developing world because
international action on the refugee issue was also new viewed as a way to deal
with potential sources of instability in the third world. During the 1960’s and
1970’s the Cold War extended beyond Europe into parts of the third world.
Both the East and West vied influence in Africa and Asia and, at the same
time, tried to minimize the ability of their ideological opponent gaining
political advantage in these regions. In the face of an escalating Cold War
struggle, Western governments came to perceive assistance to refugees as a
central part of their foreign policies towards newly independent states, thus
using foreign aid as one of the principle tools in this East-West struggle for
influence. Governments made little distinction between military aid,
development assistance and refugee relief and. More importantly because
UNHCR was a donor-dependent organization, possessing no communist
member states and being dominated by the West there was little risk of multilateral refugee aid being used in ways unacceptable to the principal donor government. 32

At a time when the majority of the world's refugees originated and stayed in the third world, Western states had little difficulty in extending the regime's rules to include a much broader category of refugees. These states were not in danger of confronting masses of third world arrivals and, therefore, could avoid the question of whether these groups were in fact formally within the High Commissioner's mandate. Thus the refugee situation evolved into one characterised by a lack of state consensus on a single refugee definition and requiring multiple definitions for multiple purposes. During the 1960's and 1970's this pragmatic and principally non-legalistic approach served the interests of the international community and the vast majority of the world's refugees. The inherent inadequacies of these vastly different approaches, however, became apparent by the 1980's when deteriorating political conditions in third world not generated, but also pushed increasing numbers of refugees northward to claim political asylum in industrialised nations.

(ii) The Refugees Outflows from Western Rivalry and Regional Conflicts

Until the late 1970's the relatively liberal attitude of most states and their willingness to accept additional responsibilities to assist refugees and strengthen measures to protect them characterized the post-second World War regime. During the 1980's however, states within the regime began to develop not only restrictive but also conflicting policies regarding the refugee issue. 33 In addition, despite its phenomenal organisational growth during the 1970's the international refugee regime still fell short in addressing the news and seemingly intractable refugee problems of the decade.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

The intensification of the Cold War during the 1980's shifted the structure of the bipolar conflict. Both established third world governments and their opposing political forces collected external Western patrons and enjoyed relatively easy access to weapons. As a result, internal wars in Indochina, Afghanistan, Central Africa, the Horn of Africa and Southern Africa became protracted and debilitating affairs. Such conflicts perpetuated endemic violence, which in turn, generated large waves of refugees.\(^3\)

In the light of such developments, during the 1980's long-term care and maintenance in enclosed camps for the majority of refugees fleeing regional conflicts in Africa, Asia, and Central America characterised the global refugee relief situation. The international community failed to devise comprehensive or long-term political solutions or to provide any alternatives to prolonged camp existence. At the same time, a growing number of Third World Refugees appeared on the doorsteps of Western countries to seek asylum. Unlike in earlier periods, these refugees were no longer confined to their regions of origin, and now travelled directly to Western countries by air transport.

(iii) Refugee's Problems in the Post-Cold War Era

The 1990s represent a new era for refugees.\(^3\) The end of the Cold War brought about major changed in the general pattern of refugee emergencies and challenges posed to the international refugee regime in providing relief and protection.\(^3\) Most major refugee crises of the 1990s have been triggered by internal conflicts in which ethnic identity is prominent element in both the goals and methods of adversaries. The number of wars involving secession and state formation are increasing. In such conflicts, civilians are often used as weapons and targets in warfare, and large-scale displacements comprise a political strategy in claiming control territory. Refugee movements are more likely the result of ethnic, communal and religious conflicts as well as of sharp socio-economic divisions and human rights abuses. UNHCR must
THE HUMAN RIGHTS OF REFUGEEES AND INTERNATIONAL REFUGEE REGIME

confront refugee emergencies in rapid, sometimes ever-lapping, succession. Refugee crises in Iraq, Bosnia, Croatia, Kenya, Somalia, Bangladesh, Nepal, the Caucasus, Tajikistan, Benin, Ghana, Rwanda, and Burundi strain the capacities of the organisation almost to the breaking point. At the same time, UNHCR is trying to resolve the long-standing refugee problems of the previous decade primarily through repatriation in the context of continuing instability and insecurity.

It is time for a major debate about how the UN, regional bodies and states can effectively intervene in internal conflicts and humanitarian emergencies. The most difficult political and humanitarian questions confronting the international community in the 1990s are how governments and international organisations can intervene to prevent refugee flights within countries or across international borders; how they can provide assistance and protection to internally displaced people when their own governments subject to such intervention as an infringement of sovereignty; or, when as in Somalia, Liberia Haiti or Bosnia, it is impossible to determine the legitimate government or authority in the country. The most immediate short-term problem for international agencies is to determine when and how repatriation and reintegration are most appropriate, particularly as some post regional conflicts in Central American, Indochina and Africa subside.

B. The Challenges Before UNHCR: Institutional Constraints and Potential Problems

For the past 40 years, UNHCR has worked with people fleeing to countries of asylum where they require protection and assistance. UNHCR assisted refugees on the assumption that once the conflict had ended, the refugees would return home and the old socio-political and territorial order would be re-established. Internally displaced persons were aided only in so far as home governments allowed it.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

Since the end of the Cold War, UNHCR has adopted new criterion in serving refugee populations: Now, UNHCR focuses on meeting the immediate needs of refugees, returnees and internally displaced people who live in conditions of inter-communal violence, shifting borders and on-going conflict. In countries of asylum across the world, UNHCR has extensive experience in aiding refugees on the basis of its mandate and well-defined international refugee instruments. But in countries undergoing civil wars, UNHCR staff find themselves not only working with governments, but also with opposition groups, guerrilla forces and political factions. UNHCR staffs are now engaged alongside U.N. peacekeeping forces in anarchic and unstable countries, which lack viable national and local structures. Their duties include protecting civilians against reprisals and forced displacement, relocating and evacuating civilians from conflict areas; and assisting besieged populations, such as those in Sarajevo, who are either unable or unwilling to move from their homes. Frequently, however, UNHCR lacks any firm institutional and legal basis for this work.38

(i) The Challenges of Working in Internal Conflicts

In the post-cold war era, the international community is emphasising the underlying causes of the refugee problem. Such a policy includes early warning, preventive diplomacy and ensuring respect for human rights. UNHCR itself has started to develop strategies and approaches intended to address the root causes of refugee flows before they start and to reduce or contain population movements, which have already begun.

This shift to a preventive strategy, however, cannot be accomplished easily or quickly. Working in countries of origin differs substantially from working in countries of asylum. Unlike in countries of asylum, UNHCR must work with governments as well as opposition movements and guerrilla factions. UNHCR is ill equipped to respond to the needs of internally displaced people and returnees who live and conditions of inter-communal
violence and on-going conflict. For example, UNHCR especially in areas contested by both governments and armed opposition in working with internally displaced population. Furthermore, most staff are recruited or trained to work in situations where local populations view both the displaced and returnees as the enemy and U.N. assistance as favouring one side to the disadvantage of the other. In situations such as in Bosnia, the Caucasus or Tajikistan, UNHCR uses humanitarian and legal interventions similar to used by the International Committee of the Red Cross (ICRC), but its staff lacks the special training, skills and experience of ICRC staff members.39

A major obstacle to taking a more active role in refugee protection in countries of derives from the international refugee regime itself. The regime was designed to be non-political and strictly humanitarian, a strategy employed to receive permission to work in host countries and to secure funding from donor governments. UNHCR, as it presently structured, is not mandated to intervene politically against governments or opposition groups, despite documentation of human rights violations. In addition, UNHCR staffs are often unfamiliar with human rights and humanitarian law and are uncertain of law governments and opposition groups will react to their interventions using these protection worms.

Warring parties in internal conflicts perceive humanitarian assistance and one of several weapons of warfare, which is another weakness of current relief operation. For example, food assistance is very often used as a political weapon. Adversaries divert assistance from the proper recipients for military or political goals while denying assistance to certain populations and geographical areas by blocking access to international agencies. If UNHCR is to respond effectively to enlarged population flows resulting from the consequences of the increasing number of internal wars, it must both reorganise the staffing, training and operations of the organisations to reflect
(ii) The Inadequacy of the Existing Resource Base

The 1990s presented UNHCR with several new emergencies that greatly increased its overall expeditions. In 1991, as a result of emergency relief operations in northern Iraq and the Horn of Africa, total voluntary fund expenditures amounted to $862.5 million, an increase of almost 60 percent over 1990. In 1992, new refugee and humanitarian crises in the former Yugoslavia, Bangladesh, the Horn of Africa and southern Africa, as well as continued responsibilities in northern Iraq and new repatriation programs in Cambodia, Ethiopia and Mozambique, pushed UNHCR expenditures over $1 billion. The sums required for UNHCR operation in 1993 are estimated to be in the range of $1.3 billion.

In addition to the high costs of responding to refugee crises, internal displacements and repatriations, humanitarian missions today are likely to be protracted affair with no clear outcome. In the former Yugoslavia, for example, UNHCR committed approximately one-quarter of its staff and one-third of its total resources worldwide to providing assistance and protection to nearly four million people. UNHCR is now in danger not only of overextending itself because of its involvement in vicious and intractable conflicts but also of exhausting the political interest of donor governments in continuing to fund such protracted operations, even in high-profile situations like Bosnia-Herzegovina.

One of UNHCR’s most significant weaknesses is its dependence on voluntary contributions to carry out existing and new programs. The flow of assistance from donor governments is neither reliable nor always in the most appropriate form. In addition, funding is frequently provided late and is often earmarked for particular uses with political overtones.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

In the past, donor governments have made funding contingent upon external political factors. Today, however, these governments are less influenced politically by refugee situations, which they view as local or regional problems of little or no foreign policy or security value. Funding is now more likely to be cut back in favour of the domestic priorities of these industrialized states. Major powers are reluctant to provide funds for humanitarian programs when internal conflicts in aid-recipient countries continue unabated. Thus, despite the clear link in situations involving displacement and regional security, such as in the Caucasus and Central Asia, there is weak donor interest in funding a comprehensive strategy for dealing with refugees and internally displaced people. It is a tragic irony that major Western donors appear to have lost political interest in providing generous support to new programs at a point when many political barriers to effective humanitarian action have disintegrated.

(iii) Inadequacy of Existing Mandates in International Humanitarian Law

While there is a clear mandate for the protection and the provision of humanitarian assistance to refugees; existing political, diplomatic, economic and legal mechanisms are insufficiently developed to cope with the increasingly complex and volatile population movements of the post-Cold War period. In particular, there are no specific international organisations mandated to protect and assist the internally displaced. At the same time, the political issues involved, particularly state sovereignty and non-intervention in domestic affairs, make the issue of the internally displaced one of the most challenging problems confronting the international community in the 1990s.

Further, existing human rights and humanitarian laws offer internally displaced persons little protection. These also do not adequately cover forcible displacements and relocations, humanitarian assistance and access, the right to food and the protection of relief workers. In particular, public emergencies
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

and internal violence fall outside the scope of the Geneva Convention of 1949
and Additional Protocol II of 1977. As a result, of a state is suspended. It is
precisely in these conditions that internal displacement often occurs.

C. The Way Ahead: The Need For New Alliance and New Actors

Hindered both by its dependence on voluntary contributions to carry
out its programs and its need to obtain the approval of host governments
before intervening, UNHCR cannot resolve the problems of refugees,
returnees and internally displaced people single-handedly. More attention
must be focused on a range of players including development agencies,
human rights networks, peacekeeping and conflict resolution mechanisms and
the tradition relief organisations – all of which must be involved in finding
innovative approaches and collaborations to resolve conflicts and their
accompanying displacements.\textsuperscript{45}

Interagency cooperation is the key to a more effective response to the
problems of displacement. If UNHCR hopes to ensure co-operation in
achieving a solution to displacement and phasing out the political source of
such operations in the future, it must continue to work at improving co-
ordination with other international, regional and non-governmental agencies,
particularly in strategic planning and in marking legal and institutional
arrangements with other agencies charged with responding to refugees.

(i) Department of Humanitarian Affairs

Making the system work better requires a more effective division of
labour among the actors involved in responding to the humanitarian, political
and security dimensions of internal conflicts. The U.N. General Assembly
took an important first step in December, 1991 in creating the office of the
emergency Relief Coordinator, charged with providing a focal point, within
governments and between governmental and non-governmental organisations
for communication during U.N. emergency Relief Coordinator, became the
first Under Secretary General in the newly formed U.N. Department of
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

Humanitarian Affairs (DHA). The creation of the DHA was an essential step in clarifying and assigning responsibilities to U.N. agencies in complex emergencies. Donor states influential in the creation of DHA envision the office gathering data and managing information, mobilizing resources and orchestrating field activities, negotiating a framework of action with political authorities and providing overall leadership to humanitarian aid efforts.46

Unfortunately, in the past two years, the vision has not been realised. Lack of adequate staff in the field a rapid succession of humanitarian crises in the post-cold war period, and incompletely established and largely untested mechanisms for interagency coordination have caught the DHA unprepared to assume its intended leadership role in most recent emergencies. Perhaps the greatest difficulty confronting the DHA is that the specialised agencies such as UNHCR and others possess a high degree of constitutional autonomy and consistently resist any attempt by the DHA to impose strong authority over their actions in humanitarian emergencies. If the DHA’s presence is to lead to improvements in the response capacity of the United Nations, the significance of its coordinating role must be recognised by UNHCR and other agencies. The DHA must also be fully equipped both politically and financially to undertake effectively its assigned tasks.

(ii) Coordinating Relief and Development

Closer coordination between United Nations Development Programme (UNDP) and UNHCR represent a key solution to situations involving refugees, returnees and the internally displaced. Cooperation between these agencies already takes place in quick impact projects (QIPs) 47 aimed at assisting a variety of displaced groups in Central America, Mozambique and Cambodia. In addition, in recent years in the Horn of Africa, UNHCR and UNDP established joint management structures to create preventive zones and cross mandate programs to stabilize and prevent displacement in border areas.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

Although there have been greater efforts at UNDP-UNHCR coordination in field operation, for more effective interagency planning, consultation and implementation are required. The roles and responsibilities of the UNDP and UNHCR in such efforts continue to be determined on an ad hoc situation-by-situation basis. In most countries humanitarian emergency relief aid is administratively and programmatically divorced from developmental concerns. Thus, a development gap exists between short-term humanitarian relief assistance and long-term development.

In countries such as Afghanistan, Ethiopia, Cambodia and Mozambique, a precondition for successful returns is development aid and reintegration assistance aimed at alleviating extreme poverty in countries of origin. Without improved and established economic prospects in these countries, political instability and new displacements are likely to occur. A focus on safety of return and reintegration involves rethinking the roles and mandates of international organisations and NGOs; shifting their operational priorities from receiving countries to countries of return; training agency staff to work in development as well as relief assistance; and closer cooperation and coordination between development and refugee agencies on the one hand, and human rights and refugee agencies on the other.

(iii) Greater Human Rights Monitoring and Enforcement

Greater development assistance alone is not enough to create safe conditions for those returning home: international cooperation must also ensure democratisation and respect for human rights. However, neither good governance nor respect for human rights fall within UNHCR’s domain. The existing U.N. human rights machinery needs to be strengthened and applied more effectively to deal with refugees, returnees and the internally displaced, for it is integral to the success of U.N. peacemaking.

In recent years, the U.N. human rights system has demonstrated its potential capabilities to respond quickly to a select number of human rights
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

emergencies involving the internally displaced. In 1992 it called an unprecedented meeting of the U.N. Commission on Human Rights and appointed a special Rapporteur to investigate human rights abuses of minority populations in Bosnia and to make recommendations to the Security Council. Similarly, an incriminating U.N. report on Human Rights violations in Iraq including the alleged forced deportation and murder of the Shi’ite population by the Iraqi army, provided humanitarian justification for the establishment of an air exclusion zone over southern Iraq.50

At present, the U.N. human rights program is grossly understaffed and under funded. The advisory services section of the centre for Human Rights, for example, has an annual budget of approximately $ 700,000. This is a minuscule sum in view of both the massive amounts currently being spend on relief and peacekeeping operations and the potential of the advisory services section to strengthen civil society, promote democratic and pluralistic institutions and procedures and, thereby, to prevent human rights abuses and mass displacements.

If the United Nations hopes to respond more effectively to the refugee crisis, it must strengthen its capacity to monitor developments in human rights issues. A greater protection role in the field should be granted to U.N. human rights personnel. At present, the U.N. Centre for Human Rights has country expertise but no field presence. In the short-term, the Centre can strengthen its coverage in the field by the continued expansion of its advisory services and technical cooperation. In addition, by offering services such as training judges, strengthening electoral commissions, establishing ombudsmen, training prison staff and advising governments on constitutions and legislation regarding national minorities and human rights, the Centre is likely to be more successful in its activities and less threatening to governments than in more straight forward fieldwork-oriented human rights monitoring.
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

In recent years, there has been much discussion about the creation of special human rights machinery for the internally displaced. At its 1993 session, the U.N. Human rights Commission reappointed the Specials Representative on the Internally Displaced to monitor mass displacements of people, collect information on violation of their human rights, and help to sustain a positive dialogue towards achieving solutions with governments of the country of origin. But the Special Representative must be given proper political support and funding to carry out his or her tasks effectively. A General Assembly Resolution confirming the role and mandate of the Special Representative is now required to institutionalise this office further. A significant first step towards trying to deal with the problem would be to designate a permanent representative for the internally displaced. This representative could undertake fact-finding missions intercede with governments, embark on activities which strength institutions that sustain democracy and civil society, publish reports and bring violations to the attention of human rights bodies and the Security Council.

Recent, thee have been attempts to create closer linkages between UNHCR and the human rights organs and activities of the U.N. system. In 1992, for example, the Centre for Human Rights and UNHCR drafted a memorandum of understanding so that human rights information collected by UNHCR could be forwarded to the Centre for Human Rights. At the end of 1992, UNHCR and the Centre established a joint working group to study mechanisms and approaches for enhanced and continuous collaboration. Such consultation should be strengthened to ensure that displacements emanating from human right violations are brought to the attention of the Commission on Human Rights, and that the work of the Centre’s advisory services section adequately addresses human rights issues associated with refugee movements and internal displacements.
Military Involvement in Future Refugee Emergencies

The emergencies in the post-Cold War era have highlighted the need for more effective interface between humanitarian relief and political and security considerations. Relief programs frequently now run alongside peacekeeping efforts or other types of military intervention. Indeed, humanitarian aid is likely to become increasingly militarised, especially because of the heavy casualties among relief workers and fighting, for example, in Mozambique and Bosnia. Recent experience has demonstrated that the military has instant access to a range of material and logistical resources which simply are not available to UNHCR and other humanitarian organisations. With the greater use of military convoys and the need for security training among UNHCR staff, UNHCR field operation in conditions of continuing conflict are, in fact, becoming increasingly militarised.

While the potential for cooperation between humanitarian organizations and military forces should not be discounted, it is evident that the objectives and working methods of two groups of actors are different, and, in some cases, contradictory. As relief operations in countries such as Iraq and Somalia have indicted, military forces rarely if ever, have a purely humanitarian agenda. Moreover, they are generally unwilling to work under external direction, even in operations conducted under U.N. auspices. Recent experiences in Bosnia also demonstrate that the provision of military security for relief operations can compromise the new neutrality of UNHCR and its staff, and can even threaten the delivery of humanitarian assistance. Military intervention may also have an adverse impact on the resolution of conflicts. In the struggle to provide aid to the displaced and other war victims, the resolution of the root causes of the conflict can easily become increasingly peripheral.

In future operations, there should be greater efforts to ensure the complementarity of humanitarian and political objectives. If military
THE HUMAN RIGHTS OF REFUGEES AND INTERNATIONAL REFUGEE REGIME

intervention for humanitarian purposes is undertaken, it should fit into an integrated humanitarian or conflict resolution framework, and humanitarian assistance and the protection of refugees and displaced persons should not be subservient to or compromised by the political and military decision-making process and priorities. Any humanitarian action needs political support, but humanitarian agencies and military forces should work as partners in situations where humanitarian and political objectives carry equal weight.53

UN Secretary-General should ensure that the peacekeeping peacemaking and humanitarian components operating in complex emergencies are better coordinated. Further, the Secretary-General should ensure that each of these components embraces and explicit humanitarian mandate that recognizes the primary of human rights and refugee protection in the conduct of peacekeeping activities. This would prevent the recurrence of situations, as have occurred in Bosnia and Somalia, where U.N. military or civilian staff have failed to prevent or ameliorate human rights abuses, claiming that such action is beyond their mandates. In the long-term, the DHA should be given the necessary capacity and ability to coordinate all the dimensions and actors involved in refugee emergencies.54

D. Future International Cooperation and the Global Refugee Problem

The refugee emergencies of the post-Cold War era highlight the fact that combating the causes of forced migration cannot proceed solely within the mandate of international humanitarian organizations. The global refugee problem is not a humanitarian problem requiring clarity but is a political problem requiring political solutions, and as such it cannot be separated from other areas of international concern such as migration, human rights, international security and development assistance. Such as approach raises complex questions of harmonization of efforts, coordination, determination of institutional responsibilities and allocation resources.55
4. RECAPITULATION

Thus, the challenge of the 1990’s for the international community will be to respond not only to the immediate humanitarian problems of displaced people, but in the long-run, also to confront the conditions which lead to these dislocations. These are political task requiring a more active role from national policymakers and a greater willingness to utilise fully the U.N. and regional mechanisms on security, peacekeeping and human rights in anticipating as well as reacting effectively to refugee incidents around the world.

Unfortunately, UNHCR does not enjoy a statutory status as other subsidiary institutions of the UNO since it is a creation of governments who are wielding a greater amount of political clout in the global politics of human rights. Though it is responsible for the protection and preservation of human rights of refugees but it has initially been allowed to take care of only specific situations of refugees in a particular geo-political part of the world. Therefore, it is extremely warranted under the contemporary circumstances that the mandate of UNHCR inter alia reformulation, re-structuring and re-drafting of the existing refugee law must be carried out keeping in view the present day realities. Moreover, other human rights instruments of national, regional and transnational character must also be made sina qua non-part of the international refugee law.

A more comprehensive and effective international response to refugee problems will require adequate and readily available resources. UNHCR, the Office of the Emergency Relief Coordinator, and other UN agencies cannot accomplish their missions unless the major donor states, including the United States, are prepared to bear a greater financial support and reinforcement of existing institutional mechanism are the only effective ways for the international community, both to manage interdependent issues like refugee movements, and to ensure long-term strategic stability.
THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

NOTES AND REFERENCES

1. Igor Khokhlov. Professor, Moscow State Institute of International Relations.

2. THE DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE U.N. [GA. Re. 2625 (XXV)].


5. ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

6. Since, however, the declaration is steadily moving into the domain of international customary law, the imperative aspect of the principle of asylum is constantly strengthened therewith (DECLARATION ON TERRITORIAL ASYLUM, G.A. Res. 2312 (XXII)).


10. The term “in the same circumstances” implies that any requirements which the particular individual would have to fulfil for the enjoyment of the right in question if he were not a refugee must be fulfilled by him with the exception of requirements which by their nature a refugee is incapable of fulfilling (Article 6 of the 1951 Convention).


12. STATUTE OF THE OFFICE OF UNHCR, item 1 (G.A. Res. 428 (v).

13. Article 6 of the UNIVERSAL DECLARATION OF HUMAN RIGHTS.

14. Article 13 of the UNIVERSAL DECLARATION OF HUMAN RIGHTS.


17. Article 1.2 of the OAU Convention of 10, Sep. 1969 governing the specific aspects of refugee problems in Africa.

18. Supra note 16.

19. Article 3 of UN DECLEARATION ON TERRITORIAL ASYLUM OF 14 DEC. 1967.


21. Supra note. 9.

22. Article 16.3 of the UNIVERSAL DECLARATION OF HUMAN RIGHTS.


THE HUMAN RIGHTS OF REFUGEES AND
INTERNATIONAL REFUGEE REGIME

32. Ibid.
36. Ibid.
38. Supra. note 26.
40. Supra. note 26.
42. Ibid. p. 56.
47. QIPS are small-scale development projects such as the digging of wells, which lead to the immediate rehabilitation of communities. This model was first devised in Nicaragua and subsequently extended to Afghanistan, Cambodia and Somalia.
54. Supra. note 26.
55. Supra. note 26.
CHAPTER-VIII

THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE
1. AN OVERVIEW

Human rights are freedoms, which are granted equally to all persons without distinction. In a sense, human rights can be considered universally recognized standards of behaviour. The violation of these standards by States, or other agents, may give rise to situations, which lead to the creation of refugees. Refugees, by definition, are victims of human rights violations.¹

Viewing the refugee problem in the context of human rights is clearly relevant. In fact the origin of the international system of refugee protection, as codified in international refugee law, grew out of concern for the plight of refugees fleeing the troubles of post-war Europe. Regrettably, protecting and assisting victims of human rights violations which result in forced displacement is as relevant today as it was some fifty years ago. However, refugees are not simply victims of human rights violations as they represent a distinct group of individuals who are without the protection of a national State. The international system of refugee law was adopted in order to replace the protection, which is normally provided by and is the responsibility of national governments for their citizens.

The idea of developing a system of law, which protects the human rights of individuals, is also nothing new. Many States have been established on the basis that individuals have certain inherent rights, which must be respected by the State. The idea of establishing a system of international human rights law is a more recent development, which has been catalysed through the United Nations. The 1945 UN Charter proclaims in its Preamble that promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion is a primary purpose of the United Nations. Member States of the UN pledge themselves to take action in cooperation with the United Nations to achieve this purpose.
Apart from the UN Charter, the Universal Declaration of Human Rights of 1948, and the Convention relating to the Status of Refugees of 1952, a number of other international human rights standards and instruments have been developed and adopted by Member States of the United Nations. These include the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966)—collectively known as the International Bill of Rights— the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Convention relating to the Status of Stateless Persons (1954), and the Convention on the Elimination of Racial Discrimination (1965), and the Convention on the Elimination of Discrimination against Women (1979). More recently, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989) have been adopted at the international level.

In addition to the central foundational status of the Universal Declaration of Human Rights, more than 189 States have ratified or adhered to at least one (or in the majority of cases more) of these international human rights treaties, thus establishing binding legal obligations of a continuing nature. Several south Asian States are party to the major human rights Conventions in addition to the 1949 Geneva Conventions and their 1977 Additional Protocols governing the laws of war.

Among the international human rights treaties, India is party to the two international Covenants as well as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women. India has also ratified the Convention on the Political Rights of Women, the Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against
2. RESORTING TO ‘HUMAN RIGHTS’ TO ENHANCE THE PROTECTION OF REFUGEES

In the international system of human rights protection, the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights cannot be regarded as an unfriendly act by another State. Similarly, and particularly in the post-Cold War context, it is widely acknowledged that international attention to human rights violations is not an interference in a country’s domestic affairs but is rather part of routine international diplomacy. Although some States will go to great lengths to avoid scrutiny or criticism before international human rights bodies, the international community has identified a need to strengthen and improve application and enforceability of the international system of human rights protection. This has been realized through, for example, the UN-sponsored human rights missions in Cambodia, El Salvador, Guatemala, Haiti, the former Yugoslavia and Rwanda; the establishment of international criminal tribunals for the former Yugoslavia and Rwanda; and technical cooperation in the field of human rights with governments and other actors. Of course the degree varies, ranging from assistance and advice, to monitoring and reporting and direct protection.

In its own policies and programmes, UNHCR has incorporated a number of human rights principles. Its protection activities in countries of asylum and countries of origin include working with States in the areas of legal rehabilitations, institution building, law reform and enforcement of the rule of law and providing humanitarian assistance to internally displaced persons. Increased cooperation with international and regional human rights mechanisms are also new areas of involvement for UNHCR. These activities
add to an already overburdened agenda. Some States have expressed concern that UNHCR should not undertake tasks, which go beyond its formal mandate. This concern is well taken as these more recent activities are placing considerable strain on UNHCR’s limited resources. In this context the question of whether UNHCR has the capacity and capability to do these tasks must be addressed. Despite these apprehensions, in this era of downsizing and reform of the UN system it seems unlikely that UNHCR will be permitted to continue its activities along traditional lines. Furthermore, ‘in country’ protection activities are becoming increasingly formalized as part of UNHCR’s evolving protection mandate.4

In efforts to prevent refugee flows the UN and others, notably NGOs, are providing technical assistance to States within a general human rights framework. This includes the promotion of human rights standards through the training of judges, lawyers, and human rights activists; giving substance to educational rights by funding the construction of new schools in war-torn countries; and promoting economic rights through community-based projects focused on providing assistance to returning refugees. Promoting enactment and enforceability of domestic refugee and human rights laws, promotion of national human rights institutions, and training of government authorities, are other prevention-oriented activities in which the UN, Governments, and NGOs are increasingly engaged.

As part of the development of human rights principles through UN Conventions, a number of international treaty bodies have been established to investigate violations, enforce standards, and assist States in implementing their treaty obligations. These bodies have the authority to examine periodic State party reports regarding implementation of the treaty provisions. With the agreement of States, some treaty bodies have the competence to investigate and decide upon individual and inter-State complaints and undertake field missions in order to monitor implementation measures.
During examination of State party reports the Committees may prepare formal conclusions and observations on the performance of States in complying with international human rights law. They may also formulate specific recommendations to Governments. In recent years, some of these Committees such as the Human Rights Committee, the Committee on the Rights of the Child, and the Committee Against Torture, have regularly raised issues about the treatment of refugees by State parties to the respective Conventions.\(^5\)

The UN human rights machinery has paid increasing attention to the plight of refugees. This raises awareness of refugee protection issues through promoting legal standards for refugees and internally displaced persons in addition to sharing information concerning incidents of violations of refugees’ rights. Human rights NGOs and UNHCR have played key roles in educating members of the international and domestic human rights communities on the linkages between safeguarding human rights and refugee protection. These initiatives have firmly entrenched human rights issues in relation to the refugee problem.\(^6\)

3. NATIONAL HUMAN RIGHTS INSTITUTIONS AND REFUGEE PROTECTION

On a regional basis a number of human rights treaties have been adopted. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights (1969), and the African Charter on Human and Peoples’ Rights (1981). In South Asia, despite efforts in this direction, no regional human rights framework has yet been established. However, several Asian States have enacted or have expressed their commitment to enacting national human rights legislation.\(^7\)

In the absence of a formal legal framework governing the treatment of refugees, several South Asian countries have chosen to manage influxes of refugees through administrative decisions rather than through specific
legislative enactments. This has advantages in that it allows for flexibility in the granting of asylum. India, for example, generously accepts large groups of refugees who are fleeing not just for reasons relating to persecution, but also due to generalized violence, as is the case of Sri Lankan Tamils. However, this does not hold good for all groups as certain refugees like Afghans, Iranians, Iraqis, Somalis, Sudanese, and Myanmarese are not recognized by the Indian Government. For which reason UNHCR has had to intervene through determining and granting refugee status under its mandate.

This differential treatment of refugees is a fundamental problem. It negates the provision of legal rights and assistance, which would normally be granted by an asylum country. Moreover, it is not clear what legal status or rights accrue to a person as a result of registration by the Government and corresponding national laws governing the entry and stay of foreigners.8

Although the host of international human rights instruments which have been ratified by India and other South Asian countries may significantly strengthen the international regime of human rights protection in the region9, it remains a curiosity that none of the South Asian countries have acceded to the international refugee instruments.10 Nor have any of them enacted a domestic legal framework in the form of a refugee or asylum law or determination procedure.11 In the absence of a domestic legal framework and procedure, national human rights institutions and the courts can play an important role.

The 1993 Protection of Human Rights Act 12 established the Indian National Human Rights Commission (NHRC or Commission). Under the Act the NHRC has a wide range of powers and functions. First and foremost, it may inquire *suo moto* or on the basis of a petition the violation of human rights of any person.13 Under its authority the NHRC can intervene in any human rights proceeding before any Court, or visit any jail or other institution under control of the State government to investigate illegal detentions or
conditions of legal detention.\textsuperscript{14} The NHRC is authorised to review legal provisions and factors inhibiting the enjoyment of human rights in India and make recommendations to remedy any violation. It is also empowered to summon and examine witnesses, requisition and discover documents including public records, consider affidavit evidence and undertake field investigations.\textsuperscript{15}

The NHRC may study treaties and international instruments on human rights and make recommendations on their effective implementation along with promoting research and performing functions necessary for the promotion of human rights. In respect of this particular function the Commission reportedly played an active role in encouraging the Indian government to accede to the UN\textit{ Convention against Torture.}

The NHRC comprises a chairperson who has been a Chief Justice of the Supreme Court of India, a member who has been a Judge of the Supreme Court, a member who has been a Chief Justice of a High Court, and two other members with experience in the field of human rights.\textsuperscript{16} Under the Act, Human Rights Commissions may also be established at the State level. The organisational set-up of the State Commissions are quite similar to that of the National commission with the Chairperson being a former Chief Justice of the High Court.\textsuperscript{17} At the State level the Act provides for the establishment of Human Rights Courts for the purpose of providing speedy trial of offences arising out of violations of human rights. To assist the Court, the State Government is also permitted to appoint an experienced Public Prosecutor or advocate as Special Public Prosecutor who would be responsible for conducting cases.\textsuperscript{18}

Till date, the NHRC has been considerably active in the field of protection of human rights of refugees. Specific interventions made by the Commission have resulted in wide-ranging consequences relating to the protection of Chakmá refugees who have sought refuge in the Northeastern
States of India, particularly the States of Arunachal Pradesh and Tripura. It has also effectively intervened and continues to do so in cases of illegal detention of Sri Lankan Tamil refugees in the State of Tamil Nadu. Details of these interventions are discussed below.

In 1994, an Indian NGO, the Peoples' Union for Civil Liberties (PUCL), spearheading the complaints made by the Chakmas and Hajong refugees, approached the NHRC for redress of their grievances which related to the non-grant of citizenship and attempts at their forcible expulsion from India. Intimidatory tactics employed against the refugees included acts of looting, threats, and physical violence targeting Chakma and Hajong refugees in Arunachal Pradesh. The Commission took steps to verify the authenticity of the grievances by writing to the Central and concerned State Government, and upon not obtaining a favourable response it sent an inspection team comprising senior officials of the NHRC and the PUCL. The matter was pursued further, and due to lack of cooperation on the part of the State of Arunachal Pradesh the Commission took the initiative and filed a writ petition before the Supreme Court of India.

The Supreme Court granted interim orders for non-expulsion of the refugees till the final disposal of the case. Thereafter, in January 1996, the Supreme Court issued final orders, which *inter alia* recognised that there exists a clear and present danger to the lives and personal liberty of the refugees. The court further upheld that the protection of Article 21 of the Indian Constitution, which ensures the right to life and liberty, is applicable to all irrespective of whether they are Indian citizens. The Supreme Court thus ordered that the refugees couldn’t be deprived of their life or personal liberty except in accordance with the procedure established by law. Specific directions were issued to the State Government to the effect that:

"...the State shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be
Orders were also passed for ensuring that applications for Indian citizenship made by the Chakma refugees would be duly recorded and forwarded to the Central Government for consideration. The decision of the Indian Supreme Court is hailed as a landmark judgement in respect of safeguarding fundamental constitutional rights of foreigners, in this case a group of refugees. Although the judgement is rather limited in its discussion of the scope of the “rights” applicable to refugees in India, it is a most helpful pronouncement which has since been referred to repeatedly in respective High and Lower-level courts in India that refugees, however defined, should be granted certain legal protection in India. More broadly, the decision is a successful example of the National Human Rights Commission following-up a refugee case as intervener to the Supreme Court. It this respect it creates a favourable precedent.

Another case taken up by the NHRC concerned a number of Jumma refugees in the State of Tripura. In mid-1996 the Commission sent a team to the Jumma refugee camps to investigate allegations concerning the poor camp conditions, which, as one NGO pointed out, had the effect of pressuring the refugees to repatriate. After conducting its investigation the team reported on the woefully inadequate accommodation, health and food facilities in the refugee camps. The Commission took up the matter with the State and Central Governments and is actively involved in enhancing the quality of life in the Jumma refugee camps. As a result of these interventions camp conditions have improved. However, neither UNHCR nor ICRC has been provided a role in the ongoing repatriation exercise to Bangladesh.

The NHRC has also successfully intervened in a number of cases of Sri Lankan Tamil refugees who had been detained in so-called special camps in
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

Tamil Nadu on the suspicion of being LTTE militants. A number of these refugees had been issued refugee permits by the State government recognising their refugee status and thereby authorising their stay in India. A number of these refugees had been issued refugee permits by the State government recognising their refugee status and thereby authorising their stay in India. Despite grant of the permits, many refugees were detained for illegal entry and unauthorised stay in India under the Foreigners Act. The commission took up these cases with the State government and obtained the release of many refugees.

The above examples demonstrate that NHRC can play a powerful role in protecting the rights of refugees. In considering the Indian experience it should be noted that the resources of the Commission simply cannot keep pace with the number of complaints it receives, as it is estimated that the NHRC receives over 2,000 communications monthly and has a backlog in excess of 25,000 cases. In such circumstances the delivery of justice will never be satisfactory. Nevertheless, the work of the Indian National Human Rights commission stands out as a positive example of an accessible and functioning national human rights institution.

The ability and willingness of the Commission to take up the cause of refugees in the future will depend on many factors. These include the quality and presentation of complaints, which come to its attention, as well as the crucial part played by advocates and NGOs in pursing such matters before the NHRC. In this regard the work of the national Commission should have a positive impact on the emerging activities of the State-based human rights commissions. As an institution, which enjoys independence of process and procedure, and as a result of the status and expertise of its members, there are high expectations that the NHRC will continue to play an important role in safeguarding and expanding the legal protection of refugees in India.
4. REFUGEE ASSISTANCE AND INDIA'S POLICY, PRINCIPLE AND PRACTICE

Refugees are of major international concern today. Series of humanitarian crisis have contributed to increase the global refugee population to 13.1 million.\textsuperscript{20} Care and assistance to such a large number of refugees over a long period of time when no permanent solutions are forthcoming is a matter of concern, particularly when the donor countries are less and less enthusiastic about contributing refugee aid. The Convention relating to the Status of Refugees 1951 embodies the different welfare measures for refugees to be adopted by the host countries. Articles 20, 21, 22 and 23 of the Convention provide that the refugees should be given favourable treatment in the matter of housing, education, public relief and assistance and rationing if it exists. The Statute of the Office of UNHCR does not talk of responsibility of UNHCR in providing material assistance.

Though the statute of the office of UNHCR may not have prescribed a specific role of UNHCR for refugee assistance, it along with its role of providing protection to the refugees is also providing refugee assistance in view of the urgent needs of refugees. The former UN High Commissioner for Refugees Mrs. Sadako Ogata has stated that –

"UNHCR was established by the General Assembly in 1950, to provide international protection to refugees and to solve their plight. Protection of refugees does not only mean making sure that people fleeing persecution, human rights violation or war are allowed to enter other countries to seek asylum or not forcibly returned to a country which may threaten their lives. It also requires looking after their physical and material well being, by coordinating emergency relief in the form of shelter, water, food, health care, education, and community services."\textsuperscript{21}

The Executive Committee of UNHCR have adopted different resolutions on the issue of refugee assistance and the involvement of the UNHCR in providing such assistance. The Committee expressed concern for the assistance needs of vulnerable groups like refugee children and refugee
women and also emphasized the need to respect the principles of international
solidarity and burden sharing.

Historically, UNHCR involved itself in the large-scale relief
programme in Africa and other less income regions in the late 1960s. Upon
arrival in a country of asylum, refugees were accommodated in camps and
settlements where they received food and other relief items provided by the
international community. Once the emergency phase was over, the refugees
concerned were encouraged to take up income generating or wage earning
opportunities in the hope that they would attain a level of subsistence. It was
anticipated that such refugee settlements would become self-sufficient, at
which point, responsibility for the administration could be handed over from
UNHCR to the host government but as the global refugee population grew, lot
of difficulties were experienced in providing assistance to the refugees.
Instead of becoming self-sufficient, many refugee populations continued to be
dependent on international assistance. Countries of asylum expressed growing
concern about the burden, which refugees were placing, on economy,
environment and infrastructure. Donor States were looking for ways to reduce
the financial commitment and were becoming increasingly reluctant to extend
the financial commitment for open-ended care and maintenance programmes
for refugees in low-income countries. In contrast to the established model of
refugee relief, a new approach, which stipulated that assistance should be
development oriented from the outset so that refugees could achieve self-
sufficiency. It was agreed that the international assistance should be used not
to provide relief but to promote development of both refugees and the local
population.

But this approach also faced difficulties as the ultimate objective
remained ambiguous for it was not clear whether its purpose was to promote
the solution of local integration or was its aim simply to ameliorate the
situation of refugees and local people pending the day when the refugees
could return to their home land. Host countries are reluctant for local integration. Donor countries are interested in finding lasting solutions to refugee problems and reduction in the number of refugees. They do not want to invest large sums of money on refugee populations, which are going to remain dependent on external assistance for an indefinite period. In most of the refugee emergencies the international community do provide assistance to meet the emergency situation. Emergency assistance has a very high profile and media plays a very important role. The basis for providing such assistance is the Principle of International Solidarity and Burden Sharing. Some scholars have, however, considered the question whether a theory of obligation can be fashioned to support refugee assistance. It has been argued that the existence of international treaties like the 1951 convention, the statute of the Office of the UNHC for refugees as well as regional instruments such as the 1969 OAU Convention Governing the Specific Aspects of Refugee problems in Africa place obligation on the treaty parties.

The obligations, however, require no specific level of assistance. It has also been argued that the moral obligations to provide assistance can be deduced from basic principles of human rights as well. Provision of assistance can legitimately be described as a form of human rights protection in the sense that everyone under the terms of the international human rights instruments has a right to be free from hunger, to be educated and to have adequate shelter. Donor countries can no longer afford to be as generous as they once were and fund flows are slowly diminishing at a time when needs remain high. It is becoming increasingly difficult to find new funding sources. Many countries prefer bilateral aid programs. Some donor countries prefer to give funding priority to their own national NGOs.

Countries which have ratified the 1951 Refugee Convention and the 1967 Protocol have undertaken the obligation of refugee protection and have
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

conferred rights on the refugees which *inter alia* includes right to receive assistance for food, housing and educational and health care facilities. Most of these countries have enacted domestic legislation for determination of the status of refugees and also to specify the entitlements of the refugees. India has neither signed the Convention nor the Protocol. India does not also have a domestic law on refugees but India has handled many refugee situations. The objective of this chapter is to critically examine India’s refugee assistance policy as it has emerged in handling different refugee situations. It is therefore proposed to examine the practices followed in the case of Tibetan, Bangladesh, Sri Lankan refugees in general and Chakma refugees in particular where the Government had granted recognition as refugees. It is also proposed to consider the Afghan and Bhutanese refugee situation where the Government had not granted such recognition.

A. India’s Refugee Assistance Policy:

India has a rich experience of rehabilitation of displaced persons from erstwhile West Pakistan and East Pakistan following the partition of India by the British and the creation of two independent states of India and Pakistan. An independent Ministry of Rehabilitation was created in 1947 to deal with the problem of displaced persons both from Western and Eastern Pakistan. The Ministry was later abolished but the Department of Rehabilitation continued for some period as part of Ministry of Works, Housing & Supply and again as part of Ministry of Labour, Employment and Rehabilitation. Since 1984-85, the Department of Rehabilitation has been abolished and the Rehabilitation Division in the Ministry of Home Affairs is dealing the matters relating to rehabilitation.

“About 8.1 million of displaced persons of which 4.7 million from Western Pakistan and 3.4 million from East Pakistan crossed over to India, the dimension of the problem and the rehabilitation of such vast number could be well imagined.”

329
In respect of displaced persons from West Pakistan, evacuation and relief were the chief activities of the Ministry of Rehabilitation during 1947-48 to 1948-49. Late, increased emphasis was placed on plans of permanent rehabilitation.

"From the very beginning, rehabilitation was made part of the First Five Year Plan and expenditure of Rs.1357 million was provided."23

The displaced persons were first received in camps where food, medical aid and shelter were provided. The Government concentrated on providing land and loans for the purchase of bullocks, agricultural implements and seeds for the settlement of the rural population and on providing houses and gainful employment in the case of displaced persons from urban areas. In addition, educational facilities were provided for the displaced children and vocational training was arranged to enable some of them to learn various trades and vocations.

"About 2.3 million persons had to be provided with houses. About 1.2 million persons were accommodated in evacuee houses. For the rest 0.2 million houses and tenements were planned in various States – 0.15 million were to be built by the Government and 45,000 by individuals and Co-operative Societies. Nineteen new towns and 136 colonies had been set up."24

Loans were provided for building houses for those living in a state of acute congestion in evacuee and other houses. Land was allotted on lease at subsidized rate for setting up of factories and industries. Students were granted stipends and freeships. Grants were also given for the purchase of books. Work centres in various States were started to provide gainful employment to displaced persons. An emporium was opened in Delhi where articles manufactured in these centres were kept for exhibition and sale. 0.18 million persons were provided with employment in Government and private services. In addition, other measures were taken like reclamation of land not
under cultivation, organizing training according to the capacity and aptitude, rehabilitation benefits after training, selection of persons for training as village level workers required for community Projects and National Extension Service, etc. There were elaborate administrative sets up of the Rehabilitation Departments of the State Governments.

“Non Governmental Organizations in the educational, medical and cultural sector working for rehabilitation of displaced persons were also given grants”.25

The Government of India had also set up the Dandakaranya Development Authority in September 1958 for the effective and expeditious rehabilitation of displaced persons from East Pakistan. This rehabilitation venture was basically agriculture-oriented.

“An agriculturist family was allotted about 5.5 acres of agricultural land in addition 800 sq yrds was provided for homestead. Each family was given loan for building house and also for agricultural purposes for buying agricultural implements, seeds manures and fertilizers, a pair of bullock and a milch cow. In addition, the farmers were given maintenance subsidy for the agricultural crop for three seasons. Non-agriculturist family were given homestead plot and also loans for small trade/business. 1,36,935 acres of land had been reclaimed and developed with soil conservation work. For the integrated development of the area, other schemes were also taken like (i) construction of 220 miles of main road, 343 miles of link roads; (ii) irrigation schemes: construction of dams, irrigating an area of 75,000 acres, construction of minor irrigation schemes and lift irrigation schemes etc; (iii) Water supply schemes: for water supply, tube wells, masonry wells, village tanks, over-head tanks were provided; (iv) Medical and Public health: Hospitals, Primary Health Centres, Dispensaries and Mobile Medical Units had been established and malaria had been eradicated from settlement zones; (v) Education: 210 primary schools, 14 middle schools and 3 high schools and one industrial training institute were set up; (vi) Industrial Development: Training units were set up for toy making, sports goods, umbrella assembly, lime burning, tile making and weaving. Production units had also been set up for carpentry, cart wheel manufacture, black-smithy, tile making, textiles and agricultural implements. The toal expenditure on the Dandakaranya Development Authority was Rs. 331 lakhs.”
scheme up to the end of March 1969 was Rs. 383.8 million which benefited 12,672 families.\textsuperscript{26}

Rehabilitation of the displaced persons from West and East Pakistan was organized because of special circumstances and considerations and as such will not be helpful in understanding India's Refugee assistance policy though the rich experience gained in the rehabilitation works must have guided the policy of assistance followed in the case of Tibetan, Sri Lankan, Afghan and Bhutanese refugees.

(B) Tibetan Refugees:

About 56,000\textsuperscript{27} Tibetan refugees entered India and Bhutan since 1959. The Indian Government had set up transit camps at Misamari in Assam and Buxa in West Bengal. In these transit camps, refugees were provided with rations, clothing and cooking utensils as well as some medical care.

"The Government of India proposed three approaches: first, resettlement in agriculture, horticulture and animal husbandry; secondly, the establishment of centres for training refugees in the production and sale of Tibetan handicrafts; and finally, the establishment of small industries to be run and operated by Tibetans."\textsuperscript{28}

The main land settlements were set up at Bylakuppe, Mundgod and Cauvery valley in Mysore State, at Main part in Madhya Pradesh, at Chandragiri and Mehendragarh in Orissa, at Tezu and Changlang in Arunachal Pradesh and at Paro, Thimpu, Jumenyang and Khaskha in Bhutan. At Bylakuppe settlement, 3267 Tibetan refugees had been settled in an area of 3500 acres of land, each family of 5 members had been provided with a house and 5 acres of cultivable land and a small plot for a kitchen garden. Roads, water supply and medical and educational facilities had also been provided. At Mundgod settlement, 1400 acres of reclaimed land have been put under cultivation and similar facilities like that at Bylakuppe had been provided.

In Cauvery valley settlement 700 families have been provided with permanent houses and some 1800 acres of land reclaimed from the forest. At Mainpat settlement in Madhya Pradesh, 303 families have been settled in an area of 2000 acres of land. At Tezu and Changlang settlements in Arunachal Pradesh, 2020 Tibetans have been settled; each family of 5 members has been allotted 5 acres of land. At Chandragiri and Mahendragarh settlements in Orissa, 3000 Tibetans have been settled. 1800 Tibetans have been settled in Bhutan." "97,908
THE STATUS OF REFUGEES IN THE NORTHEAST
INDIA: INTERNATIONAL PRINCIPLES AND
INDIAN PRACTICE

Tibetan Refugees are staying in India and their distribution in various states are as follows:

Andhra Pradesh : 400
Arunachal Pradesh : 6,004
Himachal Pradesh : 19,346
Delhi : 3,022
Jammu & Kashmir : 5,704
Karnataka : 31,467
Madhya Pradesh : 1,650
Maharashtra : 1,100
Sikkim : 5,025
Orissa : 3,900
Uttar Pradesh : 12,737
West Bengal : 7,386

Handicraft centres were started for Tibetans refugees where carpets, blankets, brasswares, Tibetan and Indian garments and knitted ware were produced. An emporium, which serves as a clearinghouse for the articles produced and different handicraft centres have been set up in the Tibet House in New Delhi. A Tibetan Industrial Rehabilitation Society was set up in 1965 to provide the administrative framework to formulate and implement industrial projects for the rehabilitation of Tibetan refugees with funds from voluntary agencies. The Society had established following projects in Himachal Pradesh:

(i) Woolen Mills at Bil
(ii) Lime Quarry at Kumraoh
(iii) Dehydrating Lime Plant at Sataun
(iv) Fibre Glass Industry at Paunta
(v) Tea Estates at Bir, and Chautra
(vi) Tibetan Craft Community, Patrola
(vii) Sakya Agricultural Settlement at Puruvala

Education facilities are being provided to the Tibetan refugees through the Central Tibetan Schools Administration set up by the Ministry of Education, Government of India. The Central Tibetan School Administration is at present running 7 residential schools besides a number of day schools in
the land settlement areas and also near the camps. The Central Relief Committee of India is providing medical facilities, which had set up 7 well-equipped hospitals in relief camps and other areas for Tibetan refugees.

"Tibetan refugees have been issued ration cards by the various State Government. Upto 1992-93, an expenditure of Rs.161.6 million was incurred on Tibetan refugees. And expenditure in subsequent years is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993-94</td>
<td>Nil</td>
</tr>
<tr>
<td>1994-95</td>
<td>Rs. 3.0 million</td>
</tr>
<tr>
<td>1995-96</td>
<td>Rs. 3.42 million</td>
</tr>
</tbody>
</table>

"The level of expenditure in 1968-69 and 1969-70 were of the order of Rs.6.53 million and Rs.7.4 million respectively."

(C) Bangladesh Refugees:

In the year 1971, refugees numbering about 10 million entered India from erstwhile East Pakistan in the wake of repression of democratic forces on the civilian population in East Pakistan by the military junta of West Pakistan. The Government decided that, on humanitarian grounds, the refugees should be given succour. About 1200 camps/reception centres were established for accommodating the refugees. Arrangements were made for provision and distribution of foodstuffs, drinking water and medical care. Resources of other agencies like the Food Corporation of India, the Railways, etc., had also to be pressed into service. Four million to ten million of refugees from Bangladesh were looked after, for a period of about eight months, without any serious repercussions on health or law and order.

From the last week of March 1971, refugees began pouring in from Bangladesh into the Border States of West Bengal, Assam, Meghalaya and Tripura. The Ministry of Home Affairs issued instructions to all the Border State Governments to screen the refugees properly and register them under Section 3 of the Foreigners Act, 1946. The refugees were given residence permits for a period of three months in the first instance. It was decided that
refugees should be provided with relief and the cost of such relief would be met by the Central Government. The State Governments were accordingly requested to undertake the requisite relief program on behalf of the Central Government.

"Of the 10 million refugees who came to India, about 69% were admitted to camps; others stayed with their friends and relatives. No relief assistance from Government was admissible to those who were staying with their friends and relatives. Public institutions like school buildings, community halls, etc., were requisitioned where they were temporarily accommodated, pending construction of temporary shelter for them. The State Governments were authorised to construct temporary shelters at a cost not exceeding Rs.5/- per sq.ft. Floor area allowed for each family was 100 sq.ft. The State Governments used the locally available construction materials and built the temporary shelters employing refugee labour in the majority of the cases. 82,026, tents/shoulderies and 24,000 tarpaulins were supplied through DGS & D, a Central Purchase Organization of the Government of India."^34

In order to ease the pressure of refugees in the border areas in the States of West Bengal, Assam, Tripura and Meghalaya, it was decided that a proportion of refugees should be dispersed to other States and for this purpose centrally run camps should be set up in those States. It was also decided to set up a few large sized Central camps in the Border States also. As a result of these decisions, 19 Central camps had stated functioning in the Border States and other States and 5,69,361 refugees were dispersed to the Central camps.

"The Shelter material received from abroad provided tentage accommodation to 1,60,000 families. And there was further need of tentage accommodation for 2,20,000 families."^55

Reported refusal of some States to accommodate the Bangladesh refugees was debated in the Lok Sabha, which the members raised through a Call Attention Motion considering the importance of the subject. The Government had stated in the Parliament that –
"the Government of India wanted to accommodate these refugees as near the border as possible so that they were in a position to return as soon as normal conditions were created. It was further stated that because of heavy rush of refugees there had been serious congestion in the border states of West Bengal and Tripura and the State Governments had been complaining of their inability to cope with the problem and in order to relieve the pressure on the two states it had been decided to disperse some of the refugees to large sized camps either in the interior of West Bengal and Tripura or in other states, and these camps would be run by the Central Government. Some members opined that the congestion could not be relieved by removing the refugees from the border to the interior of the same State; moreover the total number of refugees who were to be dispersed would be a small number in comparison to the total of 5 to 5.5 million of refugees. Member also stated that the state's formal permission might not be necessary but some consultation would be necessary so that they make necessary arrangements. It was also stated that there had been disquieting report that many refugees were not wanting to go to other states. On the question whether the Government thought that remedy lied only in some coercive measure as reported in press that refugees had been told that, if they refused to go, their ration would be stopped or the Government would resort to some form of propaganda campaign in camps to persuade these people to go. It was clarified by the Government in the Parliament that the congestion was confined to particular places near the border and the places where the camps were proposed to be located were far off from the border where the pressure of population was not much. The Government also clarified that the Government wanted to remove as many as 2.5 million refugees to camps. Regarding transport facilities it was said that the Government had received large size transport planes for carrying the material needed for the refugees and in the other way while returning they would be bringing refugees to the various camps. It had also been decided to run non-stop trains to camps. Refugees coming from a single village wanted that they should be put in a single place the Government decided to respect such sentiments of refugees and categorically stated that no coercion would be used."

The Ministry of Labour & Rehabilitation looked after the refugee camps. And the Government categorically stated in the Parliament "that there was no question of Army taking over these camps."
(i) Medical Relief and Health Care:

Instructions were issued to the Central Government Medical Store Depots at Calcutta and Guwahati to store adequate quantities of critical items like anti-Cholera vaccines, re-hydration fluids, bleaching powder, anti-malaria drugs, anti-biotics, etc. To facilitate supply four sub-medical store depots were set up at Agartala, Karimganj, Tura and Dhubri. To meet the shortage of doctors and para-medical personnel, 500 medical and para-medical staff were sent from the Central Medical Services, Railway Medical Service as also from some of the States, Public Sector Undertakings, and Voluntary Organizations. Two regular epidemiological units were set up to help investigate epidemics.

"The state Government were allowed to employ medical and para-medical personnel from amongst refugees on daily wages. In all, about 800 doctors, 2100 para-medical staff and 72 medical students were engaged in refugee medical relief programmes. There were 700 medical units functioning in the camps. 50 referral hospitals (existing and new) served the refugees. Additional beds (3800) were established in the hospitals. A 100-bedded mobile hospital was functioning at Bashirhat in West Bengal. All available WHO/UNICEF vehicles meant for the normal health programs were diverted for the refugee relief work. Mass inoculation programs with the help of jet guns within a radius of 5 miles of the camps and in towns with population of 20,000 and above were undertaken." 38

Labour cases were admitted to hospitals attached to camps or nearest hospitals available. Expectant mothers were provided with milk through the voluntary agencies like Indian Red Cross Society. Milk and baby food were given to infants.

The Government mentioned in the Parliament that "as supply of milk powder and baby food from foreign agencies were forthcoming to meet the demand, no special appeal to countries rich in milk production was considered necessary." The Government of Meghalaya had reported that 'upto 30th June, 1971, 1205 refugees had left refugee camps in Balat area for Bangladesh voluntarily due to scare caused by gastroenteritis. No instance of persons leaving on account of hostile attitude of people had come to the notice of the Government." 40
Water Supply and Sanitation: “A norm of one tube-well per 200 persons was prescribed. About 43 tube-wells were sunk and about 21,000 latrines were constructed for drilling large diameter and deep tube wells 48 drilling rigs of different categories were arranged. In addition, water tankers were arranged for distribution of water.”

Nutritional Schemes: “It was estimated that nearly 50% of the infants and children of pre-school going age fell into the categories of either moderate or severe degree of protein, calorie malnutrition. A scheme called Operation Life Line had been undertaken to meet the nutritional needs through specially set up nutritional feeding centres. The advanced cases of mal-nutrition were treated at clinical therapy centres.”

(ii) Civil Supplies:

With a view to ensure regular supply of essential commodities to the refugees in camps and curbing the trend in rise of prices, arrangements were made to supply rice, wheat, pulses, edible oil, sugar, salt and match boxes through the Food Corporation of India. FCI opened new depots at Dhubri, Karimganj, Kokrajhar and Goalpara in Assam and Tura in Meghalaya. The Government of Tripura also made available to Food Corporation of India depots of the State Government at Dharmanagar, Udaipur and Agartala for stocking essential items. Due to devastating floods in Eastern States during August and September, 1971, there was serious dislocations in rail and road traffic with the result that supply of essential food stocks to North Bengal, Assam, Meghalaya and Tripura got seriously disrupted. Supply of essential items like medicines and food grains were, however, maintained by airlifting adequate quantity of buffer stock for 3 months of food grains and other essential food items in Tripura, Assam, Meghalaya and North Bengal. The Government stated in the Parliament that—

“there was no negotiations with any country for import of foodgrains to meet the requirements of refugees. Offers of some foodgrains had, however, been received from USSR, USA, Japan and certain international organizations like WFP, UNHCR. According to an estimate prepared feeding 6 million refugees for a period of 6 months, the quantity of rice required was put as
5,80,000 tonnes. The total number of refugees exceeded 7 million and the influx continued unabated. These refugees were supplied from the existing stocks available in the country which was to be recouped from food aid. The monetary ceiling fixed for supply of food stuff, etc., to refugees was Re.1 per head per day for adults and 60 paise per child between the age of 1 and 8 years and 20 paise per child below 1 year of age. Within this monetary ceiling, the scale of ration was as follows:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>ADULT</th>
<th>CHILD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rice</td>
<td>300</td>
<td>150</td>
</tr>
<tr>
<td>Wheat/Atta</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>Pulses</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>Edible Oil</td>
<td>25</td>
<td>12</td>
</tr>
<tr>
<td>Sugar</td>
<td>25</td>
<td>15</td>
</tr>
</tbody>
</table>

For refugee children up to 1 year of age, milk powder and baby food were issued out of donations made by international foreign and voluntary organizations. After computing the cost of the rationed articles, the balance amount of the prescribed monetary ceiling was disbursed in cash, which was not to exceed 33 paise and 20 paise per head per day in respect of adults, and children respectively for purchase of vegetables, salt, spices, fuel, hair oil and washing soap. Scale of clothing's and monetary ceilings were also decided. Monetary ceiling of Rs. 14 was fixed for adult male and female refugees respectively and Rs.10 for boys and girls respectively. Supply of woollen and cotton blankets to the refugees staying camps at the rate of 1 blanket per adult subject to a maximum of 3 blankets per family was arranged. Utensils and mats were also supplied to refugees in deserving cases.

(iii) Education:

As the refugees were staying in India for a temporary period and they were to return to Bangladesh eventually, it was not considered necessary to provide any elaborate schooling for them herein India. However, educational lectures were organized for boys and girls in the camps through the social workers and NSS on payment of daily honorarium @ Re. 1 per teacher. The refugees in camp were encouraged to undertake social welfare activities, such as distribution of ration, construction of shelter, looking after sanitation and general cleanliness of camp premises. The women were also encouraged to
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

keep themselves profitably engaged in sewing handicrafts and beedi making. With a view to provide recreational entertainments for refugees in camps, community radio sets were provided. Arrangements were also made to provide facilities for simple games like football, etc.

Women's home and Orphanages were set up for single women and orphans so that they could live in a congenial atmosphere. These homes were run by social organizations. In these homes, the single women were given training in sewing, cutting, doll making, first-aid, nursing, handicraft, etc.

(iv) Assistance INTER-ALIA Foreign Assistance:

The administrative set up was strengthened by opening a branch secretariat of the Department of Rehabilitation at Calcutta in order to look after the day to day problems of relief operations in co-operation with state Governments and other Central agencies concerned.

From the very beginning, it was made clear that the government of India was looking after the refugees on humanitarian grounds but the relief to such refugees was really the responsibility of the international community.

“A sum of Rs. 80 million was advanced to the Food Corporation of India in April 1971, for purchasing adequate quantities of foodgrains and other essential commodities and for stocking them in their godowns in the border areas. Originally a provision of Rs. 600 million was made in Budget Estimates for 1971-72 towards relief of refugees. An appraisal of the Fourth Five Year Plan was undertaken which took note of the emerging social and economic situation including the influx of the evacuees from East Pakistan. It was decided that while making a reappraisal of the Fourth Five Year Plan, if some additional amount were required, it would be taken into account. As the influx continued and the expenditure on relief of refugees increased total supplementary grant of Rs. 3000 million was obtained in two instalments. While preparing the original estimates and Demands for Supplementary Grant, the expected foreign aid estimated at Rs. 1100 million, was taken into account. The Government imposed a new tax to meet the refugee situation. “The total receipt from refugee levies imposed by the Central and State Governments were estimated at Rs. 75 million whereas the total expenditure was of the order of Rs. 3060 million. The rest of the
expenditure was financed from relief assistance received from abroad and normal budgetary resources."46 "The refugees from Bangladesh were not allowed to work to pursue any trade or profession pending their return to Bangladesh".47

"A team headed by Mr. Charles Mace, United Nations Deputy High Commissioner for Refugees made an on the spot study of the refugee problem in May 1971. The requirements of various items of food, medicines, milk powder, vehicles, tarpaulins were placed before the team by the Government of India, the requirements at that time were estimated at $175 million on the basis of an estimate of 2.3 million refugees in camps for 6 months. Subsequently the estimates of the requirements were reviewed with the continued influx of refugees the World Bank estimated the total requirement at $700 million (Rs. 5250 million) till the financial year ending March 31, 1972.48

The United Nations High Commissioner for Refugees posted a representative in India to act as a focal point for the aid received from various sources. A special meeting of the Aid India Consortium was held in Paris on 26th October 1971 under the chairmanship of the representatives of the World Bank. The Consortium recognized the need for special assistance to India to offset the burden of refugee relief. Members emphasized that assistance for refugee relief should be in addition to normal developmental assistance. The delegates urged the UNHCR as the focal point of the whole UN to continue its efforts to seek contribution from the international community to cover the total cost of relief. In response to an appeal issued by the Secretary General of the United Nations, offers of aid were received from various UN Agencies, foreign Governments and international voluntary agencies. The Secretary General of UN issued two appeals, one on the 19th May and the other on the 16th June 1971. The first appeal was addressed to Governments, inter-governmental and non-governmental organizations as well as private sources to help meet the urgent needs for the humanitarian assistance to the refugees from East Pakistan in India. In the second appeal, the Secretary General referred to organizing relief operations with the cooperation of the Pakistan Government for the people in East Pakistan called upon the Governments and
other organizations to contribute in cash and kind to the humanitarian effort for assistance to the people of Pakistan in East Pakistan itself. The Prime Minister of India also personally addressed letters to foreign Governments for aid. Offers of assistance from various international agencies up to end of March 1972 amounted to about Rs.1983.7 million. Various countries and international organizations offered foodgrains, cooking oil, medicines, sheltering material and also cash grants. Assistance from the internal sources had also been received directly by the State Government.

"The Indian Red Cross Society had allocated supplied worth about Rs. 8,80,000 to their State branches for providing relief to the Bangladesh refugees. Amongst the items included milk powder, clothes, sarees, dhotis, blankets, footwear's, penicillin vials, sera, vaccines, medicaments, tablets, vitamins, tents, etc."^\textsuperscript{50}

Management and distribution of relief material also posed number of problems.

"Members of Parliament raised the issue of reports in newspapers that certain countries or agencies were offering some material which the Government said that the Government told them not to send. The members quoted the example of the Government of Australia, which offered to send some medical teams, but the Government of India declined the offer saying that the Government had enough doctors. Members also raised the issue of the consignment of the codfish sent by the Norwegian Red Cross Society which lying at the airport and not lifted and they were told not to send any more consignment of fish since it was a very unsuitable commodity. Members also questioned in the Parliament the basic issue whether the Government of India had any clear conception about the specific things that they wanted for relief purposes."^\textsuperscript{51}

There were reports of corruption and mal-practices regarding handling of refugee assistance in refugee camps in West Bengal, Tripura, Meghalaya and Assam. The Government had replied in the Parliament that "complaints regarding malpractices had been received. In respect of allegations relating to State camps, which were administered by the State Governments, the complaints were generally referred to the State Rehabilitation Authority for enquiry
and necessary remedial action. In respect of Central camps, necessary departmental enquires were undertaken by the Central government agencies, like Director General of Refugees, or by CBI. As a result of such enquiries, either departmental action was taken or cases were referred to the police wherever such action was warranted.\textsuperscript{52}

"Certain press reports alleging some relief goods for Bangladesh refugees received by Indian Red Cross and Oxfam having found their way into the market was denied though enquiries to alleged leakage were made.\textsuperscript{53}

A Coordination Committee for the coordination of supplies received as aid from international organizations, foreign counties and voluntary agencies abroad was set up with representatives from various Ministries and international organizations like WFP, UNHCR, WHO, etc. The problem of refugee influx into India and the question of aid was also discussed in the Executive Committee Meeting held at Geneva from 4\textsuperscript{th} October 1971 to 13\textsuperscript{th} October 1971. The UNHCR issued the second appeal to the International Community for further relief assistance to the cause of refugees.

To a question what action the Government proposed to take when the mark of Bangladesh refugees that could be given shelter had crossed the Government had replied in the Parliament that –

"on humanitarian considerations it would not be possible for the Government to refuse entry to the refugees from Bangladesh. Government was conscious of the fact that providing food, shelter and other basic facilities would impose a serious strain on our resources.\textsuperscript{54}

The Government had invited Parliamentarians, Diplomatic representatives and other important persons from all countries of the world to visit the Bangladesh refugees camp in order to have first-hand knowledge of the facts.

"Parliamentarians from USA, UK, Canada, West Germany, Ireland and Australia, besides. Ambassadors and other officials of Diplomatic Missions located in New Delhi had visited the camps on invitation of the Government of India.\textsuperscript{55} The then United Nations High
Commissioner for refugees Prince Sadruddin Agha Khan also visited the refugee camps in India. It was stated by the Government in the Parliament that “the Indian Embassy in the Arab countries had been kept informed about the constant refugee influx from East Pakistan and other relevant facts for giving adequate publicity.”

“Immediately after the surrender of the Pakistan forces and the inauguration of the Republic of Bangladesh refugees started going back to their country. From 1st Jan 1972 an organized program for the return of refugees was finalised. The returning refugees were allowed 2 weeks ration. The State Governments were authorised their discretion in allowing one weeks ration in kind and cash equivalent of one weeks ration. Further, journey money was also provided at the rate of Rs. 2 for the distance of 10 miles from border Rs. 5 for distance from 10 to 30 miles and Rs. 10 for distance beyond 30 miles. Camp refugees to whom clothing, blankets had already been distributed were permitted to take those items to their homes in Bangladesh. The returning refugees from camps were also paid cash grant @ Rs.30 per adult and Rs.15 per child on reaching their destination in Bangladesh by the concerned authorities. The total cost of this item was estimated at Rs.185.8 million and this amount was to be made available to Bangladesh Government as a grant. The UN focal point agreed to transfer of the relief material which remained unutilised and which was obtained through them to the Government of Bangladesh for providing relief assistance to the returning refugees in that country. At the time of return, the refugees were required to surrender their ration cards, and the registration cards and they were issued with a certificate (refugee return cards) in the prescribed form. The Government of India estimated the total cost of food and transport, etc. in respect of the refugees return to Bangladesh at Rs.1200 million.”

(D) Sri Lankan Refugees:

“Under the Indo-Sri Lankan agreement of 1964 and 1974, the Government of India had agreed to repatriate and grant Indian citizenship to 6,00,000 persons of Indian origin together with natural increase in that number by 1981-82. 4,59,327 persons (about 1,15,400 families) reached India by No. 1984. of which 94,116 families had been given rehabilitation assistance. A rehabilitation cell in the High Commission for India in Sri Lanka had functioned at Candy for providing factual data and advice to the
Ministry of Home Affairs, Rehabilitation Division in regard to resettlement of these repatriates in India. As a result of ethnic violence in Sri Lanka, even persons of Indian origin not covered by the agreement had been coming to India since July 1983. 1604 such Sri Lankan refugees had been granted relief facilities in the camps in Tamil Nadu by the end of 1984. By the end of 1985, 28,310 persons had asked for and were receiving relief facilities in the camps at Mandapam, Kottapattu and 21 other temporary camps in Tamil Nadu. The Government assured that these persons would continue to be looked after till they return to Sri Lanka. 1,34,053 Sri Lankan Tamil refugees had arrived in India up to Oct. 87 out of these 39,918 refugees were accommodated in various camps in the State, where relief facilities aggregating to Rs.700/- per month per family were provided. The grant was later increased to Rs. 1,000/- per month for a family consisting of five members, which included on element of cash dole, clothing, utensils, subsidized ration, etc. The remaining refugees were staying outside the camps on their own without seeking any governmental assistance. Till July 1988, an amount of Rs. 144.7 million had been spent in providing relief assistance to these refugees. There were two permanent camps at Mandapam in Ramanathapuram district and at Kottapattu in Tiruchirapalli district. Besides these there were 100 temporary camps in 11 other districts of Tamil Nadu details of which are –

<table>
<thead>
<tr>
<th>Village</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinglepattu</td>
<td>8</td>
</tr>
<tr>
<td>Torim;ve;o</td>
<td>2</td>
</tr>
<tr>
<td>Coimbatore</td>
<td>12</td>
</tr>
<tr>
<td>Periyar</td>
<td>13</td>
</tr>
<tr>
<td>Salem</td>
<td>8</td>
</tr>
<tr>
<td>Dharmapuri</td>
<td>4</td>
</tr>
<tr>
<td>Thanjavur</td>
<td>4</td>
</tr>
<tr>
<td>South Arcot</td>
<td>11</td>
</tr>
<tr>
<td>Madurai</td>
<td>21</td>
</tr>
<tr>
<td>North Arcot</td>
<td>5</td>
</tr>
<tr>
<td>PudilpttaI</td>
<td>11</td>
</tr>
</tbody>
</table>
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

No amount had been spent on providing rehabilitation assistance to the Sri Lankan refugees as they were not Indian citizens and were expected to go back to Sri Lanka. According to the Indo-Sri Lankan agreement of 29 July 1987, all these refugees were to be sent back to Sri Lanka in the first phase only those refugees were to be sent back who were residing in camps in so far as non-camp refugees were concerned, a press note was issued on 15 Oct. 87 requesting all non-camp refugees to get themselves registered with the nearest district headquarters in Tamil Nadu by 31st December, 1987 to facilitate their return to Sri Lanka, the last date had been extended to 29th February, 1988. According to the Report up to 31st January 1988, 5114 applications were received from non-camp refugees for registration. Necessary identification certificates had been issued to the applicants. As a result of renewed violence in phase-II arrivals, 1,15,240 refugees had also been admitted in two permanent camps at Mandapam and Kottapattu and in temporary/relief centres, spread over 18 districts in Tamil Nadu. The remaining refugees had not sought admission in the camps thus, as on 31st March 1991, a total of 2,10,726 refugees were staying in Tamil Nadu. The total number of refugees who were staying in various camps in the States as on 31st March 1991 was 1,15,742, 1615 Sri Lankan Tamil refugees were brought to Malkangiri Sub-division of Koraput district in Orissa. However, as on 31st March 1991, only 218 refugees were staying in camps in Malkangiri. The remaining had deserted the camps.

On arrival at Rameshwaram port, necessary customs check were carried out and refugees were screened for registration. Adequate drinking water and medical facilities were available at the port. Necessary inoculation was also given there. At the port, they were provided food till they were shifted to the refugee camps. Adequate drinking water, sanitation and medical facilities were available in the various camps. In the permanent camps at Mandapam, banking facilities, educational facilities and fair price shops were
also available. Adequate security arrangements had also been made in the permanent camps as also in the temporary shelters and camps. The expenditure on Sri Lankan refugees, which till July 1988 was Rs. 144.7 million went up to Rs. 610 million till September, 1991 and 856 million till Aug 1993. Apart from this, an amount of Rs. 2.0 million had been released to the Government of Orissa for meeting expenditure on providing relief facilities and for carrying out various works in the camps in Malkangiri. The State Government were only the implementing agencies but the entire cost on relief and accommodation was borne by the Central Government.

"In pursuance of the talk between the Prime Minister of India and the President of Sri Lanka during the SAARC summit in Colombo in 1991, the Government of Sri Lanka had agreed to take back Sri Lankan refugees in manageable batches. The process of repatriation of refugees commenced with effect from 20th January 1992." The refugees were put into three categories – (i) those in refugee camps as on 1.7.97 – 63,208 accommodated in 117 camps; (ii) affluent refugees who maintained themselves outside the camps 25000. Following Rajiv Gandhi’s assassination, they were asked to register with local police station. Those who had not done, 1800 were detained under the Foreigner’s act; (iii) refugees who had been identified to belong to militant group. In 1992, 1692 militants were detained in special camps. However, the Government had released those against whom there were no specific charges and permitted them to leave the country. There were about 270 militants in 3 special camps. It is worthwhile to consider the facilities available to refugees in camps, the Mandapam camp in Tamil Nadu is spread over 294.25 acres near National High Way 49. Mandapam camp sets standard for other refugee camps. 500 refugees live at present. There are 827-cottage type old building and 1200 semi-permanent buildings. Government had to pay over Rs. 10 million to Electricity Board for electricity charges of refugee camps. Elementary schools and secondary school offer quality education. Refugee children could take courses in private institution costing about Rs.500/-. Camps have sound sanitary structures. Each block of houses has a lavatory and there is no shortage of water. Underground sewerage were in place. However, an epidemic of gastroenteritis broke out in Mandapam camp in July 1996. There is a 20-bedded hospital at Mandapam camp. Curfew time is 6 p.m. Every refugee is expected to be home by then. This is
to ensure that the refugees are not up to mischief and also to protect
them from potential risk. India does not accept foreign contribution to
run these camps.\textsuperscript{67}

"The DMK Government was more sensitive to the humanitarian
aspects of the refugee situation. The Government had removed the
ban on higher education since 1996-97. Irksome restrictions on
movement of refugees had been relaxed. Sri Lankan refugees were
permitted to take up employment – a facility, incidentally denied to
Chakma refuge\textsuperscript{68} "From July 1983 to February 1996, an expenditure
of Rs.1083.4 million has been incurred in providing relief assistance
to Sri Lankan refugees\textsuperscript{69}

(E) Chakma Refugees

Since May 1986, over 70,000 tribals have fled their habitats in
Chittagong Hill Tracts of South East Bangladesh and taken refuge in the
neighbouring Indian states of Tripura and Mizoram. While those entering
Mizoram were immediately pushed back, 56,000 of them remain in six
evacuee camps in South Tripura. A majority of these refugees are Chakmas.
The rest comprise members of nine other indigenous tribes – Marma, Tripuri,
Bourem, Lushai, Murung, Pankhu, Khumi, Khijang and Chak.

(i) The Genesis of the Crisis

The Chittagong Hill Tracts (CHT) lies in the southeastern fringe of
Bangladesh. It is bordered by Chittagong district of Bangladesh in the west,
the Indian states of Tripura and Mizoram on the northwest, and the Burmese
province of Arakans on the south. The British took over the port city of
Chittagong in 1760 from the Mughals and slowly expanded their influence
into the Hill Tracts. In 1990, the British Government passed the Chittagong
Hill Tracts Regulation Act and in 1935 the CHT was declared an 'excluded
area'. Since then, the Hill Tracts people, known as Jummas, came to enjoy a
certain amount of autonomy.

After the partition of the Indian sub-continent, the Bengal Boundary
Commission headed by Sir Cyril Radcliffe gave over Chittagong Hill Tracts
to Pakistan in a controversial award. The decision shocked the tribals because

348
Pakistan was conceived as an one-religion state based on Islam and the population of the CHT in 1947 was 98 per cent non-Muslim. Led by the Chittagong Hill Tracts People’s Association, the tribals hoisted the Indian flags all over the district. But the Pakistan army crushed their agitations swiftly. The Jummas began to demand autonomy, but the Pakistan Government considered them ‘Pro-Indian’ and started persecuting them. The CHT Frontier Police was dissolved and in its place the East Pakistan Police was deployed. Also, large-scale infiltration of Bengali Muslims into the Hill Tracts began, in violation of the Regulation Act. To compound the Chakmas’ plight, the construction of the multipurpose hydro-electric project on the river Karnafuli in 1960 led to the submergence of 253 sq. miles of rich agricultural land-amounting to 40 per cent of Jumma homeland. About 100,000 people were uprooted, and they were neither rehabilitated in other areas nor given any compensation. Caught in dire straits about 40,000 took refuge in India and another 20,000 in Burma. Unmoved by the tragedy, the Pakistan Government abolished the special status of CHT by an amendment to the constitution of 1964 and thus threw upon the flood gates to plainsmen migration, leading to the subsequent bloody ethnic conflicts and periodic mass exodus of tribals into India. After Bangladesh came into existence in 1971, the conditions of the Jummas worsened. The Hill Tracts people formed the Parbatya Chattagram Jana Samhati Samity or JSS. In 1972 a delegation of hill peoples’ leaders met with Sheikh Mujibur Rahman, the first president of Bangladesh. The delegation was led by the Chakma Member of Parliament Mr. Manobendra Naryan Larma and included around 12 people from the CHT. The memorandum sought autonomy for the CHT with its own legislature, retention of the 1990 regulations and a ban on the influx of non-hill peoples. But sheikh Mujib rejected the demands out of hand. No provisions on the CHT had been included in the new constitution. Increased
numbers of Bengali settlers were coming into the Hill Tracts. One of the
Amnesty International Reports describes the meeting, and adds:

"it is reported that after this meeting a massive military action was
started including the Army, Police and Air Force attacking villages in
the tribal areas, several thousands of men and women and children
were killed according to sources close to the tribes people." Failing
thus to achieve regional autonomy through constitutional means, it
launched an armed campaign by forming a military wing, ‘Shanti
Bahini’, under the leadership of Shantu Larma, the brother of Mr.
Monobendra Naryan Larma.

Meanwhile, under successive military juntas after the assassination of
Mujibur Rahman in 1975, the repression of the Chakmas reached
unprecedented levels. Three full-fledged Cantonments, one schools of jungle
warfare and about 60,000 police and army men have been deployed by the
Bangladesh administration in the Hill Tracts. Cases of torture, mass killings,
rape and ransacking of temples have since been well documented by
international human rights monitoring agencies. The Chakmas were forcibly
resettled in concentration camp like settlements in the name of ‘ideal
villages’. The Bangladesh military has reportedly carried out at least eight
major massacres since 1980, in which nearly 2,000 people are said to have
killed.

Chakma refugees say their religious and social rights were curtailed,
Buddhists temples razed and monks tortured and forced to perform namaz.
Meanwhile, the Bengali Muslim infiltrations have been reportedly grabbing
the tribals’ land with government backing. For their part, the Bangladesh
military has forcibly occupied large chunks of Jumma land to set up camps.
Not surprisingly, the Jumma population in the Chittagong Hill Tracts has been
steadily dwindling, out numbered increasingly as they are by Bengali Muslim
settlers. As per statistics – in 1947, the non-tribal population of the Hill Tracts
was only two per cent, in 1971, it was up to 7.78 per cent; in 1980 the figure
shot up to 40 per cent, in 1986 to 45 per cent. And in 1990, the non-tribal population stood at a staggering 47 per cent.

On April 29, 1986, tribal guerrillas of the ‘Shanti Bahini’ attacked Bangladesh army and Muslim settler colonies. As the news of the guerrilla raids spread, units of the Bangladesh army went on the rampage, along with Muslim settlers, in vast areas of Kzhagracheri district of CHT. According to a report of the Amnesty International – more than fifty tribal people were killed in the Mayhem and over a dozen villages, inhabited by the tribesmen, were affected. Some eyewitnesses alleged that after entering the tribal villages, law enforcement personnel ordered the inhabitants to assemble in open ground, men separate from women, away from the villagers’ huts. While the villagers were held in this way, their settlements were reported to have been set on fire by non-tribal people. “Law enforcement Personnel were then reported to have opened fire randomly on the groups of villagers, who attempted to escape.” The killings sent thousands of tribesmen fleeing into Tripura state. By 30 November 1986, the number of CHT refugees in the six camps of Tripura had risen to 48,206. Nearly 66,000 refugees reported to the refugee camps since May 1986 in the phases, between May and November 1986 and between May and August 1989. As pressure mounted on India from the International community, India ultimately granted official refugee status to these peoples. They are sheltered in six camps in Tripura.

(ii) Relief Assistance to Chakma Refugees

At present, about 55,000 refugees are housed in the six camps – Takumbari, Kathaleherri, Karbok, Pancharam, Silachari, and Lebacherra. All these camps are situated in the South District of Tripura state. Takumbari is the largest of the camps. In September 1986, it had 11,352 refugees; this rose to 15,561, comprising 3,4004 families in January 1992. The inmates are housed in long, partitioned ‘sheds’. A ‘central executive committee’ administers the camp; with representative from the ‘blocks’, each comprising
three or four ‘sheds’. The management oversees ‘Camp discipline’ and the
distribution of rations. In Silachari Camp the number of refugees registered
are 6178, in Karbuk it is 11,000, in Pancharan Para it is now nearly 10,000, in
Kathalcherri Camp it is nearly 11,000 refugees.

India Government bears the expenditure for relief and shelter provided
to these refugees and till January 1994, had spent nearly Rs. 49 crores for
these people. The Tripura Government also has spent over Rs. 2.5 crores to
look after these refugees. Each adult refugee is entitled to receive 400 grams
of rice, 50 grams of lentils, 15 grams of salt, 10 grams of molasses, 25 grams
of flattened rice and 20 paise in cash dole per day. Minors are entitled to half
that amount and females are additionally entitled to 100 millilitres of coconut
oil for application to hair every month. The rations are generally given once a
week, but very often, the officials tend to delay, forcing the refugee to stretch
the weekly ration to ten days – on one occasion, it was stretched to 23 days,
leading to near revolt in the camps and at least three deaths ascribed by the
refugees to “suicide on account of starvation”. Refugee leaders alleged that
the officials often cheat on weights – and threaten refugees with dire
consequences, if they complain. Most refugees interviewed by the author
complained that the quantity of rice and dry fish are much short of individual
requirements. The sleeping space available for a refugee is very short. There
are only 86 makeshift huts in Silachheri Camp for 6000 refugees, 260 for
11000 refugees in Korbuk, 145 for 1000 refugees in Panchrampara, 219 for
1,6000 refugees in Takumbari, 85 for 5,700 refugees in Lebacherra and 229
and 12,000 refugees in Kathalcherri Camp. About 90 to 95 persons are
accommodated in a makeshift hut of 1000 by 15 feet – which means about 15
square inches per person. Though the refugees are supposed to by provided
40 paisa per head for purchase of firewood, the officials buy wood from
contractors and supply to refugees. There is an acute scarcity of drinking
water in the camps, because sink – tubewells, the only source, are scarce and
those installed are mostly unserviceable. Moreover, tubewells are inadequate in numbers. As per one report of the Relief Department of Government of Tripura – there are in total 9 MK II and 29 shallow tubewell in Silacherry camp, 12 MK II and 15 shallow tubewells in Karbuk Camp, 16 MK II tubewells in Pancharampara Camp, 32 MK III tubewells in Takumbari Refugee Camp, 5 MK II tubewells in Lebacherra and 29 ML II tubewells in Kathalcherri relief camp. The refugees are thus compelled to collect impure drinking water from natural sources. No wonder, most of the common diseases prevalent in the camps are water borne–like diarrhoea, gastroenteritis, dysentery, enteric fever etc. There is also a shortage of blankets and winter clothing. The Government has issued only two blankets to each family, which is generally for five to six members on the average. The refugees have built up a school with volunteers from amongst them—but books and teaching materials are scarce. Of course, the Government gives the teachers an honorarium of Rs. 100 per month. So far the medical care and facilities are concerned – these are also very much nominal comparing to the necessity of the refugees. It is very neglected in all camps. The doctors reside far from the camps and they are very much irregular in visiting the camps. Supply of medicine is also too much irregular and inadequate. Out of the six camps-only four camps are having a temporary health centre for its inmates. In Pancharampara refugee camp, at present there are one Doctor, five helpers; in Takumbari Refugee Camp-there are only one compounder and one nurse; and in Kathal Cherri Refugee Camp-there are one doctor, two MPW, eight helpers and 2 contingent workers. The refugee leaders have already raised their strong demands for more rations. In a memorandum to the Chief Minister of Tripura in 1991, they demanded increase of the rice dole to 600 grams per adult per day, to appoint two doctors and at least two nurses for every 5000 refugee and to open a temporary medical centre with 15 to 20 beds in every refugee camp, to increase number of tubewells at least one for every five hundred refugees,
to open centres for weaving and handicrafts for refugee skilled in bamboo craft, to improve education facilities in camps, to supply cooking utensils and warm clothes to refugee every year.

However, it seems very difficult for India Government to increase the level and quality of relief, because it has already incurred a substantial expenditure on the Chittagong Hill Tracts refugees. The Indian Government is not all willing to involve international relief organisations, even the United Nations High Commissioners for Refugees: partly it regards the issue a temporary one and partly because it is not in favour of allowing foreigners into north-east Indian states, which are regarded as sensitive areas. In a letter to the Chief Minister of Tripura, Mr. Dasharath Dev on 12th August 1993, the refugee leaders of all the camps alleged that all the ration items have been curtailed since long and presently they are being given only rice and salt. This has caused a sever sufferings to the refugees who are passing their days in the camps almost without food. The refugee leaders strongly appealed to the Chief Minister to release immediately all the ration items to them as were given previously.

Here it may be noted that, the Executive Director of the Delhi-based ‘South Asia Human Rights Documentation Centre’- Mr. Ravi Nair presented a fifteen-page report in the international Conference on Refugee Affairs held in Oslo, in June 1994-brought an allegation directly against the Government of India for its present policy on humanitarian assistance to Chakma refugees. He alleged that the Government of India has been encouraging ‘voluntary repatriation’ by making living conditions in the refugee camps untenable. Between October 1992 and July 1993 rice and salt were the only provisions available to the refugees. Sometimes even salt supplies were not provided. The food provisions are given in 10 days cycles. The quantity given normally suffices for only 8 days. According to a report-the cash dole given to the refugees up to 30th Nov. 1992, the cash in lieu of dry fish given into 30th
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

Nov. 1992, the cash in lieu in dry chilly given upto 30th September 1992, mustard oil given upto 31 December 1992 and again from 1st July 1993 to 30 July 1993, coconut oil given upto 20th February 1993, Milk Powder for children given upto 10th August 1991. So far the medical facilities are concerned-Mr. Ravi Nair alleged that-

“To describe the medical facilities in the camps as minimal would be a generous statement since at the moment they are practically non existent. The doctors, who rarely visit, give prescription. The Refugees do not have the money to buy the medicines in the local market”.

He further added that-

“The family of Miss Romana Chakma of Takumbari Refugee Camp managed to afford a bottle of eye disease. When SAHRDC researchers CHECKED the bottle, it was found that the drops which had been SOLED on that day had already passed the expiry date”.

The educational facilities in the camps are minimal. The students are not entitled to appear in the final exams under Tripura Board. The government has provided some materials such as chalk, blackboards, textbooks and geometrical materials but the amount in proportion to the number of students is totally insufficient. For example, for the 528 students in the Karbuk Refugee Camp high school there are only 92 copies of the textbooks required for the syllabus.

The refugees are provided with one set of clothing each per year. The quality is so bad that the items barely last for a month. Material for the repair of the thatched huts has not been given for over two years. Over 400 huts have burnt down due to accidental fires in the camps. But, the Government had not taken any initiative to repair that.

The South Asian Human Rights Documentation Centre (SAHRDC), a NGO drew the attention of the National Human Rights Commission to the miserable condition of the refugee camps in Tripura. Accordingly, the Commission sent a team to Tripura for investigation team reported to the
Commission about the shortage of water, inadequacy of accommodation and woefully inadequate medical facilities in the camps. The Commission had taken up these issues with the Union Home Ministry and the State Govt. of Tripura in order to ensure that the administration of the camps is improved and to ensure that the Human Rights of the refugees are not violated.

(iii) **The Repatriation of Chakma Refugees**

The Jumma refugees took refuge in Tripura, India, just to escape from armed conflict between the Shanti Bahini and the Bangladesh army and systematic massacre by the Bangladesh security forces and Muslim settlers. The Government of India tried to repatriate the refugees in January 15, 1987. The fresh influx on the eve of repatriation and the serious international concern helped postpone the attempt. With the outcome of discussion between Sri. P.V. Narasimha Rao, Prime Minister of Bangladesh during later’s visit to New Delhi on May 26, 1992, fresh initiative was taken for repatriation of the refugees by December 31, 1992. Due to political reason the plan could not take shape.

After a summit of the South Asia Association for Regional Co-operation in Dhaka in April, 1993 a fresh move was taken up to start the repatriation. A Bangladesh delegation led by its Communication Minister, Col. (Retd.) Ali Ahmed visited refugee camps on May 9, 1993. The refugee leaders submitted a 13-point Charter of demands for repatriation. However, Dhaka and New Delhi decided and released a joint statement on May 10, 1993 to start the repatriation process without any further delay. The repatriation was scheduled from June 8, 1993. The refugees refused in budge until the CHT situation develops and their demands are met. Many human rights organisations came forward to postpone the repatriation. The United Nations High Commissioner for Refugees asked both the governments of India and Bangladesh to make the repatriation voluntary and involve its machinery in this process. However, after a long negotiations among the
representatives of the Government of Bangladesh, India and the leaders of the Jumma refugees, Mr. Upendralal Chakma, the president of the Jumma Refugees Welfare Association, acceded to the appeal of Bangladesh Government for starting repatriation as a mark of good will towards the peaceful solution of the CHT crisis. The Government of Bangladesh offered to the refugees a sixteen points package consisting of money and material assistance alongwith the assurance of security. The first phase of repatriation took place on February 15, 1994 when 1,845 people of 379 families went back to their homes in Bangladesh. Mr. P.M. Sayeed, Union Minister of State for Home and Col. (Rtd.) Ali Ahmed, Bangladesh Minister for Communication were present on the Occasion.

Here it is interesting enough to note that just after the first phase of repatriation in February 1994, Mr. Upendralal Chakma, in an exclusive interview with the ‘Statesman’ in Calcutta directly blamed the Indian Government for this repatriation. He alleged that-

“last year we understood we were no longer welcome here. We did not receive the full quota of rations and survival in the camps became a struggle in itself.”

He further that-

“We have been persuaded both by Dhaka as well as New Delhi to agree to the repatriation. New Delhi, through the Tripura Governor, Mr. Ramesh Bhandari, have been persuading us to give repatriation a try-at least on an experimental basis. Dhaka had also been sending over delegations time and again. So we thought we would give in a try”.

However, in the month of April, 1994, an eleven member team of Jumma refugees who went back in February 1994. At the end of their visit-the Jumma Refugees’ Welfare Association published a report where, its leader, Mr. Upendralal Chakma had alleged that the Bangladesh Government had not
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

implemented the 16-point package agreed upon for the rehabilitation of refugees who had returned to Bangladesh in February last.

Meanwhile, the Humanity Protection Forum (a Tripura based Human Rights Association) and the Parbatya Chittagram Janasanghati Samity, which had been fighting for regional autonomy of the CHT tribals, had reiterated in separate statements their demands that the United Nations High Commissioner for Refugees and other international human rights organizations should be involved in the separation in the repatriation and rehabilitation process. They said more than 70,000 Bangladesh army and more than four lakh Muslim resettlers had occupied the Tribals’ lands. Massive atrocities and other kinds of crime against tribal had been continuing in the Chittagong Hill Tracts, which they said was not conducive for the return of the remaining 55,000 refugees from India.

In reply to this allegation of Chakma leaders—Mr. Farookh Sobhan, Bangladesh High Commissioner in India, told in a press conference that the Chakma refugees in Tripura were behaving like political exiles and their leaders Mr. Upendralal Chakma was “playing games”. He said that the conditions listed by the refugees for their return were humiliating for any covering Government.

However, on March 9, 1997, a bi-partite agreement signed between the Bangladesh Government announced a 20-point package benefit programme for the refugees. Accordingly, the fresh repatriation of Refugees started from March 28, 1997 and it is completed on February 27, 1998. Here it is important to note that on December 2, 1997 a peace agreement is signed in Dhaka between the National Committee in Chittagong Hill Tracts affairs, formed by the Govt. of Bangladesh, and Parbatya Chattagram Jana Sanghati Samity, on behalf of the inhabitants of Chittagong Hill Tracts. As per the provision of the agreement the members of the PCJSS deposited their arms at Khagrachari,
before the Prime Minister of Bangladesh Ms. Sheikh Hasina and returned to a normal life under an amnesty declared by the Govt. of Bangladesh.

In the wake of ethnic disturbance in the erstwhile East Pak (now Bangladesh) a sizeable number of Chakmas and Hajongs between the period 1964 and 1968 had migrated into India. Under a rehabilitation scheme, they were settled in different States in the North East.

“Again, due to disturbed conditions in the CHT area of Bangladesh about 57000 Tribal refugees have come to India since 19086. They are living in 6 temporary camps in Tripura and are being provided with food, shelter, clothing and other civic amenities.”

“Chakma refugee camps are located at Lebachera, Pancharampara, Silacheri and Kathalcheri in Tripura’s two southern subdivision of Subrum and Amarpur, and their condition is dismal. Rows of squalid huts line dusty roads, the air reeks of human waste and malnourished children rummage through garbage heaps.”

The then Chief of Mission of the UNHCR in India Ms. Irene Khan said that –

“While Tamil refugees in Tamil Nadu receive about Rs.150 a month, the Government spends about Rs. 15 a month for each Chakma refugee in Tripura and UNHCR has no role to play for Chakma refugees”.

Describing the conditions of Chakmas, it has been reported that –

“the Chakmas were facing starvation conditions because of the decision by the Central Government to totally stop financial assistance for the relief of nearly 60,000 Chakma refugees herded in 6 crowded camps in Tripura. Desperate for food and minimum help the Chakmas had turned to the then Chief Minister, Tripura, Mr. Dasarath Deb for help. There was little that he could do, he had told the Chakmas. The Centre had stopped all assistance and without notice. To date Tripura had spent Rs. 19.2 million to look after the Chakmas. And now the money and time were running out for Chakmas. It seemed, New Delhi had applied the screw effectively. The usual ration cycle was 10 days (now 20 days). At present a Chakma adult gets 400 gm of poor quality of rice for food and babies get 200 gm. No edible oil, 50 gm of dry fish, 10 gm of pepper and 10 gm of salt per day. When supply is available 20 gm of pulses. No cash dole, no milk powder (even for new born babies numbering about 4000), and...
The refugees who sought shelter in 1986 are living in miserable conditions after the Home Ministry, in a letter on June 13, 1993 directed the Tripura Government to dismantle the 6 refugee camps housing the refugees. Concerned with the adverse international criticism, the non-violent means of the Government reduced all other facilities except rice and salt. They had been receiving a variety of items for food such as rice, salt, edible oil, dried fish, chillies, pulses, coconut oil and milk powder and firewood. However since October 1992, the refugees have been receiving only rice and salt. Ration supplies are reported to be highly irregular and delay causes desperation. The UNHCR and International Committee for the Red Cross (ICRC) have been denied access to refugee camps. Chakma refugees cannot expect to stay in the refugee camps forever but like any other refugees in the world they are entitled to UN protection and from other international agencies. However, given the parameter of the geo political equations and inaccessibility of camps, it will remain to be seen for how long Chakma refugees can stand “non-violent” pressures of the Government.\(^7\)

The Humanitarian Protection Forum (HPF), a Tripura-based organization of India Chakmas had accused the Centre of policy reversal and “inhuman pressure” on the refugees to return to their homeland in the CHT. Chairman of HPF Mr. Bhagya Chandra Chakma said that –

“Food is being used as weapon. He asserted that the Government was cutting rations to pressurise the refugees to return to Bangladesh.\(^7\) “Lack of any legal mechanism and the continuing ad hocism to deal with refugees resulted in a discriminatory policy at the Government’s end. For instance, the Tibetan refugees are issued travels documents to facilitate their travelling abroad. The same is not true for the Chakma refugees. Similarly until the assassination of Rajiv Gandhi, Tamil refugee from Sri Lanka had access to education at all institutions in Tamil Nadu. But the children of Chakma refugees do not have any educational facilities yet.”\(^7\) “In so far as Chakma refugees are concerned there is lack of adequate educational facilities. However, there are primary schools in all the six camps, where 57 teachers render voluntary service and eight works for an allowance of Rs. 100 each. There are secondary schools where teachers are paid Rs. 100 each. Even these sums are a heavy burden for the inmates of the camps. The refugees’ request that their children be allowed to take the state of Tripura’s Secondary level examination (secondary level) has been turned down”.\(^7\) “As for the Chakma refugees, because
of the almost non-extent dole, camp inmates have had to find ways of earning some money. Usually this means manual labour. While the local rate is Rs. 25 to Rs. 30 a day in the farming season, the refugees work for as little as Rs. 10 or even Rs. 5. This has often caused tension with the local people. Some refugees are involved in selling essential commodities like vegetables and other items grown inside relief camps.  

Attention of the Government was drawn in the Parliament regarding lack of basic facilities in the camps. It was stated by the Government that-

"the Government was doing the best the Government could do for their survival. This was being done as humanitarian aid to these people as they were refugees. The Government had its own constraints for its own people, within its limitations, everything possible had been done. The Government was spending more than Rs. 52.5 million for their stay in camps."  

The Government also stated in the Parliament that -

"a total amount of Rs. 530 million had been spent by the Government of India on the Chakma refugees in the end of March, 1994."  

The National Human Rights Commission sent a team in 1996 to the refugee camps in Tripura to investigate allegations concerning poor camp conditions. The team had reported that the accommodation, health and food facilities were inadequate. The NHRC took up the matter with the State and the Central Government and it was because of this intervention the conditions in camps improved considerably.

(5) UNATTENDED REFUGEES IN INDIA

(A) Afghan Refugees:
Due to disturbed conditions in Afghanistan, over 1.2 million Afghans have taken refuge in Pakistan. 18,551 Afghan refugees are staying in India.

The distributions of Afghan refugees in different States are as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi</td>
<td>15,589</td>
</tr>
<tr>
<td>Haryana</td>
<td>2,832</td>
</tr>
<tr>
<td>U.P.</td>
<td>43</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>26</td>
</tr>
<tr>
<td>Punjab</td>
<td>25</td>
</tr>
</tbody>
</table>

361
New Delhi is home to some 16,000 primarily Afghans, many of whom arrived directly from Kabul when the Soviet-backed Government fell. India has no laws on asylum and the Afghans are not officially recognized as refugees. They are considered as “foreigners temporarily residing in India”. Each asylum seeker who approaches UNHCR in New Delhi is interviewed individually to assess his or her claim to refugee status. Those who are recognized as refugees are issued with the UNHCR refugee certificate which normally enables them to obtain an official residence permit. UNHCR is providing subsistence allowance only to those with a particular need such as households with female heads of house, the disabled and the newly arrived exiles. Though the Government is not giving any assistance, many Afghan refugees have succeeded in setting up small businesses and earning living.

(B) Bhutanese Refugees:

About 20,000 ethnic Nepalese refugees from Bhutan have fled into India since early 1991. A large number have fled to Nepal, crossing through a narrow strip of Eastern India to get there. The refugees are fleeing discrimination and human right abuses at the hands of Bhutan’s ruling Buddhist Drupka Group. The Indian Government does not recognize them as refugees or offer them any assistance; however, these refugees have been allowed to stay temporarily. Bhutanese refugees are mostly staying in the State of Assam and other northeastern states and West Bengal. They are earning living through self-employment in animal husbandry and employment in agriculture and the informal section. UNHCR is not providing any assistance to these refugees either.

6. RECAPITULATION

While drawing conclusions on India’s refugee assistance policy the first question for consideration is which category of refugees can expect to get refugee assistance? India has provided assistance to refugees from Tibet, Bangladesh and Sri Lanka who were recognized as refugees by the
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

Government. In the case of Afghan and Bhutanese refugees, who have not been recognized as refugees, are being treated as foreigners temporarily residing in India. No assistance is being provided to them. In the absence of any law regarding determination of the status of refugees, situations arise whereby a particular category of refugees is given assistance whereas other refugees similarly placed may well be denied such assistance. The recognition of refugee status has hitherto been based on geo-political considerations. Does it mean that recognition as refugees and entitlement for assistance is dependent on the country of origin of refugees? Does it mean that in future also if refugees originate from Bangladesh and Sri Lanka they would be given recognition as refugees, as it has been done in the past and provided with assistance? There is no clear policy in this regard and perhaps such a decision will be taken on political considerations and expediency in the given situation. But one thing can be clearly stated that it would be increasingly difficult to take decision in future as to whether to allow assistance or not in the absence of objective criteria. Recognition as such of refugees may be a precondition for refugee assistance in the normal circumstances but when recognition itself is based on political expediency and not based on any legislation is it really consistent to link recognition as precondition for refugee assistance? It appears to be inconsistent to deny assistance when the refugees like Afghans are being treated as de facto refugees and are recognised Afghans as refugees and its providing assistance but in the case of Bhutanese refugees no assistance is being provided either by the UNHCR or by the Government.

The next question for consideration is what assistance should be given to refugees? India's refugee assistance policy is based on humanitarian considerations and the objective is to meet basic needs. Two important factors which govern the package of assistance are (i) limitation of resources, and (ii) the package of assistance has to be such that the living condition of refugees is more or less similar to that of the local poor. However, the nature
of assistance offered varies, both qualitatively and quantitatively if the
Government's decision is for rehabilitation of refugees. For example, in the
case of Tibetan refugees a comprehensive rehabilitation package has been
provided. Tibetan refugees have been given agricultural land and provided
with all other infrastructures like roads, water supply, educational and medical
facilities, etc. Government has also settled Tibetan refugees through cottage
industries, particularly manufacture of handloom and handicraft items.

In general, the Government considers the stay of refugees in India as a
temporary phase and they are expected to go back to their country upon return
of normalcy. As the Government considers the stay of refugees temporary the
need for shelter is met in temporary camps, temporary structures, government
buildings, etc. Provision of drinking water, sanitation facilities, and medical
facilities are also met. Refugees are provided with free rations, and other
essential requirements, like clothing, utensils, blankets, etc. In addition,
refugees are provided with cash grants. The government also takes special
care to meet the need of refugee women and children in a limited way.
Special nutrition programmes are launched to meet the need of the expecting
mothers and malnourished children. Vocational training is also arranged for
refugee women so that they can acquire some skills and can earn some living.
For recreation, radio sets are also provided in camps. Certain refugee camps,
which are in the nature of permanent camps, have fully developed
infrastructure with permanent buildings, electricity, drinking water, sewage
system, elementary schools and hospitals. Temporary arrangements of stay
for refugees in camps over the years acquire a permanent character as it
happened in the case of Chakma refugees who were staying in 6 camps in
Tripura for more than ten years. Unless the facilities in such temporary camps
are constantly augmented life becomes difficult with the passage of time. In
any refugee situation in India, the local population has played a very important
role. In major refugee situations like the refugees from Bangladesh in 1971
The overwhelming response from the population of the entire country could be seen. The Government always encourages such participation of the population in providing assistance to the refugees. The refugees are, however, not permitted to work in India. But, some of the refugees do manage to get work and earn some living to supplement the assistance provided by the Government.

The next important question is what administrative arrangements are put in place for providing assistance? India has considerable experience in refugee protection and care. Adequate administrative measures necessary for providing assistance to refugees from the camp administration to the State and Central Government level are put in place according to need. And such refugee needs are always organized through the civil administration both at the State and the Central Government level and the services of Army have never been utilized. Further, provisions are made in the Budget and in the Five Year Plans. Whenever it is necessary to mobilize resources and the manpower, the same is done from other government organizations like the Food Corporation of India, the Ministry of Railways, the Ministry of Health and the Ministry of Education. For mobilizing additional resources to provide assistance to Bangladesh refugees in 1971, a relief tax was levied by the government. The entire expenditure on refugee relief is incurred by the Central Government. Whenever expenditure incurred by the State Government is reimbursed by the Central government.

The next important question for consideration is whether India's refugee assistance policy can be said to be discriminatory? As it has been discussed earlier, in the case of refugees where a rehabilitation package is provided, assistance is on different considerations altogether. However, it has to be seen whether a uniform package of assistance is provided in all other refugee situations where the stay of refugees has been considered as a temporary phase. There has been criticism that the Chakma refugees in the
State of Tripura had not been provided timely and adequate assistance so much so that the National Human Rights Commission had to intervene. The conditions in camps improved considerably after its intervention. Facilities in camps may vary from State to State but minimum basic facilities to which the Government is committed needs be ensured. In the case of Sri Lankan refugees, relief facilities aggregating to Rs. 1,000 per month for a family consisting of five members, which included an element of cash dole, clothing, utensils, subsidized ration had been provided. In other refugee situations, relief should aggregate to this amount; otherwise, there may be avoidable criticism. In the case of Sri Lankan refugees, an amount of Rs. 1083 million had been spent in the period 1983-1996 for about 63,000 refugees in camps whereas for 60,000 Chakma refugees, an amount of Rs. 530 million had been spent in the period 1986-1994. Thus the total amount spent on Chakma refugees is considerably less when their number is comparable to Sri Lankan refugees for the similar corresponding period. Thus, assistance made available per Chakma refugee family will also work out much lower than the corresponding assistance to Sri Lankan refugee family. It is therefore necessary to fix norms and apply the same uniformly. There may be some difficulty in laying down norms. Whenever a norm is laid down, on the one hand, it can be criticized by saying that it is too meagre or inadequate, particularly in comparison to the assistance provided in the Western countries; on the other hand, it may be termed as excessive or very liberal particularly when compared to the general level of poverty of the local population. However, attempts should be made to define norms keeping in view the local conditions in order to bring about uniformity in the refugee assistance policy.

The next important question for consideration is what is India's attitude regarding receiving foreign assistance and involving international agencies and media in the visits to refugee camps? India prefers to deal with refugee matters on a bilateral basis. The policy of assistance is also guided by
the same considerations. India does not generally accept foreign assistance. However, in the case of Tibetan refugees and also Bangladesh refugees in 1971, foreign assistance has been received. In the case of Bangladesh refugees, India had made it clear that it was hosting 10 million Bangladesh refugees on behalf of the international community and it was expected that the international community would share the burden. International assistance was accepted from many countries and international organizations but in the case of refugees from Sri Lanka and Chakma refugees from Bangladesh, the Government has not sought any international assistance. In the case of Bangladesh refugees perhaps the staggering number of 10 million refugees had influenced the decision to seek international assistance and advocate the principle of burden sharing. Acceptance of assistance from other countries for refugee assistance would automatically call for greater involvement of the donor agencies, which may lead to internationalising the refugee issue whereas the Government prefers to deal with such matters bilaterally. If a government on its own meets the entire liability of assistance it cannot really be faulted. Regarding involvement of international agencies and media in visiting camps, the government is not enthusiastic. In the case of refugees from Bangladesh, however, delegations of foreign parliamentarians, international organizations were allowed to visit camps so that they could assess the situation themselves. The reason why the Government is reluctant to involve the international agencies for assistance as well as visit camps is perhaps because of apprehension that any misinformation or propaganda about the state of affairs in the camps may have serious repercussions on the local population which is often of the same ethnic group as the refugees and would affect the domestic politics and also the bilateral relations between India and the country of origin of refugees, which incidentally are the neighbouring countries. But the whole question has to be examined from the perspective of the outside world also. By not allowing international agencies
or representatives of other countries to visit the camps, a general suspicion develops that the conditions in the camps are such that it cannot be shown to outside agencies and that there are gross violations of human rights. If the conditions in the camps are really not satisfactory, organizations like National Human Rights Commission, political parties and other organizations would intervene and draw the other hand the conditions are satisfactory there is no reason whey the same cannot be shown to international agencies. The government can always impose reasonable restrictions keeping in view the security considerations and the bilateral relations with the country of origin of refugees. Taking such measures would bring about sufficient transparency and would provide scope for taking corrective measures in case there are certain deficiencies. In this regard, India’s approach need not be over-protective and defensive.

It can now be said that humanitarian considerations have always guided India’s policy on refugee assistance. India’s performance in providing refugee assistance has been appreciated by the international organizations and other countries but it is necessary to bring about codification, more transparency and openness in the refugee assistance policy.
NOTES AND REFERENCES

1. A key element of the refugee definition as found in the 1951 Refugee Convention is fleeing one’s country of origin “owing to a well-founded fear of persecution”. Persecution is not defined in international refugee or human rights law. However, one commentator has offered the following description: “[…] persecution may be defined as the sustained or systematic violation of basic human right demonstrative of a failure of State protection. A well-founded fear of persecution exists when one reasonably anticipates that the failure to leave the country may result in a form of serious harm which Government cannot or will not prevent […].” James Hathaway, “Fear of Persecution and the Law of Human Rights”, Bulletin of Human Rights, 91/1. UN, New York, 1992, at p.99.

2. There are currently 134 State parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees. Article 1(A) of the 1951 Convention defines a refugee as any person who “[…] owing to a well-founded fear to being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it […].”

3. In a statement issued by the Indian Ministry of External Affairs it was noted that India’s accession to the Convention Against Torture is part of “India determination to uphold the greatest values of Indian civilisation and our policy to work with other members of the international community to promote and protect human rights”.

In the refugee context, ratification of the Convention Against Torture is extremely important as Article 3 (1) provides that: “No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture”. Article 3 (2) further provides that: “For the purpose of a determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.” (emphasis added).

For a description of the mandate and activities of the Committee established under the Convention Against Torture see ‘Refugee Protection and the Committee Against Torture’ by Brian Gotrick, JURL, Vol. 7, No. 3, July 1995.


5. For example, the UN Human Rights committee examined the third periodic report of India during its sixtieth session held at Geneva. In its Concluding Observations under the heading ‘Subjects of Concern and Committee’s Recommendations’, the Committee remarked as follows: “The Committee, noting that international treaties are not self-executing in India, recommends that steps be taken to incorporate fully the provisions of the Covenant into domestic law, so that individuals may invoke them directly before the courts. The Committee also recommends that consideration be given by the authorities to ratifying the Optional Protocol to [International Covenant on Civil and Political Rights], enabling the Committee to receive individual communications relating to India.” (Para 13). Concerning refugees, the Human Rights committee further stated: “The Committee expresses concern at reports of forcible repatriation of asylum seekers, including those from Myanmar (Chins), the Chittagong Hill Tracts and Chuchmas (sic). It recommends that, in the process of repatriation of asylum seekers of refugees, due attention be paid to the provisions of the Covenant and other applicable international norms.” (Para 30). See UN Document CCPR/C/60/ADD/3 of 30 July 1997.

7. At the 2nd Asia Pacific Regional Workshop held in New Delhi on 10-12 September 1997 the government delegates of Bangladesh and Nepal indicated they are in the process of establishing national human rights institutions through enacting legislation.


9. As concerns the application of international human rights standards in domestic law the former Chief Justice of India, JS Verma, noted in his inaugural speech to the seminar on ‘Refugees in the SAARC Region’ held in New Delhi in May 1997 that: “In the absence of national laws satisfying the need [to protect refugees], the provisions of the [1951 Refugee] Convention and its Protocol can be relied on when there is no conflict with any provision in the municipal laws. This is a cannon of construction, recognized by the courts in enforcing the obligations of the State for the protection of the basic human rights of individuals. It is more so when the country is a signatory to the International Convention which implies its consent and obligation to be bound by the International Convention, even in the absence of expressly enacted municipal laws to the effect [...]” For a recent judicial application of this reasoning see the Indian Supreme Court judgment of *Vishaka et al v Rajasthan et al.* Writ Petition (Criminal) Nos. 666-70 of 1992, unreported judgement of 13 August 1997.

It is also noteworthy that certain ‘rights’ provisions of the Indian Constitution including Articles 14 (right to equality) and 21 (right to life and liberty) are available to non-citizens including refugees. *See National Human Rights Commission v State of Arunachal Pradesh et al. op cit.*, and *Khudiram Chakma v. Union of India*, (1994), Supp 1 SCC 614.

10. In a speech to the 48th Session of the UNHCR Executive Committee, then Indian Permanent Representative to the UN, Ms Arundhati Ghose, explained India’s reluctance to accede to the 1951 *Refugee Convention* as follows: “[…] The 1951 Convention was adopted in the specific context of conditions in Europe during the period immediately after the second world war. International refugee law is currently in a state of flux and its is evident that many of the provisions of the Convention, particularly those which provide for individualised status determination and social security have little relevance to the circumstances of developing countries today who are mainly confronted with mass and mixed inflows. Moreover, the signing of the Convention is unlikely to improve in any practical manner the actual protection, which has always been enjoyed and continues to be enjoyed by refugees in India. We therefore believe that the time has come for a fundamental reformulation of international refugee law to take into account present day realities […] it has be recognised that refugees and mass movements are first and foremost a ‘developing country’ problem and that the biggest “donors” are in reality developing countries who put at risk their fragile environment, economy and society to provide refuge to millions. An international system which does not address their concerns adequately cannot be sustained in the long run […]”.

11. Although no South Asian country has yet adopted a domestic refugee law or procedure a recent ‘Model Law on Refugees’ was adopted at the 4th Regional Consultation on Refugees and Migratory Movements in South Asia held in Dhaka in November 1997. It is expected that this Model Law will provide a point of departure for continued debate and discussion on the form and content of a national refugee legislation, which may be appropriate in the context of South Asia.


13. *Id*, Section 12

14. *Id*

15. Sections 13 and 14
16. Section 4
17. Section 21
18. Sections 30 and 31
35. Lok Sabha Debates, 15.7.71, p.8
36. Lok Sabha Debates, 26.7.71, pp. 60-61
39. Lok Sabha Debates, 1.7.71, p.34.
40. Lok Sabha Debates, 3.7.71, pp. 110-111.
42. Lok Sabha Debates, 18.11.71, p.126
43. Lok Sabha Debates, 22.7.71, pp. 47-48
47. Lok Sabha Debates, 15.7.1971, p. 175.
THE STATUS OF REFUGEES IN THE NORTHEAST INDIA: INTERNATIONAL PRINCIPLES AND INDIAN PRACTICE

52. Lok Sabha Debates, 13.4.1972, p. 57.
55. Lok Sabha Debates, 26.7.1971, p. 60
56. Lok Sabha Debates, 5.7.1971, pp. 74-75.
61. Lok Sabha Debates, 1.8.1985, Q.No. 1301.
66. V. Suryanarayan, “Sri Lankan Refugees in Tamil Nadu”, Hindu, Madras, 28.7.97
68. See Suryanarayan Op cit.
69. Lok Sabha Debates, 23.3.95, Q.No. 1414.
77. See Chimni, op cit. p. 392.
78. See Chimni, op cit, pp. 393-394.
79. Rajya Sabha debate, 4.5.92.
80. Rajya Sabha debate, 4.5.94.
81. Lok Sabha Debates, 10.12.96, Q.No. 2533.

372
CHAPTER-IX

INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

1. AN OVERVIEW

The international response to the plight of refugees is one of the most remarkable humanitarian achievements of the last century. Building on foundations laid by the first High Commissioner for Refugees, Fridtjof Nansen, beginning in 1921, the international community has progressively developed the structure and practice of international protection, elaborating and consolidating a system of legal principles and norms and, most importantly, providing asylum to millions of refugees.

The jurisprudential basis of international refugee law is the concept of common humanity and the responsibility of the international community to preserve human life, to promote the well being of all men, to diminish human sufferings and to assist states in providing protection and assistance to refugees.¹ The protection that the international community extends to refugees must include physical security of refugees, and physical protection also means keeping people alive through humanitarian assistance. Food, water, sanitation and medical care are fundamental to survival. These people walk long distances only as long as their legs can carry them subject to availability of food, water and shelter or until they are stopped. The vast majority of refugee populations live in the immediate vicinity of the only international frontier they have ever crossed and which they are going to cross again when the time comes for their safe and voluntary return. Only a very few of them have the money, the contacts, the family connections, the knowledge or the inner energy to propel them onwards. The dependence of growing masses of refugees on organized assistance raises questions as to the extent and capacities of transnational efforts of humanitarian purposes.² By the end of 2000 the world’s refugee population was estimated by the United Nations High Commissioner for Refugees at some 25 million. Persecution, human rights abuses and civil strife, the major root causes of refugee flows, are increasing, and the complex humanitarian
assistance problems generated by the new conflicts are ever more difficult to resolve.

In the autumn of 1990, United Nations agencies drew up contingency plans for an anticipated flow of refugee from Iraq and Turkey. In April and early May 1991, as government troops closed in, 1.8 million Kurds suddenly headed for the Turkish and Iranian borders. Since then there has been a rapid succession of refugee crisis. In 1992 alone, over 3.5 million people were forced to flee across an international border in search of safety. In the 16 months between December 1991 and June 1993, the number of people dependent on international assistance in the former Yugoslavia rose from 500,000 to 3.6 million. In March 1992, some 3,000 refugees a day were arriving in Kenya to escape the fighting, famine and chaos in Somalia. At about the same time, a quarter of a million Muslim refugees from Myanmar fled into Bangladesh, and up to 500 refugees a day were pouring into Nepal from Bhutan. By late 1992, the conflict between Azerbaijan and Armenia had created more than 800,000 refugees and internally displaced people, while the civil war in Tajikistan had uprooted another half a million. In February and March 1993, 280,000 refugees from Togo sought refuge in Benin and Ghana.²

More recently, the human tragedy in Rwanda, which resulted in some 200,000 persons killed, more than a million persons becoming refugees in neighbouring Congo and Tanzania and million others homeless in their own country, is still fresh in the minds of the international community. Millions of Afghan refugees are still unable to return home years after the victory of the Mujahidins because of the infighting among the Mujahidins themselves. Of course, the plight of the Bosnian refugees and the international politics surrounding attention in the last two years than any other single development. As Peter Macalister-Smith⁴ observed:

"The response to these refugee situations, which were neither envisaged nor provided for in the early Post-war period of international
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

organisation, has included an enlarging of the capacities and functions of the relevant institutions charged with humanitarian tasks. In particular, UNHCR’s competence to provide material assistance has been progressively expanded to enable more practical and comprehensive action to be taken to meet the immediate needs of refugees.

For the past several years, ethnic conflict has been the world’s most common form of collective violence and a major cause of the steadily increasing refugee problem. Stories of ethnic hatred, xenophobia and racist attacks by neo-Nazi Skinheads make headlines almost daily in Germany. In Bosnia, rape has been used as weapon of war, to humiliate and destroy Muslim-families. Investigators say as many as 20,000 women may have been raped in the brutal conflict in Bosnia-Herzegovina. Some eyewitness accounts even mention cases of women who are held and repeatedly raped until they become pregnant. They are freed only when it is too late for an abortion. In the view of the perpetrators (in this case the Serbs), the children born of this barbarous union are Serbian. Thus rape becomes a method of ethnic purification.

It would be worthwhile to mention that in late 1991, when the United Nation designated the UNHCR as the lead agency for the coordination of humanitarian assistance in the former Yugoslavia, there were some 500,000 refugees and displaced persons in need of assistance as a result of the fighting in the Croatia. By the end of July 1993, the total population receiving assistance had increased to 3.6 million, with over 2 million in Bosnia-Herzegovina alone. Despite enormous obstacles, the ongoing fighting and the lack of security for relief deliveries, the massive international relief effort is bringing humanitarian relief to millions, with the focus on life-sustaining relief to persons in Bosnia. UNHCR and other UN humanitarian agencies – including UNICEF, WHO and WFP as well as ICRC and large number of NGO’s – continue to bring food, medicine and supplies to victims of the war. Today, several millions of refugees, displaced persons and others whose situation has been-considered analogous benefit directly from UNHCR’s assistance programmes. UNHCR
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

has also been involved during the post year in a wide range of activities in
favour of internally displaced persons. Ms. Sadako Ogata, the Ex-United
Nations High Commissioner for Refugees, while delivering her address before
the Third Committee of the General Assembly on the 10th November, 1992,
observed that –

“The scale and complexity of humanitarian crisis confronting us is a
reflection of the uncertainty and instability of the period in which we
are living. Resurgent nationalism, coupled with the serious economic
and social consequences of the collapse of the old world order, has led
to a multiplication of conflicts. In such circumstances, my office is
faced by a number of fundamental challenges that go to the very heart
of its mandate....I can not claim to have all answers, Mr. Chairman, but
I am confident that, given its unique mandate, its experience, its
demonstrated capacity to innovate, and the indispensable support of
Governments, my office will continue to adapt with flexibility and
innovation to new challenges while preserving the established
principles of international protection.”

However, in the field of international humanitarian assistance, the
permanent factor in post-war work for refugees has been the activity of the
voluntary agencies. The voluntary agency acts as an intermediary between
government and individuals, enabling citizens to coordinate their efforts and
achieve a goal. As a channel of good will and positive motivation, the
voluntary agency helps to influence governments to establish and carry out
comprehensive and human refugee policy. Here it is worthwhile to mention
that over the decades, the most sustained and devoted service to the cause of
refugees has been provided by various inter-governmental organisations and
NGOs viz; UNDP, FAO, WFP, ICRC, ILO, UNICEF, OXFAM, ICVA etc. In
July 1992, to further enhance emergency – response, the United Nations created
the Department of Humanitarian Affairs (DHA) with a mandate to co-ordinate
UN response in complex humanitarian emergencies.
The creation of international machinery to deal with the problem of refugees and, for that matter, international social and humanitarian cooperation, was not envisaged in the Covenant of the League of Nations of 1919. These questions were not then deemed to be of sufficient importance to merit other than general treatment. Yet, at that time, vast numbers of refugees were already living in desperate circumstances, and were dependent on assistance from private and national sources for the barest necessities of life. Help from international sources was needed to keep them alive. No thought was given, however, to the creation of an international body to tackle all the aspect of a situation, which threatened to assume alarming proportion.

When wave upon wave of refugees, began to break over Europe and Asia-Minor from 1915 onwards, the first assistance given to them came from relief societies, the refugees’ own mutual aid associations, and a number of organizations set up in certain countries to distribute foreign relief. In Asia-Minor, from 1915 onwards, various organisations, including the American Red Cross, undertook, on behalf of Armenian refugees, relief operations, which were to continue until 1923. In the course of the years 1918 to 1922, 1,500,000 persons left Russia to escape the effects of famine and other consequences of war and troubled times, and were assisted in different countries of refuge by various charitable organizations, including the American Red Cross. In March 1923, the American Red Cross was feeding every day more than half-a-million Greek refugees from Anatolia, while the Turkish Red Crescent was one of the organizations helping the Turkish Government to bring relief to Ottoman refugees coming from Greece. As some of these refugees trickled slowly into Western European countries, they sought, and found, relief and assistance from national Red Cross Societies which helped their integration in their new country of asylum. However, the situation called for energetic and imaginative action.
On February 16, 1921, the *International Committee of the Red Cross* (ICRC) convened to an unofficial meeting in Geneva, representatives of the International Labour Office, the International Union for Helping the Children, the London Save the Children Fund, the League of Red Cross Services, and the Russian relief associations, to consider what action could be taken to alleviate the distress of the various groups of post-World War-I or post-Russian-Revolution refugees, and to coordinate measures of assistance. However, in the meeting, it was decided to lay the question of Russian refugees before the Members of the League of Nations, and to suggest the appointment of a League of Nations Commissioner to deal with the various aspects of the refugee problem, as it existed at that time; to centralize all refugee relief work; and above all, to provide legal and political protection for refugees. This proposal was warmly welcomed by a number of governments, and the League of Nations decided on June 27, 1921 to appoint as High Commissioner for Refugees Dr. Fridtjof Nansen, who had just completed the task of bringing home 400,000 prisoners of War. His mandate was to seek a permanent solution for the refugee problem then in existence, and to co-ordinate the efforts made in various countries by governments and private organizations.

In the exercise of his task, Dr. Nansen enlisted the services of voluntary bodies, calling, in particular, upon the assistance of the ICRC and several of its delegations, including those in Athens, Belgrade, Bucharest, Budapest, Constantinople, Riga and Warsaw. He further established an advisory body of the private relief organizations concerned with Russian refugees among which were the ICRC, the League of Red Cross Societies, and the American Red Cross. For almost nine years, until his death in 1930, Dr. Nansen was the League of Nations High Commissioner for Refugees. Nansen was faced with the need of finding funds for the maintenance of the refugees and offers for their settlement in other countries. Between 1924 and 1929 the task of material assistance for refugees was entrusted to the International Labour Organization,
and Protection functions became the main responsibility of the High Commissioner. In 1929 both tasks were reunited in the Office of the High Commissioner. On the death of Dr. Nansen in 1930, the Nansen International Office for Refugees was created by a resolution of the Assembly of the League of Nations, as an autonomous body responsible for exercising functions, including humanitarian assistance.\(^9\)

The financing of the refugee operation was a continuous problem. The League of Nations paid only for administrative expenses and assumed on the whole no responsibility for the funding of aid for refugees. Funds had to be solicited from Governments, voluntary organizations, and private individuals, largely on an *ad hoc* basis.\(^10\) The Secretariat of the League was entrusted with the protection of the refugees, but this division between political and legal protection on the one hand, and the humanitarian work on the other hand, could not be strictly maintained in practice. In 1933 a new High Commissioner for Refugee, coming from Germany, was appointed under a mandate excluding any role of assistance. Despite the work of the Nansen Office and the High Commissioner, well over 500,000 refugees in Europe were in urgent need by 1938. In that year the Nansen Office and the Office of the High Commissioner were closed and a new High Commissioner for Refugees under the Protection of the League of Nations was appointed, whose competence relating to relief was restricted to facilitating the coordination of humanitarian assistance provided by other organizations.\(^11\) The Evian Conference of 1938, convened to deal with political and economic questions arising from the exodus of refugees from Germany and Austria, set up the *Inter-Governmental Committee on Refugees* (IGCR), headed by the High Commissioner. However, plans to establish an international organization with responsibility to carry out social, economic and humanitarian functions on behalf of those left in greatest need by the effects of World War-II resulted in the creation of the *United Nations Relief
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

and Rehabilitation Administration (UNRRA) by 44 nations on November 9, 1943.

UNRRA, established as a specialised agency before the adoption of United Nations Charter and the creation of the UN itself, was the first major operating agency for refugees and displaced persons. The Administration exercised responsibility for the provision of material assistance to refugees and displaced persons both in Europe and in its other areas of operation; with the participation of over 60 voluntary organizations. The International Refugee Organization (IRO) succeeded UNRRA and IGCR in 1947. The IRO’s main objective was to achieve voluntary repatriation or resettlement, but it was recognized that immediate maintenance and assistance functions would also be necessary and the Organization was given full power for its tasks of material relief. Between July 1, 1947, and January 31, 1952 the International refugee Organization (IRO) succeeded in resettling over one million refugees and it saved hundreds of thousand from starvation by giving them care and maintenance in their countries of residence. The IRO went into liquidation on March 1, 1952. As early as July 1949 it became clear that there would remain a refugee problem after the closure of the International Refugee Organization. The General Council of I.R.O., therefore, addressed a communication to the Economic and Social Council of the United Nations on future international action concerning refugees, in which it came to the conclusion that:

(a) international assistance in the protection of refugees should continue unbroken;
(b) an organ within the framework of the United Nations should be entrusted with this responsibility; and
(c) the question of the establishment of an international fund for the material assistance of refugees after the termination of the IRO programme should be determined by the Economic and Social Council.

The General Assembly of the United Nations adopted on December 3, 1949, a Resolution to the effect that the international protection of refugees was, as
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

from January 1, 1951, to become the responsibility of a United Nations High Commissioner for Refugees. Thus, the United Nations have assumed direct responsibility for the refugee problem. Here it is worthwhile to mention that the tasks of the IRO were largely operational: care and maintenance, repatriation and resettlement of refugees. On the other hand, the task of the UNHCR is the international protection of refugees and the promotion of permanent solutions for the problem of refugees.

In this chapter an attempt has been made to examine the refugee crises coupled with the establishment of a principle international agency, i.e. United Nations High Commissioner for Refugees and its working since its inception in 1951, and, subsequently UNHCR became the successor of a catena of international bodies which possessed a variety of responsibilities for providing material assistance to refugees.

3. THE ESTABLISHMENT OF THE UNHCR

By the beginning of the present century a number of national and voluntary organisations existed with the purpose of assisting refugees in other countries. International recognition of the need for global co-ordinated action on behalf of refugees arose principally from the problems created by World War-I. Following the creation of the League of Nations in 1919, refugees became the object of the collective measures beyond the immediate interests of the states of origin and refuge. Although early organised action for the benefit of refugees included relief measures, confined to specific groups of refugees as they arose, both the Covenant of the League nor general practice established and obligation for the permanent assumption of responsibility for material assistance.

Plans to establish an international organisation with responsibility to carry out social, economic and humanitarian functions on behalf of those left in greatest need by the effects of World War II resulted in the creation of the United Nations Relief and Rehabilitation Administration (UNRRA) by 44
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

nations on 9 Nov. 1943. UNRRA, established as a specialized agency before
the adoption of United Nations Charter and creation of the UN itself, was the
first major operating agency for refugees and displaced persons. The planned
and imminent closure of UNRRA in 1947, without having completed all its
tasks, lent urgency to the creation of a new organisation to deal exclusively with
refugees. The solution took the form of the International Refugee Organisation,
which was established by the UN General Assembly as a non-permanent body
charged with responsibility for all aspects of the problems concerning the
uprooted people.

Hence, the contemporary UNHCR was established in 1950, which came
into effect in next year i.e. 1951. Now the Statute of the Office of the UN High
Commissioner for Refugees (UNHCR) and 1951 Convention Relating to the
Status of Refugees, with its Protocol of 1967, are principal international
instruments relating to refugees. The Statute is annexed to General Assembly
Resolution 428 (v) of 14 December 1950, which is the constituent instrument of
the Office.

UNHCR is a subsidiary organ of the United Nations, established under
Article 22 of the U.N. Charter High Commissioner is responsible to the General
Assembly, through the Economic and Social Council. The continuation of the
Office is maintained by quinquennial General Assembly resolutions. The
Statute declared that UNHCR’s work is humanitarian, social and of an entirely
non-political character. U.N. General Assembly Resolution 319 (IV), 1949,
which had envisaged the establishment of UNHCR had made it clear that
international protection was to be the high commissioner’s main function.

The term refugee has a specific legal connotation under international
refugee regime which called as United Nations Convention Relating to the
Status of Refugees, adopted by the Conference of Plenipotentiaries on the
Status of Refugees and Stateless Persons, convened under United Nations
General Assembly (UNGA) resolution 429 (V) on 14 December, 1950 and
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

adopted on 28 July 1951 which entered into force on 22 April 1954 with its 1967 Protocol which expanded the temporal and geographic coverage of the Convention.

A. The Refugee Crisis

Since the end of the Second World War, the global refugee situation has reached crisis proportions. In 1951, the United Nations based the Convention Relating to the Status of Refugees on conditions in Europe, assuming a category of politically persecuted persons as refugees and figures of not larger than tens of thousands. Today, the number of refugees has skyrocketed; with scholars and practitioners estimating figures between 15 to 22 million people worldwide. In addition, approximately 25 million people displaced within their countries lack protection under the Convention countries.¹⁷

Such exponential growth is astonishing and perplexing, given the inability of the international refugee regime to address adequately and resolve the problems. In the aftermath of the Cold War, national upheavals have multiplied the number of refugees fleeing persecution based on ethnic, political or class affiliation. The worldwide arms trade, a legacy of the regional ambitions of the Cold War superpowers, has done much to destabilize nations’ polities, economies and societies, especially in the Third World. The critical issues now are fluctuating borders, the sovereign rights of nations versus the duty of the international community to intervene in humanitarian emergencies, internal displacement and refugees’ increasing difficulties in gaining asylum. Whether victims of civil war, communal violence, gross violations of human rights or forced relocation, those affected share a common fate: losing their homes, and in many cases, their countries.¹⁸

Today’s refugee crisis has pushed the international refugee toward unparalleled regional and global cooperation. While refugee flows are caused by local events such as civil strife or environmental degradation, the globalisation of transportation, communication and news dissemination
transform these flows into international events. Over the past few years, the international community, and public at large, have come to recognise a few of the implications of such trends: The refugee crisis itself in no longer a national or regional problem, but a global one. Governments NGOs and other relief organisations have taken steps towards resolving these situations through cooperation.19

As part of these efforts, the United Nations High Commissioner for Refugees (UNHCR) designated the 1990s the “Decade of Repatriation” by which it meant, voluntary repatriation. But whether voluntary or not, repatriation may be the only option for relief organisations, especially given stringent immigration requirements and the increasing incidence of racist and random hate crimes in countries that once welcomed refugees such as Canada and Germany. Western countries have also begun to define the globalisation of the refugee crisis in terms of compartmentalised regional concern, requiring separate local responses.20

The Cold War has ended. We are all now citizens of liberal democratic states. However, these changes in world politics have signalled neither an end to political instability nor a decline in its concomitant characteristic, namely the mass movement of refugees. Indeed in Eastern Europe, South East Asia and Africa, the problems created by mass movements of displaced people are increasingly threatening the integrity of nation states. Moreover, the United Nations High Commissioner for Refugees (UNHCR), which since 1951 has been the principal international actor for the assistance and protection of refugees, appears to be the focus of developing criticism from governments and non-governmental organisations alike.

The UNHCR is under considerable political and financial pressures in the 1990s. Its areas of responsibility have grown over the years as the world’s refugee population has multiplied. A survey commissioned in the 1950s by the UNHCR estimated that some one million refugees throughout the world fell
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

within the mandate of a High Commission whose annual budget was originally $300,000. By 1991, it was estimated that the UNHCR’s responsibilities extended to over $550 million. This escalation in the Commissioner’s contemporary remit reflects an increase in both the population of displaced persons worldwide and in the number of situations calling for UN intervention.²¹

Since the Second World War the UNHCR has been forced to accommodate a metamorphosis in the refugee policies of Western governments. The UNHCR is now faced with serious financial and institutional crises. In 1989, member states refused for the first time to approve the agency’s budget and the 1990s have witnessed a forecast shortfall between assessed needs and likely resources of $150 million. The organisational framework of the UNHCR was also unsettled by the resignation of the High Commissioner, Jean-Pierre Hocke, in October 1989 and the resignation of his successor, Thorvald Staltenberg, in November 1990. The former High Commissioner, Mrs. Sadako Ogata, had to operate in a political environment where many governments want the UNHCR to empty the refugee camps through repatriation.²²

Although, there are supporters and critics in equal measure who criticise the activities, strategies and modus operandi of the UNHCR. On the one hand there are those who advocate the primacy and essentiality of an agency like UNHCR for both the protection of refugees and for working out durable solutions to refugee problems. On the other there are critics even within the organisation itself who feel that the UNHCR is operating under a number of administrative and financial constraints. They question the guiding loyalties of the UNHCR and deem its efforts to protect the interest of refugees to have been largely unsuccessful.
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

B. The Role of the UNHCR

When the United Nations replaced the League of Nations in 1945, it recognized from the outset that the task of caring for refugees was a matter of international concern and that, in keeping with its charter, the community of States should assume collective responsibility for those fleeing persecution.

The task of caring for refugees indicates an international concern because of two basic reasons. First, there exists a clear humanitarian aspect of the matter duly recognized by the Charter of the United Nations, which has distinct provisions for respect, and protection of human rights. The second reason is the basic fact that it inevitably involves the interests of more than one State. The reason was indeed fundamental based on sheer necessity arising out of the need for effective tackling of the problem of refugees. It could not be dealt with by mere negotiation or mediation or intervention or other methods known for resolution of international problems and disputes. The special aspects of the problem of multitude of human beings totally displaced and rendered helpless without a home and often without food and necessary means of living. The solution dictated the establishment of a regular organisation as a sheer necessity and this does furnish the raison d' être of the numerous refugee organizations that came into being before 1946 and also after the UN came into existence like the IRO and subsequently the U.N. High Commissioner for Refugees.

It is interesting to note that when the General Assembly of the United Nations decided on 3rd December 1949 to establish an agency to succeed IRO, governmental opinion was no more unanimous than it had been four years earlier. However, the countries, in favour of the new body were generally agreed that its main function should be international protection. Countries outside Europe believed that the problem of refugees and displaced persons resulting from the Second World War was largely solved, mainly through their departure for overseas lands. These countries thought that a small organization with limited functions and a short life span of, for example, three years was all...
that was needed to deal with the residual group of non-integrated refugees then within IRO's mandate. Accordingly, the IRO was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR) on 1st January 1951 and it was to be for a period of 3 years in the first instance vide General Assembly Resolution 319 (iv) of December 3,1949 and 428 (v) of 14th December 1950. The Statute of UNHCR, adopted by a General Assembly resolution in December 1950, outlines the responsibility of the Office, the most important of which are—

"providing international protection.....and.....seeking permanent solutions for the problems of refugees."

The Statute placed UNHCR under the authority of the UN General Assembly. It is a subsidiary body following directives received from the Assembly or from the Economic and Social Council (ECOSOC). According to the very first Article of the Statute, the High Commissioner acts "under the authority of the UN General Assembly" and Art. 3 prescribe that he shall follow "policy directives given him by the General Assembly or the Economic and Social Council." In 1951, the ECOSOC at its 13th Session established the Advisory Committee on Refugees to guide the High Commissioner, at his request, in the exercise of his functions. In the beginning of 1955 the General Assembly by its Resolution 832 (viii) and ECOSOC by 565 (xix) adopted in October 1954 and March 1955 respectively, reconstituted the Advisory Committee as an Executive Committee known as UNREF Committee, which retained the advisory function of its predecessor. However, again it was in 1959 that the Executive Committee of the High Commissioner’s Programme replaced the UNREF Committee. The Executive Committee reviews the use of the emergency Fund, and the administration of Special Trust Funds, and advises the High Commissioner, at his request, in the exercise of his function under the statute of his office. It is assisted in the execution of its functions by the Sub-Committee of the whole on International Protection and the Sub-
Committee on Administrative and Financial Matter. At present the Executive Committee consists of 50 member-states and India is one of its members. Member either of the United Nations or one of its specialised agencies, to be elected by ECOSOC on the widest possible geographical basis from those States with a demonstrated interest in, and devotion to the solution of the refugee problem. UNHCR activities within the framework of Special Programme were reported to the Executive Committee from its inception.

The general control of the U.N. over the Office of the High Commissioner is exercised by various methods such as the annual report on the later's activities which has to be submitted through the ECOSOC and is first considered by the Third Committee of the U.N. General Assembly. Again the Advisory Committee on Administrative and Budgetary Questions (ACABQ) as well as the Fifth Committee of the General Assembly considers the administrative and financial aspects of the activities of UNHCR. Thus not only the policy directives but also the finances of the High Commissioner are in the hands of the Fifth and Third Committee of the U.N. as well as the ECOSOC. The High Commissioner for Refugees is elected by the United Nations General Assembly on the nomination of the Secretary General.

C. Jurisdiction and Persons of Concern

There are at least four types of persons that form the legitimate subjects of UNHCR. These are: the so-called statutory, convention, Protocol and mandate refugees. The first type-statutory refugee—is severely restricted by limitations of time and geography. The second type-convention refugee—as it appears in the Convention (and the Statute) is also greatly restricted by qualifications of time and geography. But, as these qualifications are removed by the Protocol, the potential membership of the class of the third type-protocol refugee— is global and without limit as to time. The fourth type—mandate refugee—referring to the “mandate” of the High Commissioner, is similarly broad.
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

The competence of the High Commissioner extends in varying degrees
to all four types of refugees. These are not mutually exclusive; it is quite
possible for an individual to be classified under more than one type. But, only
the latter two types (Protocol and mandate) are relevant to the more recent
refugee situations. It may further be noted that the statutory refugees are those
refugees defined in paragraph 6A(i) of the Statute, which is identical in scope of
Art 1A(i) of the 1951 Convention. The Protocol also applies to statutory
refugees. This type of refugee includes a number of clearly defined categories
of refugee, which arose in relation to various peoples of Europe and Asia
before, during and shortly after World War II.

A Convention refugee is basically any person who “as a result of events
occurring before January 1, 1951 and owing to well-founded fear of being
persecuted….is outside the country of his nationality and is unable or, owing to
such fear, is unwilling to avail himself of the protection of that country (Art.
1A(2) of the 1951 Convention). This formulation coincides almost exactly with
paragraph 6A(ii) of the Statute, which includes such persons within the High
Commissioner’s competence. But, the Convention’s definition is broader, as it
contains an additional ground for fear of persecution. The Statute refers to
“race, religion, nationality or political opinion”; the Convention refers to these
grounds as well as to “membership of a particular social group”. The protocol
applies the same grounds as the Convention except in respect of two
fundamental differences. The aforementioned limitations of time (i.e. the 1951
dateline) and geography do not apply to protocol refugees.

However, it was General Assembly resolution of 20th November 1959, which
drew a clear distinction for the first time between refugees within the
mandate and refugees who do not come within the competence of the United
Nations, in respect of whom the High Commissioner was authorised to use his
good offices in the transmission of contribution designed to assist them. So,
until 1964 some refugees were described as benefiting from the High
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Commissioner's good offices, and others as falling within his mandate. From 1966, however, the General Assembly ceased to make this distinction, requesting the High Commissioner to “continue to provide international protection to refugees who are his concern, within the limits of his competence, and to promote permanent solutions to their problems”. Later, in December 1972, to allow UNHCR to assist in the repatriation of Sudanese refugees from neighbouring countries and also to resettle those who had been displaced within their own country, the Assembly referred at one and the same time to refugees and displaced persons as coming within the competence of the High Commissioner. In 1975 an important step was taken when Resolution 3454 (XXX) of 9 December reaffirmed in its preamble “the essentially humanitarian character of the activities of the High Commissioner for the benefit of refugees and displaced persons”.

D. Statute, Mandate and Operation Framework

In the years following the Second World War; the United Nations recognised the need to address the problems of international refugees. Far from resolving problems of nationhood and territorial boundaries, the end of the Second World War acted as a catalyst for Cold War tensions and a growing population of refugees. The Communist take-over of Czechoslovakia together with the separation of Germany into the Federal Republic and the Democratic Republic illustrated the political, economic and social divisions of Europe during this period. From 1947 the International Refugee Organization accepted some responsibility for worldwide refugee issues, but when it completed its mandate in 1951, a new international framework for assisting refugees was deemed essential. Within this environment, the United States and other Western States in the General Assembly opted to address the international problems of refugees by establishing an ad hoc body supposedly capable of acting independently within the administrative and financial framework of the United Nations. This, the Office of the United Nations High Commissioner for
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Refugee was established on 1 January 1951 as a non-political agency devoted to protecting and assisting the world’s refugees. Paragraph 2 of the Statute of the UNHCR declares:

"The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule to groups and categories of refugees."

The creation of the UNHCR in January 1951 and the adoption of the Convention relating to the Status of Refugees in July of the same year may be seen as part of a broad move by the United Nations to promote human rights. Despite the non-political chains of the Statute, the setting-up of the High Commission at this time was in itself a function of the basic ideological division between East and West. In the years following the Second World War, the vast majority of refugee movements flowed from East to West and Western governments viewed refugees as welcome evidence of the failure of communist systems. To a certain extent, the General Assembly debates surrounding the drafting of the 1951 Refugee Convention reflected an understanding in the West that refugees should be viewed in positive propaganda terms.

The 1951 Convention was drafted by a group of only 35 states. In the era of colonialism, Egypt was the only independent African signatory whilst the Soviet Union and the Eastern bloc rejected the Convention. Indeed for at least the next three decades the Soviet Union perceived the UNHCR to be a tool of Western political ambitions. The United States perceived the High Commissioner’s primary responsibility as being to resettle the refugees who were a legacy from the war in Europe. As a result, the UNHCR mandate and the Convention Relating to the Status of Refugees adopted by the General Assembly in July 1951 reflected a philosophy of "cautions liberality. On the one hand, there was the influence of a general philosophy of "Western liberalism, which perceived refugees as a European problem within an intensifying Cold War. On the other hand, there were xenophobic pressures to maintain "nationhood". Thus, the 46 articles establishing minimal rights for refugees
both recognized the basic right to seek asylum and recognized that nation states had no obligation to grant refugees asylum.

In a similar vein, resolutions concerning the definition of a refugee and the responsibilities of the High Commission were equally cautious. Paragraph six of the Convention defined a refugee as any person who:

“Owing to a 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.”

The armed conflicts and economic deprivation were not included within the ambit and competence of the High Commissioner, so were people who were stateless but who do not fall under the aforesaid definition of a refugee. In addition, the Convention is silent on the grant of asylum as a human right rather cerebrated that it was a sovereign domain of discretion for governments.

Moreover, in response to pressures from Washington the Convention restricted the mandate of the UNHCR to events occurring in Europe and to persons made refugees before 1 January 1951. The term “persecution” was not defined and this appears to have ensured different rates of acceptance for people fleeing the same conflict. As Gallangher concluded in his consideration of the formative years of the UNHCR, these restrictive definition efforts were motivated, of course, to keep the numbers down.

E. Responsibilities of the UNHCR

The Statue of UNHCR adumbrated the responsibilities of the Commissioner as follows:

1. Promotion of the legal protection of refugees.
2. An emphasis on the durable solutions of refugee problems
3. Promotion of voluntary repatriation, assimilation or resettlement of refugees.
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

However, it was axiomatic from the 1951 Convention that it was the pious onus of the governments and its instrumentalities to determine the criterion and who qualified under the subjective definition of refugee owing to a “well founded fear of persecution”.

It should nevertheless be noted that the Refugee Convention’s position on repatriation reflected positive attitude. The Soviet Union’s general stance was that the sovereignty of the refugees’ states of origin should be preserved and protected and all the refugees should voluntarily or not be repatriated. But the Western powers advocated vehemently in the General Assembly that the repatriation should only be made on a voluntary basis.

As Louise Holborn cogitated upon the concept of repatriation and pointed out:

"——the concept of repatriation was surrounded by question marks—— in fact, both the United States and France tried to torpedo the inclusion of ‘repatriation’ as a possible task of the High Commissioner for Refugees—— for the West it was virtually inconceivable that refugees from e.g. the USSR world be willing to return home, or should be forced to repatriate. Nor was the West able or willing to conceive of refugee problems outside Europe."

Article 31 of the High Commissioner’s Statute is a manifestation of the influence of Western members of the United Nations, which refers to repatriation in negative terms. However, arguments for repatriation in relation to the contemporary refugee crises subsequently assumed more prominence and acceptability. The phrase negative terms denote that there should not be any expulsion or forcible return (refoulement) of refugees.

In the 1950s, the UNHCR was unable to discard its ideological trappings and, as a result, did not always enjoy overwhelming support in General Assembly debates. However, international reaction to events in Hungary in 1956, when 2000,000 Hungarians sought shelter in Austria and Yugoslavia, thrust the UNHCR once more into the limelight and helped ensure the agency’s long-term survival. On 9 November 1956 the General Assembly, in the face of Soviet opposition, authorised the High Commission to raise funds and to
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

coordinate assistance to the Hungarians. This was first major occasion where the agency was authorised to respond to large-scale movements of people without reference to the limited and cautious guidelines of the 1951 Convention. Although politically motivated the UNHCR’s intervention in the Hungarian crisis was perceived as a successful, humanitarian response and provided the basis for a series of supportive General Assembly Resolutions. In 1961 and 1964 the international community raised the issue of extending the remit of the UNHCR by deleting the time limitation clause of the Refugee Convention, and in 1967 a Protocol removing the time and geographical limitations of the 1951 Convention was accepted by the General Assembly.\textsuperscript{37} The importance of the Protocol lies in the fact that it extends the scope ratione personae of the 1951 Convention by removing the dateline of 1 January 1951 continued in the definition of the term refugee in Article 1. This ensures that the Convention is applicable to new groups of refugees, i.e. persons who became refugees as a result of events that took place after 1 January 1951.

F. Resources and Administration

The governments of the West with different priorities also directed the administration and finances of the UNHCR. The United States wanted the High Commissioner within the office of the UN Secretary General whilst the Europeans wanted the head of the UNHCR to be independent. The resulting compromise saw the High Commissioner as an extendable, three (now five) year appointment, nominated by the U.N. Secretary General from a list of candidates submitted by governments. The Secretary General’s nomination is subject to approval by the General Assembly. Under this arrangement the High Commissioner is perceived to be partially independent whilst remaining accountable to the General Assembly.\textsuperscript{38} The High Commissioner reports to the Executive Committee (EXCOM), which currently comprises 44 governments. Its functions include the approval of the annual programme and budget. In 1951, the High Commissioner was allocated a very small administrative budget
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

of $300,000. At the same time, the Commissioner was forbidden to raise revenue directly, or even spend it directly on refugees. Rather, he was allowed to raise finances indirectly through governments and even non-governmental organisations. According to the Statute:

"The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and as appropriate, public agencies which he deems best qualified to administer such assistance".

The barrier against raising revenue was partially lifted in 1957 with the operation to assist refugees from Hungary, but the limitations on spending funds were not lifted. The UNHCR budget is broadly divided into funds destined for General Programmes and those for Special Programmes. General Programmes include basic projects for refugee aid and the promotion of durable solutions. Special Programmes are destined for particular types of intervention, such as the Orderly Departure from Vietnam. They include major unforeseen emergency operations and are the subject of specific fund-raising appeals. As Nicholas Morris has pointed out from within the UNHCR, the voluntary character of this revenue has considerable implications for the operational framework of the Commission:

but they may lack the "While in theory UNHCR is assisting governments in their primary responsibility, in practice some of these governments cannot discharge that responsibility unaided. They may have the political will, but they do not have the resources. Conversely, others in the international community have the resources political will."40

G. How UNHCR is funded?

The budgetary implications may have been limited in the early years when resource requirements were relatively small. As the number of refugee movements multiplied, however, the gap between assessed needs and likely resources assumed crisis proportions. Many governments had different budget cycles from the UNHCR. Some staggered or delayed their payments and the
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

UNHCR found it increasing difficult to raise revenue. Between 1978 and 1988 the Commissioner’s annual expenditure rose from $ 135 million to almost $ 546 million and, by 1989, donors were increasingly unwilling to provide unconditional funds. In October 1989 there was shortfall of over $ 100 million between the funds that the donor actually provided and the budget they had approved a year earlier. The UNHCR cut spending by $ 70 million during the year but a deficit of $ 40 million remained. The resulting financial crisis led to philosophical change in the nature of voluntary contributions. In 1990 the Executive Committee set up a working group to scrutinize all aspects of the UNHCR’s administration, programmes and budget. The findings of this working party led to substantial cost cutting and a project reduction of over 20% in total voluntary contributions for 1993. They also helped to establish that voluntary contributions from donor governments towards the Commissioner’s income would be based upon what was available rather than on refugee needs. These changes threaten the UNHCR’s surplus financial capacity, a capacity, which historically has been essential to the Commission’s ability to react to volatile and unpredictable refugee crises.

In many respects the 1967 Protocol considerably enhanced the potential power and influence of the Commission. It coincided, however, with a qualitative change in the character of refugee movements. By the end of the 1960s the fragility of the nation state in post-colonial Third World societies and the availability of law cost weaponry on the international arms market acted as catalysts for political instability and a burgeoning refugee population in Africa and Asia. From the late 1960s refugees from the less developed world became a major proportion of the international refugee population. As a result, several Western governments, particularly in Europe, appeared to become less and enthusiastic towards the concept of political asylum. This may not be altogether surprising. The international framework for dealing with refugees was party accepted by Western powers only in so far as it served, or did not run
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

counter to, their geopolitical interests. Thus an increase in the number of refugees who were not automatically a product of Cold War was not so welcoming. The majority of migrants seeking asylum now originate from the less developed world and their strategic and political value to the West may be relatively limited.42

This has had two important and major effects. Firstly, Western governments introduced more restrictive and defensive measures to curb and check “unwelcomed migration”. For instance, United Kingdom designed the introduction of fines for airlines carrying refugees with inadequate travel documents, restrictive detention conditions and excessively bureaucratic procedures and legal labyrinth for those seeking asylum. Secondly, the volatile political environment within which the UNHCR operates appears to have promoted the use of repatriation as a durable solution to refugee movements. The UNHCR has always emphasised and accorded the top priority to the durable solutions and voluntary repatriation should be a harmonious and desirable solution. It is thus instructive and imperative to examine the metamorphosis of government and UNHCR policies with regard to the arrival of the Vietnamese Boat People in Hong Kong.

UNHCR is almost entirely funded by direct, voluntary contributions from governments, non-governments organizations and individuals. There is also a very limited subsidy from the regular budget of the United Nations, which is used exclusively for administrative costs. UNHCR’s budget topped $ 1 billion for the first time in 1992. It has exceeded that mark every year since, primarily because of major refugee emergencies in former Yugoslavia, the Great Lakes region of Africa and elsewhere. The 1995 budget was $ 1.3 billion.

A total contribution to UNHCR in 1994 was $ 1.069 billion, including $ 36 million in in-kind donations. In-kind contributions can range from wheat
flour and cooking oil to the provision of airlift planes to children's shoes. Since 1977, UNHCR's budget has been divided into two parts:

(a) General Programs, which are basic ongoing refugee protection and assistance activities that are planned and approved in advance. General Programs are statutory activities and are divided, for the most part, by country and continent. In 1995, the General programs budget target was $428.7 million. As of 5 December, a total of $385.2 million was available for expenditure. Governments at annual pledging conferences announce funding for general programs often.

(b) Special Programs are made use of refugee emergencies, voluntary repatriations and programs for non-refugees. The Special Programs funding target for 1995 was $863.9 million. As for 20 November, $501.6 million had been contributed. Funds for each Special Programs are usually sought through the issuance of appeals, which can be launched, revised and updated as required. Each special program has its own distinct trust fund. In former Yugoslavia and other large programs, appeals for funds are often coordinated with other UN agencies active in the region and have been issued to cover periods ranging in duration from a few months to a year.

Over the past five years, donors have kept pace with UNHCR's increased requirements. About 95 percent of the agency's funding comes from just 15 governments, prompting UNHCR in recent years to seek expansion of its donor base. UNHCR has more than 5,300 staff, about 80 percent of them in the field. Each year, its more than 250 offices in 118 countries channel at least $300 million through non-governmental organization (NGOs) for the implementation of humanitarian programs benefiting refugees and others of concern throughout the world. In all, UNHCR works with some 500 NGOs worldwide.

4. THE AID, ASSISTANCE AND ACTION OF THE UNHCR

In any refugee relief situation, one agency should be designated as the primary operating agency, with responsibility for coordinating relief activities and ensuring that all refugees received the basic, minimal level of assistance. The three primary tasks that must be carried out by any coordinator of relief operations include the responsibility to ensure:

(1) that all refugees have equal access to the services being offered;
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

(2) that all refugees receive a basic, minimal standard of care and support
while in refugee camps; and

(3) the coordination of the services offered by various operational partners
(usually international voluntary agencies), so as to guarantee that no
gaps in services or levels of service occur.

In the heat of a refugee emergency, the immediate priority is to save lives. Two
factors, in particular, are crucial: One is to protect the displaced people from
being forced back into the areas from which they have fled, and the other is to
supply them with food, water, health care, shelter and sanitation. Meeting the
physical needs of people in emergency is the more tangible response of the two,
and often seems to dominate the agenda of emergency assistance.

But protection should be built into emergency management from the very
beginning. The challenge is to provide aid in a way that shields people from
further persecution and violence, while simultaneously laying the foundations
for lasting solutions to their predicament. It is absolutely true that the speed and
efficiency of the initial response to a refugee emergency affect the welfare and
in some cases the very survival of the people concerned; they may also
influence the prospects for solutions.

The office of the United Nations High Commissioner for Refugee
(UNHCR) is viewed increasingly as the humanitarian arm of the United
Nations. The agency's work is being transformed in the post-cold war era by
its efforts to respond to the proliferation of conflicts and cause of displacement
that have produced nearly 25 million refugees and another 24 million internally
displaced persons. From the mountains of northern Iraq to the besieged city of
Sarajevo UNHCR has been required to respond in new ways to new
responsibilities. UNHCR has a major role in co-ordinating aid to refugees. Excerpt in special circumstances, its material assistance – activities are
conducted through national or local authorities of the country concerned, other
organizations of the United Nations system, non-governmental organizations, to
private technical agencies. In this context it may be submitted that no explicit
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

enabling provisions for UNHCR’s material assistance functions can be found in Paragraph 8 of the Statute which sets out the High Commissioner’s responsibilities in greater detail, or in the 1951 Convention; neither has the question of humanitarian assistance been covered by subsequent conventions dealing with refugees. 44

Sadruddin Aga Khan, in one of his writings aptly observed:

“In order, to comprehend the reasons for the quite secondary importance given to material assistance in the original statute of the UNHCR, one should recall the situation at the time the Office was established. As the heir of two organisations, which had had considerable financial resources and had been given the onerous task of housing, feeding, assisting and repatriating or resettling millions of persons who were refugees or were displaced as a result of the Second World War, the UNHCR was given only a modest share of those numerous activities. The year was 1950 and the main contributing governments were showing signs of impatience and weariness. They wished to put an end to measures, which were by definition temporary and geared to an exceptional and urgent situation, which they regarded as being largely past. To them, the time seemed to have come for a return in traditional standards involving the basic, if not exclusive, responsibility of each State toward the refugees whom it was sheltering. Consequently, in the Statute of the UNHCR, the role of the Office to provide financial help to countries of reception or material assistance to refugees was minimized. 45

UNHCR’s approach to assistance to refugees is, as stipulated in Paragraph 1 of the Statute, to provide durable solutions to their problems by promoting voluntary return to their own countries, or integration elsewhere. This approach is in keeping with the idea that refugees should be helped to help themselves. In applying this principle, every effort is made to resolve their problem in terms of the three possible solutions: voluntary repatriation, local settlement, or resettlement through migration to another country. While durable solutions constitute the ultimate goal, the over-riding priority, in the first instance, is to ensure the refugees’ well being and to provide them with emergency relief. This has become more acute in recent years because of the
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

suddenness of new influxes, the large numbers involved and, often the lack of facilities in the area where the refugees arrive.

A. The Policy of Material Aid and Assistance

The General Assembly, in its resolution 538 (VI) B, adopted at its Sixth Session in February 1952, authorised the High Commissioner to issue an appeal for funds, under paragraph 10 of the Statute, to enable UNHCR to give emergency aid to the most needy groups of refugees. The fund that was thus constituted referred to as the United Nations Refugee Emergency Fund, remained in operation until the establishment of the UNREF Programme in 1954. Soon after the creation of UNHCR, an Advisory Committee had been set up to assist the High Commissioner. In 1955 the Advisory Committee was replaced by the UNREF Executive Committee, which in turn was replaced by the Executive Committee of the Programme of UNHCR. The Executive Committee, appointed by the Economic and Social Council and now comprising of 50 members, remains the guiding body of the office. In 1958 the General Assembly passed a resolution 1166 (XII) in relation to the assistance Programmes of the UNHCR. Under the terms of this resolution and of decisions subsequently taken by the UNREF Executive Committee, the High Commissioner was authorised to put into effect an annual assistance programme – nowadays referred to as General Programmes. The Projects and financial targets submitted under these programmes as subject to prior approval by the Executive Committee. The High Commissioner was also authorised to establish an emergency fund. He furthermore, required to submit an annual progress report on the implementation of his programme.

As and when new large-scale problems concerning refugees arose, UNHCR was called to provide essential material assistance under Special Programmes in keeping with specific resolutions adopted by the General Assembly and ECOSOC to that effect. Furthermore, pursuant to Resolution 2956 (XXVII), adopted by the General Assembly in December, 1972 the High
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Commissioner was requested, at the invitation of the Secretary General, to continue to participate in those humanitarian endeavours of the United Nations for which his office has particular expertise and experience. "The structural change paved the way for deeper and more comprehensive extensions of UNHCR's competence for material assistance functions. A dual approach in the progressive widening of UNHCR's mandate, in the form of greater capacity for humanitarian assistance and expanded categories of persons eligible for protection, emerged from the fundamental responsibility to seek solutions to the refugee problem."^47

A wide recognition of UNHCR's non-mandate responsibility occurred when the High Commissioner was requested in 1961 by General Assembly Resolution 1625 (XVI) to continue to "pursue his activities on behalf of the refugees within the mandate, or those for whom he extends his good offices". The effect of these provisions was to authorise the High Commissioner to use his good offices on behalf of any person considered to be a refugee who was not a mandate refugee or within the competence of any other UN organ. A former High Commissioner essentially as enabling large-scale operations to be conducted, centred entirely on the provision of material assistance thus described the achievement of the good offices resolutions. However, in the year 1965, the General Assembly passed a Resolution 2039 (XX) and abandoned the distinction between refugees within the mandate and refugees covered by the High Commissioner's good office.48 Throughout the 1960's and 1970's growing refugee problems relating to an increasingly wide range of uprooted people highlighted the need for a corresponding increase and change in field activities. In 1975, the General Assembly passed a Resolution 3454 (XXX), in which the preamble specifically reaffirmed the eminently humanitarian character of the activities of the High Commissioner for the benefit of refugees and displaced persons.
B. Main Aspects of UNHCR Material Aid and Assistance

UNHCR material assistance activities include emergency relief, assistance in voluntary repatriation or local integration, resettlement through migration to other countries, as well as counselling, education, and legal assistance.

(i) Emergency Relief is provided mainly in the form of care and maintenance of new refugees or displaced persons when a variety of basic essentials such as food, shelter and medical are required on a large scale at short notice. In recent years, this type of aid has been needed in Africa, Asia, and Central America, just to ensure survival.

(ii) Assistance in Voluntary Repatriation -- In such cases, the assistance element consists of helping refugees, wherever, possible, to overcome practical difficulties concerning their voluntary repatriation. It also allows UNHCR to ensure that the refugees are given basic help upon arrival in their homestead.

(iii) Local Integration -- The object of local integration is to assist refugees and displaced persons to become self-supporting in their country of residence and or of first asylum. Providing refugees with loans or grants to establish themselves in a profession, assisting them through vocational training to learn a skill etc, does this in a number of ways, such as.

(iv) Resettlement through migration -- From its inception, UNHCR has been actively engaged in the promotion of resettlement through migration, in close co-operation with interested governments and voluntary agencies concerned with the resettlement of refugees.

(v) Education has proved to be particularly important in facilitating the integration of refugees. Educational assistance of primary and secondary level is made available under UNHCR General Programmes.

(vi) Counselling, which is provided under various UNHCR Programmes, is particularly important in helping refugees to opt for an appropriate solution to their problems and to avail themselves of such facilities as may be open to them.

(vii) The rehabilitation of disabled refugees is mostly undertaken in close co-operation with voluntary agencies, which implement special local programmes of assistance and treatment. A further response to the needs of disabled refugees is UNHCR’s Promotion of Special Resettlement schemes known as the “Ten-
or-More Plan”. Under this plan, several resettlement countries admit ten or more handicapped refugees and their families per year.

(viii) Legal assistance is provided to help individual refugees with administrative formalities in their country of residence. It is also provided to refugees who are involved in court cases affecting their refugee status. It may be summarised that through material assistance activities of the High Commissioner started modestly it has now assumed and increased proportion.

C. Co-operation and Co-ordination with other Agencies

Para 8 of the Statute of the UNHCR provides for cooperation with all members of the international community. With the increase and diversification of UNHCR’s activities, relation with member agencies of the United Nations System, as well as with inter-governmental and non-governmental organizations (NGOs), have continued to strengthen. UNHCR draws on the expertise of other organizations of the United Nations system experienced in matters such as food production (FAC), health measures (WHO), education (UNESCO), child welfare (UNICEF) and vocational training (ILO). The participation of the World Food Programme (WFP) is particularly important in supplying food until such time as the refugees are able to grow their own crops or become self-sufficient through other activities. Close contact is also maintained with the Resident Coordinators/Representatives of the United Nations/United Nations Development Programme (UNDP). In areas where UNHCR is not represented, UNDP representatives frequently administer UNHCR financed projects and act on UNHCR’s behalf in relations with Governments. The World Bank and UNHCR have cooperated in planning, financing and implementing projects aimed at promoting self-reliance through, for example, agricultural activities and at creating employment opportunities for refugees in their country of asylum.49

In addition to these and other members of the United Nations system cooperating with UNHCR in their respective fields, inter-governmental organizations play an important part in UNHCR’s activities. The European
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Community (EEC) is instrumental in providing contributions, both in cash and kind, and in the implementation of legal instruments. The EEC also extends considerable moral and political support in the search for solutions to refugee problems. The International Organization for Migration (IOM) organizes the transportation of refugee migrants. There is also a long-standing tradition of co-operating between UNHCR, the International Committee of the Red Cross (ICRC) and the League of Red Cross Societies (LRCS).

UNHCR co-ordinates activities with the Organization of African Unity (OAU) within the framework of the Joint Working Group established to monitor progress in the implementation of recommendations adopted at the Conference on the Situation of African Refugees held in Arusha in 1979. The International Conference on Assistance to refugees in Africa (ICARA), held in Geneva in April 1981, was sponsored jointly by the Secretary General of the United Nations, the OAU and UNHCR. The second International Conference on Assistance to Refugee in Africa (ICARA II) took place in Geneva in July 1984 under the same auspices except that UNDP also participated in the Steering Committee in recognition of the development aspect of many of the projects submitted to the Conference. The latest of the Conferences organized under these cooperative arrangements, the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED) was held in Oslo, Norway in August 1988. Relations with the Organization of America States (OAS) have continued, with special emphasis at the moment on UNHCR’s programme for Central American refugees.

One of the most important areas of co-operation with the OAS in 1988 and 1989 concerned preparations for the International Conference on Central American Refugees (CIREFCA) which was held in Guatemala City in May 1989. Several discussions were held with the OAS in preparation for that Conference. Within the United Nations, UNHCR provided organizational and other preparatory support for the International Conference on Indo-Chinese
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Refugees (ICIR), which was convened by the Secretary General and took place in Geneva in June 1989 to consider a new approach to the problems of Indo-Chinese refugees and asylum seekers. Close co-operation with the League of Arab States continues, while an Agreement was signed in July 1988 between the Organization of the Islamic Conference and UNHCR, thus consolidating co-operation in areas of mutual interest.

A number of countries have governmental or semi-official organizations dealing with refugees. However, over the decades, perhaps the most sustained and devoted service to the cause of refugees has been provided by voluntary agencies. Voluntary agencies or non-governmental organisations frequently act as UNHCR operational partners in the implementation of specific projects. They also play an important part in the migration and resettlement of refugees. Other voluntary agencies are of great importance by virtue of the funds they make available for refugee assistance. UNHCR has direct contact with some 200 NGOs, the majority of which are helping in operational or other ways to assist refugees. UNHCR also maintains close contact with the International Council of Voluntary Agencies (ICVA) in Geneva.

D. Some Recent Aspects of Aid and Assistance

The number of people of concern to UNHCR has increased in recent years: 17 million in 1991, 23 million in 1993 and more than 27 million at the beginning of 1995. Of this nearly 14.5 million are refugees—people who have crossed an international border and been granted asylum in another state. Close to 40 per cent of all refugees were in Africa, and slightly over 30 per cent in Asia. Almost 60 per cent of the internally displaced persons assisted by UNHCR were in the former Yugoslavia and 30 per cent in the former Soviet Union. The largest populations of concern to UNHCR were in Bosnia and Herzegovina (2.7 million displaced persons and victims of war), the Islamic Republic of Iran (2.5 million Afghan and Iraqi refugees) and Pakistan (1.5 million mainly Afghan refugees). Since the start of the 1990s, the UNHCR has
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

mounted emergency operations in an accelerating series of crises. These have included the flight of 1.8 million Iraqi Kurds to the Islamic Republic of Iran and the border between Turkey and Iraq; the war that has produced nearly 4 million refugees, displaced people and other victims in former Yugoslavia; the arrival of about 330,000 refugees in Kenya, the majority from Somalia; an exodus of around 260,000 refugees from Myanmar into Bangladesh; and the influx of some 250,000 refugees from Togo into Benin and Ghana.

In addition, crises in the Transcaucasus and Central Asia led UNHCR to dispatch Emergency Response Teams to cope with some 1.5 million displaced persons in Armenia, Azerbaijan and Tajikistan in December 1992. At the end of 1993, UNHCR began to deal with a refugee crisis in Burundi; in April 1994, this emergency was compounded by a fresh exodus of refugees from Rwanda, which put the number of refugees and returnees in the region in need of assistance at over 8,00,000. A $ 25 million emergency fund allows UNHCR to provide a rapid response to new refugee situations. If this initial assistance proves insufficient to meet the full range of needs arising from a large-scale movement of refugees, special appeals are launched to raise funds from the international community. In order to be able to respond effectively to emergencies, UNHCR has established a structure of emergency response teams and made arrangements to pre-position and stockpile relief supplies. To provide yet further flexibility, stand-by arrangement have been made with the Danish and Norwegian Refugee Councils and the United Nations Volunteers (UNV) for the quick development of staff to emergency operations in any part of the world.

In 1992, UNHCR continued to implement the High Commissioner’s three-pronged strategy of Prevention, Preparedness and solutions. UNHCR began to provide assistance not only to refugees, returnees and displaced persons – addressing the needs of entire communities rather than focussing on individuals but also, in the case of the former Yugoslavia, to people under a
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

direct threat of expulsion or threatened by the form of persecution now known as "ethnic cleansing". More than 600 UNHCR staff in the former Yugoslavia helped not only to distribute relief to the displaced and besiezed populations, but also to meet their protection needs. In Somalia, UNHCR established presence across the border from Kenya, and brought in food and assistance in an effort to stabilize population movements and eventually create conditions to the return of refugees. In South-eastern Ethiopia, UNHCR joined efforts with other United Nations organizations to address the needs of entire communities with the goal of stabilizing the population. UNHCR's Open Relief Centres (ORC) in Sri Lanka have become heavens of safety, accepted and respected by both warring parties. In terms of preparedness, the office continued to strengthen its emergency preparedness and response capacity, recognizing that the capacity to deliver is a necessary pre-requisite for improved system-wide co-ordination to address complex humanitarian emergencies.

In 1993, UNHCR has mounted emergency programmes for over three million people in the former Yugoslavia, for some 420,000 refugees in Kenya, for some 260,000 refugees from Myanmar in Bangladesh and for the continued influx of asylum-seekers from Bhutan into Nepal. Emergency Response Teams were sent to Armenia, Azerbaijan and Tajikistan in early December 1992, making the area a new focus of UNHCR concern and activity. In early 1993, in Africa the office began to cope with a new influx of some 200,000 refugees from Toto into Benin and Ghana. As to solutions, during the same period, UNHCR helped some 24 million refugees to return home voluntarily – including over 1.2 million of Afghanistan, some 360,000 to Cambodia and tens of thousands to Ethiopia. Progress continued in the local integration and repatriation of thousands of Central Americans through the process initiated in the framework of the International Conference on Central American Refugees (CIREFCA). With the encouragement of the Executive Committee and the United Nations General Assembly in its resolution 47/105 (192), UNHCR has
sought to strengthen its cooperation with the human rights bodies of the United Nations with a view to promoting effective responses to human rights problems which are generating or threaten to generate, flow of refugees and displaced persons, or which impede voluntary return.

It may be noted that in 1992 the total expenditure of UNHCR under General programmes (including Emergency Fund) amounted to $382.1 million. With regard to Special Programmes (which include programmes funded through appeals by the United Nations Secretary General) expenditure related to 1992 reached $689.8 million. Thus, total voluntary funds expenditure related to 1992 activities amounted to $1,701.9 million. In addition, the Regular Budget contribution to UNHCR amounted to $21.2 million. In terms of volume of activities and related expenditure, 1992 therefore represented a record year in UNHCR’s history, exceeding 1991 expenditure by some 24 per cent. It also reflected an unprecedented effort by the donor community in support of humanitarian initiatives worldwide. The 1993 General Programmes target, as approved by the Executive Committee at its meeting on December 17, 1992, stands at $413.6 million. Projections for 1993 under Special Programmes amount to $959.7 million.50

5. THE TERRITORIAL AID AND ASSISTANCE PROGRAMMES OF UNHCR
   A. Africa:

   In Africa millions of people have been uprooted from their homes because of Civil and ethnic conflict, human rights abuses, drought, and the famine. Some of these people have fled to neighbouring countries, which now hosts some 7 million refugees – a third of the world’s total refugee population. A greater number have become internally displaced persons. Recognizing the gravity of the crises facing Africa, the Assembly of Heads of State and Government of the Organization of African Unity (OAU), in its twenty-eight ordinary session (June 1992), decided to adopt a mechanism for preventing,
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

managing and resolving conflicts in Africa. In early 1992, UNHCR, the Department of Humanitarian Affairs, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP), UNICEF, the World Food Programme (WFP) and the World Health Organization (WHO) made determined efforts to coordinate and harmonize their humanitarian relief activities with those of ICRC and NGO’s.

In 1992 and the first quarter of 1993, UNHCR implemented a new “cross mandate” and “cross-border” approach to the delivery of assistance to all needy persons living in the same community. Under the cross-mandate approach, mixed populations comprising refugees, returnees, internally displaced persons, demobilised soldiers and civilians affected by war and drought receives basic food rations, agricultural seeds and veterinary drugs. They also benefit from improved water supplies, rehabilitated schools, expanded clinics equipped with essential medicines, and other social facilities. The implementation of cross mandate activities is undertaken collectively by the United Nations, NGOs, Government bodies and donors. There is an urgent need, for the international community to focus on African refugees today – to reinforce the political will and commitment of Governments to find lasting solutions to address refugee problems and insecurity, to improve conditions for the delivery of humanitarian assistance and ensure mobilization of adequate resources, to promote voluntary repatriation and tackle the plight of internally displaced and other affected persons. During 1992, total expenditure in Africa amounted to $ 284,435,700 of which $ 186,937,000 was spent under General Programmes and $ 97,498,700 under Special Programmes.51

B. America and the Caribbean:

Progress in the attainment of durable solutions – coupled with the risk of new movements of asylum-seekers characterized 1992 and the first quarter of 1993 in the Americas and the Caribbean. Repatriation and local integration continued to be supported, especially in the Central American region through
the International Conference on Central American Refugees (CIREFCA). The situation with regard to Haitian asylum-seekers remained an area of major concern for the office. Since the commencement of CIREFCA process in May 1989, $240.1 million have been mobilised for 153 projects with external financial requirements of $335.7 million. These funds have been channelled through NGOs (38 per cent), Governments (32 per cent), UNHCR (24 per cent) and others (6 per cent). Direct support to the follow-up of the CIREFCA concerted Plan of Action by UNHCR and UNDP continued to be provided through the CIREFCA joint support unit (JSU), based in San Jose, Costa Rica. Jointly staffed and funded by UNHCR and UNDP, the JSU played a key role in resource mobilization, technical support and regular reporting on progress in implementation of the concerted Plan of Action.52

C. Europe:

Following the fundamental changes affecting Central and Eastern Europe, UNHCR substantially increased its activities in the area during the period under review. The management of man flows triggered by the Persian Gulf crisis and by events in Yugoslavia proved to be particularly difficult in view of budgetary and staffing constraints. Beyond the emergency operation being implemented at the request of the United Nations Secretary General in Yugoslavia in favour of more than 600,000 displaced persons, UNHCR has opened an office in Moscow and placed liaison officers in all Central European capitals. In Western Europe the estimated number of asylum-seekers in 1992 was close to 700,000, compared to 545,000 in 1991 and 420,000 in 1990. The problem of managing the consequences of the great influx of asylum-seekers and processing their asylum claims has been aggravated by increasing manifestations of xenophobia and racism and a high incidence of attacks in reception centres for asylum-seekers and refugees.

It is worth to mention that on July 29, 1992, the United Nations High Commissioner for Refugees convened in Geneva a high-level International
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Meeting on humanitarian Aid for Victims of the conflict in the former Yugoslavia. This meeting was attended by all affected countries in the region, by the donor community and other interested states, and by a considerable number of governmental and non-governmental organizations. It endorsed the Comprehensive Response to the Humanitarian crisis in the Former Yugoslavia, as proposed by the High Commissioner. However, expenditure by UNHCR for the humanitarian relief operation in the former Yugoslavia for the period of November 1991-March 1993, including the value of in kind as well as cash contributions, totalled an estimated $ 319.5 million. As of March 1993 UNHCR had established 24 offices in the former Yugoslavia, employing some 600 international and local staff.

D. Asia and Oceania:

UNHCR was confronted with new refugee challenges during 1992 in South Asia. The influx of Myanmar refugees into Bangladesh, which began in the fall of 1991, continued until the summer of 1992. Nearly 250,877 Myanmar refugees were registered in various refugee camps of Bangladesh. Assistance was given consisting of food, mostly from WFP, shelter, water, sanitation, domestic items and health care. A bilateral agreement signed by the Governments of Bangladesh and Myanmar in April 1992 prepared the way for the voluntary repatriation of the refugees. Through the end of March 1993 a total of 22,477 refugees had returned to Myanmar. UNHCR and the Government of Bangladesh have agreed upon the text of a Memorandum of understanding to regulate the voluntary repatriation of the refugees.

During 1992 a major influx continued into Nepal of ethnic Nepalese from Bhutan, which had begun in early 1991. They have received assistance in the sectors of food, shelter, water, sanitation, health care, education and community services. It is worth noting that over 20,000 children have been registered for attendance at camp school. For the repatriation of these people –
the High Commissioner has offered both states the services of the office in finding a durable solution.

Since mid 1992 events in Afghanistan have produced a fresh influx of refugees into India, most of them being Hindus or Sikhs. In the course of 1992, 28,971 Sri Lankan refugees returned from India and were received in reception centres assisted by UNHCR, which has been certifying the voluntary nature of this repatriation on the Indian side since August 1992. The conflict between the Liberation Tamil Tigers of Ealam (LTTE) and the Government of Sri Lanka in the north and east of the country has at times restricted the freedom of movement of returnees and produced large numbers of internally displaced persons. UNHCR provides assistance to some 31,000 internally displaced persons in open Relief Centres. From 1980 to the end of 1992, a total of 14,723 Lao refugees and asylum-seekers repatriated to the Lao People’s Democratic Republic under UNHCR auspices, mainly from Thailand and the People’s Republic of China. Each person repatriating under UNHCR auspices presently receives a cash grant equivalent to $ 80 in the country of asylum prior to departure, and then receives $ 40 and an 18-month rice ration upon arrival in the Lao People’s Democratic Republic. In 1993, vegetable seeds and a small kit of agricultural tools were added to the standard assistance given to each returnee family. The repatriation of Cambodians, carried out within the framework of the Paris Peace Accords of 23 October 1991, began on 30 March 1992. By 1 April 1993 a total of 344,286 persons had returned to Cambodia with UNHCR. During 1992, repatriated Vietnamese continued to receive reintegration assistance upon their return. For needy returnees housing assistance is also provided.

UNHCR also provides assistance in the form of small-scale projects for local communities, which benefit both returnees and the local population. These micro-projects aim at improving the self-sufficiency of returnees, generating employment and strengthening infrastructure. UNHCR reintegration
assistance is further enhanced by the important International Reintegration Assistance Programme in Vietnam, financed by the European Community, focusing on job creation, vocational training, micro-projects, health and the promotion of small enterprises. During 1992, total expenditure in Asia and Oceania amounted to $174,527,000 of which $49,622,900 was spent under General Programmes and $124,904,100 under Special Programmes.

E. South West Asia, North Africa and the Middle East:

Afghanistan remained a focus of UNHCR concern during the period of 1992-93. UNHCR's programmes for returnee within Afghanistan has focused on limited emergency rehabilitation activities in shelter and irrigation, mainly through food-for-work projects. The withdrawal of most international staff from the country owing to the unstable conditions, however, has prevented the United Nations from addressing the reconstruction of Afghanistan and limited the ability of a range of agencies to assist population in need. The highly volatile situation in northern Afghanistan and in the country as a whole has hampered the assistance programme. In Pakistan, UNHCR offers Afghans wishing to repatriate an assistance package consisting of a cash grant and what provided by WPF to assist in their return movement and settlement in their areas of return. A total of 1,274,000 Afghan refugees benefited from this scheme from 1 January to 31 December 1992 and another 23,000 from 1 January to 28 February 1993. In the Islamic Republic of Iran, UNHCR began assisting Afghan refugees to return home through the establishment of a network of in-country transit centres, border-exit stations and organized internal transport. Following the return of almost 2 million Iraqi refugees of Kurdish origin from Turkey and the Islamic Republic of Iran during 1991, UNHCR focused on the needs of returnee villages, particularly as many had been raced during fighting. In Yemen, the number of Somali refugees increased during 1992 to nearly 51,800. In June 1991, UNHCR began to implement an emergency programme to assist the Yemeni authorities to cope with this
refugee influx. Following a request to UNHCR by the Yemeni authorities to establish a more durable camp, the UNHCR financed a number of programmes in this regard. In addition to this, UNHCR continues to provide health care assistance to some 600 urban refugees in Sana. During 1992, total expenditure in South-west Asia, North Africa and the Middle East amounted to $158,816,700 of which $60,621,400 was spent under General Programmes and $98,195,300 under Special Programmes.

If human rights are the ultimate safeguard of humanity, the UNHCR has steadily expanded its functions to cover new fields of activity in that very direction. From “refugees” as defined by the Statute of 1950 it has moved to include “uprooted persons” and then to “displaced persons” and now to all manmade disasters and it does so by co-ordinating its activities with all. Again, it is the one institution that is ever-ready to go out of its prescribed way to meet the humanitarian problems of mankind today. However, considering the present complex situation of the world, Mr. Frederick C. Cuny observed that – “To be effective, the UNHCR must assume an active posture within the relief operation. It must arrive early and promptly, and not only participate in the decisions – that are made regarding the refugees, but also take an active role in formulating and guiding the overall policy framework to ensure that the objectives of the entire programmes are coordinated and properly conducted."

Mrs. Sadako Ogata, the Ex-United Nations High Commissioner for Refugees, in her statement to the Third Committee of the General Assembly expressed her views by admitting that –

“While making renewed efforts to strengthen preventive measures, we have learned all too often the tragic consequences of talked or delayed attempts to address crisis. Emergency response is therefore the second prong of our humanitarian strategy. I have sought, over the last year, to strengthen further the capacity of my office to prepare for and respond to emergencies. We have installed five emergency teams, increased our training, and made arrangements for stockpiles of relief goods and
rapid deployment of staff. We have also reinforced links with other agencies, Governments and NGOs. I am confident that, given its unique mandate, its experience, its demonstrated capacity to innovate, and the indispensable support of Governments, my office will continue to adapt with flexibility and innovation to new challenges while preserving the established principles of international protection.

6. THE ROLE OF INTER-GOVERNMENTAL ORGANISATIONS

The Second World War and its aftermath saw an increase in refugee assistance by various organizations, which shaped the cooperation between inter-governmental refugee organizations and non-governmental and voluntary societies in the pattern, which exist today. From the very outset, the United Nations recognised that the task of caring for refugees was a matter of international concern and that, in keeping with the Charter, the community of States should assume collective responsibility for those fleeing persecuting.

The United Nations system consists of various agencies, programmes and offices. Several of them, including UNHCR, WFP, UNICEF, UNDP, WHO and the Department of Humanitarian Affairs which includes the Office of the United Nations Disaster Relief Co-ordinator, have emergency response as a part of their mandate. Of course, in classic refugee emergencies, UNHCR has a clear mandatory responsibility within the United Nations system to provide protection and assistance. It performs this function in close collaboration with other UN agencies and NGOs that have expertise in particular sectors, such as food, health and water supply. The participation of the World Food Programme (WFP) is particularly important in supplying food. Again, in areas where UNHCR is not represented, UNDP representatives frequently administer UNHCR-financed project.

In extreme emergency situations – the various inter-governmental organisations play an important role by providing humanitarian assistances to refugees. The European Community (EEC) is instrumental in providing contributions, both in cash and kind. The International Organization for
Migration organizes the transportation of refugee migrants. There is also a long-standing tradition of Co-operation between UNHCR, International Committee of the Red Cross (ICRC) and the League of Red Cross Societies (LRCS).

From the end of 1945 onwards, the ICRC undertook the distribution of relief supplied through grants-in-cash and in kind made by the various governments and national Red Cross Societies to benefit displaced persons of different nationalities. Faced with large-scale Palestine refugee problem in 1948, the General Assembly of the United Nations established the United Nations Relief for Palestine Refugees (UNRPR) to plan the large-scale relief programme necessary, in conjunction with the ICRC, the League of Red Cross Societies, and the American Friends Service Committee (AFSC). Agreements were drawn up between the United Nations on the one hand, and the ICRC and the League on the other. These recognized the independent status of these institutions vis-à-vis the United Nations, and placed funds of their disposal to supply the refugee with basic needs. A $32,000,000 UNRPR Relief Programme was decided upon for a period of nine months, starting December 1948, with the relief operation itself being organized by the Red Cross, with the ICRC, the League and the American Friends Service Committee. The large-scale relief action made it possible to stabilize a difficult situation pending more permanent arrangements. It was also the first time that the Red Cross participated in a direct and collective relief action of the United Nations. The experience served to establish a pattern for future joint activities of the United Nations High Commission for refugees and the Red Cross in various parts of the World. However, the Hungarian emergency operation in 1956-57 saw the beginning of close framework between UNHCR and the League in tasks of vast magnitude. It was also the largest single operation in which UNHCR and the Inter-governmental Committee for European Migration (ICEM) have cooperated. On September 13, 1957, the ‘Nansen Medal’ was awarded to the
League of Red Cross Societies, in recognition of its “constant humanitarian efforts for the victims everywhere of wars and natural, and other disasters, and particularly refugees”. The close working partnership established between the League of Red Cross Societies and the High Commissioner’s Office, developed during the Hungarian crisis and subsequently in North Africa, has not been confined to those two major operations. In an ever-increasing manner, it is proving its effectiveness in other parts of the world where new refugee situations are arising, sometimes with great suddenness. Africa continues to be one of the continents most gravely affected by the problem of refugees and displaced persons victims of conflict situations and disturbances. With a view to alleviating their sufferings, the ICRC maintains delegates on a permanent basis in 19 countries and has sent missions on a case-by-case basis to 15 others. In Angola, Ethiopia and Sudan, the ICRC continued its activities with regard to assistance, the tracing of persons, the exchange of messages and the reuniting of families in favour of various groups of refugees and displaced persons.

In Latin America, the ICRC has maintained its delegations in Nicaragua and at Salvador and some other countries including Argentina. It is, however, in El Salvador that ICRC has been most considerable in terms of the number of victims assisted. Food aid had been regularly given to some 80,000 persons. In addition, three medical teams provided care and assistance to some twenty villages in the affected areas. All these assistance programmes were being implemented in close co-operation with the El Salvador Red Cross, which each day had over fifty-aid workers and volunteers active in the field side by side with ICRC delegates. In Asia, the main ICRC actions taken in favour of the refugees and displaced persons have been and continue to be – those conducted along the frontier between Thailand and Kampuchea, its contribution to the programmes for the Vietnamese “boat people” and its medical assistance to the Afghan refugees in Pakistan. As regards assistance, the ICRC was remained very active mainly in the matter of medical aid. Here it is to be noted that most
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

of the National Societies in South Asia, as well as the Hong Kong and Macau branches of the British and Portuguese Red Cross, have been concerned with the Vietnamese “boat people”. Services often begin from the time the refugees reach the respective shores in frail boats asylum-sometimes many months or even years later.

National Society Services include initial reception, help in carrying out formal procedures, temporary shelter, clothing, financial assistance and a range of social welfare services – marriage counselling, tracing and efforts to effect family reunion, counselling of families in which unaccompanied minors have been placed, and so on.

In conformity with its Statutes, League involvement with refugee programmes has generally been in support of that of National Societies. Much of the Leagues qualitative inputs are in terms of assessments of situation and organizations of medical expertise and advice on nutrition, community health care and social welfare. Through its Development Programme the League aims to build up National Societies potential to meet emergencies and evidence of the soundness of this approach its already plentifully available. The work of the International Committee of the Red Cross, traditionally as the honest broker in situations which may be dangerous and are invariably delicate, has been of tremendous benefit to the refugees. Not only has the Committee undertaken prompt relief action on many occasions before inter-governmental help could be arranged, but many of its specialised services complement the High Commissioner’s function of international protection, and provide the legal assistance so often needed to solve problems stemming from the fact that a person is a refugee.

Co-operating between the High Commissioner and the League of Red Cross, Red Crescent, and Red Lion and Sun Societies, whose eighty-eight national societies comprise some 160 million members throughout the world, has already proved its effectiveness in the most demanding of circumstances. It
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

has also helped immeasurably by focusing interest on the needs of refugees. This was amply demonstrated too during World Refugee Year (1959-60), an international effort in which the Red Cross participated extensively.

It is interesting to note that the United Nations General Assembly, which has long stressed the principle of inter-agency co-operation, now also recognizes the inter-connectedness of strategies. In its December 1992 resolution on UNHCR, the General Assembly endorsed the High Commissioner’s Commitment to preventive activities, bearing in mind fundamental protection principles and her mandates, in close coordination with Governments and within an inter-agency, inter-governmental and non-governmental framework. International agencies have engaged in complementary programmes on numerous occasions, and co-ordination is essential if input is to be effective. In this context it is to be remembered that some agencies have specific mandates, which, in certain circumstances, impose responsibility that cannot wait or be dependent upon any distant co-ordinating authority. The United Nations High Commissioner for Refugees, for example, has been specifically charged by the UN General Assembly with providing ‘international protection’ to refugees, and she reports directly to that body. On the other hand, the International Organization for Migration operates outside the United Nations system, and is accountable to its governing council. Each agency, therefore, has unique mandate responsibility that may need to be activated autonomously.

The preamble of the revised Constitution of the IOM was adopted in 1989. In the organizations first years of operation, the main problems were perceived to be that of displaced persons and refugees in Europe, future refugee movements, and the orderly migration of nationals working to emigrate because of over-population in Europe; and transport and the facilitation of overseas movements were primary matters. Today, IOM’s objectives and functions are considerably wider.
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

- the orderly and planned migration of nationals wishing to leave for countries where they may achieve self-dependence through employment and live with their families in dignity and self-respect.
- the organized transfer of refugees, displaced persons and other persons compelled to leave their country of origin.
- technical assistance and advisory services in regard to migration policies, legislation, administration and programmes.

In September 1990, in the context of United Nations inter-agency operations, IOM assumed responsibility for the repatriation of third country nationals displaced or expelled in the aftermath of the Iraqi invasion of Kuwait. In September 1991 working with UNHCR and within the context of comprehensive Plan of Action for Indo-Chinese Refugees, IOM signed a memorandum of understanding with the Socialist Republic of Vietnam, with respect to the return of Vietnamese citizens from countries of refuges in South Asia.

Some international agencies, such as the International Labour Organization (ILO), have explicit responsibilities with respect to workers employed abroad; the defence of whole interests is among the objectives included in the preamble to its constitution. The ILO’s standard setting activities have in turn produced a variety of conventions and recommendations aimed at migrant workers, the most important of which are: the Migration for Employment Convention (Revised) 1949 (No.97); the Migration for Employment Recommendation (Revised) 1949 (No. 86). Here it is to be submitted that in May 1992, the ILO and UNHCR held a joint meeting in Geneva on “International Aid as a Means to Reduce the Need for Emigration”.

The full extend and potential of inter-agency Co-operation are clear from a brief-review of inter-agency instrument in former Yugoslavia. In November 1991, UNHCR was mandated by the United Nations Secretary General to act as lead agency within the UN system, and to provide protection...
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

and assistance to those affected by the conflict in former Yugoslavia. When fighting and displacement increased, the High Commissioner convened the International Meeting on Humanitarian Aid for Victims of the Conflict in the Former Yugoslavia in Geneva on 29 July 1992. On the basis of the Comprehensive Response to the Humanitarian Crisis in former Yugoslavia (CRHC) presented by the High Commissioner, the international community launched a special effort to protect and bring assistance to those in need. The inter-agency activities included programmes co-ordinated in the field by UNHCR, and designed and implemented together with UNICEF, WFP, WHO, IOM, the ICRC, the European Commission and International and Local NGOs. These covered, for example, the distribution of health services, and assistance to survivors of war trauma, including rape and sexual assault.

In 1992, the United Nations took a new step aimed at improving the coordination of its responses to complex humanitarian emergencies with the establishment of a Department of Humanitarian Affairs. In February 1993 when the United Nations faced with the Georgian crisis – and inter-agency assessment mission brought together and appropriated responsibilities and tasks between the Department of Humanitarian Affairs (DHA), the United Nations Children Fund (UNICEF), the World Food Programme (WFP), the Food and Agriculture Organization (FAO), the World Health Organization (WHO), UNHCR, IOM and the International Federation of Red Cross and Red Crescent Societies (IFRC). Programme activities oriented to humanitarian assistance and the needs of the displaced included emergency food aid and supervision, health care nutrition and social welfare services protection and non-food assistance, and transportation assistance.

The OAU is a regional organization of African States, like the Organization of American States. It consists of newly independent States, which have sprung up on the African continent. It deals with problems peculiar to Africa, including refugee problems. Refugee problems have plagued the
African continent, which has half of the world's refugee population. With the
proliferation of new States in Africa, there has been proliferation of the refugee
population there, which has reached the staggering number of five million.
Many of the African States have a smaller population that the total of African
refugees. In Somalia, every fourth person is a refugee, and in Djibouti every
eighth person is a refugee.

Faced with a massive refugee situation, the OAU concluded a separate
Refugee Convention for Africa in Addis Ababa in 1969. Although the
definition of word "refugee" is wider than the one found in the Geneva
Convention of 1951 (as amended by the 1967 Protocol), the OAU has never
worked as a focal point for African refugees. It works in collaboration with
UNHCR, which has always remained the focal point for looking after refugee
situations in Africa. In 1969, the Pan-African Conference on the problems of
Refugees was convened at Arusha (Tanzania) under the joint auspices of
UNHCR the Economic Commission for Africa (ECA) and the OAU. In April
1981, a word conference was convened under a 19080 resolution of the General
Assembly, at the instance of the OAU, to deal with the serious situation in
Africa. It was called the International Conference on Assistance to Refugees in
Africa (ICARA). It was attended by, among others, African States, UNHCR,
the United Nations Secretary General, traditional donors to UNHCR funds, and
oil-exporting countries, totalling about one hundred States. Promised for $ 560
million for aid to African refugees were secured at the Conference.

Today, Africa is the continent of refugees. But it must be said, to the
credit of African States, that they have welcomed the refugees within their
frontiers with traditional hospitality and with whatever resources are available
to them. And the resources are meagre. The OAU has reinforced the 1969
Convention with about 25 resolutions dealing with specific refugee situations.
Refugee situations in Africa can be summed up: Africa has become
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

independent, but it has left 7 million refugees dependent on international goodwill.

The ICARA meeting was successful in the sense that it focused world attention on the plight of refugees in Africa. It is hoped that this is just the beginning of the World's awareness of the refugee problem in Africa. The OAU is mainly responsible for highlighting the refugee problem in Africa.

The OAU has created the Bureau for the Placement and Education of African Refugees (BPEAR), for the education and employment of refugees in Africa. It is doing a good job in making the refugees self-employed or securing them jobs according to their qualifications.

7. THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS

Non-governmental organizations perform an indispensable role at every stage as a refugee situation develops. They are involved in preventive efforts from the very first sign of crisis; once an emergency is under way, they are instrumental in saving lives and meeting the basic needs of the victims, and finally, they play a key role in the identification and implementation of solutions, including voluntary repatriation. Where prevention is concerned, these NGOs can provide invaluable information about unfolding crisis, alerting the world to the imminence of refugee flows and other population movements. Repeated violations of human rights, impending crop failure and rising ethnic tensions are all examples of early warning signals that are often first detected by NGOs. In the emergency phase of refugee crisis, rapid interventions by NGOs frequently save innumerable lives. Because of their size and flexibility, they can reach quickly to provide essential relief such as health care, food, water supplies and shelter. Once survival is assumed, NGOs help refugees look forward to a better future by providing education and social services. NGOs also have a role to play in solutions to refugee problems. The resettlement of millions of refugees could not have taken place without their active collaboration. Their involvement is also crucial during voluntary-repatriations,
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

when their contributions include accompanying refugees back to their places of origin, designing and implementing quick impact rehabilitation projects monitoring human rights.

The unique and perhaps most valuable contribution of voluntary agencies in disaster relief is that they are frequently the only type of organization present and able to cope with the most critical phase of disaster recovery. Their staffs are familiar with the local customs and cultures, as well as with the resources, which can be mobilized. Indeed voluntary organizations are sometimes the first to report a disaster to the outside could, and are the first to launch public to finance relief efforts. Of course, there are also politically sensitive situation there outside governmental assistance is inadvisable or unacceptable, and in much cases voluntary agencies, often in cooperation with indigenous voluntary groups, are able to perform an invaluable function which governments cannot.

Currently, eleven voluntary agencies, six religiously affiliated and five non-sectarian or ethnically related carry out most refugee resettlement in the United States. These eleven agencies are: American Council for Nationalities Service (ACNS), American Fund for Czechoslovak Refugees (AFCR), Church World Service (CWS), International Rescue Committee (IRC), Habbrew Immigrant Aid and Sheltering Society of New York (HIAS), Lutheran Immigration and Refugee Service (LIRS), Polish American Immigration and Relief Committee (PAIRC), the Tolstoy Foundation (TF), United States Catholic Conference (USCC), World Relief Refugee Service (WRRS), and the Young Men’s Christian Association (YMCA). Some of the most notable international NGOs that are actively participating in humanitarian assistance programmes for refugees are – International Council of Voluntary Agencies (ICVA), International Social Service, Inter-Action, Amnesty International, American Refugee Committee, World Vision Inc., World Concern International, Save the children Federation, Refugees International, CARE, etc.
"CARE" is an international aid and self-help development organization. Responds to the needs of refugees and displaced persons in emergency situations through effective delivery systems to facilitate the distribution of food and other aid. Also implements long-term development programme in health and nutrition education and natural resource management to improve living conditions and facilitate self-sufficiency among refugees, displaced persons and repatriates. Presently, it is actively engaged in assistance programmes in Sierra Leone, Somalia, Sudan, Thailand, Chad, Mali, Niger, Ethiopia and Mozambique.

**Inter-Action (American Council for Voluntary International Action)** – It is broadly based membership association of 120 U.S. private and voluntary organizations working in international development, humanitarian and emergency relief, refugee relief, assistance, and resettlement. Member agencies participate in any or all of six working committees: Development Assistance, Migration and Refugee Affairs, Disaster Response and Resources, Public Policy, Development Education, and Private Funding.

**International Social Service** – Established in 1924, liaison between social agencies in U.S. and services abroad to resolve on a case-by-case basis problems which derive from international migration and separation of families by national boundaries. Special emphasis on services and protection for children in migration, inter-country adoption planning, and family reunification, including refugee families.

**OXFAM** – A non-profit, international agency that funds self-help development and disaster-relief projects in poor countries in Asia, Africa, Latin America and the Caribbean. At present it has sever autonomous bodies worldwide.

**Save the Children Federation, Inc.**: Founded in 1932, serves children through community development in 43 countries including the U.S. In its refugee programmes, provides humanitarian assistance with an emphasis on making refugees self-sufficient and providing a base on which long-term development
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES can take place. Agriculture, nutrition, health care, sanitation, education and small-scale enterprise are programme components in Somalia, Zimbabwe, Sudan and Pakistan.

World Vision Inc.: Established in 1950, an international Christian child cares, relief and development agency, which supports more than 5,000 projects in 89 countries worldwide. Through emergency disaster relief, child sponsorship, primary health care, agricultural development projects. World Vision’s work benefits approximately 13 million people, including 616,000 sponsored children.

International Council of Voluntary Agencies (ICVA) Founded in 1962 to provide a forum for voluntary agencies actives in the fields of humanitarian assistance and development cooperation’s. At present has 87 members comprising international and national voluntary agencies.

Ford Foundation: the Ford Foundation took the largest single voluntary action for help to refugees when in 1952 it made available a grant of $2,900,000 to assist in providing permanent solutions for the refugee problem. In the early summer of 1952 four of the major voluntary agencies with the active cooperation of the High Commissioner for Refugees and the Inter-governmental Committee for European Migration prepared a survey of refugee needs and outlined a series of practical proposals which might provide permanent solutions to the refugee problem. This document was submitted to the Ford Foundation and, after personal representations by a spokesman for the agencies and later by the High Commissioner for Refugees, the Foundation made the grant of $2,900,000 to enable the agencies to initiate some of their proposals and test their validity as permanent solution. At the same time the Foundation invited the High Commissioner for Refugee to become trustee and administrator of the Fund.

It is absolutely true that over the decades, the most sustained and devoted service to the cause of refugees has been provided by non-
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

governmental organizations (NGOs). NGOs not only provide substantial aid from their own resources, but also frequently act as UNHCR's operational partners in carrying out specific projects. They are important partners in advocating for the refugee crisis. Since its establishment in 1951, UNHCR has collaborated with NGOs in all its fields of activity. Over 200 NGOs cooperate in UNHCR's relief and legal assistance programmes. In all UNHCR maintains contact with nearly 100 NGOs involved with refugees in one way or another. In 1993, the 'Nansen Medal', awarded for outstanding service to the cause of refugees, recognized the valuable collaboration of one such NGO, "Medecins Sans Frontiers".

8. REFUGEES AND INTERNATIONAL RELATIONS

Within international relations, refugee movements not only may create tension between states but also may act as the catalyst for cultural and ethnic disputes within states. Mass movements of asylum seekers may be a source of political embarrassment or, paradoxically, an instrument of foreign policy. Accommodating large numbers of displaced people can place a considerable financial burden on the country of asylum and may lead to strong nationalist pressures to curb immigration. Thus, refugee problems and reactions to them are intensely political and it is inadequate to consider them only as humanitarian problems requiring humanitarian solutions. During the era of Cold War, asylum seekers from Eastern Europe were guaranteed a relatively positive reception in the West. These displaced people often had the benefit of ethnic European affiliation and were perceived to be useful, anti-Communist symbols in the Cold War. On the other hand, many commentators and politicians are aware that some leaders may promote refugee movements in an endeavour to get rid of political opponents and in order to exacerbate economic and political tension within the region. Gil Loescher, for example, has pointed out that in 1980 Fidel Castro deliberately expelled Cuban criminals and
Thus, refugee movements may be interpreted in positive or negative foreign policy terms as far as the recipient government is concerned. Moreover, judging by the contrasting fortunes of refugees from different parts of the world, it is apparent that applications for asylum are considered with this in mind. For instance, the United States has historically treated asylum seekers from Haiti in a much less sympathetic fashion than their counterparts from Fidel Castro’s Cuba. Recipient states appear to be less welcoming when migrants are seeking asylum in countries when cultural affiliation is tenuous and political gains perceived to be limited. As a result, the treatment of asylum seekers by Western governments appears to have developed in a relatively arbitrary fashion, with reactions to applications for refugee status treated on a case-by-case basis.

9. UNHCR ON PRESENT SITUATION

Mrs. Sadako Ogata, the Ex-United Nations High Commissioner for Refugees, sheds light on progress made by organisation and the constraints it faces at a time when most donor nations are experiencing “aid fatigue” and domestic travails. She vaticinates that the current worldwide crisis will abate. Mrs. Ogata also calls for durable solutions to minimize the impact of domestic upheavals on populations in the following words:

“In the 1950s the world was reacting to refugee flows created with the protection of individual refugees from Eastern European countries. The 1960s was much more a period of third world independence movements and decolonisation, during which there were large-scale refugee outflows, but people were able to return after their countries become independent. During the 1970s and into the 1980s, during the Cold War, traditional refugee solutions comely slowly to a dead end. And new, during the 1990s, the nature of refugee flows is much more complex – it is a mixture of economic and political forces. Finding solutions during this time is not easy, given the complexity of these forces.”

429
During the Cold War, solutions in the country of origin were never really an option, and we always focused on assistance in countries of asylum. But with the decline of the Cold War, solutions are possible. Refugee work in the 1990s should focus on the countries of origin to promote prevention. Prevention and solutions mean looking into the countries of origin and solutions involve returning people (to their home countries). Most (refugee) activities take place in countries of origin because they involve refugees and the internally displaced.

As to the prioritisation of refugee situations, she spoke of Burundi as one of the main priorities where 675 people became refugees. (In this case) there no question of which refugee situation to prioritise; the Burundians have already crossed borders. They are refugees. For those people who stayed back in Burundi, though, we will try to bring in other (organisations) because these people are not under our mandate. So in this sense, the very absence of the internally displaced in our mandate creates prioritisation.

She upheld the validity of the current definition of refugees, formulated under the 1951 convention, in the following words:

It’s a base. It’s a very important basis for current efforts because it contains the (core) principles, in particular the principle of protection. It also contains the principle of non-refoulement. This is a very important concept. The coverage of the causes of refugee outflows in the Organization of African Unity conventions on refugees has enriched the definition. It’s also been expanded. A complete legal structure has been developed through regional instruments and many UNHCR Executive Committee Conclusions. The most important thing is to protect people. The disintegration of states and internal displacement are what is mostly happening now. It’s happening in Tajikistan and in Yugoslavia. In Yugoslavia and in the former Soviet Union the federated states are disintegrating everybody who crosses the border will be a refugee, and we are being overwhelmed by the number. It is also happening in many developing countries including India due to riots, unemployment & construction of dikes.
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

As to the funding and financial constraints and issue of compassion fatigue in developed countries, she cerebrated that voluntary fund contributions from governments make up 95 percent of our available funds. As for compassion fatigue, certainly, the industrialized countries have been hit by the recession, but our needs have continued to increase. Japan is the second largest donor country; the United States is the first. We have a program of about $ 415 million, a predictable part of the budget for the next year. Other than that, if it's a situation like Burundi or Yugoslavia — those unpredictable large-scale emergencies — we put in special programs. Government funds in the general programs are not earmarked, but the funds spent on special programs reflect strongly the interests of the donors. For example, European members heavily fund the Yugoslavia operation. Cambodia was heavily funded by Japan. This reflects a kind of geopolitical interest. For example, the United States would not fund Iran. So if you ask me if foreign policy is reflected in funding priorities, then yes. Some projects are better funded than others. But politicisation is not as much the issue because there is a framework of humanitarian assistance. Moreover, coordinating the development effects of different organisations could help achieve long-term solutions. Economic, social and political programs — all kinds of approaches must be taken to prevent (refugee crises) from happening. When emergencies occur, the most important thing is to make sure that we are quick and effective. For example, we have something of a partnership with the World Food Program (WFP), because food is a very important component of refugee assistance. We also link up with UNDP (U.N. Development Programme) and UNICEF. We collaborate with UNDP primarily when dealing with return efforts or repatriation, but would like them to work with us from the very (onset of the crisis). One example of a project hand over to UNDP is the Central American Peace and Development Conference, which is the framework that develops repatriation programs for refugees from Central American countries. UNHCR took care of the initial
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

repatriation phase over a two years period; the UNDP took over at the development phase because agencies have different mandates and specializations.71

The focus in the 1990s is on refugee repatriation. Such an effort must take into account the issue of land mines also. For example, estimates suggest that it would take a working crew over 500 years to remove all the land mines in southern Afghanistan. Although, there is a lot of attention within the U.N. system on mines and de-mining.

Women and children comprise the largest number of refugees. But they are unrecognised as separate groups under the refugee regime. Notwithstanding UNHCR guidelines deal with these groups.

The refugee situations of regional importance affect neighbouring countries within their region. For example, the situation in Haiti significantly impacts the United States, and Bosnia may affect the European Community. As for the Haitian situation, refugees began leaving the country (and) headed for the United States in the fall of 1991. The U.S. set up a base in Guantanamo Bay and (conducted) the screening of individuals. This was a situation where a country such as Haiti was likely to have outflows of refugees and therefore they should be screened. And then also, since they were fleeing, we tried to coordinate a regional cooperation effort. But this never shaped up. Other countries in the region did not take on burden – sharing responsibilities. Mostly it really did not work because the refugees overran the U.S. (As a result), the U.S. started taking an approach that emphasized interdiction and I had to respond.

She vaticinates that the current crisis is of ephemeral nature and will die down. She puts in the following words:

“Right now there is a lot of ethnic and nationalist tension that breaks up communities. It’s at a maximum in Yugoslavia. But at some point, I think, there has to be a search for viable community building again.
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

And also protecting minorities should be emphasized. Protection of minorities is something so important, especially if you want to put some order in this chaotic world – whether it is in the Soviet Union or other countries that are breaking up because of ethnic tension, like in Africa. How can you really protect minorities better? Because if the world’s going to break into ethnically pure states, like in Bosnia, the countries won’t be viable. I think we should develop minority protection as an alternative.⁷²

The UNHCR’s contemporary stance has attracted both support and criticism. In essence the Commission is a creation of governments. Its budget is ultimately determined by the contributions of these donor governments. Johan Cels, in an analysis of the refugee policies of Western European governments, acknowledges that any stance adopted by the Commission towards international refugee crises is constrained both by the scope of its mandate and the willingness of governments to co-operate with the office. Some academics have supported the Commission’s programmes of repatriation for displaced people who are not perceived to be “genuine” refugees. For example Cunyn and Stein have suggested that although displaced people may be fleeing a war, some regions can be judged to be areas of “low intensity conflict” and perhaps “safe enough” for most refugees to return.⁷³ However, the UNHCR has also been accused of formulating its refugee policies in line with donor, rather than refugee, interests. For example, Barbara Harrall-Bond has criticized the office for promoting voluntary repatriation as the most desirable of the three “durable” solutions to the refugee crises the three solutions being country repatriation, integration and resettlement.⁷⁴

At a recent International Conference on Refugees and Migration, Frank Krenz, the London Representative of the UNHCR, stated:

“I think that it is not realistic to believe that all the refugees in the third world should be coming to the industrialised countries-----The UNHCR, therefore, is not persuading governments to abandon immigration controls and the comments of my office vis-à-vis a requirements or carrier liabilities have been prudent.⁷⁵

433
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Despite being ambitiously mandated by the U. N. Convention of 1951 and Statute, the UNHCR should act as a “non-political agency although Commission cannot function in a political vacuum. The UNHCR is at liberty not to pursue or impose a policy of mandatory repatriation, but political and economic pressure from national governments impelled it to go slow over its introduction.

10. RECAPITULATION

The provision of assistance to refugees is a humanitarian and non-political matter, which should not be hindered by political considerations, despite the fact that refugee situations themselves are inherently political in character. The need to give greater attention to questions of assistance arises primarily from the scale of practical humanitarian problems which remain to be solved. Moreover, a strictly positive law approach does not seem desirable in this field since many states are still not parties to the relevant international instruments relating to refugees.

Of course, it may be difficult to find examples in practice where a State has been compelled, against its will, to grant access to its stricken population. The more common problem is the lack of humanitarian assistance from outside, not the reluctance of the state to permit. Indeed, the obvious obstacle to the existence of such an obligation is the principle of ‘State Sovereignty’. Current international law, which is largely based on traditional practice, does not obligate a State in any way to accept emergency aid even when its population is in extremely grave danger.

However, in all cases, except perhaps, where the Security Council has authorised access, organizations should not act without prior permission of the State. This can be invoked only if the Security Council feels that the disaster is on a dimension, which threatens international peace and security. Here it is important to note that the international community is divided on this point. Representatives of some states continue to insist that sovereignty overrides all
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

other principles of international inter-action, while others speak not only of a right but even a duty to intervene on humanitarian grounds. Whatever the eventual outcome of this debate, recurring humanitarian emergencies have undoubtedly focussed attention in the question of how far the relief of human suffering can and should be subject to national boundaries and the consent of governments. The former United Nations Secretary General, Boutros Boutros Ghali, raised this question in a more general context in his 'Agenda for Peace'. He aptly observed:

"Respect for (the state's) fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good international governance and the requirements of an ever more interdependent world".  

The important point to note is that lack of security is one of the major obstacles of protection and humanitarian assistance in conflict zone. Delivery of humanitarian assistance is frequently disrupted or halted because of threats to or actual attacks on the staff of relief organizations and their facilities and vehicles. The airlift that supplies the besieged city of Sarajevo, for example, had to be suspended three times in 1992 for a total of eight weeks and seven times in the first six months of 1993 for a total of five weeks. The Secretary General of the United Nations in his 1992 Report in the Work of the Organization, observed that:

"The security and protection of staff and safe and effective delivery of relief materials are major concerns with respect to humanitarian efforts in conflict situation. United Nations and other humanitarian relief works are often exposed to great dangers and many are risking their lives on a daily basis".  

Negotiations with the warring parties can result in guarantees of safe conduct, without which relief work might carry to a great risk. At the same time, the use of armed forces to protect relief supplies and personnel is also a
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

matter of risk. As military involvement in humanitarian work compromises its non-political nature, raises the temperature in a crisis and may turn humanitarian facilities and staff into targets. The co-ordination of humanitarian efforts with political and military actions in refugee producing conflicts is not without its difficulties. It blurs traditionally distinct roles and, if mismanaged, could compromise the strictly neutral character of humanitarian aid, which is the best guarantee of access to people in need.

However, of all UN agencies, the United Nations High Commissioner for Refugees is the most operational one. By encompassing the needs of greater numbers of people, the United Nations has developed the High Commissioner’s Office into a principle instrument of its humanitarian policies. Over the years, with political upheavals in Africa, Asia and Central America forcing whole communities into flight, UNHCR has had to adapt to situations in which food, water and shelter had to be provided quickly to people in remote areas. The old emergency unit of UNHCR was revamped. The new unit, renamed the Emergency Preparedness and Response Section, became operational in February 1992. Its role is to develop resources and tools to enhance the capacity of the Regional Bureaus to respond to emergencies. It is true that to be more effective, the UNHCR must assume an active posture within the relief operation. It must arrive early and promptly, and not only participate in the decisions that are made regarding the refugees, but also take an active role in formulating and guiding the overall policy framework to ensure that the objectives of the entire programme are coordinated and properly conducted.82

Other UN organizations and voluntary agencies are essentially service organizations, each specialising in a certain range and level of services to be offered to the refugees. A majority of these organizations have the capability of providing only medical or nutritional services. Thus, a large gap may exist in
the provision of basis management and community services within the refugee camps, which must be filled by the UNHCR.

The “Oslo Global Conference on Common NGO-UNHCR Challenge – Partnership in Action” recommended that UNHCR, NGOs, and other agencies involved in refugee emergencies, should establish and/or develop crisis committees to: (i) coordinate various activities undertaken jointly by NGOs-UNHCR and to avoid duplication and overlap of activities; (ii) facilitate UNHCR-NGO sharing of information through periodical and regular meetings, and (iii) evaluate effects and results of ongoing common activities. The Conference further recommended that –

“UNHCR should simplify its emergency arrangements and programme procedure to: (i) ensure rapid emergency responses, especially in order to maximize the contribution of local NGOs and refugee groups, (ii) create a more flexible and less bureaucratic decision making and procurement system for emergencies, which does not require lengthy negotiations with Headquarters, and (iii) inform its partners clearly and early of the respective roles of each UN agency during a refugee emergency:.

It is indeed true that in its towering activity the UNHCR has not trodden on any one toe to incur displeasure of a single soul or single Sovereign State. Whereas it has stood on its legs constantly to serve teeming millions of humanity in dire distress. The United Nations has expressed its gratitude on numerous occasions and the community has recognized it by giving it the ‘Novel Prize’ time and again. It functions not only with the community’s support but also with the deepest gratitude of the human race.

The former president of the International Court of Justice, Mr. Nagendra Singh rightly observed:

“In relation to the work it performs and the activities that it undertakes, the Office of the High Commissioner is the Central Pivot promoting humanitarian cause ‘Par excellence’…. The Office of the High Commissioner does not give out doles in charity but promotes human activity to keep human beings alive and self-reliant.”

437
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

NOTES AND REFERENCES

7. The terms of Article 25 of Covenant of the League of Nations, the Members of League were pledged to co-operate with Red Cross Organizations, having as their purposes the improvement of health, the prevention of disease, and the mitigation of suffering - throughout the world.
8. In a Telegram dated February 20, 1921, sent by the then president of the ICRC, Mr. Gustave Ador, to the President of the Council of the League of Nations, then in Session in Paris, it was emphasised that all the organizations at work would be glad to put forth fresh efforts under the general supervision of a Commissioner - appointed by the League of Nations, which was the only supra-national authority capable of solving a problem which was beyond the power of exclusively humanitarian organizations.
9. League of Nations, Official Journal (1931) and Special Supplement No. 84 for more reference.
14. During its existence (July 1947 to Feb. 1952), the IRO assisted 1,619,008 persons, of whom 1,038,750 were resettled and 73,834 repatriated twenty-five thousand, five hundred and thirty nine were still in receipt of care and maintenance at the end of 1951.
18. Ibid.
19. Ibid.
20. Ibid.
22. Ibid.
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

26. In the same was as UNRWA, UNICEF, WFP, UNDP etc. and differing thus from Specialized Agencies such as WHO, ILO etc.
27. Supra note. 3.
30. Supra note. 21.
32. Supra note. 21.
33. Supra note. 31.
36. Ibid. p. 72.
38. The UNHCR at 40: REFUGEE PROTECTION AT THE CROSS ROADS, Lawyers Committee for Human Rights, pp. 52-90.
42. Supra note. 21, p. 285
43. Para 1 of the Statute of UNHCR states:
“The United Nations High Commissioner for Refugees acting under the authority of the General Assembly shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and if seeking permanent solutions for the problem of refugees...”
46. Supra note.3.
49. Supra note. 3.
52. Ibid.
INTERNATIONAL HUMANITARIAN ASSISTANCE FOR REFUGEES: THE WORKING OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

79. On April 5, 1991, the United Nations Security Council passed Resolution 688 and, thereby, gave international law a prod in the right direction. By ordering Iraq to "allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq", the Security Council made a crucial contribution to the individual human being's struggle for protection in international law. The resolution had in mind the plight of the Kurdish population in Iraq. Problems for 'Kurds' there began in the aftermath of the Gulf-war in February 1991. Kurdish rebels started an uprising to establish an autonomous Kurdistan in North-eastern Iraq. This prompted a violent response from the Saddam Hussein regime, which left over a hundred thousand Kurdish civilians displaced without adequate food, shelter and medical supplies.


83. Ibid.

84. Ibid.

85. Nagendra Singh, "The Role and Record of the UN High Commissioner for Refugees", Macmillan India Limited, Delhi, 1984, p. 42.
INTERNATIONAL HUMANITARIAN ASSISTANCE
FOR REFUGEES: THE WORKING OF UNITED
NATIONS HIGH COMMISSIONER FOR REFUGEES

53. Supra note. 3
54. Supra note. 3.
57. Supra note. 3.
58. "Red Cross Action in Aid of Refugees", Document Prepared by the International Committee of Red Cross and the League of Red Cross Societies, Geneva, August 1983, DOC-ORG/NGO/RC/70 D.
60. In undertaking humanitarian operations outside her regular mandate, the High Commissioner will report to the body specifically requesting such additional activity, for example, the UN Security Council.
61. Art. 1 (2), IOM Constitution, which states that IOM shall co-operate closely with international organizations concerned with migration, refugees and human resources, and that such co-operation shall be carried out in the mutual respect of the competencies of the organizations concerned.
64. Supra note. 3.
67. Supra note. 21.
69. Ibid.
70. Ibid.
71. Ibid.
CHAPTER-X
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

1. AN OVERVIEW

India is one of the few countries in the world which has experienced refugee situation, time and again, and that too on a gigantic scale in the last less than half-a-century.¹ History of India is marked by large-scale migrations of people from other countries and continents. These migrations had principally taken place across of two gateways-Hindukush mountains in the West and Patkoi range in East. From the times immemorial, people from different parts of the world have been coming to India in various categories such as travellers, invaders, settlers, refugees etc., and have made, this land their home with or without separate identity.² In the first twenty-five years after independence India had to accept the responsibility of 20 million refugees. It was mainly because of the partition of the country. As a result of partition of the Indian sub-continent in 1947, India had to confront a gigantic task of providing relief assistance and rehabilitating displaced persons from West Pakistan. The Declaration of Independence in 1947 resulting in the creation of India and Pakistan, caused the world’s largest uprooting and movement of population in recent history in the Indian sub-continent estimated at 15 million, nearly 8.5 million immigration from India to Pakistan and 6.5 million the other way round.³ At the initial stage, 160 relief camps were organized and the total expenditure incurred on relief up to the end of 1950 was Rs. 60 crores. Various schemes were prepared for the rehabilitation of the refugees. The Government of India took necessary legislative and administrative measures to meet the situation. The Rehabilitation Finance Administration Act, 1948 was passed in this direction. The two Governments (India and Pakistan) entered into a special treaty on April 8, 1950, regulating the flow of refugees and evolving modalities for settlement of claims of refugees over property, land and payments. The main features of the Agreement could be divided in four parts. The first part aimed at allaying the fears of the religious minorities by giving them an assurance about their basic
human rights. The second part was concerned with the solution of the immediate problem by promoting communal peace and normalizing the disturbed situation. It was sought to be achieved by restoring confidence among the members of the minority community. The third part aimed at establishing a climate in which other differences could be solved amicably. The last part referred to the implementation machinery, which aimed at redressing the grievances of minority communities of the two countries.4

Therefore, an intricate legal question arose as to the legal status of these displaced persons as the definition of ‘displaced person’ provided by the Rehabilitation Finance Administration Act of 1948, is at variance from the definition of the term ‘refugee’ provided by the 1951 Convention relating to the Status of Refugees. In this case, the situation creating the refugees was the result of an agreement between the two governments. So how could these persons be termed as refugees as their predicament was mainly due to civil disturbances? The plight of the people who had migrated was the same as that of refugees. They were displaced from one country to another, had undergone harrowing experiences, and had sought refuge in a country not of their origin. The refugees of India and Pakistan who had commenced a journey in fear and commotion and had abandoned their hearth and home – deserve the status of refugees under international law. They were so considered by the world community.5

As a result of the Chinese take-over of Tibet in 1950, India had faced another refugee influx in 1959 when Dalai Lama along with his 13,000 followers fled the country and reached India as refugees. The Government of India granted political asylum to the Dalai Lama and his followers. The institution of Dalai Lama was dealt a severe blow. It was politico-religious persecution. “One can state candidly that the political asylum granted to the Tibetan refugees did play a small but significant part in the evolving hostility between the two nations.”6
India faced another massive refugee influx in 1971 when 10 million people fled from the erstwhile East Pakistan, now Bangladesh and reached India as refugees. India was forced to abide by its humanitarian obligations and gave shelter to these people on condition that these people would have to return to their own country when the conditions improve there. However, after a gap of one decade India was once again severely affected by the influx of thousands of refugees from Sri Lanka and Bangladesh since 1983 and 1986 respectively. As per the record of the ‘World Refugee Report’, prepared by the Bureau for Refugee Programmes, Department of States (July 1993): at the end of 1992 India hosted approximately 400,000 internally displaced persons.

It is most distressing to note that India is not a party to the 1951 UN Convention on Refugees or its 1967 Protocol, nor is there any Indian law establishing asylum or refugee status. The Government of India handles refugee matters administratively, according to internal domestic and bilateral political and humanitarian considerations. UNHCR has no formal status in India and it is usually permitted to deal only with nationals from countries not bordering India. The Indian authorities generally grant renewable temporary residence permits to UNHCR recognized refugees. Official policy of the Indian government is that all refugees, whether those it protects or those under UNHCR mandate, are allowed temporary refuge only in India. Besides, India does not offer permanent resettlement to refugees granted temporary asylum elsewhere.

The legal framework within which the refugee is located remain characterised, on the one hand, by the principle of state sovereignty and the related principle of territorial supremacy and self-preservation, and, one the other hand, by competing humanitarian principles deriving from general international law and from treaty. Refugees are for the most part victims of human rights abuses. And more often than not, the great majority of today’s refugees are likely to suffer a double violation: the initial violation in their
own country of origin which will usually underlie their flight to another country; and the denial of a full guarantee of their fundamental rights and freedoms in the receiving state. The international legal regime for the protection of refugees, whose basis is provided by the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol, attempts to guarantee against such violations. Or, at any rate, these conventions prescribe duties and obligations, which are incumbent upon States in their treatment of asylum-seekers and refugees.

International guarantees for the protection of refugees, of course, are in themselves largely without much effect unless supported by parallel guarantees within the domestic structures of the various states, which comprise the international community. This suggests the need for a certain concordance between international law, on the one hand, and municipal law, on the other. This need is an acknowledgement of the fact that, international refugee law largely, if not wholly, depends for its effectiveness on the willingness of States to respect and apply to the individuals concerned. Thus, realistically, the refugees through provisions may only enjoy the protection enshrined in the provisions of international refugee conventions in the municipal law enacted by the host or receiving State.

The formal instruments on refugees are three:

(i) the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in 1950,
(ii) the Convention relating to the Status of Refugees, 1951; and

The Statute of the Office of the High Commissioner for Refugee is an important instrument, sometimes overlooked because it is not in treaty form. It invests the High Commissioner with the function of protection of refugees. These functions include the promoting measures to improve the situation of refugees by special agreements with governments, assisting governmental and
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

private efforts to promote voluntary repatriation or assimilation within new
national communities, promoting the admission of refugees, facilitating the
welfare and improvement of conditions of refugees, and maintaining liaison
with governments in all matters concerning refugee questions. The High
Commissioner is assisted by the advice of the Executive Committee of the
High Commissioner's Programme, which in term established, in 1975, a Sub-
Committee of the whole on International Protection.

Indeed, the principal legal instrument concerning refugees is the
Convention Relating to the Status of Refugees of 1951, which has been
described as the Magna Carta – the Great Charter – of refugees. Although it
does not go back as far in history as the memorable proclamation of rights and
freedoms conceded in 1215 by the King of England to his subjects, the
Convention is the veteran of many battles it has helped to win by providing a
unified code of rights and duties for refugees, which still today protects them
from arbitrary treatment by states. 9

The 1951 Convention is a comprehensive charter of the rights, which
signatory countries agree to confer upon refugees. These rights range from
the simplest to the most elaborate, and it is provided that there shall be no
discrimination for reasons of race, nationality or religion. They include the
right to practise a religion, to have access to wage earning or self-employment
and to the liberal professions, to housing and public education, and to hold
movable and immovable property. The refugee shall also have access to
courts of law, to public relief and to social security. He shall be granted
freedom of movement, and shall be entitled to identity papers and a travel
document. He shall also have the right to cease to be a refugee, that is the
right to seek and acquire the citizenship of the adopted country. Regarding the
application of these rights, the Convention often refers to treatment at least as
favourable as that accorded to other aliens in the same circumstances, and
recommends that refugees shall benefits from the most favourable treatment

446
possible. However, the most notable omission from the Convention is any statement of obligation on the part of contracting States to admit a person qualifying as a refugee under its terms. But it is also true that in 1951, the events of the preceding years seemed unlikely to be repeated, and the Convention was seen as achieving its primary objective of resettlement and integration of dislocated persons without the need for any obligation of admission of refugees. This expectation proved, of course, to be wrong.

The term “asylum” does not appear in any of the instruments discussed above relating to refugees. But asylum (meaning territorial and not diplomatic asylum) aptly describes the status of a person accorded refugee status and permanent settlement in a State other than that of his nationality. The status of refugee and of enjoyment of asylum is thus largely, but not exactly, coterminous. For asylum is a wider notion embracing in addition protection for reasons other than those particular grounds of persecution set out in the 1951 Convention. Also, the notion of asylum connotes a decision by the host State to grant the asylee permanent, or at least indefinite, residence, whereas refugee status can be granted without such an assurance of residence; an obligation is assumed only against expulsion and refoulement.

The Committee on the Enforcement of Human Rights Law of the International Law Association – in its report for the Buenos Aires Conference held in August 1994 stated, inter alia, that despite widespread acceptance of the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto, the right set forth in Art. 14 of the Universal Declaration has not been identified by commentators or states as falling within customary international law; however, returning a person to a country where he would be tortured might well violate a developing customary norm against the refoulement of refugees. So, the central problem to be addressed is the legal status of the right to seek and enjoy asylum in general and the principle of non-refoulement in particular.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

The international community has reacted to the asylum crisis *inter alia* by trying alternative methods of improving the legal framework of territorial asylum. Within United Nations this has been done mainly through the Executive Committee of the High Commissioner's Programme. The UNHCR Executive Committee has adopted significant conclusions on asylum and non-refoulement, particularly at this twenty-eighth, thirtieth and thirty-first sessions in October 1977, 1979 and 1980 respectively. One of the conclusions "reaffirms the fundamental importance of the principle of non-refoulement both at the border and within the territory of a state of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees."

2. THE STATUS OF REFUGEES IN THE COUNTRY OF ASYLUM

Once the asylum-seeker has been admitted to the country of refuge, and the danger of persecution thereby averted, the inevitable question of his rights and duties arises. According to customary international law, the asylum-seeker's status is chiefly governed by the fact that he now falls under the territorial jurisdiction of the receiving State. Generally speaking, he occupies the position of any normal alien, with the proviso that he may not be expelled to his home country unless there are grave reasons for doing so. Therefore, as an alien, the refugee is entitled to treatment in accordance with the rule of law, as well as to the benefits of the "minimum treatment" rule. The refugee cannot claim rights not otherwise granted by legislation to foreigners, such as permission to work, assistance under public or social schemes etc. In addition, he has to submit to the rules pertaining to alien administration.

General international law is silent on the question of the political rights of refugees in their country of residence. The attitude of some states is stricter in this matter than others. It would seem that, in general, refugees have no right to engage in political activities going beyond the normal freedoms, such
as freedom of speech, conscience, etc. On the contrary, states may incur international responsibility if they allow or support the activities of exiles directed against the government of another State. It remains a moot point in how far the country of nationally remains entitled to protect, or to enforce its laws against, a refugee who has fled abroad. Under customary international law, nationals abroad remain under the supremacy of their home state, and according to the rules of conflict of laws, the country of either nationality or legal domicile governs their personal status. This means in effect that unless the country of asylum, in the exercise of its rights to afford refugee, adopts special provisions regulating his status and legal capacity, the refugee may find himself in difficult circumstances. The law is indeed vague on this point, and all depends on the arrangements made by the individual States.

The 1951 Convention relating to the Status of Refugees lists the principle rights which the contracting states undertake to grant them, subject to exceptions relate to each country's particular requirements. Interesting from both a juridical and a political point of view is, first, the international nature of the status afforded to persons qualifying under Article I of the Convention. They have been officially released to a large extent from their attachments to their country of origin, and placed under an internationally guaranteed protection, and this under the supervision of a United Nations organ, the Office of the High Commissioner for Refugees. Secondly, the treatment of refugees is enhanced far above that of ordinary aliens.\textsuperscript{12}

The 1951 Convention establishes three standards of treatment as regards specific rights of refugees:

(i) National treatment, i.e., the same treatment as is accorded to nationals of the contracting state concerned;

(ii) Most favoured nations treatment, i.e. the most favourable treatment accorded to nationals of a foreign country; and

(iii) "Treatment as favourable as possible, and in any event not less favourable than that accorded to aliens generally in the same circumstances".

449
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

According to 1951 Convention, refugees are to be given the same treatment as nationals in respect to certain basic rights, such as freedom of religion, access to courts, possession of property, as well as in matters pertaining to public relief, rationing and elementary education. Subject to certain qualifications, national treatment is also granted in wage-earning employment, labour and social security legislation. The personal status of refugees is to be governed by the laws of the country of asylum, and they are to be exempted from exceptional measures. Moreover, after three years' residence, exemption from legislative reciprocity is ensured.

Most-favoured nation treatment is to be accorded to refugees in respect of permission to create and join non-political and non-profit making associations and trade unions, as well as in matters relating to the right to engage in wage-earning employment for those who have not yet fulfilled the requirements for national treatment. Treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally is granted as regards the acquisition and lease of property, the right to engage in agriculture, trades, handicrafts of business, and to practice a liberal profession. Matters such as housing, higher education and related subjects are regulated in a similar manner.

However, among the main rights of concern to the refugee is that of free access to employment, which in practice means that right to an independent existence. In the case of wage earning employment, Art. 17 of the Convention provide that the contracting state shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to aliens. In addition to this general principle there are special provisions in favour of refugees who have completed three years' residence in the country, or whose children or spouse possess the nationality of that country. The latter are exempted from any restrictive measures imposed on aliens for the protection of the national labour market.
So far the freedom of movement is concerned — Art. 26 of the Convention proclaim the rights of refugees to choose their place of residence and to move freely within the territory of the country concerned. Although the principle of the free choice of place of residence is very widely accepted, its application is sometimes hampered by the regulations on access to employment. The OAU Convention provides that refugees shall, as far as possible, be settled at a reasonable distance from the frontier of their country of origin.

A. Travel Documents for Refugees

Unlike an ordinary alien, a refugee does not enjoy the protection of the country of his nationality and cannot therefore avail himself of a national passport for travel purposes. When the international community, after World War I, approached the task of establishing an internationally recognised status for refugees, one of the first measures taken was to ensure that refugees were provided with documentation to enable them to travel. The form and content of this documentation varied at different times, but provided the basis from which the “Convention Travel Document” developed. The Convention Travel Document is now regularly issued by States parties to the 1951 Convention or to the 1967 Protocol relating to the Status of Refugees and is also widely recognised by States, which are not parties to these instruments.

The first international instrument drawn up for the benefit of refugees in 1922 dealt exclusively with the issue of certificates of identity to refugees for use as travel documents. The issue of such certificates of identity was also provided for in various later international instruments adopted between the two world wars. Originally, these certificates of identity, which came to be known as “Nansen Passports”, were issued on a single sheet of paper and were not, like later refugee travel documents, in booklet form resembling a national passport. The earlier instrument contained no indications as to the period of validity of the certificate of identity, and also provided expressly
that the certificate did not in any way imply a right for the holder to return to the issuing country without special authorization. In the later instruments it was specified that the period of validity should normally be one year. As regards the right of return, provisions were in due course introduced enabling the holder to return to the issuing country within the period of the certificate’s validity. At the same time it was specified that limitations on this right of return should only be introduced in exceptional circumstances.

Article 28 of the 1951 Convention provides that:

1. The Contracting states shall issue to refugees lawfully staying in their territory travel documents for the purposes of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

An obligation to issue travel documents in accordance with this article is also assumed by States upon becoming parties to the 1967 Protocol relating to the Status of Refugees. An exception to the requirement that contracting states issue travel documents to refugees lawfully staying in their territory is to be found in the words “unless compelling reasons of national security or public order otherwise require”. So, not every case, which would ordinarily fall under the latter concept, would therefore justify a refusal of travel document, but only reasons of a very serious character. In the 1969 OAU Convention, there are no provisions relating directly to the rights of refugees granted lawful residence. This was because, as the preamble to the convention makes clear, the 1951 Convention constitutes “the basic and universal instrument relating to the Status of refugees”. As the 1969 OAU Convention
was designed to complement and supplement the 1951 Convention, it was not considered necessary to add to the 1969 OAU Convention provisions relating to the rights of refugees granted lawful residence.\textsuperscript{15}

The 1966 Bangkok Principles contain a provision on minimum standard of treatment. Article VI states:

1. A state shall accord to refugee’s treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of aliens, annexed to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements, which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied by right on the ground that there is no reciprocity in regard to the grant of such rights between the receiving state and the state or country of nationally of the refugee or, if he is stateless, the state or country of his former habitual residence.

B. Right of Family Re-unification

A refugee may be granted all the normal rights of lawful residence but if he is separated from his spouse, children of parents, he may endure acute suffering. To his isolation is added the pain of the loss of the society of his family. The right to family re-unification is derived from the basic principle of human rights stated in Art. 16 (3) of the 1948 Universal Declaration of Human Rights.

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

Unfortunately, none of the existing international legal instruments on asylum or the protection of refugees contain a provision on family re-unification. The Final Act of the 1951 Convention of the Status of Refugees contained a recommendation stating:
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

Considering that the unity of the family, the national and fundamental
group unit of society, is an essential right of the refugees, and that such
unity is constantly threatened, and noting with satisfaction that.... the
rights granted to a refugee are extended to members of his family;
Recommends Governments to take the necessary measures for the
protection of the refugees’ family, with a view to:

(i) That the unity of the refugees’ family is maintained
particularly in cases where the head of the family has fulfilled
the necessary conditions for admissions to a particular
country; and

(ii) The protection of refugees who are minors, in particular
unaccompanied children and girls, with special references to
guardianship and adoption.

Thus, the Executive Committee of the United Nations High
Commissioner for Refugees, at its twenty-eighth Session in 1978, adopted a
conclusion on family reunion which:

(a) Reiterated the fundamental importance of the principle of
family reunion;

(b) Reaffirmed the co-ordinating role of UNHCR with a view to
promoting the reunion of separated refugee families through
appropriate intervention with Governments and with inter­
governmental and non-governmental organizations.

Further, in 1981, recognizing the necessity of the minimum standards
of treatment of asylum-seekers who have been temporarily admitted to a
country pending arrangements for a durable solution, the Executive
Committee of the UNHCR Programme adopted all these basic standard of
treatment of refugees as described above.\textsuperscript{16}

Needless, to say, the interpretation and application of the 1951
Refugee Convention are left first and foremost, with the contracting states.
Its provisions become national law, and the asylum-seeker is thereby placed
in a position to claim his rights before the competent municipal authorities
and tribunals. However, the international community, in particular the United
Nations, has aimed higher in its attempts to provide an international standard
of treatment of refugees. By a series of General Assembly Resolutions, the
world’s refugees were formally placed under the protection of international society as a whole.¹⁷

Prince Sadruddin Aga Khan, the former United Nations High Commissioner for Refugees, has rightly observed:

“A rule of the law can not be judged solely by its actual wording and purport; everything depends on how it is applied. This fact has been confirmed by the UNHCR’s own day-to-day experience in performing its protection function. Its efforts to persuade governments to make their internal legislation more favourable and equitable for refugees therefore have to be accompanied by constant vigilance, to ensure that a rule, which has been adopted, is not evaded, wrongly interpreted or simply ignored. This applies particularly, and above all, in such vital areas as the grant of asylum...Hence the great importance, in the country of reception, of the presence of a UNHCR representative who can know the details of particular cases and who can intervene before it is too late.”¹⁸

3. THE NATIONAL IMPLEMENTATION OF THE INTERNATIONAL NORMS OF REFUGEE LAW

Although there are international institutions for the protection of refugees depends on individual sovereign states who have to follow their respective national legislation. Essentially, the refugee has no nationality so that he has no national protection and therefore needs international protection. The legal basis for this international protection may either, be customary international law or conventional international law, but the problem here is how to translate this international law to national legislation.

As regards customary international law, the general practice of most states is to consider this as “part of the law of the land”. Some states however would require a specific act of incorporation into the national legislation while other states would require that such customary rule be not inconsistent with national legislation. But these states are in the minority and the general rule is that customary international law, i.e., generally accepted practices and principles of international law, are deemed part of national legislation and should prevail in case of conflict with municipal law. But here, many times,
there is difficulty in ascertaining with certainty the customary international law, so that judicial application and interpretation comes in.\(^{19}\)

States have the responsibility to protect refugees by reason of their accession to international instruments, by reason of their own national legislation, by reason of their political and moral commitment, or by reason of customary international law. By the exercise of their sovereign authority to control borders, states may take responsibility for refugees; from which action certain rights flow. By the exercise of their authority to legislate and enforce, states may extend asylum to those who have been given refugee status, committing themselves to ensure refugees' safety and security. Already in its ninth session in 1954, the United Nations General Assembly recognised that 'the ultimate responsibility for the refugees within the mandate of the High Commissioner falls in fact upon the countries of residence.'\(^{20}\)

As regards international protection of refugees, it is submitted that the basic customary international law applicable to them are those pertinent fundamental human rights found in the International Bill of Human Rights.\(^{21}\) Hence it is submitted that all states should protect the fundamental human rights of refugees under customary international law. As regards conventional international law, this is generally law only between the states, which are parties to it under the principle of "Pacta tertiis nee nocent nee presunt." But to the parties' states, this law is binding on them and must be performed by them under the principle of "Pacta Sunt Servanda." The basic conventional international law for the protection of refugees is the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967. More than hundred and thirty States have already acceded to this Refugee Convention but it still has a long way to go before it attains the status of a general practice accepted as law under Article 38 of the Statute of the International Court of Justice, so as to be applicable to all States.
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

However, states parties to the 1951 Convention and the 1967 Protocol have not only assumed Obligations concerning the status and treatment of refugees but have also undertaken to implement these instruments effectively and in good faith. Legislation is but one way in which compliance with international obligations may be assured. Proper fulfilment of this undertaking often becomes a function of political will and government policy, which in turn can be influenced by perceptions of the national interest and problems of a geopolitical nature.

In reviewing their own policy, certain states consider that their territory may act as a “pull factor”. In other states there is the belief that full enjoyment of rights might’s work against voluntary repatriation which they regard as the best durable solution. Curtailment of rights in certain of these countries is also adopted as a deterrence measure to dissuade further arrivals. Practices such as detention of asylum-seekers may also have a policy base in deterrence. In many countries, such measures are permitted or required by law, although in effect they penalize refugees for their illegal entry, despite the prohibitions in this regard contained in Article 31 of the 1951 Convention. Here it may further be submitted that, inspite of widespread, international recognition that the grant of asylum is a peaceful and humanitarian act which should, therefore, not relations with the neighbouring countries also often plays a significant role in many decisions taken by States as to what rights refugees should enjoy. In many instances there are serious bureaucratic impediments to full implementation. As Prof. L.C. Green rightly observes.22

“Unfortunately, one is bound to recognise that whatever be the international law on this aspect of the refugee problem, states will in fact condition their policies by their ideology. They may even acknowledge the existence of the international legal rule just mentioned, while at the same time finding excuses, such as the need to support freedom or combat Communism or fight colonialism in the name of self-determination, to justify contrary behaviour”.

457
Indeed, as a rule, the Refugee Convention is self-executing, particularly regarding those provisions granting equal treatment as aliens to refugees, so that no subsequent national legislation is needed. And here, the general rule is that prior or subsequent national legislation cannot prevail in case of conflict with provisions of self-executing — international instruments. However, such as those calling for expenditure of public funds, then the necessary national legislation must be duly enacted. In the event that a state does not want to enforce the Refugee Convention, in whole or in part, although it is a party to it, and this it can do for it is a sovereign states; still, the Refugee Convention subsists as an international obligation, and the international institutions relative to the protection of refugees should act towards its enforcement.

As regards those States not parties to the Refugee Convention or any international instrument concerning refugees; then they are bound by customary international law to provide certain minimum standards of treatment which should at least respect the fundamental human rights of the refugees, and this is usually found in national legislation, both in the Constitution such as in the Bill of Rights or in the municipal law such as the Alien or Immigration laws. So, the states which are not parties to these international instruments relating to refugees should fully enforce and implement the generally accepted practices and rules regarding refugees, particularly the minimum standards of treatment to which they are entitled, under customary international law, likewise by proper and appropriate national legislation; and if those customary rules still are vague or uncertain, then national courts should given an authentic interpretation. It is submitted that customary and conventional international law takes priority over all prior or subsequent national legislation, including administrative action; and national courts should be authorised to declare them valid.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

4. THE INDIAN PRACTICE OF INTERNATIONAL REFUGEE LAW

India is one of the countries in Asia, which has received millions of refugees during the last 50 years since its independence. Indian experience with the problem of refugee has been rich and rewarding, in the sense that no country in Asia had suffered such massive migration of peoples and had faced such stupendous tasks of relief and resettlement of refugees and had come out comparatively so successful.23

At the end of 1992 as stated earlier, India hosted approximately 400,000 refugees along with at least 2,000,000 (mostly Bangladeshi) migrants and some 237,000 internally displaced persons. As of 31 August, 1996, there were some 238,000 refugees in India comprising 108,000 Tibetans, 56,830 Sri Lankans, 53,465 Chakmas from Bangladesh, 18,662 Afghans and 1,043 refugees of other nationalities.24 There were also considerable number of Bhutanese of Nepali origin and Burmese. Truly speaking – the root causes of these influxes may be traced in two factors – political and social. Politically, dictatorships or undemocratic form of governments in its vicinity often created political upheavals and thereby forced their people to leave their countries for a new shelter; and socially, the people in the neighbouring countries share common roots in patterns of social encourage many amongst the persecuted in these neighbouring countries to seek asylum or refuge in India.

India, like the majority of Asian states, is not a party to the 1951 Refugee Convention or the 1967 Protocol, and is, therefore, under no treaty obligation to admit the activity intended for the international protection of refugees. Of course, India, being a sovereign nation, has the absolute right either to grant asylum or to refuse to admit an alien. But, at the same time India, like any member of the International Society, has to respect its international obligations. At least, India is bound by customary international law to provide certain minimum standards of treatment, which should respect
the fundamental human rights of the refugees. It has handled the issue at the political and administrative levels, with the single exception at the time of partition in 1947. The Rehabilitation Finance Administration Act was passed in the year 1948 to cope with the massive migration of people from Pakistan. The other relevant documents and legislations are – The Constitution of India, The Foreigners Act of 1946, The Registration of Foreigners Act of 1939, The Extradition Act of 1962, Passport Act of 1967, and a few decisions of the Indian Courts.

The Constitution of India contains just a few provisions on the status of international law in India; Article 51 (c) states that -

“The State [India] shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.”

The provision supra is placed under the Directive Principles of States Policy in Part IV of the Constitution, which are not enforceable in any court. It is submitted that before its independence, the Indian Courts administered the English common law. They accepted the basic principle governing the relationship between international law and municipal law under the common law doctrine. English law has traditionally adopted a dualist approach to the relationship between international and domestic law, seen most clearly in the case of treaties. In British doctrine a treaty does not automatically become part of the domestic legal order by virtue of its conclusion and promulgation by the executive government. A treaty imposing obligations on, or creating rights in favour of, individuals (whether citizens or aliens) require legislation in order to make it effective and enforceable in the courts.25

For some time it was thought that customary law also was not part of the law of England until expressly ‘adopted’ as part of the domestic law by statute or by the declaration of a higher court. This theory has recently been rejected by the English Court of Appeal, with the apparent consent of the House of Lords.26 The position now is that customary law, established to be
such by sufficient evidence, is regarded as part of the law of England unless contrary to Statute.

The Indian executive has followed this common law practice; legislature and judiciary have followed this common law practice even after the independence of India. Article 253 of the Constitution lays down that –

"Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

This constitutional provision implies that whenever there is a necessity, the Parliament is empowered to incorporate an international obligation undertaken at international level into its own municipal law. In the case “Gramophone Company of India Ltd. V. Birendra Bahadur Pandey”27, Justice Chinapa Reddy observed that –

“The doctrine of incorporation recognizes the position that rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. National courts can not say ‘yes’ if parliament has said ‘no’ to a principle of international law”.

Against this backdrop when one examines the binding force of international refugee law on India and its relations with Indian municipal law, one can easily draw a conclusion that as long as international refugee law does not come in conflict with Indian legislations or policies on the protection of refugees, international refugee law is a part of the municipal law.

A. Subject Matter Relating to International Convention -

Indian practice of Asylum and Non-refoulment is the vital point of debate in the advocacy of human rights of refugees. Asylum is the protection, which a state grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it.28 To speak of refugees is to speak of asylum, the very condition of their existence. The international law on asylum is comparatively new and it took its present from only little
more than century ago. Art. 14 of the Universal Declaration of Human Rights lays down the fundamental rule of asylum which may not be invoked in the case of persecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

The term ‘asylum’ has no universally accepted definition. So, generally it is used in the sense of admission to the territory of a state, and a distinction is made between admission which is granted as an emergency measure, guaranteeing refuge of a temporary nature only, and admission which encompasses the more durable aspect involved in the grant of a permanent right to settle. The fundamental principle governing admission is that of non-rejection at the frontier, which has been considered in aspect of the more general principal of non-refoulement. The rule of non-refoulement thus incorporates the obligation to refrain from forcibly returning a refugee to a country where he is likely to suffer political persecution. This principle of non-refoulement constitutes the very basis of the institution of asylum and an essential guarantee for the asylee that he would receive the protection – defined in Art. 14 of the Universal Declaration; in some cases it would be tantamount to an asylee’s right to life.

India has all along followed the principle of non-refoulement. The Government of India allowed the unending streams of refugees in utter distress entry into India and gave solace and comfort. Evidence of India’s ancient history shows that once the king granted shelter to any individual it was his sacred duty to protect the refugee at all times. In 1959 when Dalai Lama of Tibet crossed over to India along with nearly 13,000 of his followers – the Government of India granted the political asylum to all those people on humanitarian ground. But it made the asylum conditional upon the Dalai Lama residing in India peacefully and not engaging himself – or his followers in political activities. The condition imposed by the Government of India was at per with the international norm. The refugees have a general obligation to
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

respect the laws and regulations of the country in which they find themselves. In this respect they are not on different footing from the citizens of the country, or for the matter, any other foreigner. This obligation includes a duty to refrain from engaging in subversive activities directed against their country of origin, such as armed insurrection.

Again in 1971, when 10 million people crossed over in its territory from the erstwhile East Pakistan, the Government of India granted them temporary asylum on humanitarian ground. Mrs. Indira Gandhi, the then Prime Minister, in her statement in Lok Sabha on May 24, 1971 on “situation in Bangladesh” made it very clear that -

“Relief can not be perpetual, or permanent, and we do not wish it to be so. Conditions must be created to stop my further influx of refugees and to ensure their early return under credible guarantees for their future safety and well-being.”

She further added that –

“I hope this Parliament, our country and our people will be ready to accept the necessary hardships so that we can discharge our responsibilities to our own people as well as to the millions, who have fled from a reign of terror to take temporary-refuge here”.

In reply to a reporter’s question in Calcutta on 5 June 1971, Mrs. Indira Gandhi clearly stated that the refugees would be looked after on a temporary basis. They needed to be treated as foreigners to be repatriated to Bangladesh for which conditions should have to be created within that country. As she stated further-

“They have to go back. They are certainly not going to stay here permanently. I am determined to send them back.”

In view of the above, the status of asylum given to the refugees from East Bengal must be deemed to be provisional or temporary asylum. In all other subsequent cases viz.; in the case of Tamil refugees from Sri Lanka, in the case of Chakma refugees from Bangladesh-India followed the same practice of ‘temporary asylum’.
Article III of the Bangkok Principles of 1966 provides the provision on temporary and provisional asylum and lays down that –

1. A state has the sovereign right to grant or refuse asylum in its territory to a refugee.
2. The exercise of the right to grant such asylum to a refugee shall be respected by all other states and shall not be regarded as an unfriendly act.
3. No one seeking asylum in accordance with these principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.
4. In cases where a state decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country."

So, India granted 'provisional asylum' or 'temporary asylum' to the refugees as per the present international norms. However, even though India accepted the principle of non-refoulement as including non-rejection at the frontier under the 'Bangkok Principles' of 1966, it did not observe that principle in its practice. The actual practice is that India deals with the question of admission of refugees and their stay, until they are officially accorded refugee status, under legislations, which deal with foreigners who voluntarily leave their homes in normal circumstances.

The chief legislation for the regulation of foreigners is the Foreigners Act, 1946, which deals with the matters of entry of foreigners in India, their presence therein and their departure there from. Para 3 (1) of the Foreigners Order, 1948 lays down the power to grant or refuse permission to a foreigner to enter India. This provision lays down a general obligation that no foreigner should enter India without the authorization of the authority having jurisdiction over such entry points. In case of persons who do not fulfil
certain obligations of entry, the Sub-Para 2 of the Para-3 of the Order authorizes the civil authority to refuse the leave to enter India. The main condition is that unless exempted, every foreigner should be in possession of a valid passport or visa to enter India. If refugees contravene any of these provisions they are liable to prosecution and thereby to the deportation proceedings.

Unfortunately, India has not established any refugee determination criteria or procedure and it is the Union Cabinet, which decides on the kind of protection to be provided to the entrants. Since, there is no legislation and legal procedure for determining their status, so they are being treated as 'alien refugees' under Entry 17, List I, Sch. 7, of the Indian Constitution. The difference between an alien and an alien refugee is that the latter is given residential permit exempting from certain conditionalties of stay of a foreigner depending on his political refugee status in India, whereas an alien or foreigner has to show valid grounds for his stay if he intends to stay more than ninety days in India.36

So, the natural consequence is that refugees have to be treated under the law applicable to aliens in India, unless it makes a specific provision as it did in the case of Ugandan refugees (of Indian origin) when it passed the Foreigners From Uganda Order 1972. The Registration Act of 1939 deals with the registration of foreigners entering, being present in, and departing from India. Besides this, there are: (i) the Passport (Entry into India) Act 1920 and the Passport Act of 1967, dealing with the powers of the Government to impose conditions of possession of a passport for entry into India; and the issue of passports and travel documents to regulate the departure from India of citizens of India and applies in certain cases to others too, respectively.
B. Treatment of Persons Granted Asylum in India-

The following components may shed light on the treatment of persons granted asylum in India:

(a) National treatment,
(b) Treatment to foreigners, and
(c) Special treatment

(a) National Treatment-

(i) *Equal Protection of Law* –
Article 14 of the Indian Constitution guarantees the right that state shall not deny to any person equality before the law or the equal protection of the law within the territory of India. This right is available to all persons including non-citizens. So, as per the provision of this Article, State would not discriminate a refugee against other refugees of same class regarding any benefits or rights they enjoy by virtue of their refugee status.

(ii) *Religious Freedom* –
Article 25 of the Indian Constitution provides that subject to public order, morality and health and to the other provisions of the constitution, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(iii) *Right to Liberty, etc.* –
Article 21 of the Indian Constitution guarantees the right to life and personal liberty of all persons. A person is further guaranteed protection against arbitrary arrest and detention, and free access to the courts. Here it is important to note that the right to life, personal liberty and free access to the courts (under Arts. 21 and 22) have been extended to every person irrespective of the fact whether the person concerned is an alien, refugee, or a citizen of India. His free access to the courts is assured under Articles 32 and 226 of the Constitution particularly with regard to the right to equality and protection of law, right to practice his own religion, the right to life and personal liberty. So, as desired in Art. 16 of the 1951 Refugee Convention, a refugee has free access to the courts of law in India as permitted under the Constitution.

(iv) *Right to Social Security* –
Regarding right to Social Security, there is no special provision on social security in any Indian legislation, but non-citizens.
(v) Educational Rights –
India has been providing free primary education to all recognised refugees, although there is no legal guarantee for the enjoyment of that facility as a matter of right. As for higher education, only Tibetan refugees enjoy that privilege.

(b) Treatment to Foreigners-
(i) Right to employment:
Among the main rights of concern to the refugee is that of free access to employment, which in practice means the right to an independent existence. In the case of wage-earning employment, Article 17 of the 1951 Convention provides that the contracting state shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to aliens. Art. 17 further invites contracting states to give sympathetic consideration to assimilating the rights of all refugees with regard to wage earning employment to those of nationals. The provisions of Article 18 and 19 concerning self-employment and the liberty of profession do not go so far. They merely refer to “treatment as favourable as possible and in any extent, not less favourable than that accorded to aliens generally.”

However, so far the Indian practice is concerned in this field, no foreigner in India has a right to a wage-earning employment, self-employment or profession, but he can do that with the permission of the Government of India. When it comes to the question of refugees, there are in fact no restrictions on wage earning or self-employment but they are not usually allowed to undertake any work since India has a large population of unemployed citizens. Instead, the Union Government of India provides refugees with some subsistence allowance and ration. Exceptions to this are Tibetans who are allowed to engage themselves in wage-earning employment in agriculture, agro-industries and handicrafts specially set up for their rehabilitation. They are also engaged in small business such as selling of handicrafts and winter clothes.

(ii) Freedom of movement and residence:
Article 26 of the 1951 Convention proclaims the right of refugees to choose their place of residence and to move freely within the territory of the country concerned. In India this freedom of movement and residence is available to all refugees, subject to the restrictions necessary for the safety of India or its international relations. The refugees who could afford to live on their own are allowed to live wherever they want and they are given freedom to move within India subject to conditions
such as national security or public order. In case of large number of refugees such as Chakmas in Tripura and Sri Lankan Tamils in Tamil Nadu, their right to freedom of movement and residence is hampered by the fact that they are totally dependent on the Government. They are therefore, confined to camps. When they need to go out from the camps they need to take permission of the camp authorities.

(iii) **Right to housing:**

The requirement of Art. 21 of the 1951 Refugee Convention in connection with ‘housing’ is fulfilled, and while the refugees are free to live in refugee camps, there is no rule to prohibit them from residing in private houses if they can afford. Many Afghan and Sri Lankan refugees are residing in private houses in Delhi and Madras respectively.

(iv) **Right to form association:**

Art. 15 of the 1951 Convention Relating to the Status of Refugees lays down that as regards non-political and non-profit making associations and trade unions the contracting states shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same.

In India, like foreigners, refugees too enjoy the right to form peaceful associations. Burmese and Chakma refugee communities have formed student and welfare refugee associations. In Tripura, Chittagong Hill Tracts Jumma Refugees Welfare Association headed by Mr. Upendralal Chakma is actively engaged in the day-to-day welfare activities of the Chakma refugees.

(v) **Rights to Property:**

Art. 13 of the 1951 Convention states that the contracting states shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts — relating to movable and immovable property.

However, in India this right has not been accorded to the refugees. Even after three decades of their rehabilitation, Tibetans do not enjoy and property rights over the agricultural lands and houses, which they were allowed to use on lease.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

(c) Special Treatment-

(i) Exemption from Penalties:

Art. 3 (1) of the 1951 Refugee Convention provide that “the contracting state shall not impose penalties, on account of their illegal entry or presence on refugees who coming directly from a territory. Where their life or freedom was threatened…. enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” This is one area where India is very apathetic towards refugees. Under section 14 of the Foreigners Act, 1946 a foreigner is liable to the punishment with imprisonment for a term, which may extend to five years and is also liable to fine. Due to lack of a procedure for considering asylum claims, all individual asylum-seekers who entered illegally or stayed in India without authorization were persecuted and punished under this section. However, in case of large-scale influx, India has always acted according to the principle laid down in the Refugee Convention and has not imposed penalties on the refugees.

Indeed, the question remains with respect of asylum-seekers of other national groups determined to be refugees under the mandate of UNHCR. Differential treatment already exists in the way the host government treats individual refugees recognized under the UNHCR mandate and those of man influxes from neighbouring states. With respect to the former, their non-recognition before the law and uncertain status renders them open to risk of penalization for illegal entry and expulsion while there is a greater measure of fundamental protection with respect of the latter.

(ii) Identity and travel documents:

Since refugees do not enjoy the protection of the government of their country of origin, they cannot claim a national passport. Only the authorities of the country of residence can make good this deficiency by issuing them a suitable travel documents. Since, however, this document is of no value unless it is recognised internationally, each of the agreements concluded after the First World War to assist various groups of refugees make explicit reference to it. The 1951 Convention was no exception to this rule. Article 28 of the Convention provides that:

“The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside
their territory unless compelling reason of national security or public order otherwise require”.

In India, all refugees who are recognized so were given identification certificates showing their refugee status. But, as regards travel documents; no refugee has so far had a privilege of getting travel documents except Tibetan refugees. Tibetan refugees can even travel to foreign countries and come back to India on the basis of such identification paper.

5. THE RESPONSE OF THE INDIAN JUDICIAL SYSTEM TO THE REFUGEE PROBLEM

The concept of ‘Refugee Law’ in the Indian judicial system has evolved over a period of time. Due to lack of a refugee specific statute, the judicial system is constrained to enforce upon refugees, laws, which are applicable to foreigners in general, thereby consciously, or subconsciously ignoring the unique predicament peculiar to refugees. Unfortunately, the ensuing acts or omissions result in a grave travesty of natural justice for the refugee, who has per force of tragic circumstances lost his home, country, social group, lifestyle, livelihood and may even have lost members of his immediate family. It may serve well to reiterate that a refugee flees persecution from his country of origin, only when there is grave apprehension of danger to his life and liberty. Often, circumstances, which lead to a situation of strife, civil war, ethnic cleansing etc., is targeted at a particular group or community and results in the flight of the targeted group into a neighbouring country or any other friendly country which may be accessible.37

There is acute lack of general awareness of the need for a specific legislation regulating the numerous groups and individual refugees presently in India. Also prevalent is a general misconception that refugees are an undesirable lot, who have fled in search of greener pastures to economically better their lives and that ‘fear of persecution’ is a mere excuses on their part. The concept of ‘refugeehood’ is confused with economic migrants, who do not fall within the definition of the term ‘refugee’. A broad understanding of
the concept of 'refugeehood' is essential to grasp the necessity of refugee related legislation, which would serve to curtail the rampant illegal entry of economic migrants into India. Once a framework for entry of refugees is drawn up, it would restrict movement of any other unauthorised mass of foreigners into the Indian Territory and would be a guideline for local authorities to determine the manner of dealing with genuine refugees.

Further lacking, is transparency in the policies of the Administration in granting asylum/facilities/grants etc., to certain refugees or refugee groups without spelling out reasons for granting such benefits to some and not to other refugees in similar circumstances. Such lack of transparency further confounds the issue.

Despite lack of legislation, perplexing administrative attitudes and the strict laws regulating entry, exist and stay of foreigners in India, the Indian judiciary is in the process of steadily evolving its own set of mechanism to deal with refugee issues. In order to better appreciate the ensuing process of evolution of refugee law through judicial precedents, it may be clarified that the Indian judicial system includes not just the courts but also related agencies that determine the key elements of refugee extended to refugees:

A. The Border, Immigration Authorities and the Police
B. Administrative policies and directions;
C. The Courts.
D. Legal Framework For Refugee Protection in India.

A. The Border, Immigration Authorities and the Police:

(i) The Border and Immigration authorities are usually the first representatives of the legal system, which a refugee encounters the moment he tries to, enter India. In the event of the refugee not having the valid travel documents i.e., passport, visa and entry permit, he may face forced return/deportation to the country where he came from. In the alternative, he may be interrogated and detained at the border itself, pending decision by the administrative authorities regarding his plea for refuge/asylum. The refugee may be lodged in the local district jail and proceedings may be initiated for violation of the relevant provision
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

of the Foreigners Act 1946, the Registration of Foreigners Act 1939 and the Passport Act 1967.28

Also compounding the legal process is the applicability of penal provisions under the Indian Penal Code, when some refugees may have misled the authorities by producing fraudulent travel documents. The refugee may be charged for cheating the Boarder/Immigration authorities for forging and using as genuine a forged document.39 Such offences committed by the refugee, in addition to the illegal entry into India, draws the ire of the relevant authorities, who are then primarily concerned with the fact the refugee, in addition to the illegal entry into India, draws the ire of the relevant authorities, who are then primarily concerned with the fact that the refugee has attempted to fool them. There is, then hardly any consideration of the compelling factor of ‘refugeehood’, flight from persecution, grave danger to life and liberty and lack of option on the part of the refugee to either face the danger in his country of origin or flee elsewhere though any means available. Often, due to the gravity of circumstances from which the flight has occurred, the refugee is left with no option but to obtain false passports or forged visas for entry into India.

Refugees may enter without any travel documents. In such cases the offence amounts to violation of the relevant provisions of the Foreigners Act, 1946,40 the Registration of Foreigners Act, 1939 and the Passport Act, 1967 and can be legally dealt with in a simpler manner as compared to violations of the penal provisions of law.

It may also happen that a refugee may be incarcerated in illegal detention, i.e., without registration of a formal case. Such a situation may arise when the refugee has come from or is suspected to have come from a country, which does not share satisfactory relations with India. In that case, the refugee maybe suspected to be a spy or a terrorist/militant entering our borders with intent to cause harm to the stability and integrity of India. Therefore, the refugee’s detention will not be recorded until the authorities realise their misapprehension, or until judicial the concerned refugee/human rights groups in India seek intervention. Often, such a process takes a long time. In the meanwhile, the refugee continues to languish in illegal detention.41

(ii) Immigration Authorities:

In cases where the refugee lands at established seaports and airports on Indian Territory, without valid travel documents, once detected, the Immigration officers manning the concerned ports immediately detain him. The refugee may be deported forthwith, if there is no other charge pending against him, except the offence of illegal entry. However, in case where there is any accompanying penal offence like forgery,42 a case may be registered against the refugee at the local
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

police station, and the refugee may be formally arrested and lodged in the local prison/detention cell pending trial.

(iii) **The Police:**

In cases where refugees initially enter India with valid travel documents, or in cases where discrepancies, if any, in the travel documents are undetected by the Border Control/Immigration authorities, the refugee may be arrested on expiry of the said documents or earlier, when the said discrepancy is detected by the Police. Sometimes, refugees do not obtain renewal of their visas/residential permit from the local Foreigners Regional Registration Office (FRRO). In such cases random checks are routinely conducted by the local police, amongst foreigners including refugees, and those who do not comply with the mandatory requirement of renewal/obtaining residence permits etc. are arrested.

**B. Administrative Policies and Directions:**

The administration includes the Ministry of Home Affairs, Ministry of External Affairs and other related Departments of the Government of India at the Central and State levels. Under Section 3 of the Foreigners Act 1946, the Central Government is authorised to “…make provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners India or their departure therefrom or their presence or continued presence therein….”

Due to the lack of specific refugee related legislation, the said administrative flats (vide Ss. 3-3A of the Foreigners Act 1946) determine the course of action to be adopted by the authorities with regard to specific refugee groups. Often, policies of the Central Government are not communicated. They may be orally communicated to the States and other authorities, in cases where the Government may not want to commit itself. This practice often creates confusion and proves to be an impediment in pinning down responsibility and in the implementation of the said policies/orders/flats.

In routine matters, the Centre communicates its policies to the Home Ministry in the States, which in turn communicate the same to the concerned
Departments. There may often be lack of communication between the Departments and concerned Ministries resulting in severe delay in decisions on refugees who may be languishing in prison all the while. Some recent examples of such cases are as follows:

i. In the case of two Afghan refugees, Shah Ghazai and his minor son Assadullah, who had been arrested while trying to exit India for Afghanistan via the Attari border at Amritsar in May, 1994, the two were tried and convicted for the offence and duly completed their conviction in mind 1995. They continued to be in detention at the Transit Camp of the Amritsar Central Jail with attempts for their release being sought by the UNHCR in conjunction with the Central Ministries of Home Affairs and External Affairs in New Delhi, resulting in the filing of a Criminal Writ Petition on behalf of the said refugees in the Punjab & Haryana High Court at Chandigarh.\(^4\) The consent for release was granted by the said Ministries. However, due to lack of communication and subsequent confusion regarding instructions from the Central Government to the Punjab State Department of Home, the release of the refugees took a considerably long time, finally culminating in their release in March 1997 after the relevant judgement was delivered by Mr. Justice S.S. Sudhalkar in February 1997. The refugees were therefore in illegal detention in the Transit Camp of the jail for two years.

ii. In the case of Burmese refugee, Benjamin Tang Neng,\(^4\) who was arrested in 1994 for lack of valid travel documents and was subsequently detained at Calcutta Central Jail, he completed his conviction in July 1995 and continued to be detained in Jail due to apathy on the part of the State authorities. Finally his release was secured with the intervention of the Central Government in February 1996. Even then the Central Government failed to come out with any explicit written policy or directions regarding Burmese detenues. A mere oral conversation on telephone between the Central Government and the State Home Department took place resulting in the release of the refuge.

In some instances the Central Government issues clear directives to the States and delegate its powers under S. 3 of the Foreigners Act 1946. An illustration of the same is as follows:

iii. In the case of Lawrence Loro Kamilo,\(^4\) a Sudanese refugee, the policy regarding Sudanese nationals who had been students in India, was expressly recorded by the Central Government in explicit directives to the State of Maharashtra.
Further, in some instances the State Government and the Central Government have vastly differed in their attitude to the refugees in the territory of a particular State, thereby resulting in a peculiar conflict, which in a recent case resulted in a far reaching judgement of the Supreme Court after its intervention was sought by the National Human Rights Commission.

iv. The Chakmas/Hajong tribal from erstwhile East Pakistan had entered India in 1964, when they were displaced by the construction of the Kaptai Hydel Power Project. Most of them were settled in the States of Assam and Tripura and obtained citizenship in due course of time. Since a large number of them had settled in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance from other States in this regard. Therefore, in consultation with the erstwhile NEFA administration (north Eastern Frontier Agency - now Arunachal Pradesh), about 4,012 Chakmas were settled in parts of NEFA. They were also allotted some land in due consultation with local tribals. The Central Government had also sanctioned some grants for their rehabilitation. Subsequently, the Central Government promised to grant the said refugees citizenship. However, no action towards the same was initiated by the State of Arunachal Pradesh, since it did not intend recommending grant of citizenship to the said refugees. The same resulted in a volatile situation whereby the refugees faced forcible eviction, threat and danger to their lives and property. Thereafter, the National Human Rights Commission investigated the matter, and filed a writ petition in the Supreme Court. The result of the same was the issuance of directives by a Writ of Mandamus to the State of Arunachal Pradesh to ensure that the life and liberty of each and every Chakma residing within the State shall be protected and any attempt to evict them shall be repelled. The Supreme Court was also pleased to order that the applications for citizenship of the Chakmas shall be forwarded by the State to the Central Government for consideration in accordance with law.

C. The Courts

The Indian legal system for the protection of refugees, may be activated in four distinct ways:

(i) Humanitarian Tradition;
(ii) International Legal Obligations;
(iii) The Constitution of India and
(iv) Judicial Responses
Once a refugee is caught violating any law of the land, he shall face prosecution for such violation. Initially, on being arrested, the refugee may be unable to communicate his arrest to the outside world. This is primarily due to the refugee’s inability to establish outside contact being in an unfamiliar country. Once he gains his bearings in prison and with the assistance of prison authorities, the refugee may be able to establish contact with some Non-Governmental Organisation, the United Nations High Commissioner for Refugees, or some friends and fellow refugees, who may then seek legal aid for securing his release. Cases of Benjamin Tang Neng & Shah Ghazai are examples for this situation.

The strategy for release may naturally be presumed to be release on bail. However, it is pertinent to note that a refugee is not a local person belonging to the area where he was arrested. He would, therefore, in all probability be unable to find any person to stand as local “surety” for him and guarantee his presence in the court on each date of hearing. Hence unless the trial court agrees to the refugee himself standing personal surety and/or is able to afford payment of the surety amount, release may be elusive.

The court may also insist on the regular attendance of the refugee at the concerned police station in order to be doubly assured that the concerned refugee may not become untraceable. Directions to the effect, including appearance in court on subsequent dates of hearing, shall be binding on the refugee; any lapse in such directives can amount to cancellation of bail and issuance of warrants of arrest. Even then if the refugee is untraceable, he may be formally declared a “proclaimed offender” and all the concerned police stations shall be intimated of his disappearance. Subsequent arrest may invite a severe penalty. In the alternative, instead of seeking bail for the refugee, if the charge sheet has been presented by the prosecution in court, the refugee may be advised to plead guilty directly and seek release on payment of a fine along with imprisonment to be set off with the imprisonment already
undergone. The alternative of pleading guilty may be resorted to even if bail has been sought. The same coupled with cogent arguments in favour of the refugee has usually had the effect of awarding a lenient sentence and a nominal fine. The following are some broad outlines of possible arguments to be rendered in such cases:

(a) Explanation of persecution in the country of origin due to race, religion, ethnicity etc., resulting in grave danger to the life and liberty of the refugee, including personal facts of the concerned case e.g., loss of property, murder of family members, harassment, torture, rape, etc.

(b) Explanation regarding lack of protection by origin has to be put forth in order to stress home the fact that a refugee is a person completely lacking in national protection. Therefore, a refugee may be referred to as a stateless person.

(c) Flight from the country of origin, compelled due to the above circumstances of persecution and lack of protection by the State, complete loss of all that is familiar, including the travails of the flight e.g., arduous journey across into India, loss of travel documents, etc.

(d) It must be pointed out to the court at the outset, that the concerned refugee is not a criminal, spy or infiltrator, nor is he a mere traveller or tourist. The refugee should also not be confused with economic migrants who enter India with a view to economically better their lives.

(e) Resultant effort to reorganise life in India, living peacefully without in any way threatening the peace and security in India e.g., no revolutionary activity conducted against the country of origin or any other country from the Indian soil.

(f) Biding time peacefully in India till the situation in the country of origin improves, to enable return as soon as it is safe to do so. This argument of desire to voluntarily repatriate to the country of origin once the situation there improves, holds, weight in the psyche of the host country. It reinforces the temporary nature of the refugee’s presence in India.

(g) It is imperative to dispel the common presumption that most people from the third world countries (usually the refugee producing countries) want to leave their land in search for greener pastures. For that, it may be argued that the refugee’s roots are in his country of origin, where he may have been well settled, leading a
comfortable life till the strife in his homeland resulted in his sudden and compelled flight into another country.

(h) Support from the United Nations High Commissioner for Refugees (UNHCR) vide a Refugee Certificate issued by them as identity document, and also financial and social sustenance to refugees in serious cases again extends international acceptance and validity of the refugee’s plight and claim to refugeehood.

(i) Holding tremendous weight are sympathetic judgements rendered by the Indian Judiciary in other refugee cases, coupled with developments in international law on the subject.

The above arguments may be supplemented by any additional arguments as may be deemed necessary on a case-to-case basis, since the same are by no means exhaustive. It is pertinent to note that the above arguments put forth may be done so with intent to establish violation of human rights as the basis of the concerned refugee’s problem. Hence, the arguments would naturally veer towards the primary canons of justice in the common law system i.e. the rules of natural justice, fairplay, equity and good conscience.

Invariably, the attitude of the lower courts in refugee cases has been that of complete lack of knowledge of the concept of refugee-hood, refugee related laws etc. Hence a detailed explanation of the same results in generating sympathy towards the refugee himself coupled with an attempt by the court to find a way out for the refugee from his presence predicament. This altered and aware attitude gives rise to the use of the limited discretionary power with the lower court judge in imposing a minimum fine and conviction to the already thwarted refugee.

On the other hand the divergent view by other lower courts may be that of strict technicality whereby, the court may be of the opinion that deportation of the refugee on completion of the sentence is mandatory. In such situations, the matter may be taken up with the administrative authorities or in the alternative the order may be appealed to a higher court.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

The High Courts of various States in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees. The High Court of Gauhati has in various judgements recognised the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the lower court or the administration, in cases where the refugee has been arrested for violations of the Foreigners Act e.g.: In the case of Zothansangpuli v State of Manipur, Bogyi v. Union of India, Khy-Htoon and others v. State of Manipur.

In Gurunathan and other v. Government of India and A. C. Mohd. Siddique v. Government of India and others, the High Court of Madras has expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will.

In another far reaching judgement, in the case of P. Nedumaran v. Union of India before the High Court of Madras, where Sri Lankan refugees had prayed for a Writ of Mandamus directing the Union of India and the State of Tamil Nadu to permit UNHCR officials to check the voluntariness of the refugees in going back to Sri Lanka, and to permit those refugees who did not want to return to continue to stay in the camps in India. The Court was pleased to hold that since UNHCR was involved in ascertaining the voluntariness of the refugee return to Sri Lanka, and being a world agency, it is not for the Court to consider whether the consent is voluntary or not. Further, the Court acknowledged the competence and impartiality of the representatives of UNHCR.

The Bombay High Court in Syed Ata Mohammadi v. Union of India, was pleased to direct that there is no question of deporting the Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR. The Court further permitted the refugee to travel to whichever country he desires.
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

The Supreme Court of India has in a number of cases stayed deportation of refugees, e.g. In the Matwand’s Trust of Afghan Human Freedom v. State of Punjab, N.D. Pancholi v. State of Punjab & Others. In Dr. Malavika Karlekar v. Union of India, the Supreme Court was pleased to direct stay of deportation of the Andaman Island Burmese refugees, since their claim for refugee status was pending determination and a prima facie case is made out for grant of refugee status.

The Supreme Court has consistently held the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the right to life and personal liberty applies to all, irrespective of the fact whether they are citizens of India or aliens. Reference may be made to the Supreme Court judgement in the Chakma refugee case. Earlier, the judgements of the Supreme Court in the matters of Louis De Raedt v. Union of India & State of Arunachal Pradesh v Khudirani Chakma had stressed the same point.

Hence, the stand taken by the Indian judiciary has over all been encouraging, despite the fact that there is no existing statute relating to refugees. The precedents set down by the High Courts and the Supreme Court are in the process of paving the path for refugee related legislation.

D. Legal Framework for Refugee Protection in India

India is not a state party to either the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol. However, it has acceded to other international instruments whose provisions are relevant to the rights of refugees. In April 1979 India acceded to the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights. Article 13 of the former instrument deals with the expulsion of a person lawfully present in the territory of the state. India has reserved its right under this Article to apply its municipal law relating to aliens. In December 1992 India acceded to the 1989 Conventions on the Rights of the Child, Article 22 of which deals with refugee children and
The Emergence of Refugee Jurisprudence and Human Rights in India


Applicable non-binding international human rights instruments include the 1948 Universal Declaration on Human Rights whose Article 14 (I) states that, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” The principle of non-refoulement incorporated in the Asian-African Legal Consultative Committee’s 1966 Principles Concerning the Treatment of Refugees (“Bangkok Principles”), specifically includes non-rejection at the frontier. The Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights included a specific section on refugees, which reaffirmed the right of every person to seek and enjoy asylum, as well as the right to return to one’s own country.

Indian courts do not have the authority to enforce the provisions of the above international human rights instrument unless these provisions are incorporated into municipal law by legislation and this process of incorporation in the Indian context has been largely ignored with respect to the above treaties. Parliament is under no obligation to enact law to give effect to a treaty and in the absence of such law the judiciary is not competent to enforce obedience of the treaty obligation by the Executive. Thus, while every state has the duty to carry out in good faith its obligations arising out of international law and while states cannot offer acts or omissions on the part of their legislative or executive organs as an excuse for failure to fulfil the above obligations. In the event of failure of a state to bring its municipal law in line with its international obligations, international law does not render such conflicting municipal law null and void.

Various court decisions have in the absence of a concrete legislative structure, tried to provide humane solutions to the problems of refugees,
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

primarily with regard to the principles on non-refoulement, right to seek asylum and voluntary repatriation. The courts have, however, arrived at asylum and voluntary repatriation. The courts have, however, arrived at their decisions without entering into a discussion of international refugee law. It may be noted however that courts can take the treaty provisions mentioned earlier into account in certain circumstances. Article 37 of the Indian Constitution provides that the Directive Principles of State Policy in Part IV are fundamental to the governance of the country and that it shall be the duty of the State to apply these principles in making laws. Article 5 (c) in Part IV of the Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations. Thus, while Indian courts are not free to direct the making of legislation, they do adopt principles of interpretation that promote rather than hinder the aspirations in Part IV of the Constitution.

India has non refugee-specific legislation and hence refugees are not classified and treated differently from other aliens. The principal India laws relevant to refugees are: the Foreigners Act, 1946 (section 3, 3A, 7, 14); the Registration of Foreigners Act, 1939 (section 3,6); the Passport (Entry into India) Act, 1920; the Passport Act, 1967; the Extradition Act, 1962. Jurisdiction over issues of citizenship, naturalisation and aliens rests with the union legislature, however influxes of refugees have been handled by administrative decisions rather than through legislative requirement. This administrative discretion is exercised within the framework of the 1946 Foreigners Act, and refugee policy in the country has essentially evolved from a series of administrative orders passed under the authority of section 3 of the said Act. It may be noted that the impact of administrative policy on judicial decisions is minimal and developments in one area occurs quite independently of developments in the order.
Positive rights accruing to refugees in India therefore, are those apply
to all aliens under the Indian Constitution: the right to equality before the law
(Article 14), free access to courts for protection of life and personal liberty
which may not be deprived except according to procedure established by law
(Article 21), freedom to practice and propagate their own religion (Article
25). Indeed, any law or administrative action in violation of these rights is
null and void and can be so declared by the courts (Article 13 read with
Articles 32 and 226).

6. THE LEGAL POSITION VIS-À-VIS SPECIFIC INTERNATIONAL
REFUGEE LAW ISSUES IN INDIA

(A) Refugees' Definition

Influxes of asylum seekers from neighbouring countries are generally
accorded refugee status by the Indian government. The Indian authorities
issue identity documents to Tibetans and Sri Lankans. These documents
identify the holder as a "refugee". The content of the term "refugee" is not
specified in the executive decisions under which these asylum seekers are
welcomed and the term is used only as a tool to identify those aliens who are
eligible for certain assistance benefits earmarked for them. It would appear
however that as India accepts large groups of refugees who are fleeing not
just for reasons relating to persecution but also because of generalised
violence, that these executive decisions subscribe to the definition of
"refugee" as stated in the 1969 Organisation of African Unities Convention
rather than the narrower definition provided in the 1951 Refugee Convention
as amended by the 1967 Protocol.

At the time of the initial influxes of Tibetans into India, no formal
refugee status determinations were undertaken and the Tibetans were issued
"Indian Registration Certificates" on a prima facie basis under executive
decision. These certificates are valid for one year and are renewable. They
identify the bearer as a "refugee" with "Tibetan nationality". Children of
registered Tibetan refugees have to be in turn registered at age 18. These
certificates serve as an identity document and a residential permit. Holders are associated with one of the settlements provided by the government and are entitled to membership of the cooperative\(^5\) associated with the settlement. Registration certificates have not been issued to Tibetans entering the country after the initial mass influxes.\(^6\)

A travel document called the "Identity Certificate"\(^7\) is also issued by the Government of India upon completion of the "Application for Issuance of Certificate of Identity,"\(^8\) and after obtaining the "No Objection to Return to India" (NORI) Certificate by the concerned State government. NORIs are renewable every two years while the Identity Certificate is renewable after a six-year period.

After the initial security clearance, identity cards on the basis of an administrative decision were provided to each family on a prima facie basis in order to regularise temporary stay in the country and also for the purpose of providing relief materials like food and shelter in the camps in Tamil Nadu. The identity cards are labelled "refugee identification cards" and identify the holder of the documents as "refugee".

The legal status of the identity documents provided by the government, notwithstanding the fact that they identify the bearer as a "refugee", is unclear. Shortly after the 1992 assassination of Mr. Rajiv Gandhi in Tamil Nadu, several Sri Lankan refugees who were holders of the refugees identity document were detained by local authorities for violation of camp curfew, under section 3 of the 1946 Foreigners Act (which grants powers to the central government to pass any order pertaining to foreigners it deems fit). The courts in handling these cases directed that these refugees be moved to the special camps that had been set up to accommodate those refugees that were of higher security risk.\(^9\)

While refugees in the country who are holders of an identity document issued by the government are certainly in a more secure position legally than
those that do not, it is pertinent that these documents do not provide the holder any form of separate legal status with respect to the municipal law ordinarily applicable to aliens in the country.\textsuperscript{80}

An interesting aspect of the refugee identification card issued to Sri Lankans is the fact that children born to Sri Lankan women refugees married to Indian nationals are registered on their mother’s refugee certificates. While this enables them to access the assistance benefits provided to other refugees, it prejudices issues relating to nationality and the legal status of the child under Indian and Sri Lankan nationality laws.

B. Admission

The provisions of the Foreigners and Passport Acts govern admission of all aliens into the country. Admission and grant of asylum to certain groups of asylum seekers has however occurred solely on the basis of administrative decision. Procedures for admissions that are followed in these cases are group specific. In the case of the Tibetans, the largest influxes occurred soon after the Dalai Lama was given asylum by the Indian government in March 1959. During this period the asylum seekers were met at the Indian border by the Indian army and were escorted from the border to settlements allocated to them in various parts of the country. In the case of the Sri Lankans, all 1,22,000 asylum seekers who came to Indian by boat after 2\textsuperscript{nd} August 1989 were received at a reception centre in Rameswaram, Tamil Nadu where an initial screening was done by official from the Customs, Revenue and Immigration Departments to distinguish the militants from amongst the asylum seekers.\textsuperscript{81}

Asylum policies of the country have been generous in practice because of the broad de facto definition of “refugee.” However, as asylum is granted solely as a matter administrative policy rather than legal requirement, executive discretion both with regard to which groups of asylum seekers are accepted and with regard to the treatment of various groups of refugees within
the country remains paramount. It may be noted that there are no judgements or laws addressing a right to seek asylum upon arrival. Cognisance of this issue has only occurred when courts are faced with deportation orders and violation or Article 21 rights are pleaded.

C. Non-Refoulement

The principle and non-refoulement has arguably acquired the status of *jus cogens* — a peremptory norm of general international law accepted as such by the international community as a whole. Principles of customary international law are enforced by Indian courts only in so far as they are not inconsistent with existing statues and section 3 (1) of the 1946 Foreigners Act grants seemingly absolute rights to the Indian government to expel foreigners from Indian territory. Judicial decisions have tempered this position and courts at all levels have stayed deportation orders in several cases pending refugee status and citizenship applications.

In *Luis de Readt v. Union of India* and *Khudiram Chakma v. Union of India*, the Supreme Court held that Article 21 of the Constitution, which protects life and personal liberty by stating that they may not be deprived except according to procedure established by law, is applicable to aliens in Indian territory. The Supreme Court in the recent decision of *National Human Rights commission v. Union of India*, appears to have gone further in establishing protection to refugees in the face of imminent expulsion from the country. The All Arunachal Pradesh Students’ Union (AAPSU) had issued “quit India” notices to all alleged foreigners including the Chakmas living in the state, with the threat of use of force if its demands were not acceded to. Justice Ahmadi held that as the constitutional rights in Articles 14 and 21 are available even to non-citizens, “the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so". The
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

court recognised that the “quit India” notices amounted to a threat to life and liberty as understood by Article 21 and that the Chakmas could not be evicted from their homes except in accordance with law.

The decision is limited to threats of expulsion posed by an activist student union and it does not enter into a discussion of issues pertaining to expulsion notices issued by the Central Government (whether they might constitute a violation of Article 21 rights for a refugee etc.). Furthermore, as the order passed states, “…the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected…” it may be argued that the principles of refugee protection established are limited to Chakmas living in the State of Arunachal Pradesh.89

However, protection even against expulsion orders issued by the government has been provided to refugees through a staying of these deportation orders. In Malavika Karlekar v. Union of India,90 21 Burmese facing deportation from the Andaman Islands filed a write petition with the Supreme Court pleading a violation of their Article 21 rights. The court directed that the deportation order was to be stayed to allow the asylum seekers to approach UNHCR for refugee status. Similarly, in Bogyi v. Union of India,91 even in the absence of a pending application for refugee status, the Guwahati High Court ordered the temporary release of a Burmese man from detention for a two month period so that he could apply for refugee status with UNHCR.

The petitions of these cases allege violation of Article 21 of the Constitution in the event that the deportation orders are carried out. While the absence of reasons given in passing these interim motions staying the deportation orders results in an unclear legal position with respect to non-refoulement, the implication of the decisions would appear to be that a
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

successful application for refugee status by an asylum seeker precludes refoulement.

D. Illegal entry

Provisions of the foreigners and Passport Act apply as no difference is made in law between asylum seekers and other aliens. As their specific situation is not recognised, asylum seekers are frequently detained for non-possession of valid travel documents. However, courts have been lenient with respect to the imprisonment terms and fine amounts imposed in view of the special situation of refugees.

E. Non-Discrimination

The policies employed by the Central Government with respect to modes of admission, duration and regulation of stay, assistance benefits granted, long term solution envisaged etc., varies with respect to different groups of asylum seekers. As the process of administrative decision-making is not transparent, the basis for this differentiation is unclear. The Indian government officially recognises three groups of “refugees” – Tibetans, Chakmas and Sri Lankans. Even with regard to these three groups a common administrative procedure is not followed. While the Tibetans and Sri Lankans are issued refugee identity documents (the Tibetans are also issued travel permits), no such document is issued to Chakmas in the camps in Tripura state. Lists of refugees are posted in these camps and they serve the same function as the identity documents of the Tibetans and the Sri Lankans – they serve to identify people eligible for certain assistance benefits. Assistance benefits granted to different groups of refugees in India appear to be determined by the situation of the refugees in relation to the local people (for example ethnic ties between refugee groups and the local population impacts upon assistance provided) and to the relative burden they impose on the States concerned. This is particularly true for subjects like education that fall under the State List in the Indian Constitution. Thus, the Chakma refugees
in Tripura are worse off economically than are the Sri Lankan refugees in Tamil Nadu.

Administrative discretion is also paramount in the treatment of issues like the regulation of stay in the country of foreign nationals who are recognised as refugee under UNHCR's mandate. Afghan refugees recognised by the UNHCR in New Delhi have their residential permits regularly extended on the basis of renewal of their refugee certificates while Sudanese refugees with the UNHCR are often issued *leave India* notices by the government upon expiry of their student visas. The 1993 Protection of Human Rights Act establishes a recommendatory body called the National Human Rights commission that has powers to inquire into the *violation of human rights or abetment thereof*. The commission is not restricted to investigating issues of concern to citizens only and in fact it has visited both the special camps for Sri Lankan refugees in Tamil Nadu and the camps for Chakmas in Tripura to investigate living conditions there. At issue here is whether a body like the Human Rights commission may be used to take up cases of discriminatory treatment between refugees, especially in the light of the fact that some of the areas in issue, like access to primary education, fall clearly within the purview of recognised human rights.

An examination of the potential role of the National Human Rights Commission is also pertinent in the face of recent judicial decisions establishing standards with respect to non-refoulement and voluntary repatriation. As these judgements may be limited in their scope of application to particular refugee groups in identified areas of the country, a standardisation of the norms established may take place through recommendations of the commission. A denial of non-refoulement and voluntary repatriation standards applicable to other groups of refugees in the country (especially if these are other groups of refugees recognised by the government), is clearly violative of human rights norms.
F. Repatriation

The Madras High Court in *P. Nedumaran and Dr. S. Ramadoss v. Union of India*, 97 has set certain standards with regard to the repatriation of refugees. A writ petition was filed seeking interim relief in the form of an injunction to restrain the authorities from repatriating refugees against their will. It was alleged by the petitioners that the Indian government was using force by reducing rations, limiting movement of refugees, and stopping the financial assistance that was previously given. The court in finding that the Indian government had acted properly and in accordance with international law, laid special emphasis on UNHCR’s role as an impartial third party in verifying the voluntariness of repatriations, and on the fact that individual refugees had signed forms in English and Tamil wherein they had expressed their willingness to return. The State government was however ordered to translate the court order into Tamil and to circulate it in refugee camps. The court also ordered that a circular in Tamil be posted in all refugee camps indicating that no refugee would be forcibly repatriated.

The court did not address the issue of whether reduction or rations, limitation of movement of refugees and the stoppage of financial assistance constituted *coercion* so as to render the repatriation involuntary. 98 However, by presuming from the start that repatriations are necessarily to be voluntary, and by examining whether the governments’ actions had sufficiently established voluntariness, standards governing voluntary repatriation have been set by the court. The moot question is whether these standards are extendable to all other refugees in the country. The court in this case was asked to pronounce judgement upon a very specific situation where the government already had in place a repatriation policy. In its judgement the court merely approved the policy and did not make any observations about the larger refugee context in the country.
7. CHALLENGES OF VOLUNTARY REPATRIATION AND NEW INITIATIVES

Seeking solutions to refugee problems have been a matter of international concern. The office of the United Nations High Commissioner for Refugees (UNHCR) was created in 1950 to provide international protection and to promote solutions for refugees. These solutions have been interpreted as voluntary repatriation, integration in the host community, or resettlement in a third country.

Article 13 (2) of the Universal Declaration on Human Rights provides that everyone has a right to leave any country, including his own and to return to his country. The Article applies to every individual including the refugees. In a normal situation it means that an individual can leave or return to his/her country without any hindrance by the State. But in the situation of return or repatriation of refugees, the State may be called upon to play an active part in its promoting. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees do not make any mention of the solution of voluntary repatriation. However, in Clause 8 (c) of the Statute of the Office of the United Nations High Commissioner for Refugees, it is stated that the High Commissioner shall provide for the protection of refugees by assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities.

The OAU Convention of 1969 (hereafter the OAU Convention) governing the Specific Aspects of Refugee Problems in Africa is not only unique for adopting a broad-based definition of the term Refugee but also for clearly laying down the guidelines for voluntary repatriation in Article V of the Convention. Since the OAU Convention had taken into account the ground realities in Africa these guidelines have not lost relevance even today. UNHCR’s mandate for refugee repatriation has been extended over the years through the General Assembly Resolutions, UNHCR Executive Committee conclusions and practices. Initially, it was considered
that the role of UNHCR is over once the refugee cross the border and return to the country of origin but in the extended role, UNHCR is supposed to monitor the safety and security of returned refugees and also provide reintegration assistance to them. The Executive Committee first examined the topic of voluntary repatriation in 1980 and recognized in its Conclusion 18 (XXXI) the desirability for the involvement of UNHCR in voluntary repatriation. In 1985, the Executive Committee adopted Conclusion 40 (XXXVI) on the same subject and significantly developed the doctrine with regard to voluntary repatriation. Further, UNHCR in 1996 issued a Handbook giving detailed guidelines on voluntary repatriation. The two voluntary repatriation methods commonly distinguished are:

- Organized repatriation
- Spontaneous repatriation

In the case of organized repatriation, UNHCR takes the lead role right from the assessment of the conditions of safety and the climate of return to providing logistical support and other assistance. In the case of spontaneous repatriation, on the other hand, the refugees repatriate on their own initiative. Normally, such repatriation takes place without any assistance from any agency though in some cases assistance may be made available. The repatriation figures at Annexure ‘A’ vis-à-vis the refugees who continue to remain in the host countries will show the magnitude and complexities of the problem.

In this Article, it is proposed to consider the challenges of voluntary repatriation and analyses how the solution of voluntary repatriation has emerged, vis-à-vis the new initiatives of UNHCR.

A. Return in Safety and with dignity

The fundamental question that has to be considered in any organized voluntary repatriation is how to ensure return in safety and dignity. Return in safety not only means the physical safety or refugees but also freedom from
persecution or punishment. Return with dignity, on the other hand, signified acceptance of the refugee by the national authorities and the local communities so that individual’s membership in the community is renewed with the restoration of all their rights. Safety of refugees has to be ensured in the camps, in the reception centres, in the routes of return and also to the places of return. Return in safety and with dignity is possible only when proper climate of return is created. And proper climate is possible only when the international community at the political level takes initiatives for peace.

UNHCR has often helped in engaging all parties concerned to dialogue. The UNHCR, because of its humanitarian mandate and presence in the country of origin and the host country, is better acceptable to all the groups. The persuasive role of UNHCR in this regard has however serious limitations and much would depend on the role of the international community. The UNHCR has been insisting on formal repatriation agreement and guarantees from the country of origin. In a number of refugee repatriation situations it has entered into Tripartite Agreements with the country of origin and the host country. The tripartite agreements are insisted upon to get undertakings from the country of origin and the host country that they will ensure the return of refugees in safety and dignity by maintaining the voluntary character of repatriation.104

The refugee repatriation situation varies from country to country and from situation to situation. In situations, where peace agreements have been reached and where tripartite agreements have been signed it is relatively easy to effect refugee repatriation. However, even in such situations, it would be necessary for the international community to ensure that all concerned observes the terms of peace agreements. This may call for deployment of international observers for monitoring the safety measures taken by the national governments for returning refugees including monitoring of violations of human rights and, if need be, deployment of stabilization forces.
to provide a secure environment for the returning refugees. NATO deployed such a force (IFOR) in Bosnia Herzegovina.

The monitoring exercise can pose many practical difficulties considering the complexity of the problems. Monitoring not only means keeping vigil but also liaising with different agencies of the government. The UNHCR has often suspended repatriation operations when conditions were not found to be conducive. This has been done in order to put pressure on the country of asylum and the country of origin so that they respect the basic conditions for the protection of refugees. A matter of controversy which needs consideration is whether the UNHCR should at all cooperate with local leaders and non-recognized authorities to promote repatriation in situations where power struggle and the conflict amongst various groups are still continuing. Some refugee scholars are of the view that the UNHCR should cooperate with the local leaders and the local authorities even in such situations in order to expedite repatriation. But Chimni has a different view that UNHCR has no authority to cooperate with the non-recognized entities without the consent of the country of origin. According to Stein and Reed, for the participation of UNHCR in the organized voluntary repatriation, there were four pre-conditions:

(a) Fundamental changes of circumstances
(b) Voluntary nature of the decision to return
(c) Tripartite agreement between the State of origin, the host State and the UNHCR
(d) Return in safety and dignity

"Ideally, repatriation is fully voluntary, fully informed and takes place only once the conditions that gave rise to the refugees plight no longer exists. The refugees will feel confident that it is safe to repatriate voluntary with the help of international community." But very rarely, such ideal situations are found for effecting organised repatriation.
B. The Voluntary Character of Repatriation

Before considering the question of voluntary character of repatriation, it will be worthwhile to consider some of the statements made by a number of Rwandan refugees in the Benasco Camp in Tanzania to see the perception of refugees about their repatriation:

(a) Now, it is safe to return after spending 2-1/2 years in camp.
(b) It is better to go back than to remain here as a refugee.
(c) We are living here in difficult conditions. In Rwanda, we had our own home and own things. We have been too long away from home doing nothing.
(d) Any way, it is better to return to my home because, here in the camp, there are many problems, no schools, for example. Life here has no future.
(e) Now, lot of people are planning to repatriate which is good because it is better to go in a greater number. There is no need for us to stay here for any longer.
(f) Since nothing happened to those who returned to home, why should we be afraid of returning?
(g) Some people have committed genocide and they are discouraging others from returning. These are the young militiamen who are assistants to commune leaders. They will not repatriate. They will resist till the end.
(h) When people returned to their villages in the hills and are out of sight of international community and media, then they are killed by the rival groups.\textsuperscript{107}
(i) Hope is to go back home and cultivate land.
(j) We have been told that Rwanda is insecure but we find it peaceful. In any case, we are all safe.
(k) We had to find a way home and we did it.\textsuperscript{108}
(l) I would like to start all over gain.\textsuperscript{109}

The above statements convey the basic sentiments of refugees about repatriation. These statements, though by a particular group of refugees placed in a particular situation, would largely be valid in most of the cases of refugees living in camps in developing countries. The most important message conveyed is that the refugees would like to go back to their home rather than lead their lives in camps without any future. Even the refugees in
developed countries who have been granted only temporary refuge and who
know that they would not be granted asylum would be willing to return to
their country of origin upon normalization of situation rather than live under
conditions of uncertainty.

Any assessment of changes in the situation, which led refugees to flee,
has to be objective and verifiable and should be fundamentally stable and
durable in character. It is obvious that the host country of refugees will
always be keen to project that the conditions are safe for repatriation so that
its burden on maintaining refugees gets over in the minimum possible time.
In such a situation, who can guarantee that it is safe to return? The answer is
not easy. The country of origin may give guarantees for the safety but a
certain element of risk is always involved. In fact, refugee repatriation does
take place even when the situation is risky due to the following reasons:

i) Refugees see little change that the unrest in the home
country will end in the foreseeable future.

ii) Refugees feel that by returning they can contribute to the
changing situation at home.

iii) The conditions in exile are most difficult.

iv) Refugees who have left their countries due to sudden
emergency, had to leave their home, their property and other
belongings and also their own relations without even getting
time and they would be keen to get back home at the
earliest.

Though the voluntary nature of repatriation is always advocated but in
many situations, there is always the possibility that it may give way in order
to achieve solutions, either due to the pressure of the host countries, or the
dangerous situations in camps. Assuming for a moment, that the situation is
normal and fit for repatriation from the point of view of the country of origin,
the host country and the international agencies, the refugees themselves may
consider it otherwise. The question arises who amongst the refugees in a
camp should decide whether to repatriate or not. In any refugee camp, certain
informal leaderships develop and they take all the major decisions. If the
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

bonafide of these leaderships are doubtful or the self-proclaimed leaderships take decision by political and other considerations, the repatriation process becomes more difficult.

UNHCR has emphasized that the refugee repatriation needs situational analysis taking into account the ground realities. Assessing these become easy where UNHCR field staff are already present in sufficient numbers. It is natural that the refugees in camp have magnified apprehensions about the conditions back home. Information plays a very important role in refugee repatriation. UNHCR has emphasized the need for the information campaign in every refugee’s repatriation. A focus on information can provide an insight into the repatriation process, although it is clearly one of a multitude of factors involved in the decision making process. The way the refugees perceive conditions at home has been demonstrated to be of central importance in the repatriation decisions. A study has shown that “self-repatriation was largely a reaction to events in exile, and where information about home conditions did not necessarily figure, highly, although even in these cases, some people were reported to have waited at least some information before actually repatriating. In contrast, information was reported to have been much more important in the repatriation decision of other people, whose decision might be described as pro-active than reactive. Many confirmed that they themselves were actively seeking information of various sorts before deciding whether or not to repatriate. For some, there was information vacuum. Another variable that influenced whether or not information was acted upon was household and community structures of decision-making.111

The mass information campaigns if launched with sincerity and that too by the national leaders of the country of origin can have a lot of impact. The mass information campaign needs to be done carefully; otherwise there is every possibility of it being counter-productive. The refugees may consider
that they systematic mass campaign has been organized for there forced repatriation. In Tanzania, in 1996, the Rwandan refugees did not believe the information provided by the official agencies and they abandoned the camps and moved into the interiors of Tanzania fearing forced repatriation. As a confidence building measure, UNHCR has encouraged visits by representatives of refugees to the country of origin so that they can assess for themselves whether the situation is suitable for repatriation and spread the message for the same in the refugee camps. Such messages from the refugee representatives would always be more creditworthy. For organized repatriation, registration of refugees is important for close monitoring. Due to intimidation by local leaders in refugee’s camps in Zaire, UNHCR had even initiated the registration outside the camp areas so that refugees could register themselves without any fear or intimidation. The registration also ensures that the refugees are themselves ready to repatriate and they have not been forced to repatriate. UNHCR often organizes a pilot repatriation project to test the ground reality.

Despite all efforts to promote repatriation by UNHCR, there may be refugees who may decide not to repatriate due to their assessment of the security situation in the country of origin or to the traumatic experiences of the past. UNHCR’s approach for these residual refugees is that the host countries should continue to give protection. These refugees with the passage of time may decide to repatriate. But if the refugees continue to live in the host countries for long years, they may get used to their way of life. Thus, on the one hand, an affinity may grow for the host country and, on the other hand, a sense of abandonment may emerge in respect of the country of origin. This phenomenon will be strong if the residual refugees in sufficient numbers are able to maintain their community life and sustain themselves independent of aid.
C. Logistics and Administrative Measures

In any organized repatriation, large number of activities relating to logistics and administrative measures need to be coordinated so that repatriation process can be effected smoothly. Once the refugees express their willingness to repatriate and have been registered for repatriation, the repatriating refugees need to be provided with assistance package. The assembly centres, border-crossing points, the routes for return and also the transit points have to be decided. Proper security arrangements at every point need to be assured by the country of asylum. The UNHCR through its field staff coordinates with the authorities and makes due assessment about proper arrangements of security before actually launching repatriation operation. UNHCR always prefers repatriation in a phased manner taking into consideration the absorption capacity and the preparedness of the country of origin. However, it may not always be possible to organize repatriation in phased manner. A large number of refugees may choose to repatriate at the same time and thus contingency planning is required. Essential commodities and services like facilities for drinking water and medical care, etc. may require to be organized.

Proper arrangements for transport play a very important role in organized repatriation. UNHCR organizes transport by road, rail, sea and in case of emergency, even by air. In case of repatriation by road, convoys are planned and routes are checked and assessed by prior visits. Any route passing through the conflict zone or where there is danger of landmines is avoided. All this planning is necessary because any mishap or attack on repatriating refugees by terrorist groups can dislocate the entire repatriation operation. Physical arrangements are so varied and of such magnitude that it is necessary for UNHCR to select competent implementing partners including the government, UN agencies and NGOs. UNHCR also takes into account the needs of vulnerable groups like unaccompanied women, children and
elderly handicapped person and makes special arrangements for them. Attempt is also made in maintaining family unity during repatriation. In the country of origin, reception centres/arrivals points with proper infrastructure are established. Such administrative measures like immigration checks, health and custom formalities are sorted out by UNHCR well in advance.

D. Post-Return Monitoring and Re-integration Assistance

One of the evolving functions of the UNHCR is monitoring the guarantees given to returnees by the country or origin. The first pre-condition for such monitoring is that the UNHCR should have free access to all the returnee refugees and at the same time refugees should also have free access to all the returnee refugees and at the same time refugees should also have free access to UNHCR. In case of violations of human rights and fundamental freedom, UNHCR timely brings it to the notice of the concerned authorities so that remedial actions are taken. And in case remedial actions are not taken UNHCR makes formal protests by making representations to national, regional or international bodies. The resident population in the returnee areas generally welcome the returnees and as such there may not be any conflict between the returnees and the resident population. However, in situations where the primary cause of refugee flow had been ethnic conflict, the reaction of resident population needs to be carefully monitored. Many times, the refugee repatriation itself can provoke ethnic violence and disturb the fragile peace. The ethnic problem has manifested in acute form in Bosnia Herzegovina where the repatriation of the minorities is one of the most difficult problem. The Dayton peace agreement mentions:

a) Rights of refugees to return to their homes;

b) Rights to choose a place of future residence in Bosnia-Herzegovina.

The animosity and the distrust between the different ethnic and religious groups are undermining the primary right to return to one’s home invoked in the Dayton peace agreement. For many refugees of the minorities
groups, the dream of returning to one's own home may not come true and they may have no piton but to settle in the areas where their ethnic groups are in majority thus further widening the ethnic divide. The resettlement of refugees at places other than their homes in the absence of alternative is in a way similar to their resettlement in a third country. But, it is also different in the sense that the resettlement in a third country brings in the benefit of protection of the third country and the possibility of economic betterment whereas resettlement in their own country at a place other than home brings in all the disadvantages. So, such refugees ought to be treated as a separate category and the package of assistance has to be commensurate with their disadvantages and should be available for a longer duration.

The United Nations High Commissioner for Refugees Mrs. Sadako Ogata has observed that “establishing peace alone while hoping that refugees should find their own solution rarely works.” She also noted that “repatriation in many situations cannot be achieved by human rights guarantees and rehabilitation alone. Societies have been shaken fundamentally be conflict and group co-existence is at stake. Peace building requires agreed a\concept of society perhaps even one party totally defeats the other, there must be a minimum common understanding of the cause of the conflict and a genuine compromise on the main features of the society. Compromises must be clear and supported by a willingness to settle. Achieving lasting repatriation in contributing reconciliation remains our objective.” Therefore, one of the most important tasks is the psychological reconstruction and it is very necessary that different groups compromise. In the effort for reconciliation, voluntary agencies, Church and other humanitarian organizations do play a very important role. In many countries, in order to bring about reconciliation, general amnesties have been declared as have been done in South Africa. “Togo, etc. General amnesty dispels fear from the mind of refugees who dread being victims of violence and repression on return even though they had no role to play in causing the
refugee outflow. General amnesty means overlooking wrongs perpetrated by some people in a spirit of forgiveness. However, it is not easy to have a general acceptance of amnesty by all sections in the society particularly by the families of victims who can still identify the perpetrators of violence. "The human rights field operation in Rwanda have recorded 5460 arrests among returnees from Zaire and Tanzania by the end of December, 1996. Many of these returnees had given themselves up to authorities for their protection after the local people identified them as having been involved in killings in 1994. Setting up of Tribunals for the trial of those who had committed genocide as has been done in Bosnia and Rwanda will instil confidence amongst returned refugees. In the post conflict situation, it is very important that the administrative authority in position, particularly at the local level, enjoys the confidence of the returnees.

Many returnees often face land and property disputes on return. While judicial and administrative intervention often become necessary, informal arrangements are much more effective and quick. It has been reported that "most property disputes in the case of returning Rwandan refugees got settled amicably by informal arrangements." However, it must be recognized that in many refugee situations, settlement of dispute relating to land and property is the most important issue for voluntary repatriation. For Chakma refugees in India getting back land rights in the Chittagong Hill Tracts of Bangladesh remains the most important issue to be resolved for voluntary repatriation. It may be true in other refugee repatriation situations as well.

In any refugee repatriation, assistance plays a very important role. The immediate needs of refugees for reconstruction and repair of houses, provision of food for few months, and resources to purchase essential household items and agricultural inputs have to be met. To promote voluntary repatriation of Afghan refugees in Pakistan, the UNHCR had introduced the encashment of the family ration card so that the refugees who

502
are willing to repatriate could utilize it to meet their urgent requirements. UNHCR also adopted a strategy of distributing the repatriation assistance package to returning Rwandan refugees at the returnee’s communes to promote repatriation. The reconstruction of minimum infrastructure for drinking water, education and health services, is equally necessary to effect repatriation. The UNHCR has played a very important role in mobilizing funds from donors to provide reintegration assistance to returnee refugees, as also to the resident population of returnee areas. Indeed the implementation of community projects for the returnee refugee together with resident population helps in bringing about reconciliation. However, the gap between the need for assistance and the mobilization of resources always remain wide and has been a critical variable for UNHCR in finding durable solution for refugees.

8. CO-OPERATION WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEE (UNHCR)

India, for the first time, established its formal relationship with the United Nations High Commissioner for Refugees in 1969 for rehabilitating Tibetan refugees in India. When the High Commissioner visited India in July 1963, India expressed its interest in receiving assistance from the Office of the United Nations High Commissioner for Refugees for Tibetan refugees. UNHCR made available some funds from the proceedings of the sale of “All Star Festival” record. Since a pre-requisite for such assistance was the proper supervision of UNHCR funds are careful coordination of international efforts, Indian Government agreed that the presence of an on-the-spot UNHCR representative was desirable. A Branch office of UNHCR was officially opened in Delhi on February 1, 1969. In co-operation with India UNHCR undertook new projects and consolidated old ones in the fields of agricultural settlements, housing for the aged lamas, and medical facilities. Thus, a close working relationship between UNHCR and India was established by the time India got involved in providing emergency relief to Bangladesh refugees.
Here it is worthwhile to mention that to cope with the refugee influx from East Pakistan, on 23 April 1971 India called upon the UN family to assist in bringing relief in order to meet massive refuge problem. Responding to India’s call, the Secretary General of the United Nations appointed the United Nations High Commissioner for Refugees as the Co-ordinator of assistance, and in June, a unit (UNEPRO) was created in East Pakistan itself to relieve the plight of civilians in that territory. In May 1971, the High Commissioner sent a fact-finding Commission to India. The Commission’s report stated that two matters were of utmost importance: urgent relief measures and the promotion of voluntary repatriation. The assistance programme ran from May 1971 to February 1972. It directly involved UNICEF, WHO, FAO and WFP to co-ordinate fund-raising and assistance activities. The High Commissioner for Refugees was entrusted with the work of liaison with the Government of India and the governments, which contributed to the relief efforts in cash and kind.

After 1972, UNHCR Branch office in Delhi concentrated on resettlement projects for Tibetan refugees again. But in 1975 UNHCR suddenly wound up its projects in India and closed its Delhi Branch office for no reason. Again in 1979 UNHCR requested the Government of India to reopen its Branch Office in Delhi. India did not give permission to that effect, but agreed to allow a UNHCR representative to function as the “UNHCR component of the United Nations Development Programme (UNDP)” in New Delhi. However, in 1981 the Government of India allowed the UNHCR to re-open its office in New Delhi after a significant number of refugees had arrived from Afghanistan and Iran. But it imposed that the UNHCR must function under the banner of the UNDP.

A controversy raised in 1984 when the UNHCR granted refugee status to three Delhi-based officials of the Afghan Airlines Arina.\(^{118}\) The Indian position has been that ‘refugee status’ cannot be granted by New Delhi-based
THE EMERGENCE OF REFUGEE JURISPRUDENCE 
AND HUMAN RIGHTS IN INDIA

U.N. Official without the approval of the Government of India to an alien within the Indian territory. India also objected to the UN officials granting international protection to three members of the Afghan soccer team who defected in Delhi while returning from Beijing after participating in a tournament.\textsuperscript{119}

However, despite the absence of a formally strong relationship India has a good rapport with UNHCR and it cooperates and assists the later in resolving international refugee problem.\textsuperscript{120} In practice, the UNHCR tactfully avoids confrontation and tries to achieve practical results through conciliation. This style is very evident in the manner in which the UNHCR has been operating in New Delhi under the umbrella of UNDP. Recently, India has become the Member of the Executive Committee of the United Nations High commissioner for Refugees Programme. So, it is hoped that the relation between the two will improve further.

9. THE VULNERABILITY OF ASYLUM-SEEKERS IN INDIA

Life has not been easy for Naveen Kumar, an ethnic Hindu Afghan. At age nine, he and his family fled from their hometown near Kabul in Afghanistan. They covered the distance to New Delhi riding trucks. Naveen carried with him only the splinters that were lodged in his body when shots were fired at him. Now, almost two decades later, he is working as a shop assistant in New Delhi. His most treasured document is the refugee certificate issued by the United Nations High Commissioner for Refugees (UNHCR). To those who care to listen, he narrates his story. His family owned acres of land and big cars, all of which were left behind in Afghanistan. Now he lives in a two-room shelter in a crowded area of Delhi. Naveen is a diligent worker. His employer knows that he takes a day off every month to queue up outside the UNHCR office in Delhi along with his family to collect their subsistence allowance. His plans for the future include at least one visit to his hometown. He is waiting for the situation there to normalise. For the time being, he
concentrating on getting his two sisters married, preferably to grooms in European or North American Countries. Adnan Ibrahim Salman, an Iraqi citizen who has been living in India for more than 20 years and is married to an India, says that his biggest mistake was not to have applied for a refugee certificate when his visa expired. He fears that this mistake will cost him his life as he can be deported to Iraq any time. Adnan came to India on a student visa in 1979. He did not return to his country when the Iran-Iraq war started and all overseas students were asked by the Iraqi government to return home and join the army. The penalty for his non-compliance is death upon return to Iraq. In India, the local police under the Foreigners Act, 1946, for overstaying, has booked Adnan. He will now have to prove before a court of law why he should not be deported to Iraq. He is trying hard to get a refugee certificate from the UNHCR, which, he says, can save his life.\footnote{121}

What has complicated Adnan’s case is the fact that India does not have a separate piece of legislation for refugees. If this was not the case, he need not have a separate piece of legislation for refugees. If this was not the case, he need not have approached the UNHCR; instead he could have approached the state authorities for asylum. A national law would have ensured the presence of a mechanism to determine whether one was a refugee, on the basis of agreed, transparent standards. Adnan would have been recognised as a refugee if he was found eligible. Naveen would also have benefited from such a piece of national legislation; he would have had access to benefits from the state, such as education and subsidised food. He would not have had to renew his refugee certificate after specified time limits. He could have even thought about settling down in India. India is not a signatory to the basic instrument on refugee law – the 1951 U.N. Convention relating to the Status of the Refugees and the 1967 Protocol. More than two-thirds of U.N. members are parties to the instrument. No South Asian country has acceded to these international instruments. This, combined with the fact that there is no regional instrument on refugees in South Asia, makes the picture even
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

more dismal. In South Asia, no effort has been made for a regional consensus on this issue. Nor has any South Asian country adopted a domestic law on refugees or asylum. African states developed a regional convention on refugees in 1969, while Central American countries adopted a non-binding regional instrument called the Cartagena Declaration in 1984. For people like Naveen and Adnan, this lapse has meant that they do not have any legal status in India and no clear protection regime to turn to for help. They fend for themselves in a country where state authorities discriminate amongst refugees on the basis of their country of origin. The pampered lot include the Tibetan refugees who have been issued not only travel permits but refugee identity documents. The Chakmas of Bangladesh and Sri Lankan Tamils are also officially recognised by the Indian government as refugees. The determinants for these benefits include the ethnic ties of the refugees with the local people and the relative burden they impose on the Indian States concerned. This is particularly true in the case of a subject like education, which falls under the State List in the Constitution. Hence the Chakma refugees in Tripura are worse off in getting state benefits than the Sri Lankan refugees, who benefit from their ethnic ties with the Tamil population in India. Administrative discretion is also paramount in issues such as regulation of stay for those who are recognised as refugees. Afghan refugees have their residential permits periodically extended while Sudanese or Iraqi refugees are often issued “leave India” notices by the government upon the expiry of their student visas.

Who can help these people who have run away from their countries of origin in the face of death and persecution? The judiciary has been instrumental in safeguarding the interests of asylum-seekers. A handful of judgements have recognised the UNHCR’s role – cases in which the courts ruled that a person claiming refugee status couldn’t be deported until he or she has had a chance to apply for refugee status to the UNHCR. However, there have also been instances where the courts dismissed cases on the grounds that they did not want to enter what they felt were the political
domain. In other cases, court proceedings against refugees who entered the
country illegally have ended the country illegally have ended in their
imprisonment until their official status was decided. Owing to procedural
delays, there is invariably a long gap between the time such persons enter
India and the time they are declared refugees. There have also been cases
where the UNHCR was asked to secure a home in a third country for the
refugee concerned. The UNHCR has its own limitations in India. It does not
have an independent office; it functions as an arm of the United Nations
Development Programme (UNDP). Statistically, India’s refugee population
rose to nearly 2,50,000 by the end of 2000. However, the Government of
India has allowed the UNHCR to exercise its mandate only over
approximately 12,000 Afghans and about 1,000 individuals of other
nationalities. Wei Meng Lim-Kabaa, Deputy Chief of Mission, UNHCR,
says: “Protection of refugees can only be offered by the government. We are
only an intervening body. Lack of national legislation makes it difficult for
us to function, especially when we come across cases of resettlement. There
is no effective alternative to a law for the refugees.”

The benefits of a piece of national legislation will be many. It would
allow the government to distinguish clearly between an illegal migrant and a
refugee. It would ensure a rights-based regime instead of one that deals with
refugees in an ad hoc manner, and would go a long way in wiping out the
existing discrimination. India is a member of the executive committee
(Excom) of the UNHCR since 1995. A national law on refugees would
strengthen its case for a permanent membership of the U.N. Security Council.
Efforts have been made earlier to introduce a national law on refugees. In
May 1997, an Eminent Persons Group (EPG), a panel of jurists under former
Chief Justice of India P.N. Bhagwati, drafted a model national law on
refugees. However, the proposed bill is pending even though most State
governments and political parties have shown the political will to make it a
reality. The main contribution of the EPG’s draft law is that it has taken the
first step towards defining a refugee. It defined a refugee as (a) any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, or (b) any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refugee in another place outside his or her country of origin. The international principle of non-refoulement (which prohibits the forcible return of refugees to situations in which they would be subject to persecution and where their lives and freedom could be threatened) and an adequate quasi-judicial mechanism for the determination of refugee status are essential components of the legislation. It has been structured keeping in mind the broader spectrum of international human rights law. The UNHCR sent the draft bill to the Union Home and Law Ministries for consideration, but has not received feedback from any of the government departments. Says Kabaa:

“For the time being, we are satisfied that the issue is being looked into. This was not the case earlier.”

With no indication of a refugee law in the near future, human rights activist are demanding amendments to the Foreigners Act. Under this Act refugees in India are dealt with like ordinary aliens. The amendments sought are that the government define refugees as a distinct class, prescribe the procedure to consider their claims, and elaborate their rights, including protection of non-return. This would fall short of a full-fledged piece of legislation but could be a stopgap arrangement. The government’s lethargic response to the need for a refugee law stems from the belief that refugees and immigrants should be dealt with
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

at a bilateral, and not a multilateral, level. This argument stems from the conviction that migrants and refugees will have an adverse effect on internal security and political stability. Recognition of refugees would also mean that an already cash-strapped government would have to direct some resources to ensure their rights – such as free education, free movement and adequate healthcare facilities. Hence, these are going to be ad hoc solutions. The government argues that it is observing the basic principles of refugee protection even now – it admits asylum-seekers and refugees and follows the principle of non-refoulement. However, in reality, the status of a refugee in India is that of a foreigner whose movement can be restricted or who can even be ordered out of the country. Administrative procedures decide his or her fate. A refugee, at the end of the day, remains without any legal status and is in most cases confused with a migrant.

10. RECAPITULATION

The Government of India has dealt with refugee issues as an integral part of bilateral relations with neighbouring states. The importance of administrative discretion in the government’s dealings with refugees is therefore governed by the practical consideration of relations between states. However, this administrative discretion has been exercised in broad consonance with international refugee law norms. Thus, the de facto definition of “refugee” being employed in administrative policy accords with the 1969 OAU Convention definition (although it appears that the definition is being used not to create a legally separate category of persons, but rather for administrative purposes of identifying beneficiaries to certain types of assistance provided by the government). Standards with respect to the voluntariness of repatriations have been established through the practice of the Tamil Nadu government and through a High Court decision. Deportation orders for asylum seekers have been stayed pending refugee’s status
determinations with the implication that successful applications preclude refoulement.

The Indian government believes that even in the absence of refugee specific legislation and inspite of being a non-signatory to the principal refugee conventions, adequate protection to refugees is being provided a generous asylum policy and administrative structure. However, by not differentiating refugees from other aliens in the country gaps in their protection occur – particularly with regard to asylum seekers that enter the country illegally and with regard to the equitable regulation of their stay in the country. Importantly, over the last decade and a half, approximately 50,000 Afghans and 2,000 Iranians have individually arrived in India seeking asylum. Under the current framework, no system of protection exists for such asylum seekers and if it was not for the intervention of a third party, these persons might have run the serious risk of being refouled at the expiry of their initial stay permits. A legislative framework would clearly be beneficial in sealing these lacunae in the protection of refugees. The experience of resolving the problem of the stateless persons of Indian origin in Sri Lanka indicates the importance of recognising the inter-connectedness of refugee problems and solutions in the region. The Draft Regional Declaration on Refugees in South Asia is therefore a very useful first step in this regard.

The challenge in drafting a regional declaration is that it takes cognisance of two imperatives – the need to provide adequate, encompassing protection to asylum seekers and refugees and the simultaneous need to allow governments some measure of administrative discretion in their management of refugees. It may be noted here that the Draft Declaration mentioned above incorporates both a refugee definition that is already in consonance with the definition being used by the Indian government in relation to asylum seekers from neighbouring countries and a reaffirmation of “the sovereign right (of a State) to grant or refuse asylum in its territory to a refugee…”
Voluntary repatriation of refugees is the preferred solution to the refugee problem, particularly in the situations of mass influx of refugees to developing countries, which are not in a position to carry the burden of refugees for a long period, unless the international community shares the burden. Though voluntary repatriation is the preferred solution it is by no means an easy solution. In most of the major refugee repatriations, despite all efforts by the UNHCR and the host countries and the countries of origin to ensure return in safety and dignity, the success has been only partial. Vast majority of refugees continue to live in the host countries.

In many situations, the voluntary aspect of refugee repatriation gets compromised either due to pressure from the host countries or the adverse situations in the host countries forcing refugees to repatriate. In most of the major refugee repatriations it is found that a large number of refugees have repatriated spontaneously, at their own initiative. Successful refugee repatriations clearly show the close link between the safety and the voluntariness. It can be inferred that if the conditions of the safety could be ensured, the majority of the refugees would return voluntarily. In spontaneous repatriation, UNHCR may not directly have taken initiative in actual repatriation but could have contributed in creating conditions of safety. Though more refugees may have repatriated spontaneously, it cannot undermine the importance of organized repatriation by the UNHCR. Organized repatriation becomes necessary when situations are complex. But for successful organized repatriation, millions of refugees would have continued as refugees in the host countries.

Confidence building measures like mass information campaign, visit by refugee, etc., help the refugees in taking decisions regarding repatriation. But there may be refugees who may not be willing to repatriate due to continued fear of persecution. Such refugees should continue to get the protection of host countries. In every refugee repatriation situation, there
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

would always be residual cases and one may not achieve total repatriation of all the refugees. Refugee repatriation will always be temporary and reverse outflow of refugees can occur at any time if the peace accords are not fully implemented and the cause of refugee outflow are repeated. Further, peace accords alone, without reconciliation in real terms, cannot help in finding durable solutions for the repatriating refugees.

Refugee repatriation is generally spread over a number of years and it varies from situation to situation and from country to country. The number of refugees repatriated may not be the true index of the success of refugee repatriation. Refugee repatriation of a small number of refugees in complex situations may require more efforts. And the successful repatriation of small number of refugees in complex situations will always pave the way for future repatriation in greater numbers. Settlement of land and property disputes, and timely reintegration assistance help in finding durable solutions for the repatriating refugees. Post return monitoring of returnee refugees is also very important.

In many situations, the host countries and the countries of origin prefer bilateral arrangement for refugee repatriation and there is no direct involvement of UNHCR and the role of UNHCR is reduced to the status of an observer only. Repatriation of refugees under bilateral arrangements without full involvement of UNHCR can always be questioned. In the bilateral arrangement, despite the best of intentions of the country of origin and the host country, doubts about the voluntary aspect of the repatriation can always be raised and it can always be said that the refugees have been forced to repatriate contrary to the principal of non-refoulment. Therefore, full involvement of UNHCR is a necessary prerequisite in any refugee repatriation situation.

The role of the UNHCR from a passive facilitator to that of active promoter has emerged in view of the complex refugee situation, the demands
THE EMERGENCE OF REFUGEE JURISPRUDENCE AND HUMAN RIGHTS IN INDIA

of the international community, overburdened host countries and in certain situations, the refugees themselves due to miserable life in the camps in the host countries. Its role as an active promoter has evolved over time and the international community has accepted it and now there is no possibility of going back.

Refugee repatriation as a concept and process has evolved over the years and helped in finding durable solution for millions of refugees. This is the solution, which needs to be pursued vigorously with the cooperation of all concerned. It will require intense involvement and commitment of the country of origin, the country of asylum and the international community. The international community has also to address the causes of the refugee flow and adopt a pro-active role to bring about peace and reconciliation. Adequate and timely reintegration assistance play a very important role in the successful repatriation and therefore, should get the due attention of the international community.
NOTES AND REFERENCES


3. Supra note 1.


5. Ibid.

6. Ibid.


13. Article 1.1 of the Protocol provides. “The states parties to the present protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugee, as hereinafter defined.”


19. Supra note. 15

20. Supra note. 15

21. The International Bill of Human Rights is consisting of:
   ii) The International Covenant on Civil and Political Rights adopted by General Assembly on December 16, 1966 with its Optional Protocol, and


24. Supra note 15.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA

28. The Institute of international law adopted this definition of asylum at its 1950 Session.
32. Nagendra Singh, “Indian Practice of International Law”, New Delhi, 1972, p. 84.
35. Ibid., June 18, 1971, p. 9.
38. The Foreigners Act, 1946 deals with the entry, exit and stay of foreigners in India.
40. Under Ss. 6,7,14 of the Foreigners Act, 1946.
41. Supra note 37.
42. For instance using as genuine a forged document and cheating the immigration authorities, which is punishable under the Indian Penal Code, See supra, note. 39.
43. Criminal Writ Petition No. 499/96 before the High Court of Punjab & Haryana, Chandigarh.
45. Criminal Writ Petition No. 189/96 before the High Court of Bombay at Nagpur Bench, in Maharashtra.
46. Writ Petition (Civil) No.720/95 before the Supreme Court of India, 1996 (1), SCC. 742;
1996(1) IHL & RL. 147.
47. Supra note 44 & 45.
48. Supra note 37.
49. Supra note 37.
50. Gauhati High Court, Civil Rule No. 981/1989.
52. Gauhati High Court, Civil Rule No. 515/1990.
56. Supreme Court of India, Writ Petition (Criminal) 125 & 126/1986.
57. Supreme Court of India, Writ Petition (Criminal) 243/1988.
58. Supreme Court of India, Writ Petition (Criminal) 583/1992.
59. Writ Petition (Civil) No. 720/95 before the Hon’ble Supreme Court of India, 1996 (1), SCC 295.
60. (1991) 3 SCC 554.
62. Article 10 dealing generally with family reunification and Article 38 dealing with children in situations of armed conflict are also relevant.
THE EMERGENCE OF REFUGEE JURISPRUDENCE
AND HUMAN RIGHTS IN INDIA


64. The well established position that “the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action.” Was stated in the Privy Council case of Attorney General for Canada v. Attorney-General for Ontario (1937) AC 326. This position still holds: see for example, State of Gujarat v. Vora Fiddali A.I.R. 1964, SC 1043.


67. Supra note 65, p. 18.


71. Item 17 of the Union List (Schedule Seven appended to Article 246).

72. Section 3 provides the power to make orders and is drafted very broadly – “The Central government may by order make provision, either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating, or restricting the entry of foreigners into India or their departure there form of their presence or continued presence therein”.

73. Article 1 (1) incorporates the 1951 Convention definition. Article 1 (2) states, “The term “refugee” shall also apply to every person who, owing to external aggressions, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.

74. “Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fear of for reasons other than personal convenience, is unwilling to return to it.”

75. These co-operatives are largely agricultural in nature. They are all registered under the Indian Co-operative Societies Act.

76. Currently approximately 150 Tibetans enter India annually. This includes persons who enter India intending to stay only very temporarily (to visit relatives, to study, etc.) Mr. Tsering Wangyal, the Representative of the Dalai Lama in New Delhi.

77. This document is not restricted to Tibetans. Bangladeshi, Chakma and Pakistani refugees have also utilised this travel permit.

78. Issued by the Ministry of External Affairs after the Internal Security Department of the Home Affairs Ministry is made cognizant of the issue.

79. Till January 1995 there were 1629 Sri Lankan refugees in 7 special camps in Tamil Nadu. After repeated interventions by the UNHCR, India and the National Human Rights commission, 808 refugees were moved back to normal camps 500 Sri Lankans repatriated voluntarily, with UNHCR overseeing the voluntariness of the repatriations.


81. Ibid.


84. Supra note 68, p.380.


88. 1996 (1) SCC 295.


90. Tibetans are settled in several states and a special society registered under the Societies Registration Act (XXI of 1860) was established on 31/07/61 to govern their education. The Central Tibetan Schools Administration (CTSA) is a government-funded body that is responsible for administering culture specific education exclusively for Tibetans. It is one of the largest employers of Tibetans in the country. For additional information please see: Education Code for Central School for Tibetans, Central Tibetan Schools Administration, New Delhi, 1995.

91. Section 12 (a)(1).

92. Relevant provision: section 3 (2) (a) of the 1946 Foreigners Act states that the Central Government may issue orders regulating the manner foreigners enter into India. Section 3 (2) (a) of the Foreigners Order, 1948 states that leave to enter India may be refused if the concerned civil authority is not satisfied that the foreigner is in possession of a valid passport or visa. Section 12 (1) (c) of the 1967 Passport Act states that travel documents are to be produced for inspection when required. Failure to do so is punishable with imprisonment and/or a fine under the same sub-section.

93. C.W.P. No. 12343/92, Madras High Court.

94. Justice Srinivasan said that, “the question whether the original consent was obtained by force or not is not very material in as much as the voluntary nature of the consent is ascertained by the representatives of the UNHCR before the actual expatriation of the refugee”, page 16 of the order.


98. Article V of the Convention provides:

i. The essentially voluntary character of repatriation shall be respected in all cases and no refugees shall be respected in all cases and no refugees shall be repatriated against his will.

ii. The country of asylum in collaboration with the country of origin shall make adequate arrangement for the safe return of refugees who request repatriation.
iii. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country and subject them to the same obligations.

iv. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Wherever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in the country of origin will enable them to return without risk and to take up a normal and peaceful life without fear or being disturbed or punished and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

v. Refugees, who freely decide to return to their homeland as a result of such assurances or on their own initiatives, shall be given every possible assistance, by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return.

104. Supra note 101.
107. Statement (a) to (h) have been cited from Paul Stromberg “Rwandans finding their home” Refugees, No. 105, 111 (1996), p. 13.
108. Statements (i) to (k) have been cited from Mans Nyberg “Too long away from home” Refugees, No. 105, 111, (1996), p. 13.
110. Supra note. 101.
112. Supra note. 101.
113. Opening Statement by the High Commissioner Mrs. Sadako Ogata at the UNHCR, IPA Seminar “Healing the Wounds: Refugees, Reconstruction, Reconciliation”, Princeton, 1 July 1996.
116. Ibid, p. 5
118. Indian Express, 29 September 1984.
119. Ibid.
120. Supra note. 15.
122. Ibid.
CONCLUSION
International refugee law rests on a humanitarian premise. It is a premise tragically inadequate for our time, but one, which remains a \textit{terra incognita} despite the frequency and enormity of contemporary refugee crises. The problem of the refugee is today profoundly different. The persecutors are not defeated and defunct regimes. Instead persecutors are existing governments, able to insist on the prerogatives of sovereignty while creating or helping to generate refugee crises. When labelled as persecutors, they react as governments always react. They assert their sovereignty and castigate as politically motivated the human rights claims made against them. To censure these governments as persecutors is often the surest route to exacerbating a refugee crisis because it diminishes the opportunity to gain their necessary cooperation. In the face of dramatically and cataclysmically changed social and economic conditions, States felt obliged to abandon the centuries-old practice of permitting the free immigration of persons fleeing threatening circumstances in their home countries. In an effort to limit the number of persons to be classified as refugees while still offering sanctuary to those in greatest need, international legal accords were enacted which imposed conditions requisite to a declaration of refugee status.

This approach of humanitarianism, the attempt to affect events by asserting the claims of individual human rights, is largely doomed to failure when dealing with refugee problems. In other contexts, human rights claims concern rights of citizens within a state, even if voiced in international forums. However, in the refugee context, human rights law produces an unusually negative tension with the principle of sovereignty. The problem of the refugee, by its very nature, concerns the relations between states because it involves the movement of persons between states. The perspective of state-to-state relations, not the relation between the individual and the state, becomes critical for the mitigation or solution of refugee crises. Over the course of more than 50 years, three quite distinct approaches to refugee definition were evident. While each was designated to facilitate involuntary migration, the precise approach was
determined by the perceived nature of the international community. The presence of masses of stateless and undocumented aliens who wanted to migrate in search of decent living conditions in the years following the end of the World War-I dictated a refugee definition founded upon considerations of formal legal status. The exodus of persons fleeing Nazi Holocaust and persecution in the 1930’s called for the extension of refugee protection to all members of the groups targeted, tortured, victimised and abused. Ultimately the inception of the institutionalised ideologies to which many individuals were unable and unwilling to emulate in the wake of World War-II suggested an approach to refugee definition, which accorded relief to these persons for whom continued residence in their own countries, was unthinkable.

Refugee status, then, is an extremely malleable legal concept, which can take on different meanings as required by the nature and scope of the dilemma prompting involuntary migration. If properly defined, refugeehood enables to maintenance of a delicate balance between domestic policies of controlled immigration and the moral obligation of the international community to respond to the plight of those forced to this role, the definitional framework must, as during the period analysed here, evolve in response to changing social and political conditions.

The definition of the term “refugee” given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today’s refugee problem, which are primarily problems of refugee groups. Despite the character of the problem of the refugee, contemporary efforts to improve international refugee law continue to address the problem as essentially a problem of human rights. Indeed, commentators who argue for expanding the capacities of the international community to deal with refugee crises generally insist on enlarging the human rights basis of international refugee law. They see such a development as part of the broader mission of contemporary human rights advocacy to define international law as establishing the rights of individuals as
well as states. They reject out of hand as retrogressive and as an anathema the more traditional confinement of international law to inter-state rights and obligations. However, an agreement on a more precise and inclusive definition by Western States and India would ameliorate a number of serious problems because the context in which refugee problems because the context in which refugee problem rise these days is becoming increasingly complex. Tremendous migratory pressures have emerged, provoking large movements of people between countries in the South from the large movements of people between countries in the South from the South to the North, and from the East to the West, even the concept who is a refugee requires new clarification and formulation. Though, it may be noted that the convention may not provide an answer to many of today’s problems, which have an adverse bearing on the refugee situation. But it should not be a reason for questioning its basic value in the sphere for which it was intended and directed at. The Convention should not be blamed for failing to resolve problems with which it was never supposed to deal. It should never be forgotten that the Convention is an essential and sine-qua-non part of our humanitarian heritage for the international protection of refugees who do not want to be refugees.

But this more traditional concept of international law is a key to the problem of the refugee. It is the thesis of this study that the humanitarian premise of refugee law seriously limits, and even undermines, constructive response to the problem of the refugee and that the problem becomes more manageable the more it is treated as a problem of relations and obligations among states. This study calls for a new foundation for refugee law, but a foundation built on traditional principles, as the means to achieve significant progress in dealing with the most critical aspects of the problem of the refugees.

It is evident that the concept of “refugee” and that of “asylum” are complementary; the one does not exist without the other. Asylum on the territory of a state is, of course, what interests most refugees. This, however, implies at least three conditions of first importance-admission to the territory, a
durable stay and the assurance of a certain protection, of basic rights opening the way back to normal life. Thus, it is absolutely true that, asylum, in the core sense of admission to safety in another country, security against “refoulement” and respect for basic human rights, is the heart of international protection. Without asylum, the very, survival of the refugee is in jeopardy.

Refugee law thus reaches a dead-end as human rights law because it collides with the principle of national sovereignty. Sovereign authority in regard to expulsions is no less jealously insisted upon than the right of states to deny asylum, both being theoretically and practically based on the same “undisputed rule of international law” that every state has exclusive control over the individuals within its territory. Human rights law is consistently compromised by this reality. Indeed, even the prohibition of mass expulsion contained in the Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms is seriously limited by concession to sovereign prerogative. Article 15 of this Convention effectively negates the prohibition by providing that the humanitarian provisions of the Convention may be derogated from in time of war or other public emergency threatening the life of the nation. Obviously public emergency is a convenient classification for a government interested in mass expulsion. In oft-quoted dicta in the Barcelona Traction case, the International Court of Justice went some distance in articulating a concept of human rights obligations owed by states to the International community generally. But beyond rhetorical condemnation, the concept never has been the basis for any imposition of sanctions or for the realization of a state obligation vis-à-vis an international institution in cases of mass expulsion.

As per present practices of states, denial of access to a country of asylum continues to take various forms, including outright rejection at frontiers, interceptions, push-offs, and forcible return of asylum-seekers to persecution or danger. Denial of access to safety in another country can also occur as a result of the application of legal and administrative measures that present asylum-
CONCLUSION

seekers from reaching the frontiers of asylum countries, refuse them admission to procedures, or fail to provide adequate procedural safeguards against the inadvertent or indirect return of refugees to their country of origin or other places where they will not be protected. Whether direct or indirect, such practices violate the most basic principles of international protection.

The principle of "non-refoulement" is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in countries asylum from persecution, this principle reflects the concern and commitment of the international community to ensure to those in need of protection, the enjoyment of fundamental human rights, including the rights to life to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is forcibly returned to persecution or danger. The principle of non-refoulement was given expression in Article 33 of the 1951 Convention. It has since been consistently reaffirmed as a basic principle of state conduct towards refugees. It would be patently impossible to provide international protection to refugees if states failed to respect these paramount principles of refugee law and of human solidarity. Unfortunately, this basic tenet of refugee protection has not always been observed in practice. A number of countries, where the admission or presence of certain groups of refugees have been perceived as incompatible with national interests or domestic concerns, have ignored or undermined the principle of non-refoulement.

The institutional apparatus for dealing with refugee crises suffers from the same infirmities, as do the substantive principles of international refugee law. The Office of the UN High Commissioner for Refugee (UNHCR) is the most prominent and extensively operating refugee agency and embodies the same humanitarian premise that underlies international refugee law. The keynote of the UNHCR expressly proclaimed in article 2 of the Statute, is that the agency is "humanitarian". Accordingly, the UNHCR operates under a wholly recommendatory and non-binding legal mandate. In a tenuous sense
CONCLUSION

state obligation resides in the undefined duty of states to “cooperate” with the UNHCR. But there is no expressly recognized obligation of states to address impending or ongoing refugee problems to the UNHCR or any other international institution, or to abide by particular procedure. The Statute of the UNHCR establishes the agency as a protector of human rights, and this circumscribes its legal status. Thus, it is said: *In exercising international protection on behalf of refugees, the international agency asserts the rights of the refugees.*

The 1951 United Nations Refugee Convention was the culmination of an important historical development in the definition on the international plane of basic minimum legal standards for the treatment of refugees. It also constituted a beacon for the future. The adoption of a conceptual definition of the ‘refugee’ in the convention definition, which is essentially the same as that in the UNHCR Statute – was regarded as a major step forward, compared with the definitions by categories in the Pre-war refugee instruments and in the constitution of the International Refugee Organization. Until recently this definition was readily accepted as a basis for identifying those refugees who were to be benefited from international protection and assistance.

The UNHCR, when acting as pragmatism dictates, has found it necessary to avoid its humanitarian roots. It does not confine itself to the legal definition of refugee and its criterion of *well-founded fear of persecution.* The now classic legal definition has proved too narrow to deal with many large-scale refugee episodes. Most significantly, this definition is not useful when the critical objective is securing the cooperation of the disturbed and persecuting government from which people flee. When the UNHCR does become involved, the expelling state can point to the UNHCR’s legal mandate as a basis for limitation. The legal mandate of the UNHCR is such that neither the country expelling refugees nor potential states of refuge are under any obligation even to permit the UNHCR to operate in their territories. Compounding the legal constraints, the UNHCR depends on voluntary contributions, which have been
far short of the need. The lack of a workable legal regime means that refugee relief efforts, whether done by the UNHCR or any other international institution dealing with refugee flows, are characterized by ad hoc and crisis-oriented arrangements. These efforts always depend upon the willingness of governments to respond to an essentially humanitarian appeal.

The definition of the term ‘refugee’ given by the UNHCR Statute or 1951 Convention has led some to consider that these definitions are essentially applicable to individuals and are of little relevance for today’s refugee problem, which are primarily problems of refugee groups. Because, a prima facie group determination of refugee character does not mean that each and every member of the group would satisfy the test of well-founded fear of persecution, if his or her case were individually determined. Group determination by its nature concentrates on the objective situation in the country of origin. However, in order to deal with these new refugee situations the High Commissioner, with the approval of the General Assembly, developed and applied the ‘good offices’ procedure. This procedure was originally employed to with respect to refugees outside the competence of the United Nations, specifically, the Chinese refugees in Hong Kong and Tibetan refugees in India, for whom the High Commissioner was called upon to act in a limited manner, namely, for the transmission of contributions. Thereafter, in the new refugee situations in Africa, the ‘good offices’ was used to enable High Commissioner to assist refugee groups under his regular programme. In making this prima facie determination of refugee character, the High Commissioner used broad criteria based on the objective situations existing in the country of origin.

There are many perspectives on the issue of exactly who merits protection under international refugee law. Some argue that the 1951 Convention refugee definition is too rigid to encompass all those fleeing to the west in need of protection and, therefore, that various other categories, such as de facto or ‘humanitarian’ refugees, are required. Others believe that the definition is sufficiently elastic, and that it can be applied in such a way as to
provide international protection to those who need it. In resolving the problem of who is a Convention – refugee in Western countries, a two-fold approach is called for. First, more specific criteria must be developed, in order to eliminate the ambiguities of the Convention definition as far as possible. Second, and most importantly, the Convention definition must be applied uniformly.

The frustration of human rights proponents with this state of affairs is reflected in the perennial calls for a multilateral treaty to prohibit mass expulsion and for the establishment of a refugee right of asylum by convention or some other legal articulation. However, both suggestions for dealing with the present failure of refugee law are essentially unrealistic. These responses to the harsh reality of national sovereignty do not accommodate sovereignty, but depend upon fantasizing it away. In response to recent constrictions of asylum opportunities, there also has been a call in general terms for addressing the source of the problem, that is, conditions existing in the expelling state. But this call always degenerates into lamentation about the intractable and complex political, economic, and social origins of the problem of the refugee. Moreover, any inhibition of refugee flow at the source suggests violation of the refugee’s rights to seek and enjoy asylum, rights with strong precedents in international law. Freedom of emigration from one’s own nation is a fundamental human right and a norm of customary international law.

Humanitarian intervention as a mechanism to secure a minimum standard of human rights through the use of force cannot be reconciled with the peace rule in current international law. Although humanitarian intervention is now the vast majority of authors rejects once again finding support but this mechanism, as it cannot be reconciled with the UN Charter’s general ban on violence and there is a risk of abuse. A right to interfere, as lately demanded by French writers is also generally rejected. In the current discussion, a right to humanitarian aid which guarantees access to the victims of humanitarian crises is not seen as a restriction on national sovereignty but, on the contrary, as reconcilable with this. This view that in cases of doubt a right to humanitarian
aid could prevail over the principle of national sovereignty is still confined to a minority and is not reflected in the resolutions of the General Assembly.

The refugee crises created by forced expulsions demonstrate that managing refugee crises depends primarily on the leverage from inter-state relations and interests. The pressures of inter-state interests were brought to bear, and these were the pressures that made a noticeable difference. What is needed, therefore, is a formulation of refugee law, which is designed to take advantage of the politics of sovereignty. Such a formulation would also serve to bypass the tension between sovereignty and human rights. The resources of international law are remarkably equal to the task. The traditional conception of international law, as comprised of inter-state rights and obligations, is germane and relatively unequivocal in its implications for preventing and controlling expulsions, and for regulating mass movement in general. There is no more fundamental principle of international law than the principle that every state is obligated to respect the territorial integrity and rights of other states. Territorial sovereignty includes both a state’s right to exercise exclusive jurisdiction over its own territory and its legal obligation to prevent its subjects from committing acts, which violate another state’s sovereignty. Mass expulsions clearly run against the principle of territorial sovereignty because of the burden cast on receiving states. Often refugees come despite the receiving state’s laws and policies to the contrary. Moreover, the receiving state’s capability to send back the asylum seekers is limited by humanitarian and political considerations. Indeed, a variety of reasons may make it impossible for a civilised State to exercise its right of expulsion. It should not be a novel observation that mass expulsion and the problem of the refugee bear on state-to-state relationship. After all, the impact on the territorial integrity and rights of the receiving state is unquestionably the heart of the matter in the receiving state, as evidenced by the now critical reluctance of states to accept the refugees. Massive refugee flow inevitably assumes the proportion of an international delict because of the burden imposed on receiving states.
CONCLUSION

Only in the Security Council is it possible, in the situations examined here, for resolutions binding on the member states to be taken on the basis of Chapter VII of the UN Charter to enable aid to be supplied to internally displaced persons, as was done in the case of the Kurdish civilian population in Iraq and in Somalia. Proceeding in this way assumes that a risk to peace has already been established; and this option is also the subject of political considerations within the Security Council. In addition, the results of the actions taken in Iraq and Somalia leave room for doubt as regards the suitability of this form of protection for internally displaced persons.

Even in India, there is no state protection available to the “internally displaced persons” nor International NGOs as enumerated supra are allowed to visit and attend the internally displaced persons in the different parts of the country who owe their displacement to generalised violence, organised crimes, communal violence, man-made disasters, hexicological imbalances, noxious emissions, insurgency and militancy inter-alia reasons adumbrated in the definition of internally displaced persons discussed in the preceding paragraphs and grounds stipulated in Article 1 of 1951 Convention Relating to the Status of Refugees. Though, the internally displaced persons are living in the refugee-like situations and Guiding Principles on Treatment of Internally Displaced Persons recognised by the UNO are not followed by the national governments including India. Therefore, Article 1 of the 1951 Convention must be re-drafted, reformulated and re-structured while taking into consideration the on going debates and deliberations initiated and posed by the instant study.

It is evident from the ongoing discussions and deliberations that when a person does not possess the nationality of any State, he is referred to as a stateless person. A person may be without nationality knowingly or unknowingly, intentionally or though no fault of his own. For instance, when an illegitimate child is born in a State which does not apply jus soli to an alien mother under whose national law the child does not acquire his nationality, or where a legitimate child is born in such a State to parents who themselves have no nationality the child becomes a stateless person. Statelessness may occur after birth as well. For instance, it may occur as a result of deprivation or loss
of nationality by way of penalty or otherwise. All individuals who have lost their original nationality without having acquired another, are, in fact stateless persons. A stateless person does not enjoy those rights, which are conferred to a person. A stateless person does not enjoy those rights, which are conferred to a person in International Law. For instance, their interest is not protected by any State; they are refused by enjoyment of rights, which are dependent on reciprocity.

The above efforts to eliminate or reduce statelessness have only a limited effect in so far as the determination of nationality is still within the competence of each State. In this conspectus, it is axiomatic that nationality and statelessness issues have acquired crises proportions under the scheme of contemporary international law. Respective governments including Government of India must strive to evolve a legal structure regarding reduction of the statelessness and formulating nationality laws on humanitarian premise. Moreover right to the country of origin or habitual residence must be respected by the national governments. Jurisdiction of the UNHCR with regard to the matters of nationality and statelessness must be expanded, re-formulated and re-defined while taking into account state concerns and individual claims in a new World Human Order.

The consequences of the individualisation of international responsibility for the law on state responsibility have not been addressed by the recent restatements of the law of individual responsibility and the law of state responsibility. Traditionally, international law attributes acts of individuals who act as state organs exclusively to the state. Although in factual terms states act through individuals, in legal terms state responsibility is born not out of an act of an individual but out of an act of the state. State responsibility neither depends on nor implies the legal responsibility of individuals. Responsibility of individuals is a matter of national, not international law. In this respect, the dualities between state and individual and between international law and national law are mutually supportive. Thus, the duality between state and individual is reflected in several key principles of the law of state responsibility. The invisibility of the individual in the traditional law of state responsibility did
have drawback. Shielding the individual from responsibility undermined the efficacy of international law.

International refugee law is largely indifferent to the question as to whether refugees return to their original homes or relocate to another place within their country of origin. Both return and relocation are considered to be “durable solutions”, which in UNHCR terminology is the threshold beyond which an individual ceases to be defined as a refugee, and therefore no longer requires the protection of the 1951 Convention. Because international refugee law is humanitarian in purpose, and the mandate of UNHCR is one of protection, the responsibility of the international community ceases once the refugee settles in a place of safety. A purely localised risk of persecution is not in general sufficient to ground refugee status, provided that flight to another part of the country is reasonable and safe. The courts of a number of States, including Germany, use this principle of the “international flight alternative” in their interpretation of the 1951 Convention, according to which refugees not considered to be \textit{refouled} contrary to the Convention if here if there is any place within their country of origin where they can go without risk of persecution.

The provision of assistance to refugees is a humanitarian and non-political matter, which should not be hindered by political considerations, despite the fact that refugee situations themselves are inherently political in character. The need to give greater attention to questions of assistance arises primarily from the scale of practical humanitarian problems which remain to be solved. Moreover, a strictly positive law approach does not seem desirable in this field since many states are still not parties to the relevant international instruments relating to refugees.

Of course, it may be difficult to find examples in practice where a State has been compelled, against its will, to grant access to its stricken population. The more common problem is the lack of humanitarian assistance from outside, not the reluctance of the state to permit. Indeed, the obvious obstacle to the existence of such an obligation is the principle of ‘State Sovereignty’.
CONCLUSION

international law, which is largely based on traditional practice, does not obligate a State in any way to accept emergency aid even when its population is in extremely grave danger.

However, of all UN agencies, the United Nations High Commissioner for Refugees is the most operational one. By encompassing the needs of greater numbers of people, the United Nations has developed the High Commissioner’s Office into a principle instrument of its humanitarian policies. Over the years, with political upheavals in Africa, Asia and Central America forcing whole communities into flight, UNHCR has had to adapt to situations in which food, water and shelter had to be provided quickly to people in remote areas. The old emergency unit of UNHCR was revamped. The new unit, renamed the Emergency Preparedness and Response Section, became operational in February 1992. Its role is to develop resources and tools to enhance the capacity of the Regional Bureaus to respond to emergencies. It is true that to be more effective, the UNHCR must assume an active posture within the relief operation. It must arrive early and promptly, and not only participate in the decisions that are made regarding the refugees, but also take an active role in formulating and guiding the overall policy framework to ensure that the objectives of the entire programme are coordinated and properly conducted.

The essential need, however, is to articulate inter-state obligation as the basic foundation for international refugee protection and relief, replacing human rights principles at centre stage. This is not to eliminate the humanitarian aspect, but to make clear that mass exodus is a matter of international legal responsibility, not just a violation of human rights ideals that states can denigrate on the basis of national sovereignty. An international convention so framing the matter, being an instruments with the status of treaty obligations, would be the ideal embodiment of this new regime and is a worthy objective. It need not offend human rights norms, including the right to seek asylum. But certainly it can be an articulation of the obligation of any
CONCLUSION

government to conduct a mass exodus within prescriptions of the international community as implemented by an international agency. It is indeed true that in its towering activity the UNHCR has not trodden on any one toe to incur displeasure of a single soul or single Sovereign State. Whereas it has stood on its legs constantly to serve teeming millions of humanity in dire distress. The United Nations has expressed its gratitude on numerous occasions and the community has recognized it by giving it the ‘Novel Prize’ time and again. It functions not only with the community’s support but also with the deepest gratitude of the human race.

If refugee flow is firmly established as a matter of inter-state legal obligation, then a remedy for the currently intractable defects of refugee protection and relief becomes possible. The endemic defects generated by humanitarianism and the solipsistic conception of state sovereignty are evident: the ad hoc and crisis-oriented operation of refugee relief and protection efforts; the belated nature of these efforts coming only after evidence that tragedy has occurred, and the position of the international agency as supplicant, begging on bended knee for funds, for asylum places, and for the state of origin to cooperate and reduce the brutality of its scheme of expulsion.

These defects all can be addressed by an inter-state regime of refugee law. If a sovereign power decides to send or allow part of its population out over its borders as castaways, then traditional principles of state responsibility articulated in the form of international refugee law, would obligate the state of origin to consult with the international community affected through appropriate forums or agencies, to help control the flow of refugees, and to reduce the burden imposed on other states. The strength of this approach is that it avoids the moral judgements of humanitarianism Condemnation of mass expulsion is, in the final analysis, worse than unproductive. A state expelling a population always justifies its policy by claiming that the group of persons being expelled engages in objectionable activities, or that the expulsion is somehow the fault of a foreign enemy. Similarly destructive is the definitional game of determining
when there is *mass expulsion*. The phrase inevitably is infused with political considerations. Such terms are not defined legally, but politically, and are not helpful as legal tools, as demonstrated, for example, by the long and analogous development of the injected in debate during a crisis, such terms simply enhance the difficulty of diplomatic resolution.

Thus, the challenge of the 1990’s for the international community will be to respond not only to the immediate humanitarian problems of displaced people, but in the long-run, also to confront the conditions which lead to these dislocations. These are political task requiring a more active role from national policymakers and a greater willingness to utilise fully the U.N. and regional mechanisms on security, peacekeeping and peacemaking and human rights in anticipating as well as reacting effectively to refugee incidents around the world.

A more comprehensive and effective international response to refugee problems will require adequate and readily available resources. UNHCR, the Office of the Emergency Relief Coordinator, and other UN agencies cannot accomplish their missions unless the major donor states, including the United States, are prepared to bear a greater financial support and reinforcement of existing institutional mechanism are the only effective ways for the international community, both to manage interdependent issues like refugee movements, and to ensure long-term strategic stability.

While drawing conclusions on India’s refugee assistance policy the first question for consideration is which category of refugees can expect to get refugee assistance? India has provided assistance to refugees from Tibet, Bangladesh and Sri Lanka who were recognized as refugees by the Government. In the case of Afghan and Bhutanese refugees, who have not been recognized as refugees, are being treated as foreigners temporarily residing in India. No assistance is being provided to them. In the absence of any law regarding determination of the status of refugees, situations arise whereby a particular category of refugees is given assistance whereas other
refugees similarly placed may well be denied such assistance. The recognition of refugee status has hitherto been based on geo-political considerations. Does it mean that recognition as refugees and entitlement for assistance is dependent on the country of origin of refugees? Does it mean that in future also if refugees originate from Bangladesh and Sri Lanka they would be given recognition as refugees, as it has been done in the past and provided with assistance? There is no clear policy in this regard and perhaps such a decision will be taken on political considerations and expediency in the given situation. But one thing can be clearly stated that it would be increasingly difficult to take decision in future as to whether to allow assistance or not in the absence of objective criteria. Recognition as such of refugees may be a precondition for refugee assistance in the normal circumstances but when recognition itself is based on political expediency and not based on any legislation is it really consistent to link recognition as precondition for refugee assistance? It appears to be inconsistent to deny assistance when the refugees like Afghans are being treated as *de facto* refugees and are recognised Afghans as refugees and its providing assistance but in the case of Bhutanese refugees no assistance is being provided either by the UNHCR or by the Government.

The next question for consideration is what assistance should be given to refugees? India’s refugee assistance policy is based on humanitarian considerations and the objective is to meet basic needs. Two important factors which govern the package of assistance are (i) limitation of resources, and (ii) the package of assistance has to be such that the living condition of refugees is more or less similar to that of the local poor. However, the nature of assistance offered varies, both qualitatively and quantitatively if the Government’s decision is for rehabilitation of refugees. For example, in the case of Tibetan refugees a comprehensive rehabilitation package has been provided. Tibetan refugees have been given agricultural land and provided with all other infrastructures like roads, water supply, educational and medical facilities, etc.
CONCLUSION

Government has also settled Tibetan refugees through cottage industries, particularly manufacture of handloom and handicraft items.

In general, the Government considers the stay of refugees in India as a temporary phase and they are expected to go back to their country upon return of normalcy. As the Government considers the stay of refugees temporary the need for shelter is met in temporary camps, temporary structures, government buildings, etc. Provision of drinking water, sanitation facilities, and medical facilities are also met. Refugees are provided with free rations, and other essential requirements, like clothing, utensils, blankets, etc. In addition, refugees are provided with cash grants. The government also takes special care to meet the need of refugee women and children in a limited way. Special nutrition programmes are launched to meet the need of the expecting mothers and malnourished children. Vocational training is also arranged for refugee women so that they can acquire some skills and can earn some living. For recreation, radio sets are also provided in camps. Certain refugee camps, which are in the nature of permanent camps, have fully developed infrastructure with permanent buildings, electricity, drinking water, sewage system, elementary schools and hospitals. Temporary arrangements of stay for refugees in camps over the years acquire a permanent character as it happened in the case of Chakma refugees who were staying in 6 camps in Tripura for more than ten years. Unless the facilities in such temporary camps are constantly augmented life becomes difficult with the passage of time. In any refugee situation in India, the local population has played a very important role. In major refugee situations like the refugees from Bangladesh in 1971 an overwhelming response from the population of the entire country could be seen. The Government always encourages such participation of the population in providing assistance to the refugees. The refugees are, however, not permitted to work in India. But, some of the refugees do manage to get work and earn some living to supplement the assistance provided by the Government.

536
The next important question is what administrative arrangements are put in place for providing assistance? India has considerable experience in refugee protection and care. Adequate administrative measures necessary for providing assistance to refugees from the camp administration to the State and Central Government level are put in place according to need. And such refugee needs are always organized through the civil administration both at the State and the Central Government level and the services of Army have never been utilized. Further, provisions are made in the Budget and in the Five Year Plans. Whenever it is necessary to mobilize resources and the manpower, the same is done from other government organizations like the Food Corporation of India, the Ministry of Railways, the Ministry of Health and the Ministry of Education. For mobilizing additional resources to provide assistance to Bangladesh refugees in 1971, a relief tax was levied by the government. The entire expenditure on refugee relief is incurred by the Central Government. Whenever expenditure incurred by the State Government is reimbursed by the Central government.

The next important question for consideration is whether India’s refugee assistance policy can be said to be discriminatory? As it has been discussed earlier, in the case of refugees where a rehabilitation package is provided, assistance is on different considerations altogether. However, it has to be seen whether a uniform package of assistance is provided in all other refugee situations where the stay of refugees has been considered as a temporary phase. There has been criticism that the Chakma refugees in the State of Tripura had not been provided timely and adequate assistance so much so that the National Human Rights commission had to intervene. The conditions in camps improved considerably after its intervention. Facilities in camps may vary from State to State but minimum basic facilities to which the Government is committed needs be ensured. In the case of Sri Lankan refugees, relief facilities aggregating to Rs. 1,000 per month for a family consisting of five members, which included an element of cash dole, clothing, utensils, subsidized ration.
had been provided. In other refugee situations, relief should aggregate to this amount; otherwise, there may be avoidable criticism. In the case of Sri Lankan refugees, an amount of Rs. 1083 million had been spent in the period 1983-1996 for about 63,000 refugees in camps whereas for 60,000 Chakma refugees, an amount of Rs. 530 million had been spent in the period 1986-1994. Thus the total amount spent on Chakma refugees is considerably less when their number is comparable to Sri Lankan refugees for the similar corresponding period. Thus, assistance made available per Chakma refugee family will also work out much lower than the corresponding assistance to Sri Lankan refugee family. It is therefore necessary to fix norms and apply the same uniformly. There may be some difficulty in laying down norms. Whenever a norm is laid down, on the one hand, it can be criticized by saying that it is too meagre or inadequate, particularly in comparison to the assistance provided in the Western countries; on the other hand, it may be termed as excessive or very liberal particularly when compared to the general level of poverty of the local population. However, attempts should be made to define norms keeping in view the local conditions in order to bring about uniformity in the refugee assistance policy.

The next important question for consideration is what is India’s attitude regarding receiving foreign assistance and involving international agencies and media in the visits to refugee camps? India prefers to deal with refugee matters on a bilateral basis. The policy of assistance is also guided by the same considerations. India does not generally accept foreign assistance. However, in the case of Tibetan refugees and also Bangladesh refugees in 1971, foreign assistance has been received. In the case of Bangladesh refugees, India had made it clear that it was hosting 10 million Bangladesh refugees on behalf of the international community and it was expected that the international community would share the burden. International assistance was accepted from many countries and international organizations but in the case of refugees from Sri Lanka and Chakma refugees from Bangladesh, the Government has not sought any international assistance. In the case of Bangladesh refugees perhaps
the staggering number of 10 million refugees had influenced the decision to seek international assistance and advocate the principle of burden sharing. Acceptance of assistance from other countries for refugee assistance would automatically call for greater involvement of the donor agencies, which may lead to internationalising the refugee issue whereas the Government prefers to deal with such matters bilaterally. If a government on its own meets the entire liability of assistance it cannot really be faulted. Regarding involvement of international agencies and media in visiting camps, the government is not enthusiastic. In the case of refugees from Bangladesh, however, delegations of foreign parliamentarians, international organizations were allowed to visit camps so that they could assess the situation themselves. The reason why the Government is reluctant to involve the international agencies for assistance as well as visit camps is perhaps because of apprehension that any misinformation or propaganda about the state of affairs in the camps may have serious repercussions on the local population which is often of the same ethnic group as the refugees and would affect the domestic politics and also the bilateral relations between India and the country of origin of refugees, which incidentally are the neighbouring countries. But the whole question has to be examined from the perspective of the outside world also. By not allowing international agencies or representatives of other countries to visit the camps, a general suspicion develops that the conditions in the camps are such that it cannot be shown to outside agencies and that there are gross violations of human rights. If the conditions in the camps are really not satisfactory, organizations like National Human Rights Commission, political parties and other organizations would intervene and draw the other hand the conditions are satisfactory there is no reason why the same cannot be shown to international agencies. The government can always impose reasonable restrictions keeping in view the security considerations and the bilateral relations with the country of origin of refugees. Taking such measures would bring about sufficient transparency and would provide scope for taking corrective measures in case
CONCLUSION

there are certain deficiencies. In this regard, India’s approach need not be over-protective and defensive.

It can now be said that humanitarian considerations have always guided India’s policy on refugee assistance. India’s performance in providing refugee assistance has been appreciated by the international organizations and other countries but it is necessary to bring about codification, more transparency and openness in the refugee assistance policy.

The Government of India has dealt with refugee issues as an integral part of bilateral relations with neighbouring states. The importance of administrative discretion in the government’s dealings with refugees is therefore governed by the practical consideration of relations between states. However, this administrative discretion has been exercised in broad consonance with international refugee law norms. Thus, the de facto definition of “refugee” being employed in administrative policy accords with the 1969 OAU Convention definition (although it appears that the definition is being used not to create a legally separate category of persons, but rather for administrative purposes of identifying beneficiaries to certain types of assistance provided by the government). Standards with respect to the voluntariness of repatriations have been established through the practice of the Tamil Nadu government and through a High Court decision. Deportation orders for asylum seekers have been stayed pending refugee’s status determinations with the implication that successful applications preclude refoulement.

The Indian government believes that even in the absence of refugee specific legislation and inspite of being a non-signatory to the principal refugee conventions, adequate protection to refugees is being provided a generous asylum policy and administrative structure. However, by not differentiating refugees from other aliens in the country gaps in their protection occur – particularly with regard to asylum seekers that enter the country illegally and with regard to the equitable regulation of their stay in the country. Importantly,
over the last decade and a half, approximately 50,000 Afghans and 2,000 Iranians have individually arrived in India seeking asylum. Under the current framework, no system of protection exists for such asylum seekers and if it was not for the intervention of a third party, these persons might have run the serious risk of being refouled at the expiry of their initial stay permits. A legislative framework would clearly be beneficial in sealing these lacunae in the protection of refugees. The experience of resolving the problem of the stateless persons of Indian origin in Sri Lanka indicates the importance of recognising the inter-connectedness of refugee problems and solutions in the region. The Draft Regional Declaration on Refugees in South Asia is therefore a very useful first step in this regard.

The challenge in drafting a regional declaration is that it takes cognisance of two imperatives - the need to provide adequate, encompassing protection to asylum seekers and refugees and the simultaneous need to allow governments some measure of administrative discretion in their management of refugees. It may be noted here that the Draft Declaration mentioned above incorporates both a refugee definition that is already in consonance with the definition being used by the Indian government in relation to asylum seekers from neighbouring countries and a reaffirmation of “the sovereign right (of a State) to grant or refuse asylum in its territory to a refugee…”

Voluntary repatriation of refugees is the preferred solution to the refugee problem, particularly in the situations of mass influx of refugees to developing countries, which are not in a position to carry the burden of refugees for a long period, unless the international community shares the burden. Though voluntary repatriation is the preferred solution it is by no means an easy solution. In most of the major refugee repatriations, despite all efforts by the UNHCR and the host countries and the countries of origin to ensure return in safety and dignity, the success has been only partial. Vast majority of refugees continue to live in the host countries.
CONCLUSION

In many situations, the voluntary aspect of refugee repatriation gets compromised either due to pressure from the host countries or the adverse situations in the host countries forcing refugees to repatriate. In most of the major refugee repatriations it is found that a large number of refugees have repatriated spontaneously, at their own initiative. Successful refugee repatriations clearly show the close link between the safety and the voluntariness. It can be inferred that if the conditions of the safety could be ensured, the majority of the refugees would return voluntarily. In spontaneous repatriation, UNHCR may not directly have taken initiative in actual repatriation but could have contributed in creating conditions of safety. Though more refugees may have repatriated spontaneously, it cannot undermine the importance of organized repatriation by the UNHCR. Organized repatriation becomes necessary when situations are complex. But for successful organized repatriation, millions of refugees would have continued as refugees in the host countries.

Confidence building measures like mass information campaign, visit by refugee, etc., help the refugees in taking decisions regarding repatriation. But there may be refugees who may not be willing to repatriate due to continued fear of persecution. Such refugees should continue to get the protection of host countries. In every refugee repatriation situation, there would always be residual cases and one may not achieve total repatriation of all the refugees. Refugee repatriation will always be temporary and reverse outflow of refugees can occur at any time if the peace accords are not fully implemented and the cause of refugee outflow are repeated. Further, peace accords alone, without reconciliation in real terms, cannot help in finding durable solutions for the repatriating refugees.

Refugee repatriation is generally spread over a number of years and it varies from situation to situation and from country to country. The number of refugees repatriated may not be the true index of the success of refugee repatriation. Refugee repatriation of a small number of refugees in complex
situations may require more efforts. And the successful repatriation of small number of refugees in complex situations will always pave the way for future repatriation in greater numbers. Settlement of land and property disputes, and timely reintegration assistance help in finding durable solutions for the repatriating refugees. Post return monitoring of returnee refugees is also very important.

In many situations, the host countries and the countries of origin prefer bilateral arrangement for refugee repatriation and there is no direct involvement of UNHCR and the role of UNHCR is reduced to the status of an observer only. Repatriation of refugees under bilateral arrangements without full involvement of UNHCR can always be questioned. In the bilateral arrangement, despite the best of intentions of the country of origin and the host country, doubts about the voluntary aspect of the repatriation can always be raised and it can always be said that the refugees have been forced to repatriate contrary to the principle of non-refoulment. Therefore, full involvement of UNHCR is a necessary prerequisite in any refugee repatriation situation.

The role of the UNHCR from a passive facilitator to that of active promoter has emerged in view of the complex refugee situation, the demands of the international community, overburdened host countries and in certain situations, the refugees themselves due to miserable life in the camps in the host countries. Its role as an active promoter has evolved over time and the international community has accepted it and now there is no possibility of going back.

Refugee repatriation as a concept and process has evolved over the years and helped in finding durable solution for millions of refugees. This is the solution, which needs to be pursued vigorously with the cooperation of all concerned. It will require intense involvement and commitment of the country of origin, the country of asylum and the international community. The international community has also to address the causes of the refugee flow and adopt a pro-active role to bring about peace and reconciliation.
timely reintegration assistance play a very important role in the successful repatriation and therefore, should get the due attention of the international community.

The necessary reformulation of international refugee law can be accomplished both in the working out of particular crises and the articulation of generally applicable rules and procedures. It should be possible to elaborate a set of principles and procedures that states are obligated to follow both to prevent and ameliorate refuge flow. This is precisely the sort of elaboration that ought to occur, but it is being addressed only within the current conceptual framework, which retards and ultimately prevents such development. Even the Federal Republic, while noting the refugee flow has become a problem of international order, assumes the present legal framework is suitable. This assumption must be reversed before significant progress can be achieved.

As well as relieving the asperities of refugee flow, articulation of the legal responsibilities of the state of origin can serve as a deterrent by rendering the expelling state accountable for damage to other states and the international community. It would be an important enough advance over the current state of affairs if accountability meant only that the expelling state’s legal responsibility could be internationally identified as such, thereby enlisting solid legal argument to help bring political leverage to bear on expelling states.

However, it is not beyond the realm of possibility that this newly articulated accountability could be the basis of damage claims brought in any of the conventional international forums available for the pursuit of inter-state monetary claims. Any realizable financial responsibility more likely would appear as contributions to the international funding of refugee protection and relief. An appropriate scheme for contributions would be an internationally financed and managed Fund for Durable Solutions such as the one proposed a few years ago as one way to remedy the emergency and ad hoc nature of international assistance. The basic idea behind this proposal was to establish group solutions to refugee problems through multi-year economic development.
programs in countries that might receive refugees but lacked resources. The proposal had merit and could well be integrated as an aspect of the new approach proposed here. Of course, many, if not most, refugee movements are from poorer states, which could not provide a substantial contribution, so the obligation to support the financial burden would have to be qualified by ability to pay, making it largely symbolic as to the poorer states. But any resources obtained would be a new addition to the general funding available from the international community at large.

For the UNHCR or some other refugee agency to be so employed would not undermine the non-political character of refugee relief, the concern expressed whenever it is suggested that the UNHCR be authorised to act with greater authority. The administrative apparatus of international refugee law would be gaining important leverage to carry out its roles as negotiator and coordinator presently undertaken with undue weakness. The objectives of non-political relief and protection would not change. The need is not to abandon human rights and humane assistance as objectives. The need is to distinguish these normative objectives from the principles of inter-state obligation that should be the legal basis for refugee work. Through dependence on international obligation rather than the humanitarian relations between governmental authority and the individual, the international agency would take on the character of an international institution with a limited authority, but an authority critical to securing timely intervention and prevention of the awful consequences of unmanaged refugee flow.

The virtue of any legal system must be how well it responds to the realities of conflict and change. International refugee law, born of a time when the critical refugee question before the international community was how to revive victims of World War II, has not accommodated the contemporary realities of mass exodus. Now that refugee flow is pre-eminently a matter of economics and governmental political strategies, the question is how, in such a world, does the international community best discourage such strategies, yet
maximize asylum opportunities. The answer does not require abandoning the values currently embodied by the human rights principles of international refugee law. Refugee crises are nationally infused with the rhetoric of human rights. But we must recognize that these human rights principles embody ends, not means, and their misuse as the exclusive legal basis for dealing with mass exodus leads only to unproductive rhetoric and recrimination.

Refugee flow is a problem of inter-state relations. This is the crux of the refugee problem today. Accordingly, a truly relevant and secure foundation for refugee law must be based on inter-state principle in India. Building on traditional principles of inter-state obligation also accommodates the realities of domestic politics in asylum states. Where the problem of the refugee is perceived today as clear and present danger. Imprecations about the human rights aspects of refugee flows are falling on deaf ears, as potential asylum states retrench and withdraw. It is time to manage the problem instead of expressing forlorn faith that the better side of human nature will save a generally desperate situation. There is a humane task to be done. Doing, not preaching will be affirmation enough.

In this conspectus, it is evident that the time is ripe for South Asia and India to abdicate their pusillanimity and xenophobic proclivity. Must dispel the sense of precarity among the refugees and address their problems and repinements while demonstrating the political temerity of having a law on refugees at national and regional levels as well as acceding to the minimalist international protection available to the refugees under 1951 Convention Relating to the Status of Refugees with its Additional Protocol of 1967 in the interest of humanity. However, prior to such policy and legislation, national governments of South Asia must evolve and conceptualise some sort of unanimity, wherewithal and apparatus to arrive at a Regional Covenant dealing with refugees of the sub-continent.
SUGGESTOPAEDIA
Traditionally the main reason for granting asylum was the abuse of state power vis a vis individuals who were regarded by the state authorities as their opponents. Therefore, many asylum states linked refugee protection to persecution attributable to the state and some still continue to do so. They perceive international protection as a substitute in situations where the authorities of the country of origin are unwilling to provide adequate protection to their citizens at home or abroad. In recent years, however, there has been a significant increase in situations where very serious harm is inflicted by various kinds of non-state actors and where state authorities no longer are in a position to provide adequate protection to those under their jurisdiction. The breakdown of public order, internal strife, civil war, ethnic cleansing and genocide are increasingly the cause of refugee movements.

Asylum states have reacted to this challenge in three different ways-

1. Many countries in Africa and Latin America continue to apply the regional refugee instruments, which cover such situations.

2. Countries in North America and some in Europe and the Pacific have expanded the traditional reading of the refugee definition as contained in article 1A para 2 of the 1951 Refugee Convention, to include persons fleeing persecution in situations where the country of origin is unable to provide effective protection or no longer exists.

3. Other European countries including India insist that a ‘refugee’ is a person who is fleeing his country because of harm that can be attributed to the State. They recognise that this requirement is met where state authorities encourage, tolerate or acquiesce in violations carried out by private actors or, in the absence of legitimate state power, by de facto governments exercising control over a particular territory in a stable and permanent manner. They maintain, however, that persons fleeing situations where the authorities of the country of origin are unable to control private actors or where governmental structures have collapsed are not refugees in terms of the 1951 Convention.

Therefore, reason that refugees find it increasingly difficult to obtain international protection in Europe and India in this manner in which some European states interpret the refugee definition. As a result,
refugees and their advocates turn increasingly to human rights treaty bodies and courts in order to find alternative forms of protection after rejection of their claims to refugee status.

Human rights bodies have had to assume a role they were not initially meant to play, as they are now dealing more frequently with cases relating to asylum. Given the different procedures available and the length of these procedures, persons in need of international protection are forced to apply to various bodies until they eventually find protection against *refoulement*. When they do find protection, this is not always asylum. At the same time, persons not deserving international protection also use the same bodies --- in effect misusing the human rights system as much as the asylum system. Consequently, some governments and courts continue to apply a narrower interpretation of who is entitled to refugee status, in full awareness that many persons who are not refugees will remain in any event and eventually be granted some sort of status. As a result, they are depriving persons who otherwise would qualify as refugees of the full range of benefits guaranteed by the 1951 Refugee Convention and other instruments.

Rejected asylum seekers are increasingly resorting to regime/forum shopping. Human rights bodies are finding themselves overburdened and under-resourced. This compromises the effective and fair functioning of their procedures and increases pressure on them to apply stricter tests, higher evidentiary standards and stricter doctrinal positions. This essentially negative cycle does not serve the interests of eligible asylum seekers, human rights bodies or the governments themselves, and it is governments, which risk public censure for policies that are incompatible with their human rights commitments. They must also bear the financial, political and other costs incurred by protracted and inefficient procedures. In addition, the narrower approach adopted by certain European states and
India sends inappropriate messages to states in other regions that might be tempted to emulate these practices.

“Non-state agents” and how refugee law and human rights law can protect them from *refoulement* must rivet the particular focus on those people who feared persecution. This question has become increasingly important in Europe where some governments and national courts maintain that not everyone who fears serious harm because of nationality, race, religion, and membership in a social group or political opinion is a refugee. Rather, only those who fear persecution by public authorities or in situations where the public authorities condone or acquiesce in the persecution by others, can receive refugee status — in other words, the police, the army or other groups supported or condoned by the authorities or whose conduct the authorities have acquiesced in — such as paramilitaries.

UNHCR has always maintained that this is an inappropriate interpretation of the 1951 Convention. In recent years situations have increased where very serious harm is inflicted by various kinds of non-state actors in circumstances where the state authorities are not able to provide adequate protection to those under their jurisdiction. The international protection is used as a substitute to national protection in situations where the individual concerned is no longer protected in the country of origin, irrespective of the identity of the persecutor or the reason for the failure of national protection — whether it was caused deliberately, inadvertently or simply because of a collapse in the formal structures of government in the state.

Generally that this interpretation is consistent with the traditionally neutral character of the granting of asylum, with the express wording of the 1951 Convention itself and with the Convention’s object and purpose. It was also compatible with recent developments in international criminal law (i.e. the 2 *ad hoc* Tribunals of Rwanda and the former Yugoslavia, the
Statute of the International Criminal Court and the International Law Commission’s draft International Criminal Code) and in the jurisprudence of several human rights treaty bodies which relates to the prohibition of return of people to situations where they are at risk of very serious harm — amounting to torture or other forms of cruel inhuman or degrading punishment or treatment — irrespective of the perpetrator of the harm.

The narrow interpretation of the 1951 Convention was driving rejected asylum-seekers to procedures offered by other human rights treaty bodies — notably, the European Court of Human Rights (ECHR), the UN Committee against Torture (CAT) and the UN Human Rights Committee (HRC). This resort to other procedures could have a serious impact on States’ asylum policies in Europe, Equally, there was a risk that the human rights treaty bodies, themselves, could become overwhelmed if States and the Office of the High Commissioner for Human Rights (in the case of CAT and HRC) do not give them adequate resources to deal with these claims fairly and expeditiously. This would be to the detriment of vulnerable individuals, to the States parties and to the integrity of the human rights treaty system itself. Therefore, there was an urgent need for States to develop and rationalise refugee and human rights procedures nationally and regionally, if they were to comply fully with their obligations under both refugee and human rights instruments.

Although many of the issues and recommendations need more implication, it is hoped that they will have some positive influence on Indian policy and practice in both areas of law and that this will contribute to a more rational and humanitarian approach to the protection of refugees in the future.

Whether during partition in 1947, or later during the 1971 liberation of Bangladesh, India has hosted some of the largest refugee populations in the world. But, strangely enough, in India the refugee issue often tends to get confused with economic migrants. This is partly out of
ignorance, and a global trend to politicise the refugee issue. According to
the international definition, a refugee is a person who owing to well-found
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 unable or unwilling to avail the protection
of his country.... Refugees also leave their country for reasons of
insecurity arising out of armed conflict or civil strife. No person becomes
a refugee of his or her own volition. A refugee should not be confused
with an economic migrant; the latter seeks to improve his livelihood, a
refugee to save his life.

Though India has been a very generous country in hosting refugee
populations, the country, like the rest of South Asia, has no domestic law
on refugees, nor is it a party to the 1951 Convention on Refugees and its
1967 Protocol. One of the thrust areas of UNHCR’s advocacy efforts in
India has therefore been to highlight the absence and the need for laws to
protect the rights of refugees. In this endeavour, UNHCR has over the
years built an institutional relationship with the judicial community in
India. In this endeavour, UNHCR has over the years built an institutional,
relationship with well-known lawyers; UNHCR has held several seminars
and workshops on Refugee Law and International Law relating to
refugees. One of the key partners in this effort has been SAARC LAW,
together with whom UNHCR held a major seminar in 1997. UNHCR has
also sought the services of PILSARC, an implementing partner, to provide
legal assistance to refugees facing protection problems.

The Indian Centre for Humanitarian Laws & Research (ICHLR),
another implementing Partner of the UNHCR in India, has been
conducting seminars, workshops and conferences on refugee issues
throughout the country. ICHLR, in collaboration with the Informal
Consultations on Refugees and Migratory Movements in South Asia, has
also brought out a draft National Model Law on Refugees for countries in
South Asia. To disseminate the draft National Model Law, UNHCR plans to support NGO efforts to translate it into the national languages of various South Asian countries. UNHCR is also supporting NGO efforts to bring out a handbook on well-known court cases in India relating to refugees. This will serve as a useful reference in future cases relating to refugees.

UNHCR also collaborates with the National Human Rights Commission (NHRC) of India to strengthen the protection of refugees, who are very often victims of human rights violations. The NHRC has been very supportive of the need for domestic laws on refugees. In fact, NHRC has played a stellar role in protecting the rights of refugees when it appealed to the Supreme Court of India and stopped the forcible eviction of Chakma refugees from Arunachal Pradesh. In that landmark judgement the Supreme Court of India stopped the forcible eviction of Chakma refugees from Arunachal Pradesh. In that landmark judgement the Supreme Court ruled that Article 21 of the Indian Constitution – Right to Life and Liberty can be interpreted to protect the life and liberty of all people living in the country, and by that definition, of refugees. There are other lesser known cases that the NHRC has taken up with the courts to protect the rights of refugees.

Stressing on the importance of a legal framework, UNHCR has also endowed a Chair on Refugee Law in the National Law School of India University (NLSIU), in Bangalore, in 1996. Similarly, UNHCR supported the Centre for Refugee Studies, Department of international law, Jadavpur University, Calcutta, in conducting several short courses for lawyers and law professors. UNHCR also interacts with the Department of Rehabilitation in Chennai. Under an agreement with the Government of India, UNHCR monitors the voluntary repatriation of Tamil refugees returning to Sri Lanka.
One of the main partners in spreading information and awareness of refugees has of course been the media, whether print or electronic. UNHCR has responded to queries from journalists, and has from time to time motivated them to take up refugee issues to a broader audience. Since the subject is one of human interest, the press has consistently taken a deep interest in the plight of refugees. For instance, Doordarshan, Calcutta, had collaborated with UNHCR in producing a 55-minute programme on Refugees in 1997. The programme featured, among others, eminent former refugees like Mrinal Sen, Sunil Gangopadhyya and Jogen Choudhury, all household names in Bengal.

The Statesman in Calcutta and the West Bengal Federation of United Nations Association have been UNHCR’s partners for the last two years in conducting an annual inter-school debate on refugees. Similar debates and essay writing competitions have been organised in Chennai also. Children being future citizens, UNHCR feels it important to foster in them a spirit of tolerance and acceptance of people seeking refuge. After all, refugees do not leave their homes willingly, but under threat of persecution, and to save their lives and beliefs.

The accountability view holds that there can only be persecution when the country of origin can be held accountable for the human rights violations. The protection view on the other hand, stresses the concept of international protection as a substitute in situations where the individual concerned at risk of persecution is not protected for any reason whatsoever by the country of origin. Hence, the following suggestions and recommendation are submitted for any legislative arrangement/incorporation for refugees’ protection in India.

The definition of refugee as provided by the 1951 Refugees’ Convention is couched in general terms and does not meet the contemporary requirements and needs. It only protects international refugees. Although, the UNHCR and other organisations are exerting
tremendous pressure on India and South Asian Nations to accede to and sign 1951 Convention with its Additional Protocol of 1967.

The definition of refugee must be revisited de-nova for a better understanding and appreciation of their problems and visualising an equipoised mechanism for ameliorating their plight for all times to come. I, therefore, propose two new definitions based on natural and non-natural grounds and these are inclusive by nature. First part of the definition one contains natural grounds and later part enumerates non-natural grounds. First definition is pretty comprehensive and runs as under:

- "Any person who is rendered homeless or stateless owing to well established fear of being persecuted or displaced, on the grounds or reasons of gender, age, caste, creed, race, social origin, ethnorenous, language, nationality, natural calamity, indigenous existence, membership of a minority, membership of a social group, economic status or environmental conditions, militancy, insurgency, terrorism, organised & generalised violence, cultural intolerance, communal riots, internal & external armed conflicts or aggression, out of country of origin or domicile, shall be a refugee".

The second definition is quite important, brief and equally practicable, if accepted and implemented, which is as follows:

- "A person shall be a refugee if abused or deprived of life and personal liberty and rendered homeless or stateless contrary to his/her free will except according to the procedure and due process established by law".

These two definitions can cater to the present day needs of refugee problem and encompass every refugee movement or refugee-like situation. Moreover, these definitions do not recognise any geo-political boundaries nor have any specific character whether national and international but aim to achieve universalisation of international refugee law. Though legal persons, experts, lawyers and jurists at various levels can further debate premise of these definitions.
But, the other side of the argument, of course, is that there are certain advantages too of not having a law because having a law means to act within the parameters of stipulated legal framework which incurs & casts upon the governments certain liabilities and accountabilities which may have political dimensions. Refugee laws were also needed not merely for the protection of refugees, but also for the benefits and convenience of the countries in identifying between refugees & illegal immigrants.

- India has always been and is very magnanimous in bestowing shelter and asylum to the people who are fleeing conflict. Nevertheless, as India and Pakistan had become members of the UNHCR Executive Committee in 1995 and have since been playing a pivotal role must strive to get present international legal instrument – 1951 Convention – on refugees reformulated and re-defined while incorporating present day realities of refugee situations as well as arriving at a Regional Legal Regime and domestic laws on refugees that balance human and state concerns.

- The entire edifice of refugee protection gyrates around the institution of asylum and non-refoulement, which must, therefore, be re-visited and preserved, protected, promoted and strengthened in tune with the existing needs and realities of refugee situations. No country of refuge is capable of facing great difficulties in handling refugee influxes at its own so that principles of burden sharing is there which implies that the international community will help to relieve the burden placed on the country of reception.

- The modalities of burden sharing may have political, economic and social predilections and distinctions based on peace and development. The burden sharing may be through international funds or re-settlement opportunities available in the countries of origin or refuge.

- Institution of and promotion of preventive action must further be developed in accordance with humanitarian philosophy. Preventive action does not men building barriers to stop refugees but tackling the causes, which compel people to move from one place to another within the country and from one country to another. The philosophy of preventive action has envisioned that human needs like poverty alleviation, education, job creation, and health care etc. must be fulfilled by the national governments otherwise denial of these needs may result in refugee flows.
The administrative machinery should be more sensitive and humane at borders and ports. Legalities of entry should be determined on the entry spots itself by simplifying procedural hassles. There may be chances when refugees may not have valid passport, visas and travel documents. But that does not mean allowing surreptitious crossing. A way-out should also be evolved on this score.

Refugee status must cease whenever any refugee is found violating civil or penal laws of the host country or indulging in smuggling, drug trafficking, narcotic substances and general crimes including human rights abuses.

The rationale and justification for international protection to refugees is the denial of national legal protection. It is made available under the Statute of the Office of the UNHCR and 1951 Refugee Convention. But national governments raise a boggy of sovereignty and territorial integrity while refusing international humanitarian intervention mandated by UNO’s agencies like UNHCR. Therefore, national legislation must be enacted by way of *general incorporation* or *special incorporation* of international treaties on refugees in municipal system.

The stratification of refugees on economic, environmental, humanitarian and political grounds must be incorporated in the scheme of existing refugee definition whenever it is re-formulated. Definition must also be grounded on natural and non-natural foundations of persecution and displacement.

Refugees are being regarded as subjects of international law, therefore states should not perceive refugee flows, exoduses, influxes, migration and transmigration as a threat to the sovereignty, integrity and national security of the host country.

Refugees must also be treated as minority groups as they move representing discernible and distinguishable entities, which are enumerated, as grounds of persecution and displacement in the definitional clause of refugee law. Protection of Article 27 of the *UN Convention on Civil and Political Rights* must be extended to refugees while suitably amending the impugned Article.

International instruments on refugees and international Human Rights Conventions must be devoid of any ambiguity, repugnancy, and overlapping so that principle of *unity of action* could be evolved through an *integrated international, regional and national humanitarian action* for the refugee protection. Moreover, language and vocabulary of international conventions should not have masculine tinge but must be based on equality and gender equilibrium.
Theories of *push back* and *imposed repatriation* must at all levels be eschewed rather than principles of *non-refoulement* and institution of *asylum* must be promoted and preserved as required under Article 14 of Universal Declaration of Human Rights and same must be the part of national laws. Human Rights Sensitisation and Education Programmes for officials and armed forces dealing with refugee problems and issues should be initiated at all levels of administrative and military hierarchy. Institutionalisation of human rights culture in South Asia and particularly in India must be promoted and endorsed.

Stateless persons must be encouraged to contribute their professional skills, expertise and dexterity coupled with intellectual wisdom to the welfare of the country of their reception while ensuring their socio-economic upliftment by the host states. Moreover, dissemination of information and awareness about their rights must also be pursued.

Nothing moves in this world without money, therefore, minimum financial contribution by the national governments to the UNHCR for meeting its international humanitarian obligations and commitments must be determined and decided for a stipulated period but that should be revisable at the end of agreed time-frame by a committee of plenipotentiaries.

It can be better reconciled with the traditionally neutral character of the granting of asylum. The 1951 Refugee Convention is not an instrument for evaluating the responsibility of countries of origin but rather a device for identifying those in need of international protection.

If, as was held in 1993 in *Ward* by the Supreme Court of Canada, 'the international community is meant to be a forum of second resort for the persecuted, a surrogate, approachable protection upon failure of local protection', then such protection should respond to actual needs. These protections needs today often stem from situations where harm is inflicted by non-state actors.

States which deny refugee protection in situations of an inability of the state to protect or the absence of state power do not take into account the ordinary meaning of the terms of the definition in article 1A2, providing that 'any person who...owing to well-founded fear 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'. They also do not take into account the object and purpose of the 1951 Refugee Convention.
They also do not sufficiently take into account recent developments in international criminal law, which increasingly attach international responsibilities for certain acts to actors other than the state. The International Criminal Court Statute for instance recognises that persecution can be carried out by private actors as part of an organisational policy.

To adopt the protection view when dealing with asylum seekers fleeing harm inflicted by non-state actors.

To consider the fact that the 1951 Refugee Convention is closely related to other international human rights instruments and should, wherever relevant, be interpreted in the light of modern human rights law as well as actual protection needs.

To affirm the humanitarian nature of the granting of refugee status and to avoid politicising the issues.

To permit all claimants to access asylum determination procedures and to refrain from directing cases to manifestly unfounded procedures solely on the basis that the risk of persecution in the country of origin comes only from non-state actors.

To permit access to asylum determination procedures to those who are nationals of countries which have already been deemed to fall under Article 1C5, in order that a review can be made of any change of circumstance.

To create national procedures for identifying those who are protected by ECHR art. 3, CAT art. 3 and ICCPR art. 7 --- in particular fact-findings.

To rationalise the relationship between asylum procedures and any procedures for determining issues related to human rights prohibitions of forcible return — in particular fact-finding.

To ensure that:

i. All procedures are based on good administrative practises for a fair and expeditious identification of those in need of protection.

ii. Human and economic resources are saved through an improvement in the standard of decision-making by the provision of appropriate advice and assistance to all asylum seekers.

To train officials at all levels in international human rights law, and to ensure their awareness of the views and comments adopted by the treaty bodies. All officials should be familiar with the approach adopted by the CAT Committee which considers that discrepancies in statements made by victims of torture are not uncommon as long,
as the inconsistencies do not raise doubts about the general veracity of the application.

- To use as far as possible medical and other relevant expert evidence from professionals specially trained in the field of torture and other traumatic experience;
- To seek advice and technical support from UNHCR, OHCHR and relevant treaty bodies to ensure credible and rational procedures respecting international principles of refugee and human rights law.
- To adopt provisions to ensure that individuals who have not qualified for refugee status, but whose return would be in breach of international human rights obligations, are granted an appropriate status consonant with their situation and the dignity of the person and which respects their fundamental human rights.
- To continue to offer appropriate protection on humanitarian grounds to those whose return is not prohibited by international law.
- To strengthen universal jurisdiction and the mechanisms in criminal law and practice which provide that individuals who are accused of serious abuses of human rights are brought to justice even when they cannot be returned to the country where the crime was committed.
- To strengthen the mechanisms in criminal law and practice which enable individuals who are accused of serious abuses of human rights to be brought to justice without being returned to countries where they are at risk.
- To increase support for treaty bodies in order for them to perform their duties more effectively.
- To take steps to make their case law more accessible and more widely disseminated.
- To give more detailed and transparent reasons in their decisions so as to ensure a higher level of consistency in their views.
- To increase the dialogue between treaty bodies and Special Rapporteur and other specialised bodies dealing with common matters at both the regional and the universal level and to ensure greater co-operation between them.
- To strengthen the resource support which will enable the various treaty bodies to deal fairly and expeditiously with both state party reports and individual complaints procedures relating to the protection of refugees.
- To ensure that treaty bodies and other bodies dealing with refugee/torture/related issues, in particular UNHCR, are kept fully informed of important developments, decisions and practices to ensure a coherent and rational approach to common issues.

- To facilitate/co-ordinate dissemination of information between various human rights bodies and with outside entities, including governments NGOs, and GDs Committee for the Prevention of Torture (CPT) etc.

- To promote the need for coherent, rational and fair national procedures through advocacy, training and information-sharing.

- UNHCR should convene meeting between government representatives and experts on practices developed by treaty bodies relevant to the protection of refugees.

- To increase an overall knowledge of human rights within UNHCR by enhancing training and policy making in this field.

- To study further the interlinkages between refugee and human rights law.

- To continue to promote the protection view for the reasons included in the definition under Art. 1 of 1951 Refugee Convention.

- NGOs and academia must have a crucial collaborative role to play for the protection of refugees in India and elsewhere.

- The dichotomy between "Internally Displaced Persons" and "Refugees" must be obliterated at the earlier because a refugee is a refugee under all the circumstances, conditions and situations.

- The proposed National Model Law for Refugees must be adopted by India while incorporating the entire gamut of suggestopaedia of the instant study relating to substantive as well as procedural laws of refugees.

- Non-refoulement must be made a non-derogable human right of the refugees in the domestic legal system.

- To create and establish a "UNHCR Fund For Durable Solution" for refugees.

- To incorporate provisions in the administrative apparatus of UNHCR to maintain non-political character of the refugee relief.

- To respect the principles of inter-state obligation that should be legal basis for refugee work. At the same time.
SUGGESTOEPEDIA

- Dependence of UNHCR should be on international obligation rather than the humanitarian relations between governmental authority and the individual.

- The vulnerable groups of refugees like women, children, mentally challenged people (MCPs) and differently abled people (DAPs) must get special care, treatment and protection under any law to be enacted in future at all levels of executive, administrative and judicial hierarchy.

- Finally, the accountability view does not sufficiently take into account that the 1951 Refugee Convention already recognises the linkage between refugee protection and human rights by referring in its preamble to the Charter of the United Nations and the Universal Declaration of Human Rights as well as to endeavours ‘to assure refugees the widest possible exercise of these fundamental rights and freedoms’. In this regard it is important to note that human rights case law on the prohibition of inhuman return also recognises that persons cannot be returned to situations where they are at risk of very serious harm, irrespective of the source of this harm.
TABLE OF CASES
<table>
<thead>
<tr>
<th></th>
<th>Table of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>Hoshnak Singh v. Union of India, AIR 1979, SC 1328.</td>
</tr>
</tbody>
</table>
27. PUCL v. Union of India, 1997, 3 SCC 433.
BIBLIOGRAPHY
8. A.I.R. 1999 SCC (2) 228.
27. *Conclusion on Refugee Children and Adolescents*, No. 84 (XLVIII), (UNHCR, 1997).
30. *Foreign Department Files, Miscellaneous*, vol. 331.
33. *GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT*.
36. Home Department Files, Public Branch, January 1870.
37. Home Department Files, Public Branch, September 1869.


42. Intergovernmental Committee for European Migration Annual Report of the Director to the Council – Published in mimeographed form since 1952.


49. LEGISLATIONS PASSED DURING AND AFTER 1950.


52. Legislative Assembly Debates 1924, Delhi: Superintendent Government Printing, 1924.


57. Legislative Department Files, Miscellaneous Dispatches from Home and Foreign Department of Secretary of States, 1932, No.8.

58. Legislative Department files, Miscellaneous, Orders in Council, 1936, No. 6.


60. Model National Refugee Law.


62. Principal Applicants and Dependents (by Gender), Montreal: Canadian Council For Refugees, 1996.

63. Principal Applicants and Dependents (by Gender), Montreal: Canadian Council For Refugees, 1997.

64. Principal Applicants and Dependents (by Gender), Montreal: Canadian Council for Refugees, 1998.


68. Relief and Rehabilitation of Displaced Persons in West Bengal, Calcutta: Home (Pub.) Department, Government of West Bengal, August 1956.


BIBLIOGRAPHY

74. The Defence of India Rules 1939 (Rules made under the Defence of India Act 1939, Reprinted as amended up to and including 30th September 1940) (Delhi: Manager of Publications, 1940).
75. The Displaced Persons (Claims) Act, 1950, Delhi: National Archives of India.
83. The Supreme Court Almanac, (New Delhi), Vol.3, Nos. 3 and 4, 10-16 May 1999.
91. UN Convention on the Elimination of All Forms of Discrimination Against Women.
92. UN Convention Relating to the Status of Refugees Done at Geneva on 28 July 1951
103. West Bengal Legislative Assembly Debates, Vol. IX.
BIBLIOGRAPHY

104. West Bengal Legislative Assembly Debates, Vol. XI.
105. West Bengal Legislative Assembly Debates, Vol. XVI.
106. West Bengal Legislative Assembly Debates, Vol. XVII.
107. West Bengal Legislative Assembly Debates, Vol. XV.
108. West Bengal Legislative Assembly Debates, Vol. XVII.

Books:

22. Chakraborti, Saroj, With Dr. B.C. Roy and Other Chief Ministers, Calcutta: Rajat Chakraborti, 1980.
39. G.J.L. Coles HUMAN RIGHTS AND REFUGEE LAW. Staff Member, UNHCR.
49. Grahl Madsen, A 1966. The Status of Refugees in International Law, Leyden, the Netherlands, Sijthoff.
58. Hathaway, James C. FEAR OF PERSECUTION AND LAW OF HUMAN RIGHTS.
BIBLIOGRAPHY

64. Hutchinson, R.H.S. An Account of the Chittagong Hill Tracts, Calcutta, 1906.
86. Luthra, P.N., Problems of Bangladesh Refugee Influx and Emerging Lessons for Administration, New Delhi: Training Division, Department of Personnel and Administrative Reforms, Cabinet Secretariat, 1975.
99. Myron Weiner, Sons of the Soil. Migration and Ethnic Conflict in India(Princeton, 1978), Examines the clash between migrants' claims to equal access and the claims of local groups to protection by the state within the Indian context.
125. Richardson, H.E., Tibet and Its History, London: OUP.


BIBLIOGRAPHY


ARTICLES


572
36. Lhamo, Nawang, 'Tibetan Women Nosedive into Politics with Devotion', Liberal Times, 3(2), 1922.


14. G.J.L. Coles HUMAN RIGHTS AND REFUGEE LAW. Staff Member, UNHCR.
29. Igor Khokhlov THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW.
BIBLIOGRAPHY

34. Migration News – Published since 1952.

576
APPENDICES
APPENDIX-I

Statute of the Office of the United Nations High Commissioner for Refugees

General Assembly Resolution 428 (V) of 14 December 1950

The General Assembly

In view of its resolution 319 A (IV) of 3 December 1949.

1. Adopt the annex to the present resolution, being the Statute of the Office of the United Nations High Commissioner for Refugees;

2. Calls upon Governments to co-operate with the United Nations High Commissioner for Refugees in the Performance of his functions concerning refugees falling under the competence of his office, especially by:
   a) Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions;
   b) Entering into special agreements with the High Commissioner for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;
   c) Admitting refugees to their territories, not excluding those in the most destitute categories;
   d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;
   e) Promoting the assimilation of refugees, especially by facilitating their naturalization;
   f) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;
   g) Permitting refugees to transfer their assets and especially those necessary for their resettlement;
   h) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them.

3. Requests the Secretary-General to transmit the present resolution together with the annex attached thereto, also to States non-members of the United Nations, with a view to obtaining their co-operation in its implementation.

Chapter I

General Provisions

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees, if it is created.

2. The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given to him by the General Assembly or the Economic and Social Council.
4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

5. The General Assembly shall review not later than at its eight regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the office should be continued beyond 31 December 19053.

CHAPTER II

Functions of the High Commissioner

6. The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangement of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.

(ii) Any person who, 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 or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugees Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

a) He has voluntarily re-availed himself of the protection of the country of his nationality; or

b) Having lost his nationality, he has voluntarily re-acquired it;

or

c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

e) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had a well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or if he has no nationality, to return to the country of his former habitual residence.
7. Provided that the competence of the High commissioner as defined in paragraph 6 above shall not extend to a person:

a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his office by:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of State;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the Governments and inter-governmental organizations concerned;

(h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

(i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance.

The High Commissioner may reject any offers, which he does not consider appropriate or which cannot be utilized.

The High commissioner shall not appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly.

The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies.
The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the co-operation of the various specialized agencies.

**Chapter III**

**Organization and Finances**

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (a) Within the limits of the budgetary appropriations provided, the staff of the office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(b) Such staff shall be chosen from persons devoted to the purposes of the office of the High Commissioner.

(c) The conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

(d) Provision may also be made to permit the employment of personnel without compensation.

16. The High Commissioner shall consult the government of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative who may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditure relating to the functioning of the office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner’s funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary General.
Convention Relating to the Status of Refugees
Done at Geneva on 28 July 1951
Entry into force: 22 April 1954, in accordance with Article 43

PREAMBLE

The High Contracting Parties
Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.
Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedom.
Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement.
Considering that the grant of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.
Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.
Nothing that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commission,
Have agreed as fellows:

CHAPTER I
General Provisions
Article I
Definition of the term “Refugee”
A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:
1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under Conventions 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;
Decision of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section
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 of 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.
In the case of a person who has more than one nationality, the term "the
country of his nationality" shall mean each of the countries of which he is a
national, and a person shall not be deemed to be lacking the protection of the
country of his nationality if, without any valid reason based on well-founded
fear, he has not availed himself of the protection of one of the countries of
which he is a national.

B. (1) For the purpose of this Convention, the words "events occurring before 1
January 1951" in Article I, 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 meaning it applies for
the purpose of its obligations under this Convention.

(2) Any Contracting State, which has adopted alternative (a) may at any time
extend its obligations by adopting alternative (b) by means of a notification
addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section
A if:
1. He has voluntarily re-availed himself of the protection of the country of his
nationality; or
2. Having lost his nationality, he has voluntarily re-acquired it, or
3. He has acquired a new nationality, and enjoys the protection of the country of
his new nationality; or
4. He has voluntarily re-established himself in the country which he left or
outside which he remained owing to fear of persecution; or
5. He can no longer, because the circumstances in connection with which he has
been recognized as a refugee have ceased to exist, continue to refuse to avail
himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to refugee falling under section A
(1) of this Article who is able to invoke compelling reasons arising out of
previous persecution for refusing to avail himself of the protection of the
country of nationality.
6. Being a person who has not nationality he is, because the circumstances in
connection with which he has been recognized as a refugee have ceased to
exist, able to return to the country of his former habitual residence;
Provided that this paragraph shall not apply to a refugee falling under section
A (I) of this Article who is able to invoke compelling reasons arising out of
previous persecution for refusing to return to the country of his former
habitual residence.

D. This Convention shall not apply to persons who are at present receiving from
organs or agencies of the United Nations other than the United Nations High
Commissioner for Refugees protection or assistance.

E. This Convention shall not apply to a person who is recognized by the
competent authorities of the country in which he has taken residence as having the
rights and obligations, which are attached to the possession of the nationality of the
country.

F. The provisions of this Convention shall not apply to any person with respect to whom
there are serious reasons for considering that:
(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2
General obligations
Every refugee has duties towards the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3
Non-discrimination
The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4
Religion
The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5
Rights granted apart from this Convention
Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting States refugee apart from this Convention.

Article 6
The term “in the same circumstances
For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7
Exemption from reciprocity
1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years’ residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting State.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for the State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraph 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraph 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Article 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.
APPENDIX-II

Article 8
Exemption from exceptional measures

With regard to exceptional measures, which may be taken against the person, property
or interests of nationals of a foreign State, the Contracting States shall not apply such
measures to a refugee who is formally a national of the said State solely on account of such
nationality. Contracting States, which, under their legislation, are prevented from applying the
general principle expressed in this Article, shall in appropriate cases, grant exemptions in
favour of such refugees.

Article 9
Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and
exceptional circumstances, from taking provisionally measures which it considers to be
essential to the national security in the case of a particular person, pending a determination by
the Contracting State that person is in fact a refugee and that the continuance of such measures
is necessary in his case in the interests of national security.

Article 10
Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and
removed to the territory of a Contracting State, and is resident there, the period of
such enforced sojourn shall be considered to have been lawful residence within that
territory.

2. Where a refugee has been forcibly displaced during the Second World War from the
territory of a Contracting State and has, prior to the date of entry into force of this
Convention returned there for the purpose of taking up residence, the period of
residence before and after such enforced displacement shall be regarded as one
uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11
Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the
flag of a Contracting State, that State shall give sympathetic consideration to their
establishment on its territory and the issue of travel documents to them or their temporary
admission to its territory particularly with a view to facilitating their establishment in another
country.

CHAPTER II
Juridical Status

Article 12
Personal Status

1. The personal status of a refugee shall be governed by the law of the country of his
domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more
particularly rights attaching to marriage, shall be respected by a Contracting State,
subject to compliance, if this be necessary, with the formalities required by the law of
that State, provided that the right in question is one which would have been
recognized by the law of that State had he not become a refugee.

Article 13
Movable and immovable property

The Contracting State shall accord to a refugee treatment as favourable as possible
and, in any event, not less favourable than that accorded to aliens generally in the same
circumstances, as regards the acquisition of movable and immovable property and other rights
pertaining thereto, and to leases and other contracts relating to movable and immovable property.

**Article 14**

**Artistic right and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

**Article 15**

**Right of association**

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

**Article 16**

**Access to Courts**

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from cautio judicatum solvi.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

**CHAPTER II**

**Gainful Employment**

**Article 17**

**Wage-earning employment**

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
   (a) He has completed three year's residence in the country.
   (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse,
   (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

**Article 18**

**Self-employment**

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens
generally in the same circumstances, as regards the right to engage on his own account in
agriculture, industry, handicrafts and commerce and to establish commercial and industrial
companies.

Article 19
Liberal professions
1. Each Contracting State shall accord to refugees lawfully staying in their territory who
hold diplomas recognized by the competent authorities of that State and who are
desirous of practising a liberal profession, treatment as favourable as possible and, in
any event, not less favourable than that accorded to aliens generally in the same
circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and
constitutions to secure the settlement of such refugees in the territories, other than the
metropolitan territory, for whose international relations they are responsible.

CHAPTER V
Welfare
Article 20
Rationing
Where a rationing system exists, which applies to the population at large and regulates
the general distribution of products in short supply, refugees shall be accorded the same
treatment as nationals.

Article 21
Housing
As regards housing, the Contracting States, in so far as the matter is regulated by laws
or regulations or is subject to the control of public authorities, shall accord to refugees
lawfully staying in their territory treatment as favourable as possible and, in any event, not less
favourable than that accorded to aliens generally in the same circumstances.

Article 22
Public education
1. The Contracting States shall accord to refugees the same treatment as is accorded to
nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible,
and, in any event, not less favourable than that accorded to aliens generally in the
same circumstances, with respect to education other than elementary education and, in
particular, as regards access to studies, the recognition of foreign school certificates,
diplomas and degrees the remission of fees and charges and the award of
scholarships/

Article 23
Public relief
The Contracting States shall accord to refugees lawfully staying in their territory the
same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24
Labour legislation and social security
1. The Contracting States shall accord to refugees lawfully staying in their territory the
same treatment as is accorded to nationals in respect of the following matters:
(a) In so far as such matters are governed by laws or regulations or are subject to
the control of administrative authorities: remuneration, including family
allowances where these form part of remuneration, hours of work, overtime
arrangements, holidays with pay, restrictions on home work, minimum age of

X
employment, apprenticeship and training, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining:

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER-V
Administrative Measures

Article 25

Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse. The Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26

Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.
Article 27
Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who
does not possesses a valid travel document.

Article 28
Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel
documents for the purpose of travel outside their territory unless compelling reasons
of national security or public order otherwise require, and the provisions of the
Schedule to this Convention shall apply with respect to such documents. The
Contracting States may issue such a travel document to any other refugee in their
territory. They shall in particular give sympathetic consideration to the issue of such a
travel documents to refugees in their territory who are unable to obtain a travel
document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by
parties thereto shall be recognized and treated by the Contracting States in the same
way as if they had been issued pursuant to this article.

Article 29
Fiscal charges

1. The Contracting States shall not impose upon refugee’s duties, charges or taxes of any
description whatsoever, other or higher than those which are or may be levied on their
nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws
and regulations concerning charges in respect of the issue to aliens of administrative
documents including identity papers.

Article 30
Transfer of assets

1. 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 purpose of re-settlement.

2. 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.

Article 31
Refugees unlawfully in the country of refugee

1. The Contracting States shall not impose penalties, on account of their illegal entry or
presence, on refugees who, coming directly from a territory where their life or
freedom was threatened in the sense of Article 1, enter or are present in their territory
without authorization, provided they present themselves without delay to the
authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions
other than those which are necessary and such restrictions shall only be applied until
their status in the country is regularized or they obtain admission into another country.
The Contracting States shall allow such refugees a reasonable period and all the
necessary facilities to obtain admission into another country.
Article 32
Expulsion

1. The Contracting States shall not expel a refugee lawful in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of Law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures, as they may deem necessary.

Article 33

Prohibition of Expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34
Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI
Executory and Transitory Provisions

Article 35

Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations, which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
   a) The condition of refugees,
   b) The implementation of this Convention, and
   c) Laws, regulations and decrees, which are, or may hereafter, be, in force relating to refugees.
Article 36
Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37
Relation to previous Conventions

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII
Final Clauses
Article 38
Settlement of dispute

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39
Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40
Territorial application clauses

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention.
Convention to such territories, subject, where necessary for constitutional reasons, to be consent of the governments of such territories.

**Article 41**

**Federal clause**

In the case of a Federal or non-unitary State, the following provisions shall apply:

a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States,

b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation bound to take legislative action, the Federal government shall appropriate authorities of States, provinces or cantons at the earliest possible moment.

c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of Convention showing the extent to which effect has been given to that provision by legislative or other action.

**Article 42**

**Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

**Article 43**

**Entry into force**

1. This convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

**Article 44**

**Denunciation**

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary General of the United Nations.

3. Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary General.

**Article 45**

**Revision**

1. Any Contracting State may request revision of this convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommended the steps, if any, to be taken in respect of such request.

Article 46

Notification by the Secretary-General of the United Nations.
The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 39:
a) of declarations and notifications in accordance with Section B of Article 1;
b) of signatures, notifications and accessions in accordance with Article 39;
c) of declarations and notifications in accordance with Article 40;
d) of reservations and withdrawals in accordance with Article 42;
e) of the date on which this Convention will come into force in accordance with Article 43;
f) of denunciations and notifications in accordance with Article 44;
g) of requests for revision in accordance with Article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Government.

DONE at GENEVA, this twenty-eight day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in Article 39.
Protocol Relating to the Status of Refugees of 31 January 1967
Entry into force: 4 October 1967, in accordance with Article VIII

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention covers only those persons who have become refugees as a result of events occurring before 1 January 1951.
Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention.
Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951.

Have agreed as follows:

Article I
General provision
1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the convention to refugees as hereinafter defined.
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 1 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 1A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save the existing declaration made by States already Parties to the Convention in accordance with Article IB (1)(a) of the convention, shall, unless extended under Article IB (2) thereof apply also under the present Protocol.

Article II
Co-operation of the national authorities with the United Nations
1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
   (a) The condition of refugees;
   (b) The implementation of the present Protocol;
   (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III
Information on national legislation
The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.
Article IV
Settlement of disputes

Any dispute between states Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V
Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI
Federal clauses

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII
Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article 1 of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party there to which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the country is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraph 2 and 3, and of Article 44,
paragraph 3, of the Convention shall be deemed to apply mutatis mutandis to present Protocol.

**Article VIII**

**Entry into Force**

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

**Article IX**

**Denunciation**

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

**Article X**

**Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

**Article XI**

**Deposit in the archives of the Secretariat of the United Nations**

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.
Principles Concerning Treatment of Refugees
As adopted by the
Asian-African Legal Consultative Committee
At its Eight Session
Bangkok 1966

Article 1
Definition of the term "Refugee"
As refugee is a person who, Owing to persecution or well-founded fear of persecution for reasons of race, colour, religion, political belief or membership of a particular social group.

(a) leaves the State of which he is a national, or the country of his nationality, or, if he has no nationality, the State or Country of which he is a habitual resident; or
(b) being outside such State or Country, is unable or unwilling to return to it or to avail himself of its protection.

Exception
1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.
2) A person who prior to his admission into the Country of refugee, has committed a crime against peace, a war crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purposes and principles of the United Nations shall not be a refugee.

Explanation
The dependents of refugee shall be deemed to be refugees.

Explanation
The expression “leaves” includes voluntary as well as involuntary leaving.

Notes
i. The Delegation of Ghana reserved its position on its Article.
ii. The Delegations of Iraq, Pakistan and the United Arab Republic expressed the view that, in their opinion, the definition of the term "Refugee" includes a person who is obliged to leave the State of which he is a national under the pressure of an illegal act or as a result of invasion of such State, wholly or partially, by an alien with a view to Occupying the State.
iii. The Delegations of Ceylon and Japan expressed the view that in their opinion the expression “persecution” means something more than discrimination or unfair treatment but includes such conduct as shocks the conscience of civilized nations.
iv. The Delegations of Japan and Thailand expressed the view that the word “and” should be substituted for the word “or” in the last line of paragraph (a).
v. In Exception (2) the words “prior to his admission into the Country of refugee” were inserted by way of amendment to the original text of the Draft Article on the proposal of the Delegation of Ceylon and accepted by the Delegations of India, Indonesia, Japan and Pakistan. The Delegations of Iraq and Thailand did not accept the amendment.
vi. The Delegation of Japan proposed insertion of the following additional paragraph in the Article in relation to proposal under note (iv):
“A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State or the Country of which he is a habitual resident, at the time of the events which caused him to have to well-founded fear of above mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection shall be considered a refugee.”
The Delegations of Ceylon, India, Indonesia, Iraq and Pakistan were of the view that this additional paragraph was unnecessary. The Delegation of Thailand reserved its position on this paragraph.

Article II
Loss of Status as Refugee

1. A refugee shall lose his status as refugee if:
   i. He voluntarily returns permanently to the State of which he was a national or the Country of his nationality, to the State or the Country of which he was a habitual resident; or
   ii. He has voluntarily re-availed himself of the protection of the State of Country of his nationality; or
   iii. He voluntarily acquires the nationality of another State or Country and is entitled to the protection of the State or Country.

2. A refugee shall lose his status as a refugee if he does not return to the State of which he is a national, or to the Country of his nationality, or, if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he become a refugee have ceased to exist.

Explanation
It would be for the State of asylum of the refugee to decide whether the circumstances in which he became a refugee have ceased to exist.

Notes
(i) The Delegations of Iraq and the United Arab Republic reserved their position on paragraph (iii).
(ii) The Delegation of Thailand wished it to be recorded that the loss of status as a refugee under paragraph 1 (ii) will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality because the right of protection was that of his country and not that of the individual.

Article III
Asylum to a Refugee

1) A State has the sovereign right to grant or refuse asylum in its territory to a refugee.

2) The exercise of the right to grant such asylum to a refugee shall be respected by all other States and shall not be regarded as an unfriendly act.

3) No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4) In cases where a State decides to apply any of the above-mentioned measures to a person-seeking asylum, it should grant provisional asylum under such conditions, as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV
Right of Return

A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him.

Article V
Right to Compensation

1) A refugee shall have the right to receive compensation from the State or the Country, which he left or to which he was unable to return.
2) The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependents of the refugee or of the person whose dependent the refugee was, and destruction of or damage to property and assets, caused by the authorities of the State or Country, public officials or mob violence.

Notes

1) The Delegations of Pakistan and the United Arab Republic were of the view that the word “also” should be inserted before the words “such loss” in paragraph 2.

2) The Delegations of India and Japan expressed the view that the words “deprivation of personal liberty in denial of human rights”, should be omitted.

3) The Delegations of Ceylon, Japan and Thailand suggested that the words “in the circumstances in which the State would incur state responsibility for such treatment to aliens under international law” should be added at the end of paragraph 2.

4) The Delegations of Ceylon, Japan, Pakistan and Thailand expressed the view that compensation should be payable also in respect of the denial of the refugee’s right to return to the State of which he is a national.

5) The Delegation of Ceylon was opposed to the inclusion of the word “or country” in this Article.

6) The Delegation of Ceylon, Ghana, India and Indonesia were of the view that in order to clarify the position, the words “arising out of events which gave rise to the refugee leaving such State or Country” should be added to paragraph 2 of this Article after the words “mob violence”.

Article VI

Minimum Standard of Treatment

1. A State shall accord to refugee’s treatment in no way less favourable than that generally accorded to aliens in similar circumstances.

2. The standard of treatment referred to in the preceding clause shall include the rights relating to aliens contained in the Final Report of the Committee on the status of aliens, annexed to these principles, to the extent that they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfill requirements, which by their nature of refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such right between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

Notes

i. The Delegations of Iraq and Pakistan were of the view that a refugee should generally be granted the standard of treatment applicable to the nationals of the country of asylum.

ii. The Delegation of Indonesia reserved its position on paragraph 3 of the Article.

iii. The Delegations of Indonesia and Thailand reserved their position on paragraph 4 of the Article.

Article VII

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or in activities inconsistent with or against the principles and purposes of the United Nations.
Note

i. The Delegations of India, Japan and Thailand were of the view that the word “or any other country” should be added after the words “the country of refuge” in this Article. The other Delegations were of the view that such addition was not necessary.

ii. The Delegation of Iraq was of the view that the inclusion of the words or in activities inconsistent with or against the principles and purposes of the United Nations” was inappropriate as in this Article what was being dealt with was the right and obligation of the refugee and not that of the State.

Article VIII
Expulsion and Deportation

1. Save in the national or public interest or on the ground of violation of the conditions of asylum, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures, as it may deem necessary.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, religion, political belief or membership of a particular social group.

Notes

i. The Delegations of Ceylon, Ghana and Japan did not accept the text of paragraph 1. In the views of these Delegations the text of this paragraph should read as follow:
“A state shall not expel or deport a refugee save on ground of national security or public order, or a violation of any of the vital or fundamental conditions of asylum”.

ii. The Delegations of Ceylon and Ghana were of the view that in paragraph 2 the words “as generally applicable to aliens under such circumstances” should be added at the end of the paragraph after the word “necessary”.

Article IX

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees
Conclusions and Recommendations

I

- Recalling the conclusions and recommendations adopted by the Colloquium held in Mexico in 1981 on Asylum and International Protection of Refugees in Latin America, which established important landmarks for the analysis and consideration of this matter;
- Recognizing that the refugee situation in Central America has evolved in recent years to the point at which it deserves special attention;
- Appreciating the government efforts which have been made by countries receiving Central American refugees, notwithstanding the great difficulties they have had to face, particularly in the current economic crisis;
- Emphasizing the admirable humanitarian and non-political task which UNHCR has been called to carry out in the Central American countries, Mexico and Panama in accordance with the provisions of the 1951 United Nations Convention and the 1967 Protocol, as well as those of resolution 428 (V) of the United Nations General Assembly, by which the mandate of the United Nations High Commissioner for Refugees is applicable to all States whether or not parties to the said Convention and/or Protocol;
- Bearing in mind also the function performed by the Inter-American Commission on Human Rights with regard to the protection of the rights of refugees in the continent;
- Strongly supporting the efforts of the Contadora Group to find an effective and lasting solution to the problem of Central American refugees. Which constitute a significant step in the negotiation of effective agreements in favour of peace in the region;
- Expressing its conviction that many of the legal and humanitarian problems relating to refugees which have arisen in the Central American region, Mexico and Panama can be tackled in the light of the necessary co-ordination and harmonization of refugees and national systems and regional efforts;

II

Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the basis of which the Colloquium fully shares and which are reproduced below:

(a) To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

(b) To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants.

(c) To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above.

(d) To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problems of refugees in each State.

(e) To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate.

(f) To ensure that any repatriation of refugees is voluntary, and is declared to be an individual basis, and is carried out with the co-operation of UNHCR.

xxix
(g) To ensure the establishment of tripartite commissions composed of representative of the State of origin, of the receiving State and UNHCR with a view of facilitating the repatriation of refugees.

(h) To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety.

(i) To ensure that programs and projects are set up with a view to ensuring the self-sufficiency of refugees.

(j) To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies.

(k) To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies.

(l) To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be transferred to third country against his will.

(m) To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem.

(n) To ensure that, once agreement has been reached on the basis for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country to visit the refugee camps.

(o) To ensure that the receiving countries facilitate in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation.

(p) To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees.

The Colloquium adopted the following conclusions:

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.

2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concepts of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concepts of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts,
massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.

5. To reiterate the importance and meaning of the principle of non-refoulment (including the prohibition of rejection at the frontier) as a cornerstone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens.

6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiently and integration into the host society.

7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.

8. To ensure that the countries of the region establish a minimum standard of treatment for refugee, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx.

9. To express its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship, which many of them face.

10. To call on States Parties to the 1969 American Convention on Human Rights to apply this instrument in dealing with asilados and refugees who are in their territories.

11. To make a study, in countries in the area which have large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creating or generating of employment of resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.

12. To reiterate the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one, which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.

14. To urge non-governmental, international and national organizations to continue their worthy task, co-ordinating their activities with UNHCR and the national authorities of the country of asylum, in accordance with the guidelines laid down by the authorities in question.

xxxii
15. to promote greater use of the competent organizations of the inter-American system, in particular the Inter-American Commission on Human Rights, with a view to enhancing the international protection of asilados and refugees. Accordingly, for the performance of this task, the Colloquium considers that the close co-ordination and co-operation existing between the Commission and UNHCR should be strengthened.

16. to acknowledge the importance of the OAS/UNHCR Programme of cooperation and the activities so far carried out and to propose that the next stage should focus on the problem raised by massive refugee flows in Central America, Mexico and Panama.

17. to ensure that in the countries of Central America and the Contadora Group the International norms and national legislation relating to the protection of refugees, and human rights in general, are disseminated at all possible levels. In particular, the Colloquium believes it especially important that such dissemination should be undertaken with the valuable co-operation of the appropriate universities and centres of high education.

IV

The Cartagena Colloquium therefore Recommends:
- That the commitment with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.
- That the conclusions reached by the Colloquium (III) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.
- That volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents, and that the Colombian Government, UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.
- That the present document should be proclaimed the "Cartagena Declaration on Refugees.
- That the United Nations High Commissioner for Refugees should be requested in transmit the contents of the present declaration officially to the heads of State of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombia authorities, and in particular to the President of the Republic, Mr. Ucilsario Betanncur, the Minister of Foreign Affairs, Mr. Augusto Ramfrez Ocamp, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de India's and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolivar and the city of Cartagena. It also thanked the people of Cartagena, rightly known as the 'Heroic City', for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practiced by the Colombian people and authorities.

Cartagena de India, 22 November 1984
GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

INTRODUCTION - SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
   (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
   (b) States when faced with the phenomenon of internal displacement;
   (c) All other authorities, groups and persons in their relations with internally displaced persons; and
   (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION-1
GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law, as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

**Principle 4**

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

### SECTION-II

**PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT**

**Principle 5**

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

**Principle 6**

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:
   
   (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the affected population;

   (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

   (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

   (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

   (e) When it is used as collective punishment

3. Displacement shall last no longer than required by the circumstances.

**Principle 7**

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such ‘displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
(a) A specific decision shall be taken by a State authority empowered by law to order such measures;
(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
(c) The free and informed consent of those to be displaced shall be sought;
(d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

**Principle 8**

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

**Principle 9**

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

### SECTION-III

**PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT**

**Principle 10**

1. Every human being has the inherent right to life, which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
   (a) Genocide;
   (b) Murder;
   (c) Summary or arbitrary execution; and
   (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

   Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or not longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
   (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
   (b) Starvation as a method of combat;
   (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
   (d) Attacks against their camps or settlements; and
   (e) The use of anti-personnel landmines.

**Principle 11**

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
   (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

**Principle 12**
1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

**Principle 13**
1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices or recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

**Principle 14**
1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

**Principle 15**
Internally displaced persons have:
(a) The right to seek safety in another part of the country;
(b) The right to leave their country;
(c) The right to seek asylum in another country; and
(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

**Principle 16**
1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Gravesites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the gravesites of their deceased relatives.

**Principle 17**
1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families, which are separated by displacement, should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment of confinement in camps shall have the right to remain together.

**Principle 18**

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
   (a) Essential food and potable water;
   (b) Basic shelter and housing;
   (c) Appropriate clothing and
   (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

**Principle 19**

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious disease, including AIDS, among internally displaced persons.

**Principle 20**

1. Every human being has the right to recognition everywhere as a person before the law.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
   (a) Pillage;
   (b) Direct or indiscriminate attacks or other acts of violence;
   (c) Being used to shield military operations or objectives;
   (d) Being made the object of reprisal; and
   (e) Being destroyed or appropriate as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

**Principle 22**

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
   (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
   (b) The right to seek freely opportunities for employment and to participate in economic activities;
   (c) The right to associate freely and participate equally in community affairs;
(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
(e) The right to communicate in a language they understand.

Principle 23
1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education, which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION-IV
PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24
1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25
1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withhold, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26
Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27
1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.
SECTION -V
PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to settle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions, which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.
MODEL NATIONAL LAW ON REFUGEES

Preamble:
- Acknowledging the fact that India has a long tradition and experience in accommodating inflows of refugees, and demonstrating its faith in the principle of non-refoulement;
- Affirming its commitment to uphold international human rights principles through accession to all major human rights treaties, and adoption of appropriate legislative steps to implement them;
- Considering the pronouncements of the Supreme Court and High Courts extending the protection of fundamental rights to refugees and asylum seekers;
- Reaffirming the initiatives taken by Parliament under Article 37 and 253 of the Constitution of India to provide an administrative system free from arbitrariness and guarantee equality, fairness and due process of law;
- Recognising the need for an appropriate legal framework to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay;
- The following Act is enacted to consolidate, streamline, and harmonise the norms and standards applicable to refugees and asylum seekers in India; to establish a procedure and the requisite machinery for granting refugee status; to guarantee them fair treatment, provide for their rights and obligations and regulate matters connected therewith. For the purposes of this Act, the grant of refugee status shall be considered a peaceful and humanitarian act and does not imply any judgement on the country of origin of the refugee.

1. Short title, Extent and Commencement
   (a) This Act may be called the Refugees and Asylum Seekers Protection Act, 20-0.
   (b) It extends to the whole of India.
   (c) It shall come into force on the day specified by the Union government by notification in the Gazette of India.

2. Terminology
   In this Act, unless the context otherwise requires:
   (a) ‘Asylum seeker’ means a person who seeks recognition and protection as a refugee.
   (b) ‘Refugee’ means a ‘refugee’ defined in Article 3 and includes dependants of persons determined to be refugees.
   (c) ‘Country of origin’ means the refugee’s country of nationality. Or if he or she has not nationality, his or her country of former habitual residence.
   (d) ‘Commissioner’ means the ‘Commissioner of refugees’, defined under the provisions of Articles 7 and 8 of this Act.
   (e) ‘Refugee Committee’ means the ‘committee’ established as an Appellate Board of the Government under Articles 7 and 8 of this Act.
   (f) Refugee children means children below the age of 18 years who are seeking refuge or where protection is extended by the state to children under Article 22 of the Convention on the Rights of the Child, 1989.
   (g) ‘Serious non-political offence’ refers to any offence determined in accordance with Article 17 of this Act, and listed in schedule A of the Act.
   (h) ‘Government’ shall mean Union government.

3. Definition of a Refugee
   A refugee is defined as:
   (a) any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear or persecution
APPENDIX-VII

on account of race, religion, sec, nationality, ethnic identity, membership of a particular social group or political opinion, or,

(b) any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin.

4. Persons who shall be excluded from refugee status
A person shall be excluded from refugee status for the purpose of this Act if:

(a) He or she is convicted for a crime against peace, a war crime or a crime against humanity, in accordance with the applicable principles and rules of International Law/Conventions including the SAARC Regional Convention On Suppression of Terrorism, 1987;

(b) He or she has committed a serious non-political crime as specified in the Schedule A, outside India prior to his or her admission into India as a refugee.

5. Principle of Non-Refoulement
(a) No refugee or asylum seeker shall be expelled or returned in any manner whatsoever to a place where there are reasons to believe his or her life or freedom would be threatened on account of any of the reasons set out in sub-sections (a) or (b) of Article 3;

(b) Where an asylum seeker or refugee has been convicted by a final judgement of a crime against peace, a war crime or a crime against humanity and constitutes a danger to the community, or where a Minister has certified that there are reasonable grounds to believe that an asylum seeker or refugee is a threat to the sovereignty and integrity of India, such an asylum seeker or refugee may be asked to leave India. However, such an asylum seeker or refugee shall not be returned to a situation or to any country in which his or her life or liberty is threatened for reasons of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.

6. Application
(a) Where an application is made by, on behalf of, or in relation to an asylum seeker, for the recognition of the said asylum seeker as a refugee, either at the point of entry or subsequently, the applicant shall, in accordance with the principle laid down in Article 5 be directed and assisted to apply to the Commissioner of Refugees;

(b) Where an application is made by, on behalf of, or in relation to an asylum seeker, for the determination of refugee status, pending determination of such status, no restrictions shall be imposed on the asylum seeker save and except those that are necessary in the interests of sovereignty and integrity or public order of India. Such application may be made within such reasonable time as may be prescribed in accordance with Article 17 of this Act;

(c) Where an application for refugee status is made by, on behalf of, or in relation to a child, accompanied or unaccompanied; or where a refugee child is found within the territory of India; he or she shall receive immediate and appropriate protection and humanitarian assistance in accordance with the existing policy and legal framework of the state. The requirement of filling an application form on their behalf may be entrusted to a local Legal Service Authority or their representatives or any other recognised NGO involved in the welfare of children in general.

7. Constitution of the Authorities
In order to implement the provisions of this Act:
(a) The President shall appoint the commissioner of Refugees, and Deputy Commissioners of Refugees as may be necessary on the basis of the eligibility requirements and procedure laid down in Articles 7 and 8 of this Act.

(b) Other officers as may be necessary shall be appointed after consultation with the Commissioner of Refugees;

(c) The President shall appoint the Chairperson and Members of the Refugee Committee.

(d) The Chairpersons of the Refugee Committee shall appoint the staff of the Committee.

8. **Appointment and Functions**

(a) The commissioner of Refugees shall be a sitting or retired High Court Judge, and shall be appointed after consultation with the Chief Justice of India.

(b) The Deputy commissioner should be qualified to be appointed as a High Court Judge; and shall be appointed after consultation with the Chief Justice of India.

(c) The Chairperson of the Refugee Committee shall be a retired Supreme Court Judge;

(d) The Refugee Committee shall consist of the following three members: a sitting or retired High Court Judge, appointed by the President in consultation with the Chief Justice of India, and two independent members with knowledge and experience of refugee issues and refugee law;

(e) The Commissioner of Refugees may assign such of his functions as may be necessary to the Deputy Commissioner of Refugees appointed under this Act.

(f) The decision of the Commissioner of Refugees shall be final. Any appeal against such decision shall lie only with the Refugee Committee, as the Appellate Board for reconsideration of the decision.

9. **Determination of Refugee Status**

(a) Any asylum seeker who wishes to claim refugee status under the terms of this Act shall be heard by a Commissioner of refugees before the determination of his or her status;

(b) During the refugee determination interview, the asylum seeker shall be provided necessary facilities including the services of a competent interpreter where required, and a reasonable opportunity to present evidence in support of his or her case;

(c) The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, to contact a representative of UNHCR;

(d) The asylum seeker, if he or she wishes, shall be entitled to be assisted in the determination of the status by a person of his or her choice including a legal practitioner. A list of competent legal practitioners, who are conversant with refugee law, shall be provided by the government to the asylum seeker;

(e) If the asylum seeker is not recognised as a refugee, he or she could be given a reasonable time as provided in the rules, to appeal to the Refugee Committee;

(f) Where an application by the asylum seeker is rejected, the commissioner of refugees shall give reasons for the order in writing and furnish a copy of it to the asylum seeker;

(g) If the asylum seeker is recognised as a refugee, he or she shall be informed accordingly and issued with documentation certifying his or her refugee status.
10. **Publication of findings and Decisions**
   (a) The findings, as well as the orders of the Commissioner of Refugees, the Refugee Committee and other authorities established under this Act shall be published by them periodically.
   (b) The Commissioner of Refugees and the Refugee Committee shall publish an annual report. The annual report and any other periodic or special reports related to their work shall be made public.

11. **Appellate Procedure**
    The Refugee Committee shall receive and consider appeals made by asylum seekers against the decision of the Commissioner of Refugees. The Committee may also consider applications for refugee status *suo mto*.

12. **Persons who shall cease to be refugees**
    A person shall cease to be a refugee for the purpose of this Act if:
    (a) he or she voluntarily re-avails himself or herself of the protection of the country of his or her origin; or
    (b) he or she has become a citizen of India; or
    (c) he or she has acquired the nationality of some other country and enjoys the protection of that country; or
    (d) he or she has voluntarily re-established himself or herself in the country which he or she left, or outside which he or she remained owing to fear of persecution; or
    (e) he or she can no longer, because the circumstances in connection with which he or she was recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

13. **Rights and Duties of Refugees**
    (a) Every refugee so long as he or she remains within India, shall have the right to:
    1. fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion;
    2. receive the same treatment as is generally accorded under the Constitution or any other laws and privileges as may be granted.
    3. be provided a means to seek a livelihood for himself or herself, and for those dependent on them;
    4. be given special consideration to ensure their protection and material well being in the case of refugee women and children;
    5. choose his or her place of residence and move freely within the territory of India, subject to any regulations applicable to refugees generally in the same circumstances;
    6. be issued identity documents;
    7. be issued travel documents for the purpose of travel outside and back to the territory of India unless compelling reasons of national security or public order otherwise require;
    8. be given the right of access to education, health and other related services.
    b. Every refugee shall be bound by the laws and regulations of India.

14. **Situations of Mass Influx**
    (a) The Government may, in appropriate cases where there is large-scale influx of asylum seekers, issue an order permitting them to reside in India without requiring their individual status to be determined under Section 11 of this Act, until such time as the reasons for departure from the country of origin have ceased to exist, or the Government decides that their status should be determined on an individual basis under this Act;
APPENDIX-VII

(b) Asylum seekers who have been permitted to reside in India under this provision, may be subject to reasonable restrictions with respect to their location and movement but will otherwise be granted normally the same rights as refugees under this Act;

c) Women and children asylum seekers in mass influx shall have the right to be given special consideration as to their protection and material well being.

15. Refugees Unlawfully in India
The Government shall not impose penalties on refugees on account of their illegal entry, or presence who, coming directly from a place where their life or freedom was threatened in the sense provided in Article 3, enter or are present in India without authorisation. Provided they present themselves with immediate effect to the authorities and are able to show good cause for their illegal entry or presence.

16. Voluntary Repatriation
The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means, before the Commissioner of Refugees. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under condition of refugees and the need for it to be carried out under conditions of transparency and safety to the country of origin shall be respected.

17. Rules and Regulations
The Government may propose to Parliament, from time to time, rules and regulations, to give effect to the provisions of this Act.

18. Non-Obstinate Clause
The provisions of this Act shall have effect notwithstanding the provisions of any other laws.
APPENDIX-VIII

LEGISLATIONS PASSED DURING AND AFTER

1950

3. Immigrants (Expulsion from Assam) Act, 1950.
5. Evacuee interest (separation) Act, 1951.

LEGALISATIONS PASSED PRIOR TO 1950


A NUMBER OF AMENDING LEGISLATIONS WERE ALSO PASSED TO SOME OF THESE ENACTMENTS

Refugee definition* in India

Refugee means:

(a) A person (Land holder or a tenant or grantee of Land)
(b) Displaced from the territory now comprised in West Pakistan
(c) On account of civil disturbance or a fear of such disturbance(s)
(d) And now resident in the Indian Dominion or any state acceding thereto.

xlv
Who has since 1\textsuperscript{st} day of March 1947 abandoned or has been made to abandon his land in the said Territory (ies) on account of civil disturbance(s);

\textit{INTERCHANGEABLY USED TO INDICATE ‘DISPLACED PERSONS’ AS WELL AS EVACUEE PROPERTY.}

\textbf{Refugee Means\textsuperscript{**}}

A person domiciled or ordinarily resident in, or owning property in, or who carried on business within, the territories now comprised in the dominion of Pakistan, and who has, since the First Day of March, 1947, left or has been made to leave his place of residence or has abandoned or has been made to abandon his property or business in the said territories on account of civil disturbances or the fear of such disturbances or the partition of the country.

\textbf{Displaced Person\textsuperscript{***}}

Means any persons who, on account of the setting up of the dominion if India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of west Pakistan, has, after the 1\textsuperscript{st} Day of March, 1947, left or been displaced from, his place of residence in such area who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable of has been rendered unable to manage, supervise or control any immovable property belonging to him in west Pakistan, but does not include a banking company.

*This definition has been provided under section 2 of East Punjab Displaced Persons (Land Settlement) Act, 1945. But this definition is no more applicable.

**This definition is no more in existence.

***This definition is also out of use.