HUMAN RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW
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PRELUDE

Refugee law is international community’s single most effective mechanism of human rights protection. Refugee law is about establishing status of a ‘refugee’ and protecting that status with rights which accrue to the recognition of that status. Until the adoption of the 1951 Convention relating to the status of refugees, the protection of refugees was primarily based on specific agreements concluded in the frame work of the League of Nations. The groups of refugees protected under these agreements were of specific countries or regions of origin.\(^1\) Gradually, by the end of First World War, the persons displaced from their home states as refugees became a matter of general or international concern and their misfortune was taken to be a human problem. Subsequently the United Nations for the first time provide an international mechanism to legally recognise and provide protection to the refugees.\(^2\)

Concept of International Refugee Law

International refugee law is the outcome of one of the biggest political and human tragedies of the 20\(^{th}\) century, which displaced millions of people from their home land in throughout the world. International refugee law is not a law of the past but very much the response to the problems of the present. It is the part of public international law which deals with the legal aspects of international protection, seeking permanent solution for the problems of refugee by facilitating

their voluntary repatriation or their assimilation within new national communities.\(^3\)

Development of the refugee law has its foundation on the events taking place in the Western countries. It evolved as a reaction to the erection of immigration law walls in Europe, commencing in the later part of the 19\(^{th}\) century. Refugee law is not about facilitating migration. Its goal is to deliver safety for the duration of a serious risk, to ensure a life in dignity for refugee until and unless they can safely return to their homes.\(^4\)

So, the international refugee law should be understood as a system of human rights protection, by which the international community agrees to act as surrogate guarantor of the dignity of persons compelled to leave their own country.\(^5\) So the concept of refugee protection is itself inseparable from the notion of human rights. Thus the thrust of refugee law is to define and protect the rights of refugees.

The refugee law is based on the principle declared in the preamble of the United Nations charter which reaffirms "faith in fundamental human right, in the dignity and worth of the human person,...to promote social progress and better standards of life in larger freedom". The 1951 UN Convention relating to the status of refugees reflects this in its preamble by citing the Universal Declaration of Human Rights, 1948 as a source document.\(^6\) Apart from the international legal principles, there are some regional and domestic human rights instruments and mechanisms, customary law, state

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5. Ibid.
6. Supra n. 3 at xii.
judicial decisions, justice works, treaty law which can be employed to enhance the protection of refugees and asylum seekers.7

**Applicability of Refugee Law**

Main issue regarding refugees is the respect for their human rights. The global community has shown due concern for the refugee's rights which is evident from the fact that refugee law encompasses customary law, Peremptory norms, international legal instruments and regional legal instruments.8 As of now 175 countries are parties to these international legal instruments. Protection under refugee law is ordinarily available to those who have left their countries of origin.9

**Determination of Refugee Status**

Refugee status is defined in various international instruments relating to refugees. The early international instruments adopted between the two World Wars defined refugees by categories, according to their national or ethnic origin.10 The various instruments adopted after the Second World War contain general definitions of the term 'refugees'. Refugee status is also defined in regional instruments relating to refugee. Finally, a definition of refugee status is also contained in the constitution or in the ordinary legislation of a number of countries.11

But there is no single definition of refugee that is suitable to all. However, all refugees have common characteristics; they are uprooted, they are homeless and

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8. Human Rights Machinery has been established on a regional basis in Europe, Africa and Americas.
10. *Supra* n. 3 at 23.
they lack national protection and status. Therefore, 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.”

The early institutional definitions of refugee status included some of the key elements:

(a) being in a foreign country; and  
(b) not having the protection of a national;

But there was vagueness as to the exact reason for the flight which qualified a person for refugee status. Moreover, 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.

**Different Definitional Norms of Refugees**

There have been various attempts to produce a legal definition of refugee. Between two World Wars international instruments on refugee contained ad-hoc and generalized definitions of the term. During that period the refugees were identified by reference to a certain nationality. So it is clear that, the definition of refugee under the international refugee law is an outcome of the historical developments and political constraints, etc.

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12. The Refugee is perceived as a person who has been forced to leave their country or home, because there is a war or for political, religious or social reasons; Oxford Advanced Learner’s Dictionary (Sixth ed.) (2000), p. 1068.


International Instruments

(A) Refugee in international instruments between (1920-1950) or refugee in international instruments prior to 1951 convention on refugee status

The attention of international community has been focused on the need and protection of refugees since 1921, when the council of the League of Nations decided to appoint a High Commissioner for Russian Refugees on June 27, 1921. The duty of the High Commissioner was to co-ordinate the assistance given to those refugees by various countries. The mandate of the high commissioner had included the following tasks:

(i) To define the legal status of refugees;

(ii) To organize their repatriation or their allocation to the various countries;

(iii) To undertake relief work amongst them with the aid of philanthropic societies.

The mandate of the high commissioner was extended to Armenian refugees in 1924 and to Assyrian, Assyro-Chaldean and Turkish refugees in 1928.

The first international instrument to deal with the legal status of these refugees was signed in Geneva on June 30, 1928. This agreement was supplanted by the regular

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15. After World War I almost two million persons were stranded in and around Russia as a result of the Bolshevik Army Movements and the Russian Famine in 1921 as quoted in T.N. Giri, Refugee problems in Asia and Africa: Role of the UNHCR, 2003, p. 28.
16. Dr. Nansen Fridtjof was appointed High Commissioner on 20 August, 1921.
18. Ibid. also see Supra n. 3 at p. 25 – 26.
19. This agreement was worded in the form of resolutions recommending that the states accepting it, adopt certain measures for the protection of the Russian and Armenian refugee. As cited in Manik Chakrabarty, Human Rights and Refugees: Problems, law and practices, 2001 p. 26.
convention relating to the international status of refugees signed at Geneva on October 28, 1933.20

(a) According to the 1933 Convention

"Refugees shall be assured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions of industry and commerce, and in regard to the movement of persons, admission to schools and universities".21

Group or category approach was adopted to define refugees in 1936 also in arrangements in respect of people fleeing from Germany. However, in 1936, when the provisional agreement concerning the status of refugees coming from Germany was adopted, it followed as "the term refugee covered all persons coming from Germany".22 The same was later incorporated in 1938 convention, but with minor fundamental changes.23

(b) According to the 1938 Convention, the term "Refugees" covers

(i) Person possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy in law or fact, the protection of German government 24 and

(ii) Stateless persons not covered by previous Conventions or agreements who have left German territory after being established therein and who are proved as not having

20. Supra n. 3 at 26.
22. Supra n. 20.
enjoyed in law or fact the protection of the German government.25

However, "persons who left Germany for reasons of purely personal convenience were excluded from the definition of the convention".

(B) "Refugee" defined in Convention relating to the Status of Refugees, 195126

The 1951 convention relating to the status of refugee is now over 50 years old. Still the convention is very much a living document which, maintain its relevance in respect of providing a normative framework to address contemporary refugee problems.

The 1951 convention for the first time, offered a general definition of refugee, and by the 1967 protocol, extended its protection to such persons irrespective of nationality or geographical location. As concerns the human rights focus of the 1951 refugee convention, it is noteworthy that the direct line of descent from the UN charter and Universal Declaration of Human Right is stated in its preamble. The Convention affirms "the principle that human beings shall enjoy fundamental rights and freedom without discrimination".27 In this context, refugee law is essentially human rights based.

25. Article 1 (2) of the 1938 Convention, 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.


The definition of the term 'refugee' has been set out in article 1 of the Convention relating to the status of refugee, of July 28, 1951.

According to Article 1-A the term 'Refugee' Applies to any person who:

(i) Has been considered a refugee under the arrangements of 12 May 1926 and 30 June 1928 or under conventions of 28 October 1933 and 10 February 1938, the protocol of 14 September of 1939 or the Constitution of International Refugee Organization.

(ii) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.28

"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.29

However, events occurring before January 1, 1951 in Article 1, Section A, shall be understood to mean either:

28. Convention Relating to the Status of Refugees, 1951, Article 1 A (i) and 1 A (ii).
29. Ibid.
(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 the convention.  

The above article 1-A of the 1951 Convention covers two groups of persons who are considered as refugees for the purpose of its application:

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 International Refugee Organization. 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.  

(C) Refugee defined in the 1967 Protocol on the Convention relating to Status of Refugee  

The concept of a refugee was expanded by the convention's 1967 protocol. This protocol extends the protection of the 1951 Convention to the persons who have become refugees as a result of events that took place after 1

30. *Id.*, Article 1-B (I) (a) (b).
31. *Supra* n. 3 at 29-30.
January 1951. Protocol relating to the status of refugee 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.  

According to 1967 Protocol, the term 'refugee' shall 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 1 A (2) were omitted.

Thus, according to 1967 Protocol, the definition of refugee modified from "as a result of such events occurring before 1 January 1951" to "as a result of such events".

The present Protocol shall be applied by the state parties here to without any geographical and time limitation, save the existing declaration made by states already parties to the Convention in accordance with Article 1 (B) (1) (a) of the Convention, shall, unless extended under article 1 (B) (2) thereof, apply also under the present protocol.

Article 1 of the 1967 Protocol defined a refugee as a 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 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".

33. Supra n. 3 at 30.
35. Id., Article 1 (3).
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 definition in the convention irrespective of the definition of 1 January 1951”.\textsuperscript{36}

However, there was no review conducted of the substantive content of the definition. When after the elimination of temporal and geographical limitations, only persons whose migration is prompted by a fear of persecution on the ground of civil and political status come within the scope of the convention based protection system. This means that most third world refugees remain defacto excluded as their flight is more often prompted of natural disasters, wars or broadly based political and economic turmoil than by ‘persecution’.

Refugees whose flight is not motivated by persecution rooted in civil or political status are excluded from the rights regime established by the convention.

Regional Instruments

The two principal international instruments relating to refugee law sets out the rights of refugees and the standard for their treatment in the countries that receive them. But the absence of any effective international agency for the protection of refugees in different regions worldwide required the need for the existence of regional arrangements for refugee protection.

Thus some regional groups have enacted standards of refugee protection that extend the Convention definition of refugee to meet the peculiar regional conditions. They were

\textsuperscript{36} Supra n. 3 at 30-31.
mainly Organization of African Unity (OAU)\textsuperscript{37}, Organization of American states (OAS)\textsuperscript{38}, Council of Europe (COE)\textsuperscript{39} and Principles concerning Treatment of Refugees (The 1966 Bangkok principles).\textsuperscript{40}

**Definition of Refugees Status by the Organization of African Unity: (OAU)\textsuperscript{41}**

The first regional arrangement was established by the Organization of African Unity (OAU) in 1969. In addition to respecting the UN convention definition of refugee, state parties to the OAU Convention governing the specific aspects of refugee problems of Africa broke new ground by extending


\textsuperscript{38} In 1980, the outbreak of Civil Strife in Central America resulted in massive exoduses of million people to neighbouring countries in search of protection and assistance. Responding to the demands created by this unprecedented situation, the countries concerned initiated a process of identification and implementation of humanitarian measures for the protection and assistance of the refugees. This was resulted in form of Cartagena Declaration on Refugees, in November 1984, which contains a set of Principles and Criteria for the protection of and assistance to refugee as cited in Manik Chakraborty, *Human Rights and Refugees: Problems, Laws and Practices*, 2001, p. 34.

\textsuperscript{39} 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, or who are unable or unwilling for other valid reasons to return to their countries of origin; as cited in T.N. Giri, *Refugee Problems in Asia and Africa: Role of UNHCR*, 2003, p. 28.

\textsuperscript{40} In March, 1964, The Government of the Arab Republic of Egypt by a reference made to the Asian-African Legal Consultative Committee (AALCC) under a mandatory provision of its statutes requested it to consider the question of status and treatment of refugees and make its recommendations thereon. The immediate objective behind that reference was primarily to be advised on the appropriate standard of treatment for a large number of Palestinian refugees who had sought and been given asylum on Egyptian soil. The issues before the committee were however broadened to those in Asia and Africa, at the initiative of the United Nations High Commissioner for Refugees which had led to the adoption of a set of recommendation known as the “Bangkok Principles” in August 1966. As cited in B.Sen, “Protection of Refugees: Bangkok Principles and after”, *Journal of the Indian Law Institute*, Vol. 34, No. 2, 1992, p. 187.

protection to all persons compelled to flee across national borders by reason of any manmade disaster whether or not they can be said to fear persecution.\(^42\)

The 1969 OAU convention, defines a refugees as one 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".\(^43\)

The most important aspect of the OAU Convention is its two-fold definition of a 'refugee':\(^44\)

(a) It incorporates the same definition as in the 1951 convention without the dateline and without the possibility of geographical limitation.

(b) At the same time it includes explicitly persons who are victims of manmade disaster like international armed conflicts or civil wars etc.

The relevance of the OAU definition to conditions in the developing world had made it the most influential conceptual standards of refugee status apart from the UN Convention definition itself.

**Definition of Refugee Status by the Principles Concerning Treatment of Refugees (the 1966 Bangkok principles)**\(^45\)

In the definition of the term 'refugee' given in article 1 of the 1966 principles concerning treatment of refugees adopted

\(^{42}\) *Supra* n.1 at 26.

\(^{43}\) Organization of African Unity, Convention 1969 Article 1 (2).

\(^{44}\) *Supra* n.3 at 32.

\(^{45}\) The Principle Concerning Treatment of Refugees as adopted by the Asian-African Legal Consultative Committee at its Eighth Session Bangkok 1966 from 8 to 17 August 1966.
by the Asian-African legal Consultative Committee, the term 'refugee is applied 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 him of its protection”. 46

Two explanations attached to this article state that:

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

(ii) The expression ‘leaves’ includes voluntary as well as involuntary leaving.47

Definition of Refugee Status by the Organisation of American States (OAS)48

The most recent regional extension of the refugee definition is derived from the Cartagena Declaration, adopted by ten Latin American States in 1984. In recognition of the inadequacy of the UN convention definition to embrace the many involuntary migrants from generalized violence and oppression in Central America, the state representatives agreed to refugee definition that is similar to that enacted by the Organization of African Unity.49

47. Ibid.
49. Supra n.1 at. 27.
The Cartagena Declaration extends the notion 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.

The Cartagena Declaration of 1984 defined refugees as those “who have fled their country; because their lives, safety or liberty have been threatened by generalized violence foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order”.50

The definition was approved by the 1985 General Assembly of the Organization of American States, which resolved to urge member states to extend support and in so far as possible, to implement the conclusions and recommendations of the Cartagena Declaration on refugees.51 Although the Cartagena Declaration is not a legally binding instrument of states, it is never the less of fundamental importance as it reflects consensus on particular principles and criteria and has guided states in their treatment of refugees.

Definition of Refugee Status by the Council of Europe (COE)52

The Council of Europe has also introduced standards of refugee protection that go beyond the UN Convention definition, although the changes are significantly more modest than those of the OAU or OAS. In the Parliamentary Assembly’s Recommendation 773 in 1976, the Council of

50. Cartagena Declaration of Refugees, Part III (3).
51. Supra n.1 at 27.
52. In 1948, the ‘Congress of Europe”, called for the creation of United Europe including a European Assembly. This proposal was the origin of the Council of Europe, which has 24 member states as cited in Manorama Year Book 2003, P. 373.
Europe expressed its concern in regard to the situation of "defacto refugees", that is,

"Person 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".\textsuperscript{53}

Till date, this recommendation has been only partially implemented. Overall, it can be said that the Council of Europe has acknowledged the legitimacy of the claim for protection of an expanded class of refugees, but has not moved to formalize their status or rights:\textsuperscript{54}

The Council of Europe adopted several instruments concerning refugees. Some of the most important are:\textsuperscript{55}

(a) European Agreement on the Abolition of Visas for refugees (1959);
(b) Resolution 14 (1967) on asylum to persons in danger of persecution;
(c) European agreement on transfer of responsibility for refugees (1980);
(d) Recommendation on the harmonization of national procedures relating to asylum (1981);
(e) Recommendation on the protection of persons satisfying the criteria in the Geneva Convention who are not formally refugees (1984); and

\textsuperscript{53} Supra n.1 at 28 also sees Supra n. 21.
\textsuperscript{54} Ibid.
\textsuperscript{55} Supra n.3 at 33.
International Agency

Apart from the international instrument and regional arrangements, the refugee is also defined by the international agencies to look after the issues of refugees' protection, thus ensuring treatment of refugees in accordance with recognized international standards. These international agencies have enacted standards of refugee protection to meet the peculiar conditions they are facing. They were mainly International Refugee Organization (IRO) and United Nations High Commissions for Refugees (UNHCR).

Refugee defined in International Refugee Organization (IRO)

In 1946, the Constitution of International Refugee Organization (IRO) defined refugee by specific categories also provided the element of more general definition in the classification of valid objection to repatriation. The actual 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".

The Constitution of the IRO covers the cases of refugees of Second World War and post Second World War periods. It includes following persons:

(i) All those persons who have been considered as refugees under the Constitution of International Refugee Organization.

56. Supra n.1 at 36
(ii) Victims of Nazi or Fascist regimes, whether enjoying international status as refugees or not.

(iii) Saar refugees, i.e. "all person who, having previously had the status of inhabitants of the Saar, have left the territory on the occasion of the plebiscite and are not in possession of national passports".\textsuperscript{58}

For the first time, the international community made refugee eligibility depends on the individual rather on the group and accepted the individual's right to flee from political persecution and to choose where he wanted to live.

Refugee defined within the Mandate of the United Nations High Commissioner for Refugees (UNHCR)\textsuperscript{59}

United Nations high commissioner for refugees is the principles UN agency mandated to provide assistance and international protection to refugees and other persons of concern, and to find solutions to their plight. Traditionally, these solutions have taken the form of asylum, resettlements and voluntary repatriation. UNHCR's statute includes a very similar definition of "refugee" as the 1951 convention. However, over time, UNHCR's mandate has been expanded by the UN General Assembly and Economic and Social Council to cover other groups in "refugee like" situations that normally would not fall within the office's competence (including some internally displaced persons).\textsuperscript{60}

Article 1: of the statute provide that: The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of

\textsuperscript{58} Supra n.17 at 341.
\textsuperscript{59} In Resolution 319 (IV) of 3 December 1949, the United Nations General Assembly decided to establish a High Commissioner's Office for Refugees as of 1 January, 1951.
providing international protection. Under the auspices of the United Nations, to refugee 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.

**Article 6-A:** of the statute of UNHCR lays down that the competence of the high commissioner shall extend to:

(i) Any person who has been considered a refugee under the arrangements of May 12, 1926 and of June 30, 1928 or under the Conventions of October 28, 1933 and February 10, 1938, the Protocol of September 14, 1939 or the Constitution of the International Refugee Organization.61

(ii) Any person who, as a result of events occurring before January 1, 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.62

Further Article 6-B of the statute lay down as under:

62. *Id.*, Article 1 A (ii).
Article 6-B: of the statute of UNHCR lays down that:

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 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.

This description is of universal application, containing neither temporal nor geographical limitations.

Refugees in Municipal Laws

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 humanitarian for a large number of countries. In some cases, the principles of asylum for refugees are expressly acknowledged in the constitution. For example, the definition of refugee in the 1951 Convention and Protocol has been incorporate into the domestic laws of Denmark, France, Germany, Norway and Sweden. The United States and the United Kingdom have based parts of their immigration laws on these instruments.

In Asia, there has so far been no such regional initiative, nor virtually any appropriate domestic legislation, except of course that imposing restrictions on unwanted new arrivals.

63. Supra n.3 at 35.
64. Ibid.
Eligibility/criteria for the Determination of the Refugee Status

The fair procedure of refugee determination is one of essential requirements of refugee protection. The aim of determination of refugee status is to distinguish genuine refugees from alien migrants, economic migrants and fugitives from justice and also to confer on them essential social, cultural and economic rights as well as protection in the asylum state.65

Two factors which led to man's status as a refugee are; 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 frame work 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.66

Determination of Refugee Status in International Instruments Prior to 1951 Convention

The international instruments concerning refugees, until the Convention on the Status of Refugees, 1951, authorizing certain officials or committees to certify the refugee status of eligible person. Thus, under the arrangement relating to the legal status of Russian and Armenian refugees of June 30, 1928 and the arrangement concerning the functions of the representative of the League of Nations High Commissioner for Refugees of June 30, 1928, the representatives of the

66. Supra n. 3 at 37.
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 in the various states.\textsuperscript{67}

Further the magnitude of the refugee problem in the early post-war period promoted 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 Organization (IRO) contained a provision for determining the eligibility of refugees in annex 1 and provided for the creation of "some special system of semi-judicial machinery".\textsuperscript{68}

**Determination of Refugee Status in the Statute of United Nations High Commissioner for Refugees (UNHCR)**

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 used only when the document is needed for a specific purpose.\textsuperscript{69}

It is relevant to mention that the determination of refugee status is generally considered to be declaratory rather than constitutive in its effect.\textsuperscript{70} A person becomes eligible for the application of the UNHCR statute, by meeting the

\textsuperscript{67} Supra n. 3 at 38.
\textsuperscript{68} Ibid.
\textsuperscript{69} Ibid
\textsuperscript{70} That is, the decision is regarded as merely formal recognition of the fact that the person in question satisfies the criteria required for refugee status, and not as itself conferring the status.
requirements of paragraph 6 and 7 of the statute, that is to say, when he flees his home country, or declares himself a refugee sur-place,\textsuperscript{71} or cease to be subject to a suspension clause.\textsuperscript{72} According to UNHCR's view the origin of the persecution should not be deserves international protection because it is not available in the country of origin.\textsuperscript{73}


The Refugee Convention of 1951 considers a person refugee, who satisfies the criteria laid down in Article 1, but Convention does not contain any provision as to how eligibility is to be determined in any contracting state but leaves the matter with the asylum state. They may establish such procedures for the purpose as they deem fit, subject to the provisions of Article 31 (2).\textsuperscript{74} The different states have adopted different eligibility procedure.\textsuperscript{75}

In order to determine who is a refugee, the criteria is based on the establishment of well founded fear of 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.\textsuperscript{76} The important criterion in the definition is that a person claiming refugee status should be outside the country of his origin.

\begin{itemize}
\item \textsuperscript{71} A person who was not a refugee when he left his country, but becomes a refugees at a later date, is called a refugee "Sur place"
\item \textsuperscript{72} Supra n.3 at 39.
\item \textsuperscript{73} UNHCR—Protecting Refugees: Questions and Answers. \url{http://www.unhcr.org}. visited on 01.12.2007.
\item \textsuperscript{74} R.C. Chhangani, "Determination of Refugee Status in Nigeria", \textit{Indian Journal of International Law}, Vol. 26, No. 3 & 4, (1986), P. 46 also see Supra n. 3 at 39.
\item \textsuperscript{75} For example; some countries have adopted ad-hoc, or purely administrative procedure, while other has either opted for judicial (Courts of Law) or special tribunals etc.
\item \textsuperscript{76} Parmod Mishra, \textit{Human Rights in South Asia}, 2000, P. 85,
\end{itemize}
owing to well-founded fear of being persecuted for certain specified reasons.\textsuperscript{77}

Thus threat to life or freedom on account of race, religion, nationality, and sex, membership of a particular social group or political opinion is amount to be persecution, other serious violations of human rights is also amount to be persecution. The fear of persecution and lack of protection remain the two main factors for determining the criteria for refugee status. Whatever may be the system of determination procedure, but the main aim is to distinguish between refugee and alien migrants, so that no genuine refugee is refouled to the country of persecution and the rightful claimant is recognized as a refugee according to the laws of the country concerned.

**Termination of Refugee Status**

A refugee cease to be a refugee under certain conditions provided under the 1951 convention.

**Persons who cease to be Refugee\textsuperscript{78}**

Following persons cease to be a refugee, if;

(i) He has voluntarily re-availed himself of the protection of the country of his nationality\textsuperscript{79}; or

(ii) He has voluntarily re-acquired the nationality which was previously lost by him;\textsuperscript{80} or

(iii) He has acquired a new nationality, and enjoy the protection of the country of his new nationality;\textsuperscript{81} or

\textsuperscript{77} Supra n. 3 at 39.

\textsuperscript{78} 1951 Convention of Refugee Status, Article 1 C.

\textsuperscript{79} Id., Article 1 C (1)

\textsuperscript{80} Id., Article 1 C (2)

\textsuperscript{81} Id., Article 1 C (3)
(iv) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;\textsuperscript{82} or

(v) The circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, and he can no longer continue to refuse the protection of the country of his or her nationality. However, if there is compelling reasons arising out of previous persecution, he can refuse to avail himself of the protection of the country of nationality;\textsuperscript{83} or

(vi) He is able to return to the country of his former habitual residence after the circumstances in connection with which he has been recognized as a refugee have ceases to exist. However, if there is compelling reasons arising out of previous persecution, he can refuse to return to the country of his former habitual residence.\textsuperscript{84}

**Exclusion from Refugee Status**

The 1951 Convention, in section D, E and F of Article 1, contain provisions whereby persons otherwise having the characteristics of refugee, as defined in Article 1, Section A, are excluded from refugee status. Such persons fall into there groups

(i) **Persons receiving Protection from Organs of United Nations**\textsuperscript{85}

Persons who are receiving protection or assistance from organs or agencies of the United Nations other than United Nations High Commissioner for Refugees shall not be entitled

\textsuperscript{82} Id., Article 1 C (4)
\textsuperscript{83} Id., Article 1 C (5)
\textsuperscript{84} Id., Article 1 C (6)
\textsuperscript{85} Id., Article 1 D
to the benefit under the Convention relating to the status of refugee.

When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled, these persons shall ipso facto be entitled to the benefits of this convention.

(ii) Persons having Rights and Obligations Similar to the Nationals86

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, shall not be entitled to the benefit under this convention.

(iii) Persons Guilty of Serious Crimes87

No person shall be entitled to the benefit under this convention, if:

(a) He has committed a crime against peace, a war crime, or a crime against humanity;

(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.

An analysis of the international refugee law regime shows that, it recognizes a very broad concept of human rights to refugees. There is no doubt that the various treaties and instruments on refugees have made a modest contribution to the improvement of the position of individual

86. Id., Article 1 E
87. Id., Article 1 F
in international law vis-a-vis his state. Human rights treaties are therefore effective tools to use in the international protection of refugees, particularly, the definition of 'refugee' given in the convention and its 1967 protocol removed limitation to some extent and now the definition of refugee applies to in wider sense. In addition, the regional arrangements have also enacted standards of refugee protection that extend to Convention definition. Thus, refugee law is concerned with both in protecting the rights of refugees and solving refugee problem.

Enhancing Protection to Refugees under International Human Rights Law

Refugee problem is a global problem. Main issue regarding refugees is the respect for their human rights. There are a number of universal regional and domestic human rights instruments and mechanisms which have make a significant contribution to enhance the protection for refugees and asylum seekers. The idea of establishing a system of human rights law at the international level for refugee protection is a more recent development and has taken shape through the United Nations itself. The United Nations charter proclaims as one of the purposes and principles of the UN is “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

Since the adoption of the United Nations Charter in 1945, many international laws and treaties on refugee’s human right, were developed, the United Nations has helped to set a common standards for helping the persecuted people world- wide. The Conventions, or international treaties, that the United Nations has adopted are legally binding on all the

88. Supra n. 27 at 11
signatory nations. Beside these treaties and convention even under different regional arrangements rights of refugees are protected.

The International Refugee Protection Regime and Rights of Refugees under International Human Rights Law

The concept of refugee protection is inseparable from the notion of human rights. In other words, we can say that the contemporary refugee law evolved out of human rights law and considered to be a part of international humanitarian law. The international legal regime for the protection of refugees, whose basis is provided by the 1951 Convention relating to the Status of Refugee and the 1967 Protocol, attempts to guarantee against violations or, at any rate, these conventions prescribe duties and obligations which are incumbent upon states in their treatment of asylum-seekers and refugees.89

Approximately two-third of the world's countries are state parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Despite, some arguments, concerns as to whether these international instruments are sufficiently up-to-date to take account of today's refugee problems, they remain the principle body of international law for the protection of refugees. Furthermore, the refugee definition and a number of the rights provisions contained in these international instruments have been widely incorporate in to regional instruments and domestic legislation.90

The formal instruments on refugees are three:

(i) The Convention relating to the status of refugees, 1951;
(ii) Protocol relating to the status of refugees, 1967; and

89. Supra n. 3 at 105
90. Supra n. 27 at .5.

Indeed, the principal legal instrument concerning refugees is the Convention relating to the status of Refugees of 1951, which has been described as charter of the *magna carta*—the great *Charter of refugees*.

As the sources of refugee rights are customary international law, regional and universal treaty law or the domestic legislations including refugee legislations, whatever may be the sources of refugee rights, they are essential for human survival, and dignity. The different conventions and treaties that deal with the human rights of refugees are as below:

**Refugee’s Human Rights under Universal Instruments**

(i) *Universal Declaration of Human Rights*

Fifty nine years ago the United Nations General Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. This represented the first international recognition, that human rights and fundamental freedoms are applicable to every person, everywhere. Today, it continues to affect people’s lives and inspire human rights activism and legislation all over the world.

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91. *Supra n. 3 at 106.*
92. In general, refugees in every country enjoy certain fundamental human rights and freedoms for their survival, dignity and integrity. e.g.: Right to life, Dignity of human person, personal liberty, fair hearing, freedom of expression, right to peaceful assembly and association etc.
CHAPTER - III

Under the Universal Declaration of Human Rights, 1948:

(i) Everyone has the right to freedom of movement and residence within the borders of each state. 94

(ii) Everyone has the right to leave any country, including his own, and to return to his country. 95

(iii) Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of persecution genuinely arising from non-political crimes or from acts country to the purposes of Principles of the United Nations. 96

(iv) Everyone has the right to a nationality. 97

(v) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. 98

A few of the rights recognized in the Universal declaration of Human Rights (UDHR) are further recognized in the 1951 Convention, 1967 Protocol and in many regional arrangements. So the Universal Declaration of Human Rights itself was the first international instrument, which stated basic human rights which are essential to live with dignity and respect to every human being, anywhere in the world. The United Nations has shown the concern for the protection of human rights of the refugees who are without national protection.

Making a person 'refugee' would seriously affect his birth rights to

• Life, liberty and security of the person; 99

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95. Id., Article 13(2).
96. Id., Article 14(1) (2).
97. Id., Article 15(1).
98. Id., Article 15(2).
CHAPTER - III

- Freedom of opinion and expression;\textsuperscript{100}
- Equality before law without any discrimination;\textsuperscript{101}
- Right to marry and found a family;\textsuperscript{102}
- Freedom of peaceful assembly and association;\textsuperscript{103}
- Right to education;\textsuperscript{104}
- Right to take part in government and equal access to public service;\textsuperscript{105}
- Right to work and to free choice of employment;\textsuperscript{106}
- Right to own property and not be arbitrarily deprived it;\textsuperscript{107}
- Right to social security;\textsuperscript{108}
- Right to live with human dignity;\textsuperscript{109}
- Freedom of religion;\textsuperscript{110}
- Right to remedies for the enforcement of human right\textsuperscript{111} and so forth;

The Universal Declaration is not a treaty. As a resolution of the General Assembly it is not open to UN member states to sign it or to agree to become legally bound to its provisions as such. However, its provisions were further

\textsuperscript{99} Id., Article 3.
\textsuperscript{100} Id., Article 19.
\textsuperscript{101} Id., Article 7.
\textsuperscript{102} Id., Article 16.
\textsuperscript{103} Id., Article 20.
\textsuperscript{104} Id., Article 26.
\textsuperscript{105} Id., Article 21.
\textsuperscript{106} Id., Article 23.
\textsuperscript{107} Id., Article 17.
\textsuperscript{108} Id., Article 22.
\textsuperscript{109} Id., Article 1.
\textsuperscript{110} Id., Article 18.
\textsuperscript{111} Id., Article 8.
elaborated in treaties which would create binding legal obligations for state party to them.\textsuperscript{112}

The country that turns its own citizens into refugee is in violation of all the articles of the Universal Declaration of Human Rights.

(ii) 1951 Convention relating to the Status of Refugees and its 1967 Protocol\textsuperscript{113}

Once a person has been recognized as a refugee under the provisions of Convention, he is entitled to residence and a number of human rights without discrimination. The rights enjoyed by refugees under this convention cover wide and diverse areas, such as religious, economic, social, educational, cultural, fiscal and civil rights etc. The 1951 Convention and the 1967 Protocol constitute the most important codification efforts of the rights of refugees. These ensure the refugees certain fundamental rights laid down in the 1948, Universal Declaration of Human Rights.\textsuperscript{114}

So the Convention is a comprehensive charter of the rights which signatory countries (states) agree to confer upon refugees, subject to exceptions relate to each country’s particular requirements. The Convention has a clear nexus with the basic concept of human rights.

The 1951 convention provides the following rights to refugees:

(i) The Preamble to the 1951 Convention refers specifically to the UN charter and the Universal

\textsuperscript{112} "Refugee Laws and UNHCR", 4F. 1, Indian Institute of Human Rights, New Delhi, 2000, p. 17.


Declaration of Human Rights as having affirmed the principles that human beings shall enjoy fundamental rights and freedom without discrimination.\textsuperscript{115}

(ii) Before specifying the rights of refugees the Convention puts them under a duty to the country in which they find themselves to conform to its laws and regulations as well as to measures taken for the maintenance of public order.\textsuperscript{116}

(iii) The Convention requires the application of its provisions to refugees without discrimination on the basis of race, religion or country of origin.\textsuperscript{117}

(iv) The refugees are to be accorded a treatment, at least as favourable as is accorded to the nationals. They are even given the freedom of religion and right to impart religious education to children.\textsuperscript{118}

(v) The Convention provides for the protection of refugees right not only under its own provisions but also those available under any other law or policy.\textsuperscript{119}

(vi) After a period of three years residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the contracting states.\textsuperscript{120}

(vii) Whenever exceptional measures are allowed against the property or interest of the nationals of a foreign state, the contracting state shall not apply such measures to a refugee who is formally a national of the said state solely on account of such nationality, except

\textsuperscript{115} Preamble, The 1951 Convention on the Status of Refugees.
\textsuperscript{116} Id., Article 2.
\textsuperscript{117} Id., Article 3.
\textsuperscript{118} Id., Article 4.
\textsuperscript{119} Id., Article 5.
\textsuperscript{120} Id., Article 7.
in time of war or other grave and exceptional circumstances where national security so demand.\textsuperscript{121}

(viii) In the case of refugees regularly serving as crew members on board, a ship flying the flag of a contracting state, the 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 facilitate their establishment in another country.\textsuperscript{122}

(ix) The Convention permits the determination of the personal status of a refugee by law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.\textsuperscript{123}

(x) The Convention recognizes the rights of acquisition of moveable and immovable property through different modes, at least equivalent to the rights accorded to aliens in the same circumstances.\textsuperscript{124}

(xi) The Convention guarantees the same protection of industrial property such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific work, of refugees in the country of habitual residence as is accorded by that country to its own national.\textsuperscript{125}

\textsuperscript{121} \textit{Id.}, Article 8 and Article 9.
\textsuperscript{122} \textit{Id.}, Article 11.
\textsuperscript{123} \textit{Id.}, Article 12 (1).
\textsuperscript{124} \textit{Id.}, Article 13.
\textsuperscript{125} \textit{Id.}, Article 14.
(xii) A refugee shall have regarding association with non-political and non-profit making associations and trade unions. 126

(xiii) A refugee shall have right to free access to courts and to legal assistance. 127

(xiv) Right to 'wage-earning employment' and 'self-employment': Restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applicable to a refugee who was already exempt from them before the enforcement of the Convention or who has completed three year's residence in the country or has a spouse possessing the nationality of the country of residence or has one or more children possessing such nationality. 128

(xv) Those refugees who are holding recognized degree and who are desirous of practicing a liberal profession are entitled to get from the contracting state a favourable treatment and the state shall use their best endeavors consistent with their laws and constitution to secure the settlement of such refugees. 129

(xvi) Rationing facilities. 130

(xvii) Education, recognition of degree and qualifications. 131

(xviii) Public relief. 132

(xix) In the matters of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions

126. Id., Article 15.
127. Id., Article 16.
128. Id., Article 17.
129. Id., Article 19.
130. Id., Article 20.
131. Id., Article 22.
132. Id., Article 23.
on homework, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining, right to compensation for the death of a refugee resulting from employment injury or from occupational disease, the refugees are to be treated by a contracting state in the same manner as it treats its own nationals. Almost equal benefits are enjoyable under the social security legislation.\textsuperscript{133}

(xx) The contracting states are required by the convention to grant assistance to refugee in regard to their access to foreign countries to whom they cannot have recourse for matters like delivery of documents or certificates by their own authorities or by an international authority for service charges commensurate with those charged to nationals for similar services.\textsuperscript{134}

(xxi) Freedom of movement.\textsuperscript{135}

(xxii) A refugee who does not possess a valid travel document is also to be issued identify papers and refugees who are lawfully staying in a contracting state, should be issued travel documents for the purpose of travel outside their territory unless found to be improper under compelling reasons of national security or public order.\textsuperscript{136}

(xxiii) Fiscal charges.\textsuperscript{137}

\textsuperscript{133} Id., Article 24.
\textsuperscript{134} Id., Article 25.
\textsuperscript{135} Id., Article 26.
\textsuperscript{136} Id., Article 27 and Article 28.
\textsuperscript{137} Id., Article 29.
(xxiv) The conformity with its laws and regulations, a contracting state shall, permit refugees the transfer of assets to their places of settlement.  

(xxv) No penalties are to be imposed on refugees entering a contracting state illegally provided they present themselves, without delay, to the authorities and show good cause for their illegal entry or presence.  

(xxvi) The contracting states shall not expel a refugee lawful in their territory save on grounds of national security or public order. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law.  

(xxvii) The Convention contains clear provisions about the prohibition of expulsion or return (refoulment) directing the contracting states not to expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion except for one who is a threat to its national security or has been convicted for a serious crime and constitutes a danger to the community of that country.  

(xxviii) None the less the contracting parties are required by the Convention, as far as possible, to facilitate the assimilation and naturalization of the refugees. If repatriation is not possible, then the final aim of
protection to refugees lies in their assimilation and naturalization by granting nationality.\textsuperscript{142}

The convention itself provides that the contracting parties may make reservation on any of these provisions except article 3, 4, 16, (1) and 33. Thus, it is not obligatory on the receiving states to accord all these rights to refugees, except those specifically protected under the convention. A brief review of the above-stated provisions reveals that the Convention is an extra ordinarily "bill of rights" for refugees.

The Convention's refugee concept has been expanded in practice through the 1967 Protocol relating to the status of the refugee which extended its protection to such person irrespective of nationality or geographical location, provided an International Bill of Rights, containing detailed provisions on the minimum standards of treatment of refugees. Thus the Convention of 1951 and the Protocol of 1967 provide a legal basis for states for the treatment of refugees on their territories and for non-state parties; they serve as the international standard.

(iii) International Covenant on Civil and Political Rights, 1966\textsuperscript{143} and International Covenant on Economic, Social and Cultural Rights, 1966\textsuperscript{144}

Beside the Universal Declaration of Human Rights, 1948 and Convention on the status of refugees, 1951 and its 1967 Protocol, the international human rights treaties like international covenant on civil and political rights 1966;

\textsuperscript{142} Id., Article 34.
international covenant on economic, social and cultural rights 1966, are very useful for ensuring minimum human rights to refugee. Although the 1951 Convention provides an impressive array of rights, international human rights instruments ICCPR and ICECSR may provide even broader legal protection\(^{145}\) than the refugee instruments.\(^{146}\) Both of these instruments recognise a variety of basic human rights to refugees.

(a) Rights of Refugees under the International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political rights deals with various human rights and fundamental freedoms. These rights are derived from the inherent dignity of human person. These are inalienable rights of all members of the human family and as such, are the foundation of freedom, justice and peace in the world.\(^{147}\) The covenant define in precise manner the permissible limitations or restrictions on the exercise of those rights and freedoms, and provide measures designed to ensure their implementation.

The basic human rights provided by the covenant are:

(i) The prohibition of discrimination is of crucial importance to refugee. In the International Covenant on Civil and Political rights the general rule is that each one of the rights of the covenant must be granted without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of

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145. For example: In relation to housing rights and social security the 1951 convention of Refugee status guarantees equality of treatment of refugees with other non-nationals. While the relevant international human rights instruments provides such guarantees equally to all persons without restrictions.
146. Supra n. 27 at 7.
147. Supra n. 17 at 55.
non-discrimination in respect of the rights guaranteed in the covenant.\textsuperscript{148}

(ii) International covenant on civil and political rights includes freedom from arbitrary deprivation of life, protection against torture or to cruel, inhuman or degrading treatment or punishment.\textsuperscript{149}

(iii) Rights to freedom from slavery and slave-trade, servitude and compulsory labour.\textsuperscript{150}

(iv) Rights to liberty and security of person and freedom from arbitrary arrest and detention.\textsuperscript{151}

(v) Facilitating voluntary repatriation of refugees is the solution to their problem and covenant provides that no one shall be arbitrarily deprived of the right to enter his own country.\textsuperscript{152}

(vi) Covenant also guarantees free movement and residence within state and the right to leave any country, but also provided that these rights may be subject to restrictions which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in the present covenant.\textsuperscript{153}

(vii) Right to freedom of thought, conscience and religion.\textsuperscript{154}

(viii) Rights to freedom of expression, and to hold opinion.\textsuperscript{155}

(ix) Rights to peaceful assembly and association.\textsuperscript{156}

\textsuperscript{148} Article 2, Covenant on Civil and Political Rights, 1966.
\textsuperscript{149} Id., Article 7.
\textsuperscript{150} Id., Article 8 (1) (2).
\textsuperscript{151} Id., Article 9 (1).
\textsuperscript{152} Id., Article 12 (4).
\textsuperscript{153} Id., Article 12 (1) (2) (3)
\textsuperscript{154} Id., Article 18 (1).
\textsuperscript{155} Id., Article 19 (1) & 19 (2).
(x) Further the unity of the family was considered as an essential right of refugee. Covenant includes family as the natural and fundamental group unit of society and is entitled to protection by society and state.\textsuperscript{157}

(xi) Covenant provide that an alien, who is lawfully in the territory of a state party to the present covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reason against his expulsion and to have his case reviewed by, and be represented by the purpose before, the competent authority or a person especially designated be the competent authority.\textsuperscript{158}

(xii) Right to freedom for arbitrary or unlawful interference with his privacy, family, home and right to protection of the law against such interference.\textsuperscript{159}

(xiii) Right to equality before the law and equal protection of the law.\textsuperscript{160}

As compared to the Universal Declaration of Human Rights, the Covenant on civil and political rights incorporates certain rights which do not found mention in the Universal Declaration.\textsuperscript{161}

\textsuperscript{156} Id., Article 21 and 22.
\textsuperscript{157} Id., Article 23 (1).
\textsuperscript{158} Id., Article 13.
\textsuperscript{159} Id., Article 17 (1) (2).
\textsuperscript{160} Id., Article 26.
\textsuperscript{161} Such as, Prohibition of imprisonment merely on the ground of inability to fulfill a contractual obligation; humane treatment of detainees and certain rights of the child not mentioned in the Universal Declaration.
(b) Rights of Refugees under the International Covenant on Economic, Social and Cultural Rights 1966

Without full realization of economic social and cultural rights the implementation of civil and political right is not possible. The state parties to the present Covenant undertaken to take step, individually or through international economic and technical assistance and co-operation, to the maximum of its available resources for achieving progressively the full realization of rights recognized in the present Covenant. States parties have also guaranteed that the rights recognized in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Covenant protected the basic values, which are essential to live in society.

The covenant includes the following rights:

(i) Rights to work, one of the most important right, is crucial for refugees. Refugees need to be in a position to support themselves and their families. Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(ii) Covenant recognises the right of everyone to the enjoyment of just and favourable conditions of work.

(iii) Covenant recognises the right of every one to social security, including social insurance.

162. Supra n. 17 at 178.
164. Id., Article 6 (1).
165. Id., Article 7.
(iv) Covenant recognises the right of protection and assistance to the family, which is the natural and fundamental group unit of society.\textsuperscript{167}

(v) Covenant recognises the right of every one to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.\textsuperscript{168}

(vi) Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.\textsuperscript{169}

(vii) Covenant recognizes the right of everyone to education. Primary education shall be compulsory and available free to all; and secondary education in its different forms, including technical and vocational education. Higher education shall be made equally accessible to all.\textsuperscript{170}

(viii) Covenant recognises the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications.\textsuperscript{171}

Both these instruments complement each other, as mentioned earlier, without full realization of economic, social and cultural rights the implementation of civil and political rights is not possible. Number of basic human rights of refugees is recognized by both these instruments.

Rights of Refugees under other International Human Rights Instruments

While the basic concept and principles of the international refugee regime, such as the UN refugee
Convention and Protocol are universal there are some other human rights instruments, which are adopted under the auspices of the United Nations and constitutes the most important codification efforts of the refugees are: The 1984 Convention against torture and other cruel, inhuman or degrading treatment or punishment, the 1989 Convention on the rights of the child, the 1965 Convention on the elimination of racial discrimination, the 1979 Convention on elimination of discrimination against women. So many of the rights found in the international refugee instruments are in one form or another enshrined in international human rights treaties mentioned above.

Notwithstanding, some of the pertinent decision of the Executive Committee of UNHCR are also very important and become part of the general international refugee law regime these are like the decisions regarding: Asylum, 1977; determinations of refugee status, 1977; protection of Asylum seekers in the situation of large-scale influx 1981; refugee women and international protection, 1985; voluntary repatriation 1985; detention of refugees and asylum seekers, 1986; refugee children, 1989; refugee women and


Rights of Refugees under Regional Instruments

Regional mechanisms are an important means for strengthening refugee protection as well as finding solution to refugee problems. They allow harmonization of refugee policies and practices in the region and encourage regional cooperation to solve the refugee problems.\textsuperscript{177} International agreements have been supplemented by regional instruments and mechanisms that take into account concerns that exist at the regional level, though they are not fully appreciated or relevant at the global level. The Regional instruments, reaffirmed the basic principles on the Convention and Protocol, but expanded the definition of refugee to more realistically account for contemporary root causes of flight, i.e., war, internal conflicts, massive human right abuses, etc.

Regional mechanisms can take various forms. The OAU Convention governing specific aspects of the refugee problem in Africa and the Schegen and Dublin Agreements\textsuperscript{178} are legally binding regional treaties adopted under the auspices of the OAU and the European Union respectively. The Cartagena Declaration on Refugees is not binding instrument adopted by NGO’s and Scholar in Central America, but governments have tended to follow it as a matter of policy.


\textsuperscript{178} Schengen and Dublin Agreements (1985 & 1990 respectively) were sponsored by regional organisations, (European Union) and were made possible by strong political consensus on the issues. The Dublin and Schengen Agreement were drafted in order to harmonize European practices and procedures relating to asylum seekers so as to ease the removal of internal borders of the European Union.
because the Declaration reflects the consensus of practices and policies in the region. Another example of a non binding instrument is the Bangkok principles concerning the treatment of refugees adopted by the Asian-African Legal Consultative Committee in 1966. These regional arrangements have enacted standards of refugee protection and they have not gone against the international legal regime relating to refugees. They have only enriched its meaning and content. This also serves the purpose of implementation of international refugee regime in a more meaningful and effective manner. So at the regional level, a number of instruments define the rights of refugees Rights of refugees under different regional instruments are as follows:

(i) **Human Rights of Refugees under Organization of African Unity (OAU)**

The Organization of African Unity (OAU) had adapted a Convention governing the specific aspects of Refugees problem in Africa in 1969. One of the important purpose of the OAU is to promote international cooperation having due regard to the United Nations Charter and the Universal Declaration of Human Rights. Convention adopted by OAU in real sense reflects and resolve the specific concern of the African refugees.

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180. The flow of refugees in Africa became an acute problem in the 1960s, coinciding with the struggle for an attainment of independence by most African states. Since the establishments of the Organisation of African Unity (OAU) in 1963, OAU decided that a regional treaty was needed to take care of African refugees. OAU had adopted a convention governing the specific aspects of refugee problem in Africa, by the Assembly of Heads of States and Government at its Sixth Ordinary Session (Addis Ababa, 10 September 1969) entered into force on 20 June 1974, UNTS No. 14691, Art. XI.

Organization of African Unity Convention deals with the following rights of refugees in Africa:

(i) The organization of African Unity Convention deals with the right of asylum, according to the provision of convention, “No person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons of race, religion, nationality, membership of a particular social group or political opinion, or because of external aggression, occupation, foreign domination of events seriously disturbing public order”.

(ii) OAU convention also deals with non-discrimination, “all member states undertake to apply the provisions of the convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group of political opinion”.

(iii) Further, under the OAU Convention, “the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”. For refugees whose states of origin are parties to the Organization of African Unity, Refugee Convention, Article V of the convention provides for these other safeguards which may be enforced on their behalf by other contracting states, “The country of origin, on receiving back refugees, Shall facilitate their resettlement and grant them full rights and privileges of nationals of the...

183. Id., Article IV.
184. Id., Article V (1).
country, and subject them to the same obligation". Paragraph (4) of this Article provides that "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 situation".

These provisions which have no parallel in the U.N Refugee convention are a salutary innovation indeed. They impose an obligation on states to whose territory refugee return, not to repeat the persecutory practices that had given rise to their national’s flight.

(iv) The Organization of African Unity convention also provides for the issuance of travel documents in accordance with the 1951, Convention relating to the status of refugees, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, with an exemption clause permitting a country of first asylum to dispense with the practice of giving travel documents with return clauses in cases where an African country of second asylum agrees to accept the particular refugees.

Organization of African Unity, Convention is considered the principle source of protection for the refugees in African region, though it was based on the 1951 Geneva Convention and its follow-up 1967 Protocol, but it was expanded significantly to embrace specific African realities. Together with international Convention on refugee this OAU convention, provide the basis for articulating further

185. *Id.*., Article V (3).
186. *Id.*, Article V (4).
187. *Id.*, Article VI (1).
188. *Id.*, Article VI (2).
protection procedure which help out to solve the problems experienced by the refugees. This OAU Refugees Convention broadened the refugee definition, which goes beyond the concept of persecution and is development of the greatest importance for the world community.

(ii) Human Rights of Refugees under Organization of American States (OAS)

The Organization of American states adopted the Cartagena Declaration in 1984.\textsuperscript{189} The Declaration proposed an extension of the concept of "refugee" as applied to Central America, Mexico and Panama, stipulating that a 'massive violation of human rights' should be considered of refugee. A clear mandate for the protection of refugee based on human rights violations was incorporated in the Cartagena declaration.\textsuperscript{190}

The 1984 Cartagena declaration in central America was inspired by the OAU convention, the Cartagena declaration laid down that the definition of refugee could not only incorporate the elements contained in 1951 convention and the 1967 Protocol or the 1969 OAU Convention and General Assembly resolutions, but also covers.

"Persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive

\textsuperscript{189} In the 1980s, the outbreak of civil strife in Central Africa resulted in Massive exodus of million of people to neighboring countries in search of protection and assistance. This unprecedented situation demanded from the countries concerned to initiate a process of identification and implementation of humanitarian measures for the protection and assistance of the refugees. The process was advanced further and the declaration was adopted at the conclusion of a colloquium organised by the National University of Colombia and the Centro Regional De Estudios del Torcer Mundo in Cartagena in November, 1984 as cited in Maink Chakarbarty, Human Rights and Refugees: Problems, Laws and Practices, 2001, p. 34.

\textsuperscript{190} Supra n.1 at p. 53.
violation of human rights or other circumstances which have seriously disturbed public order”. 191

It reiterates the importance of the Principle of non-refoulement (including prohibition of rejection at the frontier) as a cornerstone of the international protection of refugee. 192 The term refugee in the declaration was approved by the 1985 General Assembly of Organization of American states, which resolved to urge member states to extend support and in so far as possible, to implement the conclusions and recommendations of the Cartagena declaration on refugees. Further the declaration ensures 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 situation of large-scale influx. 193

Although not formally binding, the Cartagena declaration on refugees has become the basis of refugee policy in the region, and has been incorporate into the national legislation of a number of states. The declaration revitalized the tradition of asylum in Latin America, while aiming at consolidating a regional custom for the treatment of refugees, returnees and displaced persons. 194 Thus, the extended refugee definitions of the Organization of African Unity (OAU) Convention and the Cartagena declaration have brought international protection to a large numbers of people who may not be covered by the 1951 Convention, but who are

194. Supra n. 3 at 35.
forced to move for a complex range of reasons including persecution, widespread human rights abuses, armed conflict and generalized violence. Cartagena declaration took 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 in international law which is protected rights. ¹⁹⁵

(iii) Human Rights of Refugees under the Bangkok Principles, 1966

The Bangkok Principles is an intergovernmental instrument adopted by Asian African Legal Consultative Committee (AALCC). ¹⁹⁶ The “Bangkok principles”¹⁹⁷ which speak about “burden sharing” and the doctrine of state Responsibility as being the steps toward durable solution to the problem. The immediate objective of the AALCC was primarily to give advice on the appropriate standard of treatment for a large number of Palestinian refugees who had sought and been given asylum on Egyptian soil.¹⁹⁸ The issues before the committee were however broadened to cover wide aspects of refugees situations generally and more particularly those in Asia and Africa, at the initiative of the United

¹⁹⁵ Id., at 34-35.
¹⁹⁶ The AALCC is an inter-governmental body which had emerged as an outcome of the historic Asian-African conference held in Bandung in 1955. Established in November 1956 as an advisory body to its member governments on legal matters of common concern, its functions were later extended to economic issues with legal implications, as cited in B. Sen, Protection of Refugees: Bangkok Principles and After, Journal of the Indian Law Institute, Vol. 34, No. 2, 1992, p. 187.
¹⁹⁷ Principles concerning treatment of Refugees as adopted by the Asian-African Legal Consultative Committee at its eighth session held in Bangkok, August 1966.
Nations High commissioner for Refugees\textsuperscript{199} which had led to the adoption of a set of recommendations known as the “Bangkok Principles” in August 1996.\textsuperscript{200}

The provisions in the Bangkok Principle are similar to the corresponding ones in the 1951 Convention except that the definition in the Bangkok Principles contain no dateline and ‘color’ is included as an additional reason which may give rise to fear of persecution.\textsuperscript{201} The various rights of refugees aimed at protecting them as provided under Bangkok Principles concerning the treatment of refugees are:

\begin{enumerate}[(i)]
  \item Repatriation or return of refugees to their country of nationality or former habitual residence is the permanent solution to their problem. The AALCC went on to consider the long term aspects of the problem of refugees. In this regard, it took the view that the recognition of the right to return to his homeland and ensuring the exercise of that right would, whenever possible be the best solution. Bangkok principles provided that, “A refugee shall have the right to return, if he so chooses, to the state of which he is a national or the country of his nationality and in this event it shall be the duty of such state or country to receive him.” \textsuperscript{202}
  \item In traditional international law, a state is liable to pay compensation for maltreatment of aliens in its territory.
\end{enumerate}

\textsuperscript{199.} The office of the UN High Commissioner for Refugees actively participated in the 6th, 7th and 8th sessions of the Committee held in Cairo (1964) Baghdad (1965) and Bangkok (1966) respectively. The High Commissioner was represented by Prince Sadruddin Agha Khan the then Deputy High Commissioner and E. John, Deputy Director of Legal Division, as cited in B. Sen, “Protection of Refugees: Bangkok Principles and After, \textit{Journal of the Indian Law Institute}, Vol. 34, No. 2, 1992, p. 187.

\textsuperscript{200.} Supra n.198.

\textsuperscript{201.} Patricia Hyndman, “Developing International Refugee Law in the Asia Pacific Region: Some Issues and Prognoses”, \textit{Asian Year Book of International Law}, Vol. 1 1991, p. 27.

\textsuperscript{202.} Article IV, the Bangkok Principles Concerning the Treatment of Refugee, 1966.
However, in modern international law, a refugee is entitled to receive compensation for losses suffered by him. The right of a refugee to receive compensation form the state of nationality as such is not recognized in the 1951 Convention.\textsuperscript{203} The Bangkok Principles of the Asian-African Legal Consultative Committee recognized the refugee’s right to receive compensation from:

(a) The state or the country which he left or to which he was unable to return.\textsuperscript{204}

(b) The compensation shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of dependants of the refugee or of the persons whose dependent the refugee was and destruction or damage to property and assets caused by the authorities of the state or country or mob violence.\textsuperscript{205}

(iii) The principles concerning treatment of refugees also provided minimum standard of treatment. But in regard to the standard of treatment for refugees in the state of asylum, the approach in the Bangkok principles initially appears to have been same what restrictive.

(a) A state shall accord to refugee’s treatment in no way less favorable than that generally accorded to aliens in similar circumstances.\textsuperscript{206}

\textsuperscript{203} It, however, provided in Article 5 that “nothing in this convention shall be deemed to impair any rights and benefits granted by a contracting state to refugees apart this convention”. Under Article 24, the “right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be effected by the fact that the residence of the beneficiary is outside the territory of the contracting state”.

\textsuperscript{204} Art. V (1), the Bangkok Principles Concerning the Treatment of Refugees. 1966.

\textsuperscript{205} Id., Article V (2).

\textsuperscript{206} Id., Article VI (1).
(b) A refugee shall not be denied any right on the ground that he does not fulfill requirements which by their nature of refugee is incapable of fulfilling.\textsuperscript{207}

(c) A refugees shall not be denied any rights on the ground that there in 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.\textsuperscript{208}

The 1966 Bangkok principles concerning treatment of refugees is a non-binding instrument and because of the advisory nature of the AALCC and the divergence among the member countries of Africa, the Middle East and Asia who comprises the AALCC the Bangkok principles have had less of an impact and they remain of value as the only regional refugee document.\textsuperscript{209} However, recently interest in the Bangkok principles has been revived and the text is being examined by the AALCC membership from time to time or reviewed by the UNHCR from time to time in the light of subsequent developments, and new principles had been incorporate by means of an addendum on two occasions, once in 1970\textsuperscript{210} and again as in 1987.\textsuperscript{211}

\textsuperscript{207} Id., Article VI (3).
\textsuperscript{208} Id., Article VI (4).
\textsuperscript{209} V. Vijay Kumar, "Developing A Regional Approach to Refugee Problems in South Asia" in Fourth Informal Consultation of Refugee and Migratory Movements in South Asia, Dhaka, 10-11, Nov. 1997, P. 56.
\textsuperscript{210} The AALCC at its eleventh session in Accra, held in 1970 had an addendum concerning the right of a refugee to return to his habitual place of residence, or where he is unable to exercise the right to return due to the attitude of authorities in control his right to receive full compensation. The addendum was however, subject to certain reservations regarding its applicability to all situations, as cited in B. Sen, "Protection of Refugees: Bangkok Principles and After, Journal of the Indian Law Institute, Vol. 34, No. 2, 1992, p. 188.
\textsuperscript{211} The AALCC at its 27th Bangkok session in January 1987 Unanimously approved of an addendum concerning the Principles of burden sharing in respect of refugee situations, as cited in B. Sen, "Protection of Refugees:
consolidated text of the Bangkok principle on the status and treatment of refugees was adopted by the Asian African legal consultative Organization (formerly committee) at its 40th session in New Delhi on 24 June 2001. It incorporates a definition of refugee which includes “person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or nationality is compelled to leave the place of habitual residence in order to seek refuge in another place outside the country of origin or nationality”. While the Bangkok principles are declaratory in nature, their provisions represent and reflect an important understanding of who is a refugee in the contemporary context in parts of the world with significant experience in receiving and hosting refugees.

(iv) Human Rights of Refugees under the Council of Europe (COE)

Regional body concerned with human rights in Europe is the Council of Europe, which has adopted a number of human rights instrument and agreements dealing with one or other human rights of refugees. They are:

(a) European agreement on the abolition of visas for refugees (1959)

(b) Resolution 14 (1967) on asylum to persons in danger of persecution.


213. Ibid.

214. In 1948, the “Congress of Europe”, called for the creation of United Europe, including a European Assembly. This proposal was the origin of the council of Europe, which had 25 member states then as cited in A short history of the council of Europe: Introduction at http://portal.coege/index visited on 16.01.2008.
(c) European agreement on transfer of responsibility for refugee (1980).

(d) Recommendation of the harmonization of national procedures relating to asylum (1981).

(e) Recommendation on the protection of persons satisfying the criteria in the Geneva Convention who are not formally refugees (1984).

(f) Dublin Convention (1990), which lays down criteria for determining which member state, is responsible for examining an asylum request when the applicant has filed an application for asylum with one or more member states of the community.215

The European Convention on human rights does not contain any right to asylum and it makes no direct reference to asylum seekers or refugees. However it established that states were indeed responsible in certain instances, for the well being of individuals in other countries. The art. 3 of the European convention states that “no one shall be subjected to torture or inhuman or degrading treatment or punishment”. Although art. 3 is most often called upon to protect asylum seekers and refugees, other articles may also be invoked to ensure that their human rights are respected.216 In particular art. 4 (prohibition of forced or compulsory labour), art. 5 (deprivation of liberty), art. 6 (right to a fair and impartial hearing, “within a reasonable time), art. 8 (respect for private and family life), art. 9 (right to freedom of thought, conscience and religion), art. 10 (right to freedom of expression), art. 13 (right to the grant of an effective remedy

215. Supra n. 3 at 33.
before a national authority) and art. 16 (no restriction on political activity of aliens) can offer substantial protection.\footnote{ibid.}

The Council of Europe has introduced standards of refugee protection that go beyond the UN Convention definition, although the changes are significantly more modest than those of the OAU or OAS. The council of Europe also 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 conventions criteria), or who are unable or unwilling of other valid reasons to return to their countries of origin. This recommendation has been only partially implemented.\footnote{Supra n. 1 at 28.}

According to statistics published by UNHCR in March 2006, the number of asylum seekers in Europe continues to fall significantly reaching the lowest level since 1988. In the then 25 member states of the European Union and in Europe as a whole, the figure fell by 16%.\footnote{Parliamentary Assembly (Council of Europe) Doc. 11217, 30 March 2007State of Human Rights and Democracy in Europe, http://www.assembly.coe.int, visited on 05.10.2008.} While this is in part due to an improvement in conditions in a number of countries of origin of refugees and asylum seekers, it is also due to an increasingly fortress approach by states toward these persons.\footnote{World Refugee Day: Council of Europe, Parliamentarians call for a re-examination of ‘fortress-policies’ Dated-Mon, 19 June 2006, http://www.hrea.org, visited on 05.10.2008.} Overall, it can be said that Council of Europe has acknowledged the legitimacy of the claim for protection of an expanded class of refugees but has not moved to formalize their status or rights.\footnote{Supra n.218.}
CHAPTER - III

Approaches of International Organizations to Provide Humanitarian Assistance and Protection to Refugees:

Problems of refugees and displaced person as well as demand for relief and rehabilitation on massive scale exist all around the world in refugees prone areas. Refugees being deprived of the support and protection of their home country are required to be given the needed protection, in the same time, the considerable strain is imposed on fragile economics of countries that receive large number of refugees and they naturally expect assistance from international community to share the burden they carry.

To deal with such situations the response of international community is one of the most remarkable humanitarian achievements of the twentieth century. The task of refugee protection and refugee’s care is a matter of international concern and humanitarian approach because of these basic reasons: 222

(a) These exists a clear humanitarian aspect of the matter duly recognized by the charter of the United Nation which has distinct provisions for respect and protection of human rights. 223

(b) There is need for recognition of the problem as one of international concern because it inevitably involves the interest of more than one state.


223. For example, the very first Article of the UN Charter introduces the basic purposes of the UN as achievement of “international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

224. The problem spills over the territorial boundary of one state to engage the international concern of at least another state which could soon easily spread to a contiguous group of neighbouring states and this could attract responsibility of the community.
(c) Categorical recognition which had to be given to the problem of refugees arose out of the aftermath of World War II, and

(d) There was indeed fundamental, based on sheer necessity arising out of the need for effective tackling of the problem 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 suffering and to assist states in providing protection and assistance to refugees. 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. This cannot be ignored by the United Nations. The special aspect of the problem needed a proper organization with regular man power running it to consolidate efforts towards resolving the grave problem of a multitude of human beings, victims of human rights violations, totally displaced and rendered helpless without a home and often without good and necessary means of living.

The institutional framework for organizing relief for refugees has evolved over the years, and became apparent during First World War. Prior to 1921, humanitarian

225. Food, Water, Sanitation and Medical care are fundamental to survival.
226 Supra n. 3 at 50 also see, Humanitarian Assistance for Refugees in Indian Institute of Human Rights, 2000, p. 100.
227. Supra n. 222.
228. During First World War, most of the countries found themselves faced with arrival of thousands of refugees than ever before. In both Europe and Asia minor, especially, very large number of people fled their homeland and passed on from the countries in which they had first found themselves, for the fear of persecution due to race, religion, nationality or political opinions. Moreover, it was not only the plight of refugees that caused concern. Many of countries to
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assistance and efforts to cope with refugee needs were undertaken mainly by private organizations or voluntary agencies and were predominantly in the form of relief. But with the increased number of refugees it became difficult for the voluntary organizations to provide relief for disorganized masses of Russian and other refugees flooding into the border countries. Therefore, it was increasingly recognized that the refugees’ problem could be successfully tackled only by an international co-ordinate action.229

For this purpose numerous refugees’ organizations were established such as the United Nations Relief and Rehabilitation Administration (UNRRA) and the Inter-Governmental Committee for Refugees (IGCR). The foundations of post-second world war refugee’s law were laid down by the United Nations in 1946 and in the early 1950s in connection with the adoption of the Constitution of International Refugees Organization (IRO), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and subsequently the United Nations High Commissioner for Refugees (UNHCR). All these international bodies of the inter-governmental type are strongly indicative of international concern for the problem.230

Humanitarian Approach towards International Refugees

The international community was placing growing emphasis on the provision of humanitarian assistance, protection and creation of condition which could contribute to the solutions of the refugees problems and for this

which they had fled were themselves also destroyed by war, their economic condition disrupted and their political situation were unstable and tense, as cited in T.N. Giri, Refugee Problems in Asia and Africa: Role of the UNHCR, 2003 pp. 28 – 29.

229. Supra n. 1 at 29.

concern, international agencies were created to assist and provide international protection\footnote{International Protection means the search for durable solutions to the problem of refugees. It may be legal protection from expulsion, social and economical rights, etc., as well as physical in some class.} when there is a lack or absence of such protection.

The League of Nation Era

The first initiative to provide humanitarian assistance to refugees had been taken by the League of Nations forerunner of the United Nations. The League of Nations that followed the treaty of Versailles\footnote{The League of Nations was created by the Versailles Treaty signed by 32 nations June 28, 1919 in the Hall of Mirrors at the Versailles palace near Paris. On 10 of June 1920, the Treaty of Versailles was officially ratified and the League of Nations came into existence.} recognized the refugees' problem to be of a global nature and in 1921 it appointed a high commissioner\footnote{Dr. Fridtjof Nansen, a Norwegian National was appointed by the council of the League as "High Commissioner".} of refugees to co-ordinate refugees' welfare with a mandate to help some 8, 00,000 mainly Russian refugees.\footnote{In the year 1918-1922 about 105 million Russian Refugees were moved mainly in north, central and southern Europe, as a result of the Bolshevik armies in European Russia in 1919-20, and due to the Russian Famine of 1921, and the breakdown of white Russian resistance in Siberian Russia in 1922, as cited in T.N. Giri, Refugee Problems in Asia and Africa: Role of the UNHCR, 2003, p. 28.}

Dr. Nansen took the service of voluntary bodies, calling, in particular, upon the assistance of the International Committee of the Red Cross (ICRC) and several of its delegation for coordinate and provide the humanitarian assistance to different agencies and the national governments in this field.

In 1929, the Assembly made certain organizational changes. The high commissioner's post was abolished and a new set up came into being - The Nansen International office

\footnote{In the year 1918-1922 about 105 million Russian Refugees were moved mainly in north, central and southern Europe, as a result of the Bolshevik armies in European Russia in 1919-20, and due to the Russian Famine of 1921, and the breakdown of white Russian resistance in Siberian Russia in 1922, as cited in T.N. Giri, Refugee Problems in Asia and Africa: Role of the UNHCR, 2003, p. 28.}
for Refugees235 was created, as an autonomous body responsible for exercising functions, including humanitarian assistance.236 In order to meet the German refugee situation, the League appointed a high commissioner for refugees from Germany. The high commissioner enjoyed full autonomy and had nothing to do with Nansen's office.237

Further, in 1933 the League of Nations produced the convention relating to international status of refugees. This 1933 instrument had introduced the notion that the signatory states were obligated not to expel the authorized refugees from their territories.238 This convention recognized the refugee's status of Russian, Armenian and other refugees in Europe.239 In 1938 the Convention concerning the status of refugees coming from Germany was made. The League decided to have a single group / category of refugees and merged the two refugee offices i.e. the International Nansen office and the High Commissioner for refugees coming from Germany, into a single authority "High Commissioner for refugees under the protection of League of Nation". It was for a period of five years. Competence of high commissioner relating to relief was restricted to facilitating the coordination of humanitarian assistance provided by other organizations.240

235. 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.
236. Supra n. 3 at 56.
237. Supra n.225 at 4.
238. Proceeding under the auspices of the High Commissioner of Refugees the contracting State parties agreed to issue the so-called "Nansen- passports" to refugees residing regularly in their territories for travel abroad. They also recognized the right of refugees to free and ready access to the courts of law. The convention helped the refugees by regulating the labour conditions, welfare, relief and education in country of their refuge, as cited in U.N. Gupta, The Human Rights—Conventions and Indian Law, 2004, pp. 240-241.
239. Supra n.2 at 240 – 241.
(i) Inter Governmental Committee on Refugees (IGCR)

In July 1938 before adjourning, the Evian Conference established the Inter-Governmental Committee on Refugees (IGCR) and commissioned it to "approach the government of the countries of refuge with a view to developing opportunities for permanent settlement," and to persuade Germany to cooperate in establishing "conditions of orderly emigration". This committee was founded to facilitate the migration of refugees from Germany and Austria, subsequently the mandate of the committee was extended to include all European refugees who were forced to leave the country of their residence because of danger to lives or persecution on account of their race, religion or political beliefs.

For the next eight years, until 1946 the IGCR existed alongside the League of Nation's office of the high commissioner for refugees. When the League of Nations was dissolved in 1946 the Inter-Governmental Committee on Refugees (IGCR) assumed independent responsibility for a period of six months. In the same year i.e. 1946, its mandate was extended to all refugees subsequently covered by the draft Constitution of the International Refugee Organization (IRO). The IGCR however, received little authority and almost no funds or support from its member nations, and it had virtually no success in opening countries to refugees.

(ii) United Nations Relief and Rehabilitation Administration (UNRRA)

The end of the Second World War saw an unprecedented influx of population and plans to establish an international

241. The first director of the Inter governmental Committee on Refugees (IGCR) was George Rubble, an American Lawyer.
243. Supra n.2 at 241 also see Supra n. 225 at 4.
244. Supra n.242 also see Supra n.225 at 4.
organization with responsibility to carry out social, economic and humanitarian functions on behalf of those in greatest need led to the creation of the United Nations Relief and Rehabilitation Administration (UNRRA) by 44 nations on November 9, 1943. UNRRA was established as a specialized agency, but before the adoption of the UN charter and the creation of United Nations itself. UNRRA was the first major operating agency for refugees and displaced persons in liberated Europe, exercising responsibility for the provisions of material assistance to refugees and displaced persons both in Europe and in its other areas of operation, with the particular of over 60 voluntary organizations.\textsuperscript{245}

From its inception in November, 1943, until its disbandment in June, 1947 UNRRA spent over 3.6 billion (of which the United States contributed 2.8 billion) and about seven million persons had been returned home through organized repatriation by UNRRA. Although UNRRA had no power to resettle refugees and displaced persons to third countries, relief and rehabilitation in Europe were to be for the short term only. In July 1947 UNRRA ran into political problems and went out of existence.\textsuperscript{246}

United Nations Era

The war had closed with tremendous uprooting of populations and families. In order to meet the problems of these uprooted and displaced persons, the General Assembly passed a resolution on 12\textsuperscript{th} February 1946, in which besides expressing its concern about the plight of refugees, it laid

\textsuperscript{245} Peter Macalister Smith, \textit{International Humanitarian Assistance: Disaster Relief Actions in International Law and Organisation}, (1985), P. 35. also see Supra n.3 at p. 57.

\textsuperscript{246} Supra n.1 at 35.
three broad guidelines to deal with the situation. They were:

(i) Refugee problem should be viewed as “international in scope and nature”.

(ii) There should be no forced repatriation.

(iii) Repatriation for displaced persons should be pursued and assisted.

The League of Nations was dissolved in 1946 and League’s High Commissioner for Refugees was terminated. The imminent closure of other two organizations - the Inter-Governmental Committee on Refugee (IGCR) and the United Nations relief and rehabilitation administration (UNRRA) lent urgency to the creation of a new organization to deal exclusively with refugees. The solution took the form of the Internationals Refugee Organization (IRO).248

(i) The International Refugee Organization (IRO)

The International Refugee Organization was established by a United Nations (UN) General Assembly resolution on 15th December 1946. International refugee organization as a non-permanent body249 charged with responsibility for all aspects of the problems concerning uprooted people. The preparatory committee of the IRO began operations on July 1, 1947, and its function until August 20, 1948. The IRO was supported by about a third of the total UN membership of some 50 states.250

The primary task of IRO was to repatriate the refugees and the displaced persons. The secondary task of IRO was the

247. Supra n.225 at 5.
248. Ibid.
249. As a temporary specialized agency of the United Nations, IRO’s life span was four and a half year.
250. Supra n.245.
resettlement and rehabilitation of those refugees who for valid or good reasons did not or could not return to their country of origin. But it was recognized that immediate maintenance and assistance functions would also be necessary and the organization was given full power for its task of material relief. Thus wide range of IRO functions made it possible for the first time to approach the refugee problem in all its dimensions.

The IRO was, inter alia, to:

(a) Promote the conclusion and ratification of new international Conventions for the protection of refugees;

(b) Promote the execution of such measures as are calculated to improve the situation of the refugees by special agreement with governments;

(c) Progressively reduce the number of refugees who required protection and assistance; and

(d) Assist the governmental and private efforts meant to achieve voluntary repatriation of refugees back to the country of their origin or directed towards the assimilation of the refugees in the new states or the states of new domicile or of refuge.

When the IRO took over operations on July 1, 1947, refugees and displaced persons under the IRO mandate were spread over a wide geographical area and their total number estimated was 1.5 million. IRO organized its own assistance activities with the help and support, firstly from local authorities and secondly from the voluntary agencies.

251. Supra n.2 at 242, also see, Supra n.3 at 57.
252. For example, identification, registration and classification care and assistance, and repatriation or resettlement, were brought under the mandate of the IRO.
253. Supra n.2 at 242.
254. Supra n.1 at 36, also see, Supra n.3 at 57.
the assessment of actual performance it is recognized that IRO resettled more than one million displaced Europeans around the world and helped 73,000 civilians to return to their former homes during its four and a half years of existence. However, the IRO was not able to liquidate the refugee problem because of the constant change in international politics and economic conditions. In addition, the IRO left some problems unsolved. For example, material assistance for certain categories of refugee for whom resettlement or repatriation was not feasible, for the continuing influx of new refugees etc., and the other unfortunate feature of the IRO was its temporary nature while the refugee problem was a permanent problem.255 It therefore became quickly imperative that some further organized international effort was necessary. The International Refugee Organization went into liquidation on March 1, 1952, when it was accordingly felt that the responsibility which was recognized internationally by the creation of the IRO by 18 sovereign states should now become the collective responsibility of the community.256 It should, therefore be taken over by the United Nations itself. In 1951 the Office of the United Nations High Commissioner for Refugees (UNHCR) was created to replace International Refugee Organization (IRO).

(ii) United Nation Relief and Work Agency for Palestine Refugees in the Near East (UNRWA)

The United Nations Relief and Work Agency for Palestine refugees in the Near East was established by the General Assembly- Resolution 302 (V) in December 1949. It is the

255. Supra n.2, at 242, also see, Supra n.11 at 37.
256. Supra n.225 at 6-7.
primary international body mandated to provide assistance to a population of 4.5 million Palestinian refugees. It is working since May 1950. The agency took over the humanitarian relief operations in the Jordanian-controlled West-Bank, Egyptian-controlled Gaza strip, Jordan, Lebanon and Syria in May 1950. The agency was given two duties: first, to carry out in collaboration with ‘local governments’ the direct relief and works programmes for the Palestine refugees already recommended by an Economic survey mission; and, secondly, to consult with “interested Near Eastern Governments” about measures to be taken by them against the time when international assistance for relief and works projects would no longer be available.

Refugees wishing for relief have been required to register with the Agency, and there are now over three and a half million registered refugees. Out of these, some 187,000 are living in Lebanon, 173,000 in Syria, 5, 68,000 in Jordan, 283000 on the West Bank of the Jordan, and 327,000 in the occupied Gaza strip. These five territories or countries, together with Egypt, where there are some 3,000 refugees, form the Agency’s area of operation. The registered refugee is entitled to the assistance available according to his need. Faced with high overhead costs, lack of regional cooperation, and beset by strong opposition among refugees to de facto resettlement, UNRWA shifted its humanitarian operations to the delivery of basic education, health and social assistance.

257. The General Assembly accorded UNRWA a short term mandate. It was expected that those refugees wishing to do so would soon be able to return to their homes in accordance with General Assembly Resolution 194 (iii). All relief and works operations were to be terminated by the middle of 1951. UNRWA’s mandate has been extended on a regular basis due to the lack of durable solutions for Palestinian refugees.


259. Supra n.3 at 58.

260. Id., at 59.
services. In 1967 the UN General Assembly - Resolution 2252 (ES-V) requested UNRWA to extend its services to Palestinian refugees displaced during the 1967 war.\textsuperscript{261}

UNRWA currently provides education, health care, and social assistance to more than four million Palestinian refugees in five areas of operation - West Bank, Gaza strip, Jordan, Lebanon and Syria. Approximately one-third of the refugees live in 59 official refugee camps.\textsuperscript{262} The Secretary-General of the United Nations appoints the Commissioner-General of the agency, and he in turn appoints his staff. The refugees registered with UNRWA and receiving its assistance are excluded from the competence of the United Nations High Commissioner for Refugees (UNHCR).\textsuperscript{263} UNRWA does not run refugees' camps and does not have an explicit mandate to provide international protection to Palestinian refugees. The United Nations accorded a protection mandate for Palestinian refugees to UNRWA's "sister-agency" - the UN Conciliation Commission for Palestine (UNCCP). The provision of services that guarantee basic economic, social and cultural rights may be considered as a type of protection i.e. "relief protection."\textsuperscript{264}

Since its creation United Nations Relief and Work Agency has faced continuous budgetary deficits, as UNRWA's operations are financed almost entirely by voluntary contributions from governments. The Syria field regular budget supporting the ongoing education, health and relief and social services activities stands at US $ 34,878 million

\textsuperscript{261} Supra n. 258.
\textsuperscript{262} Ibid.
\textsuperscript{263} Supra n.3 at 59.
\textsuperscript{264} Supra n.258.
for 2008. The 2008 budget for special projects assistance stands at US $7.6 million.265

(iii) United Nations High Commissioner for Refugees (UNHCR)

By 1950 the international community had still not established a network of institutions, system and laws to deal with the Refugees problem in a global manner. The turning point came in 1950-51, with the establishment of the office of the United Nations High Commissioner for Refugees (UNHCR) and the adoption of the United Nations Convention relating to status of Refugees. Together they provide, for the first time, a formal structure for responding to the needs of Refugees and standards for the protection of refugees under international law.266

During the late 1940s, as the IRO was close to fulfilling its own temporary mandate, states agreed to follow it with the creation of a further temporary office, a United Nation High Commissioner for Refugees, to be elected by the General Assembly. The work of the High Commissioner was to be facilitated by a new treaty, and work began in parallel on the statute of the new office and on the text of what was to become the 1951 Convention relating to the status of Refugees. The new high commissioner would take on the role of providing international protection to Refugees and assisting governments to find permanent solutions, while the new treaty would ensure that Refugees were better protected and enjoyed a status that would allow them to settle

Since 1951 UNHCR started its operation as a subsidiary body of the United Nations for a limited period and the mandate has been regularly extended. It has a global geographical coverage and operates on the basis of its statute, adopted in 1950. One of the remarkable features of the UNHCR, is that this agency is of an 'entirely non-political character' of course refugee for the most part are the result of a political situation but the office of the high commissioner was initially designed to be non-political and attempted to be objective in dealing with refugee situations. This has not been entirely possible, as the United Nations has become a highly political organization and every specialized agency is involved in the politics of the day.

Organization of the United Nations High Commissioner for Refugees (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations (UN) to lead and co-ordinate international action for the worldwide protection of Refugees and the resolution of refugee problems. UNHCR's primary purpose is to safeguard the rights and well being of refugee.

The General Assembly decided on December 3, 1949 to establish the office of the United Nations High Commissioner

269. Supra n.2 at 65.
270. In 1949, the United Nations decided to assume more responsibility for international action for protection of refugees. After the downfall of the I.R.O., two possibilities were worked out in the General Assembly, either to entrust this task to a department of the United Nations (UN) Secretariat, or to establish an ad-hoc body which could act independently within the administrative and financial framework of the United Nations as cited in T.N. Giri, Refugees Problems in Asia and Africa: Role of the UNHCR, 2003 p. 42.
CHAPTER - III

for Refugees (UNHCR). As a result the office of the United Nations high Commissioner for Refugees (UNHCR) was set up on January 1, 1951.

272. In resolution 319 (IV) of 3 December 1949. The United Nations General assembly decided to establish a high commissioner's office for Refugees from January, 1951. The statute of the office of the United Nations High Commissioner For Refugees was adopted by the General Assembly of 14 December, 1950 as annexure to resolution 428 (V). In this resolution, the assembly also called upon the governments to cooperate with high commissioner in the performance of his functions concerning Refugees falling under the competence of his office. In accordance with the statute the work of the high commissioner is humanitarian and social and of an entirely non-political character.

The functions of the high commissioner are defined in the statute and in various Resolutions subsequently, adopted by the General Assembly Resolution concerning the High Commissioner's office adopted by the general assembly and the Economic and Social Council are issued by UNHCR as in information document, HCR/INF/48/Rev.2.

The high commissioner reports annually to the General Assembly through the Economic and social Council pursuant to paragraph 4 of the statute, an advisory committee on Refugees was established by the Economic and Social Council (resolution 393 (XIII) B if 10 September 1951) and was later reconstituted as the United Nations Refugee Fund (UNREF) Executive Committee (economic and social council resolution 565 (XIX) of 31 March 1955, adopted pursuant to General Assembly resolution 832(IX) of 21 October 1954). The later was replaced in 1958 by the Executive Committee of the High Commissioner's program (General Assembly Resolution 1166 (XII) of 26 November 1957 and Economic and Social Council Resolution 672 (XXV) of 30 April 1958). Under its terms of reference the Executive Committee, inter alia, approves and supervises the material assistance program of the high commissioner's office and advise the high commissioner at his request, on the exercise of his functions under the statute. The executive committee was originally composed of 24 states. In 1963 (General assembly Resolution 1958 (XVIII) of 12 December 1963), its membership was increased to 30 states and in 1967 (General Assembly Resolution 2294 (XXII) of 11 December1967) to 31 states so as to achieve the widest possible geographical representation. The office was originally established for a period of three years (statute, paragraphs) by General Assembly Resolution 727 (VIII) of 23 October 1953, 1165 (XIII) of 26 November 1957, 1783 (XVII) of 7 December 1962, 2294 (XXII) of 11 December 1967, 2957 (XXVII) of 12 December 1972 and 32/68 of 8 December 1977, the office was extended for successive period of five years and further the tenure has been continuously renewed and extended from time to time as quoted in Basic International Legal Documents on Refugees, 1999, p. 1.

273. Office established in 1951 to give legal, social, economic and political aid to refugees. The UNHCR is the successor of the IRO. It is based in Genova and financed by voluntary government contributions. The office won the Noble Prize for peace in 1954 and 1981. Office assist refugees in their voluntary repatriation, local integration or resettlement to a third country. Mr. Antonio Guterres (Portugal 2005-2009) is the UNHCR's 10th High Commissioner as cited in http://www.unhcr.org visited on 07.12.2009.
Status, Tenure and the Structure of the Office Status

Status

The status of the office of the United Nations High Commissioner for Refugees (UNHCR) is a subsidiary organ of the General Assembly functioning under art. 22 of the charter. The office enjoys a special status within the United Nations with high degree of independence and autonomy along with prestige arising out of important and at times vital function which it performs.274 When UNHCR opened its door for business on Jan 1, 1951, it comprised a staff of 33 people based mainly in Geneva with a budget of around $300,00. In more than five decades, the refugee agency has grown into a global operation. Today, a staff of around 6,300 people in more than 110 countries continues to help 32.9 million people.275

Structure

The office consists of a High Commissioner, a Deputy High Commissioner and an Assistant High Commissioner. Apart from them, the office of high commissioner has been divided into seven division/departments. They are as follows: 276

(i) The executive (High Commissioner's) office;

(ii) The division of international protection—which is responsible for the agency's core protection mandate;

274. Supra n.225 at 8, also see Supra n.1 at 43.
276. Ibid.
(iii) The department of operations - which covers all field programmees;
(iv) The division of external relations;
(v) The division of human resources management for personnel;
(vi) The division of information system and technology; and
(vii) The division of financial and administrative management.

All the divisions have been divided into further subdivisions, sections and desks. These divisions work in close cooperation with each other. The UNHCR performs its responsibilities with the help of all regional offices and their staff. However, the High Commissioner holds the key position and performs its duty in terms of coordination, formulation of policy and effective planning.

Tenure

The office of the United Nations High Commissioner for Refugees was set up on January 1, 1951 for a period of three years. However, it soon became imperative that the office could not be dispensed with after three years and the General Assembly decided to prolong the mandate for a further period of five years, and made it renewable from January 1, 1954.277 Thus, the tenure of the United Nations High Commissioner for Refugees has been continuously renewed and extended from time to time.

The office of the United Nations High Commissioner is usually held by a person of distinction. United Nations High Commissioner for Refugees, first high commissioner Gerrit Ian van Heuven Goedhart called its attempts to create an

277. Supra n.274.
environment "in which no people of any country, in fact no group of people of any kind, live in fear and need."\textsuperscript{278} At present Antonio Guterres, (2005-present (term to expire in 2010) (Portugal) is the High Commissioner of United Nations High Commissioner for Refugees’s office.

**Functions of United Nations High Commissioner for Refugees (UNHCR)**

The role of any office along with its activities must depend upon its functions and on the nature of the specific purpose lying at the root of its creation in relation to the community which it is required to serve. To provide protection to refugees is the main function of the United Nations High Commissioner for Refugees (UNHCR). It is the primary operating agency, with responsibility for coordinating relief activities and ensuring that all refugees received the basic, minimal level of assistance. Therefore, the office of the United Nation High Commissioner for Refugees (UNHCR) is viewed as the humanitarian arm of the United Nations. United Nations high commissioner for Refugees (UNHCR) has a major role in coordinating aid to refugees\textsuperscript{279} and its material assistance activities are conducted through national or local authorities of the country concerned, other organizations of the United Nations (UN), NGO’s.\textsuperscript{280}


\textsuperscript{279} In accordance with Para 1 of the statute of the Office of High Commissioner the following overall functions may be said to be assigned to or associated with solely to the cause of refugees:

(i) Providing international protection of refugees;
(ii) Seeking permanent or durable solutions to the problem of refugees;
(iii) Providing material assistance to the refugees including giving of emergency aid;
(iv) Obtaining adherence to legal instruments governing refugees; and
(v) Promoting generally the overall cause of the refugees with an eye on the future.

The term “Providing International Protection” and “Seeking permanent solutions” is clearly mentioned in the Statute’s Para-1.

\textsuperscript{280} Supra n.3 at 66.
United Nations high commissioner for Refugees (UNHCR) material function can be found in Para 8 of the statute:

The specific activities as mentioned in the statute are as follow: 281

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments there to;

(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 states;

(e) Endeavoring 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 intergovernmental 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.

The purpose of international protection is to give refugee's similar legal status as the nationals living abroad. However the permanent solution means economic and social integration of refugees in the country of asylum and repatriation to their country of origin. Former High Commissioner Ruud Lubbers said in one speech: "protection is not protection if there are no solutions".\(^{282}\) Traditionally three major durable solutions have been promoted by the United Nations High Commissioner for Refugees (UNHCR) "voluntary repatriation, integration on the spot or local settlement and third country settlement". However, the international community has placed emphasis on voluntary repatriation as the strongly preferred solution. The High Commissioner performs such activities including repatriation and resettlement, as the General Assembly determines, within the limits of the resources placed at his disposal.\(^{283}\)

Repatriation

The statute of the United Nations High Commissioner for Refugees (UNHCR) gives direction to the High Commissioner to facilitate and to promote voluntary repatriation. The repatriation can be considered only when conditions in the country of origin have changed so much that the refugees should not believe that their lives are in danger or liberty is being threatened. It is noteworthy that under the UNHCR

\(^{282}\) Supra n.278 at 14.

auspices thousands of refugees have returned to their homes. For example, 2, 00,000. Burmese who were in Bangladesh, repatriated in 1978, 1, 30,000 Zairians living in Angola as well as 1, 50,000 Angolans living in Zaire were repatriated to their respective home countries. Further almost 1, 00,000 Nicaraguan refugees returned from Costa Rica and Honduras. In 1981, at the request of the United Nations Secretary-General, the UNHCR agreed to coordinate a programme of humanitarian assistance in Zimbabwe. This programme could benefit 6, 00,000 returning refugees and displaced persons. Again in 1981, the UNHCR repatriated Chadian refugees mainly from Cameroon and provided assistance to help them on their arrival which benefited 2,00,000 people.

In April 1994, the UNHCR initiated an organized repatriation programme for the Refugees. Under this programme thousands of refugees repatriated under the high commissioner’s auspices. More than two million Afghan and Mozambique refugees returned to their homes in 1994-95. Significantly return movements continue in 1996 in which thousands of Rwandese returned to their homes from Uganda, Burundi, and Tanzania.

As part of its efforts to promote and consolidate voluntary repatriation and to prevent new displacement, the UNHCR has expanded its activities in countries of origin. Whenever, voluntary repatriation takes place, the UNHCR tries to ensure that a legal frame work is set up to protect the rights of returnees. Since refugees return to a situation of uncertainty, the UNHCR adopts community-based

284. Supra n.1 at 57-58.
285. Supra n.1 at 58.
286. Ibid.
approaches to ensure the sustainability of its repatriation and reintegration.287

Integration

Where voluntary repatriation is not feasible, the best solution is to settle refugees in their host country. This can only be done with the agreement of the government of the asylum country and the UNHCR. In Africa, refugees have been moving for a long time into neighboring countries, they have generally been admitted unconditionally. The integration is either spontaneous or in an organized manner. If it is in an organized manner the same is achieved, within a programme set up by UNHCR and the government concerned jointly.288

Most of the local settlements have become the permanent home of refugees. For example in 1981, 66 such settlements were established in 14 African countries in which a million people integrated.289 In Tanzania itself about 36,000 refugees, who were there for more than 20 years, have been integrated and offered Tanzanian citizenship. In Sudan also, same efforts are being made to settle a large number of refugees in rural and semi urban region.290 Similar plans are being put into effect in different region of the world. However, due to bad economic and social conditions in many host countries, the UNHCR’s integration activities in recent years have diminished in relation to its other material assistance programmes.

Resettlement

Resettlement in the third country may be the only way to guarantee international protection to a refugee who has
been denied protection in the country of asylum and who cannot repatriate to the country of his origin. United Nations High Commissioner for Refugees (UNHCR) has been actively engaged in the promotion of resettlement with cooperation of interested governments and voluntary agencies concerned with the resettlement of Refugees.\textsuperscript{291}

Sometimes Refugees may even find themselves at greater risk in their country of asylum than they were in their country of origin, in such circumstances repatriation is not possible and there is no possibility of durable local integration into the country of asylum, resettlement in third country may be the only feasible option.\textsuperscript{292} Resettlement involves transferring a refugee from his or her country of asylum to another state which has agreed to admit that person, to grant them long-term residence rights and the opportunity to become naturalized citizens.\textsuperscript{293}

Agency encouraged states to accept more refugees for permanent settlement to integrate them locally in countries where they had first sought refuge or asylum. The UNHCR reported that in 2002, in the wake of terror attacks on the United States, the number of successful settlements directly under the auspices of the agency plunged by 56 percent.\textsuperscript{294} Out of 185 member states of the United Nations, only nine countries\textsuperscript{295} establish annual resettlement quotas over and above their acceptance of persons arriving spontaneously at their own borders.\textsuperscript{296}

\textsuperscript{291} \textit{Id.}, at 62.

\textsuperscript{292} \textit{Id.}, at 63.

\textsuperscript{293} \textit{Ibid.}

\textsuperscript{294} \textit{Supra} n.278 at 10.

\textsuperscript{295} These nine countries are: The United States, Canada, Australia, New Zealand, Norway, Finland, Sweden, Denmark and the Netherlands.

\textsuperscript{296} \textit{Supra} n.1 at 64.
Persons Concern to United Nations High Commissioner for Refugees (UNHCR)

The past years witnessed significant humanitarian developments. On the one hand, armed conflict resulted in the movement of millions of people within and outside their countries; on the other hand, millions of displaced were able to return home or found another durable solution. Despite UNHCR’s efforts to find durable solutions, the number of refugees and internally displaced persons (IDP) under its care rose by 2.5 million in the course of year, reaching an unprecedented 25.1 million by the end of the reporting period.\footnote{297} The number of refugees under UNHCR’s responsibility rose from 9.9 to 11.4 million by the end of 2007.\footnote{298}

Analysis of Refugees data reveals two major patterns: \footnote{299}

(1) First the vast majority of refugees are hosted by neighboring countries with over 80 percent remaining within their region of origin;

(2) Second, available information indicates that the number of urban refugees continues to grow; it is estimated that half of the refugee population was residing in urban areas at the end of 2007.

Population of Refugees under UNHCR’s Responsibility:

By the end of 2007, the total population under UNHCR’s responsibility had dropped from 32.9 million in 2006 to 31.7 million, representing a decreased of 1.2 million people (-3%).


\footnote{298} \textit{Ibid.}

\footnote{299} Information on the location is available for 8.8 million out of the 11.4 million refugees (77%) at the end of 2007 as cited on \url{http://www.unhcr.org/statistic} visited on 08.09.2009.
While the global refugee population and the number of IDPs protected and assisted by UNHCR has increased. By the close of 2007, there were an estimated 11.4 million refugees under UNHCR's responsibility, including some 1.7 million people in refugee-like situations. Refugees continued to be the persons of concern with whom UNHCR is systematically engaged in extending the core and full range of its protection and assistance activities.

As of the end of 2007, roughly one third of all refugees were residing in countries in the Asia and Pacific region, with 80 percent of them being Afghans. The Middle East and North-Africa region was host to a quarter of all refugees, primarily from Iraq, while Africa and Europe hosted 20 and 14 percent of the world's Refugees. The American region had the smallest share of refugees (9%), with Colombians constituting the largest number.

300. The steady decline in refugee numbers witnessed since 2002 was reversed in 2006 when numbers started going up again. By the end of 2006, there were an estimated 9.9 million refugees. One year later, the global figure of refugees stood at 11.4 million, (this figure does not include 4.6 million Palestinian refugees who fall under the responsibility of UNRWA) including 1.7 million people considered by UNHCR to be in a refugee like situation as cited on http://www.unhcr.org/statistic visited on 08.09.2009.
301. Supra n.297 at 5.
302. Id., at 7.
<table>
<thead>
<tr>
<th>UNHCR region</th>
<th>Refugees</th>
<th>People in refugee like situation</th>
<th>Total refugees end -2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Africa and Great takes</td>
<td>1,100,100</td>
<td>____</td>
<td>1,100,100</td>
</tr>
<tr>
<td>East and Horn of Africa</td>
<td>815,200</td>
<td>____</td>
<td>815,200</td>
</tr>
<tr>
<td>Southern Africa</td>
<td>181,200</td>
<td>____</td>
<td>181,200</td>
</tr>
<tr>
<td>West Africa</td>
<td>174,700</td>
<td>____</td>
<td>174,700</td>
</tr>
<tr>
<td>Total Africa</td>
<td>2,271,200</td>
<td>____</td>
<td>2,271,200</td>
</tr>
<tr>
<td>Americas</td>
<td>499,900</td>
<td>487,600</td>
<td>987,500</td>
</tr>
<tr>
<td>Asia and Pacific</td>
<td>2,675,900</td>
<td>1,149,100</td>
<td>3,825,000</td>
</tr>
<tr>
<td>Europe</td>
<td>1,580,200</td>
<td>5,100</td>
<td>1,585,300</td>
</tr>
<tr>
<td>Middle East and North Africa</td>
<td>2,654,000</td>
<td>67,600</td>
<td>2,721,600</td>
</tr>
<tr>
<td>Total excluding North Africa</td>
<td>9,681,200</td>
<td>1,709,400</td>
<td>11,390,600</td>
</tr>
</tbody>
</table>


The number of Refugees in the Middle East and North Africa region increased as a result of the volatile situation in Iraq. According to government estimates, Jordan and the Syrian Arab Republic together host some 2 million Iraqis. Conversely, in Africa, the number of refugees decreased by 6 percent during the year, primarily due to the successful voluntary repatriation operations to Sudan (130,700), the Democratic Republic of the Congo (59,800), Liberia (44,400), and Burundi (39,800). This notwithstanding, renewed armed conflict and gross human rights violations in the Central African Republic, Chad, the Democratic Republic of the
Congo, Somalia and Sudan also led to refugees outflows of almost 120,000 people, primarily to Kenya (25,000-arrivals), Cameroon (25,000), Sudan (22,500), and Uganda (9,400).\textsuperscript{303}

**Major Refugee Hosting Countries**

The ten major refugee hosting countries in 2006 were the same as in 2007, but in different order. Pakistan continued to be the asylum country with the single largest number of refugees (2 million), principally, because of the inclusion of registered Afghan living outside refugee villages. According to government estimates, the Syrian Arab republic was host to 1.5 million Iraqi refugees, making it thus the second largest refugee hosting country at the end of the year. The Islamic Republic of Iran hosted close to 964,000 refugees, almost all Afghans. Germany reported some 579,000 refugees, a reduction of almost 26,000 compared to last year due to an improved government registration system that yielded more accurate statistics. Whereas the refugee figure for Jordan remained virtually unchanged (500,300), in the United Republic of Tanzania, the refugee population dropped to 435,600 due to the voluntary repatriation of 39,500 Burundian and 28,400 Congolese refugees. The United States of America was estimated to have some 281,000 refugees.\textsuperscript{304}

\textsuperscript{303} Ibid.

\textsuperscript{304} Id., at 8.
Major Refugee Hosting Countries, end-2007

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>No. of Individual</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1*</td>
<td>Pakistan</td>
<td>2,033,100</td>
<td>**-includes Afghans In a refugee-like situation</td>
</tr>
<tr>
<td>2**</td>
<td>Syrian Arab Rep.</td>
<td>1,503,800</td>
<td>**- Government estimate</td>
</tr>
<tr>
<td>3</td>
<td>Islamic Rep. of Iran</td>
<td>963,500</td>
<td>***-UNHCR Estimate based on 10 years of individual recognition of asylum seekers.</td>
</tr>
<tr>
<td>4</td>
<td>Germany</td>
<td>578,900</td>
<td>Figure Excludes resettled refugees</td>
</tr>
<tr>
<td>5**</td>
<td>Jordan</td>
<td>500,300</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>United Rep. of Tanzania</td>
<td>435,600</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>China</td>
<td>301,100</td>
<td></td>
</tr>
<tr>
<td>8***</td>
<td>United Kingdom</td>
<td>299,700</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Chad</td>
<td>294,000</td>
<td></td>
</tr>
<tr>
<td>10***</td>
<td>United States</td>
<td>281,200</td>
<td></td>
</tr>
</tbody>
</table>


As of 1 January 2007, UNHCR reported a total of 21018589 individual falling under its mandate.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Region</th>
<th>No. of individual under UNHCR mandate</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>In Asia</td>
<td>7979251, of which</td>
</tr>
<tr>
<td></td>
<td>(i) In Middle-East Asia</td>
<td>2580638</td>
</tr>
<tr>
<td></td>
<td>(ii) In South-East Asia</td>
<td>2974315</td>
</tr>
<tr>
<td></td>
<td>(iii) In Central Asia</td>
<td>218584</td>
</tr>
<tr>
<td></td>
<td>(iv) In South Asia</td>
<td>1304189</td>
</tr>
<tr>
<td></td>
<td>(v) In East Asia and the Pacific</td>
<td>901525</td>
</tr>
<tr>
<td>(2)</td>
<td>In Europe</td>
<td>4740392, of which</td>
</tr>
<tr>
<td></td>
<td>(i) In Eastern Europe</td>
<td>1617214</td>
</tr>
<tr>
<td></td>
<td>(ii) In South-East Europe</td>
<td>708132</td>
</tr>
<tr>
<td></td>
<td>(iii) In Central Europe and in the Baltic states</td>
<td>616132</td>
</tr>
<tr>
<td></td>
<td>(iv) In Western Europe</td>
<td>1798914</td>
</tr>
<tr>
<td>(3)</td>
<td>In Africa</td>
<td>5069123, of which</td>
</tr>
<tr>
<td></td>
<td>(i) In Central Africa and the Great Lakes region</td>
<td>1,395175</td>
</tr>
</tbody>
</table>
(ii) In Eastern Africa  2105314
(iii) In Western Africa  1031030
(iv) In Southern African region  434427
(v) In North Africa  139177

(4)  

<table>
<thead>
<tr>
<th></th>
<th>In America</th>
<th>3,229,822, of which</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>In North America and in the Caribbean</td>
<td>717 545</td>
</tr>
<tr>
<td>(ii)</td>
<td>In South America</td>
<td>2512277</td>
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**Executive Committee of the Programme of the United Nations High Commissioner for Refugees (Ex Com)**

In 1951, the Economic and Social Council (ECOSOC) at its 13th session established the Advisory Committee on Refugees to guide the High Commissioner, at his, request, in the exercise of his function. This Committee was replaced by the Executive Committee of United Nations Refugees fund (UNREF) However, again it was in 1959 that the UNREF Committee was replaced by the Executive Committee of the programme of the United Nations High Commissioner for Refugees. The Executive Committee of the programme of the

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305. Paragraph of the statute of the office of the United Nations High Commissioner for Refugees, empowers the Economic and Social Council to establish an advisory committee on refugees consisting 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 solution of the refugee problem.

306. 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 which retained the advisory functions of its predecessor.

CHAPTER - III

United Nations High Commissioner reconstituted with the following mandate: 308

(a) To give directions to the High Commissioner for liquidation of the United Nation Refugee fund;

(b) To advice the High commissioner, at his request, in the exercise of his functions under the statute of his office;

(c) To advice the High Commissioner as to whether it is appropriate for international assistance to be provided through his office in order to help to solve specific refugee problems remaining unsolved after 31 December, 1958 or raising after that date;

(d) To authorize the High Commissioner to make appeals for funds to enable him to solve the refugee problems referred to in Para (c) above;

(e) To approve projects for assistance to refugees coming within the scope of Para (c) above;

(f) To give directions to the High Commissioner for the use of emergency fund.

Currently made up of 76 member states, Ex-Com meets in Geneva annually to review and approve UNHCR’s programme 309 and budget, advise on international protection and discuss a wide range of other issue with UNHCR and its intergovernmental and non-governmental partners, Ex-Com’s standing Committee meets several time each year to carry on Ex-Com’s work between plenary sessions. UNHCR’s 59th


309. As its annual session, the Executive Committee reviews the work of the standing committee over the past year and establishes its programme of work for the next 12 months; examines UNHCR’s financial requirements for the coming year and approves the annual programme target; and, adopts conclusions, notably on international protection as well as decisions on a range of administrative, financial and procedural issues.
Executive Committee met in Geneva from 6 to 10 October 2008 to review and approve the agency’s programmes and budgets and to advise on protection matters. Ex-Com 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. India is one of its members.\textsuperscript{310}

**Executive Committee Officers**

The Executive Committee Bureau comprises three office holders; the Chairman, the vice chairman, and the Rapporteur. The Bureau is elected at the end of the annual plenary session in October, by tradition, the chair is held in alternating years by donor and non-donor representatives. It is customary for the Vice-chairman to be elected chairman the following year.\textsuperscript{311}

**Current officers**

\rightarrow Chairman \quad - \quad H.E Ambassador Boudewijn J. Van Eenennaam (Netherlands)

\rightarrow Vice-Chairman \quad - \quad H.E Ambassador Laura Thompson chocon (Costa Rica)

\rightarrow Rapporteur \quad - \quad Ms. Emina Tudakovic (Canada)

As mentioned earlier that a body comprised of 76 member states meets annually in Geneva. Each year, members discuss a variety of issues relating to international protection and adopt conclusions. While these conclusions lack the force of law, they carry some weight because they represent a consensus reached in an international forum.\textsuperscript{312}

\textsuperscript{310} Supra n.307.
\textsuperscript{311} Ibid.
\textsuperscript{312} Ibid.
CHAPTER - III

Funding of UNHCR

The United Nations High Commissioner for Refugees (UNHCR) relies almost exclusively on voluntary contributions to cover the costs of its operations. The High Commissioner administers funds both public and private, which he receives for assistance to refugees, and distributes among the private and public agencies, to administer the assistance to the refugees. Further, the office of the High Commissioner shall be financed under the budget of the United Nations, which is exclusively used for administrative costs of the office.

Although a limited subsidy from the regular Budget of the United Nations cover some 200 administrative posts, this represents only two percent of UNHCR’s total Budget and the office must raise 98 percent of its financial requirements each year. This reliance on voluntary funds, coupled with unforeseen refugee crisis, often results in funding shortages which directly affect UNHCR’s ability to respond the needs of refugees and other populations of concern.

Donors

Although UNHCR receives contributions from a large number of governments, inter-governmental Organizations, NGO’s and individual, most of its funding is provided by 15 donors -14 government and the European Commission. UNHCR is constantly seeking ways to enlarge its circle of donors. UNHCR also receives financial support from the private-Sector, which includes the general public,

313. See, Article 10, Statute of the office of the UNHCR for Refugees, 1950.
314. Id., Article 20.
316. i.e. U.S.A., Japan, the Netherlands, Denmark, United Kingdom, Norway, Switzerland, Germany, Canada, Finland, Italy, France, Australia and Sweden.
corporations, foundations and NGO's in response to ongoing fund-raising efforts in a number of countries.\textsuperscript{317}

**Budget Structure**

United Nations High Commissioner for Refugees (UNHCR) activities are divided into two types of programmes:

- **General programmes**
  - Mainly focused on UNHCR's statutory activities and included activities to protect and care for refugees in exile, whereas

- **Special Programmes**
  - Covering assistance and protection during emergencies, voluntary repatriation, and assistance for persons outside the refugee mandate but still of concern to UNHCR, including internally displaced persons (IDPs), victims of war and returnees.\textsuperscript{318}

Both programmes depend on voluntary contributions from donors. General programmes enable the High Commissioner to deal with new refugee situations between sessions of the Executive Committee by drawing on the Emergency Fund. These funds are used to finance immediate survival needs, making adjustments in allocation, modifying projects allocations or by drawing on the Programme Reserve. In the case of Special Programme carried out at the request of the Central Assembly or ECOSOC for the benefit of certain specific groups of persons the High Commissioner can appeal for the funds required to finance such type of programmes. Funds for each special programme are usually sought through

\textsuperscript{317.} Supra n.315.
\textsuperscript{318.} Id., at 19.
the issuance of appeals which can be launched, revised and updated as required. 319

UNHCR facing Funding Crisis

The UNHCR makes considerable efforts to raise funds throughout the years, so that refugees can be immediately assisted with food, shelter and other essentials for their survival. UNHCR has lacked sufficient core funding in recent year because nearly 85 percent of the contributions to it have been earmarked. International agencies need the freedom to allocate about 25 percent of their funds freely if they are to function effectively. Tight earmarking has also reduced the organization's flexibility, weakening its ability to balance financing between regions, countries and emergencies consequently, some refugee's crises, mainly in Africa, received far less funding than was available for the crisis in Afghanistan, the Balkans and Iraq. 320

In addition at the end of the 1990s, UNHCR also started experiencing funding shortages as contributions fell well behind the budgeted needs approved by its executive committee. The organization's funding situation had substantially improved by 2004. The agency rose sufficient funding for all its programmes as donors responded positively in 2004 to appeals for flexible, early and prompt funding. In addition, several donors have increased their unrestricted contributions. However, by the end of 2005 UNHCR's financial situation had deteriorated once again. 321 United Nations High Commissioner for Refugees (UNHCR) had admitted that it has also seen a sharp drop in donations for its aid efforts. At a

319. Supra n.1 at p. 69, also see, Supra n.3 at 67 - 68.
321. Ibid.
Conference in Geneva last week donations from governments for the organization which cares for 33 million people were down 6 percent. "This is of grave concern", said Peter Kessler of UNHCR.322

Cooperation with other Organizations
Cooperation between the UNHCR and other organizations of United Nations

As the refugee problem belongs to the international community as a whole it was intended from the very inception of the office that all members of the community and all agencies whether governmental or otherwise should be fully associated with the effort to find solutions to refugee problems.

Para 8 of the Statute of the UNHCR provides for cooperation with all members of the international community. Since the activities of the UNHCR have increased and diversified, its relationship with other organs of the United Nations and specialized agencies,323 with intergovernmental organizations and NGOs have become increasingly important and have continued to strengthen. UNHCR, constantly seeking the help of all specialized agencies of the United Nations (UN) whose functions are complementary to its own. Thus close links are established with the following member's agencies of the United Nations:

323. Specialized Agencies are autonomous organisations which are institutionalized by specialized agreements and are inter governmental agencies related to the UN. It works through a coordinating agency of the economic and social council.
(i) In matters of food production, the expertise of the food and Agriculture Organization (FAO)\textsuperscript{324}:

Food and agriculture organization is a specialized agency of the United Nations that leads international efforts to defeat hunger.

The special Programme for food security (SPFS) is FAO's flagship initiative for reaching the goal of having the number of hungry in the world by 2015 (presently 852 million people). Through projects in over 100 countries worldwide currently, 102 countries are engaged in the Special Programme for Food Security.\textsuperscript{325}

(ii) In the health measures, the World Health Organization (WHO)\textsuperscript{326}:

World Health Organization's constitution states that its mission “is the attainment by all peoples of the highest possible level of health”. Its major task is to combat disease, especially key infectious diseases, and to promote the general health of the peoples of the world.\textsuperscript{327}

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\textsuperscript{324} Food and Agriculture Organization (FAO) was founded on 16th October, 1945 in Quebec City, Quebec, Canada. In 1951, its headquarters were moved from Washington, D.C. United States, to Rome, Italy. As of 11th April, 2006, it had 190 Members (189 States and the European Community). as cited in Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, P. 57.

\textsuperscript{325} Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, p. 57.

\textsuperscript{326} The WHO was established by the UN on 7th April 1948. WHO is a specialized agency of the United Nations, acting as a coordinating authority on international public health, headquartered in Geneva, Switzerland. As cited in Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, p. 56.

\textsuperscript{327} Supra n.325 at 56.
(iii) In Educational matters, the United Nations Educational, Scientific and Cultural Organizations (UNESCO): 328

(iv) United Nations Educational, Scientific and Cultural Organization is a specialized agency of the United Nations. UNESCO pursues its action through five major programmes: education, natural sciences, social and human sciences, culture, and communication and information.

Three main Strategic thrusts of UNESCO are: 329

- Developing and promoting universal principles and norms, based on shared values, in order to meet emerging challenges in education, science, culture and communication and to protect and strengthen the "common public good"

- Promoting pluralism, through recognition and safeguarding of diversity together with the observance of human rights.

- Promoting empowerment and participation in the emerging knowledge society through equitable access, capacity-building and sharing of knowledge.

328. UNESCO is established in 1945 on 16th November, 1946 after satisfaction by 20 signatories. Its stated purpose is to contribute to peace and security by promoting international collaboration through education, science and culture in order to further universal respect for justice, the rule of law, and the human rights and fundamental freedoms proclaimed in the UN charter as cited in Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, p. 360.

329. Supra n.325 at 61.

United Nations International Children's Emergency Fund provides long-term humanitarian and developmental assistance to children and mothers in developing countries. As a voluntarily funded agency, its programmes emphasis developing community-level services to promote the health and well being of children. UNICEF is currently focused on five primary priorities: Child Survival and Development, Basic Education and Gender Equality including Girl Education), Child Protection from Violence, Exploitation and abuse, HIV/AIDS and Children and Policy advocacy and Partnerships for Children's rights.\textsuperscript{331}

(vi) For Vocational Training, the International Labour Organization (ILO)\textsuperscript{332}:

The International Labour Organization is a specialized agency of the United Nations to deal with labour issues. The Organization seeks to strengthen worker rights, improve working conditions and living conditions, create employment, and provide information and training opportunities. International Labour Organization's programmes include the occupational safety and health

\begin{footnotesize}
\textsuperscript{330} The United Nations Children's Fund (UNICEF) was established by UN General Assembly on December 11, 1946. In 1959, the UN General Assembly adopts the Declaration of the Rights of the Child, which defines children's rights to protection, education, health care, shelter and good nutrition. UNICEF is Headquartered in New York City as cited in Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, p. 102.

\textsuperscript{331} Supra n. 325 at 102.

\textsuperscript{332} Founded in 1919, it was formed through the negotiations of the Treaty of Versailles, and was initially an agency of the League of Nations. It became UN specialized Agency in 1946. Its headquarters are in Geneva, Switzerland. The ILO has a specialist programme addressing child labour, the International Programme on the Elimination of Child Labour (IPEC) as cited in Dr. Kuldeep Fadia, United Nations and other International Organizations, 2007, p. 55.
\end{footnotesize}
hazard alert system and the labour standards and human rights programmes.\textsuperscript{333}

All these specialized agencies of the United Nations provide all possible assistance to the United Nations High Commissioner for Refugees (UNHCR).

Further the participation the World Food Programme (WFP)\textsuperscript{334} 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. World Food Programme strives to eradicate hunger and malnutrition, with the ultimate goal in mind of eliminating the need for good aid itself. The core strategies behind WFP activities, according to its mission statement, are to provide good aid itself. The core strategies behind WFP activities, according to its mission statement, are to provide food aid to:\textsuperscript{335}

- Save lives in refugee and other emergency situations;
- Improve the nutrition and quality of life of the most vulnerable people at critical times in their lives; and
- Help build assets and promote the self-reliance of poor people and communities, particularly through labour-intensive works programmes.

Close contact with the United Nations Development programme (UNDP)\textsuperscript{336} is also maintained with the Resident...
Coordinators/Representatives of the United Nations Development Programme which are often requested to function for UNHCR-financed projects and act on UNHCR's behalf in relation with Governments of states where the UNHCR does not have its own representative. So the UNHCR and UNDP have co-operated very closely to ensure that the immediate material assistance provided by UNHCR strengthens the longer-term development plans.\(^{337}\)

**Co-Operation with Other Inter-Government Organization**

In addition to these agencies of the United Nations System Cooperating with UNHCR in their respective fields, government, intergovernmental and non-government Organizations play an important role in UNHCR's activities. This has sometimes been achieved by designating a lead agency responsible for the Co-ordination of a particular operation at the field level. The European Community (EEC) is instrumental in providing help both in cash and kind, and in the implementation of legal instruments. The European Community also extends moral and political support in the search for solutions to refugee problems.\(^{338}\) Similarly the International Organization for Migration (IOM) organizes the transportation of refugee migrants. There is also a long-standing tradition of Co-operation between UNHCR, the International Committee of the Red Cross (ICRC) and the League of Red Cross Societies (LRCS). In early 1992, the Secretary General established the Department of Humanitarian Affairs (DHA) to assist in coordinating the

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\(^{337}\) Supra n. 222 at 13, also see Supra n. 3 at 7.

\(^{338}\) Supra n.1 at. 72-73
United Nations response in complex humanitarian emergencies.\textsuperscript{339}

In addition to these, the United Nations High Commissioner For Refugees (UNHCR) Coordinates activities with the Organization of African Unity (OAU) within the framework of the Joint Working Groups established to monitor progress in the implementation of recommendations adopted at the Conference on the situation of African Refugees held in Arusha in 1979. Moreover, 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 Organization of a African Unity (OAU) and United Nations High Commissioner for Refugees (UNHCR).\textsuperscript{340} The Second International Conference on Assistance to Refugees in Africa (ICARA-II) took place in Geneva in July 1984, under the same auspices, this time United Nations Development programme also participated in the steering committee in recognition of the development aspects of many of the projects submitted to the conference.\textsuperscript{341}

Relations with the Organization of American States (OAS) have continued, with special emphasis at the moment on UNHCR’s programme for Central American Refugees. In the same way, a 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.\textsuperscript{342}

\textsuperscript{339} \textit{Id.}, at 73, also see \textit{Supra} n.3 at 72.
\textsuperscript{340} \textit{Supra} n.3 at 72 also see, \textit{Supra} n.1 at 73.
\textsuperscript{341} \textit{Ibid.} also see, \textit{Supra} n.322 at 14.
\textsuperscript{342} \textit{Id.}, also see, \textit{Supra} n.1 at 73.
United Nations High Commissioner for Refugees (UNHCR) and Non-Government Organizations (NGOs)

Non-governmental organizations perform an indispensable role at every stage as a refugee situation develops. Undoubtedly voluntary agencies are the most valuable agencies to provide the first hand humanitarian assistance to the refugees in the emergency circumstances when violation of human rights, ethnic tensions, persecution, genocide, etc, occur and save innumerable lives and give warning signals to the international community regarding their problems. Over the decades, perhaps the most sustained and devoted service to the cause of refugees has been provided by voluntary agencies. In pursuance of Article 8 (h) of the statute, the High Commissioner “establishes contact in such manner as they may think best with private organizations dealing with Refugees questions” and “facilitate the coordination of the efforts to private organizations concerned with the welfare of refugees.”

Voluntary agencies or non-governmental organizations frequently act as UNHCR operational partners in the implementation of specific projects. They also play an important role in the migration and resettlement of refugees. It is noteworthy that UNHCR has direct contact with more than 200 voluntary agencies. These non-governmental organizations are most valuable in helping refugees both in operational matters and other ways to assist refugees. 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 collaborations. Their involvement is also crucial during

343. Article 8 (h) of Statute of UNHCR for Refugees, 1950.
344. Supra n.3 at 73.
345. Ibid, also see Supra n.222 at 14.
voluntary repatriations, when their contributions include accompanying refugee back to their places of origin, designing and implementing quick impact rehabilitation projects monitoring human rights.

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,


350. American Refugee Committee – is an international non-profit, non-sectarian organization. American Refugee Committee works within its partners and constituencies to provide opportunities & expertise to communities of refugees and IDP in seven countries in Africa, Asia and Europe, American Refugee Committee provides shelter, clean water and sanitation, health care, skill training, education etc. as cited in http://www.arcrelief.org.


352. World Concern Int. – is a non-profit humanitarian organization. It provides relief in areas where people face significant political or religious restrictions. As cited in http://www.worldconcern.org.

etc. UNHCR has developed its relations and collaborations with Non-Governmental Organizations in every corner of the World, wherever UNHCR is involved.

Overview of the Role of UNHCR

The main role of the UNHCR is to protect and assist refugees in finding durable solutions to their displacement, addressing their special needs, and promoting and monitoring states, adherence to the 1951 UN Refugee convention in order to provide adequate protection to the refugees in their respective territories.

UNHCR's core mandate has not changed since 1950. The protection of refugees and the search for solutions to the problems of refugee remain the central objectives of the Organization. But the environment in which UNHCR works and the types of activity undertaken by the organization have changed significantly over the past 50 years. During the first half century of its existence, the scale of UNHCR operations was greatly increased, with offices in more than 120 Nations around the world in 2001. In addition to permanent solutions to the long-term needs of refugees; the organization provides assistance with many more immediate concerns for survival. Initially, the UNHCR focused primarily on facilitating the flow of refugees. Now it also provides material support such as food, shelter health care, education and other related social services. It has also designed special programmes to meet the specific needs of groups such as women, children, adolescent,

354. Refugee International – Refugee International is a non-governmental organization. It is based in Washington D.C. it was started in 1979 as citizens' movement to protect Indo-Chinese refugees. as cited in http://www.refugeecinternational.org

the elderly, and those who are suffering from the effect of war trauma. Additionally, the UNHCR has developed programs that assist displaced people within their own countries, returnees, asylum seekers and stateless people. Finally, the UNHCR works hand in hand with other United Nations agencies, peacekeepers, military forces, regional organizations, human rights organizations, and other international and local organizations and agencies.

Since its establishment in 1951, UNHCR has had as its primary mission the goal of meeting the needs of those forcibly displaced. However, the agency faces continuing challenges such as limited funding, difficult working environments, military threats, large numbers of displaced persons, and often overwhelming poor health conditions. Finding clear, lasting, and meaningful solutions to refugee problems around the world is extremely difficult due to complex political, economic, social and related barriers. However, with more than 32.9 million refugees worldwide today and another more than 24 million displaced people—there is an obvious need for the UNHCR and other humanitarian organizations to work jointly to ensure peace and tranquility by mobilizing resources that support these displaced persons.356

**Human Rights of 'Refugees' have emerged as a new Rules of Customary Rules of International Law:**

It comes out from the study that the fundamental rights of men gained formal recognition only at the end of World War II in the Charter of the United Nations and in the various Conventions on human rights. Before that refugees have no right under Customary International Law. Their insecure and uncertain position in customary law led to a situation which

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made it necessary to take some measures that would give them the basic rights to which they are entitled to as human beings.\textsuperscript{357}

The existing international legal framework on refugees recognized a variety of basic human rights to refugees. There is no doubt that the various treaties and instruments on refugees have made a modest contribution to the improvement of the position of individual in international law vis-à-vis his state. With the passage of time some human rights are being become a part of customary international law.\textsuperscript{358} It is generally recognized that several of the provisions of the Universal Declaration of Human Rights and some refugees rights are being became a part of customary international law i.e. right to racial discrimination (e.g. apartheid), right to non-refoulement, right against genocide, torture, arbitrary detention, etc. It is binding to all states to respect the rights mentioned above even if they are not party to the 1951 Convention.\textsuperscript{359}

An analysis of the international refugee law regime show that, it recognized a very broad concept of human rights and these basic rights of refugees become part of customary international law while fulfilling the two tests for such recognition like: Psychological Test (opririojuris) and material Test (State Practices). So although human rights of refugees are progressively emerged as the new rules of customary international law in the meantime international law regime shares some problems:\textsuperscript{360}

\textsuperscript{357.} Supra n.114.
\textsuperscript{358.} A norm or rule of customary international law is one which is binding on all states, regardless of whether it is set out in a treaty to which a state is party.
\textsuperscript{359 .} Supra n.176.
\textsuperscript{360.} Id., at 19 – 20.
(i) Firstly, the definition of 'refugee' given in the Convention is quite limited and covers only those persons who became refugees as a result of conflicts in Europe during and before the Second World War. However, in 1967 Protocol, this limitation was removed to some extent and now definition of refugee apply only to person, who had to leave their country due to fear of persecution, or due to race, religion, nationality, membership of a particular group or political opinion. Thus, it clearly seems that several other category of refugees remain outside the scope of the 1951 Convention and 1967 Protocol on refugees.

(ii) Secondly, many important refugees’ rights are not absolute. Most of them are subject to limitation imposed by the legal instruments themselves, like: security of state, safety of own community, public health, public order, morality and the rights and freedom of others.

(iii) Thirdly, sometimes, when a state becomes party to an international refugee law regime, it makes a "reservation" to some of the provisions of the treaty. It is like a declaration, clarifying the manner in which the state will interpret a particular provision of the treaty or indicating that state will not bound by a particular provision.

(iv) Fourthly, many states through their national Constitutions allow for the suspension of constitutionally guaranteed rights and the imposition of martial law or emergency in the case of war, external aggression or armed rebellion.

It is the time now that human rights of refugees should be recognized by all states in the worldwide, weather signatory
to the Convention/Protocol for refugees or not. It further seems to possible that sooner in future these rights regime will be accepted as a part of customary international law and all states will respect these basic rights of refugees as essential part of human being.

**Sum-Up**

An analysis of the international refugee law regime shows that, it reaffirms "faith in fundamental human rights, in the dignity and worth of the human person......to promote social progress and better standards of life in large freedoms". While the country of asylum has the responsibility and obligation to protect refugees, the country of origin has the obligation to create conditions so that refugees could return to their home in safety. Further, the definition of 'Refugee' given in the international instrument (i.e. 1951 Convention and its 1967 Protocol) removed limitation to some extent and now the definition of refugee applies in wider sense. In addition, the regional arrangements have also enacted standards of refugee protection that extend to Convention. Thus study reveals that refugee law is not about facilitating permanent immigration, it is rather a system of human rights protection at international as well as regional level respectively. The existing international legal framework on refugees not only recognizes a variety of basic human rights to refugees but also shows that there is a global consensus recognizing the human rights of refugees in a foreign land. This is emerging as a new rule of customary international law. Further the humanitarian aspect of the refugee problem recognized by the different international organizations also provides respect and protection for human rights of refugees. The humanitarian assistance of international organizations is very helpful to solve their problem to some extent.