CHAPTER 1
INTRODUCTION

The refugee problem is old, as people in search of dignified existence have always left the land of their birth, when confronted with the inhumanity of other men. On the other hand, there have been humanitarian initiatives to ease the problems of refugees and displaced persons.

The last year of the 1970s will go down in history if for nothing else as the year of refugees. Two decades after World Refugee Year, the official estimate of refugees throughout the world had reached a figure of 10 million people. But unofficial estimates by well informed organisation which recognise the essential characteristics of a refugee amounted to nearly 14-18 million. The geographical distribution of these men, women, children and even of whole populations fleeing from fear and deprivation is fluctuating almost continually but it is an ominous development for the future that semi-permanent concentrations of refugees have in recent years increasingly built up in parts of South east Asia, the Middle East and the Horn of Africa. Africa alone now contains some four million refugees largely forgotten by the world's public consciousness. The future outlook appears to be a cumulative nightmare. At the end of 1979, although plans were being made to return 200000 refugees to Zimbabwe, over 400000 new ones had arrived in Pakistan from Afghanistan. In January 1980 the UN High Commissioner for Refugees reported that his budget fixed at the unprecedented figure of $234m, only three months earlier, now because of new emergencies needed to be doubled.

That refugees are recognised as a 'problem' implies that somewhere in the hearts of the traditionally humanitarian nations of the world a supranational responsibility is perceived. But it is not clear what factors: political, historic, socio-economic or the pressures of public opinion (whether based on

1. Displaced persons are also included, the official world figure is nearer to 12 million.
2. Personal communication, UNHCR, Geneva.
traditional generosity or transient emotions) encourage nations to accept
refugees or to assume any special responsibility. Granting asylum to refugees is
intended to be both a friendly (in the political sense) and humanitarian act, but
the political bias often underlying such action is an important component of the
conduct of nations. Never has this been demonstrated more tragically than in
the case of the Kampucheans who until hundreds of thousands had crossed the
national border into Thailand were denied protection by the international
community. Their population devastated by more than one war awaited
governments' decisions concerning political allegiances and protocols for the
distribution of relief.

Beyond the short-term deprivations and degradations of becoming a
refugee and sometimes being exploited by middlemen lies the (possibly
lifelong) traumatic reality of never belonging of being permanently
dispossessed of homeland and rights. The practical effects of what this entails
is under researched. Recent findings however, indicate that fear, depression,
and the loneliness of having no roots often being cut of from relatives, friends,
community support, culture and means of livelihood can have profound effects
which are sometimes only apparent in refugees and their children long after
resettlement.3 Meanwhile the number of refugees according to the United
Nations High Commissioner for Refugees is at present increasing at an average
rate of 2000 per day.4

**Historical Perspective:**

Refugees broadly defined as those people who move to seek sanctuary
and protection have existed since historical records began. Massive population
movements have changed the demographic maps of the world during every
century. The main causes then were as familiar as they are today: war,

3. World University Service (UK), Seminar on Mental Health and Exile: Chile WUS (UK) London.
intolerance and persecution of ethnic, religious or political minorities. Solutions were in the past informal and often unpublicized today as national frontiers have become ever more sharply defined and guarded refugees have been designated and developed into a problem requiring increasingly formal remedies, classifications and legislation. The growing emphasis on national, cultural and political homogeneity since the First World War has created more refugees than ever before and at the same time has served to restrict their movements. Other contributory factors include political instability (for example in Africa, Latin America and South East Asia), population growth and the pressures that this can generate and even the development of social welfare in some richer nations. Refugees both as minorities and as individuals are no longer merely those physically uprooted. They are in both a national and international context euphemistically identified as being and creating 'problems'.

Movement of individuals or families between neighbouring and distant groups has characterised non-industrialised societies throughout the world.\(^5\) Previously, these traditions have frequently paid little attention to the boundaries of sovereign states. Tensions and concomitant restrictive legislation have arisen when amongst other factors national tenets have come to predominate over those of the migrant poor. Whereas the oppression and expulsion of political or religious minorities (see, inter alia the Minority Rights Group's Reports nos. 6, 11, 14, 16, 20, 24 and 32) has been a recurrent theme in history. Asylum did not in the past necessarily require formal permission as it does today. In addition escape routes have effectively been barred through the development of fixed and closed state frontiers and consequently a political matrix or at least complexion has been forced upon most refugee legislation.

It is worth considering the key factors which motivate people to uproot themselves and their families to face an unknowable future. (Of Course, some

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5. In Africa today, as in the past, fleeing across national boundaries to escape retribution is common in many societies and can be a formal requirement of local justice.
potential refugees are not permitted to leave their country and thus never become actual refugees: others suffer internal deportation like the Crimean Tartars in the Soviet Union). Even a cursory glance at a precedents for the major refugee movements during and since 1918 clearly reveals that most people take such drastic steps when they subjectively or objectively believe they are denied their basic right to maintain a former way of life. Because economic, religious or ethnic practices have been summarily forbidden; because they belong to a victimised political minority or because they or their close family members have been deprived of citizenship and the right to work and support themselves. A person becomes a refugee because not to do so is likely to mean death from violence or at the very least in order to escape a level of insecurity that is intolerable even to those who may be inured to poverty or persecution.

The numbers are so great and the conditions that create refugees so prevalent, that the resulting difficulties can often seem insoluble. However, a closer examination of the history of refugee movements both before and since the Second World War suggests otherwise. The available records show that between 1945 and the early 1970s there have been perhaps 60-100 million refugees in the world. A period highlighted by those displaced in Europe by the Second World War and its aftermath, the partition of India, the division of Germany, the Palestinians' diaspora, the flight of Cubans, the consequences of the Indo-Pakistan War and the birth of Bangladesh, 1971 was marked by the exodus of over 9 million inhabitants from East Pakistan to India. The emergence of nationalism in Africa created in all several million refugees together with the Biafran, Ethiopian and Sudanese wars, while more recently refugees from oppressive regimes in Latin America have grown steadily and even greater numbers have fled from war and persecution in South-east Asia.

Although the immediate reasons for flight and indeed the circumstances and opportunities for resettlement vary. It is interesting to examine which

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refugee groups have been granted asylum most readily and by which countries. This will provide a framework within which the present refugee 'crisis' and the adequacy of the response to it can be more properly assessed.

The Immediate Post Second World War Experience 1945-60:

During the early postwar years, the majority of war refugees in Europe were able to return to their countries once hostilities had ceased. Populations moved back to areas previously occupied by German forces and peoples in Eastern and Central Europe were exchanged: for example, in 1946 Hungary and Czechoslovakia agreed on a voluntary exchange of their respective ethnic minorities. It is however, undoubtedly true that not all exchanges were voluntary, many thousands of Soviet citizens were forcibly repatriated and the majority were sent to Stalin's slave camps. The Croats handed over to Tito were murdered almost to a man. Between 1945 and 1961 3\(\frac{3}{4}\) million refugees from East Germany were granted political asylum in West Germany.\(^7\) Subsequently, religious fighting in India and the eventual emergence of Pakistan in 1947 created millions of refugees, who like their counterparts in the later Bangladesh war became the responsibility of the national governments and to some extent of relief agencies when the fighting stopped. In the Middle East, once the State of Israel had been established almost all the Jewish refugees still unsettled in Europe were absorbed and subsequently Jewish refugees from Arab states, the British colony of Aden and elsewhere went either to Israel or settled in the United States or Latin America. Palestinians in camps however, continue to occupy the uniquely recognised position of permanent refugees under the special protection of the international community under the aegis of the United Nations Relief and Works Association (UNRWA).

Events following the Hungarian Revolution of 1956 illustrate just how effective, efficient and rapid the international community has proved. It can be

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7. A further 17,000 have been 'bought' by the Federal Republic of Germany for $600 million from the German Democratic Republic since 1962.
in resettling refugees (just as in 1917-20 nearly 1.5 million political refugees from Russia had been accepted mainly in Europe as well as nearly half a million Armenian and 1.25 million Greek refugees from Turkey). Some 200000 Hungarians fled into neighbouring European countries after the uprising. By 1958, over 170000 had been resettled in countries mostly of their choice including Australia, Canada and the US with some 20000 going to the UK and approximately 18000 returning to Hungary. 8 Similarly over half a million Cuban refugees were welcomed and registered by the United States authorities in a spectacularly efficient 'freedom flight' airlift programme between 1965-73. 9 Sympathy for those unwilling to tolerate a communist regime was an even more strongly felt concern in the 1950s than it is today. (The U.S. Refugee Act (Sec. 203(a) 7) specifically makes provision for a yearly quota of refugees from communist dominated countries. Under the quota system would-be refugees from non-communist states must be victims of political, racial or religious persecution). Nevertheless, the fact that the majority of refugees in both the Cuban and Hungarian cases were white educated often professionally skilled and culturally from a Euro-Western background were obvious inducements to the developed Western countries where they eventually settled.

During the 1950s and 1960s, hundreds of thousands of emigrates were created by the emerging independence of former European colonial possessions in Africa and Asia. British subjects from all over the world including many Asians from Kenya and Uganda migrated to the UK. A considerable quantity of French citizens from North Africa and Indo-China poured into France. Dutch repatriates together with the Amboinese from Indonesia fled to Holland while many Italians from Libya, Eritrea and Ethiopia moved to Italy.

The Changing Pattern- 1960 onwards:

In the face of this evidence of integrating such large numbers of people, it is scarcely possible to contend that there is no international capacity for absorption and it has proved impressively effective and successful in the relief and rehabilitation of refugees when the political will is present. But what seems to emerge is that the relatively informal efficiency also occasioned more restrictive legislation in an attempt to stem the flow to those nations which had previously operated a more or less 'open door' policy to genuine refugees or at the least, had accepted fully their responsibility for immigrants from former colonies. A background of economic expansion or restraint also appears to be a crucial factor. For example, prior to the United Kingdom's 1962 Commonwealth Immigrants Act there was clearly a need for cheap labour during Britain's expansionist period by contrast the 1971 Immigration Act, which recognises in the rules of administrative procedures. Six types of citizenship formed a response to changing political and economic conditions. (However, that Wasserstein\(^{10}\) demonstrate from Cabinet Minutes and other documented sources, the changing attitude of the British government towards Jewish refugees from the early 1940s onwards. The increasingly negative attitude was summed up by the note of one senior Foreign Office official who declared that he regarded the sinking of a ship carrying Jewish refugees to freedom as an opportune disaster).

The fundamental attitude of many governments became to keep any appreciable number of new people out and the granting of asylum became a last possible resort. But which people are to be kept out and why? Those countries such as Australia and New Zealand which until recently have encouraged immigration often exclude the refugee who may not fulfil the strict health, language and professional (or other skill) requirements. Other nations for example Canada, Switzerland, Austria and in Scandinavia commendably

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make special provision for the acceptance of the sick and mentally and physically handicapped refugees.

Refugees as a long-term problem:

The Western stereo typed image of a refugee probably includes the following characteristics- poor, ill educated, and under-nourished. The common view (often derived from media pictures or charities advertisements) is one of the pathetic individuals, their children and a few belongings on their backs fleeing with fear and bewilderment in their eyes. This picture is often all too familiar and true but political emigrates and more recently the Boat People have to some extent challenged the stereotype. Now the world is confronted with well educated and relatively wealthy refugees 'fee-paying emigrants' as a Malaysian government official described the Boat People and others who are 'voting with their feet.

The word 'refugee' has immediacy suggesting an emergency status or at least a short-term problem. However, the historical indications are that almost inevitably. A proportion of refugees will become semi-permanent exiles (Hirschon and Thakurdesai\(^\text{11}\) report that the families of Greek refugees who came from Asia Minor in 1922 still, today maintain a sense of separate identity partly due to the fact that the majority continue to occupy prefabricated temporary housing supplied by relief organisation in the twenties). The most extreme and unique case of the long-term ill-consequence of political upheaval is represented by the Palestinian refugees who now number over 1.8 million (700000 in Jordan, 363000 in the Gaza strip, 318000 on the West Bank, 219000 in Lebanon and 204000 in Syria). In addition the recent fighting in southern Lebanon has created new problems by driving 250,000 people from their homes. Rydbeck, the new Commissioner General of the UN Relief and Works Agency for Palestinian Refugees in the Near East states that the agency

ended 1979 with a deficit of over $50 million. (In 1979 the USA gave $52m, Libya $4m. and Saudi Arabia $1.2m. whereas Algeria and the Soviet Union, vocal supporters of Palestinian rights have never contributed.

Although the resettlement rate of Vietnamese refugees from Hong Kong is relatively high much less world attention would have been directed to these people had they not taken to boats. The prior price for world concern and action was the drowning of many thousands. (The various estimates of those who perished range from 20000 to 250000).12

The numbers of refugees fleeing war in the Horn of Africa have not benefited to the same extent from media attention. For example, it is estimated that at present up to 1.5 million refugees from Ethiopia are concentrated in urban and rural areas of Somalia. This represents over one quarter of the population of Somalia and the burden to the government may become intolerable. It is unlikely that these refugees will be able to return to their own countries in the foreseeable future. Meanwhile, relief organisations are providing food, medicine and rudimentary health care and education systems. However, the longer term responsibility for resettlement remains that of the host government which in an already poor country has to balance concern for the new comers with a greater responsibility towards the ills of its own people. Over one third of the world's total refugees are in black Africa, but whereas $105m. of the UNHCR budget for 1980 will be spent on 1 million refugees in South-east Asia, only $70m. is earmarked for the 4 million in Africa.

Refugees are primarily created by war and other major civil disturbances. The dilemma is how Governments that are not immediately responsible for their condition can cope effectively with the human consequences. Basically they are faced with the predicament of how best to reconcile international humanitarian obligations to refugees with domestic obligations for the well being of their own nationals (and electors). However, it is clear that some refugees are in more urgent need of protection and asylum

than others. What are the procedures, political biases and mechanisms at both national and international level available to ensure that the concern first formalized in the 1930s, following the massive refugee problem created by the first. However, continues to be translated into effective action.

More than 50 percent of all refugees are children and young people of school age; four-fifths come from developing countries. Most refugees are created by political and other emergencies that cannot be predicted an uncomfortable fact of which planning must take account.

Although the primary responsibility for refugees lies with the persecutors or conquerors who cause their plight. It is necessary to ask whose humanitarian responsibility do they become and how far does (or should) acceptance of that responsibility go? How adequate and how equitably applied are the available resources for relief, admission and resettlement? What are the conditions necessary for achieving the recognition of official refugee status (as defined by the 1951 UN Convention) and what exactly are the consequent benefits? And most important of all how can both policy and practice be improved?

Before dealing to all these matters First we should understand the definition of a refugee.

In Chapter II, an attempt has been done to define and describe refugees, though it may appear an unworthy exercise in legalism and semantics. Any dilemma in the definitional discourse develops due to historical reasons, may be on account of a paradigm shift of the genesis of the problem.

In general terms refugee is a person compelled to flee his state of origin or residence or driven from his or her home to seek refugee specially in a foreign country due to war, political troubles, religious persecution, famine or natural disasters etc.
The term refugee has been subject to various interpretations by social scientist and experts in international law. According to Sir Simpson\textsuperscript{13} "A refugee is one who finds himself deprived of legal action, mutual support, the access to employment and the measures of freedom of movement which happier mortals take as a matter of course. In an accord world this legal protection and mutual support constituting what might be the nationals of a sovereign state enjoy social security. Security is extended to them, not only at home, but when they move around the world in other countries. The refugee, unless special means are taken for his protection, has no such security but exists in any country on sufferance. His defenselessness lies in his inability to demand the protection of any state for all practical purpose he is outlawed by his country of origin in his country of refugee. He has a measure of ordinary legal protection in any decently governed state. Above all, he has no claim such as the right to continued residence, and he is liable to expulsion if his presence for any reason is no longer desired. The essential quality of a refugee therefore, may be said to be that he has left his country of regular residence of which he may or may not be national as a result of political events in that country which rendered his continual residence impossible or intolerable, and has taken refuge in another country, or if already absent from his home is unwilling to return without dangers to life and liberty.

Regarding the definition of refugee in international law: two conditions must exist:

i. Persons or categories of persons qualifying for refugee status must have left the territory of the state of which they were nationals.

ii. The events which are the root causes of a man's becoming a refugee derive from the relations between the state and its nations that is victims of natural disasters are excluded.\textsuperscript{14}

\textsuperscript{13} As cited in Vemant Jacques: The Refugees in the Post-War World (George Allen and Unwin Ltd. London) 1953 pp. 4-5.
\textsuperscript{14} Saxena, R.N. Refugees (Asia Publication House) New Delhi 1961, pp. 2-3.
Keller described three main types of refugees such as:

a) those who have become refugees due to economic causes,

b) those who have become refugees due to war, and those

c) who owe their refugees status to political, religious or ethnic reasons.

The first category of persons involves those men whose moves are voluntary and the causes of displacement can be described as positive motivation or a desire for economic betterment. The actual travel is felt to be more of an adventure than an escape. Since in most of the cases death is not the alternative to migration and violence does not attend it these people suffer little or no physical damage.

The second category, "war refugees" includes those made homeless by war and who have not yet been resettled. The displacement sometimes voluntary some times not is negatively motivated. It becomes necessary to flee if one's safety is to be guaranteed. Since these type of refugees in most of the cases returned to their homeland, it becomes difficult to characterize then as refugees, but in some other cases in which they cannot return to their homeland, they are usually known as war evacuees.

The third category of refugees is a relatively new one. Those people who as a result of new government or new policies find themselves threatened in a hostile environment and secondly because of communities, ethnic and religious worldview's out of political beliefs which is not in consonance with the new government policy, are forced to flee their native land for the purpose of security.

These three types of refugees are a broad classification and in any nation there may be more than one type. In India we also have second and third type of refugees such as Tibetans, Punjabis and Bengalis etc. Further even among one refugee group, depending on their migration and time of departure different types can be found. Recently, there has been a resurgence of the second type the war evacuee of external variety i.e. traditional people who because of
enemy occupation of their territory are forced to flee to more or less in hospitable or unsympathetic areas e.g. The Chinese occupation of Tibet has sent thousands of Tibetans into the hilly regions of India.

In these definitions of refugees, we noticed that all of them regard refugees to be nationals who have migrated to another country. While this could be accepted it should be emphasized that Keller's\textsuperscript{15} category of economic migrants does not fit in with other definition of refugees which regard the refugee as an involuntary migrant who cannot return to his country and enjoy the same citizenship status as those of other nationals.

To accept Keller's categorization of an economic migrant as refugees would lead us to categories Indian migrants to the middle east countries in search of job opportunities also as refugees. Therefore, a refugee for one purpose is regarded as a person who has been compelled to abdicate his motherland due to loss of political status or due to hostile environment created by the emergence of new religious or political groups.

This definition is also in conformity with Indian Government's approach to the refugee problem. The Indian Government does not treat these refugees as foreigners and gives them full citizenship rights if they so desire. This definition comes close to the third category of refugees as defined by Keller.

**Definitions and Conventions Relating to Refugees:**

The first United Nations High Commissioner for Refugees Dr. Van Heuven Goedhart, was appointed in 1950 and he and his staff drafted the 1951 United Nations Convention relating to the Status of Refugees. The terms of the Convention referred only to those events occurring in Europe prior to 1 January 1951. A refugee was defined as follows:

'Any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or

\textsuperscript{15} See Stephen L. Keller, 'Uprooting and social change. The role of refugees in development' Manohar Book Service, Delhi, 1975.
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, is unable, or owing to such fear, is unwilling to return to it'.

The Convention also recognises that those persons having more than one nationality could also apply for refugee status.

The United Nations Convention relating to the Status of Refugees initially signed by 13 countries was itself the outcome of previous definitions and quasi-legal agreements by various organizations including the League of Nations and bodies such as the International Refugee Organization (IRO) and the Intergovernmental Committee for European Migration (ICEM). The IRO was set up in 1946 to take over the work of resettlement care and maintenance of refugees from the United Nations Relief and Rehabilitation Administration (UNRRA) and the Intergovernmental Committee for Refugees (IGCR). ICEM, instituted in 1951, continued the IRO work of promoting migration, including that of refugees, from Europe. (In 1979 ICEM moved 248,000 people- the highest yearly figure in its history. Of that total 54,280 were Russians, of whom 17,489 went to Israel and 33,914 to the United States).

The Protocol of 1967 amended the Convention by removing both the time and geographical limitations. Effectively this means that henceforth all refugees, and not just those resulting from the Second World War, automatically came within the protection afforded by the 1951 Convention.

The 1951 UN Convention and 1967 Protocol remain the principal international instruments and accession has been recommended by various regional organisations including the Council of Europe, the Organization of American States and the Organisation of African Unity (OAU).16 This latter

body drafted additional recommendations and procedures for dealing with the growing problem of refugees in Africa. The 1969 OAU Convention was, and is, intended to supplement existing procedures relating to refugees. However, additional articles emphasize the non-discrimination clauses whereby no refugee shall be refused recognition because of religious, racial or political affiliations. Those individuals who may be fleeing from war or civil disturbance or escaping violence of any kind in Africa is also recognised as refugees. Thus while the 1951 Convention rules that fear of persecution is the necessary and sufficient condition for refugee status, the emphasis is on political persecution. Furthermore the 1969 OAU Convention incorporates the central provision of the 1967 UN Declaration on Territorial Asylum. By widening the concept of persecution from the essentially political persecution implied in the 1951 Convention, by including reference to asylum, and finally, by making explicit the mechanism of voluntary repatriation, the 1969 OAU Convention makes more liberal and innovative provisions for refugees in Africa. The High Commissioner for Refugees has subsequently pointed out that his office is similarly willing to consider ... persons who could be refugees within the meaning of the UNHCR Statute as well as the Convention and Protocol.

Sub-clauses of the UN and OAU Conventions, various subsequent articles, amendments and recommendations as to procedures for the determination of refugee status fill many a shelf in UN and government offices. It would seem at first glance as though every conceivable contingency has long been taken care of and that any victim of persecution of almost any kind is covered by the terms of the Conventions. The spirit of the Conventions can be summarised as follows: that every person is entitled to freedom from

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17. UNHCR- Collection of International Conventions, Agreements and other Texts Concerning Refugees. UNHCR, Italy, 1971.
persecution and that he or she will receive recognition and assistance from the international community in order to effect that freedom. The second crucial outcome of the 1951 Convention is the corollary that no person should or can be forcibly repatriated (refoulment) to his own country the source of his fear of persecution. The major and outstanding constraints within the terms of both Conventions are that an individual must have crossed a national boundary in order to achieve official recognition as a refugee and that his fears of persecution be well founded. Finally in neither the 1951 UN Convention nor the 1967 Protocol is there specific reference to territorial asylum, which remains a concept rather than a recommendation embodied in the text of either document. Detailed legislation in many Latin American nations clearly rules that asylum is a privilege granted by the state and is not the right of the individual to claim it.19 The delay between signing and subsequent ratification of any Convention is often considerable and, indeed, a signatory State may never become a Contracting one.20 The original, precisely drafted texts may become, modified (as was the case with the 1951 Convention) to gain wider adoption and in so doing also become more vague and flexible in order to attain the formal accessions required for any international Convention to become operative.

United Nations Conventions and Protocols are intended to be legally binding within the territory of the Contracting State. The position of Conventions in international law is that Contracting States are obliged to bring their domestic provisions into accordance with their international obligations. This can mean either that new law has to be introduced old laws changed or existing laws are sufficient to enact the Conventions and Protocols. The United Nations can and does request formal statements from Contracting States as to their procedures for implementing Conventions. By contrast UN Declarations such as the Universal Declaration of Human Rights (1948) and more

20 For example, only 19 out of 32 Members State have formally ratified the 1969 OAU Convention.
pertinently, the Declaration on Territorial Asylum (1967) have no such legal force.

Additionally Member State although party to a given Convention may introduce their own reservations to certain articles, which are thus not legally binding. A country may not ratify a Convention but may be party to a subsequent Protocol. For example, the United States of America has only ratified the 1967 Protocol pertaining to refugees and not the 1951 Convention. Amongst western European countries, only Monaco has not ratified the Protocol, though it is party to the Convention. All parties to the European Convention on Human Rights, except Spain, have ratified both the 1951 Convention and the 1967 Protocol. Once ratified, however, the Convention requires that Contracting States '... shall communicate to the Secretary General of the United Nations, the laws and regulations which they adopt to ensure the application.\(^2\)

At the time the UNHCR was started, the 'cold war' was at its height, and both the High Commission and the Convention reflected a background of the many refugees then coming from Eastern Europe to the West. The Soviet bloc countries have since consistently ignored though not obstructed- the UNHCR and its budgetary requirements. China however, is now an active member of the UNHCR's executive and is both contributing funds and has offered to receive a large quota of refugees from Vietnam.

The Spirit and practice of International Conventions:

The latitude in implementing the 1951 Convention is considerable. Added to the consequent confusion is the obvious difficulty in achieving international agreement as to the meaning of the phrase 'well founded fear of

persecution' and possibly most important of all there is the related problem of the right to asylum.

The determination of refugee status however is not simple. There are two distinct refugee categories:

(i) those who are part of mass movement provoked by invasion or oppression, and

(ii) Individuals who claim to have escaped persecution in their own country.

The former group are usually rapidly recognised as refugees but individuals in the latter category may have great difficulty in justifying that their fear of persecution is well-founded and in achieving recognition of their refugee position. There has been some discussion as to whether the Vietnamese Boat People qualified as refugees within the terms of the 1951 Convention. Initially it was thought that the ethnic Chinese in Vietnam were economic rather than ethnic or political emigrates: one refugee is reported to have said 'in Hong Kong we can live a life of luxury without hard work.' As Syrians fleeing Iraq since 1974 in many cases have been unable to prove that they are victims of persecution.

It is quite possible for a country to have impeccable legislation incorporating the directives of the Convention and Protocol and yet refuse admission to the most obvious victims of persecution. Case studies indicate that although refoulment is not a normally procedure, it is, in some countries, dependent on the port of entry official's personal understanding of refugee status and his subjective judgement of how well-founded the individual's fears are. It is clear that this understanding is often imperfect, largely because the phrase 'well-founded fear of persecution' is itself ill defined. There is no single interpretation but generally the definition refers to persons whose life and liberty are in danger and whose need for protection from persecution existed.

prior to their escape. It is easier to designate those who are excluded from Convention status for example, those who have been convicted of crimes against peace or humanity or those guilty of war crimes. At the other end of the spectrum there are undoubtedly severely poor people who are forced to move to urban areas for jobs but are not 'refugees'.

The United Nations High Commissioner for Refugees, non-governmental and voluntary agencies who have or assume responsibility for refugees, as well as individual national government departments, recognise and act as far as they can for many other categories or refugees. These categories include stateless persons, exiles, and migrant workers unable to return to their countries of origin because of civil disturbances or fear of persecution and political dissidents. Such categories of people have in practice similar benefits to Convention refugees with some important exceptions.

When the UNHCR was established in 1950, its mandate was to call upon governments to provide protection for refugees 'not excluding those in the most destitute categories'. The competence of the High Commissioner extends to those who are outside the country of nationality, or if they have no nationality, the country of former habitual residence and who require protection. The mandate is wider than allowed in the Convention, but once again there is the clear indication that unless a person has removed himself from his country he cannot come within the potential protection that UNHCR and other bodies might afford him. In fact, under special circumstances UNHCR can and does go beyond the mandate. For example, agreements with governments to deal with returnees have been made, and UNHCR has been invited to supervise or otherwise aid nationals who is every sense, except that they are inside their own countries are refugees. The High Commissioner has extended his 'good offices' to displaced populations in Southern Sudan, Angola,

25. Remarkably the non-refoulment principle in the UK is guaranteed under the Fugitive Offenders Act (1967) to persons against whom a prima facie case is established that an extradition crime has been committed.
renew a passport or work permit or when they are summoned to return to their country of origin. Many of these people, though eligible may be reluctant to apply for Convention status as it may affect the safety of relatives in the country of origin or they may fear future discrimination because of the refugee classification or in the event that the application is unsuccessful added retribution on return to the country of origin. Many would be refugee also apparently fear 'denationalisation' as passports have to be deposited when an application is made. This last fear is persistent widespread but unfounded. A refugee normally retains his nationality until his native country deprives him of it or when he voluntarily applies for citizenship in his country of asylum.29

**Convention Refugees:**

The key protection afforded a Convention refugee in international law is the right to seek asylum and the guarantee that he shall not be forcibly repatriated. However, the expulsion of aliens is equally a sovereign right of States. In practice, therefore, the rights of a Convention refugee only apply once he or she has been granted asylum permanently. Temporary asylum does not usually entitle a refugee to the full social and economic benefits embodies in the main provisions (set out below) of the 1951 UN Convention:

(i) Treatment as accorded to nationals of the Contracting State,

(ii) Treatment as accorded to nationals of the State of habitual residence of the refugee,

(iii) The most favorable treatment accorded to nationals of a foreign country,

(iv) Treatment as favorable as possible and in any event not less favorable than that accorded generally to aliens in the same circumstances.30

The Convention rules that travel documents should be issued that the

Cyprus and Lebanon. A recent example is the Programme of rehabilitation for refugees returning to Uganda. More remarkably UNHCR through the local office helped imprisoned Chileans to escape their country and thus become eligible for refugee status and consequent assistance. Because of the greater breadth of UNHCR's mandate together with the delay in rectification of Conventions and Protocol and individual reservations made both Convention and mandate refugees can co-exist in a given country within a given time.  

**Stateless Persons:**

Those countries party to the 1951 Convention ratified a separate Convention concerning Stateless Persons in 1954. As stateless Person may for example, be a victim of territorial re-alignment and not necessarily qualify under the 'well-founded fear of persecution' clause of the 1951 Convention. (Those residents of Uganda expelled by Amin who had neither British nor Ugandan passports were Stateless Persons but also qualified as refugees). There is yet a further group of refugees. The subject of much legal and political discussion the de facto refugees who are similar in every respect to de-jure refugees but are excluded from the latter category by reason of not having crossed a national border or are rejected as being eligible for Convention status by the host country in which they reside. In this group are those who still have their national passports, for example emigres from some Latin American countries or Greek nationals from and in Cyprus; exiles; 'crypto refugees' a term used by many agencies to describe refugees 'hidden' in other alien categories such as foreign students unwilling to return due to the fear of political persecution and draft evaders, conscientious objectors and deserters. For these individuals, their status only becomes apparent when they need to

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26. Italy, for example, although acceding to both the 1951 UN Convention and 1967 Protocol, recognises refugees only within the geographical limitations of Europe.
27. There is a further UN Convention on the Reduction of Statelessness adopted by the General Assembly in 1961.
28. A United Nations Resolution on the Status of Persons Refusing Service in Military or Police Forces used to Enforce Apartheid, recognises the special position of these people.
individual has the right to move within the country and to travel abroad (implying, of course, that upon return to his country of asylum there will be no question as to his right of entry) and that he be eligible to work and earn a living wage or if necessary receive payment from the State for himself and his family that his children be educated and eligible for educational grants and if necessary that he and other adult members of this family have access to counseling services and language instruction. Finally, after a certain period, the Convention refugee is eligible to apply for citizenship and this should be granted both to him and his family. The Convention also provides that the individual has access to the courts of law and when outside the country of asylum he be treated as a national of the host country.

**De Facto Refugees:**

The de facto refugee group explicitly excludes by international consensus, illegal migrant or migrant workers in search of better living Standards. But the growing populations of migrant workers from less developed countries to nations of comparative wealth often constitute yet another anomalous crypto-refugee category. For example Turkish Christians who have well-founded fear of persecution if they return may have more difficulty in gaining recognition as refugees because of their migrant worker status.31

De facto refugees may have certain legal and social disabilities when compared to Convention refugees, depending on the laws and procedures of the host country. For example, there are certain restrictions on employment and access to benefits such as language classes or vocational training often crucial in gaining jobs, and problems are encountered at secondary and higher levels of education. For example, a scholarship may require a recommendation from the country of origin, usually not forthcoming. Most pertinently, de facto refugees are not always fully protected from refoulement.

A UNHCR spokesman has pointed out that refugee rights are no more than the human rights widely recognised in the world today. The European Commission of Human Rights has used Article 3 (prohibition of inhuman or degrading treatment) as a means of protecting refugees from deportation or refoulement and governments have generally accepted (except Switzerland) this extension of the Convention. Perhaps the Convention reflects more particularly the attitude of the world in 1950 when it was drafted, and the European bias implicit in the terms of the Convention, which may no longer apply.

But there still seem to be two clear benefits in certain countries in being a Convention as opposed to a de facto refugee. One is the right to subsidised education, and the other—far more important, but astonishingly tortuous—is the question of protection under the non-repatriation clause. It is only in rare cases that Convention status is conferred prior to arrival at a port of entry, as it was for example on the Boat People. Normally the status is conferred after asylum and thus forcible repatriation can occur with refugees who are eligible for the Convention status. The discrepancy between the spirit and practice of international rulings on refugees is clearly illustrated here. Theoretically any person who fulfils the criteria of the Convention is a refugee. In practice, he or she can only benefit from that status once it has been recognised by a potential country of asylum. This anomaly often leads to the 'refugee in orbit' syndrome. The individual who presents himself at a port of entry is refused admission and put on a flight back to his port of exit which may not be his country of origin, where once again he is refused entry and shuttled away again. In one exceptional case concerning an individual from the Sudan, the 'orbit' lasted from 26 February to 18 May 1979 when the UK Home Office eventually granted refugee status.

There is another bitter twist concerning the spirit of the Convention and the practice; the rule of first country of asylum implies that refugee status shall cease to be held if the individual has been offered or has received protection in any other country other than his own. Thus Malaysian government officials
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refused entry to Vietnamese refugees on the grounds that the latter had reached the Malayan peninsula via mainland China and that within the terms of the Convention, China as the first country of asylum, should keep them. Even more Kafkaesque and ironic are those cases where individuals are imprisoned in one country awaiting further official enquiries and then refused entry to the country of choice by virtue or having 'enjoyed' asylum elsewhere. There are serious dangers for the refugee who spends 'too long' in transit. The concomitant legal contradiction is that no country party to the Convention is obliged to comply with the terms of the Convention unless and until asylum has been granted. Finally any nation can denounce the Convention (Article 44) at a year's notice at which time it becomes null and void. It is therefore of the utmost importance to examine the procedures recommended by UNHCR for the determination of refugee status and in turn the policy and machinery within countries for the same process.

UNHCR Recommendations to Governments:

Briefly, the UNHCR recommendations to governments suggest the following basic requirements that the competent official (i.e. at the port of entry) receive clear instruction for dealing with cases which might come within the terms of relevant international instruments and in particular that the official Act in accordance with the principle of non-refoulment; that there be a clearly identified single and central authority to which all potential cases could be referred that the applicant be given all the necessary assistance such as interpreters to present his case that if recognised as a refugee he should be so informed and given certification to this effect and that if not recognised he

32. It should be noted that since Malaya is not party to any Conventions concerning refugees, there is no legal obligation whatsoever to accept those who attempt to enter illegally.
33. The Dominican Republic denounced the 1928 Convention on Asylum and the 1933 Convention on Political Asylum. Haiti in addition to denouncing the above two Conventions also denounced the 1954 Convention on Diplomatic Asylum and the 1954 Convention on Territorial Asylum.
should be given reasonable time to submit an appeal. Finally, in all cases, it is
recommended that the individual be allowed to remain in the country where he
presents himself pending a fuller inquiry—i.e. in no case where there is the
slightest possibility of refugee status, should he be repatriated or sent to a
former transit country.

How far these recommendations are put into practice is difficult to
know. An experienced UK agency worker pointed out that attempts to ensure
their application are inevitably frustrated since those repatriated are, by
definition, not in the case files. It is only the relatively lucky refugees who are
informed of their right to seek help from a specialized agency and there is a
least one example of an individual (eventually recognised by the British
government as a Convention refugee) who was advised by immigration
officials not to contact any refugee agency as it would prejudice his case.

The importance of determining refugee status has not escaped UNHCR
whose Executive Committee provides a set of carefully worded
recommendations which do not however, have legal status. For all the reasons
mentioned so far claiming refugee status is a hazardous business fraught with
uncertainty bureaucratic delay and the general resistance often encountered by
the individual. In most cases officials at the port of entry confront refugee. At
this stage if he or she is well-versed in international law and Convention terms
and is competent in the language of the potential country of asylum and able to
present his case cogently and persuasively he may well be successful in gaining
temporary asylum while his case is considered. But how many refugees of this
kind are there—possibly one in a thousand? More typically the refugee is
questioned by official who may know little of the political, ethnic or other
circumstances surrounding his departure from the country of origin nor is it
reasonable to expect that immigration officers be fully acquainted with the
vagaries of persecution and degree of danger in countries from which news is
rarely reported.
The provisions of the Convention do not cover this crucial stage and if refugee status is refused the individual may have no right of appeal. Agency files also contain many cases where genuine refugees in ignorance of a given country's procedures have prejudiced their case by stating that they are tourists or students. Having entered the country under false pretences may weaken a subsequent application for asylum.

It appears that refugees are more readily officially recognized if they are part of a massive movement concentrated in space and time well advertised by the media, if they are poor, hungry and victims of tangible personal pain or injury. The individual dissident seeking political asylum from the Soviet bloc is viewed sympathetically and nearly always attracts media attention especially should he or she be artistically accomplished. Political asylum seekers from other regimes however, are often less newsworthy and ipso facto are in greater need of protection from the international community. Some categories of refugees are more rapidly recognized officially for many reasons, perhaps the two most common being the pressure of media or public opinion and a perceived political responsibility.

In Chapter III: Human Rights and Refugees an attempt to define and describe the refuge and obligations to the host countries has been made. The problem of refugees has undergone a tremendous changes, which the adoption of 1951 convention relation relating to the status of refugees.

Asylum seekers and refugees are entitled to all rights and fundamental freedoms that are spelled out in international human rights instruments the protection of the refugees must therefore be seen in the border context of the protection of human rights.

Human rights are freedoms, which are granted generally to all persons without distinction, in a sense, human rights can be considered universally

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35. There is considerable variation as to the right of appeal. In Canada, France, Belgium and the USA depending on the circumstances, there is opportunity for appeal while remaining 'sur place'. In the UK, however, right of appeal for both refugees and immigrants must be lodged outside British territory (and in practice the appeal results are usually negative).
recognized standards by state or other agents and may give rise to situations, which lead to the creation of refugees. Refugees, by definition are victims of human rights violation.\(^{36}\)

Viewing the problem in the context of human rights is clearly relevant. It is a human problem, it is the duty of the civilized country. People who migrate from one region to another, as refugees can not be deprived of certain basic rights. With the scale of human rights violations that forced people in to exile continuing unabated. The global number of refugees is likely to remain high in coming years.\(^{37}\)

A number of international instruments establish and define basic standards for the treatment of refugees. The most important and the convention relating to the status of refugees 1951, with is sometimes referred as the "bible of the refugee rights" and its protocol 1967 (which widened its geographical scope) provided an international bill of rights, an international refugee law, it sets the minimum standards of treatment of refugees, including the basic rights which they are entitled. The refugee convention listed the principles rights, which contracting states undertake to grant to refugees subject to the exceptions, related to each countries particular requirement, grouped under a number of heading in the 1951 refugee conventions, viz. general provisions judicial status, gainful employment, welfare and administrative measures. These rights constitute the most comprehensive list yet drawn up in favor of the refugees and as such standards of treatment of refugees.

The view that a refugee is a person whose social world has been disturbed can contribute to our understanding in at least two ways first, if offer a meaningful classification of refugees, as he runs from one world to its persistence even as he or she moves. Secondly, the concept enables us to

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follow the movement of refugees and to chart the transformation of their social world.\textsuperscript{38}

The 1951 convention details the civic and socio-economics rights of the refugees which ought to be respected. In its 54\textsuperscript{th} year the universal declaration of human rights, which lays down in its article 14 everyone has the right to seek and enjoy in other countries asylum from persecution" a right which goes to the root of the refugees problem.\textsuperscript{39}

In addition there are regional and universal human rights instruments which read in conjunction with the refugee specific rights regime set in a wide ranging if perhaps not fully adequate integrated measure of respect for the basic dignity of the refugees.

International refugee laws mainly comprises international instruments that is the basic standard for the treatment of refugees, like humanitarian law are in fact a branch of human rights law.\textsuperscript{40}

International human rights law can supplement existing refugee law, as it constitutes the broad framework within which refugee law provision should be seen. In addition to the central foundation status of the universal declaration of human rights more than 189 states have ratified at least one (or in majority of cases more) of these international human rights treaties, thus establishing binding legal obligations of a continuing nature.

Refugees today face many problems as prolonged or arbitrary detention; lack of due process; cruel inhuman degrading treatment; xenophobia - the 1951 convention and 1967 protocol are silent on such issues but it is the only international treaty which provides protection against refoulment.

However a number of international human rights standards are universally applicable, as they have attained the status of customary international law, further some states that are not party to refugee law treaties

\textsuperscript{40} Peter Nobel, Blurred vision in the rich world and violation of human rights: A critical assessment of human rights and refugee linkages, p.74.
are party to human rights treaties which include provisions benefiting to refugees.

The 1951 convention and human rights instrument, contains comprehensive provisions regarding refugee's rights except where more favorable rights are explicitly provided in the convention. Refugee are accorded as a minimum standards the same rights as are granted to aliens generally without any discriminations to race, religion, or country of religion, with regard to certain rights as right to freedom of religion, intellectual property rights, rights to access to the courts, the right to eliminatory education, right to public relief, right to association with employment, labour legislation and social security etc. However with regards to certain rights as movable and immovable property rights, rights to association, right to work, right to housing, freedom of movements etc, the 1951 convention can provides only equality of treatment with other non citizens with respect to certain rights, international human rights instruments are more favorable to refugees by providing protection against discrimination between citizens and non citizens.

There are number of other rights not mentioned in 1951 convention that apply equally to citizens and non citizens which are also guaranteed to both citizens and non citizens under international human rights law as refugees to peaceful assembly, freedom of opinion and expression, right to family life, right to life, liberty and security of the persons, protection against racial discrimination, rights related detention, right to fair hearing etc special consideration has been given to rights of refugee children, rights to refugee women and right to non-refoulment. All these rights have been discussed in Chapter-III.

India is neither a party to the 1951 convention nor the it has domestic or specific legislation on refugee law the word aliens is now here defined but it appears in the constitution of India, civil procedure and citizenship and some other acts. Refugees are handled like other aliens, and the subject to domestic law, governing the entry and stay of foreigners among international human rights treaties.
The phenomenon of mass movement of people is not new. From earliest times men have been fleeing one another's tolerance or migrating in search of land and livelihood. For the last several years however, the number and magnitude of flows of refugees and displaced persons have been such as to cause increasing concern within the international community. By the beginning of the 1980s, numbers exceeded ten million with the exodus from certain countries reaching hemorrhage proportions. At the same time increasingly large migratory movements within countries and regions have begun to pose economic and social problems not hitherto experienced on quite the same scale.

In the last 35 years with the emergence from colonialism of about a hundred new States often after a considerable struggle and with an inheritance or artificial national boundaries, fragile national unity, underdeveloped economies, too few cadres and boundless logistical problems, the world has seen an unprecedented proliferation of tensions and conflicts. New ideologies misunderstood by an unacceptable to portions of the population, blatant racial discrimination, civil wars, the terror tactics of more than one dictator, foreign invasion or acute economic hardship have caused millions to decide that any life outside their own country must be more bearable than the present one.

The recent mass flights of people to neighboring countries not only represent whole scale human deprivation and misery, but have come to place upon their hosts and upon the international community as a whole burdens which it is proving increasingly difficult to bear. The three solutions which until recently enabled most refugee situations to be resolved, namely voluntary repatriation, local settlement and resettlement in third countries, can no longer suggest an answer in every case. While circumstances in the home country remain substantially the same and as long as there is no dialogue between the governments most directly concerned, there is no hope of paving the way to a voluntary return. Where the refugees are numbered in hundreds of thousands- or even millions- and land and other resources are scarce, programmes of local integration are practically unthinkable. As for resettlement in third countries,
the Indo-Chinese Diaspora brought home to over twenty countries which had offered special quotas at the height of the crisis in South East Asia in mid-1979 the difficulty of integrating refugees from an entirely different ethnic and cultural background. Few have found it possible to renew their generous offers of places at anything like the same level - if at all.

Meanwhile, in some underdeveloped areas the presence of millions of uprooted people, sometimes accompanied by as many head of livestock, is playing havoc with the struggling economies of the host countries and posing a dire ecological threat which should not go unchecked. As for economic migrants, worldwide economic recession has meant that they are no longer in demand on the same scale as before. Yet millions still strive to reach more affluent countries in the hope of finding work and a better life.

As a result of all these factors, many governments have reached the conclusion that serious attention must be paid to analyzing the forces, which get people on the move, with a view particularly to considering whether means can be found to avert new large-scale refugee situations. At the same time, the need has been felt to study the phenomenon of mass exodus in the context of human rights. Hence the initiative of the United Nations Commission on Human Rights contained in its Resolution 29 (XXXVII) to appoint a Special Rapporteur.

To summarize very briefly the foregoing, the overview of the past decade amply demonstrates that the consequences of mass exodus situations may be measured in terms not only of human suffering but also of threats to national or regional peace and stability.41

People leave for a variety of reasons and usually as a combination of factors rather than a single one. The social contract has failed temporarily or permanently. Modernization and progress have made casualties of people who held certain customs and traditions too dear. In the chaos of war and post-war

reconstruction populations may have been repeatedly uprooted and thereby conditioned for a further uprooting from their country when the going is hard. Colonialism left a heritage of artificial boundaries and structurally imbalance economies. The repressive tactics of white minority regimes have made many victims. Most provisions of the Declarations of Human Rights have been violated.

In Chapter IV: Exodus of Tibetans to India and Human Rights an attempt has been made to analyze the violation of human rights of Tibetan refugees and explains the circumstances of their exodus to India. Violation of the rights of minorities and ethnic conflicts are increasing at the source of both mass exodus and internal displacements.

It is abundantly clear that unless ways can be found to counteract the withholding of or outright violation of, human rights, unless there is a more equitable sharing of the world’s resources, more restrain and tolerance the granting to everyone, regardless of race, religion, membership of a particular social group or political party, the right to belongs or alternatively to move in an orderly fashion to seek work, decent living conditions and freedom from strife—the world will continue to have to live with the problem of mass exodus. This problem if left unchecked, will increasingly pose a threat to peace and stability around the globe.

Chapter IV also explain the main causes as a violation of Human Rights and automatically, a reason of mass exodus to Tibetan in India. Human Rights are a prime concern. Denial of Human rights that only the inhabitation of a particular individual but also the dignifying the humanity as a whole. Tibet is perhaps the most glaring example of the Human Rights violation on the globe.

The facts, collaborated by policies and practices speak otherwise, over 1.2 million Tibetans which is more than 20 percent of the total populations have died since 1949 due to political persecution imprisonment torture and starvation. Accounts of massacres, torture, and killings, bombardment of
monasteries, extermination of whole homed camps are well documented. Death in prisons, and labour and concentration camps, based on testimonies of survivors, show that throughout Tibet about 70 percent of prisoners died.\textsuperscript{42}

Independent organizations and specialist agencies monitoring Tibet have compiled a body of reports on arbitrary arrests; in communicado detention, torture; judicial and extra-judicial killings; trial on gross contempt of democratic legal principles and procedures; forced prison labour; forced abortions and sterilization that deny Tibetan women their reproductive rights; denial of rights to freedom of movement and of speech, assembly and association; culture and religious rights etc.

An international commission of justice found after a preliminary investigation, that there was prime-facie evidence that genocide was being committed in Tibet is an attempt to destroy Tibetans in religious groups. The commission further found that the Chinese authorities in Tibet had violated sixteen articles of the universal declaration of Human Rights.\textsuperscript{43} United Nations General Assembly in its three successive resolutions in 1959, 1961, 1969\textsuperscript{44} expressed grave concern at the violation of fundamental Human Rights of the Tibetan people and the suppression of the distinct culture and religious life, and the autonomy, which the Tibetans had traditionally enjoyed.

From 1951 to 1959, the Chinese occupation forces repeatedly violated the human rights and unleashed repression in Tibet the increase Chinese repression in north eastern and eastern Tibet forced Tibetan, in the regime to take up armed resistance which soon engulfed the whole Tibet. Tens of thousands of ordinary Tibetans spilled into the streets of Lhasa on March 10, 1959 demanding with drawl of Chinese from Tibet. This set off the Tibetan National uprising and a Tibetan resistance moment spread all over Tibet, Chinese crushed the uprising and about 87,000 Tibetan was killed in the Lhasa

\textsuperscript{42} Tibet, an independent country under illegal communist, Chinese occupation, Tibet voice, Dharamsala, H.P., India, pp. 15-16.
\textsuperscript{43} Tibet and Chinese people's Republic, N.D. 1966 legal enquiry committee in Tibet 3-5.
region alone. The March 10 uprising resulted in the flight of the Dalai Lama members of its Govt. and about 80,000 Tibetans into India, Nepal and Bhutan.

Tibetan refugees first fled to India in 1959 undertaking a precarious journey over the Himalayan Mountains in Nepal. Initially the Govt. of India allowed the UNHCR to assist the Tibetan refugees in India. According to the office of the Dalai Lama there are more than 110000 Tibetan refugees in India. although this figure varies from year as new refugees arrive and old ones leave for settlement in another countries.

In 1956, the Dalai Lama reestablished its Government in exile in India or modern democratic principles and under the leadership of the Dalai Lama gradually the Tibetan Administration took shape in India. Today the Tibetan Government in exile functions as a variable attributes of a free democratic Government on September 2, 1960 a popularly elected body of people's representatives the Tibetan parliament in exile was constituted in 1963, a draft constitution for future Tibet was promulgated.

Under the leadership of the Dalai Lama, gradually the Tibetan Administration took shape in India. Out of the need to look after the welfare of the Tibetan refugees. Though its collective and systematic efforts and administration has been trying its best to preserve Tibet's national and cultural identity among the refugee community. In terms of international law, however the status of the Tibetan administration, which operates from Dharmsala in Himachal Pradesh, and the Bureau of Dalai Lama's which operate from Delhi.

Since than more than one lakh Tibetans are living as refugees in India trying hard to preserve their traditions against many odds. The Dalai Lama, their moral strength, in the centre in whom their hope to revive the golden past lies, he is the light of their lives. Despite the hardship of leading life in an alien land amongst distinct ethnic and cultural groups, Tibetans have been able to maintain their cultural unique still they can not but absorb influences of the outside world.
Since 1959, after the Dalai Lama's exile, over three decades have passed, the unique culture of Tibetans has undergone various changes, but essence remained the same. It is of sociological interest, to understand the under current of the exile community, their sprit and their capacity to survive without losing their identity.

In general, however, they maintained their culture and religious practices. One another has written that the ability of the Tibetan refugees to build and found in foreign lands numerous monasteries of a remarkably high architectural standards in their success in developing viable monastic communities similar to those of Tibet is one of the miracles of the two twentieth century.

In Chapter V an attempt has been made to highlight humanitarian assistance for refugees in India and to examine the Indian practice in providing assistance to refugees against the back-drop of the international standards in special reference to Tibetan refugees in India.

The refugee problem continues to challenge the international community multi-dimensionally and globally has become the most complicated issue before the world community today. The refugee situation has also become a classic example of the interdependence of the international community. It fully demonstrates now the problem of one country can have immediate consequences for other countries.

It has rightly been predicted, that the future wars would not be by invasion but by migration, Martin Van Cleveld in his book future said that by end of the century, in a sizeable portion of the globe, the law and order situation would deteriorate and most nations would have to cope up with what he described as "anarchy within states" and he has warned that we could only cope in future if we all adopted state manlike and humanitarian policies in the present. His hope are some what believed, but his predictions are coming true. We have witnessed a series of horrifying ethic cleansing in the former state of
Yugoslavia humanitarian problem in Chechenya and currently in Afghanistan.

It is abundantly clear that unless way can be found to counteract the withholding of or the outright abolition of violations of human rights, unless there is more equitable sharing of the world's resources, more restraint and tolerance. The granting to everyone, regardless of race, religion, membership of a particular social group or political opinion, the right to belong, or alternatively the right to move in an orderly fashion to seek work, decent living conditions and freedom from strife- the world will continue to have to live with the problem of mass exodus or migratory movements. The problem if left unchecked, will increasingly pose a threat to peace and stability around the globe.

Altogether migratory movements migratory flows of asylum seekers, is to ensure that there is no human rights violation in the countries of origin. So also it is essential, that human rights of asylum seekers and refugees must be protected in the host countries and globally it should be the responsibility of, not only the host country, but also the international community, because human misery and suffering have no geographical limitations and there must be international burden sharing.

There are three traditional durable solutions to the refugee problem. Resettlement in third world countries, local integration and voluntary repatriation.

It is, of course, to be hoped that the really valuable work that has been done in the last year or so will be maintained at a level sufficient to keep the international 'practitioner community' informed as to both potential refugee crises, as well as the best possible ways of dealing with them once they have occurred.

46. Justice P.N. Bhagwati, the future role of judiciary in protecting refugee's rights/were next or?: report on judicial symposium on refugee protection, 13-14 Nov.1999, New Delhi, p.126
There have, too, been some changes in refugee legislation, particularly in the main recipient countries. The new act accomplishes three primary objectives, which are to broaden the concept of refugees such that it is now compatible with that embodied in the United Nations Protocol relating to the status of refugees; the setting up of permanent and systematic procedures for the admission of refugees who are of special humanitarian concern to the United States: and thirdly it provides comprehensive and uniform guidelines for effective resettlement.

It is to be hoped that such innovation as have occurred in the last year will be refined and tested, to the ultimate benefit of both refugees and the peoples of those countries which act as hosts.

The tradition of refugee fleeing from their homelands continued even after India's independence since 1947 towards the close of 50s India granted in the face of Chinese objections asylum to Tibetan refugees incurring in the process hostility of People's Government of China. The total refugee population in India is about 260000 persons. The largest group comprises of 100000 Tibetans. According to the office of the Dalai Lama there are more than 1,10,000 Tibetan refugees in India.

The problem of refugees has always been the subject of bilateral negotiations so far as India is concerned it has been the boast of India and a rightful boast that India has always welcomed refugees and absorbed them in the mainstream of life from time immemorial people belonging to different races profession, different religions and hailing from different countries have come to India and none of them has been turned away from its shores. They have mingled, merged and got lost in one common human it and become a part of India.

Like the other South Asian countries India has neither signed nor ratified the 1951 UN Convention on refugees nor signed the 1967 protocol. India also has no national law for refugees. In the absence of a legal regime, the Indian judiciary has commendably intervened in some cases of refugees and asylum
seekers in accordance with international law, the Indian constitution which is celebrating its 51st anniversary this year is a monumental visionary document in which the protection of life liberty of all persons including aliens is enshrined. Courts in some instance applied constitutional provisions and some of the international conventions which India has ratified to ensure the protection of the basic right of refugees and asylum seekers. The interventions of the national and state Human Rights commission on behalf of refugees have complemented the role of refugees in protecting refugees at the same time the democratic environment in India permits public litigation on behalf of refugees and the vibrant human rights civil society groups have vigorously depended the rights of asylum seekers and refugees.

Since 1959 nearly 1 lakh Tibetan refugees were granted asylum to India by 1961 they have been distressed to various organized locations for settlement in India. The Indian Government has consciously promoted a policy which enables the Tibetan community to maintain its distinct identity and cultural values together with a political and administrative system of its own from the start separate settlements were identified and established in geographically suitable areas so as to provide them with economic, social and religious autonomy the central relief committee's monthly report listed some 32 locations in different states of India. The headquarter of the central Tibetan Administration CTYA and the resistance of Dalai Lama is made in Dharamsala, Himachal Pradesh.

However, presently there are in total 34 Tibetan settlements in India. India's assistance to the Tibetan refugees operates within the economic constraints of a large refugee assistance programme that must provide for refugees from Sri Lanka, Bangladesh, Burma and other surrounding countries. The Indian Governments commitment to assisting the Tibetan refugees is well established. In time, it may be submitted that the scarcity of large tracts of suitable land under government ownership and a shortage of funds for all refugee programmes have drastically changed refugee settlement policies and
have presented the Indian Government from assisting the CTA in meeting many of the needs of the displaced Tibetans.

The Indian Government has been generous to the Tibetan refugee and the authorities have also provided ration cards, identity papers, residences permits and travel documents for registered Tibetan refugees who are officially viewed as having come to India on pilgrimage. Although they are considered as foreigners under the 1946 foreigner's act they have been accorded the basic rights to contest or vote in India before March 1959 and who have ordinarily been resident in India. Since then they are considered for Indian citizenship on an individual basis. Those married to Indian nationals may apply for Indian citizenship. They also have been given assistance in establishing water supply, civic amenities, handicrafts center and school, including nurseries schools and hospitals being rendered relief assistance in the form of food, clothing and medical stipends, training in various social welfare and later in various trades and vocations. The Dalai Lama has always acknowledged the Indian help. He said, Indian helped Tibetan culturally in education and resettlement. There can be no doubt that without India's help we would not be in this position today.

Despite these positive achievements the majority of the Tibetan refugees in India still want to return to Tibet. While the conditions under which many of these refugees live are relatively good but the unresolved nature of the refugees problem is illustrated by the fact that each year Tibetan refugees not only in India, but also in Nepal and Bhutan, continue to seek asylum in western countries more than four decades after the initial flight of this group of refugees permanent solutions for them still appears to be a long way off.

Though refugees in general are not allowed to be involved in politics, the Government of India has tacitly tolerated the Tibetan refugee's campaign for the freedom of their country from Chinese domination. The Indian Government recognises Tibet as a part of China. Officially the Tibetan refugees are not allowed to engage in political activities against China from outside India. Moretheless, the Dalai Lama has been permitted to run a defacto Tibetan
Government in exile from Dharamsala. This Government is also not recognised by the Government of India, while the United Nations could not resolve the political status of Tibet, the humanitarian situation had been acknowledge and deplored and the flight of the refugees highlighted by virtue of long discussion held within the United Nations and outside, while the General Assembly at most condemned communist Chinese actions, any idea of direct intervention remained frozen. Yet unlike the political problem the autonomous flow of refugees could not be solved.

The Indian history, size and complexity necessitated a broad approach or solution would therefore have to be comprehensive and to address all aspects of the issue, from the causes of mass exodus to the elaborating of responses necessary to cover the range of refugee situations from emergencies to repatriation.

Viewing the whole problem the recommendations for dealing with the dilemma of refugees fall broadly into three major categories: those improvements suggested in the wording of the Conventions in order to make them more relevant to the changing patterns of refugees in today's world; the changes sought, sometimes radical, in the national procedures for determining refugee status and granting asylum; recommendations for improving the resettlement provisions have been discussed in the subsequent chapter.

However, a comprehensive approach should be carried out, both in theory and practice. The activities of various institutions and organizations concerned with migration and human rights, as well as with refugee problems, ought to be coordinated. Both international and state actions, and long-term and short-term, political, economic and legal means should likewise be taken into account. In situations of mass exodus, it is necessary to consider the elements of political and legal responsibility of every relevant party, including the state of origin, the receiving state and third states. The challenge for the 1990s is to rework institutional mandates to use human rights not to define, but to comprehend protection, assistance and developmental needs of people at risk.
Human rights can be used as a standard for information gathering and to promote community stability and mediation of conflict in order to prevent refugee crisis before they occur.