CHAPTER- II
DEFINITION OF REFUGEES

In this Chapter an attempt has been made to define and describe refugees. 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. The definition of 'refugee' now faces the crisis of character in understanding and responding to the values of law. It is necessary for us to define as the reason of the definition creates problems of identity of the issue.

The word refugee is frequently used by the media, politicians and the general public to describe any one who been obliged to abandon his or her casual place of residence.¹

In the name of the country, nation and homeland governments, military forces and rebels of the world have drawn great circles in the earth's sand. From inside these circles millions are being thrown out. They are known variously as "refugees", "displaced persons", "expellees,² returnees", "asylum seekers" and "economic migrants".

Normally, when the word is used in this general manner little effort is made to distinguish between people who had to leave this own country and those who had been displaced within their homeland, nor much attention paid to the causes of flight. Whether people are escaping from persecution, political violence, communal conflict, ecological, disaster or poverty, they are all assumed to qualify for the title of "refugee".

However, 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 refuge specially in a foreign country due to war, political trouble, religions persecution, famine or natural disaster etc.

Traditionally, any person who has been forced to flee his or her home for fear of life or lack of subsistence is regarded as a refugee. 3

In ordinary usage the term refugee has a broader meaning signifying some one in distress who seeks to escape or is forced to flee conditions or circumstances, which are intolerable and for which the individual is not responsible. The reasons for escape to freedom and safety can be many like oppression, threat to life or liberty, prosecution, deprivation, acute poverty, war or civil strife, natural disasters, earthquake, drought, famine or flood. 4

The definition of a "Refugee" in International Law is of critical importance for it can mean the difference between life and death of an individual seeking asylum. It describes a refugee as "a person who is forced to leave home for certain specified reasons and who furthermore is outside the country of his or her origin and does not have its protection." 5

P. N. Bhagwati, former Chief Justice of India, opines that "refugee are victims of persecution in their country of origin and they seek refuge in other countries. They have no choice but to flee for saving their life and liberty from oppressive regions, or from hostile, or unfriendly majorities, or sometimes even minority populations. The reason for their flight being primarily oppression and persecution on the basis of race, religion, ethnicity or political opinion, these are people who have lost national protection and in need of protection of the international community and the host country, where they have sought refuge. 6

Ram JethMalani, Union Law Minister of India, on definition of refugee under 1951 convention defines it in a particular way "seeking for myself, the definition of the refugee must make the following clear and perhaps, if you make that clear, on other part of the definition is really necessary or required. If it is made clear that wherever there is a situation of human rights being significantly violated in the country of domicile or origin and such situation is

3. Ibid. p. 8
not capable of any civilized remedy, then the person is a refugee and he is entitled to the right of Asylum". 7

A refugee can be defined in three ways: Legally- as stipulated in national or international law, politically- as interpreted to meet political exigencies, and sociologically- as reflecting an empirical reality. 8

According to Guy S. Woodwin- Gill, the term refugee is a term of art that is, a term with a content verifiable according to principles of General International Law. 9

Refugee: Definition in International Instruments

As refugee is not a concept of customary International Law Therefore, this law does not define him. He has been the subject of treaties and other international agreements so it is impossible to give one single definition, which could be used in "all circumstances". As Prof. "Godhart" rightly observed that: A sociological definition of the term "Refugee" differs from a legal one, the definition drafted for the purpose of the binding international agreements will look very different from the definition adopted by an association with a humanitarian aim. 10

A refugee deserves justice, protection, security in the host country that, however does not apply to the person charged with serious criminal offences.

An understanding of the refugees require an understanding of traditional international laws, treaties and the state practices provisions of international convention adopted under the United Nations and other regional organisations.

7. Ibid p. 18
10. Refugee status and humanitarian assistance, India Institute of Human Rights, New Delhi, 4F.3, p. 12.
Definitions of refugee

Refugees are defined in various international instruments relating to refugees. The early international instrument adopted between the two World War defined refugees by categories according to their national or ethnic reasons. The various instruments adopted after the Second World War gave certain general definitions of the term "refugee". Refugees, are also defined in regional instruments relating to refugees. Finally, a definition of refugee status is also contained in the constitution or in the ordinary legislation of a number of countries. However, the authority called upon to apply or implement a legal instrument relating to refugee cannot do so unless the refugees are identified as such.

Refugee: Definition in early instruments (1921-1946) before 1951

Early in the 20th century, the refugee problem became the concern of international community, which for the humanitarian reason, began to assume, responsibility for protecting; and assisting refugees.

The pattern of international action on behalf of refugee was establish by the league of nation and led to adoption of a number of international agreements for their benefits (these instrument are referred in article 1(a) of the 1951 convention relating to the status of refugees). The definitions in these instruments relate each category of refugees to their national origin, to the territory that left; and to lack of diplomatic protection by their former home country.

With this type of definition "by categories" interpretation was simple and caused no great difficulty in ascertaining who was a refugee, (although few persons covered by the terms of the early instruments are likely to request a formal determination of refugee status at the present time, such cases could occasionally arise. they are referred to as "statutory refugees").

Analysis of the international refugee accords entered into between 1920 and 1950 reveals three distinct approaches to refugee definitions. Each of these perspective—judicial, social and individualistic—was dominant during a part of the initial decades of refugee law.

1. **Juridical approach to the Refugee definition (1920 - 1935) ……

The initial series of international refugee definitions were primarily concerned with the juridical phenomenon of refugeehood,\(^{12}\) that they were treated as refugees because of their membership in a group of persons effectively deprived of the formal protection of the government of its state of origin. The purpose of refugee status conceived in judicial terms is to facilitate the international movement of persons who find themselves abroad and unable to resettle because no nation is prepared to assume responsibility for them. The first refugee definitions were formulated in response to the international legal dilemma caused by the denial of state protection.

During 1920-1935 many organized action has been taken by many international organizations and they also define refugees by juridical way. They can be studied as follows

**League of Nations**

An organized international action on the behalf of refugees began after 1st World War, when the League of Nations was faced with the problems created by about the ten millions refugees who had left Russia in consequence of Russian Revolution. Prior to 21 century efforts to cope with refugee need were under taken mainly by private organizations or voluntary agencies, and were predominantly in form of relief.

The first initiative to expend the base of Refugee operations came in Feb, 1921, from a gathering in Geneva, of representative of private relief organizations including some foreigners of Agencies represented today in the International Council of Voluntary Agencies (ICVA). Following this meeting,
an appeal was addressed through the president of International Committee of the Red Cross (I.C.R.C.), Gustav Ador, to the League of Nations (LON), suggesting: the appointment of a League of Nations Commissioner for refugees and asking the league "to define the status of Russian refugees, to secure their repatriation on their employment outside Russia, and to coordinate measures for their resistance.

I.C.R.C. proposed that "league should consider three main aspects of the Russian Refugee problem, the definition of their legal status of Russian Refugees; their settlement by repatriation to Russia, their immigration to other countries, or the organization of their employment in the countries where they were residing and the co-ordination of the various efforts already undertaken for the material relief of the refugees.

The decision of the Red Cross to address the refugees crises in judicial rather than strictly humanitarian terms prompted a positive response from the council.

On June 27th 1921 the Council of the League of Nations decided to elected a High Commissioner for Russian refugees, whose duty would be co-ordinate the assistance given to those refugees by various countries. Dr. Fredtjof Nansen was appointed High Commissioner for Russian Refugees on 20th August, 1921. His takes were to define the legal status of refugees, to organise their repatriation on their allocation to various countries and to undertake relief work amongst them with the aid of philanthropic societies.

The mandate of the high commissioner was extended to Armenians refugees in 1982 and to Assyrians, Assyro-Chaldeans and Turkish refugees in 1928. Between 1924 and 1929, the task of the High commissioners in the field of relief of refugees were entrusted to the International Labour Office (I.L.O.), while their protection remained his main responsibility. In 1929, both tasks were again combined in the offices of the High Commissioner, which was

placed under the authority of the Secretary General of the League of Nations.\textsuperscript{14} The Nansen passport was created to provide these stateless persons with a temporary identity, between 1922 and 1926, under the auspices of the League of Nations, several treaties were concluded to recognise displaced people as refugees. As these treaties created certain obligations on the contracting states, it was necessary to define the term refugee, the League of Nations treaties initially defined refugees as a category on group of persons who were.

(a) outside their country of origin and
(b) without the protection of the government of their home state

(L.N.T.S. No. 2204 : May 12, 1926), were sufficient and necessary conditions.\textsuperscript{15}

However, the first international instrument to deal with the legal status of these refugees was signed in Geneva on June 30, 1928. This arrangement was worded in the form of resolution recommending that the state accepting it, adopt certain measures for the protection of the Russian and American refugees.

Two another developments of this place was as follows: the international Nansen office for refugees was created after Nansen's death in 1931, as an autonomous body under the authority of the league. It was concerned with humanitarian relief work, and went in to liquidation as form the end of 1938, in 1933 The High Commissioner for refugees was appointed for refugees coming from Germany, following Hitler's rise to power, this office was also liquidated in the same time as the international Nansens office.

All these conventions and instruments were drawn up in response to particular situation; to protect refugees escaping from specific problems (for example, to protect people fleeing from Russia after the Bolshevik Revolution and a little later Armenians leaving Turkey) and provided simply for granting of essential documentation to those groups.

\textsuperscript{14} Refugee status and humanitarian assistance 4F.3 p.12 Indian Institute of Human Rights, New Delhi
\textsuperscript{15} Tapan K. Bose, Protection of Refugee in South Asia need for legal framework. SAFHR paper series 6, p. 9.
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The first attempt at formulating a definition of refugees General as opposed to a specific was made in Geneva on October 28, 1933 in the regular convention relating to international status of refugee of that year. Since the inception of The League of Nations Governments of different contracting states have consistently attempted to deal with the refugee problem. Through, as a rule within rather narrowly defined limits of time and space.

Holborm feels that League of Nations has grappled with some of the most obvious needs of the waves of refugees caused from 1912 by the dislocation of war, the impact of violent nationalism and the arbitrary actions of dictatorial regimes.

18. (1) Large scale refugee movements began with the Balkan War of 1912-14, tens of thousands of Greek, Bulgars and Turks were driven from their homes. Millions more were displaced during the First World War. Many of these people, however, were repatriated after the war and resettled as in earlier post-war periods. Civilian populations which had fled or were evacuated from the eastern fronts into Russia (estimated as 3 million by the spring of 1916) were able to return to their homes in states like Poland and the new Baltic countries. People who had left the western front for Great Britain, France, and other places were able to return after the defeat of the enemy. Maynam refugees driven out of Rumania, Yugoslavia and Czechoslovakia found refugee and final settlement in Hungary, while about 600,000 persons of German extraction, who left Poland under pressure, were settled in Germany itself. Other refugee movement that arose during the First World War and the post war period were more difficult to handle however, end contributed to the political unrest and tensions in central and eastern Europe and the near East in inter-war period.
(2) By 1923 an estimated 320,000 Armenian refugees were scattered throughout the Near east, the Balkans and other European countries after they had fled from persecutions and massacres in Asia minor following the collapse of the Ottoman Empire and the Nationalistic policy adopted by Turkey.
(3) Under the provisions of the Treaty of Lavsanne of 1923, 1,300,000, Greeks were transferred from Asia minor to Greece, while 400,000 Turks were moved from the Balkans to Turkey.
(4) More than 220,000 Bulgars moved between 1913 and 1925 into the truncated territories of Bulgaria.
(5) Thirty thousand Asyrian refugees, who had fought against the Turks, escaped after the Russian collapse in 1917 to the Cavcasus, Greece and Iraq, and some later to Syria.
(6) A Russian refugee in 1926 was "any person of Russian origin who does not enjoy the protection of the Government of the Union of Soviet Socialist Republic and who has not acquired another nationality." About 1.5 million Russian nationals were dispersed and left stranded mainly in north central and south Europe and in the far east in the year 1918-22 as a result of the Bolshevik revolution of November 1917, the rout of the anti-Bolshevik armies in European Russian in 1919-20, the famine of 1921 and the breakdown of white Russian resistance in Siberian Russian in 1922. [Arrangements relating to issue of identity certificates to Russian and American refugee, May 12, 1926, LNT S. No. 2006 see also M.Marrus. The unwanted-European refugees in the twentieth century 1985 pp. 119-21].
The definition of this era contained a criteria of ethic or territorial origin, coupled with a stipulation that the applicant not enjoy national protection. Only persons applying from outside their country of origin were eligible for refugee recognition. This is consistent with the nation of the refugee as an international anomaly. While the unprotected individuals remained within the boundaries of her home state, there was no question of another country being confronted with a person outside the bounds of international accountability and according no need to include her within the scope of League of Nations protection.

**The Social approach to Define Refugees: 1935-1939**

In contrast to the initial judicial focus, the refugee agreements adopted between 1935 and 1939 embodied a social approach to refugee definition.19

Refugees defined from the social prospective are the helpless casualties of broadly based social or political occurrences which separate them from their home society. The category of persons eligible for international assistance encompassed groups adversely effected by a particular social or political event, not just those united by a common status, vis-à-vis the International Legal System.

This approach was adopted in 1936 when a provisional agreement concerning to the status of the refugees coming from Germany, was adopted. The rank of refugees from the first World War and the inter-war period for whom a full solution had not yet been found were swelled by refugees from Greater Germany, following the establishment of the national socialist regime in 1933. Three main waves encompassing 4,00,000 refugees left Germany in consequences of this country's racial legislation, of the annexation of Austria and programme of November 1938.

During the conference in 1938, the term Refugee covered20: persons possessing or having possessed German nationality and not possessing any

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

Later in the 1938 the definition was restricted to only such person who had left their country of origin from fear of persecution\(^{21}\) in 1938 instrument excluded those who had left their homeland for purely personal reasons. It was also decided to exclude the victims of natural disasters as the governments of their home states did not forcibly expel them. While the disaster victims required humanitarian aids, those who had lost the protection of their home state required protection, asylum and rehabilitation and hence these were the only people to be regarded as refugee under the International treaties.

A High Commissioner for refugees was appointed in 1938, by the League of Nations with the headquarter in London. It amalgamated the two bodies: The Nansen office of Refugees 1931; and High Commissioner for Refugees 1933. Intergovernmental committee on Refugee was created in 1938 following a conference in Evian on "the question of involuntary emigration" from Germany and Austria. The work of this committee was extended in the course of World War II\(^{\text{nd}}\) to all refugee groups and later it was replaced in 1947 by International Refugee Organization (I.R.O.)

The substantial scope of this era's definition covered all person coming from Germany. However definition was defined by an embloc reference to general, situation-specific categories of persons affected by adverse social or political phenomenon.

**Individualist Approach to refugee definition (1938 - 50)**

The third phase of international refugee protection comprising the accord of the 1938-1950 era was revolutionary in its rejection of group

\(^{21}\) Tapan K. Bose, Protection of refugees in South Asia need for legal framework. SAFHR, paper series 6, 2000, p. 9.
determination of refugee status.\textsuperscript{22} A refugee by individual approach is a person in search of an escape from perceived injustice or fundamental incompatibility with her or his home state. He distrusts the Authority who have rendered continued residence in his country or origin either impossible or intolerable, and desires the opportunity to build a new life abroad: refugee status viewed from this perspective is a means of facilitating international movement for those in search of personal freedom.

However, at the Bermuda conference in April, 1943, it was decided that the protection should be extended to "All persons, where ever they may be, who as a result of events in Europe, have had to leave, or may have to leave, their country of residence because of the danger of their lives or liberties on account of their race, religious, or political beliefs."\textsuperscript{23}

J.H. Simpson,\textsuperscript{24} observed that there were certain inherent deficiencies in such a view. He said what is to be kept in view is the essential quality of the Refugee as one "who has sought refugee in territory other than that in which he was formally resident as a result of political events which rendered his continued residence in his former territory impossible on intolerable. This description is in turn something of an abstraction from what was known then about "political events" producing refugees. While the nation of impossibility and intolerability of continued residence illustrates the problem of refugee in broad strokes after the Second World War more precise criterion emerged.

Moreover, the move to a more personal conception of refugeehood altered substantive notions. The essence of refugee status came in to discord between the individual refugee applicant's personal characteristics and convictions and the tenets of the political system in her country of origin.

The subjective concept of refugee was not universally embraced by the international community. During debate in the United Nations in 1946 for

\textsuperscript{22} Refugee laws and UNHCR, Indian Institute of Human Rights, New Delhi, 4F.1 p.1.
\textsuperscript{23} Refugee status and Humanitarian Assistance A 4F.3 p.13, Indian Institute of Human Rights, New Delhi.
\textsuperscript{24} Simpson, J.H., A preliminary Report of a survey 1938 p.1
example, the socialist states asserted the impropriety of including political
dissidents among the rank of Refugee protected by international law, it was
argued unsuccessfylly that political emerges who had suffered no personal
prejudice ought not be protected as refugee under the auspices of international
community as a whole, but should instead seek the assistance of those states
sympathetic of their political views. The voting strength and influence of the
western alliance, however, led to a movement away from a focus on group
defjure or defacto disfranchisement, and forward a personalized evolution if in
compatibility between state or origin and refugee climate in search of personal
freedom and liberty. This initiative to define the refugee concept in a manner
consist with the ideology of the more powerful states set the stage for the
development of contemporary international refugee law.25

After the establishment of the United Nations, the International legal
regime for the protection of Refugee was evolved and developed to cater
primarily to the situation of refugees displaced from their home countries by
war. When the United Nations replaced the league of Nations in 1947, it
established a new body. The International Refugee Organization ("I.R.O."), as
at its second session in the later past of 1946, the General Assembly established
the International Refugee organization. It was a non permanent specialized
agency of United Nation to deal with all categories of Refugees which had
been the concern of other organizations up to that time. The organization took
over the task of United Nations Relief and Rehabilitation Agency

During World War IInd and intermediate post war period there took
place the most formidable displacement of population. Several million people
were forcibly displaced, deported or resettled. The western allies attempted to
cope with this heavy burden, but they soon became aware that so complex and
thorny a problem needed concerted international efforts. Thus U.N.R.R.A. was
established by forty-four (44) nations in 1943 as an operational and temporary

United Nations specialized Agency. This organization organized the return of several million people to their countries or area of origin. Many others, however, were increasingly reluctant to return to states where new political ideologies now reigned. Their reluctance signaled the emergence of a major refugee problem that would dominate the post war years. In 1947 the I.R.O. took over the task of U.N.N.R.A. It was first International agency to deal comprehensively with every aspect of refugee problem registration, determination of status repatriation, resettlement, legal and political protection by its temporary mandates.

The first formal reference to persecution as part of refugee definition came with the constitution of I.R.O. The actual part of the constitution reads:

"persecution, or fear based on reasonable ground of persecution because of race, religion, nationality, or political opinions, provided these opinions are not in conflict with the principle of the United Nations, as laid down in the preamble of charter of the United Nations".

Refugee as defined by the constitution of the I.R.O. included victims of Nazi, fascist, or Qrisling regimes which had opposed the United Nations, certain persons of Jewish origin, or foreigners or stateless persons who had been victims of Nazi persecution as well as persons considered as refugee before the outbreak of the World War II for reason of race, religion, nationality or political opinion. The I.R.O. was also competent to assist displaced persons including those deported or expelled from their own countries some of whom had been sent to undertake forced labour.

In addition the I.R.O. Constitution included as refugees those unable and unwilling to avail themselves of the protection of the Government of their country of nationality or former residence. It expressly recognized the individuals might have valid objections to returning to their country of origin, including persecution or fear based on reasonable grounds of persecution because of race, religion, nationality or political opinions and objections of a political nature judged by the I.R.O. as valid. At that time refugees came from
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30 countries—mainly Eastern European from July 1947 to Jan 1952, the I.R.O. helped to resettled over 1 million refugees in third countries, repatriated 73,000 and made arrangement for 410,000 who remained displaced in their home countries. It continued its activities until 1951.²⁶

Post I.R.O. Period: (1949)

In 1949 the United Nations began to look for the post I.R.O. period. Several states were opposed to the adaptation of a broad approach, considering it essential to identify refugee who were in need of international protection. The United States favoured a narrow definition of those who would fall within the competence of new, temporary agency, a de-emphasis of resettlement, and concentration on legal protection pending integration of countries of refugee, as opposed to assistance or similar activities; the main purpose was to prevent refugees becoming a liability to international community. Other refugee categories such as those created by population transfers, were mostly entitled to right afforded by their countries of residence, and thus in no need of international protection.²⁷ Apart from those countries actually having to deal with large population of "National Refugees."²⁸

As a result of post-war political tensions, I.R.O. operations were both controversial and inadequately funded. Only 18 of the 54 member states contributed to the Budget of the organization. In addition, the cost of financing operations was rapidly increasing and by 1951 had reached US$ 400 million. It soon became evident that the responsibility for refugees deserved further international effort under the auspices of the United Nations itself. Consequently, discussions about the establishment of a successor organization began long before the expiration of I.R.O.'s mandate.

²⁶ For I.R.O. and U.N.N.R., See-Human Rights and Refugees, Human Rights Fact-sheet No.20 p.4 and also see supra Note.1, p.120.
²⁷ General Assembly Resolution, 5th Session, 3rd Committee summary Record, 324th meeting, 22nd Nov, 1950, Paras 44-9, see also 326th meeting, 24th Nov, 1950 Paras 31F (United States)
²⁸ Views on India, 332nd GAOR meeting, 1st Dec, 1950, Para 26-7.
The International climate, however, in which the debates took place at the United Nations concerning the possibility of future action on behalf of refugees during the phase out period of I.R.O., was such at that time the issue was fraught with political as well as humanitarian dimensions. Heated discussion took place between those who argued for broad responsibilities, and those favoured an agency with limited competence. Though compromises were made, those who pleaded for a broad protection mandate, with a more limited mandate in the field of assistance, won the day. The General Assembly provided international protection to refugee to seek permanent solution to the problem of the refugees creating the office of the United Nations High Commissioner for refugees (U.N.H.C.R.).

In 1950 the I.R.O. was replaced by the office of the U.N.H.C.R. the office of the U.N.H.C.R. succeeded the I.R.O. as the principal U. N. Agency concerned with the refugees; such scope and extent of its competence are considered more fully taking account of the impact of developments within the United Nations, such as Article 14(1) of the Universal Declaration of Human Rights: Everyone has to right to seek and to enjoy in other countries asylum from persecution", the relation of Asylum to persecution, and the 1967 Declaration on territorial asylum. The basis for an international legal concept of the refugees are thus to be found in treaties, states and United Nations practice and the status of U.N.H.C.R.

The frequency of large-scale refugee crisis during the last 50 years, together with a variety of political and humanitarian considerations, has necessitated flexibility in the administration of the U.N.H.C.R.'s mandate. In consequence, there has been a significant broadening of what may be termed the concept of 'refugees of concern to the international community.'

Chapter II: Definitions of Refugees

A. Definition of Refugees after 1951

The primary standard of refugee status after 1951 has derived from the international refugee laws.

**International Refugee Law**

A number of international instruments established and define basic standards for the treatment of refugees. The most important are the 1951 United Nations convention relating to the status of refugees, and its 1967 protocol relating to the status of refugees.

**The 1951 Convention relating to the status of Refugees**

The United Nations convention related to the status of refugees was adopted by the United Nations conference of "plenipotentiaries" on the status of refugees and stateless persons held at Geneva on 2 to 25th July 1951, was opened for signature on 28 July, 1951 and entered into force on 22 April 1954.

Soon after the World War II as the refugee problem had not been solved, the need was felt for a new international instrument to define the legal status of refugee. Instead of adhoc agreements adopted in relation to specific refugee situations, there was a call for an instrument containing a general definition of who was to be considered a refugee. Thus came about the 1951 convention relating to the status of refugee, which was drafted as a result of a recommendation by the newly established United Nations High Commissioner on Human Rights; was a landmark in setting standard for the treatment of Refugees.

The convention sets the minimum standards of treatment of refugees, including the basic rights to which they are entitled. It embodies principles that promote and safeguard refugees rights in the field of employment, education,


residence, freedom of movement access to Courts, naturalization and above all, the security against return to a country where they may risk persecution. The essential purpose of the convention is to provide for a legal regime which ensure protection to a group of persons who are in a particularly vulnerable situation.

It applied Article 1-A to any person who.

1. has been considered a refugee under the arrangement of 12 May 1926 and 30 June 1928 or under the convention of 28 October 1933 and 10 Feb, 1938, the protocol of 14 September 1939 or the Constitution of the International refugees organizations; and

2. As a result of events occurring before 1 Jan 1951 and owing to well founded fear of being persecuted for reasons or race, religion, nationality, membership of a particular social group or political opinion in 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 it 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 I.R.O.

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 other without a nationality.

There are 2 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 Jan 1, 1951.

Persons with a nationality meeting these 2 tests are to be considered as refugees only if they are outside the country of their nationality owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion and are unable or owing to the fear of persecution, unwilling to avail themselves of the protection of the country of their nationality.

Persons without Nationality, Meeting the first two tests are considered refugees if they are unable or owing to well founded fear of persecution, unwilling to return to the country of their formal habitual residence.\(^{32}\)

There are four elementary Convention refugees identifiable by their possession of four elemental characteristics:

They are outside their country of origin: they are unable or unwilling to avail themselves the protection of that country or to return there; such inability and unwillingness is attributable to a well founded fear of being persecuted;\(^{33}\) and the persecution feared is based on reasons of race, religion, nationality, membership of a particular social group or political opinion.

Exclusion Clauses

The convention shall cease to apply to any person falling under the terms of section A if: He has voluntarily re-availed himself of the protection of the country of his nationality; or Having lost his nationality, he has voluntarily reacquired it; or He had acquired a new nationality, and enjoys the protection of the country of his new nationality; or He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or He can to no longer, because the circumstances in connection


\(^{33}\) United State of America Memorandum on the definition art of the preliminary draft convention categories were (1) Refugees from the period of 1st World War, (2) Inter War Refugee (3) Neo-Refugees and (4) displaced person and unaccompanied minors
with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; 34

This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for refugees protection assistance. 35

This convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of the country. 36

The provisions of this convention shall not apply to any person with respect to whom there are serious reasons for considering that: he had committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; he has committed a serious non-political crime outside the country of refugee prior to his admission to that country as a refugee; he has been guilty of acts contrary to the purpose and principles of the United Nations. 37

As conclusion Art. 1 of the convention identities, in section D, E, and F, cases in which persons otherwise having the characteristics of refugees are excluded from refugee status. Such persons fall into these three broad categories

The first group consists of persons already receiving protection or assistance from agencies or organs of the United Nations other than U.N.H.C.R. such people include the Palestinians who, in part of the middle-

34. The 1951 convention on the status of refugees Article 1-C (A).
35. Ibid, Article 1 D.
36. Ibid, Article 1 E.
37. Ibid, Article 1 F.
East, receive assistance from agencies or organs of the United Nations relief and work agency for Palestine refugees in the near east (U.N.,R.W.A.).

The second group consist of persons who are not considered to be in need of international protection. Those are persons who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, short of formal citizenship. For example, people of German descent from Central Europe and the former Soviet Union, irrespective of nationality, are thus protected under the German Constitution, and are therefore not refugees under the 1951 convention-

The third group comprises categories of persons who are not considered to be deserving international protection, because there are serious reasons for considering that they have committed a crime against peace, a war crime or a crime against humanity, or a serious non-political crime outside the country of refugee prior to admission to that country as refugees; or they have been guilty of acts country to the purposes and principles of the United Nations. However, James C. Hathaway gave five essential elements: 38 1951 convention definition on the status of refugees has five essential elements, each of which must be established before status is appropriately recognised: it comprehending a range of con-textual concerns is referred to here as Alienage: it includes only persons who have their country of nationality, or in the case of stateless persons, their country of former habitual residence, the refugee claimant must be genuinely at risk, it is not enough that she truly believe herself to be in jeopardy rather, there must be objective facts to provide a concrete foundation for the concern which induces her to seek protection in another state, the claimant flight must be motivated by the prospect of persecution that is risk of serious harm against which the state of origin is unwilling or unable to after protection, the risk faced by the refugee claimant must have some nexus to her race, religion, national membership in a particular soul group, or political opinion, the critical question is whether but for her civil or political status she could reasonably be

said to be at risk of serious harm, there must be a genuine need for and legitimate claim to protection.

**Criticism**

On the basis of analysis of the definitions given by the 1951 convention it has been criticised on various grounds.

1. **Political context** - the 1951 convention relating to the status of refugees, forms the primary standards of refugee status today. It was drafted between 1948 and 1951 by a combination of United Nations organs and Adhoc Committees, and conferences of Plenipotentiaries. The two main characteristics of the convention definitions are

(a) Strategic conceptionalization,
(b) Eurocentric focus on which grounds its has been criticised

(a) **Strategic Conceptionalization**

Strategic dimension of the definition come from efforts of western states, who tried to give, priority in protection matters to persons whose flight was motivated by pro-western political values. However the Soviets wanted to exclude political emerges from the scope of the convention as they feared of exposing their weak flank. The more numerous and more powerful western states were preoccupied, to maximise the internal visibility of that migration. Finally, it was agreed to restrict the scope of protection in almost the same way as had been done in the post-World War II refugee instruments: only persons who feared "persecutions" because of their civil or political status would fall within the international protection mandate this neutral formulation facilitated the condemnation of Soviet bloc polities through international law in two ways.

Firstly, the persecution standard was a known quantity, as it had already been employed to embrace Soviet bloc dissidents in the immediate post-war years. It was understood that the concept of fear of persecution was sufficiently
open-ended to allow the west to continue to admit ideological dissidents to internal protection.

Secondly, the precise formulation of the persecution standard meant that refugee law could not readily be turned to the political advantage of the Soviet bloc. The refugee definition was carefully phrased to include only persons who have disfranchised by their state on the basis of race, religion, nationality, membership of a particular social group or political opinion. Matter in regard to which East-bloc practice has historically been problematic. Western vulnerability in the area of respect for human rights in contrast, centres more on the guarantee of socio-economic human rights than on respect for civil and political rights. Unlike the victims of civil and political oppression, however, person denied even such basic rights as food, health care, or education are excluded from the international refugee regime (unless that deprivation stems from civil or political status) the convention adopted an incomplete and politically partisan human rights rationale, by giving protection to those, whose civil and political rights are Jeopardized, (western inspired) and not giving protection to those whose socio-economic rights are at risk, (Soviet inspired unless the latter is caused due to the former.39

(b) Eurocentric Focus

In addition to their desire for the refugee definition to serve strategic political objectives, the majority of the states that drafted the convention sought to create a rights regime conducive to the redistribution of the post-war refugee burden from European shoulders. The Europeans complained that they had been forced to cope with the bulk of human displacement caused by the second world war, and that the time had come for all members of the United Nations to contribute to the resettlement of both the remaining war refugees and influx of refugees from the Soviet bloc. Refugees would be more inclined to move beyond Europe if there were guarantees that their traditional

39. Ibid 6-10.
expectations in terms of rights and benefits would be respected abroad. The convention, then, was designed to create secure conditions such as would facilitate the sharing of the European refugee burden.

Notwithstanding the vigorous objections from developing countries, faced with responsibility for their own refugee populations the Eurocentric goal of the western states was achieved by limiting the scope of mandatory international protection under the convention to refugees whose plight was prompted by a pre-1951 event within Europe. While states might opt to extend protection to refugees from other parts of the world, the definition adopted was intended to distribute the European refugee burden without any binding obligations to reciprocate by way of the establishment of rights for, or the provision of assistance to non-European refugees. These were few main reasons why India did not sign the 1951 convention. (it was until more then fifteen years later that the protocol relating to the status of refugees expanded the scope of the convention definition to include refugees from all regions of the world.)

It has been criticised for being indualistic in character, temporarily and geographically.

*Individualistic Character*

Refugee definition presuppose signatory states, establishing refugee status determination procedures, to determine refugee status of asylum seekers. Establishing such mechanism involves substantial resources, including ensuring of availability of reception centers, interpreters, lawyers, and lastly, well trained decision makers. For many countries such resources are lacking

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and thus standards may be compromised, or procedures may not be established despite accession to the convention.

It also has been criticised that its scope is limited

**Well founded fear**

It also has been stated that the phrase well founded fear of being persecuted is the key phrase of the definition. It is the main element of refugee character. It replaces the earlier method of defining refugee by categories (i.e. persons of a certain origin not enjoying the protection of their country) by the general concept of 'fear' for a relevant motive. Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin to the element of fear, which is a state of mind and a subjective condition, another element is added i.e. well-founded, which is an objective condition. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term well founded fear therefore, contains a subjective and objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

**Persecution**

Persecution is a very open ended term there is no universally accepted definition of 'persecution'. Though various attempts have been made. As inferred from Art 33 of the 1951 convention, "persecution" included threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group. Other serious violations of Human Rights for the some reasons-would also constitute persecution whether other prejudicial actions or threat would amount to persecution will depend on the

44. The United Nations Convention relating to the status of refugees 1951 Article 33.
circumstances of each case including the subjective elements. The subjectives character of fear or persecution requires an evaluation of the opinion and feeling of the person concerned it is also in the light of such opinions and feelings that many actual or anticipated measures against him must necessarily be viewed. Due to variation in the psychological make up of individuals and change in circumstances of each case, persecution is bound to vary. So it is very tough to find the true reading of persecution.

However, a more literal reading is undertaken in Art 33 of the convention, which prohibits the return of a refugee to the frontiers of territories where his life or freedom would be threatened. The convention was written with the intent of, broadly reading the grounds of persecution, and protecting all persons and groups then existing in Europe who had been or were likely to be the victims of persecution. Courts and commentators tends to see persecution issue primarily in terms of the level of harm imposed on an individual.

The dominant view however, is that refugee law ought to concern itself with action which deny human dignity in any key way, and that the sustained or systemic denial of core human rights is the appropriate standard.

**Race**

Race, in the widest sense includes all kinds of ethnic, groups that are referred to as races in common usage. Frequently it will also entail membership of a specific social group of common descent forming a minority within a larger population. Racial discrimination for reasons of has found world-wide condemnations as one of the most striking violation of human dignity and human rights and therefore, represents an important element in determining the existence of persecution. The mare fact of belonging to a certain racial group

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will normally not be enough to substantiate a claim to refugee status\(^6\), barring a few exceptional cases, where, due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution.

**Religion**

The universal declaration of human rights proclaim that everyone has the right to freedom of thought conscience and religion. This right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.\(^7\)

The 1951 convention guarantees to refugees equality of treatment with nationals as regards freedom of religion, but if national law restricted religious freedom for citizens than 1951 convention would not prohibit similar restrictions on refugees.\(^8\)

**Nationality**

The term nationality refers to citizenship as well as membership of an ethnic or linguistic group or race. Persecution for reasons of nationality may consist of adverse attitude and measures directed against a national ethnic, linguistic minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well founded fear of persecution. Also, when two or more national (ethnic, linguistic) groups co-exist within the boundaries of a state; situations of conflict may arise. Hence also leading to situations of persecution or danger of persecutions. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national group is combined with political movements identified with a specific nationality whereas in most cases persecution for reasons of nationality, is feared by persons belonging to a

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47. The universal declaration of human rights 1948, article 18.
national minority. There have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority.

**Membership of a particular social group**

A particular social group includes the persons having the similar background habits and social status. A refugee being persecuted for membership of a particular social group generally overlaps to fear of persecution on the grounds of race, religion or nationality. This reason of being persecuted on the basis of membership of a particular social group may be at the root of all kinds of persecution. Because government don't have any confidence in group's loyalty just because of the political outlook of that country, having wrong employment or economic activities, and create obstacle to government policies by their actions. So the membership of a particular social group will not normally be enough to substantiate a claim to refugee status

**Political Opinion**

Holding political opinions different from the government of his country is itself a sufficient ground of being persecuted for political opinion and claiming for refugee status and it may not always be possible to establish a casual link between opinion expressed and the related measures suffered or feared by the applicant.

**The convention is inadequate to address the situation of mass flows of population** - It basically deals with refugees the problem arises regarding mass influx which is not controlled by the convention, it finds difficulties in coping with such influx. In such cases the states providing asylum to the refugees have their own yardsticks to determine their fate and future.

49. B. S. Chimni, International refugee law: A Reader (Ed.) Sage Publications. New Delhi. p.31
The convention does not provide specifically for standards required in setting up a refugee status mechanism—Nor the treatment of asylum seekers pending a decision, arguably seems to be left to signatory states. In some state, it may take years to reach a final decisions on the status of individual asylum seekers. Some states may also detain asylum seekers pending a decision.

Restrictive application of principle of Non refoulement—The convention appears to restrict the applicability of the non-refoulement rule on "refugee' convention does not explicitly oblige states to admit asylum seekers. States have thus argued that non-refoulement does not apply to asylum seekers at borders. Thus some states have been known to keep asylum-seekers at bay, so as not to engage themselves in refugee status determination; such measures may include closure of borders, interdiction at sea, reinforcing visa checking facilities at foreign airports not allowing the disembarkation of stowaway asylum seekers, or insisting that another state has the obligation to undertake refugee status determination on the basis that the asylum-seeker has passed through the state (e.g., a first country of asylum).

Convention has no provision for extension of protection to refugee returnees after voluntary repatriation—It does not deal with aspects of reintegration or with addressing root causes of refugee flows. There is nothing wrong with refugee law, since it was not conceived to deal with the situation in the country of origin an area which falls within the purview of human rights. But, there appears to be an increasing perception that if U.N.H.C.R. were to ensure durability of any voluntary repatriation, than refugee law have to address issues of reintegration and sustainability of voluntary repatriation.50

Conclusion—The 1951 convention definition relating to the status of refugees besides having all these short coming since its inception developed a

number of principles and guidelines which help a lot in defining the legal status of refugees and ensure standards for the treatment of refugees. Of course, it is to be noted that the 1951 convention, was primarily drawn up to deal with the situation of displaced persons in Europe immediately after the Second World War, and to provide protection for those persons. The state acceding to the convention were anxious to make their obligations specific and to ensure that those obligations could not be extended indefinitely. Today, circumstances have changed and many people who need international protection of the kind provided by the convention do not fall within its ambit.

**The 1961 Protocol related to the status of refugees**

Throughout the late 1950s and 1960s new refugee groups emerged in particular in Africa these refugees were in need of protection which could not be granted to them under the limited time frame of the 1951 convention. The convention could benefit only persons who had become refugees as a result of events occurring prior to 1st June, 1951. However, the years following 1951 showed that refugee movements were not merely 1951 the temporary result of the Second World War and its aftermath.

The need was increasingly felt to make the provision of the convention applicable to such new refugees. New refugee situation necessitated a widening of both the temporal and geographical scope of convention. Realising the necessity of protection to the new refugees whose fear of persecution is not related to the event occurred before 1951 a protocol relating to the status of refugees was prepared after consideration by the General Assembly of the United Nations, it was opened for accession on 31 Jan 1967 and entered into force of 4 Dec, 1967; which omitted temporal and geographical limitations on the definition of the refugee under the 1951 Refugee convention.

1967 Protocol extended the application of the convention to the situation of new refugee, i.e. person who, while meeting the convention definition, had
become refugee as a result of events that took place after 1st Jan, 1951. 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 groups or political opinion, is outside the country of his nationality and its unable or, owing to such fear, is unwilling to avail himself of protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, owing to such fear, is unwilling to return to it.

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

However, the definition contained within 1951 convention clearly does not cover everyone outside his or her country, in a situation of disasters, and unable to return home. People may be unwilling or unable to return to their own country due to circumstance such as natural disasters-famines, flood or earthquake which have rendered life there impossible. These circumstances, however are not included within the criteria specified in the convention definition. Hence, people in these situations are not refugee within the ambit of the definition.51

By accession to the 1967 protocol, states undertake to apply the substantial provisions of the 1951 convention to refugees as defined in the convention. But without the 1951 dateline, though related to the convention. The protocol is an independent instrument.

Main provisions of the 1951 convention and the 1967 protocol.52

There are three types of provisions: Basic definition of who is (and who is not) a refugee and who, having been a refugee, has ceased to be one. Legal

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52. Origin and development of refugee international principles, personal notes of Sumbul Rizvi Khan, delivered lecture at 3rd South Asian Teaching session on International Humanitarian law and Refugee law held at Bangalore 2002, slide 6-7.
Status of Refugees (In country of refugee), including the rights and duties of refugees. Implementation of the instruments from the administrative and deployment standpoint.

Although the protocol adopted in 1967 updated the convention by removing the temporal and geographical limitations, the protocol fail to review the substantive content of the definitions it embraced. Specifically, even after the universalisation effected by the 1967 protocol only persons whose migration is prompted by a fear of persecution in relation to civil and political rights come within the scope of convention based refugee protection. This means that most third world refugees remain de facto excluded, as their flight is more often prompted by natural disaster, war, or broadly based political and economic turmoil than by 'persecution'.

The adaptation of the protocol was therefore, a blessing in disguise for the less developed world: while modern refugees from outside Europe were formally included within the international protection scheme. Very few third world refugees can in fact lay claim to the range of rights stipulated in the convention. The retention of a fundamentally European and increasingly outmoded refugee definition as the accepted international standard for refugee protection was at the least a tacit recognition of the priority of European and analogous claims to a guarantee of basic rights within the international community.

The protocol, has proved to be of great importance in the maintenance of a dualistic approach in refugee law. As the number of third world refugees has increased and transportation links to the developed world have improved, a small minority of these refugees have made asylum claims in western states. The refugee definition established by the protocol has enabled authorities in developed states to avoid the provision of adequate promotion of third world asylum claimants while escaping the political embarrassment entailed by use of an overtly Eurocentric refugee policy. While not drafted as a standard for refugee definition per se, the convention derived definition has been adopted
by an increasing member of western states as the basis upon which asylum or protection decisions are made. Because the definition has the imprimatur of International Law, and because it has been specifically approved by more than one hundred states, it is difficult to argue the inappropriateness of this transmulation. But because the definition fails to reflect the full range of phenomena that give rise to involuntary migration, particularly in the less developed world, its minimal protection against refoulment works on a pervicious injustice against many genuine refugees, mostly third world refugees find themselves turned away by western states or offered something less than durable protection.

**International Expansion of the Refugee Concept**

The convention refugee concept has been expanded in practice through the evolution of the institutional competence of the United Nations High Commissioner for refugees: the effort to prepare a United Nations convention on territorial asylum; the establishment of regional refugee protection arrangements; and the practice of states.

While these developments do not constitute formal amendments of the convention definition, they are nonetheless indicative of a widening of the circumstances in which persons may be said genuinely to be in need of international protection. In keeping with recommendation of the conference that adopted the convention, states which are parties to the convention may be expected to consider these developments in determining the extent to which persons outside the strict contractual scope of the convention will be protected as refugees.

The General Assembly and the Economic and Social council have played a major role in the expansion of the term refugee.\(^{53}\) In 1957 the General Assembly first authorized the High commissioner to assist refugees who did not come fully within the statutory definition, but whose situation was "such as

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\(^{53}\) Status of the office of the UNHCR Chapter-1, General provision, para.3
Development in the refugee definition employed by the United Nations High Commissioner for Refugees are salient particularly because this institutional definition and the convention definition were drafted simultaneously by the same organ of the United Nations, moreover, the two definitions are quite similar. The individualistic charter of the refugee definition contained in the 1950 U.N.H.C.R. statute made it initially difficult for the organization to respond in a meaningful way to the needs of refugees outside Europe. Because refugees in Africa and Asia moved in large groups, the type of individuated, case by case application of a refugee definition contemplated by the statute (like the convention) was simply not a practical possibility the U.N.H.C.R. was thus technically unable to exercise its universal mandate and sought the authority to deal with refugee situation in Europe in a more collective fashion that would not involve a process of individualized assessment. Since 1957, the General Assembly, the economic and social council, and the Executive Committee of the U.N.H.C.R. have moved by a variety of means to respond to non-European refugee-producing situations. Styled variously as requests for the U.N.H.C.R. to extend its good offices, or to act on behalf of groups of concern to the international community, the defacto sphere of responsibility has expended radically from its relatively constrained statutory base. U.N.H.C.R. has been authorized to aid the full range of involuntary migrants, including the victims of all forms of both man-made and natural disasters. Moreover, the organization has been requested to assist refugees who remain within their country of origin and to contribute to the resettlement of refugees who are returning home. The essential criterion of refugee status under U.N.H.C.R. auspices has come to be simply the existence of human suffering consequent to forced migration. While this enhanced definition is linked primarily to eligibility for material assistance, U.N.H.C.R.

has also been authorized with increasing frequency to extend international legal protection to persons within its broader mandate. In functional terms, few distinctions are now made between the role of U.N.H.C.R. in regard to refugees within its statutory mandate and those within its extended competence.

In 1959 in anticipation of world refugee year, the General Assembly called for special attention to be given 'to the problem of refugees coming within the competence' of U.N.H.C.R., while simultaneously authorizing the High Commissioner to use his good offices in the transmission of contributions for the assistance of refugees who do not come within the competence of the United Nations. After the reference to 'good offices refugees' in the General Assembly's 1963 resolution on report of U.N.H.C.R. the term does not reoccur again until its final appearance in 1973.

The 1965 resolution referred generically to the protection of refugees and to the solutions for the various groups of refugees within U.N.H.C.R. competence. Thereafter, the language changed, became more composite and began to reflect the refugees of concern to U.N.H.C.R. General Assembly resolutions are rarely consistent in their language, and their rationale too, is often hidden.

The new definition of refugee is qualitatively different from the classical definitions for it considers situations where the qualities of deliberateness and discrimination need not be presented. Indeed, the driving force behind the protocol was the U.N.H.C.R.'s determination to harmonise the refugee definition in the convention based scheme with its own, the protocol, has proved to be of great importance in the maintenance of a dualistic approach in refugee law.

55. Refugee laws and UNHCR 4F.1, Indian Institute of Human Rights, New Delhi, pp. 3-4.
59. United Nations General Assembly Resolution 2039 [XX] 7-12-65
60. United Nations General Assembly Resolution 2197 [XXI] 16-12-66
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In the mid 1970, the General Assembly has spoken of and anonymously commended the high commissioner's activities on behalf of refugees and displaced persons of concern to the office. The reference to displaced persons dates back to 1972, when the economic and social council acted both to promote the voluntary repatriation of refugee to the Sudan including measures of rehabilitation and assistance, and also to extend the benefit of such measures to persons displaced within the country.\(^6\) A difference exists between refugee and internally displaced persons who are compelled to move but do not cross international boarders are classified as 'Internally displaced persons'.

The ECOSOC lead was followed by the General Assembly in the first of references to displaced persons, which were soon to acquire a regularity and substance of their own. In 1974 and 1975 the General Assembly reiterated its recognition of refugees of concern to U.N.H.C.R.,\(^6\) and acknowledged an additional category of 'Special Humanitarian tasks' undertaken by the high commissioner.\(^6\) ECOSOC took another consolidating step forward in 1976 when its recognised the importance of U.N.H.C.R.'s activities in "the context of man made disasters- in addition to its original function." The high commissioner was commended for his efforts on behalf of refugees and displaced persons, victims of man made disasters,' and requested to continue his activities for alleviating the suffering of all those of concern to his office.\(^6\) In November 1976 the General Assembly formally endorsed the ECOSOC resolution and recognised the need to strengthen further the international protection of refugees.\(^6\)

The displaced person category is the offshoot of the 'good office' approach in international law, which had recognized the need for prima-facie eligibility. The U.N.H.C.R. amply recognises the plight of displaced person and the need to provide assistance to them. The refugee crisis in the period

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64. ECOSOL resolution 2011 [LXI] 2-8-78.
65. United Nations General Assembly Resolution 3135, 30-11-76.
1975-1995 illustrates both the development in the refugee definition and problems that arise in applying it consistently to large numbers of asylum seekers. Over one and a half million people left Cambodia, Laos and Vietnam, beginning in April 1975.\footnote{Report of the secretary general of the meeting on refugees and displaced persons in South East Asia Geneva, July, 1979. See also Osborne M. The Indonesian refugees cause much concern International affairs 1980, pp.37-38.} Already involved in the region, U.N.H.C.R. was called upon to assist many who had left their countries of origin, in particular by securing asylum, providing care and maintenance, and promoting resettlement, the provisional revolutionary government in South Vietnam also requested U.N.H.C.R. to promote voluntary repatriation. U.N.H.C.R. called them displaced persons from Indo-China outside their country of origin\footnote{United Nations Documents A/AC. 98/516.}, and persons leaving the Indo-China peninsula in small boats, and not refugees. Internally displaced persons since 1990s have found place in the General Assembly resolutions, with the incremental recognition of others requiring protection, including returnees, women and children and asylum seekers.\footnote{United Nations Documents, A/AC. 96/534, para 57 (1976). 'Displaced persons and boat people' terminology prevailed through 1978 and 19709.}

The General definitions of refugee status contained in the status of the U.N.H.C.R. and the 1951 convention have been rendered obsolete. The restrictive nature of the early definitions did not adequately respond to the variety of solutions in the sixties and seventies; for the drafters of the early definitions neither considered nor anticipated the problems of the less developed world.

**The efforts to prepare a United Nations applications on territorial Asylum**

The second indication of the expanded scope of refugee status drives from the abortive effort to draft a convention to define the circumstances in which territorial asylum should be guaranteed to refugees. The need for such a convention seems from the failure to include in the convention any obligation
beyond non refoulement, that is, the duty to avoid the return of a refugee to a country where she faces a genuine risk of serious harm, while willing to provide emergency protection against return to persecution the states that participated in the drafting of the convention insisted that they be allowed to decide who should be admitted to their territory, who should be allowed to remain there, and ultimately who should be permanently resettled. In view of this deficiency in the convention and in an effort to effectuate the right to seek and enjoy asylum contained in the universal declaration of human rights and the declaration on territorial asylum.

A draft convention on territorial asylum was prepared and submitted to a conference of "plenipotentiaries" in 1977.\textsuperscript{69} While the purpose of the proposed accord was essentially to enhance the scope of protection available to convention refugees its most noteworthy achievement may in fact have been the degree of consensus attained on changes to the definition of refugee status for purpose of entitlement to international legal protection. The expert draft of Article-2 of the proposed asylum convention recommended important changes to the definitional standard derived from the convention, as amended by protocol. Clarification of the nations of (political opinion to include opposition to apartheid and colonialism and of persecution to embrace prosecution grounded in persecutory intent were proposed. During the meeting of the 92 states, moreover, it was agreed inter-alia that asylum should be accessible also to persons at serious risk of persecution due to kinship or as a result of foreign occupation, alien domination, and all form of racism. An important clarification of the definition agreed by delegates was the replacement of the "owing to a well-founded fear of persecution" convention-based standard with a requirement that a refugee be faced with a definite possibility of persecution."

The expanded scope of protection as a whole, including both the expert group and conference amendments, which was approved by 47 votes to 14 with 21

\textsuperscript{69} Refugee laws and UNHCR Indian Institute of Human Rights, New Delhi, 4F.1 pp.4-5.
abstentions, provided that: each contracting state may grant the benefits of this convention to a person seeking asylum, if he is being faced with a definite possibility of:

(a) Persecution for reason or race, colour, national or ethnic origin, religion, nationality, kinship membership of a particular social group or political opinion, including the struggle against colonialism and apartheid, foreign occupation, alien domination and all forms of racism;

(b) Prosecution or punishment for reasons directly related to the persecution set forth in (a); is unable or unwilling to return to the country of his nationality or; if he has no nationality, the country of his former domicile or habitual residence.

While the drafting of the territorial asylum convention ended in a statement, the affirmative vote in favour of expanded definition of refugee status is no less indicative of a willingness on the part of the international community to conceive the refugee concept more broadly than as elaborated in the convention and protocol. In contrast to the concern in 1967 to avoid the restlessness of the substantive content of the refugee definition, or majority of the 92 states that attended the conference on territorial asylum agreed to update the definition in ways that were responsive to refugee movement in the developing world, and which recognized the collective nature of many refugee producing phenomena. While no binding, conventional commitment was established towards refugees within this revised concept, the work of the 1977 Conference remains the most recent expression of international consensus on the appropriate scope of refugee status in international law. Three refugees groups have enacted standards of refugees protection that extended the convention definition in ways similar to the evolution of the U.N.H.C.R. mandate and the scope of the proposed asylum convention. The work of each of the organization of African unity the organization of American states and the council of Europe is considered in turn.
Other International Instruments

Other conventions and declaration, which may be relevant to refugees, provided some provisions and definitions to their status, some of which are mentioned below:70

The 1949 Fourth Geneva Convention relative to the protection of civilians and persons in time of war: Art. 44 of the convention, whose aim is the protection of civilian victims, deals with refugees and stateless persons define a refugee "who do not in fact enjoy the protection of any government."

The 1977 additional protocol to Geneva Convention, Art. 73 define refugee as71

Persons who, before the beginning of hostilities, were considered as stateless persons or refugee under the relevant international instruments accepted by the parties concerned or under the nations legislation of the state of refugee or state of residence shall be protected person within the meaning of part Ist and III of the fourth Geneva Convention in all circumstances and without any adverse distinction.

1954 Convention relating to the status of stateless persons: Defines the term "Stateless persons" as a person who is not considered as a national by any state under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless person.

1961 Convention on the reduction of statelessness: A state party of this convention agrees to grants its nationality to a person born in its territory who would otherwise be stateless. The state also agrees subject to certain conditions, not to define a person of his nationality if such deprivation would render him stateless. The convention specifies that a person or group of persons shall not be deprived of their nationality on racial, ethnic religious or political grounds.

71. Additional protocol to the Geneva convention 1977 Article 73.
The 1967 United Nations Declaration on Territorial Asylum: The declaration of the United Nations General Assembly lays down a series of fundamental principles in regard to territorial Asylum. It states that granting of territorial Asylum "is a peaceful and humanitarian act and that, such it can not be regarded as unfriendly by any other state." It upholds the basic humanitarian principle of Non-refoulment and recalls article 13 and 14 of the Universal Declaration of Human rights which has spelt out, respectively, the right to leave any country and to return to one's country and the right to seek and enjoy asylum.

The establishment of "a regional refugee protection arrangement"

Many states relied upon the internationally accepted refugee definition as explained in the 1951 convention, despite its various limitations. It also proved inadequate to deal with the problem posed by the millions of externally displaced persons in the third world. Broader refugee definitions therefore have been advanced at the regional level.

It is appropriate in light of developments in the region as well as in other part of the world over the last thirty years, to consider further the issue of the scope of the definition under the Bangkok principles. Principles concerning treatment of refugees as adopted by the Asian-African Legal Consultative Committee at its eight session Bangkok 1966, define refugee as:

"A person who, owing to persecution or well founded fear of persecution for reasons of race, colour, religion, political belief or membership of particular social group (a) leaves the state of which he is national, or the country of his nationality, or if he has no nationality the state or country of which he is a habitual resident, or (b) being outside such state or country, is unable or unwilling to return to it or to avail himself of its protection."

Two explanations attached to this Article state that: the dependents of a refugee shall be deemed to be refugees; and the expression leaves includes voluntary as-well as involuntary leaving.
The adoption of an expanded refugee definition would put the Bangkok principles in line with the actual practice of the member states. It is significant that one paragraph of the Notes to Articles 1 of the Bangkok principles hints at a border definition for the Asian-African region. Indeed, in paragraph (ii) of the Notes, three delegations proposed that the definition of the term 'refugee' include a person who is obliged to leave the state of which he is a national under the pressure of an illegal act or as a result of invasion of such state, wholly or partially, by an alien with a view to occupying the state.

This view anticipates the 1969 OAU convention in which a purportedly broader definition includes that of the 1951 convention, but extends in order to take account of the specific regional aspects of the refugee problem in Africa. In 1967 protocol to the status of refugees of 1951 convention, specially removed those limitations, here it may be mentioned that the 1951 convention and its protocol remained the principal international instrument benefiting refugees, and their definition which they offer has been specially adopted in the a variety of regional arrangements aimed at further improving the situation of recognized refugees. It forms the basis for Article 1 of the 1969 OAU convention on refugee problems in Africa, although it has there been realistically extended to cover those compelled to leave their country of origin on account of external aggression, occupation, foreign domination, or event seriously disturbing public order.

Africa

Organization of African Unity (O.A.U.)

It is in Africa where the international community is confronted with the most complex challenge and to which it has to devote a major share of its social and economic resources.

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The flow of refugees in Africa became an acute problem in the 1960s and late 1950s, including the wars, internal conflict and struggle for attainment of independence by most African states. Refugees came primarily from two main group of states. The colonial and independent state and the independent African states the enormous refugee problem in dependent and colonial territories in Africa stemmed primarily from operation and racism. Since the establishment of the Organization of African Unity (O.A.U.) in 1963, the refugee question has been of concern to the organization. It was decided to draw up a convention which should reflect and resolve the specific concerns of the African refugee problem.

In October 1967 a conference on legal, economic and social aspects of African refugee problems was held in Addis Ababa. However, the recommendations on the matter, adopted by the conference, only stated that.

"In addition to the definition contained in the 1951 United Nations convention relating to the status of refugees, as expended by the United Nations protocol of 1967, African states should take into account the specific aspects of African refugee situation, with regard in particular to the definition of an African refugees."

In June 1968, OAU refugee commission met in Addis Ababa in order to complete a final draft on an African Refugees convention which was finally adopted by the Assembly of Heads of state and government in September, 1969 what is generally considered the most comprehensive and significant regional treaty dealing with refugees.

This is the first internationally accepted agreement which governing the specific aspects of refugee problem in Africa broke new grounds by extending protection to all persons compelled to flee across international borders by reason of any man made disaster, whether or not they can be said to fear
African states felt that "well founded fear of persecution" was not sufficiently wide a criterion to cover all the refugee situation in Africa.75

The II\textsuperscript{nd} paragraph of Art. 1 of the O.A.U. convention provides that the term "refugees shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of 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. The most interesting aspect of the O.A.U. convention is its two-fold definition of a 'refugee'. It incorporates the same definition as in the 1951 convention without the dateline and without the possibility of geographical limitation. At the same time it explicitly includes persons who are victims of man-made disasters like international armed conflict or civil wars etc. The O.A.U. convention complements rather than duplicates the 1951 convention. Apart from the broad refugee definition, the O.A.U convention regulates the question of asylum (Art. II), it also contains important provisions on voluntary repatriation (Art. V) and on prohibition of subversive activities by refugees (Art. III) as of February 1992, the O.A.U. convention had been ratified by 42 states.

For the first time the legal term "refugee' albeit at regional level, was extended to individuals forced to leave their countries owing to aggression by another state and/or as a result of an invasion. The O.A.U. convention marked the beginning of a refugee protection system, which directly addressed the cause of refugee influxes, by emphasising objective conditions in the country of origin.76

It was the first legal instrument specifically to include the new universally accepted principles of voluntary repartition. So unlike the

75. Human rights and refugees human right fact sheet series 20, p.9
convention, this does not speak of subjective fear of the individual, but only to the objective conditions prevailing in the country of Africa during the period of drafting of 1969 O.A.U. convention. It represents an important conceptual adaptation of the conventional refugee definition that it is successfully translates the core meaning of refugee status to the reality of the developing world for it considers situations where the qualities of deliberateness and discrimination need not be present.

From its inception, refugee status has evolved in response to changing social and political conditions. Which has made it the most influential conceptual standard of refugee status of the developing world like Africa, apart from convention definition. It has provided a new terminology responding to humanitarian concerns and provides a practical and practical flexible solution to the problem of determining refugee status in the absence of decision making infrastructure of developing countries. It also has provided the basis for enhancing U.N.H.C.R. activities in Africa and has inspired the liberalisation of a variety of regional and national accords on refugee protection.

Europe

The Council of Europe has also introduced standards of refugee protection that go beyond the convention definition, although the changes are significantly more modest than those of the O.A.U. or O.A.S. In the Parliamentary Assembly's recommendation 773 in 1976, the Council of 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 reason to return to their countries of origin." Member governments were invited to "apply liberally the definition of "refugee in the convention" and not to expel defacto refugees unless they will be admitted by another country where they do not run the risk of persecution. To date, this recommendation has been only partially implemented. While the committee of
ministers has stipulated that convention refugees not formally recognized as such should be protected from return, no text has been adopted dealing with the right of the broader class of refugees outside the scope of the convention definition. Overall, it can be said that the council of Europe has acknowledged the legitimacy of the claim to protection of an expanded class of refugees, but has not moved to formalize their status or rights.77

The Council of Europe has adopted several instruments concerning refugees. Some of the most important are: European Agreement on the Abolition of Visas for refugees 1959; Resolution 14 (1967) on asylum to persons in danger of persecution; European Agreement on transfer of responsibility for refugees 1980; Recommendation on the harmonization of National procedures relating to asylum 1981; Recommendation on the protection of person satisfying the criteria in the Geneva convention who are not formally Refugees 1984; 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 state of the community.

**Latin America**

Latin American states have a long tradition providing humanitarian treatment to persons seeking protection and asylum. The Montevideo treaty on international criminal law, signed in 1889, was the first regional instrument which dealt with asylum. It was followed by the Caracas convention on territorial asylum signed in 1954 and by other instruments on asylum.

It contain the first provision on asylum in internal treaty law, with a stipulation (Art. 16) to the effect that "asylum for persons persecuted for political crimes is inviolable.

The next important instrument on asylum was signed in 1954 at Caracas which is known as the Caracas convention of territorial Asylum. However, in

the 1980, the outbreak of civil strife in Central America resulted in massive exodus of close to a million persons, posing serious economic and social problems to neighbouring countries towards which this massive flow was directed in search of protection and assistance.

In 1984, these host countries adopted the Cartagena Declaration on Refugees which lay down the legal foundations for the treatment of Central American refugees, which contains a set of principles and criteria for the protection of and assistance to refugees, including the principle of non refoulement. The importance of integrating refugees, and undertaking efforts to eradicate the causes of the refugee problem.78

The Organization of American States (O.A.S.)

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 convention definition to embrace the many involuntary migrants from generalized violence and oppression in Central America; and recognizing the particular characteristic of the flow of displaced person in the region, the state representatives agree to extend the nation of refugees, including, a part from those covered by the universal concept, also other externally displaced persons who are in need of protection and assistance, consequently, the declaration also considers as refugee persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.

However, the Cartagena Declaration takes 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 are protected rights. This definition was approved by the 1985 General Assembly of the organization of American states, which resolved "to urge member states, to extend support and, insofar as possible, to implement the conclusions and recommendation of the Cartagena declaration on refugees."

The Cartagena declaration is not a legally binding instrument for states, it is nevertheless of fundamental importance as it reflects consensus on particular principles and criteria and has guided states in their treatment of refugees for the last five years. In fact, the declaration revitalized the tradition of asylum in Latin America while aiming at consolidating regional customs for the treatment of refugees, returnees and displaced persons. The declaration has however, been incorporated into domestic legislation.

The Refugee Definition in the Practice of States

There is also evidence of an expanding conceptualization of refugee status in the practice of those states which do not participate in a formalized regional refugee protection arrangement. Refugees in flight from situations of generalized danger or serious disturbances of public order are protected through special programme in regulatory schemes, or by burden-sharing arrangements concluded between state of reception and resettlement countries. Because voluntary initiatives are not subject to the formal constraints of the convention-based protection scheme states have a substantial margin of discretion in determining the scope of their efforts. It is nonetheless striking to note the virtual unanimity of state practice in affording some type of protection to refugees outside the formal scope of convention.

80. Human Rights and Refugees, human right factsheet No.20, p.11.
Developing Countries of Asia

While refugee relief in developing countries has often been conditioned on the provisions by the international community of either material assistance or resettlement opportunities. There is nevertheless a clear pattern of granting non-convention refugees basic protection from return once the security of the receiving state has been assured. In sum, even in those states which have formerly committed themselves to the application of an expanded concept of refugee status through one of the regional accords. There is consistent practice of recognizing as legitimate the protection need of a class of refugees outside the scope of the convention. A more difficult issue given the predominance of discretionary and conditional programme of these humanitarian refugees, is the extent to which it can be said that they benefit from a right to international protection. 81

Municipal Laws

The practice of many developing countries is based on either the O.A.U. or O.A.S. expanded refugee concept. Even in those countries not subject to one of these regimes, however, there is evidence of a willingness to protect refugee who may not meet the convention definition. The principle of asylum for refugees is expressly acknowledge in the countries. In others, ratificating of the 1951 convention and the 1967 protocol may have directed effect in local laws. While in still other cases ratifying the states may follow up their acceptance of international obligations by the enactment of specific refugee legislation or by the adoption of appropriate administrative procedure. For example, the definition of refugee in the 1951 convention and protocol has been incorporated into the domestic laws of many countries of Asia.

There has so far been no such regional initiative, nor virtually any appropriate domestic legislation, expect of course that imposes restrictions on unwanted new arrivals. Although the Asian region has a large share of the

81. Refugee Laws and UNHCR 4F.1, Indian Institute of Human Rights, New Delhi, pp. 6-7.
Global refugee problem. There is a low rate of accession among Asian countries to the international refugee instruments, the 1951 convention and the 1967 protocol. In addition, although African states have utilized regional arrangements, such as the O.A.U. and O.A.S., to provide coordinated responses and a legal framework for the refugee problems experienced there, the Asian region has not entered into similar regional arrangements till date.\(^8\)

All the South Asian states are parties to the convention for the elimination of discrimination against women (CEDAW), The child rights convention (CRC), and international convention for elimination of all forms of racial-discrimination and they are obliged to respect and protect the rights of the women and children, racial and ethnic minorities in refugee situation.

Principle concerning treatment of refugees as adopted by the Asian-African Legal Consultative Committee at its eight session at Bangkok in 1967, commonly known as the Bangkok Principles is the most import documents up-till-now relating to refugees in Asia.

**Development in South Asia**

The National Law on Refugees adopted at the 4\(^{th}\) regional consultation on refugees and migratory movement in South Asia, held in Dhaka on 10\(^{th}\) - 11\(^{th}\) Nov, 1997\(^8\) is the main instruments to define and protect refugees in Asia. It defines refugee as:

"any person who is outside his or her country of origin and who is unable or unwilling to return to and is unable or unwilling to avail himself or herself of the protection of that country because of the well founded fear of persecution on account of race, religion, sex, nationality, ethnic, identity membership of a particular social group or political opinion, or any person who owing to external aggression, occupation, foreign domination serious violation of Human Rights or other events seriously disrupting public order in either part

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82. Refugee Laws and Humanitarian Assistance 4F.3 pp. 16-17
or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refugee in another place outside his or her country of origin.

Despite the protests of individual governments, the international community at large has not demurred when U.N.H.C.R. has exercised its protection and assistance function in cases of large scale movements of asylum seekers. The state which acceded to or ratified the 1951 convention agreed that the terms 'refugee' should apply. First to any person considered refugee under earlier international arrangement and secondly to any person who broadly speaking qualified as a refugee under the U.N.H.C.R. statute.\(^8^4\)

There are seven categories of persons following in various degree, within U.N.H.C.R.'s area of operation, i.e. convention or protocol refugee, O.A.U or cartagena refugee, refugees from man made disasters, persons in flight from natural disasters, rejected cases, internally displaced people and stateless persons.\(^8^5\)

The entire dimension of the refugee problems has changed since the end of the cold war, both qualitatively and qualitatively. Briefly the movement has been from the stature. Through good offices and assistance, to protection and solutions. The class of beneficiaries has moved from those defined in the statute. Through these outside competence assisted on a good office basis, those defined in the relevant resolutions of the General Assembly and directives of the executive committee, arriving finally at the generic class of refugees, displaced and other persons of concern to U.N.H.C.R.\(^8^6\)

The end of the cold war appeared to have brought about a radical change in the political situation. Internal solidarity seemed to have taken a giant step forward, and a new just world order with full respect for human rights does not

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84. The United Nations Convention relating to the status of refugees 1951 Article 1 A (2)
85. The United Nations Convention relating to the status of refugees 1951 Article 1 F (A)
86. The United Nations Convention relating to the status of refugees 1951 Article 1F (B)
seem far. But, it was only a dream. The post cold war era appears to have heralded a new fragmentation of the international community.\(^\text{87}\)

Large parts of the Globe are today ribbed by internal, ethnic conflicts and changes in the international political landscape have unleashed jealousies and antagonism. Nationalist and ethnic aspirations that have contributed to political instability, inter-communal violence, armed conflicts and violations of human rights which have forced large number of people to flee, both wither in and across national borders. So also additionally, economic disruption, Global recession, under employment, disparity of wealth within and among industrialised and developing countries, demographic pressures, environmental degradation, and relentless poverty have fuelled migratory flows, most of these causes for mass exodus fall under the rubric of violations of Human Rights and the migratory flows occasioned by such violation in turn give rise to Human Rights violations and consequently the definition of refugee has to be quite comprehensive. The problem of asylum seekers and refugees are essentially human rights problems and therefore the law dealing with refugees, asylum seekers, and migratory movement is part of both humanitarian law as well as Human Rights law, as it developed over the years.

\(^{87}\) The United Nations Convention relating to the status of refugees 1951 Article 1F (C)