CHAPTER I

INTRODUCTION
The flight of people in quest of refuge is as old as history and so are the inevitable sufferings of the up-rooted and homeless. Forced by man's inhumanity to man, to flee the ravaged lands of their birth, they are in search of a dignified existence, following only one law: the law of survival. Fortunately, however, there have been throughout history humanitarian initiatives to alleviate the plight of refugees and displaced persons. Refugees are human beings undergoing traumatic experiences. They are workers and producers in transit from one economic environment to another. They are political persons and find their definition in the political events that have set them in flight and they pose important questions about sovereignty, human rights, and the relationships between states and between nations and the international order. As long as man remains intolerant of his fellow-men, flight will continue to be the only alternative of the persecuted. Those denied at home the essential liberties of life will pull up their roots and look elsewhere for freedom. They are the international refugees, fleeing from their country, where they fear or have suffered oppression.

The world has shrunk and large-scale problems of refugees and displaced persons, minorities and war victims, have come to the close attention of the international community. Wars and many other military and political conflicts have brought in their wake a countless number of uprooted, including millions of refugees in search of new homes. The

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emergence of many new national states often entailing changes of regime and of boundaries, the struggle for decolonization and the reshaping of the whole areas have also brought about an endless stream of human misery. The plight of the refugees was a challenge to the consciences of public spirited persons in many countries. But by the end of 1920 it had become obvious that the task of assisting the refugees was beyond the capabilities of charitable organizations working on their own. So, after the end of First World War these initiatives took the form of an organized international effort under the inspiring impulsion of Fridtjof Nansen, the first League of Nations High Commissioner for Refugees. By the terms of Article 25 of the Covenant of the League of Nations, the Members of the League were pledged to co-operate with Red Cross organizations, having as their purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world. The League of Nations mandate to Nansen for Russians expanded to Turkish refugees in 1922 and Armenians in 1923. The European countries also tried to cope with the new realities by a series of minority treaties in the interwar years. The economic and political changes around World War-I resulted in refugees being perceived as a burden and a threat. Collective action was necessary because of the numbers involved. It was in such a situation that the

social category of refugee and the international refugee regime began to evolve. As Mr. Frank E. Krenz observed:

"It was only after the Second World War that the question of international migration became recognised as one requiring an international solution. From this time onward the concept of 'Freedom of Movement' gained impetus, and rebellion took place against the supremacy of state sovereignty in matters relating to the release of subjects or the admission of aliens".

After the end of the Second World War and the establishment of the United Nations, the international legal regime for the protection of refugees was evolved and developed to cater primarily to the situation of refugees displaced from their home countries by the war. But before their problems could be resolved, other refugee problems arose in the world spurred, to some extent, by the cold war which soon ensured. This led to the establishment of the United Nations High Commissioner for Refugees (UNHCR) by the UN General Assembly in January 1951. In the same year an international convention entitled "Convention relating to the Status of Refugees" was drawn up. A protocol was added to it in 1967, known as "1967 Protocol relating to the Status of refugees". Presently there are some 125 states parties to these two international instruments. They provide a

legal basis for states for the treatment of refugees on their territories. For non-state parties, they serve as the international standard.

Here it may be noted that the principal functions of UNHCR are, in the first instance, to ensure the international protection of refugees and secondly, to seek permanent solutions to their problems. The competence of UNHCR under its Statute extends to persons who for reasons other than personal convenience have left their country of origin and cannot or do not wish to return to that country or to avail themselves of the protection of the government of that country. Refugees meeting these conditions are entitled to the protection of the High Commissioner irrespective of their geographical location. Where necessary, they are also provided with material assistance by the Office of UNHCR. Of course, refugees who within the competence of other United Nations agencies are outside the Mandate of UNHCR. The main objective of international protection, the primary function of UNHCR, is to safeguard and protect the rights and interests of refugees. Special attention is paid to the vital principles of asylum and non-refoulement, while every effort is also made to improve the status of refugees in their country of residence. UNHCR pursues its objectives in the field of protection by promoting the conclusion of and accession to intergovernmental legal instruments in favour of refugees and encouraging governments to adopt legal provisions for their benefit.

In seeking permanent solutions to the problems of refugees, the main objective of UNHCR is to help refugees to help themselves. In so doing, the Office always seeks to give a refugee a choice between the
three main solutions open to him: voluntary repatriation, which is at times the most desirable solution, resettlement through migration to another country or integration in the country of residence. Projects for permanent solutions constitute the main part of the UNHCR annual assistance programme which also includes provision for emergency relief and educational assistance. The programme is financed through voluntary contributions mainly from Governments. The vast majority of States - confronted with refugee situations observe the fundamental principles of refugee protection in granting asylum to persons in need of protection. Despite the economic and social burdens involved, action to protect and assist refugees still enjoys widespread popular support throughout the world, a support that is also expressed through vigorous and effective action by non-governmental organizations working alongside UNHCR in every region of the world.

Here it may be noted that the concept of 'refugee' and that of 'asylum' are complementary, the one does not exist without the other. Asylum on the territory of a state is of course what interests most refugees. This, however, implies at least three conditions of first importance - admission to the territory, a durable stay and the assurance of a certain protection, of basic rights opening the way back to normal life. Thus, it is absolutely true that, asylum, in the core sense of admission to safety in another country, security against refoulement, and respect for basic human rights, is the heart of international protection. Without asylum, the very survival of the refugee is in jeopardy. The overwhelming majority of States continue to adhere to generous asylum policies, affording refuge to persons in need of protection until a
solution can be achieved. Of course, Art.14 of the Universal Declaration of Human Rights of 1948 recognized the right of a persecuted person to seek and enjoy asylum, but did not recognize his right to have it granted. At the same time, refugee status according to the 1951 Convention corresponds adequately to the rights of asylum, with the exception, however, of admission to the territory of a state. On the point the Convention is entirely silent. Article 53 of the 1951 Convention, which forbids the return of a refugee "to the frontiers of territories where his life or freedom would be threatened" is not a substitute for the right of asylum. It often happens that persons whose refugee status is not known are refused admission, even to states which have ratified the Convention. As per present practices of States, denial of access to a country of asylum continues to take various forms, including outright rejection at frontiers, interceptions, push-offs, and forcible return of asylum-seekers to persecution or danger. Denial of access to safety in another country can also occur as a result of the application of legal and administrative measures that present asylum-seekers from reaching the frontiers of asylum countries, refuse them admission to procedures, or fail to provide adequate procedural safe-guards against the inadvertent or indirect return of refugees to their country of origin or other places where they will not be protected. Whether direct or indirect, such practices violate the most basic principles of international protection.

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

Some of the most serious current challenges to asylum are the
result of the close association of movements of refugees seeking asylum
and irregular migration, and the corresponding difficulty of reconciling
the protection of refugees with the interest of States in controlling
immigration. Movements of people seeking better opportunities or escaping
from intolerable conditions occur within the same country as well as
across national boundaries and between continents. While refugees leave
their country because they have to, because their lives or freedom are
threatened and their own Governments will not or cannot protect them,
migrants leave for other reasons which in principle do not give rise to a need for international protection. In practice the distinction between a person fleeing persecution and one fleeing desperate poverty, hunger or economic disruption is not always clear: famine may be caused or aggravated by civil war, and deprivation of the means of subsistence may be a form of persecution. International law nonetheless makes a sharp distinction between refugees, who are entitled to international protection, and other migrants, who are deemed to enjoy the protection of their own Governments, however compelling may be their reasons for leaving home. However, attempts by people with no valid claim to international protection to take advantage of asylum procedures has created serious problems for the Governments concerned as well as for bonafide asylum seekers by clogging procedures for the determination of refugee status and by contributing to both popular and official confusion between refugees and illegal immigrants. Given the restrictions on immigration that now prevail in most regions of the world, it is in the interest of refugees that Governments should clearly distinguish people who need protection, because they are - directly fleeing violence and persecution, from other migrants. The challenge for the international community into limit the possibilities for abuse while maintaining safeguards fully adequate to ensure that no refugee is returned to danger. Whenever refugees are subjected, either directly or indirectly, to rejection, expulsion and return to territories where their life or freedom are threatened, in violation of the principle of non-refoulement as well as of considerations of basic humanity, the response of the international community must be
clear and forthright. The principle of non-refoulement is the foundation for protecting the human rights of refugees and must be reaffirmed and defended.

It is worth-mentioning that in large-scale movements of refugees, where voluntary repatriation of resettlement are seen as the most appropriate durable solutions, asylum has frequently been specifically granted on a temporary or provisional basis. This practice of granting of temporary protection to persons fleeing human rights abuses and conflict illustrates the value of prima facie group determination as an alternative to individual procedures in situations of large-scale flight. Most asylum countries in the developing world suffer from increasing pressure on land and water resources, employment and public services. Local integration is correspondingly less practical. A number of asylum countries that have hosted large refugee population for extended periods, such as Kenya, Zaire, Pakistan, India, Thailand - do not view asylum on their territory as permanent but as a temporary and pragmatic response to humanitarian emergencies offered until such time as - refugees feel safe to go home voluntarily. Western governments too, are increasingly resorting to - temporary asylum. A number of them make provision for temporary protection in their national legislation, although its content and implementation vary considerably from country to country. Here, it may further be added that along with the renewed interest in cessation of refugee status, the concept of a "Safe country" is also gaining currency among officials in some asylum countries. In the context of the asylum debate, a "safe country" is one where there is no serious danger of
persecution. A safe country of origin is one that does not produce refugees. The term can also be applied to countries of asylum, meaning that refugees who enter are neither threatened with danger in that country nor with refoulement from it.

It is of course important to note that even in asylum, refugees encounter threats to their security and well being that are specific to their status as refugees. Refugee camps are a highly visible target. They house large concentrations of people, often identified with one side of an armed conflict. The inhabitants are frequently suspected of plotting against the government of their country of origin. Besides, refugee camps in which civilians and armed combatants mingle are particularly vulnerable. Often, raids on camps are proclaimed as justifiable military actions on the grounds that the camps are providing shelter for armed combatants. Recently, the world's top aid organizations led by the United Nations High Commissioner for Refugees (UNHCR) are threatening to take unprecedented action to force the UN and the international community to intervene in Hutu refugee camps in Zaire. The relief agencies want military or police action to end the cycle of violence in the centres, where Hutu militiamen have been murdering fellow refugees from Rwanda and intimidating aid workers. If the Hutu reign of terror is not stopped, the agencies would be forced to abandon their efforts to help the 800,000 refugees, according to the sources in Goma,

4. See Statesman, 29th October '1994, P.7
Zaire. The death threats against the aid workers have become a weekly routine, while mobs beat to death the Hutus wanting to return home in Rwanda.

A basic principle of refugee law is international solidarity. It is clearly linked to the very first article of the Universal Declaration of Human Rights which states:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

It is the principle of solidarity which established that the refugee is a person of concern to the international community. It is also the principle which establishes the obligation to extend refuge to those compelled to flee social order and violence and treat them in a manner befitting their dignity. However, when a refugee crosses over the state of Asylum, whether for a temporary period or permanently, there can be no denial that he is a burden on this new state, since one State's refugees are often another State's undesirables. The concept of 'burden-sharing', which plays an important role in the protection of refugees, is getting recognition by the international community. International burden-sharing of the kind that UNHCR, through its assistance programmes, seeks to provide with the support of donor countries and the cooperation of non-governmental organizations and other international agencies.
It is of course true that for the individual who is a potential victim of human rights abuses, as well as for the international community faced with a growing refugee problem, the ideal policy and the most effective form of protection is prevention, meaning action to address and remedy conditions that can force people to become refugees. In the context of refugee flows, preventive action includes both political and humanitarian initiatives. Their combined aim is to avoid the breakdown of national protection while meeting the material needs of people at risk of displacement, so that they do not have to cross borders in order to find food, medical care and other necessities. Humanitarian assistance itself can play an important role in prevention. The negotiations involved in delivering assistance may create an opening for dialogue, drawing antagonists into discourse with external observers in a way that allows the international community to exercise some restraint on refugee-producing behaviour. In Central America and the Horn of Africa, assistance has helped to open up negotiations which, in time, moved on from initial questions of assistance to address the wider political disputes underlying the conflict. Of course, direct intervention with governments is often the most productive form of prevention. Representatives of inter-governmental bodies can urge national authorities to discipline human rights abusers. International assistance to help states avoid creating conditions that lead to refugee flows constitutes another form of prevention. Recent events have shown all too clearly the need for earlier and more effective action to prevent potential
refugee-generating situations from deteriorating to the point where flight becomes the only option. Once coerced displacement has occurred it is too late to prevent widespread suffering and more difficult to provide protection and to achieve a solution.

The United Nations High Commissioner's mandate includes seeking solutions to the plight of the refugee, and international protection must be provided with this ultimate objective in view. While permanent asylum may in certain cases be the only solution available for an individual or group of refugees, the most desirable, and often the only feasible, solution to most existing refugee problems must be sought in refugees' countries of origin through voluntary repatriation. Voluntary repatriation in safety and dignity is in principle the most satisfactory remedy to forced exile - because it involves the resumption by the State of its responsibility for safeguarding the fundamental rights of its people, including the right of everyone to remain in safety in their own country and the right of refugees to return home.

From the discussion above, it becomes evident that refugee assistance should be undertaken in a spirit of international solidarity and international co-operation, and that states should equally share the burden of refugees. During the past few years there has been a dramatic increase in the number of refugees in various parts of the world. Unfortunately, the international community has not responded to the need of the refugees, neither as regards the granting of asylum, nor as regards financial contributions for the material assistance to refugees. Today
several millions of refugees and displaced persons and others whose situation has been considered analogous benefit directly from United Nations High Commissioner for Refugees' assistance programmes. The Statute of the Office of the UNHCR reads:

"The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance."

The High Commissioner started his relief work in respect of persons considered as refugees under earlier documents of May 12, 1927, June 30, 1928, October 28, 1933, February 10, 1938, September 14, 1939 and December 1946. The scope of UNHCR activities has been extended by a number of United Nations General Assembly resolutions as well as ECOSOC resolutions from time to time. Finally, there is the 1967 Protocol to extend the scope of the Geneva Convention to refugees after 1951 as well as outside Europe. The Geneva Convention of 1951 together with the 1967 Protocol can well be called the refugees' Magna Carta.

UNHCR's functions relating to refugees may be broadly divided into nine catagories: (i) Promotion of grant of asylum, (ii) Reunion of families, (iii) Application of doctrine of nonrefoulement, (iv) Maintenance and material assistance; (v) voluntary repatriation; (vi) Assimilation or resettlement; (vii) Supervision; (viii) Co-ordination; and (ix) Public relations. The United Nations High Commissioner for Refugees has become a

focal point for maintenance of and material assistance to refugees. Here it is worth mentioning that in 1971, UNHCR was requested to act as the focal point for co-ordination of assistance from the UN system to millions of Bengali who had fled to India. UNHCR channelled to India relief assistance in cash and kind amounting to some 200 million dollars. UNHCR also assisted in the return of these people to their homeland in 1972. Here it may be mentioned that in 1973, following the Delhi Agreement, UNHCR organised a massive airlift between Pakistan and Bangladesh for the return of Bengalis and Pakistanis to their respective homelands. More recently, UNHCR was called upon to undertake a large programme of humanitarian assistance in Zaire for the benefit of about 10,00,000 refugees who are the victims of genocide and massive human rights violations in Rwanda. Another large scale humanitarian assistance programme was done by the UNHCR in Iraq in 1991-92 when around four million people were displaced in the 12 months following Iraq's invasion of Kuwait on August 2, 1990. In April 1991, shortly after the war had ended, an armed conflict between the Iraqi government and disaffected groups within the country provoked one of the largest and fastest refugee movements in recent history. In a three-week period, over 400,000 Iraqis fled to Turkish frontier. By mid-May a further 1.4 million had taken refuge either in the Islamic Republic of Iran or in the eastern border of Iraq. The majority of these people were Kurds. This sudden, massive outflow prompted a humanitarian relief operation of unprecedented scope and intensity. On the Turkish border, providing assistance to so many refugees scattered across a dozen isolated and inhospitable mountain
locations presented an immense logistical problem. Relief was provided by international agencies and also, on a much larger scale, by the 13-nation coalition force, around 30 bilateral donors and over 50 NGOs. With the emergency relief phase completed and rehabilitation and reconstruction under way, UNHCR handed over its operation to other United Nations agencies in June 1992. The Iraqi refugee crisis reflected in growing scale and complexity of humanitarian emergencies and revealed serious shortcomings in the ability of humanitarian organizations to respond swiftly and effectively. It provoked a radical reassessment of the UN emergency response systems. Attempts to improve co-ordination, which lay at the heart of the debate, resulted in the establishment of the United Nations Emergency Co-ordinator and the creation of the Department of Humanitarian Affairs at the beginning of 1992. The crisis also resulted in an enhanced appreciation of the importance of early warning mechanisms and emergency response capacity in tackling major humanitarian crisis.

Here it is worth mentioning that hundreds of non-governmental organizations perform an indispensable role at every stage as a refugee situation develops. The protection of the millions of refugees throughout the world and the provision of material assistance to a far greater number inevitably involve the mobilization - on a permanent footing - of the authorities and charitable organizations concerned. The supplementing role of the non-governmental organizations is most evident in the field of material and humanitarian assistance. Most frequently it is these organizations which distribute food, clothing and blankets, which organize health and sanitation services and which initiate the process of
integration. There are a number of United Nations specialised agencies that also tend to assist the refugees in the field of specialization of the agency.

Indeed, in the 1990s, the break-up of the former Soviet Union and Yugoslavia, the end of the Socialist regimes in these and other Eastern block countries, the re-unification of Germany and the ethnic conflicts in the new break away republics, have affected the world refugee situation more dramatically than any other development in the previous decades. At present there are some 19 million refugees in the world. They are spread across five continents. In Asia, the largest group is that of Afghan refugees, which are more than five million in Pakistan and Iran. Besides Pakistan and Iran, the total refugee population in Bangladesh stands at approximately 245,000 who are mostly Rohingya from Arakan Province of Myanmar. Moreover, India also is at present having nearly 400,000 refugees in its territory comprising Tibetans, Chakmas, Sri-Lankan Tamils and Afghans. Here it is most important to note that India has not ratified the 1951 UN Convention on the status of Refugees and also its Protocol of 1967. The Government of India resolves refugee problems administratively, according to internal domestic, bilateral, political and humanitarian considerations.

However, the alarming growth in the number of refugees, the altered geographical distribution of origin and asylum, the problems of reception capacity and willingness in the countries concerned and limits to the possibilities for financial aid - all establish the fact that the theory and practice of refugee policy, as they have existed till now at
both national and international level, are no longer adequate to meet the challenges of this century. It is increasingly limited in its effectiveness and urgently needs revision. It is also absolutely true that the human rights context of the refugee problem is losing its focus and asylum as a main basis of refugee protection is increasingly under challenge. These developments pose a series of pertinent questions concerning the effectiveness of the present international legal regime for the protection of refugees. The most controversial questions that have been raised are:

i) How apt is the 1951 Refugee Convention for resolving today's refugee problems?

ii) What role does this Convention play at a time when asylum-seekers are arriving in growing numbers from all parts of the world?

iii) Is it still a valid instrument or should it be replaced by new rules and concepts?

iv) To what extent should national sovereignty shield governments who disregard or are unable to fulfil their responsibilities towards their own citizens?

v) Does the United Nations High Commissioner for Refugees have the capacity to play the role expected of it?
vi) How far is the present emergency preparedness system of the United Nations adequate?

vii) Is it justified to say that existing refugee law reaches a dead-end as human rights law because it collides with the principle of national sovereignty?

The present research is a modest attempt to make an in-depth study of all these problems that the international community is facing today. The discussion highlights the importance of addressing the question of how the process can be improved further for the benefit of these millions of homeless people. It is quite true that the institutional apparatus for dealing with refugee crisis suffers from the same inadequacies as do the substantive principles of international refugee law. The dependence of growing masses of refugees on organised assistance raises questions as to the extent and capacities of transnational efforts for humanitarian purposes.