Displacement and place are closely related: to be dis-placed, a person logically has some relationship to a place or places – usually that person is no longer there, but they are assumed to have some (intrinsic or prior) connection to it. The particular meaning that is ascribed to displacement – often as a traumatic or problematic condition – rests on a very particular view of ‘place’, as somewhere to belong or where life is settled. This is particularly heightened in the case of refugees, whose displacement often occurs across national borders, putting them outside the jurisdiction of the state and leaving them without formal citizenship entitlements.\(^1\) Displacement, according to the United Nations Guiding Principles (1998), is measured narrowly with reference to that from home or the places of habitual residence. Displacement from home or the places of habitual residence is often the culmination of a long process of depletion and erosion of critical life-bearing resources, displacement from work-place, loss of livelihood and slow submergence of cultivable land as a result of riverbank erosion.\(^2\) Displaced persons are displaced not simply from their homes or places of habitual residence but from the world of law that establishes the principle of equality for the citizens and treats them at par with each other.\(^3\) The displaced include voluntary or involuntary migrants, refugees of wars and of natural or manmade disasters and process-induced migrants caused by economic or technological changes.\(^4\)

The meaning of displacement has come to be more or less taken for granted, particularly in most academic literature. The question of displacement is very often reduced to one of effective relocation. It is very important to understand that displacement is a multidimensional phenomenon of which physical relocation is only one of the most significant outcomes. At best the displaced are viewed as a group of people who are in need of rehabilitation, not empowerment, for there is no recognition of their disenfranchisement. The displaced people’s movements have challenged this view of displacement with physical relocation at its centre and instead have as its core the historical experience of millions of displaced people.\(^5\) Displacement refers not only to those who are forced to physically relocate or migrate from their place of residence

\(^{2}\) Samir Kumar Das (ed.), *Blisters on Their Feet: Tales of Internally Displaced Persons in India’s North East*, Sage, New Delhi, 2008, p. 19.
\(^{3}\) Ibid., p. 28.
\(^{4}\) Ibid., p. 315.
\(^{5}\) Bartolome et al., *Displacement, Resettlement, Rehabilitation, Reparation and Development*, WCD Thematic Review I.3 prepared as an input to the World Commission on Dams, Cape Town, 2000, p. 4.
due to political conflicts, interstate wars or armed conflict but also includes those who are displaced from their resource base and livelihoods in order to make way for the project and its related aspects.

It is acknowledged that displacement causes severe social, economic and environmental stresses that translate themselves into physiological, psychological, socio-cultural, economic and ecological damage. Displacement often is thought of as a temporary problem that will disappear with the return or resettlement of the displaced. But some mass displacements have persisted for decades and have not been fully resolved even with the passage from one generation to another.\(^6\) At the same time, it is maintained that by expanding resettlement objectives beyond merely aiming to improve the standards of living of the people, it would be possible to offset these disabilities.\(^7\) Resettlement, which has its own particular difficulties and complications, may be the only practical solution.\(^8\) As a result displacement is largely viewed from the perspective of resettlement and rehabilitation and its attendant complexities. Displacement and resettlement is however more than a question of sheer numbers (or the lack thereof), though this is one very critical issue in itself. There are several issues involved, such as human rights, governance and accountability, the complexities of resettlement goals, options and strategies, and relevant legal and policy instruments. The notion of displacement as sacrifice has stripped displacement of its political content, i.e. the fact that displacement involves the loss of people’s rights to land and resources. This has also led to a perception of resettlement and rehabilitation as a reward for the sacrifice rather than as a basic right or entitlement.\(^9\)

**General Causes of Displacement: Global Context**

As a result of situations of armed conflicts or the threat thereof and mass violations of human rights as well as floods, earthquakes and other natural disasters, the number of people fleeing their homes has increased dramatically over recent years. There are also deep-seated factors underlying this phenomenon of mass displacement. Under-development, poverty, unequal distribution of wealth, unemployment, ethnic

---

7 Bartolome et al., n. 5, p.3.
8 David A. Korn, n. 6, p. 17.
9 Bartolome et al., n. 5, p.3.
tensions, subjugation of minorities, intolerance, absence of democratic procedures and many other factors have been also cited as causes.

The political conflicts, civilian internal wars or war among nations cause displacement of people and evenly forced people to flee their country in order to save their lives which create refugees. As well they pose vast challenges for these displaced people, who find themselves refugees and for the humanitarian and development agencies, who respond to the complex emergencies, which both generate and result from mass movement of these kinds. Agencies first involve themselves in meeting urgent needs for food, shelter and health care, but often also need to address longer term developmental needs and the political complexities of repatriation or settlement in new countries. Forced displacement and refugees are the result of one or more of the following factors: dissolution of a century of colonial rule; post-independent realignment of political and economic forces; political or civilian internal conflicts; war like situations; war among nations; misguided development policies; bureaucratic ineptitude and corruption; and unfavorable climate and weather conditions. From these factors some theorists have developed different models and typologies with a view to projecting future refugee flows.

However in the era of globalisation, the mass displacement of people is taking place with the reducing of obstacles to the movement of capital, information and people due to adoption of neo-liberal policies by the states. The refugee tragedies of the twentieth century will be remembered as a mark of the tortured decades that preceded a new era. The contemporary world is one of continued poverty and of greatly increased inequality; it is also the context for systemic conflict- the decades of 1990s witnessed a host of disputes, notably local inter-ethnic struggles, followed by wars such as in Iraq, Afghanistan, India and Pakistan etc. involving the world’s dominant states. Displacement or the involuntary and forced relocation of people has come to be acknowledged as among the most significant negative impacts in the war like situations or in local conflicts. Very large areas of Africa, Asia and Latin America operate under conditions of low-intensity democracy in which weak states experience repeated political upheavals and crises of mass displacement, producing large number of

---

10 Jenny Robinson (ed.), n. 1, p. 2.
refugees. Driven from the zones of conflict, they have found it increasingly difficult to find security.\textsuperscript{12}

People subjected to different forms of insecurity, whether stemming from violence or conflict situation or from lack of freedom or from lack of access to a decent life or as the result of economic deprivation are leaving their hearths and homes in search of safety and greater opportunities elsewhere. Masses are everywhere in flight. The reasons compelling their movements are various. But this population in transit conforms to the dictionary meaning of refugees, viz. persons seeking shelter from danger or trouble especially in a foreign country from religious or political persecution or from war, earthquakes and so on.\textsuperscript{13}

According to the United Nations High Commissioner for Refugees (UNHCR), there were between 11 million and 12 million refugees in the world at the end of December 1999. Approximately another seven million people were in a sufficiently “refuge-like situation” to be classified as ‘of concern’ to the agency\textsuperscript{14} – this category consists mainly of over four million internally displaced persons (IDPs), a term most commonly applied to those who have been displaced by war and who may well be, therefore, beyond the defacto protection of their state even though they remain within its borders.\textsuperscript{15} Forced resettlers (those who have been forcibly resettled by their own governments in order to make way for infrastructural development projects such as dam and roads) are neither outside the protection of their state nor outside its territorial boundaries but have been moved deliberately, with provision made for their resettlement by or with the approval of their government in order to advance regional or national development goals.\textsuperscript{16} Forced resettlers, although usually internally displaced, are specifically not included in this category. Cernea estimates the number of forced resettlers on the basis of World Bank data that around ten million people annually enter the cycle of forced displacement and relocation in two sectors alone - namely dam construction and transportation. Refugees and forced resettlers are usually treated separately, both in the literature on displacement and by agencies and bureaucracies

\textsuperscript{13} P. R. Chari et al. (eds.),\textit{ Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia}, Manohar, New Delhi, 2003, p. 17.
\textsuperscript{15} Jenny Robinson (ed.), n. 1, p. 20.
\textsuperscript{16} Ibid., p. 21.
concerned with the displaced. Cernea has pointed out ‘both involuntary resettlers (displaced by development projects) and refugees fleeing violence (wars or armed civil conflicts) confront many strikingly similar social and economic problems. It is commonly experienced through the loss of land and the disruption of social and economic relationships.

Refugees and all other displaced persons, though not strictly falling within the definition of refugees, face similar problems. However, the problems in a particular category might be more acute and pressing because of the changing dynamics of displacement particularly forced displacement, which brings catastrophe upon certain individuals or groups. This changing dynamics of displacement is also the result of the changing nature of conflict. Earlier armed conflicts between nations and serious political situations within nations triggered displacement and forced people to seek refugee elsewhere. Virtually all armed conflicts are now internal. Now, the force may not always be direct; it may even be invidious or indirect. However, the result is the same: certain persons because of certain compulsions are forced to leave their hearths and homes and are displaced.

Political repression and massive human rights violations are still significant elements in today’s displacements. But for the majority of today’s refugees, armed conflict - which often involves persecution and other human rights abuses against civilians - is the major source of threat. Many of the armed conflicts of the post-cold war period have proved particularly dangerous for civilians, as shown by the scale of displacement. Refugees are the result of human rights violation. Mass movements of people have been generated when the rights of men were encroached upon by wars, intolerance or persecution. Therefore, the political repressions, civil armed conflicts or human rights violations are the major sources that cause displacement of population.

18 P. R. Chari et al. (eds.), n. 13, p. 13.
20 P. R. Chari et al. (eds.), n. 13, p. 13.
21 UNHCR, n. 14, p. 277.
Understanding Displacement

Displacement remains a critical factor of vulnerability for people across the world. While the wider non-displaced population (particularly in areas of displacement) may be exposed to the same abuses and barriers, the fact of having been displaced tends to further reduce displaced persons access to physical security, the basic necessities of life and enjoyment of other rights. They are liable to have lost property, livelihoods and documentation in their flight, as well as the support of family members and community networks, and have suffered severe trauma in the process.\(^{23}\) The displacement has led to the loss of physical access to the place where they had been lived for years. It may involve the loss of livelihood, loss of land rights or housing, loss or collapse of social networks, impoverishment. It is clear that the places where people were living were important to them, to their material well being and to their sense of who they are.\(^{24}\) The consequence of the displacement includes mental suffering, the destruction of customary institutions and loss of their resource basis.

Malkki says that displacement can be judged as a problem, or more strongly, be seen as pathological. He argues that it is not the condition of displacement per se, which is a problem but the way in which it is framed by an overarching political system, which organises rights and entitlements on the basis of territorial states. It is our sedentarist assumptions about attachment to place that leads us to define displacement as an inner, pathological condition of the displaced.\(^{25}\)

In India, for instance, researchers found that the country’s development programmes have caused an aggregate displacement of more than 20 million people during roughly four decades, but only 25 per cent of these people have been rehabilitated.\(^{26}\) Refugees have been diminishing in number over the past decade, while internally displaced persons - that is, exiles who physically remain within their own countries - have been increasing dramatically. The number of refugees at the beginning of the twenty-first century was generally agreed to have fallen to 12 million. But the


\(^{25}\) Quoted in Ibid., p. 9.

number of IDPs is considerably larger; at least twice that number from 20 to 25 million displaced by wars, with a similar or even greater number displaced by natural disasters and development projects. When IDP data was first gathered in 1982, there were only a million IDPs, while there were about 10 million refugees.\textsuperscript{27}

Gyanendra Pandey argues in the context of 1947, a moment of quite incredible uprooting and violence, displacement in its physical sense refers generally to evacuation and migration.\textsuperscript{28} Displacement is the physical dislocation of people from their habitat and their social networks. This may be temporary, but it is more likely to be permanent when one’s place of origin is no longer habitable. Subsequent phase of displacement can occur when both the displaced and the people living in receiving areas are placed at risk usually with insufficient indifferent attitude of the state. Thus, the people gets displaced and they were called by the name of displaced persons by government of India.

DISPLACED PERSONS

Displaced persons means they aren’t where they were born at and there’s nowhere for them to go, like if you are run out of here and wouldn’t nobody have you.\textsuperscript{29} Displaced persons under international law are persons or groups of persons who have been forced or obligated to flee or to leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or man-made disasters and they must have either remain within their own national borders (as Internally Displaced Persons) or they must have crossed an internationally recognised state border (as Refugees).\textsuperscript{30}

The term “displaced persons” was used immediately after the Second World War to denote victims of population transfers in Eastern Europe, even at that early time.


causing definitional problems in its use vis-a-vis the term ‘refugees’. While preparing a study for the International Labour Office in 1943, Eugene M. Kulischer chose the expression “displacement of population” in order to comprise all kinds of war-produced population movements. Since then the term ‘displaced persons’ has become part of the everyday language and has been used as a technical term by British, American and international agencies to apply to a specific category of the millions uprooted by the war. Apart from the abortive distinction between ‘refugees’ and ‘displaced persons’, the definitions adopted and corresponded to the limited scope of activity of the various agencies dealing with Europe’s uprooted people. As per the United States Displaced Persons Act 1948, ‘displaced person’ means any displaced person or refugee as defined in the constitution of the International Refugee Organisation. It should be noted that those taking refuge in India after crossing the newly created India-Pakistan border were called displaced persons and not refugees. “Displaced persons” in the 1951 Census of India were those who came to India from Pakistan on account of 1947 partition or fear of civil disturbances in that part. The millions of refugees from the partition of India in 1947 were not legally considered refugees as they could claim protection from another country (India or Pakistan), a principle later codified by the co-nationality clause of the Convention. When over 6.5 million people took refuge in the newly born state of India following the partition of the subcontinent in 1947, the government of India took the necessary legislative and administrative measures by adopting the Rehabilitation Finance Administration Act, 1948 and the Displaced Persons (Claims) Act, 1950. Under these two Acts, a ‘displaced persons’ meant ‘a person who, being displaced from any area (now forming part of Pakistan) on account of civil disturbances, has settled and is engaged or intends to engage in any business or industry in India’. Thus, 1947 partition displaced persons are not covered by international or regional conventions.

However, all refugees have three characteristics in common. They are firstly uprooted, homeless and lack national protection and status; secondly victims of politics,

34 P. R. Chari et al. (eds.), n. 13, p. 100.
war or natural catastrophe and have been compelled to leave their habitat by forces and circumstances over which they had no effective or decisive control and lastly, forced to stay outside their own nation or country by the very conditions that had expelled them out of it.\(^\text{35}\)

**Displacement and its typology**

**Internal and External Displacement**

The term displacement could mean both internal and external.

**Internal displacement**, as opposed to the term ‘internally displaced persons’ has so far not been defined, although literally it means “movement of persons against their own will inside their own country”. The elements of ‘coercion’ as well as the failure of the state to provide protection against displacement (or its active involvement in causing it) are present in internal displacement as well.\(^\text{36}\) The key factors determining the existence of a situation of displacement should be the element of movement of persons and the element of force. Although important in developing the legal analysis of each case, the causes and the extent of state involvement should not be elements of the definition.\(^\text{37}\)

**External displacement** means the movement of persons beyond the state borders. Such situation arises that the people cannot continue to live at their place of residence because of the fear of losing their lives and rush towards the other state crossing international boundary.

**Involuntary/Forced displacement**

**Involuntary/Forced displacement** means when persons are displaced from their place of residence or habitat without their wish and they are forced to settle some other place. It results from the need to build infrastructure for new industries, irrigation, transportation highways, power generation or for urban developments such as hospitals, schools and airports. Such programmes are indisputably needed. They improve many people’s lives, provide employment and supply better services. But the involuntary


\(^{36}\) Maria Stavropoulou, n. 31, p. 518.

\(^{37}\) Ibid., p. 519.
displacements caused by such programmes also create major impositions on some population segments. They restrict that population’s rights by state-power intervention and are often carried out in ways that cause the affected populations to end up worse off. But this does not happen in India alone. Such impoverishment, with its de facto lack of social justice and equity, is manifest in numerous other countries throughout the developing world when involuntary resettlement occurs. Material and cultural losses in each case are vast and political tension also accompanies forced relocation. Forced displacement epitomises social exclusion of certain groups of people. It cumulates physical exclusion from a geographic territory with economic and social exclusion out of a set of functioning social networks.\(^{38}\)

Among processes of sudden or involuntary displacement, we can distinguish three main types, corresponding to the three types of events\(^ {39}\):

a) Natural causes (earthquakes, floods, landslides and others);

b) Political events (wars, revolutions or other forms of political or ethnic turmoil);

c) Planned developments programs (particularly infrastructural equipments) deliberately induced through purposive and intended change.

Development-induced displacement is forced displacement and can be defined as the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development.\(^ {40}\) Involuntary displacement as induced by the development processes takes place primarily through infrastructural development such as water resources development like canal irrigation, urban water supply; mineral resources development; energy development by using coal, gas or nuclear power; industrial estate; enterpraises and ports; urban development, establishing national parks, sanctuaries or biosphere reserves etc.\(^ {41}\) The development induced displacement and resettlement projects include construction of dams for river basin development and hydroelectric power generation, transportation system, slum clearance

---

\(^{38}\) Michael M. Cernea, n. 26, pp. 3659-60.


\(^{40}\) Pablo Bose, Development Induced Displacement and Participation, at http://www.yorku.ca/crs/EDID/EDID%20Documents/EDID%20WP%202.pdf

and urban renewal schemes and the creation of nature reserves and national parks with the objective to benefit a much wider population than that of the displaced themselves.42

Development induced displacement have turned out to be larger contributor of internally displaced persons in India. The displacement caused by development projects is the direct outcome of a planned political decision to take land away from its current users, rationalised by beliefs such as ‘the greatest good for the greatest number’. The problem of displacement poses two serious issues: how to ensure the improvement, if not restoration, of the physical, cultural and social quality of life of the resettlers and their progeny and how to protect their rights and privileges as free citizens to be beneficiaries of the development process, which leads to their involuntary resettlement.43 In development induced displacement and resettlement projects, the state exercises its monopoly of legitimate force to uproot a group of its own citizens, usually relatively impoverished and powerless group of citizens and with disastrous consequences for their socio-economic well-being.44

India bears a disproportionate and truly staggering toll of the global problem of internal displacement. With a population of about 1.21 billion and many ethnic groups, India is a nation - with a multitude of religious, ethnic and political fault lines that periodically erupt into communal violence. This also has created a sizeable, albeit fluctuating internally displaced population.

**Different Nomenclatures concerning Displacement such as Refugees, Migrants or Internally Displaced Persons**

The word ‘refugee’ is frequently used by the media, politicians and the general public to describe anyone who has been obliged to abandon his or her usual place of residence. Normally, when the word is used in this general manner, little effort is made to distinguish between people who have had to leave their own country and those who have been displaced within their homeland. Nor is 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. Under international law, however, the refugee concept has a much more

42 Michael J. Schultheis, n. 11, p. 7.
specific meaning.\textsuperscript{45} For Cottret, refugee status is by definition transitory and depends upon social recognition.\textsuperscript{46} The displaced people are called by different names depending upon their movement out of that place. They are known by the names of migrant, stateless people, internally displaced, displaced persons or refugees. There is distinction among all these nomenclature.

**Migrant**

Migration is a permanent change in place of residence from one community to another by the crossing of specified kind of internal administrative or political boundaries. The people who fulfill these two criteria are regarded as migrants.\textsuperscript{47} Thus human migration in broad sense refers to a relatively permanent movement of individual or a group over a significant distance.\textsuperscript{48} Migrants as individuals make migration choices according to a calculus of personal economic gain.\textsuperscript{49} Migrants are those who are compelled to shift their residence as a result of economic compulsions. Economic migrants, on the other hand, move because of the perceived or real possibility of improving their chances for a better livelihood.\textsuperscript{50}

However, the government of Jammu and Kashmir defines ‘Migrant’ as a person, who has migrated from Kashmir valley after November 1, 1989 and is registered as such with the Relief Commissioner or has not been so registered on the ground of his being in service of government in any moving office or having left the valley or any other part of the state in pursuit of occupation or vocation or otherwise and is possessed of immovable property at the place from where he has migrated but is unable to ordinarily resides there due to the disturb conditions and includes an internally displaced person; for the purpose of this clause an internally displaced person means a person who had to migrate within valley from his original place of residence in Kashmir valley for reasons

\textsuperscript{45} http://www.unhcr.org/3eb789f42.html.
\textsuperscript{46} Quoted in Philip Marfleet, n. 12, p. 13.
\textsuperscript{48} E. O. Iboloye, n. 47, p. 33.
\textsuperscript{49} Michael J. Schultheis, n. 11, p. 5.
of security and is registered as such with the Relief and Rehabilitation Commissioner (Migrants).\(^{51}\)

A migrant, in comparison, may leave his or her country for many reasons that are not related to persecution such as for the purposes of employment, family reunification or study. A migrant continues to enjoy the protection of his or her own government, even when abroad.\(^{52}\)

Refugees are not migrants. Refugees differ from spontaneous or sponsored migrants, largely in the circumstances of their movement out of one area to another. Refugees are forced to leave their homes because of a change in environment which makes it impossible to continue life as they have known it. They are forced by the circumstances which are not under their control to leave their homes and go elsewhere. Refugees are the recognised beneficiaries of internationally endorsed rights.

**Stateless Persons**

A Stateless person has been defined as ‘one who is not considered as a national by any state under the operation of its law’. A Stateless person may not be recognised as a refugee, though for various reasons he is unable or unwilling to return to his country of habitual residence.\(^{53}\) That is stateless person is the one who does not possess the nationality of any state.

There are two categories of stateless persons: dejure and defacto. The *stateless persons dejure* are those who are not nationals of any state, either because at birth or subsequently they were not given any nationality because during their lifetime they lost their own nationality and did not acquire a new one. The *stateless persons defacto* are those who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them protection or assistance or because they themselves renounce the protection and assistance of the countries of which they were nationals. A stateless person is, therefore, one who is unable or unwilling to avail himself of the protection of

\(^{51}\) [http://jkmigrantrelief.nic.in/pdf/Class%20IV-Advertisement%20Notice-12-03-2010.pdf](http://jkmigrantrelief.nic.in/pdf/Class%20IV-Advertisement%20Notice-12-03-2010.pdf)


the government of his country of nationality or former nationality. Among the general obligations, every stateless person has duties to the country in which he finds himself, which require in particular that he conforms to its laws and regulations as well as to the measures taken for the maintenance of public order.

**Internally Displaced Persons**

Internally displaced persons are those who on account of some developmental activity or internal disturbances have been forced by circumstances to leave their home and hearth and settle elsewhere within the same country.

In 1990, the term ‘internally displaced persons’ means “persons who have been forced or obliged to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country”. After various discussions and refinements, the definition utilised by the representative Francis Deng has been drafted to read: Internally displaced persons are persons or groups of persons who have been forced to flee or to leave their homes or places of habitual residence in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognised state border. It covers the two central elements of coerced movement and remaining within one’s national borders.

**Francis Deng**, the Special Commissioner of the United Nations Secretary General, defined displaced people as ‘those who have been obliged to migrate within national territory, abandoning their place of residence or habitual economic activities because their lives, physical safety or freedom have been harmed or under threat due to

56 Partha S. Ghosh, n. 47, pp. 6-7.
57 Maria Stavropoulou, n. 31, p. 519. See also David A. Korn, n. 6, p. 11. This is a widely used working definition set out in a United Nations Commission on Human Rights report issued in 1992 by Secretary-General Boutrouss-Ghali.
the presence of any of the situations of human origin: internal armed conflict, internal disturbance or tension, widespread violence, massive violation of human rights or other circumstances deriving from these situations that may disturb or drastically disturb public order or cross-border shelling (in context of Jammu and Kashmir). A large number of Hindu Punjabis and Kashmiri pandits involuntarily migrated to Delhi, Jammu and other part of India in search of security of life away from the terrorist-infested Punjab and Jammu and Kashmir.

IDPs are displaced internally only when they are viewed from the perspective of ‘within the territorially defined borders of the nation-state’. If they cannot claim a homeland of their own, IDPs become refugees having no way to claim their internality to any place. Such persons have the right to seek safety in another part of the country. The internally displaced did not forfeit their rights by the act of becoming displaced. There is no legally based instrument setting forth the rights of the internally displaced. However, no legal document could prevent governments determined to displace or otherwise abuse their citizens from doing so. But the existence of an acknowledged set of standards could have an important deterrent effect. Unlike refugees, internally displaced persons do not have benefit from a specific international regime devoted to ensuring their protection and assistance when their own government cannot or will not.

Refugee

The term refugee is derived from the Latin word ‘refugium’ meaning “shelter, security, heaven”. It means one who flees from an untenable situation to something hoped to be better elsewhere across an international border. ‘Displacees’ may move for the same reasons, but they remain within a country’s borders. Oxford dictionary defines refugee as a person who has been forced to leave their country in order to escape war, persecution or natural disaster. In general, a refugee is someone who has been

---

59 Partha S. Ghosh, n. 47, pp. 6-7.
60 Samir Kumar Das (ed.), n. 2, p. 23.
61 David A. Korn, n. 6, p. 86.
64 Earl E. Huyck and Leon F. Bouvier, n. 50, p. 40.
65 http://oxforddictionaries.com/definition/english/refugee?q=refugee
compelled to abandon his home. He is uprooted, homeless, diminished in all his circumstances; the victim of events for which at least as an individual, he cannot be held responsible.

Refugees are defined under international law as falling outside both the protection of their state and its international borders, and as therefore requiring and being in a position to receive the protection of the international community. While states are viewed as the main perpetrator of persecutions; the concept of refugee has also been interpreted to include those fleeing persecution by non-state actors, where the state is unwilling or unable to provide protection.

The UNHCR documents continue to provide the most widely used definition of a refugee: as any person “who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of the country”. Subsequent articles and documents specify responsibilities of governments towards those who are granted the legal status of refugee. In 1969, the Organisation of African Unity (OAU), reflecting the special problems in Africa, broadened the definition to include “every person, who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.

Refugees are among the world’s most desperate people who have been pushed out of their own countries by force entirely beyond their control like massive natural disaster, the indiscriminate violence of wars or acts of purposeful persecution. They have fled either from political and religious persecution or racial or social discrimination or wars and territorial conquests or economic deprivation. Edward Newman writes in his introductory chapter, ‘refugees are almost invisible: they are an inevitable and

---

68 Michael J. Schultheis, n. 11, p. 8.
Thus, refugees are compelled to abandon their home. Their plight often makes them stateless persons without documents and without citizenship. However, all refugees have common characteristics; they are uprooted, homeless and they lack national protection and status. Also, all the refugees are victims of politics, war or natural catastrophe and have been compelled to leave their habitat by forces and circumstances over which they had no effective or decisive control. They are forced to stay outside their own nation or country by the very conditions that had expelled them out of it.

What is unprecedented about present refugee flows is that they are primarily in the developing world rather than in Europe. Refugees today flee as populations rather than as individuals. They seek refuge in neighboring countries, until such time as they can either return to their homes or find permanent asylum elsewhere. Until that time, most remain uprooted and traumatised, dispossessed and homeless.

**International Response**

The international response to refugee flows, first under League of Nations sponsorship and now primarily located in the United Nations system, is founded in the nation-state system. The people are supposed to be under the protection and normally within the boundaries of their state. Any large, uncontrolled movement of people beyond their borders threatens international political stability. If the movement is caused by people who lack their state’s normal protection, then a serious failure of the state system has occurred. The world has undergone transformation, so the governments of states. The forms of authoritarian governance are on the retreat with the diffusion of egalitarianism throughout the international system and the spread of the democratic ideas within nations. The states responded positively to the problem of displacement of people especially refugees.

71 Ishtiyaq Ahmad, n. 63, p. 3.
72 Michael J. Schultheis, n. 11, p. 7.
74 P. R. Chari et al. (eds.), n. 13, p. 20.
States have agreed to collaborate on the provision of state-like protection and help for persons displaced outside their country because of persecution by their government or, in some cases, by political and social forces beyond their government’s control. The regime developed to respond to European displaced person situations following the two world wars and initially had a Eurocentric focus.\(^{75}\) A country that expresses a commitment to the cause of refugees implicitly undertakes to share the burden of the refugees receiving country in overseeing their welfare. Therefore, the organisations looking after refugee relief work, therefore, had to manage with meager resources. For both legal and economic reasons, the states were unwilling to take the obvious and easiest way of settling the status of the refugees. Instead of providing ‘enbloc’ protection to refugees; states were willing to assist only the chosen/most deserving among the millions of displaced.

**Historical Context**

For many centuries, refugee movements were a result of religious and racial intolerance. Entire groups were uprooted, exiled or deported by secular or religious authorities in an effort to enforce conformity.\(^{76}\) The word ‘Refugee’ dates back to 1685 when the Protestant Huguenots fled religious persecution in Roman Catholic France.\(^{77}\) Governments of Western Europe and North America developed the international apparatus to respond to refugee needs in the European context following the great European wars. After the first world war, the League of Nations responded to the insistence of voluntary agencies caring for Europe’s displaced persons and appointed the first High Commissioner for Refugees. Following world war II, the United Nations General Assembly in 1951 created on a temporary basis the UNHCR, which had two basic functions: firstly, to provide international minimum standards for the recognition and treatment of refugees; and secondly, to promote and facilitate either their repatriation or their assimilation into countries of asylum. The UNHCR has two main instruments for achieving these objectives: the 1951 Convention and the 1967 Protocol both relating to the status of Refugees.\(^{78}\)

---

\(^{75}\) Charles B. Keely, n. 73, p. 304.


\(^{78}\) Michael J. Schultheis, n. 11, pp. 7-8.
Politically motivated refugee movements, frequent in modern times, have occurred intermittently since the development of government’s powerful enough to oppress non-conformist minorities. The Russian Revolution of 1917 and the post revolutionary civil war (1917–21) caused the exodus of 1.5 million opponents of communism. Between 1915 and 1923 more than one million Armenians left Turkish Asia Minor and several hundred thousand Spanish loyalists fled to France in the wake of the 1936–39 Spanish Civil War. When the People’s Republic of China was established in 1949, more than two million Chinese fled to Taiwan and to the British crown colony of Hong Kong. The 1950s were marked by the Korean War (1950–53), the Hungarian Revolution (1956), the Cuban revolution (1959) and the Chinese take-over of Tibet (1959), all of which resulted in the flight of more than a million refugees. Between 1945 and 1961, the year that the communist regime erected the Berlin Wall (opened 1989), more than 3.7 million refugees from East Germany found asylum in West Germany.\textsuperscript{79}

After first world war, the free migration system was entirely abandoned. As a result, the refugee once more acquired a specific position in international migrations. Great numbers of people persecuted for political, religious and racial reasons managed to cross borders otherwise practically closed to immigrants. In the interwar period, the refugee movement constituted one of the three main forms in which international migrations proceeded in Europe; the two others were the movements of repatriates (who often were no more than refugees with an assured reception country) and contract labourers.\textsuperscript{80} The first formal recognition of the refugee problem as an issue of specifically international and inter-state concern took place in Europe in the years between the two world wars. It came in response to the turmoil created by the break-up of the Ottoman, Austro-Hungarian and Russian Empires, which led to the displacement of more than 20 million people. In 1921 the International Committee of the Red Cross appealed to the League of Nations, as the only supranational authority to take overall control of efforts to solve the problem of refugees in Europe.\textsuperscript{81}

The refugees uncertain legal status made them a political problem while their deteriorating physical and economic conditions caused human concern. Seized with this new socio-economic problem, the International Committee of the Red Cross and the


\textsuperscript{80} Eugene M. Kulischer, n. 32, p. 166.

\textsuperscript{81} Jenny Robinson (ed.), n. 1, pp. 28–29.
League of Red Cross Societies jointly convened a conference in Geneva on February 16, 1921, to find ways of mitigating the refugees suffering and to ensure for them a modicum of human rights. Six months later, on September 1, 1921, the League of Nations appointed Fridtjof Nansen, the Norwegian polar explorer, as the High Commissioner for Russian refugees. Later, the High Commissioner responsibilities were extended to other national groups of refugees such as Armenian, Greek, Hungarian and German. The refugee being defined as ‘a person who, for one reason or another, is not protected by the government of the state of which he has been or still is a national. This established the refugee, for the first time, as a figure of international concern and was instrumental in justifying the common designation of the twentieth century as ‘the century of the refugee’.

Nansen introduced the Certificate of Identity, better known as ‘Nansen passports’, which gave the refugees a legal status in their country of residence and permitted them to travel. Until then, refugees desirous of freedom of international movement in order to lessen the sufferings in the country of their origin did not enjoy the legal protection of any state. Through this first international identity paper, refugees of specified categories became the possessors of a legal and judicial status. Later, those victims of the fascist regime in Italy and Nazi rule in Germany, who had managed to escape their homelands, were included in the internationally defined category of refugees. Nansen’s office issued ‘Nansen Passports’ to Russian and Armenian refugees and assisted hundreds of thousands of Greek and Turkish refugees.

The treaties concluded under the auspices of the League of Nations in 1925-26, adopted two conditions in the definition of refugee. That someone was firstly outside his country of origin and secondly, without the protection of the government of that state was sufficient and necessary condition. The rules governing protection of refugees began under the League in 1926 to shelter persons of Russian origin fleeing Soviet Union. A similar approach was employed in 1936 for those fleeing Germany. The European scenario continued to dominate the development of refugee law (Bermuda Conference of April 1943), the formation of the International Refugee Organisation and

---

82 Renu M. Anand, n. 22, p. 2.
83 Jenny Robinson (ed.), n. 1, p. 29.
84 Renu M. Anand, n. 22, p. 2.
86 Renu M. Anand, n. 22, pp. 2-3.
subsequently the UNHCR. The massive population flows in the period of post war decolonisation passed unaddressed.\textsuperscript{87}

In many emergencies, UNHCR provided the coordination and leadership to bring relief and state-like protection to refugees. Since the UNHCR opened its first non-European office in 1962 (Burundi, p. 307), it became more and more a UN agency that operated primarily in the developing world.\textsuperscript{88} The refugee regime in the Third World has operated more or less as the refugee regime is normally described, even while addressing new challenges to the assumptions of the conventional description of what the refugee regime is and should be. International and non-governmental agencies help governments in countries of first asylum to protect and assist refugees from war and persecution. The UNHCR is usually the leading international agency and provides oversight about state compliance with international humanitarian law affecting refugees. The UNHCR and other international actors try to bring about durable solutions, especially the return of refugees to their own country in safety.\textsuperscript{89}

The complex nature of the issues underlying human displacement has led to the UNHCR, which is chiefly concerned with their problems to extend its mandate over the years; this now includes ‘those displaced within the borders of their own countries, returnees (refugees or internally displaced persons who have returned), asylum seekers (whose formal status has not yet been assessed), stateless persons, war-affected populations and others’. This comprehensive approach has permitted equal emphasis to be placed on the obligations of the homeland countries from where refugees have fled and their host nations.\textsuperscript{90}

The International Refugee Regime is the nation-states response to the refugee problem, from which it follows that the prime purpose of the regime is not to protect refugees but to protect the international system of nation-states by ‘normalising’ the figure of the refugees.\textsuperscript{91}

\textsuperscript{88} Charles B. Keely, n. 73, pp. 307-309.
\textsuperscript{89} Ibid., p. 310.
\textsuperscript{90} P. R. Chari et al. (eds.), n. 13, pp. 17-18.
\textsuperscript{91} Jenny Robinson (ed.), n. 1, p. 28.
The International Refugee Regime

The international refugee regime is the collection of conventions, treaties, inter-governmental and non-governmental agencies, precedent and funding which governments have adopted and supported to protect and assist those displaced from their country by persecution or displaced by war in some regions of the world where agreements or practice have extended protection to persons displaced by the general devastation of war, even if they are not specifically targeted for persecution. Rosemarie Rogers defines international refugee regime, is the set of norms, laws and institutions designed to protect and assist forced migrants who have crossed an international border because they have fear of persecution or generalised violence in their own countries.

It was in the aftermath of second world war and the large-scale displacement and movements of peoples that the Geneva Convention, a legally binding treaty, was adopted by the UN. The regime has its roots (1920s) in action taken following world war I by the League of Nations at the behest of non-governmental organisations represented by the International Committee of the Red Cross (ICRC). The current expression of the regime dates from the negotiations following second world war II that led to the UN Statute creating the Office of the United Nations High Commissioner for Refugees (1950) and the 1951 United Nations Convention Relating to the Status of Refugees. The task was providing displaced individuals with the protection that they were unable or unwilling to obtain from their home states.

It is a set of laws, norms and institutional structures, agreed and established by the international community for the purpose of managing and controlling (or regimenting) refugee flows. The principal laws are the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. Inclusion of persons displaced by war is based on the Charter of the Organisation of African Unity and the Cartagena Declaration in regard to the Western Hemisphere. The principal norms are the right to claim asylum and the right of voluntary return. The principal institutional structure is that of the Office

---

92 Charles B. Keely, n. 73, p. 303.
95 Charles B. Keely, n. 73, pp. 303-304.
of the UN High Commissioner for Refugees (UNHCR), which is the primary agency. Other relevant institutions include the International Committee of the Red Cross (ICRC), the International Organisation for Migration (IOM) and the Office of the High Commissioner for Human Rights (OHCHR). Non-Governmental Organisations (NGOs) have also played an increasingly important part in the operation of the regime over the past 30 year and especially during the 1990s as implementing partners of the UNHCR.96

There was not one international refugee regime during the cold war, but two: one in the industrial countries of the first world vis-a-vis Communism and one for the rest of the world. The second regime was the sphere in which the United Nations High Commissioner for Refugees primarily acted, but it too was affected by the cold war, particularly the proxy wars sponsored and supported by the great powers of East and West. The first regime in industrial countries, which Keeley has termed the Northern regime, was designed for political purposes of the cold war. It was an extension of the strategy of containment. The regime operated in a fundamentally different way from the mantra typically used to describe the nature and mandate of the international refugee regime. When the cold war ended, the states involved in the Northern regime tried to realign the policy and procedures that no longer seemed relevant to a world in which the bipolar structure had ended. The primary focus was originally the Soviet Union and the states of Central and East Europe over which the Soviet Union established hegemony following world war II - the countries behind the iron curtain. The idea was to admit and resettle those who “escaped communist oppression.”97 In the Northern refugee regime logic, the goal of the refugee regime was not to help restore stability to the international system but to destabilise governments, cause states to fail and create domestic support for a policy of opposing and weakening communist governments in a constant struggle.

Meanwhile, in the developing world countries, what is typically thought of as the normal refugee regime generally pursued a policy of protection and assistance and seeking permanent solutions to refugee displacement. The general assumption in countries of ‘first asylum’ was definitely not a presumption that the durable solution would be permanent incorporation into the country. One can cite the refugees from the Pakistan civil war in India and Indian policy not to allow settlement; the insistence of countries of Southeast Asia that boat people flows in the late 1970s would not be settled

96 Jenny Robinson (ed.), n. 1, p. 28.
97 Charles B. Keely, n. 73, pp. 306-07.
but must be moved out to third country resettlement if they were to continue providing first asylum; and regional efforts in Central America in the 1980s to make peace in order to address the issue of return of internally and externally displaced persons.  


The convention spells out the obligations and rights of refugees, and the obligations of states towards refugees. It embodies the principles that promote and safeguard refugee’s rights in the field of employment, education, residence, freedom of movement, access to courts, naturalisation and the security against return to a country where they may risk persecution. The remaining articles of the 1951 Convention provided numerous rights for refugees in asylum countries, covering such issues as non-discrimination, freedom of religion, right of association, right to work, social right and right to travel documents. With the most obvious exception of Article 28, many of these provisions only require States to grant the same rights to refugees as are granted to other non-nationals.

Article 33, which sets out the fundamental principle of non-refoulement (Prohibition of expulsion or return): “No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” International refugee law receives support from humanitarian law and human rights law for its most basic principle. The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (humanitarian law) and the 1966 International Covenant on Civil and Political Rights (human rights law) contain similar stipulations, without using the term refugee.

The United Nations Convention Relating to the Status of Refugees (CRSR) of 1951 defines the term “refugee” as applying to any person who

as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for

98 Ibid., p. 309.
101 Ibid., p. 31.
102 Rosemarie Rogers, n. 93, pp. 1116. 
reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his (or her) nationality and is unable, or owing to such fear, is willing to avail himself (or herself) of the protection of that country; or who, not having a nationality and being outside the country of his (or her) former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it…

The 1951 Convention was formulated in the specific context of post-war Europe, when millions of displaced people existed in a legal limbo. The refugee definition contained in the 1951 Convention was limited to persons who became refugees ‘as a result of events occurring before January 1, 1951 and ‘solely as victims of specific forms of political persecution’. When in the wake of new events and emergence of conflicts after January 1, 1951, additional refugees generated across the world needed attention that could not claim or benefit from the protection of the CRSR. The existing definition was of little help.

However, the Convention regime suffers from major flaws: first, it cannot be effectively implemented in the face of mass influxes of refugees and second, it only protects people who cross an international border in spite of the fact that many people are in need of international protection, whom we might otherwise think of as refugees, are displaced within their state’s territory. The refugee system, therefore, provides no formal protection for internally displaced people. In spite of the fact that every conflict generates large numbers of internally displaced people who are forced from their homes but nonetheless do not cross an international border when seeking refuge. In fact, the refugee regime creates no obligation for states to actively offer asylum protection which would create a duty for states to aid refugees trying to flee persecution. Instead, no legal protections accrue to a refugee until he or she has reached the border of a potential host state. This means that the Convention does not explicitly prohibit states from creating barriers to entry. Thus the system arbitrarily discriminates between

---

104 Renu M. Anand, n. 22, p. 4.
105 Philip Marfleet, n. 12, p. 11.
107 Ibid., p. 16.
those who cross borders and those who do not, even though both groups may be displaced for identical reasons and face identical threats from their persecutor.

No doubt, the 1951 Convention and its Protocol provided protection to the refugees but only within the territory of the contracting states. Those states that have not ratified the convention, however, are not bound by them. Does the acquisition of a new citizenship or their resettlement and rehabilitation by the receiving state automatically imply that the agony, suffering and material need of those displaced no longer exists?

The 1967 Protocol, therefore, amended the 1951 Convention by removing both the time and geographical limitations. With this, all refugees and not just those resulting from the Second World War came within the ambit and protection of the 1951 Convention. The 1967 Protocol Relating to the Status of Refugees amounted to a formal recognition that the refugee phenomenon was not a temporary blip confined to one region of the world, but an enduring and universal feature of the nation-state system. Therefore, the protocol went further and omitted the phrases ‘as a result of events occurring before 1 January 1951’ and ‘…as a result of such events’ from its own definition. By acceding to the 1967 Protocol Relating to the Status of Refugees, states agree to apply Articles 2-34 of the 1951 Convention to all persons covered by the refugee definition without reference to time or geographical limitations. Those displaced internally are excluded from the category of dejure refugees but they are defacto refugee. So they are not covered and protected by the UN 1951 Convention.

Organisation of African Unity (OAU) held Convention of African states on September 10, 1969 on Refugees which revised the definition further and it came into force on June 20, 1974. The second paragraph of Article 1 of the OAU convention states that:

the term ‘refugee’ shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his (or her) country or origin or nationality, is compelled to leave his (or her) place of

---

108 Renu M. Anand, n. 22, p. 5.
109 Jenny Robinson (ed.), n. 1, p. 32.
110 Partha S. Ghosh, n. 47, p. 2.
111 Jenny Robinson (ed.), n. 1, p. 31.
112 Partha S. Ghosh, n. 47, p. 2. For detail text see http://www.unhcr.org/45dc1a682.html, definition at p. 3.
habitual residence in order to seek refuge in another place outside his (or her) country of origin or nationality.\textsuperscript{113}

In comparison to the CRSR of 1951, the OAU Convention of September 10, 1969 governing the specific aspects of refugee problem in Africa gives a broader definition of the term ‘refugee’, taking account of some of the root causes of the refugee problem. Therefore, it allowed for some other causes of displacement that are considered part of the refugee definition. In the eighties the concept was further revised. On November 22, 1984, the Cartagena Declaration on Refugees reiterated that ‘in view of the experience gained from the massive flow of refugees in the Central American areas, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region. The definition of refugee that is used in the region, in addition to containing the elements of the 1951 Convention and its 1967 protocol, includes among refugees “persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”’.\textsuperscript{114} The 1984 Cartagena Declaration is not binding upon states.\textsuperscript{115} The Declaration includes the principle of non-refoulement and addresses the important issue of interrogation of refugees into receiving societies as well as the need to eradicate the causes of the refugee problem.\textsuperscript{116}

Today, UNHCR protects and assists refugees when it is invited to do so by an asylum country whether or not that country is a signatory to the 1951 Convention or any of the regional instruments. Most refugees are recognised on the basis of the broader criterion of fear of generalised violence rather than because of fear of individual persecution and most determinations are made for entire groups rather than separately for individuals. The international donor community also uses the broader definition in its overseas assistance activities. Although for asylum determinations on their own soil

\begin{itemize}
\item \textsuperscript{113} Ibid.
\item \textsuperscript{114} Ibid.
\item \textsuperscript{115} Quoted in J. P. Colombey (ed.), \textit{Collection of International Instruments and other Legal Texts concerning Refugees and Displaced Persons}, UNHCR, Geneva, 1995, p. 25. Also see Rosemarie Rogers, n. 93, p. 1117.
\item \textsuperscript{116} Ibid.
\end{itemize}
the industrialised countries generally use the 1951 Convention definition and employ individual status determinations.117

The international refugee regime - with international treaties, multilateral agencies and a phalanx of nongovernmental organisations encouraged to be implementing partners in dispensing aid - is not based primarily on humanitarian feelings.118 The ICRC believes that international humanitarian law is adequate to address most problems arising from internal displacement associated with armed conflict. With proper compliance, the law is sufficient to prevent displacement in the first place and protect vulnerable populations if displacement does occur. The political will to implement and comply with international humanitarian law at both national and international levels is, in many cases, still far from sufficient.119

The Guiding Principles on Internal Displacement120

In the last decade of the twentieth century, an explosion of civil wars brought a pressing new problem onto the international agenda, the plight of internally displaced persons, people forced from their homes by conflict, communal violence or egregious human rights violations who remain uprooted and at risk within the borders of their own countries. The 1951 Convention Relating to the Status of Refugees did not apply to them and the United Nations High Commissioner for Refugees (UNHCR) had no automatic mandate to assist them, because unlike refugees they did not flee across borders. Rather, they remained inside their own countries under the jurisdiction of their own governments, the very governments that may have caused their displacement in the first place and that were often unwilling or unable to provide for their well being and security.121

The principles constitute a comprehensive minimum standard for the treatment of the internally displaced. They offer standards for protection against arbitrary

117 Rosemarie Rogers, n. 93, p. 1117.
118 Charles B. Keely, n. 73, p. 1057.
displacement, innovatively enunciating a right not to be arbitrarily displaced. They set forth standards for protection during displacement, tailoring the full range of civil, political, economic, social and cultural rights to the specific needs of IDPs. Finally, they offer standards for protection during return, resettlement, and reintegration. In short, they provide a comprehensive international minimum standard for the treatment of IDPs. They set forth the rights of the displaced and the obligations of governments/national authorities, insurgent groups and other actors toward IDPs. The principles are not legally binding but are derived from international human rights treaties and humanitarian law.

They were finalised at a 1998 meeting in Vienna of international legal experts and representatives of United Nations agencies, regional bodies and non-governmental organisations hosted by the government of Austria. They offer protection against displacement, protection during displacement and protection during return and reintegration. They cover all phases of internal displacement: the pre-displacement phase; during displacement; and during return or resettlement and reintegration.

Introduced into the United Nations Commission on Human Rights in 1998, they set forth the rights of internally displaced persons and the obligations of governments and the international community toward these populations. While acknowledging that primary responsibility rests with national authorities, the Guiding Principles recast sovereignty as a form of national responsibility toward one’s vulnerable populations with a role provided for the international community when governments did not have the capacity or willingness to protect their uprooted populations. Although not a legally binding instrument like a treaty, the Guiding Principles quickly gained substantial international acceptance and authority.

The Guiding Principles begin with an introduction explaining their scope and purpose. The principles define IDPs as

---

122 Ibid., p. 465.
124 David A. Korn, n. 6, p. 90.
125 Roberta Cohen, n. 121, p. 465.
126 Ibid., p. 459.
Persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.\textsuperscript{127}

The two crucial features are being coerced to move and remaining within one’s national borders. This description highlights the two core elements of internal displacement; first, the coercive or otherwise involuntary character of the movement; and second, the fact that such movement takes place within national borders. It is also important to note that the list of causes of displacement is not exhaustive. It covers persons who are obliged to leave their homes and place of residence because of conflict and large-scale human rights violations as well natural disasters and development projects. In this context, it is important to note that the notion of ‘displacement’ is neutral in the sense of covering both situations where persons are forced to leave in violation of their rights and instances of evacuations and relocations/resettlements that are involuntary but perfectly legal. However, those uprooted by floods, earthquakes, famine or nuclear plant eruptions or forced by development projects to relocate, were included, in addition to the more traditionally accepted IDPs, those uprooted by conflict and human rights violations. Besides positing primary responsibility for the welfare and safety of IDPs with their governments, the concept also considers it an obligation of the international community to provide humanitarian assistance and protection to IDPs when the governments concerned are unable to fulfill their responsibilities. In such an instance, governments are supposed to request and accept outside offers of aid. If they refuse or deliberately obstruct access and put large numbers of persons at risk, the international community, under this concept, has a right and even a responsibility, to step in and assert its concern. Therefore, under the principles, IDPs must have access not only to material assistance but also to protection from violence and abuse, in short, to enjoy the full range of human rights.\textsuperscript{128}

The Guiding Principles come with no monitoring or enforcement machinery, but a global effort has begun to monitor and oversee compliance with their provisions. Governments, United Nations agencies, regional bodies, international and local NGOs,

\textsuperscript{127} Ibid., pp. 465-66.
\textsuperscript{128} Ibid., pp. 466-67.
and the displaced themselves are all involved. Although not a binding document like a treaty, they have gained considerable international standing and authority. Both the Commission on Human Rights and the General Assembly, in resolutions adopted by consensus, have recognized the Guiding Principles as ‘an important tool’ and ‘standard’ for addressing situations of internal displacement, encouraged their wide dissemination and welcomed their increasing use by states, United Nations agencies and regional and non-governmental organisations.

**Displacement and Refugees in South Asia Region**

Almost all South Asian states have suffered the ravages from movements, both between and within states, of population over the last six and half decades. These population flows include refugees, economic migrants, stateless persons and internally displaced persons. South Asia has also witnessed some of the largest population flows in the post world war period. The partition of British India in 1947 resulted in the brutal uprooting of nearly 15 million people in the subcontinent. The transfer of power to independent India and Pakistan was followed by the transfer of 20 million people, with the governments of India and Pakistan undertaking to rehabilitate these displaced people. During the liberation war of Bangladesh, some 10 million refugees from the erstwhile East Pakistan fled to India. In truth, the countries of South Asia have often been both the principal recipients and the originating source for refugees. According to the UNHCR, the refugees in south Asia constitute roughly 14 percent of the total world refugee population.

The factors which are responsible for the refugee influx in the region: firstly, the breakdown of colonial rule leading to adverse repercussions but resulting in the continuance of colonial legacies in the new nations formed; the end of colonial rule and the partition of British India, for instance led to large scale migration which has continued from East Bengal into India to the present day. Secondly, the problem of nation and state building resulted in political, ethnic, religious and economic conditions being engendered that forced people to migrate outside their countries of origin as apparent from the movement of Bangladeshi and Sri Lankan refugees to India, Bhutanese:

---

129 Ibid., p. 477.
130 P.R. Chari et al. (eds.), n. 13, p. 7.
132 P.R. Chari et al. (eds.), n. 13, p. 7.
refugees to Nepal and Nepalese/Bangladeshi economic migrants to India. Thirdly political developments in neighbouring regions have resulted in large number of refugees entering the South Asian Countries. The political and material support provided by the host countries to struggles by ethnic groups within their neighbours for various historical cultural and realpolitik reasons, creates the milieu for refugees from these countries to settle within the region.\textsuperscript{133} Lastly, the other causes underlying displacement includes political instability, armed conflict, lack of resources and continued hostility among the states of the region.

The plight of refugees and IDPs in South Asia is unenviable. There are no regional or national legal mechanisms for protecting displaced people. The level of government assistance is minimal and access for the UNHCR or ICRC is either restricted or denied.\textsuperscript{134} Even no intermediate path had been searched out and the refugees are on the suffering end. None of the countries in South Asia has signed any major international convention or treaty relating to refugees nor have they enacted any national legislation or established a regional framework to deal with these issues of displacement. Hence, a refugee regime, either at the national or regional level, is not available to regulate this phenomenon.\textsuperscript{135}

However, India and Pakistan were active players in the initial discussions on a new international refugee regime. Both at the outset declared their sympathy with the aims of new refugee regime. By end of 1947, over nine million refugees had crossed the India-West Pakistan border, in both directions, occasioning the need for colossal relief and rehabilitation efforts. Apart from relatively minor contributions from foreign charitable organisations, India and Pakistan shouldered the entire responsibility for these refugees. International Refugee Organisation (IRO) refused to help. Unlike the refugee situation in Europe which attracted huge sums of money, the governments of India and Pakistan received almost no international assistance.\textsuperscript{136} In the UN, fourth session (November 9, 1949) debate on the definition of a refugee and to define the status of persons who might need protection in the future, India and Pakistan attempted to call attention to the millions of refugees on their territory at that present moment in time.

\textsuperscript{133} Ibid., p. 8.
\textsuperscript{134} Janie Hampton (ed.), n. 131, p. 139.
\textsuperscript{135} P.R. Chari et al. (eds.), n. 13, p. 9.
\textsuperscript{136} Pia Oberoi, n. 85, pp. 17-18.
Both delegations attempted repeatedly to assert that the partition refugees deserved protection within the new regime. The Pakistani representative thus claimed that

After the end of the second world war...other events had taken place in other parts of the world. If the UN was to be entrusted with the problem [of refugees], it should consider it on a world-wide basis. For example, a year and a half earlier, Pakistan had been compelled to receive 6 to 7 million refugees coming from various parts of India.

In addition, the Indian delegate argued “it had to cope with its own refugee problem - indeed there were six million Indian refugees who had to be looked after and resettled”. Thus India and Pakistan were arguing that the proposed limitations of time and space should be excluded to include group of other refugees. It was a plea of the Indian and Pakistani delegates to include consideration of those displaced at partition. However, other delegations claimed that since the refugee groups on the subcontinent did not lack the protection of a government, there was no need for the legal protection of these refugees. The Indian representative, Mrs Kripalani asserted that ‘it was true that the partition refugees were not stateless; the state ensured their protection. But statelessness was often a lesser hardship than lack of food, clothing, shelter and work’. The guarantee of legal rights without concomitant material assistance was a hollow concept. The Pakistani representative added that ‘although statelessness was a great privation, it was after all the least of the misfortunes to deal with which the IRO had been set up. The massive burden of the partition refugees made them loath to accept a partial regime, in which their own concerns were sidelined, if not neglected. It is this sense of exclusion on the grounds of political expediency that India and Pakistan took with them when they left the UN deliberations.' Both India and Pakistan came away from the negotiations surrounding the birth of the post-war international refugee regime with mixed feelings. Although they agreed with the need to set up a legal framework for refugee protection but they were acutely disappointed that this regime was not prepared to recognise the tremendous refugee burden under which they laboured and to recognise that non-European refugees must also be of concern to the international community.

India abstained from and Pakistan voted against the General Assembly Resolution 319 (IV), which established the office of the UNHCR with sole

---

137 Ibid., p. 20.
138 Ibid., pp. 20-22.
139 Ibid., p. 25.
responsibility to give refugees legal protection. India argued that it would be difficult for India to contribute to a budget to be used for the legal protection of certain refugees when there were millions of refugees in dire need on its own territory. In spite of its own difficulties, it would have voted for the establishment of a High commissioner Office if it had been convinced that the need for it was imperative. In the early 1950s, India publicly affirmed that since it had no direct concern with the refugee issue as it was defined within the 1951 Convention, India did not wish to compromise its non-aligned status by becoming involved with formal refugee regime.

Since most of the refugee and migrant studies have their origin in the west, their approaches are naturally western and so the strategies suggested to deal with the problem have only limited efficacy for South Asia. South Asian states responded differently on this issue. No South Asian state is a signatory to either the 1951 Convention or the 1967 Protocol. So there is great need for a legal framework in each of the countries of South Asia. Although India has not signed the 1951 refugee convention, it is committed to the cause in every practical sense. If one goes by the record, it is clear that India has always been generous in offering asylum and assistance to refugees. The reason that it has not signed the document is that it feels that the interests of the developing countries have not been properly taken care of. India has been giving an array of reasons for not acceding to the international refugee instruments. Prof. B.S Chimni sums up the general reasons that are offered by different government spokespersons for not signing the 1951 convention. They are: firstly, the definition of a refugee contained in the 1951 Convention is Eurocentric instrument of the Cold War which was consequently not relevant to the Indian subcontinent. It was an integral part of the cold war strategy of the western countries to give refuge to anyone fleeing the former Soviet bloc countries. The Convention does not talk about social, economic and cultural rights which could also be the basis of persecution. Secondly, the Convention sets the rights regime i.e. once the refugee status is granted under the 1951 Convention; an entire range of rights is available to refugee person. These rights are of a kind which developing countries can ill afford to give to refugees as they cannot feed their own

---

140 Ibid., p. 23.
141 Ibid., p. 25.
142 Partha S. Ghosh, n. 47, p. 137.
populace. Thirdly, once the Convention is signed, the country is legally obliged to co-operate with the office of the UNHCR by sharing certain information (under Article 35 of the 1951 Convention). The government fear is that signing and cooperating will slowly and inevitably lead to the internationalisation of the issue of different refugee groups within country. As India’s long standing foundational principle of foreign policy is to deal with the refugees coming from neighbouring countries on a bilateral basis. Fourthly, national security interests cannot be sufficiently addressed through the 1951 Convention. Finally, there is the feeling that once the government signs the Convention, then government will not be able to deny the larger international community access to the refugee groups.

As none of the South Asian countries have acceded to the United Nations convention which reflects that the issue of refugees has a low priority in their national agendas. The most plausible reason is their fear of the economic burden involved in implementing the provisions of the convention such as the prohibition by the contracting states on expelling or returning the refugees against their consent, the right of refugees to work and education and the provision of housing. Still, there is need for a refugee law and India should sign one. Firstly, any civil society is expected to respond positively to a social problem through set procedures and norms. It is not enough to look after the refugees but it is also important that they are looked after within a legal framework for which appropriate institutions are created. Secondly, the Constitution of India itself protects the rights of aliens excluding enemy aliens. Same rights can be extended to the refugees as well, which in any case has been upheld by the courts. Thirdly, India is a signatory to the International Convention on the Rights of the Child (CRC) which obliges its signatories to determine the refugee status of a child based on international law or applicable domestic law. India, however, has not fulfilled its obligation to the satisfaction of the law. Since India is a member of the CRC from 1992, a simple reading of the Preamble of the CRC, together with Articles 7, 19 and 22 should oblige India to establish a legal refugee regime.

South Asian Forum for Human Rights (SAFHR) held meeting in Kathmandu on November 18-22, 1996. It was decided in this meeting to have a South Asian Protocol/Charter on refugees, migrants, internally displaced and stateless persons. The

---

144 P.R. Chari et al. (eds.), n. 13, p. 36.
Forum pleaded for an expansion of the definition so as to include ‘victims of forced eviction, man-made and natural disasters and environmental refugees’ while taking note of the earlier charters and protocols. The Forum also believed that ‘the states have an obligation to protect the rights of its citizens to remain in their habitat’ but when such displaced persons seek refuge in another state, the host state should respect the principle of non-refoulment.\textsuperscript{146} India has not ratified the 1951 convention but is bound by the principle of non-refoulment, which is a norm of customary international law.

India has been actively cooperating with the UNHCR, particularly since 1995, when it became a member of the UNHCR Executive Committee. This has resulted in a more active role for the UNHCR in India in respect to some categories of refugees.\textsuperscript{147} However, India has acceded to the major international and human rights instruments. Because of this along with the absence of permanent institutional structure to oversee refugee issues, the grant of refugee status has been at the discretion of the political authorities. In the process, the status of fleeing humanities has sometimes been subjected to political arbitrariness.\textsuperscript{148} In most of the cases, the refugee problems are handled on the basis of administrative policies and there are a lot of doubts and lots of reservations about administrative discretion. It is not fair to have the system which adopts adhoc responses. So there is the need to have national refugee legislation that must considered the definition of the term refugee and its scope, the concept of non-refoulement and the administrative judicial machinery to determine the status of displaced persons and for maintaining records after the peoples are registered with this machinery. It must also include the principles governing internal displacement.

The existing legislation which deals with the refugees is the Foreigners Act, 1946. They are not treated as refugees but as aliens. The refugee policy and the administrative directives call refugees to the Tibetan and Srilankans who migrated to India, although that word is not defined in any legal document. The government of India treats different group of displaced persons differently. This interferes with Article 14 of the Indian Constitution which applies not only to Indian citizens but also to foreigners.\textsuperscript{149}

\textsuperscript{146} Ibid., p. 4.
\textsuperscript{147} Partha S. Ghosh, n. 47, pp. 137-38.
\textsuperscript{148} Mahendra P Lama (ed.), n. 143, p. 6.
\textsuperscript{149} Ibid., p. 25.
In the absence of a formal legal structure, the Courts, particularly the Supreme Court and the National Human Right Commission (NHRC) have played both proactive and constructive roles in safeguarding and protecting the rights of refugees.\(^\text{150}\) The refugee definition included in the 1951 Convention is not ‘wholly applicable’ as legal protection should be afforded to all classes of refugees who lack food, clothing, shelter and work. It should not be restricted to those who are stateless or who lack diplomatic protection. Indian constitution, in Article 21, protects the right to life and liberty of all persons present on the territory of India, irrespective of whether they are aliens or citizens.\(^\text{151}\) When the problems of refugees and those forcibly displaced are similar everywhere, than why should there not be a uniform law applicable everywhere, especially when we talk about the world as a global village.\(^\text{152}\)

\(^{150}\) Ibid., p. 6.
\(^{151}\) Pia Oberoi, n. 85, p. 33.
\(^{152}\) P.R. Chari et al. (eds.), n. 13, p. 15.