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The Refugee's Crisis and Legal Responses with special reference to the Rohingya's

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ABSTRACT

The people, or population, are one of the most important factors in the state, and the government's inability to defend the people's fulfilment and rights, as well as to conduct geopolitical propaganda, are the fundamental causes of today's issues and crises. The world's perceptions of politics and war changed radically during the twentieth century. Without a doubt, the twentieth century has seen a shift from conventional to urban warfare, as well as other factors, resulting in natural and forced migration, immigration, displacements, and refugee movements as people strive to protect themselves and future generations from atrocities.

At present, Refugee Law is primarily governed by the 1951 Convention its 1967 Protocol, and UNHCR guidelines but as seen by numerous examples from throughout the world, the existence of a framework is not sufficient. There is a significant disconnect between theory and practice. To share the same viewpoint, the research paper is structured into several sections with the main objective to analyse the legal instruments parallel with the case of Rohingyas. The paper aims to understand the refugee's law and its theory, the legal instruments and response to it and the practice of refugee's treatment associating with the Rohingya's issue. With the view that a comprehensive analysis can be formulated to understand the disparity between the theory law and the practice law.

Keywords: *Refugee's, Crisis, Legal Instruments, Framework, Rohingya's Case-Study, Disparity, Comprehensive Analysis, Theory and Practice.*

I. INTRODUCTION

Various political and civil rights treaties were adopted in the post-world war era, and that era adopted remarkably the Convention Relating to the Status of Refugees in the year 1951 and its Protocol Relating to the Status of Refugees in year 1967. The Convention outlined definitions for understanding refugee concept also the different sorts of types and their rights. However, as the globe has witnessed new concepts of war techniques, the convention's breadth has lacking in light of modern issues. For the same reason,² new notions such as urban warfare and

¹ Author is a student at Lovely Professional University, India.

² Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, 37- 38 (ICRC, Geneva, Switzerland, November 2019).

transnational crimes arose in International Humanitarian Law. Due to state-assisted crimes and geopolitical goals, such war crimes and armed conflict circumstances are extremely obvious, resulting in a large number of atrocities towards the refugee's influx and increase in their population. Due to its very first attempt to make refugee law instrument and create a such international legal framework that talks on the very concept, the role of the convention become crucial. Its core assumption and principles implant the idea of protecting the refugees as long as they face persecution. Such protection emerges from the deep enrooted concept of customary international law of non-refoulment. This principle got its place in the convention under Article 33, which is also known as one of the basic character of the convention.

³With the going on contemporary challenges there are many refugee concerns that need changes into the structure and settings. With the passage of time, many were implemented but it gets limited due to political attempts and propagandas. Due to this, the attempt of applying the refugee protection remain unsatisfied as states are known to barricade the refugee protection and try to limit their application. Hence, the present condition of the crisis and non-dealing of the issues stands unresolved. Additional reformation progress is required as a rethinking of the fundamental causes of ongoing persecution. These inconsistencies in the law creates such loopholes in application that even sometimes the actual counting's and population data get affected and large number of migrants left even unauthorised and unknown. The rise of the crucial level of problem that non signatory country's face at the time of mass influx have put the state and international community at odds. These critical changes are clearly possible under the continuous changing, go to and alive international refugee law to achieve the desired outcomes, which have already been achieved to some extent in regional efforts of recent UNHCR practical application.

II. EVOLUTION HISTORY

The society has developed its relationship with the state from Human Rights theories to Human Rights opponent's theories, such as a shift from the understandings of Contract, Social Democratic and Liberalism theories to Social Darwinism, Social constructionist scepticism⁴ theories. These main theories clarified the basic understandings and aided in the development of debates lying on the scope of human rights issues and advancement. In today's realm, to grant rights and maintain a stable social order, individuals have to make contract with the

³ M. Rafiqul Islam, and Md. Jahid Hossain Bhuiyan, *An Introduction to International Refugee Law*, Brill, Nijhoff, 2013, *EBSCOhost*.

⁴ Haas, Michael *International human rights: a comprehensive introduction* / Michael Haas. – 2nd edition. published 2014 by Routledge London and New York.

governments. There was the acceptance of various historical documents of Human Rights in the late nineteenth and twentieth century. ⁵In 1921, the first Commission for Refugee was established by the League of the Nation's Health Organisation whose major task was to provide legal, financial assistance to the prisoners of war and refugees from Russia, but with time its status got expanded and major milestone it achieved became the adoption of the Status of Refugees convention in the year 1933.

Later due to repercussions of World War II, the whole world suffered with various downturns, from economic, political to social. For improvement, ⁶The Rehabilitation Administration goes by the name UNRRA was created in year 1944 for administering the refugee camps. It considered as a milestone achievement because repatriated millions of refugees to their state of origin. ⁷Likely, in the year 1947 another refugee organization was established by the General Assembly of the United Nations that named as the International Refugee Organization (IRO) to make resettlements. In the year 1951 the UNHCR was established because its predecessor faced restrictive policies and with a view to handle the crisis of post-world war active displacements and refugee's organisation, the UNHCR ran the resettlements with a revived role of humanitarian concerns into it⁸. As well as for the development and protection of the very status and practice of refugee law.

⁹The post IRO era was neglected by the nation states and new discussion started for the adoption of law that determined the precise and restricted duty towards the refugee, and this way the Convention relating to the Status of Refugee also known as the Refugee Convention, 1951 came into picture. ¹⁰In the 1960's The African continent was facing decolonisation and the various aspects of difficulties from human rights violation to the geographical changes and conflicted area. Such issue paced a way for Refugee Convention to extend its limitation and the Protocol Relating to the Status of Refugee 1967 got into the frame. The definition of Refugee got extended and Article 1A (2) of the Refugee Convention amended as it removed the geographical restriction and gave it the wide status range and covering areas.

⁵ Ibid

⁶ M. Rafiqul Islam, and Md. Jahid Hossain Bhuiyan, *An Introduction to International Refugee Law*, Brill, Nijhoff, 2013. *EBSCOhost*.

⁷ Ibid

⁸ UNGA resolution 428(V) of 1950, *available at*: <https://www.unhcr.org/4d944e589.pdf> (Last visited 25 April 2022).

⁹ Islam, Rafiqul. "The origin and evolution of international refugee law." *An introduction to international refugee law* 47 (2013): 13.

¹⁰ *Supra* note 3

THE RIGHTS AND PROTECTIONS OF REFUGEES

As we discussed the history and evolution of the refugee's law. It is pertinent to now understand that the law of refugee solely cannot be run by its main convention and protocol. The law is a constant evolutionary part of contemporary challenges. It includes the various other main conventions of rights such as human rights law, the law of the war known as IHL, and its humanitarian aspects. The 1951 convention related to refugee maintained a certain standards of principles.

Non Refoulment

This norm draws its existence and legitimacy from the aspect of inherent human rights of common humanity for the international community which are the world's basis for freedom, justice, and peace. ¹¹Article 33(1) of the 1951 Convention, which states the non-refoulment principle, saying that any refugee shall not sent back without his consent, where his life, rights and belief is expected to be in danger. ¹²The legal prohibition on such act for protecting against forced return of the refugees can also be found in the law prohibiting torture, cruelty or inhuman treatment.

The state that handed over people to torturers or those who recommended inhumane treatment bears responsibility, not the receiving state¹³. As a result, the non-refoulement principle is well-recognised in international law, in convention and in the customary principles. Regardless of this, governments around the world are enacting arbitrary restrictive policies to prohibit refugees and forcibly displaced people from entering their countries. ¹⁴This very principle of non-refoulement at the same time applies beyond the borders and the territory of state exercise its power, for example at the high seas while intercepting the ships and refugees.

Another challenge to the Article 33, the principle is the issue of extraterritoriality. On a practical level, the UNHCR claims that the difficulty with the concept of non-refoulement is state implementation rather than the principal standards. Many situations in recent time where such breach of principle can be seen, includes Bangladesh, Thailand, former Yugoslavia, Rwanda.

Asylum of Refugees

The Refugee Convention of 1951 does not propose such right. However, the preamble of the

¹¹ The 1951 Refugee Convention (Art. 33(1))

¹² Convention Against Torture, Articles 2 and 6. Article 7 of the ICCPR (1966).

¹³ Cruz Varas and Others v. Sweden, Judgment of 20 March 1991, *available at*: <https://www.refworld.org/cases,ECHR,3ae6b6fe14.html> (Last visited 25 April 2022).

¹⁴ Refugee Protection: A Guide to International Refugee Law (Handbook for Parliamentarians)

is conferred by fundamental guarantees and principles of UDHR¹⁵ that ensures the refugees to be accorded by it. ¹⁶The one particular article of the UDHR talks about the right of the persecuted to enjoy the asylum in the host country. Despite this, Article 14 of UDHR does not talk about specific duty of state for commensurate obligation to accept a refugee. Following the Refugee Convention, regional instruments addressed the gap in the 1951 Convention and were more explicit in their acknowledgment of the principle of asylum.¹⁷

It is worth noting that UNHCR's concept of refuge mandate the state to provide at least temporary refuge to the person in case of large scale influx, but it does not mandate developed state to grant refuge to the developing state or assist them in such situation. Such situation gets limited towards the geographical limitation and becomes country's internal matter to handle.

THE STATES ROLES AND RESPONSIBILITIES FOR PROTECTION OF THE REFUGEES

In constructing, sustaining, and conserving state asylum systems and enduring solutions for refugees, the main pillars of the state i.e., executive, legislative, and judiciary have complementary tasks and obligations to fulfil. In these endeavours, regional and local governments play very important role. When a government signs and authorised the 1951 Convention or its 1967 Protocol, it becomes a sign of promises towards protecting refugees on its land and within its authority in accordance with the treaties' provisions. States have provided the rights to refugees as per their accordance of the international human rights commitments. Even if a state is a non-signatory, the state gets bound by the non-refoulement principle which is regarded as a standard of customary international law and practise and thus it applies to all non-signatories as well.

¹⁸International Cooperation

International cooperation is especially critical needed when underdeveloped countries putted into a situation where they are expected to raise the shelter for large influx of expatriates for extended time period without any adequate resources. ¹⁹Such massive influx of refugees for a

¹⁵ Universal Declaration of Human Rights- OHCHR, 1948, *available at*: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf (Last visited 22 April 2022).

¹⁶ Ibid, Article 14.

¹⁷ Introduction: Refugees and Asylum Seekers in the International Context – Rights and Realities, in Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives, 1-31

¹⁸ Executive Committee of the High Commissioner's Programme, *Conclusion of the Executive Committee on international cooperation from a protection and solutions perspective No. 112 (LXVII) 2016*, 6 October 2016, *available at*: <https://www.refworld.org/docid/57f7b5f74.html> (Last visited 18 April 2022).

¹⁹ Executive Committee, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) - 2004*, 8 October 2004, *available at*: <https://www.refworld.org/docid/41751fd82.html> (Last visited 18 April 2022).

long period situations put immense pressure on the host country and governments. In such situation other countries whether developed or developing can help the refugee hosting country in financial and technical assistance, as well as helping refugees in their resettlement initiatives such voluntary repatriation and voluntary citizenship.

Executive Committee of UNHCR has also distinguished and acknowledged some groups can be referred as vulnerable groups. After analysing the worldwide human rights criteria's, it has accepted three different UNHCR's Conclusions that provides a broader approach to the needs of the following: a) ²⁰Children; b) ²¹Women and girls; c) ²²Persons with disabilities; d) Other persons with specific needs.

Encouraging States for the Accession

The UNHCR's Inter-Parliamentary Union and Executive Committee have been again and again insisting to nations for accession to the 1951 Convention and its Protocol²³. It improves international assurance and liability when it comes to refuge, as well as signify assistance for the refugee protection which is fundamental core idea of international solidarity. However, the real admittance could be a problem for the local population because in situation of refugee influx, states typically provide temporary or permanent residence to them which can led to series of problems to the local population in terms of resources allocation. Even in many nations, refugees are required by law to apply for citizenship once a specified period of time has passed.

The 1951 Convention's protection isn't guaranteed to last indefinitely. It comes with stipulations attached. When the circumstances that made him a refugee cease, so does his refugee status²⁴. UNHCR focuses on motivating state legislators as well as increasing formal, legal status of refugee policy to tackle such difficulties. However, doing the hurriedness while

²⁰ Report: Executive Committee of the High Commissioner's Programme, *Conclusion on Children at Risk No. 107 (LVIII) - 2007*, 5 October 2007, available at: <https://www.refworld.org/docid/471897232.html> (Last visited 18 April 2022).

²¹ See, Executive Committee of the High Commissioner's Programme, *Conclusion on Women and Girls at Risk No. 105 (LVII) - 2006*, 6 October 2006, No. 105 (LVII); UNHCR Handbook for the Protection of Women and Girls, January 2008.

²² See, Executive Committee *Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR No. 110 (LXI) - 2010*; UNHCR, *Working with Persons with Disabilities in Forced Displacement*, 2011

²³ Executive Committee, *Conclusion on the Provision of International Protection Including Through Complementary Forms of Protection No. 103 (LVI) - 2005*, available at: <https://www.refworld.org/docid/43576e292.html> (Last visited 18 April 2022).

²⁴ UNHCR, *Providing for Protection: Assisting States with the assumption of responsibility for refugee status determination - A preliminary review*, March 2014, available at: <https://www.refworld.org/docid/53a160444.html> (Last visited 19 April 2022).

passing laws could have an adverse effect and the impact on state policy in the future.

Drafting Laws and Policies of the Nation

Several governments respects legislation or administrative actions to implement refugee protection principles, but special attention should be devoted to ensuring that these concepts are adequately included into the legal system. All of these areas of legislation have the potential to erode asylum seekers and refugee's rights, thus the state should proceed with prudence when proposing legislation and administrative matters relating to extradition, temporary or permanent nationality, expulsion, and penal laws. In practise, however, countries have prioritised strengthening immigration rules or addressing national security concerns.

The concept of refugee and cessation clause, under the 1951 Convention and its Protocol should be mirrored in national legislation, because the ²⁵cessation terms are fully listed, they should be included in national legislation as well. ²⁶The legislation should be including with special provisions for the relevant refugee treaties and regulations also the UNHCR assistance and supervisory provisions. The data provisions on the situations of refugee in any country, should be more accessible.

Basic Elements of National Refugee Legislation

²⁷National laws of countries should particularly inherit the protecting principles or the returning protection and principles of refugees and asylum seekers. ²⁸There should be no legal penalties imposed on expatriates who enters or reside in a nation with no prior approval. The law and authorities should be friendly plus responsive to the case and procedures if they declare their irregular arrival status.

²⁹Asylum-seekers are eligible for basic needs, living standards with a safe and dignified living environment and administration of fair asylum proceedings while they wait for a decision on their protection application. Such aids can be given to them by the state, agencies, and the refugee commissioners, including various legal, social and administrative advice like filling an asylum claim, basic nurturing supplies help such as food, clothes, housing, and medical

²⁵ See, Article 1C of the 1951 Convention and Article 1(4) of the 1969 OAU, constitute the criteria part known as cessation clauses.

²⁶ See, Article 35 1951 Convention; Article II 1967 Protocol; Article VIII 1969 OAU Convention

²⁷ Article 33 of the 1951 Convention

²⁸ Executive Committee 37th session, *Detention of Refugees and Asylum-Seekers No. 44 (XXXVII) - 1986*, 13 October 1986, available at: <https://www.refworld.org/docid/3ae68c43c0.html> (Last visited 18 April 2022).

²⁹ Executive Committee 32nd session, Conclusions No. 22 (XXXII) *Protection of asylum-seekers in situations of large-scale influx*, 1981 and 53rd session No. 93 (LIII) *Reception of asylum-seekers in the context of individual asylum systems*, 2002.

treatment, as well as various counselling's. After refugees get recognised,³⁰ they should be able to stay in a country legally with a legal status and thus the papers they receive should make this evident. Further the Both asylum seekers and refugees should be able to obtain identification documents under the current regulations of host. To ease the resettlement or voluntary return for such refugees they should also be handed with travel documents.

At last, it is critical to have such³¹ procedures in place that allow refugees to be self-sufficient while waiting for a long-term solution. To provide a statutory framework for ensuring refugees have more rights and alternatives, such as³² self-repatriation, resettlement, any other integration in the nation where they are seeking asylum, and that these rights are exercised in a secure and dignified manner. They can also benefit from countries policies without their status stopping them from participating in such schemes.

III. LEGAL STANDARDS AND INSTRUMENTS FOR PROTECTING ASYLUM-SEEKERS AND REFUGEES

International Legal Instruments of Rights

The International refugee law came from the 1951 Convention, the 1967 Protocol, and several international/regional laws, as it does not work in isolation. It is supplemented by other international instruments including law of war and criminal law. These legal systems are not chronologically linked while implementing, but they are interconnected. These Asylum seekers, immigrants also hold the set of rights like any citizen that States must respect, safeguard, and fulfil under international standards of law, along with the extra specific rights given to them as vulnerable group.

As discussed, the refugee conventions do not work in isolation, there are other human rights agreements that compliment to international refugee law such as the³³ Convention against Torture. This convention occupies a unique position in refugee law because any kind of torture and other types of inhumanity are defined in it and prohibited in it, also prohibits the forced repatriation of a person if it is reasonably believed that the person will be tortured. The convention holds the provision of non-refoulment with no exclusions, limits, or exceptions to

³⁰ See, Articles 27 & 28 of 1951 Convention; Executive Committee Conclusions No. 35 (XXXV) 1984; 49 (XXXVIII) 1987; 91 (LII) 2001; 114 (LXVIII) 2017.

³¹ Article 34, 1951 Convention.

³² Executive Committee 55th session, *Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees No. 101 (LV) – 2004*, available at: <https://www.refworld.org/docid/417527674.html> (Last visited 18 April 2022)

³³ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> (Last visited 18 April 2022).

this rule.

Likewise, there are additional non derogable convention such as ³⁴Rights of the Child. It applies to all refugee minor children. It lays out a set of fundamental rights for them, including protection from abuse and exploitation, ³⁵special family reunification, and ³⁶state responsibility where child has separated from the family whether temporarily or permanently as well as the ³⁷right of every child towards adequate safety and humanitarian assistance as per enumerated in the Convention.

There are several regional instruments accepted by states with the passing of time. The ³⁸OAU Convention and ³⁹Cartagena Declaration became the important ones signed by various countries that are relevant for refugee protection. In the same manner there were other regional instruments accepted time by time by different regions such as Middle East, Africa, Europe, America, North Africa, Asia, for the protecting other rights and refugee rights.

More Instruments of Human Rights

There are several important treaties of international human rights with their optional protocols which significantly protect refugees. Some of the major protection treaties that inherit the refugee law substances like, ⁴⁰ the rights and protection rights described are about to be enjoyed without discrimination, and practically each of its provisions is applicable to all those who live within the state's territory or is subject to the authority of the state. ⁴¹The other covenant establishes the concept of non-discrimination through its framework. There are protecting instruments for the asylum seekers and refugees who might face racial intolerance⁴². For the progressive kinds of discrimination against women, according to the ⁴³CEDAW it might constitute to persecution in the context of the 1951 Convention.

³⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> (Last visited 18 April 2022).

³⁵ Supra note 34, Art. 10

³⁶ Ibid, Art. 20

³⁷ Ibid, Art. 22

³⁸ Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, available at: <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html> (Last visited 22 April 2022).

³⁹ Cartagena Declaration on Refugees, 1984, available at: <https://www.refworld.org/docid/3ae6b36ec.html> (Last visited 22 April 2022).

⁴⁰ International Covenant on Civil and Political Rights, 16 December 1966, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> (Last visited 20 April 2022).

⁴¹ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> (Last visited 20 April 2022).

⁴² International Convention on the Elimination of All Forms of Racial Discrimination, 1965, available at: <https://www.refworld.org/docid/3ae6b3940.html> (Last visited 20 April 2022).

⁴³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979, available at: <https://www.refworld.org/docid/3ae6b3970.html> (Last visited 20 April 2022).

⁴⁴The States Parties are obliged to provide the safe and secure environment to the people with disabilities in dangerous situations such as armed conflict and humanitarian crisis. There is another convention that talks about the enforced disappearance of the person and makes it a punishable criminal act and it is prohibited.⁴⁵

IV. THE PRACTICE, THEORY, AND REGULATION OF REFUGEE MOVEMENT

International Standards and Principles for Protection of Refugee/Migrants

⁴⁶*Non-Refoulement Obligations and Scope*

⁴⁷The clause 2 of the article for non-refoulement itself specifies the only exceptions to it. The concept states that the removing refugee and the threat must be linked in a manner.⁴⁸If the refoulement is really happening its must be the final resort for removing the threat, and it necessarily has to be proportional, with the threat to the country or population and must surpass the harm to the refugee.⁴⁹Customarily, Refoulement is never authorised in any international law including human rights law as well. Some laws overlap to some extent when it comes to defining and then implementing to the scope of refugees like in the Convention against Torture. It overlaps with the refugee Convention plus Protocol in the aspect of the refugee's definition, the protection and the exception.

⁵⁰*Expulsion*

⁵¹The convention forbids expulsion implying that if any legally present refugee has to send back it should be allowed in only rare situation and the country where he/ she is exiled, should not put his/her life and freedom in jeopardy. As previously stated, the host country's non-refoulement responsibilities apply under ⁵²Article 33 and international human rights law.

⁴⁴ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 2006, available at: <https://www.refworld.org/docid/4680cd212.html> (Last visited 20 April 2022).

⁴⁵ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 2006, available at: <https://www.refworld.org/docid/47fdfaeb0.html> (Last visited 20 April 2022).

⁴⁶ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 2007, available at: <https://www.refworld.org/docid/45f17a1a4.html> (Last visited 18 April 2022).

⁴⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 1951, United Nations, Treaty Series, vol. 189, p. 176, available at: <https://www.refworld.org/docid/3be01b964.html> (Last visited 19 April 2022).

⁴⁸ UNHCR, *Guidance Note on safeguards against unlawful or irregular removal of refugees and asylum-seekers*, January 2014, available at: <https://www.refworld.org/docid/530afbd84.html> (Last visited 18 April 2022).

⁴⁹ The principle of non-refoulement under international human rights law, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (Last visited 23 April 2022).

⁵⁰ Resolution adopted unanimously by the 133rd IPU Assembly (Geneva, 2015), available at: <http://archive.ipu.org/conf-e/133/Res-emrg.htm> (Last visited 18 April 2022).

⁵¹ Supra note 47, pg. 175

⁵² Supra note 47

These Expulsion measures should be adopted only after proper consideration of international human rights standards and with due regard by the State obligations. However, for the person is in need for an international protection, any prior expulsion order issued against him has to be automatically revoked.

International Transport and Cross Boarder Movements of Refugee

There are benefits and drawbacks to cross-border transportation. People escaping war or armed conflict frequently perish while attempting to cross borders securely. States are increasingly concerned about irregular migration, which occurs when people cross national borders without permission or identity documents. In theory, no nation is required to accept foreigners in their territory. The sovereignty and right to determine allows the states to decide the conditions and rules under which they want to allow alien people into their territory, but states are essentially needed to uphold the principle of non-refoulement as an exception to this rule. And they cannot return anyone to a place where the life, freedom and integrity would be risked under this concept⁵³.

Today's border management system is exceedingly complicated in the actual world. On every continent, irregular migrations take place. As a result, competent border management is critical in assisting nations in limiting admission and enforcing state's international refugee protection regulations, as well as creating a responsible framework to deal with war, terrorism and crimes against humanity.

Movements by sea

The individuals or the asylum seekers keep moving for a variety of reasons for embarking on dangerous sea excursions around the world. Human smugglers or traffickers generally organise trips aboard overloaded vessels with inexperienced crews and navigation systems.

⁵⁴The UNHCR's recognized guidelines and safety principles seek to help States in reducing maritime deaths, preventing exploitation, violence, and establishing safeguards responses.

⁵⁵The UNHCR Dialogue resulted in a broad consensus that unilateral or deterrent action by the states is not adequate to deal with this phenomena because it would exacerbate the dangers by pushing smugglers and traffickers to employ increasingly dangerous routes and forms of

⁵³ Inter-Parliamentary Union, *Migration, human rights, and governance, 2015, Handbook for Parliamentarians N° 24*, available at: <https://www.refworld.org/docid/57b6e1697.html> (Last visited 18 April 2022).

⁵⁴ UNHCR, *Global Initiative on Protection at Sea*, 1 May 2014, available at: <https://www.refworld.org/docid/53abd14d4.html> (Last visited 18 April 2022).

⁵⁵ High Commissioner's Dialogue on Protection Challenges, 2014 Protection at Sea, available at: <https://www.unhcr.org/pages/5357caed6.html> (visited on 18 April 2022).

transit.

State responsibility and duties

States own a duty to stop any person from entering into the borders who plans and intent to do any terrorist action in the territory⁵⁶. And sometimes such restrictive action and policies can also be restrictive towards immigrants who mostly arrive during times of crisis. Such restrictions at the time may only divert traffic to other routes, aggravating the humanitarian situation and helping human smugglers and traffickers expand their operations. The international refugee instrument recognises as well as distinguish such refugees people who are fleeing from persecution and conflict, including, terrorist activities, and contemplate their expulsion from refugee status⁵⁷.

And whenever a state responsibility arises for determining refugee status, it can implement checkpoints and investigations to ensure that the application is thorough. The process entails cooperation in the state with various administration levels. The various checkpoints from the borders to the immigration authorities and it sometimes includes foreign state cooperation as well like the embassies and international police.

The framers of the refugee convention included a number of provisions to allow states to address security measures correctly, such as the fact that ⁵⁸it is only applicable to those people who are escaping persecution, not to who are trying to avoid it and that ⁵⁹states are required to deport refugees who threaten public order or national security for procedural safeguards.

Safeguard Practices, Facilities, and Specific Needs for Protection

Interception at sea

A lot of countries use transboundary activities to prevent unwanted entry and see the high seas as an area where their immigration control methods can be extended. If countries have reasonable grounds to think that sea boats are transporting persons in contravention of the law of the sea, they utilise interception at sea to take control. All of this results in reduce the levels of fundamental rights and protection available to passengers seeking their journey, particularly for the refuge evacuees.

⁵⁶ See, UN Security Council, *Security Council resolution 1624 (2005) on threats to international peace and security*, 14 September 2005; UNHCR, *Addressing Security Concerns Without Undermining Refugee Protection - UNHCR's Perspective*, 17 December 2015, Rev.2, (Last visited 18 April 2022).

⁵⁷ Article 1F, 1951 of the Convention sets out the grounds for exclusion from refugee status, if involvement in certain serious crimes or acts.

⁵⁸ The refugee definition, Convention Relating to the Status of Refugees, 28 July 1951, *available at*: <https://www.refworld.org/docid/3be01b964.html> (Last visited 19 April 2022).

⁵⁹ *Supra* note 47

⁶⁰States are liable to take proactive steps to guarantee that people apprehended at sea receive protection. Various ⁶¹UNHCR's Executive Committee Conclusions, International Maritime Organization principles and resolutions have established rules and regulatory measures for ⁶²disembarking people who are rescued at sea, as well as ⁶³guidance on their treatment. Migrating people often refugees who travel in this manner are typically part of larger migratory movements and they think its safer than accepting refugee in any one country⁶⁴. Such people can also be the one who are party to war and conflicts.

⁶⁵Rescuing the people from sea is a complicated responsibility as it involves a specific regime of law which has different roles and responsibility. The main effort lies when states have to oblige with more than two different laws at a time for the protection of the refugees and regulating their disembarkation without violating their human rights and non-refoulement principle. And after individuals were rescued, getting the commitment of States to their disembarkation in a safe location where they will not be refouled can be difficult.

Anti-Trafficking and Smuggling

⁶⁶One convention focused on the risk of being trafficked and sexually exploited has been established by the United Nations. ⁶⁷Both of its protocols highlight that its rules have no bearing on individual rights or State responsibility under the Refugee Convention or Protocol, and the non-refoulement principle. States are required to criminalise smugglers, traffickers relevant conduct by establishing and implementing domestic law enforcement procedures and improve prohibition and punishment of these acts.

The state legislation and policy makers are encouraged to address the criminality of this issue in the way applicable in international law and making strong laws for smuggling of migrants and trafficking while encouraging the use of the correct obligations and policies application⁶⁸.

⁶⁰ Executive Committee, *Conclusion on Protection Safeguards in Interception Measures No. 97 (LIV) - 2003*, 10 October 2003, No. 97 (LIV), available at: <https://www.refworld.org/docid/3f93b2894.html> (Last visited 18 April 2022).

⁶¹ UNHCR Executive Committee, 2003

⁶² IMO, 2009

⁶³ IMO, 2004

⁶⁴ Discussion paper prepared for the Expert Roundtable on Onward Movement of Asylum-Seekers and Refugees, Graduate Institute of International and Development Studies, UNHCR, Geneva, October 2015.

⁶⁵ See, United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search and Rescue.

⁶⁶ The United Nations Convention against Transnational Organized Crime, available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (Last visited 23 April 2022).

⁶⁷ United Nations Convention against Transnational Organized Crime and the Protocols Thereto, available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (Last visited 23 April 2022).

⁶⁸ UN Office on Drugs and Crime (UNODC), *Combating Trafficking in Persons: A Handbook for Parliamentarians*, March 2009, available at: <https://www.refworld.org/docid/49ed7c0f2.html> [accessed 18 April 2022].

Receiving And Treatment of Refugees and Asylum Seekers

Situation of Mass Influx

⁶⁹The UNHCR Executive Committee has recognised the difficulties that arise from heavy mass influx situations and has issued recommendations on ways and criteria of treatment with the help from all over world with cooperation and burden sharing. The importance of refugee protection is emphasised in the recommendations which include the refugee's right to pursue asylum, human rights monitoring, and family unity⁷⁰.

⁷¹*Guiding principles for reception and treatment*

The convention and protocol of refugee does not lay down the requirements for reception. Despite that the laws and regulatory elements of the convention such as access to courts, protection, non-discrimination, applies to them⁷².

⁷³Asylum seekers registration and the furnishing of personal papers are key safeguards. It helps to assure protection from forced repatriation by giving confirmation of identity and status. The authorities should need to give instructions on this obligations of this rule and assigned the staff at land borders, air/seaports, railways, and into the local departments and organisations. The right to freedom of movement should typically be prevented to apply.

⁷⁴Detention is permissible, but only when it serves a valid purpose and is proven to be necessary and reasonable in each circumstance.

State practice to Asylum

⁷⁵The right to asylum is differently recognised in various countries. Countries have different recognition is acknowledging refugee and providing asylum to them. Some countries constitution allows them to make rules on individual protection as a seeker, while some do not expressly include such right. Some constitution believes that the right to pursue asylum is only limited to those who are facing persecution. And some legal systems include this concept as a

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⁶⁹ Executive Committee, *Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) - 1981*, available at: <https://www.refworld.org/docid/3ae68c6e10.html> [accessed 19 April 2022]

⁷⁰ See, Conclusion on International Protection No. 85 (XLIX) - 1998, available at: <https://www.refworld.org/docid/3ae68c6e30.html> [accessed 19 April 2022].

⁷¹ Executive Committee of the High Commissioner's Programme, *Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) - 2002*, 8 October 2002,

⁷² Ibid.

⁷³ Executive Committee 52nd session, *Conclusion on Registration of Refugees and Asylum-seekers No. 91 (LII) - 2001*, 5 October 2001

⁷⁴ Detention of Refugees and Asylum-Seekers No. 44 (XXXVII) - 1986, available at: <https://www.refworld.org/docid/3ae68c43c0.html> (last visited 18 April 2022).

⁷⁵ See, Inter-Parliamentary Union, *International Humanitarian Law*, 2016, Handbook for Parliamentarians N° 28-29, available at: <https://www.refworld.org/docid/583553aa4.html> (last visited 18 April 2022).

wholly concept including 1951 convention and other instruments including customary law obligation.

The law of war and criminal law

⁷⁶Also known as law of armed conflict, mostly managed by Geneva Conventions and its Additional Protocols and make up part of humanitarian law. It aims on those who are no longer taking part in the hostilities. It is a field of law that is binding on the parties of armed group which precludes complexity between human rights law and refugee law. The greatest violations in this law are regarded as war crimes. Persons with serious reasons to believe be guilty of war crimes must be denied refugee status⁷⁷.

The field is intended to make it illegal to engage in gravest crimes. The ⁷⁸Rome Statute has been in effect since 2002 and specifies the jurisdiction over ⁷⁹various crimes. As a result, the Rome Statute is relevant in deciding what criminal activities may result in a person's exclusion from refugee status.

Sources of Law and Guidance

⁸⁰The country's policy makers play a huge role in balancing out debates for accession of any law. They have capacity to promote the constituents for promoting refugee law. The government should promote to do so for refugee's rights and protection. If the country has already signatory to the law, then special efforts should be made to expand the definitions and implementation efficiency as well as with the supporting human rights instruments that are relevant with it. They may even ask questions about the policies and legislations. While adoption of refugee legislation and establishing State asylum systems parliamentarians can implement international standards after studying the various guidelines and conclusions report issued by UNHCR's. ⁸¹Protocols are vital source for securing and protection refugee and states should accede to these instruments.

⁷⁶ The Geneva Conventions of 1949 and their Additional Protocols, ICRC, *available at*: <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols> (last visited 20 April 2022).

⁷⁷ Article 1F, Refugee Convention 1951.

⁷⁸ ICC, About the Court, *available at*: <https://www.icc-cpi.int/about/the-court#:~:text=%E2%80%8BThe%20International%20Criminal%20Court,and%20the%20crime%20of%20aggression>. (Last visited 21 April 2022).

⁷⁹ Rome Statute of the International Criminal Court, *available at*: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (last visited 20 April 2022).

⁸⁰ Refugee Protection: A Guide to International Refugee Law (Handbook for Parliamentarians) pg.21 (Last visited 15 April 2022).

⁸¹ Pledges 2011 - Ministerial Intergovernmental Event on Refugees and Stateless Persons, *available at*: <https://www.refworld.org/pdfid/50aca6112.pdf> (last visited 18 April 2022).

V. ROHINGYA'S AND REFUGEE ISSUE

The Rohingya is an ethnic minority from Myanmar. They are one of the world's most oppressed community of people. They speak a dialect of Bengali known as Chittagonian, which is widely spoken in Bangladesh's south-eastern region⁸². The Rohingyas are essentially known as a friendless community amongst the other cultural, lingual and religious communities of Myanmar. ⁸³Myanmar's Rohingyas had faced numerous forms of exploitation and still is the one community that is currently facing persecution, discrimination in addition to being stateless.

They lacked historical and permanent recognition since the time country gained independence in 1947. ⁸⁴The 1982 Citizenship Act established categories of citizens according to the new improvised law. The Rohingyas do not meet any of these three conditions and were thus removed from all citizenship categories, leaving them under the status of stateless, homeless and aliens and got declared as illegal migrants in their own nation. As a result of this persecution, a considerable number of Rohingyas have fled Myanmar and settled in other countries. ⁸⁵They were expected to be in Bangladesh, the Gulf States, Pakistan, Thailand, and Malaysia, with some remaining in north of Rakhine region and other parts of Myanmar, according to the UNHCR.

Threat to Bangladesh Economy

⁸⁶It can rather be believed that Rohingya's there has a security concern for the Bangla territory and government. Such level of large refugee influx into Bangladesh territory for over twenty years had a catastrophic outcome over every aspect of democracy from social to economic stability. Due to the pressure levied by refugees the common Bangladeshi citizen suffered the lack of opportunities and resources prompting the citizens to seek better living conditions in the outside world.

⁸⁷Rohingya refugees into territory are found out as a threat to the safety and defence for Bangladesh. From almost every dimensions threat caused by the Rohingyas in the state

⁸² Azeem Ibrahim, *The Rohingyas Inside Myanmar's Hidden Genocide*, (Hurst & Company, London, 2016).

⁸³ States of denial, A review of UNHCR's response to the protracted situation of stateless Rohingya refugees in Bangladesh, PDES, Geneva, 2011, pg. 7, available at: <https://www.unhcr.org/4ee754c19.pdf> (Last visited 17 April 2022).

⁸⁴ Hassan Faruk Al Imran, *et.al.*, The Rohingya Refugees in Bangladesh: A Vulnerable Group in Law and Policy, *JSSSH Journal of Studies in Social Sciences*, Volume 8, Number 2, 2014, 235-236.

⁸⁵ Supra note 83

⁸⁶ supra note 84, pg. 243-244.

⁸⁷ Imtiaz Ahamed (ed.), *The Plight of the Stateless Rohingyas*, The University Press Ltd, Bangladesh, 2010, pg. 62-77 available at: https://www.academia.edu/24562584/State_of_Stateless_People_The_Pligh_of_Rohingya_Refugees_in_Bangladesh (Last visited 17 April 2022).

economy, namely, Political, Military, Economic, Social and Environmental. The country in the recent time has faced criticism for poorly handling the crisis and not allowing refugees into their territory. But if rationally viewed it did not produce that refugee influx and did not violate⁸⁸ Article 33 (2) principle by denying the Rohingyas entry into the country; rather, the state prioritised its self-assurance and security. Other countries affected by the same crisis such as Thailand and Malaysia also have treated the Rohingya in the same way. This situation has not received the support from other countries and the principles that we have studied under whole refugee law did not apply.

Different Gaps in Laws and Applicability

Legal Gaps

The country follows the provisions of municipal and domestic laws into the territory rather than customary international law. It has not signed the refugee convention and its protocol and it's having a weak scope there. It is foremost necessary for the Bangladesh government to develop a strong law dealing with refugee or immigration issue. The only signatory towards the refugee convention will not going to solves the crisis. As we have in detailed discussed the implication of refugee law is not standalone, it takes other conventions and treaties as well for a better implementation.

The country was having not any law to deal with the issue instead it signed a MoU with UNHCR to legally be helping the country to deal with the issue⁸⁹. With regard to it different agencies and the red cross society were helped the Bangladeshi government in aid and management of the situation of influx⁹⁰. And Bangladeshi government granted refugee status to the thousands of Rohingyas⁹¹. Thousands of Rohingyas have also landed in Bangladesh, where they have been permitted to freely interact with the local population.

⁹²There are still unregistered/unlisted countless refugees living within its borders that required proper census of population index. Bangladesh required to seek settling arrangements with its neighbouring countries including Asia, to deal with the refugee influx. It is the high time for Myanmar to deal with the issue of Rohingya's situation which Bangladesh has been dealing

⁸⁸ The 1951 Refugee Convention (Art. 33(2)).

⁸⁹ Report: *10 Years for The Rohingya Refugees in Bangladesh: Past, Present and Future* (Médecins Sans Frontières-Holland, March 2002) available at: <https://www.msf.org/sites/default/files/2018-08/ten-years-for-the-rohingya-refugees-past-present-and-future.pdf> (Last visited 17 April 2022).

⁹⁰ Bina D'Costa, "Rohingyas and the 'Right to Have Rights'," *The Daily Star, Forum*, Volume 6, Issue 8, Aug. 2012. available at: <https://archive.thedailystar.net/forum/2012/August/rohingyas.htm> (Last visited 17 April 2022).

⁹¹ Udatta Bikash "Rohingya refugees" *The Daily Star*, Mar 2, 2008.

⁹² Mirza Sadaqat Huda, "The Rohingya Refugee Crisis of 2012: Asserting the Need for Constructive Regional & International Engagement" *SAJ*, Issue 7 (2013).

for past twenty years with no evident support and benefits.

Application Gaps

⁹³The UNHCR noted in the year 2012 that the universal application of refugee protection is weakened. As its application is lacking in the world.

One of the major application gap was filled by 1967 protocol concerning over geographical and temporal scope of the refugee convention, which was certainly missing from the 1951 convention. Today the application gap lies to countries who had not ratified the convention and indicates its non-applicability. The major portion of non-state parties are located in underdeveloped countries; hence their applicability varies significantly by region. That created a global threat to severe human right violations and refugee crisis as almost forty percent of population affected by influx are under UNHCR's mandate and hosted by them. ⁹⁴The major portion included the Asia and Middle East countries. With the time, and struggle of committees and general assembly efforts, the number of state parties increased. The regional refugee instruments⁹⁵ parallel with regional human rights laws and international community helped and filled the gaps of the non-applicability of refugee instruments. The state parties through regional and international instruments recognised the non-refoulment as a part of customary international law.

Implementation Gaps

⁹⁶The UNHCR Statute, ⁹⁷Some articles of the Convention and Protocol reflects the supervisory obligation of the UNHCR. It directly supervises the treaties, conventions, regional instruments related to the refugees. These articles implement a responsibility upon UNHCR to maintain and fill the gaps of interpretation of various instruments and supervise them. ⁹⁸Countries are obliged to cooperate with UNHCR while implementing instruments, giving judicial decisions as sometimes UNHCR itself is directly engaged with many countries for verifying procedures

⁹³ The State of the World's Refugees: In Search of Solidarity, *available at*: <https://www.unhcr.org/publications/sowr/4fc5ceca9/state-worlds-refugees-2012-search-solidarity.html>

⁹⁴ Refugee Protection: A Guide to International Refugee Law (Handbook for Parliamentarians) 21 (Last visited 15 April 2022).

⁹⁵ See, the OAU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969, the Cartagena Declaration on Refugees, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, Brazil Declaration and Plan of Action, 2014, Ashgabat Declaration, 2012.

⁹⁶ Statute of the Office of The United Nations High Commissioner for Refugees, pg. 11, *available at*: <https://www.unhcr.org/4d944e589.pdf> (Last visited 20 April 2022).

⁹⁷ Articles 35 and 36 of the 1951 Convention; Article II of the 1967 Protocol

⁹⁸ Volker Türk and Rebecca Dowd, Protection Gaps, *The Oxford Handbook of Refugee and Forced Migration Studies*, 2014, *available at*: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-024?print=pdf> (Last visited 15 April 2022).

and national decisions makings. The Convention and Protocol protected those who flee variety of risks in their home countries over the past sixty years. People who have dreaded the persecution by non-state actors. examples are draft evaders, victims of trafficking, victims of organized gangs and urban warfare,⁹⁹ people fear persecution on gender identity.

¹⁰⁰There are several gaps in nations fulfilment of their commitments to recognised 1951 Convention refugees, and the level of protecting measures implemented in the laws differs from state to state. There are many states who have signed the convention but have not fully implemented it in their domestic legislation or do not always follow through. Blocking the entry of refugees through borders or sea area widens a distinct gap in application regime. The country's strict laws on the entry and exits from sea area, border controls, strict immigration and visa policies set up as a push back to the non-refoulement principle prevent the entrances.

¹⁰¹The refugees endure the gap of implementing fundamental rights of proper sanitation, health and food. These problems can be traced back to a state's legal framework which propagate or fail to acknowledge specific forms of discrimination and promote lack of resources or capacity, and political unwillingness to protect and aid such population suffering atrocities. They frequently lack conveniences arises at the time of functional concerns like when refugees face the language barriers, expenses, denied request of the entry, policymakers who are oblivious to such situation and try to get escaped from their specific requirements. ¹⁰²The UNHCR supervise the role of obligation towards the stateless, refugee seekers and asylum seekers. It plays an important part complying the standards of international law which ensures the protection laws are applied in a righteous manner.

Regulation Gaps

The Convention's most uniform implementation nonetheless excludes a significant proportion of forcefully displaced individuals who had a legitimate need for protection. The condition also frequently excludes those who are on global indiscriminate distress or fears that are not man-made and is the principal barrier to receiving 1951 Convention protection. The regulation gap can also be seen during the time when person leave their country and are outside the borders of country of their origin. The implementation weakens there as it creates situations of human

⁹⁹ See, UNHCR, The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees, Summary Conclusions: Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity, Geneva, 30 September - 1 October 2010.

¹⁰⁰ Supra note 98

¹⁰¹ *ibid*

¹⁰² UNHCR Executive Committee Conclusions No. 22 (XXXII) and No. 28 (XXXIII), *available at*: <https://www.unhcr.org/en-my/578371524.pdf> (Last visited 15 April 2022).

rights violations, deprivations, assault and exploitation for the displaced migrants. The situations in which people get displaced due to natural environmental disasters, the various initiatives at the international, regional level are implemented to fill the regulation gaps. The national legislation provides temporary residence status or residence permits in such cases¹⁰³. As well as for regional instruments there are adoption of specific instruments like Cartagena Declaration in Latin America, 1984; OAU Refugee Convention in Africa, 1969.

There are existing laws dealing with refoulement, that have scope for the protection of certain people, but they do not sufficiently grant the rights to refugee to stay on the territory and legal status not even temporary stay. The 1951 Convention is still lacking in frameworks for dealing with some of the significant safeguard issues that states, and vulnerable community has faced for years, in the situations of large-scale influxes, sea protection, and secondary refugee movements.

¹⁰⁴The UNHCR's Protection Framework recognised the complexity of large scale population displacement. Such influx that occurs from without forceful displacements and includes people fleeing from protection of their safety and their family. The reasons when people choose to flee includes ethnic, environmental, war, poverty, state failure to recognise the rights and duties etc. Such processes are complex to handle, and international community should address the root cause primarily. It established a role and responsibility in addressing particular situation of refugees. There have been several recommendations made to fulfil the protection gaps that including the development of regulatory frameworks. The committee recommended the strengthening of countries in terms of handling crisis. The responsibility sharing and providing temporary protections as discussed above.

¹⁰⁵In the last years there has been lots of efforts made to fulfil the gaps of refugee protection laws. It is the high time now that states and parliamentarians understand the issue with contemporary challenges and make solid agreements to fulfil these gaps. The UNHCR's and other actors should clarify the types of displacement that will not fall under the ambit of refugee framework. The laws should be introduced, amend and implement in a manner that its scope gets clearly defined.

¹⁰³ See, s. 244(b)(1)(B)(i) of Immigration and Nationality Act, United States of America; s. 230(1)(b) of Immigration and Refugee Protection Regulations; Articles 2 and 3 of Temporary Protection of Aliens of Czech Republic; s. 88a of Aliens Act, Finland.

¹⁰⁴ UNHCR Executive Committee Conclusions No. 80 (XLVII) 1996, *available at*: <https://www.unhcr.org/en-my/578371524.pdf> (Last visited 16 April 2022).

¹⁰⁵ *Supra* note 98

VI. SAFETY RESOLUTIONS: PROTECTION AND SOLUTIONS

UNGA's Resolution 1950, Annex, para.1 seeks to resolve the problem of refugee with permanent solutions.¹⁰⁶ But ultimately the refugee framework and law cannot pursue to let refugees forever as refugee in third state. The common practices such as resettlement, repatriation, local asylum, in other states. The essential nature of repatriation based on voluntariness should be respected and people shall be sent back forcefully without their will¹⁰⁷. For voluntary repatriation activities, there has been guidelines set out by UNHCR¹⁰⁸. It includes the general rule of safety and monitoring their returns.

¹⁰⁹Resettlement and Local Integration

Resettlements achieve a number of goals as it provides a long term solution to refugee who flee their country and cannot return back in their nations. It even helps to find the refugee a second home if they are repatriated to the country where their life and rights are in violation and in danger. It attempts to provide basic protective standard. Another purpose is to reduce the load on receiving nations by aiding them in rebuilding their strong connections with the origin country and promoting international cooperation at times in a political way.

The practical implementation of asylum law and settling the refugee in the is local territory is the integration. The local population and the acceptance of the residence in the local community where the refugee first settles. Signatory states are obligated with the convention and non-signatory with the customary law of non-refoulement but still state uphold the autonomy to decide the entry and exit of refugee or the local integration of them into their territory with local people. It holds the supreme sovereignty when it comes to implement such laws.¹¹⁰ The UNHCR Executive Committee emphasised this point in its Conclusion.

Refugees and Human rights

As we understood the application of the refugee's law is not alone possible. Various human rights instruments and customary principles works in parallel. Implementing such way helps in making rules of substantive to procedural laws. Because State owns a duty to protect the violation of rights whether it is their local population or the refuge population. This is the whole

¹⁰⁶ Guy S. Goodwin-Gill, *The International Law of Refugee Protection*, *The Oxford Handbook of Refugee and Forced Migration Studies*, 2014 available at: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021?print=pdf> (Last visited 16 April 2022).

¹⁰⁷ See, Article 5(1) OAU Convention, 1969.

¹⁰⁸ Executive Committee Conclusion No. 40, 1985; Executive Committee Conclusion No. 101, 2004.

¹⁰⁹ Solutions for refugees, the 10-Point Plan UNHCR, available at: <https://www.unhcr.org/50a4c17f9.pdf> (Last visited 16 April 2022).

¹¹⁰ Conclusion on Local Integration No. 104 (LVI) – 2005, available at: <https://www.unhcr.org/excom/exconc/4357a91b2/conclusion-local-integration.html> (Last visited 16 April 2022).

idea of the human rights law that it does not discriminate. In this case, regional laws, practices, custom are important in ensuring that international laws are followed.

¹¹¹UNHCR has increased its cooperation with all human rights instruments including regional ones. Also incorporated various principles from it, into its work in recent decades, including legal rehabilitation, capacity building, policy reform, and legal enforcement mechanisms, humanitarian assistance to displaced persons.

Temporary Protection

¹¹²When individual status determination is impossible or inapplicable, interim protection regimes allow those seeking asylum to be admitted to host countries. Until permanent solutions are available, a temporary framework for protection provides bare fulfilment of necessary capacities in compliance with human rights and humanitarian relief. States could be able to allow temporary protection to all Persons Fleeing wars and international conflicts under a structured protection system by introducing temporary protection schemes. This includes both people who might and might not be protected under the 1951 Convention.

¹¹³Temporary protection can save money, time, and manpower while also ensuring the physical safety and emergency needs of those who are receiving protection. Burden-sharing techniques can be included to improve the level of safeguard at the time of a large influx.

Because in major influxes, the method of burden sharing can be held more profitable in every aspect. As it reduces the burden from one country's resources, and it helps in preparedness to deal with such issue amongst the whole international community in a single time. During a massive influx, the problems and absence of burden sharing that the first asylum nations experience influence the protection criteria that state can provide. The whole idea of temporary protection shows that it has scope to fill the gaps that is left out by countries while applying the refugee law and human rights law, it also covers the protection of Person Fleeing in Armed Conflict. The various gaps that we had discussed, and this concept establishes a possibility for implementing this in situations of large influx.

¹¹⁴Temporary protection systems, it was suggested, weaken the 1951 Convention by offering

¹¹¹ B.C. Nirma, Refugees and Human Rights, *ISILYBIHRL* 6 (2001), available at: <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/6.html#FootnoteB71> (Last visited 16 April 2022).

¹¹² UNHCR, Roundtable on Temporary Protection: Summary Conclusions on Temporary Protection, IJHL, San Remo, Italy, 20 July 2012, available at: <https://www.refworld.org/docid/506d908a2.html> (Last visited 17 April 2022).

¹¹³ Jean-Pierre Gauci, Mariagiulia Giuffr , & Evangelia (Lilian) Tsourdi, *Exploring the Boundaries of Refugee Law: Current Protection Challenges*, Pg. 197-217, Brill, Nijhoff (2015).

¹¹⁴ Guidelines on Temporary Protection or Stay Arrangements, 2014 available at: <https://www.unhcr.org/protection/expert/5304b71c9/guidelines-temporary-protection-stay-arrangements.html>

refugees fewer rights than they currently have. It has also been suggested that the protection system can be used as a pretext for states to carry out forcible repatriation. These objections fail to take into consideration the 1951 Convention's inherent protection deficiencies. Because, in an ideal circumstance, when a large influx of refugees occurs, host countries should be required to accept every single person as a refugee who deserves the right, as well as without compromising the set of rights guaranteed by the 1951 agreement.

Though, ¹¹⁵most states that utilise non entry policies in mass influx situations are powerful countries that had not signed the convention for refugee protection and other human rights treaties that include non-refoulement guarantees. And in this scenario the very first step of protection i.e., admittance to host countries for people seeking asylum in huge influx situations, becomes difficult to achieve.

VII. CONCLUSION

Over the years, the United Nations and its refugee commission has been increasingly offered the safety and aid in countries with ongoing war. Today, UNHCR is involved in practically every complicated emergency that the UN system responds to. It is no longer feasible to agree only to the 1951 Convention, due to the definitions' time limitations. States must, however, make official declarations on geographical scope and other supporting documents in order to close the gaps that arise throughout the implementation of the Convention.

With all of the legislative relevance we've mentioned, one thing is clear: the states are the ones who are accountable for not include refugees in the main legislation. The refugee legislation may include numerous flaws and weaknesses, as well as areas where it has not yet reached, but nations who have not signed the instruments have no place in the debate of such an emergent current issue. And it is the same nation that is experiencing refugee influx. In this circumstance, UNHCR may aid and assist those nations, but only until and until they have robust legislation in place to deal with the issue. There are several gaps in the implementation of activities that the UNHCR or any NGO cannot aid or reach, such as the genuine data chart of the total number of refugees, support provided by other countries, protection and implementation of different rights, extraction and citizenship rights. These rules will not be enforced until governments ratify the treaties, and they arrive at a time in international history when other institutions are

(Last visited 17 April 2022).

¹¹⁵ Gammeltoft-Hansen, Thomas and Hathaway, James C., "Non-Refoulement in a World of Cooperative Deterrence" (2014). *Law & Economics Working Papers*. 106, *available at*: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1216&context=law_econ_current (Last visited 17 April 2022).

also obligated to support them.
