

## THE HUMAN RIGHTS AND REFUGEE CRISIS: ANALYZING THE INTERNATIONAL LAW AND POLITICAL FORTITUDE

SARIKA J. SAGAR \*

In the last two years world witnessed the biggest humanitarian and refugee crisis in the history of mankind. The civil war and violence by a radical militant group in Syria has led to a disgraceful humanitarian calamity with suffering and displacement unparalleled in recent history. About 4.8 million people flee from the country to take refuge in neighboring states<sup>1</sup> for an untimed return to their land. But the frequent series of violence and human rights violations in many parts of the world has generated more displacement situations and raised serious concern to relook into the international provisions for refugees and the political will of the world nations to cooperate and share burdens of such mass exodus. The changing nature of armed conflict and displacement has created serious angsts about “uncontrolled” migration, in this era of globalization wherein the protection of human rights has to be realized largely. Asylum countries in many parts of the world are concerned about the lack of resolution of certain long-standing refugee problems, irregular migration, an apparent imbalance in burden- and responsibility-sharing amongst the states, and increasing costs of hosting refugees and asylum-seekers that need to be addressed.

According to the *1951 Convention relating to the Status of Refugees*, a refugee is someone who has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group, or political opinion; is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.<sup>2</sup> This definition was limited to include refugees as a result of events occurring in Europe or elsewhere before 1 January 1951. As new refugee crises emerged during the late 1950s and early 1960s, a Protocol to the Convention was drafted and adopted in the year 1967.

Further in 1984, a conference of Latin American government representatives and distinguished jurists adopted the *Cartagena Declaration* that defined refugees as “*persons who flee their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order*”.

These definitions makes it clear that granting asylum is a humanitarian act. Now the word “asylum” is not defined in international law; but it has become a parasol term for the total protection provided by a country to refugees on its territory. Asylum means, basic protection, i.e., no forcible return (*refoulement*) to the frontiers of territories where the refugee’s life or freedom would be threatened - for a temporary period, with the possibility of staying in the host country until a solution outside that country can be found.

The *1951 convention provides for two kinds of refugee categories namely- firstly, Mandate refugees* are persons considered by UNHCR to be refugees according to its Statute or under the broader mandate given by the General Assembly. UNHCR’s determination of refugee status is not dependent upon the country of asylum being party to the Refugee Convention or Protocol. Secondly, *Convention refugees* are persons recognized as refugees by the authorities of States that have acceded to the Convention and Protocol. As such, they are entitled to claim the rights and benefits that those States have agreed to accord to refugees.

Etymologically speaking, the word refugee is linked to the Latin word *refugium*, which

means “*refuge*” or “*to flee back*”, from *re* as “back” and “*fugere*” meant “*to flee*”<sup>3</sup>. As for the word *asylum*, it is originally derived from the Greek word “*a*” meaning “not”, and “*sulon*” meaning “*right of pillage*” together it referred to a place where pillage was forbidden<sup>4</sup>. In ancient times, this related to protecting or helping those who sought refuge to escape from danger. For early societies, the idea of protecting refugees and offering them *asylum* was seen as an essential condition of well-being.<sup>5</sup> Sanctuary or refuge evolved into becoming a place of protection for absconders who enjoyed immunity from punishment, violence or persecution. Consequently, medieval churches were converted into *sanctuaries*, “*shrines*”, or sacred places<sup>6</sup>, for those in need of protection. The right of *sanctuary* was first codified by king Ethelbert of Kent who “drew up the earliest known Anglo-Saxon code of laws, and in the first of these laws he provided that the violation of the church (gryth) was to be punished by a penalty twice of that exacted for an ordinary breach of peace (fryth)”<sup>7</sup>. Gradually the religious *asylum* were substituted by state *asylum*.<sup>8</sup> This first reference to the right of sanctuary evolved into today’s *right to asylum*. The sovereign States offered refuge to people who by any reason, were persecuted by their own State. Thus, the concept of territorial *asylum* could be traced back to the 1648 Treaty of Westphalia which recognized the sovereignty<sup>9</sup> of States within their territories.

In the modern history of Europe, two types of refugees are notable: religious and political refugees who fled their homes due to religious and political oppression, and war refugees, who sought refuge to escape wars, specially the two world wars. This change, insisted the need to lay down a comprehensible definition for refugees, in order to provide these people with the necessary protection. After the League of Nations, the United Nations while developing a set of juridical documents in various arenas of international law, efforts were made to lay down law for the protection of refugees. This was culminated with the 1951 Refugee Convention relating to the status of refugees, which also outlines the definition of a refugee in its provisions.<sup>10</sup> But as the edict was adopted after the Second World War, “as a result of events occurring before 1 January 1951”<sup>11</sup>, the Convention was first intended to protect the European refugees fleeing the violence of the war. But due to the rapid emergence of new refugee situations, many people could not satisfy the required standards to receive protection under this Convention. Therefore, its application is expanded to all the refugees around the world, by the 1967 Protocol relating to the status of refugees that “shall be applied by the States Parties hereto without any geographic limitation”<sup>12</sup>

At the beginning the international agenda on Refugees started with, the *Universal Declaration of Human Rights* provides for right to seek and enjoy *asylum* in other countries from persecution.<sup>13</sup> The *1951 Convention relating to the Status of Refugees* which was drafted as a result of recommendation by the newly established UN Commission on Human Rights, for setting standards for the treatment of refugees. The Convention, provides a general definition of the term “refugee”<sup>14</sup>. The Convention is an international treaty that is binding upon the signatory States. It specifies High Commissioner’s functions and responsibilities and the rights and obligations of persons who are recognized as refugees according to the definition given therein.

The Convention sets the basic rights of refugees and establishes the juridical status of refugees and contains provisions on their rights to gainful employment and welfare, on the issue of identity and travel documents, on the applicability of fiscal charges, and on their right to transfer their assets to another country where they have been admitted for the purposes of resettlement. This Convention also prohibits the expulsion or forcible return of persons having refugee status.<sup>15</sup> Article 34 of the

convention concerns to the naturalization and accommodation of refugees. Other provisions deal with such rights as access to courts, education, social security, housing and freedom of movement in the host countries.

*In the year of 1967 Protocol relating to the Status of Refugees* was adopted as a consequence of the late 1950s and 1960s new refugee groups emerged, in particular in Africa. These refugees were not accorded protection under the limited time-frame of the 1951 Convention. Thus the 1967 Protocol extended the application of the Convention to the situation of “new refugees”.

Further, *1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in time of War* laid down provision for the protection of civilian victims, dealing with refugees and displaced persons.<sup>16</sup> In addition to this the 1977 Additional Protocol stipulates the protection of refugees and stateless persons<sup>17</sup> under parts I and III of the Fourth Geneva Convention.

*The 1954 Convention relating to the Status of Stateless Persons* defines the term “stateless person”<sup>18</sup> *The 1961 Convention on the Reduction of Statelessness* provides for obligation on State, subject to certain conditions, not to deprive a person of his nationality if such deprivation, on racial, ethnic, religious or political grounds, would render him stateless. Also *the 1967 United Nations Declaration on Territorial Asylum* lays down a series of vital principles regarding territorial asylum. It upholds the basic humanitarian principle of *non-refoulement* based on provisions of UDHR.<sup>19</sup> Then the Convention on the Rights of the Child, makes provision for child refugees and asylum-seekers where it explicitly stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in that Convention and in others.

*The United Nations Commission on Human Rights*, is a body comprised of 53 member States, established under the 1951 convention on refugees has established various mechanisms to investigate human rights thematic issues and country situations. Providing for special procedures it allows action regardless of whether a State is party to the international human rights treaties or not. Under all special procedures, a study of the corresponding human rights situation is presented to the Commission at its annual session in Geneva. For the status of refugees Special Rapporteurs<sup>20</sup> or special bodies of the UN Commission can intervene with the Government concerned to prevent refugees, asylum-seekers or internally displaced persons from being subjected to imminent human rights abuses especially when it concerns violation of the principle of non-refoulement.

At the regional level in the year of 1969 *Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa* expanded definition of the term refugee.<sup>21</sup> The OAU Convention supplements the 1951 Convention and intends to regulate the question of asylum,<sup>22</sup> voluntary repatriation<sup>23</sup> and on the prohibition of subversive activities by refugees.<sup>24</sup>

In Europe the Council of Europe has adopted several instruments concerning refugees such as the European Agreement on the Abolition of Visas for Refugees, 1959; Resolution 14 of 1967 on Asylum to Persons in Danger of Persecution; European Agreement on Transfer of Responsibility for Refugees, 1980; the Dublin Convention, 1990, which lays down criteria for determining which member State is responsible for examining an asylum request when an application for asylum with one or more member States of the Community is received.

The Latin America has a long practice of asylum. *The Montevideo Treaty on International Criminal Law, 1889*, was the first regional instrument which dealt with asylum. It was followed by *the Caracas Convention on Territorial Asylum, 1954*. In the 1980s, the outbreak of civil strife in Central

America resulted in massive emigrations of millions of persons, posing serious economic and social problems for the host countries. In 1984, these "host" countries adopted the *Cartagena Declaration on Refugees*<sup>25</sup> which laid down the legal foundations for the treatment of Central American refugees, including the principle of non-refoulement, the importance of integrating refugees and eradicating the causes of the refugee problem. The definition of "refugee" in the Declaration<sup>26</sup> is similar to that of the OAU Convention.

On account of Human Rights and Refugees, these are entitled to all the rights and fundamental freedoms that are signified in international human rights instruments. The human rights programmes of the United Nations deals with the rights of individuals in the territory of every State. The refugee organization was established in order to restore minimum rights to persons after they leave their countries of origin. For this the link between violations of human rights and movements of refugees needs to be established and to see to what rights and up to what extent they are violated. The universally recognized human rights under various instruments are directly applicable to refugees. These include the right to life, protection from torture and ill-treatment, the right to a nationality<sup>27</sup>, the right to freedom of movement<sup>28</sup>, the right to leave any country, including one's own, and to return to one's country, and the right not to be forcibly returned<sup>29</sup>. These rights are asserted, among other civil, political, economic, social and cultural rights, for all persons, citizens and non-citizens alike, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

There are further Non-refoulement right the central element of international instruments according to protection to refugees is the right not to be forcibly returned or expelled to a situation which would threaten their life or freedom. This is the principle of non-refoulement<sup>30</sup>. The same is reiterated under Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which stipulates that "No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

Since 1980, both the United Nations General Assembly and the Commission on Human Rights have focused on ways to prevent mass evacuations. The Special Rapporteur study<sup>31</sup> presented to the thirty-eighth session of the Commission on Human Rights in 1982 stated that mass exoduses do not only cause human deprivation and misery, but also place increasingly heavy burdens on the international community and under changing nature of refugee problems, the three traditional solutions of voluntary repatriation, local settlement and resettlement continue to be feasible but must also be accompanied by other approaches. The Special Rapporteur identified violations of human rights as a major cause of mass exoduses.<sup>32</sup> The final report of the Group of Governmental Experts<sup>33</sup> also stressed the complex and often interrelated political, economic, social and natural causes of mass migrations.

Presently while efforts continue to remedy the problem at its source, attention is turning to the difficulties that asylum-seekers encounter after they leave their countries. Three grave issues are found. Firstly, the initial tendency of neighboring states to close doors to asylum-seekers. Like the case of South East Asian refugee crisis where the boats of asylum-seekers have even been pushed back to sea by Malaysia, Australia and Indonesia to die of hunger or make an easy prey for pirates and sharks when they have attempted to land on certain shores.

Secondly, violations of the minimum rights of asylum-seekers during the process of applying

for asylum and also after grant of refuge such as intolerance, racism, aggression, national and ethnic conflicts. For example ill-treatment include physical assaults, the detention of asylum-seekers for extended periods and without legitimate reasons and harsh interrogation procedures.

The third issue is the continuance of human rights violations in countries of origin and the need to address those violations before refugees can be voluntarily deported back to their state. At times forcible return of asylum-seekers put their lives, liberties and security at risk.

In some places refugees are regularly subjected to attacks and abuse. Attacks on refugee camps have been condemned by the United Nations General Assembly in numerous resolutions. The Commission on Human Rights has also been concerned with specific cases, such as attacks on Palestinian refugees in Lebanese camps and attacks on the Thai-Cambodian border. Refugee women and children are a particularly vulnerable group. The 1989 Convention on the Rights of the Child makes a specific provision for giving "*appropriate protection and humanitarian assistance*"<sup>34</sup> to the refugee child. Women are very frequently subjected to physical and sexual abuse in countries of refuge. Today refugees live with the constant fear of physical assaults and threats to their lives and security as their issues, in most cases, are seen from political, rather than humanitarian standings.

Lastly it can be said that although the Refugee Convention also establishes the principle of responsibility-sharing - the idea that the international community must work together to address refugee crises so that no one country, or a small number of countries, has to deal with this problem alone. The obligation of individual countries to give protection and assistance to refugees, coupled with the responsibility of the international community to act collectively in the case of large refugee crises, is essential to refugee protection. The refugee crisis the world has witnessed in the past few years has been exacerbated by the failures of individual states, and of the international community as a whole, to live up to these obligations. The responsibility for coping with the world's multiple refugee crises lies almost entirely with poorer countries in the world: 86% of the world's refugees are in developing countries.<sup>35</sup> Wealthier countries are not doing nearly enough to share the burden of the global refugee crisis. Humanitarian appeals for refugee crises are consistently and often severely underfunded.

In many countries, political considerations regularly take precedence over the lives of refugees and migrants, leaving thousands to die on dangerous journeys that could have been avoided. Ultimately, refugee crises end when their root causes are addressed. Ending conflicts and widespread human rights abuses are objectives that states should pursue, but they are difficult to achieve. However, individual states and the international community as a whole must recognize that they can lessen the devastating consequences of the refugee crisis on people. For this, a global approach to the problem is needed.

Individual countries should respect their legal obligations towards refugees and asylum-seekers, including allowing them to enter their territories, providing assistance to those in distress at sea and tackling xenophobia, but there must be a fundamental change in the international cooperation on refugees. The international community must share the responsibility for assisting and hosting refugees, including by resettling refugees who need it and adequately funding humanitarian programmes in other countries.<sup>36</sup>

## (Endnotes)

- \* Assistant Professor , PDEA's Law College, Hadpsar, Pune
- 1 Stories From Syrian Refugees Discovering the human faces of a tragedy available at <http://data.unhcr.org/syrianrefugees/syria.php> last Seen on 05/12/2016
  - 2 Chapter I General Provisions Article 1 of the 1951 Convention available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx&http://www.unhcr.org/4ca34be29.pdf> last Seen on 28/11/2016
  - 3 W. W. Skeat, *The concise dictionary of English etymology*, 164(1993) Language Arts & Disciplines.
  - 4 E. C. Brewer, *The Wordsworth Dictionary of Phrase and Fable*, 70 (2001) Wordsworth Editions, Ware, Hertfordshire.
  - 5 Philip Marfleet, "*Refugees and History: why we must address the past*", in *Refugee Survey Quarterly*, vol.26, issue 3, 2007, 138.
  - 6 Skeat, *The concise dictionary of English etymology*, 411(1993), Language Arts & Disciplines.
  - 7 Prakash Sinha, *Asylum and international law*, MartinusNijhoff Publishers, The Hague, 14(1971)
  - 8 Ibid at 15
  - 9 The concept of sovereignty was laid down by the Treaty of Westphalia, which put an end to the European Thirty Years War of religion, and created a new European order in which all States were governed by a sovereign, who was assigned with independent powers within the territory of its country See also Stephen D. Krasner, *Sovereignty: Organized Hypocrisy, Princeton*, 43-72(1999) discussing the different forms of sovereignty, including Westphalian sovereignty, See Paul D'Anieri, *International Politics: Power and Purpose in Global Affairs*, Cengage Learning, 28(2009), presenting the Westphalian system).
  - 10 Article 1 A (2) of the Convention relating to the Status of Refugees, United Nations, Treaty Series, vol.189, p.152.
  - 11 Ibid at152.
  - 12 Article 1 (3) of the Protocol relating to the Status of Refugees, United Nations, Treaty Series, vol.606, p.270.
  - 13 Art. 14(1) of the UDHR, 1948, provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."
  - 14 Andreas Zimmermann, Jonas Dörschner, Felix Machts, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, Oxford University Press, 247(2011) See Also Article 1 of The 1951 Convention relating to the Status of Refugees, Available at <https://books.google.co.in/books?id=jAegkL7nHioC&printsec=frontcover&dq=The+1951> Last seen 6/12/2016
  - 15 Ibid at 1397, See Also Article 33 it stipulates that "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".
  - 16 Article 44 Fourth Geneva Convention Relative to the Protection of Civilian Persons in time of War, 1949 Available at <https://ihl.databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> Last Seen on 1/12/2016
  - 17 Ibid , Article 73 of the 1977 Additional Protocol
  - 18 As a person who is not considered as a national by any State under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless persons.
  - 19 Articles 13 and 14 of the Universal Declaration of Human Rights, which spell out, respectively, the right to leave any country and to return to one's country and the right to seek and enjoy asylum.
  - 20 The UN can appoint UN Special Rapporteur on Torture; UN Special Rapporteur on Summary Executions or UN Working Group on Enforced Disappearances
  - 21 Under the second paragraph of article 1 of the convention - "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 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"
  - 22 Under Article 2 of the OAU convention, Available at <http://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html> Last Seen on 1/12/2016
  - 23 Ibid Article 5
  - 24 Ibid Article 3
  - 25 Also known as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
  - 26 Under part III, para. 3 it states that refugees are those "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".
  - 27 Article 15, Universal Declaration of Human Rights, Available at <http://www.un.org/en/universal-declaration-human-rights/> Last Seen on 10/12/2016

- 28 Article 13, Universal Declaration of Human rights; Article 9, International Covenant on Civil and Political Rights, article 12, Available at <http://www.un.org/en/universal-declaration-human-rights/> Last Seen on 10/12/2016
- 29 Article 13, Universal Declaration of Human Rights.
- 30 Article 33, Chapter I General Provisions Article 1 of the 1951 Convention available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx> & <http://www.unhcr.org/4ca34be29.pdf> last Seen on 28/11/2016
- 31 Ibid, Document E/CN.4/1503. Available at <http://www.un.org/en/universal-declaration-human-rights/> Last Seen on 10/12/2016
- 32 Ibid.,para.9.
- 33 Document A/41/324, annex.
- 34 Article 22, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> Last Seen on 5/12/2016.
- 35 UNHCR *Global Trends*,2(2013) available at: [www.unhcr.org/5399a14f9.html](http://www.unhcr.org/5399a14f9.html) last seen 4/12/2016
- 36 Amnesty International June 2015, *The Global Refugee Crisis: A Conspiracy of Neglect*, Amnesty International Publications, International Secretariat, United Kingdom, Available at <http://static.guim.co.uk/ni/1434356535972/The-Global-Refugee-Crisis-a.pdf>Last seen 27/11/2016