

## **Refugees in the Perspective of International law: An Analytical Study.**

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### **Abstract**

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*The main theme of the study is to discuss the status of refugees in the light of International law. The research focuses on the problems faced by refugees. The research also focuses on the problems of host countries where the people take refuge. The study discusses the effects on development of state in this regard. The approach is descriptive and analytical. The Primary and secondary sources are used. The findings are in the end.*

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**Key Words:** Definition. Historical perspectives. Status. International Law. Problems and solutions

### **Introduction**

The term refugee derives from the root word refuge, from Old French refuge, meaning “hiding Place”. It refers to “shelter or protection from danger or distress”, from Latin fugere, to flee and refugium, “a taking refuge, place to flee back to”. In Western history, the term was first applied to French Huguenots, after the Edict of Fontainebleau (1540), who again migrated from France after the Edict of Nantes revocation (1685).

The 1951 United Nations Convention Relating to the status of Refugees adopted the following definition of “Refugee “to apply to any person who (in Article 1.A.2):

“Owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”(Article 1.A.2)

Post-World War 11.

In the last months of World War 11, about five million German civilians from the German provinces of East Prussia, Pomerania and Silesia fled the advance of the Red Army from the east and became refugees in Mecklenburg, Brandenburg and Saxony. Since the spring of 1945 the Poles had been forcefully expelling the remaining German population in these provinces. When the Allies met in Potsdam Agreement, signed on 2 August 1945, defined the Polish western border as that of 1937, (Article V111) placing one fourth of Germany’s territory under the provisional Polish administration. Article x1 ordered that the remaining German populations in Poland, Czechoslovakia and Hungary be transferred west in an “orderly and humane “manner. (Flight and Expulsion of Germans (1944-50)

Although not approved by Allies at Potsdam, hundreds of thousands of ethnic Germans living in Yugoslavia and Romania were deported to slave labour in the Soviet Union, to Allied- occupied Germany, and subsequently to the German Democratic Republic (East Germany). In all 15 million Germans were affected, and more than two million perished during the expulsions of the German (Norman Naimark 1995)

Between the end of War and the erection of the Berlin Wall in 1961, more than 563,700 refugees from East Germany travelled to West Germany for asylum from the Soviet occupation. During the same period, millions of former Russian citizens were forcefully repatriated against their will into the USSR. On 11 February 1945, at the conclusion of the Yalta Conference, the United States and United Kingdom signed a Repatriation Agreement with the USSR.

The interpretation of this Agreement resulted in the forcible repatriation of all Soviets regardless of their wishes. When the war ended in May 1945, British and United States civilian authorities ordered their military forces in Europe to deport to the SOVIET Union millions of former residents of the USSR, including many persons who had left Russia and established different citizenship decades before.

The forced repatriation operations took place from 1945-1947. (Forced Repatriation to the Soviet Union: The Secret Betrayal )

### Refugee Status

Refugee status is given to quota refugees and can be given to asylum seekers if their application for asylum is successful. In order to be given refugee status either way a refugee has to go through a Refugee Status determination process (RSD), which is conducted by the government of the country of asylum or the UNHCR, and based on international, regional or national law. Ideally the government of the each individual country should conduct RSDs in order to enable the UNHCR to remain independent and impartial. However, in 2013, the UNHCR conducted them in more than 50 countries and co-conducted them parallel to or jointly with governments in another 20 countries, which made it the second largest RCD body in the world. (UNHCR, p.4)

There is one exception of the RSD process: younger Palestinian and Sahrawi refugees have refugee status without having been refugees, i.e. they did not themselves flee to another country and are still in their territory of origin. They inherited the refugee status from their ancestors who were refugees.

### Asylum Seeker

There is difference between refugee and asylum seeker. An asylum seeker is not automatically a refugee and may never be granted asylum and given refugee status; likewise a refugee may never apply for asylum in the country they fled to and thus not be an asylum seeker. The term refugee is often used in two different contexts;

- who flees the A person country of origin
- A person who has refugee status in the country of asylum.

In between these two stages the person may have been an asylum seeker. An asylum seekers will be granted asylum, i.e. given refugee status, when the country of asylum is a signatory to the 1951 Refugee convention and agrees that the person's circumstances fall into the definition of a refugee, such as risk of persecution "on account of race, religion, nationality, political opinion, or membership in a particular social group". (U.S.)

Only after the recognition of the asylum seeker's protection needs is he or she is officially referred to as a refugee and enjoys refugee status. This carries certain rights and obligations according to the legislation of the receiving country. Quota refugees do not need to apply for asylum as they are selected for resettlement by third countries.

### The Role of International Agencies

The leading international agency coordinating refugee protection is the United Nations Office of the United Nations High Commissioner for Refugees (UNHCR). In 2006, there were 8.4 million UNHCR registered refugees worldwide, which was the lowest number since 1980. The UNHCR established in 14 December 1950. The headquarter is in Geneva, Switzerland. The main function of the UNHCR is to protect and support the Refugees at the request of a government or the United Nations and assist in their return or resettlement. All Refugees in the world are under the UNHCR mandate except Palestinian refugees who fled the current state of Israel between 1947 and 1949, as a result the 1948 Palestine war, and their descendants, who are assisted by the United Nations Relief and Works agency (UNRWA). However, Palestinian Arabs who fled the West Bank and Gaza after 1949 (for example, during the 1967 Six Day War) are under the jurisdiction of the UNHCR.

UNHCR provides protection and assistance not only to refugees, but also to other categories of displaced or needy people. These include asylum seekers, refugees who have returned home but still need help in rebuilding their lives, local civilian communities directly affected by the movements of refugees, stateless people and so-called internally displaced people (IDPs)

IDPs are civilians who have been forced to flee their homes, but who have not reached a neighbouring country and therefore, unlike refugees, are not protected by international law and may find it hard to receive any form of assistance.

As the nature of war has changed in the last few decades, with more and more internal conflicts replacing interstate wars, the number of IDPs has increased significantly to an estimated 5 million people worldwide. According to Bogumil Terminiski the stabilization of refugee problem worldwide is the main cause of the development of the studies on internal displacement.

The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

UNHCR's mandate has gradually been expanded to include protecting and providing humanitarian assistance to what it describes as other persons "of concern", including internally displaced persons who would fit the legal definition of a refugee under the 1951 Refugee Convention and 1967 Protocol, the 1969 Organization for African Unity Convention, or some other treaty if they left their country, but who presently remain in their country of origin. UNHCR thus has missions in Columbia, Democratic Republic of the Congo, Serbia and Montenegro and Ivory Coast to assist and provide services to IDPs;

- Asia 8,603,600
- Africa 5,169,300
- Europe 3,666,700
- Latin America and Caribbean 2,513,000 North America 716,800
- Oceania 82,500.

#### International Attitude to Refugees

##### World Refugee day.

World Refugee Day occurs on 20 June .The day was created in 2000 by a special United Nations general Assembly Resolution. 20 June had previously been commemorated as African Refugee Day in a number of African countries. In the United Kingdom World Refugee Day is celebrated as part of Refugee week. Refugee Week is a nationwide festival designed to promote understanding and to celebrate the cultural contributions of refugees, as features many events such as music, dance and theatre. In the Roman Catholic Church, the World Day of Migrants and Refugees is celebrated in January each year. It was instituted in 1914 by Pope Pius the German word for refugee, which is Fuchtlings, was chosen by the Society for the German Language (i.e.Gesellschaft fur deutsche Sprache) as word of the year in 2015.

#### Problems of Refugees.

Arguably, the principle and most enduring international policy issue is protection..." (Sharon, 2001)

- Displacement is a long lasting reality for most refugees. Two- thirds of all refugees around the world have been displaced for over three years.50% of refugees-around 10 million people have been displaced for over ten years. Research from the Overseas Development Institute has found that aid programmes for programmes that help refugees become more self-reliant. This can involve tackling difficult legal and economic environments, by improving social service, job opportunities and laws.
- It is not surprising that national governments and global bodies are engaged in an ongoing discussion of international policy Issues having to do with refugees. The responsibility to protect is grounded in the principle that sovereign states have the primary obligation to protect their citizens against harm, but when states are unable or unwilling to do so, that responsibility falls to the international community. Legally, the responsibility to protect is upheld by obligations inherent in the concept of sovereignty the UN Security Council's responsibility for maintenance of international peace and security under Article 24 of the UN Charter, and by legal obligations embodied in specific declarations, covenants, treaties, international humanitarian law, and national law. Protection is also the core mandate of UNHCR and the fundamental principle by which other policy issues and options are guided. It has also been reaffirmed by the findings of the United Nation's Commission on Sovereignty and Intervention.(Article 24)

## Providing Humanitarian Aid

For humanitarian assistance agencies, a dilemma that has become particularly salient in recent years is how best to provide protection and assistance under conditions of conflict. The challenge arises especially when humanitarian assistance is diverted to fuel conflict, when UNHCR and NGO staff are themselves targeted by warring parties, or both. Under such circumstances, international agencies face tough decisions;

- Do they call for international military involvement to provide security for protection and assistance operations, and thereby risk violating the principles of neutrality and impartiality under which they seek to function?
- What if the only way to protect people is to move them away from areas of conflict?
- Are agencies then complicit in “ethnic cleansing”?

Humanitarian agencies struggled with these issues in Bosnia. When do international agencies choose to pull out of a conflict situation (as some did from Liberia), and how do they balance their responsibilities to protect and assist refugees and displaced populations against concerns that their presence may prolong a conflict, let alone jeopardize the safety of their own staff?

Another debate on the world stage is the proper response by aid agencies when the populations they seek to protect in refugee camps include combatants or war criminals. People in refugee camps or self-settled refugee communities are often thought of as being exclusively vulnerable civilians and, under various international legal instruments, those who engage in armed activities are not to be accorded refugee status. However, in some cases camps do contain armed combatants who may seek to continue fighting opposition forces in their home or host countries or who are encouraged by other states to be reservoirs of conflict.

Another international policy issue becomes especially prominent when developed countries are faced with prospects of mass exodus from conflicts in nearby countries.

## Refugee Camps

A refugee camp is a place built by governments or NGOs (such as the International Committee of the Red Cross) to receive refugees. People may stay in these camps, receiving emergency food, education and medical aid. If it becomes safer they can make use of voluntary repatriation programmes and return home. In some cases, often after several years, other countries decided it will never be safe to return these people, and they may be resettled in “third countries”. However, more often than not, refugees are neither resettled nor naturalised. In the meantime, they are at risk for disease, child soldier recruitment, terrorist recruitment, and physical and sexual violence. There are estimated to be 700 refugee camp locations. (UNCHR, 2015)

## Refugee Law

There are customary law, norms and international legal instruments. These include;

- The 1951 United Nations Convention relating to the status of Refugees
  - The 1967 UNCHR Protocol relating to the status of Refugees
  - The 1969 UNHCR organization of Unity(OAU)Convention Governing the Specific Aspects of Refugee Problems in Africa
  - The 1974 United Nations Declaration of Protection of Women and Children in Emergency and Armed Conflict
- There are three durable solutions for refugees which is the ultimate goal of the International Agencies;
- Integration
  - Solutions
  - Repatriation
  - Naturalisation
  - Voluntary Return
  - Third Country Resettlement

## The Rights of Refugees

There are different Rights of the Refugees.

- Right to Return to Home

After “post-conflict” environment, it is not a simple process for refugees to return home. The UN Pinheiro Principles are guided by the idea that people not only have the right to return home, but also the right to the same property. (Sara Pantuliano, 2009)

It seeks to return to the pre-conflict status quo and ensure that no one profits from violence. Yet this is a very complex issue and every situation is different: conflict is a highly transformative force and the pre-war status-quo can never be re-established completely, even if that were desirable (it may have caused the conflict in the first place). Therefore, the following are of particular importance to the right to return:

- May never have had property;
- Cannot access what property they have
- ownership is unclear as families have expanded or split and division of the land becomes an issue; death of owner may leave dependents without clear claim to the land; people settled on the land know it is not theirs but have nowhere else to go ;
- Have competing claims with others, including the state and its foreign or local business partners.
- Right to non-refoulement

Non-refoulement is the right not to be returned to a place of persecution and is the foundation for international refugee law, as outlined in the 1951 convention relating to the Status of Refugees (convention, 1951)

The Political Philosopher Andy Lamey emphasizes the right to non-foulement by guaranteeing refugees three procedural rights (to verbal hearing, to legal counsel, and to judicial review of detention decisions) and ensuring those rights in the constitution. This proposal attempts to strike a balance between the interest of national governments and the interests of refugees. (Lamey.Andy, 2011)

### Right to family reunification

Family reunification, which is also a form of resettlement, is a recognised reason for immigration in many countries because of the presence of one or more family members in certain country, therefore, enable to refugees lawfully residing in their territory's the rest of the immigrant to that country as well.

### Right to travel

Those states that signed the Convention Relating to the Status of Refugees are obliged to issue travel documents (i.e. Convention Travel Document”) to refugees lawfully residing in their territory. It is a valid travel document in place of a passport, however, it cannot be used to the country of origin, i.e. from where the refugee fled.

## **Conclusion**

Today there are 60 million refugees and internally displaced peoples in search of safety, shelter, a home and a future across the globe. We all know that the root causes of this crisis are extreme poverty and fratricidal, sectarian and religious wars. It is easy to say that we must address the root causes of this 21<sup>st</sup> Century catastrophe.

No one disagrees with this grand statement. But the mounting crisis overwhelming the international community demands urgent remedies.

The world's system for protecting refugees is broken. It is obvious from Australia to South Sudan's vast camps, from Istanbul's cold streets to the European Union's heavily fortified walls. Worldwide, 19.5 million people have been forced to seek sanctuary abroad. Governments have a duty to help them. But most rich countries are still treating refugees as somebody else's problem. And by ignoring most appeals for humanitarian aid, they have left UN agencies so broke they can't even feed many refugees properly anymore.

The host countries faced serious economic crisis. These countries would need serious economic and financial assistance to enable them to cope with a large influx of refugees. It is here where the European Union, World Bank and regional inter-state financial institutions, commercial banks and business would have to be mobilized and invest enough money to assist the host countries in absorbing the impact of the refugees, and creating new economic opportunities for the resettled refugees.

Amnesty is putting forward eight solutions for how world leaders- in particular the richest countries can start tackling this massive humanitarian crisis together.

- Opening up safe routes to sanctuary for refugees is one important solution. That means allowing people to reunite with their relatives, and giving refugees visas so they don't have to spend their life savings and risk drowning to reach safety.
- Saving lives: World leaders also need to put saving lives first. No one should have to die crossing a border, and yet almost 7,000 people drowned in the Mediterranean alone in the two years since the first big shipwreck in October 2013.
- And whether they travel by land or by sea, people fleeing persecution or wars should be allowed to cross borders, with or without travel documents. Pushing people back and putting up massive fences only forces them to take more dangerous routes to safety.
- All countries should investigate and prosecute trafficking gangs who exploit refugees and migrants and put people's safety above all else.
- Governments also need to stop blaming refugees and migrants for economic and social problems, and instead combat all kinds of xenophobia and racial discrimination. Doing otherwise is deeply unfair, stirs up tensions and fear of foreigners, and sometimes leads to violence even death.
- We need radical solutions, visionary leadership and global cooperation on a scale not seen for 70 years. That involves setting up strong refugee systems: allowing people to apply for asylum, treating their refugee claims fairly, resettling the most vulnerable of all, and providing basics like education and healthcare.(amnesty International,2015)

None of these solutions are impossible to achieve, if politicians listen to the millions of people saying "refugees welcome" ,and put solidarity and compassion above petty wrangling over who should host a few thousand refugee.

Experience has shown how refugees have never been a burden or a threat to the host countries. In fact refugees have shown extraordinary resilience and creativity in inventing sustainable livelihoods for themselves, in activities ranging from modest food stalls, eating places to farming and endless other economic activities.

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