

**ROLE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR REFUGEES IN POST-COLD
WAR PEACEKEEPING OPERATIONS**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfillment of the requirements
for the award of the degree of*

MASTER OF PHILOSOPHY

RUHI



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2008



Date 29/07/08

DECLARATION

I declare that the dissertation entitled “**Role of the United Nations High Commissioner for Refugees in Post-Cold War Peacekeeping Operations**” submitted by me in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

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Acknowledgements

First and foremost I would like to give the special thanks to persons who gave their precious time in completion of this study.

*I owe my special thanks to my supervisor **Dr. Yeshi Choedon**, for her constant and invaluable advise, assistance and involvement throughout every phase of this study. Without her valuable comments and suggestions I would not be able to complete the study. This work would not have been possible without her guidance. She provided me good ideas, a keen design and positive attitude towards my work, which helped me a constant support and encouragement at every aspect of progress of this study.*

*I would like to pay my thank to faculty member of CIPOD especially **Prof. C.S.R. Murthy**, for giving me the knowledge of "Theoretical Aspect of International Organisation"; and other Professors of the centre such as **Dr. Archana Negi, Prof. Rajesh Rajagopalan and Prof. Varun Sahni** for providing me basic knowledge and guidelines during completion of my course.*

I am thankful to various other libraries and their staff for allowing me to use their materials. These libraries are Sapru House, Teen Murti Library, United Nations Information Center, UNHCR Office New Delhi and the Jawaharlal Nehru University Library.

*I would like to express my thanks to my senior **Ritambhara** and friends **Upasana, Garima and Satyendra** for their moral support and correcting my mistakes in this dissertation. Finally, I owe my debt to my parents who believe in my capabilities and help me in accomplishment of my wishes.*

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LIST OF ABBREVIATIONS

| | |
|--------|---|
| CAP | Consolidated Appeals Process |
| CDR | Centre for Documentation and Research |
| CIS | Commonwealth of Independent States |
| CSCE | Conference on Security and Cooperation in Europe |
| ECOWAS | Economic Community of Western African States |
| EU | European Union |
| GPID | Guiding Principles on Internal Displacement |
| ICEM | International Committee for European Migration |
| ICRC | International Committee of Red Cross |
| IGCR | Intergovernmental Committee on Refugees |
| IRO | International Refugee Organisation |
| NATO | North Atlantic Treaty Organisation |
| NGOs | Non-Governmental Organisations |
| OAS | Organisation of American States |
| OAU | Organisation of African Unity |
| OSCE | Organisation for Security and Co-Operation in Europe |
| QIPs | Quick Impact Projects |
| UNDP | United Nations Development Programme |
| UNHCR | United Nations High Commissioner for Refugee |
| UNICEF | United Nations Children Fund |
| UNPKOs | United Nations Peace Keeping Operations |
| UNREF | United Nations Refugee Emergency Fund |
| UNRF | United Nations Refugee Fund |
| UNRRA | United Nations Relief and Rehabilitation Administration |
| UNTAG | United Nations Transition Assistance Group |
| USEP | United States Escape Program |
| WB | World Bank |
| WFP | World Food Programme |
| WHO | World Health Organisation |

CHAPTER 1

Introduction

The term refugee usually connotes the persons who are in flight, resulting in vulnerability and need for assistance. A refugee is described as a person compelled to flee their state of origin due to some political reasons, persecutions, famine or natural disasters. They are perceived as involuntary migrants, victims of circumstances, which force them to seek residence in other countries. The use of the term “refugee” has been traced by past arrangements, through a treaty of 1283 B.C. Between Pharaoh Ramses II with the Hittites on the return of refugees to Egypt. Other significant arrangements were the Edict of Nantes (1598); the Edict of Potsdam (1685); British Acts concerning the naturalisation of foreign protestants in the colonies in America in the eighteenth century; extradition treaties since 1830, French law which concerns the foreign refugees living in France (1832); and resolutions of the International Institute of International Law (Kourula 1997: 49). So, it is not an issue of recent centuries, but only from the early twentieth century the refugee problems have been started addressing in an organised form through international organisation. This study intends to analyse how the international organisations in several ways dealt with the refugee problems in the course of period with specific focus on the functioning of the United Nations High Commissioner for Refugee (UNHCR) in the post- Cold War within the rubric of United Nations Peace Keeping Operations (PKOs).

This chapter begins by focusing on changing definitional aspect of refugees and then traces how refugee issues were handled before the establishment of the UNHCR. It then highlights the rights and duties of refugees, stated in the *1951 UN Convention Relating to the Status of Refugees*, which provides normative framework for the international arrangements to deal with refugee issues. It discusses the mandate, structure and functions of UNHCR to provide conceptual reference to the subsequent chapters. It

discusses the regime theory as the appropriate theoretical approach for understanding of the refugee problem. It ends with brief overview of the chapterisation of this dissertation.

Definitional Aspects

1920 to 1950 reveals three distinct trends in refugee definition-juridical, social and individualist perspective.

The Juridical Perspective: 1920-1935

In response to the Russian and Armenian refugee problem, the High Commissioner Nansen proposed the following definitions to member governments of the League of Nations:

Russian refugee:

Any Person of Russian Origin who does not enjoy the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired any other nationality.

Armenian refugee:

Any person of Armenian origin, formerly a subject of the Ottoman Empire, who does not enjoy the protection of the Government of the Turkish Republic and who has not acquired any other nationality (Hathaway 1984: 353).

Hathaway (1984: 353) stated that according to these both arrangements, the Russian and the Armenian refugees did not enjoy the protection of their government and they have also not acquired any other nationality. The central argument in both definitions is the “protection” of their country of origin.

The definitions of the Russian and Armenian refugee incorporated in the 1926 Arrangement were not overlapped by the 1928 Arrangement relating to the Legal Status of Russian and Armenian refugees, which established a legal and personal status for these refugees. This arrangement was extended for Assyrian, Assyro-Chaldaen and Turkish refugees.

The arrangement included *Assyrian, Assyro-Chaldaen and assimilated refugee*: Any person of Assyrian or Assyro-Chaldaean origin and also the assimilated person of Syrian or Kurdish origin, who does not enjoy the protection of the state

to which they previously belonged and who has not acquired any other nationality.

The arrangement defines the *Turkish refugee*: As a any person of Turkish origin, previously a subject of the Ottoman Empire, who under the terms of the Protocol of Lausanne of July 24, 1923, does not enjoy the protection of the Turkish Republic and who has not acquired another nationality (Hathaway 1984: 354, 356, 357).

The juridical term was formulated for the protection of persons who was denied protection by the state. The denial of state protection gives the responsibility to international legal system to rehabilitate these people.

The essential feature of the problem of refugees in this period was that they had no regular nationality. Therefore, they were deprived of normal protection by the state. Other writers gave the view that the juridical term treated the person as refugee due to their “membership in a group of persons”, which deprived them to the “formal protection of the government” of their country of origin. The purpose of juridical term was to facilitate the “international movement of persons” who found themselves abroad and unable to resettle because no nation was prepared to assume responsibility for them (Chimni 2000: 10-11; Giri 2001: 10).

The Social Perspective: 1935-1938

Social perspective dominated the second phase in the evolution of the international definition of refugees. It defines refugees during the period 1935 to 1938 as “helpless casualties of broadly based social or political occurrences, which separate them from their home society” (Giri T.N. 2003: 10). The 1938 Convention extended the “*de Jure* protection principle to provide assistance to long-term non-residents from whom state protection had been withdrawn”. The Convention states that:

...it was necessary to take into account the position of certain German nationals who, although they had been established abroad for a certain length of time, had been deprived...of the protection of the Government of the Reich for the same reasons as refugees properly so-called (Hathaway 1984: 368).

“The League of Nations approach to the Saar crisis was the first sign of an emerging social conceptualisation of refugeehood”¹. The Saar crisis posed a question mark before the *de facto*² nature of government protection to their citizen, because government failed to assist the migrate person in accordance with *de facto* rule. Therefore, the echo was heard in League of Nations to revise the *de facto* nature of the government.

For the first time, debate centered on the League’s responsibility to assist a group of persons who had reason to fear that they would be denied the *de facto*, rather than the strictly formal protection of their government. The League’s approach to the Saar migration demonstrated an openness in awarding refugee status base upon social as opposed to strictly legal criteria. (Hathaway 1984: 368).

In 1930s after the Saar crisis, a major refugee crisis was started in Germany after the rise of National Socialism. The National Socialist party wanted to expunge Jew population from Germany. They declared that:

None but the members of the nation may be the citizens of the State. None but those of German blood, whatever their creed, may be the members of the nation. No Jew therefore, may be a member of the nation (Hathaway 1984: 362).

In 1933, the League Assembly noted that the exodus of Jewish refugee in Germany, following Hitler’s accession in Germany, had presented an economic, financial and social problem. Therefore, the Assembly established the Office of the High Commissioner for Refugees from Germany and it was responsible for relief and assistance efforts in member countries. The High Commissioner prepared a draft convention. According to this Convention a German refugee was defined:

Any persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government.... Persons who leave Germany for reasons of purely personal convenience are not included in this definition (Kourula 1997: 51).

¹ Refugeehood is a term to denote the causes of being a refugee (Hathaway 1984: 349).

² “Political sovereignty is not in any way ... claims to legal authority but is concerned simply about the actual distribution of power, that is, *de facto* sovereignty” (Heywood 2004: 91).

This definition did not bring any major change in the concept of the previous definitions of refugee. It identifies that person as refugee who had already migrated from their country of origin. The definition remained that those persons be recognised as refugees who did not enjoy the protection of their governments and they did not have any nationality other than German. The definition excluded the person who left Germany for their personal reasons.

Subsequently, the German refugees the League Council extended the mandate of the High Commissioner for Czechoslovakian refugees, when the Czechoslovakia was abandoned by Germany in September 1938, to include:

Persons who, having formerly possessed Czecho-Slovak nationality and not possessing any nationality other than German nationality, have found themselves compelled to leave the territory formerly part of the Czecho-Slovak State, where they were established.

The definition recognised the person who does not have any nationality other than, Czechoslovak and German. It recognised the two nationalities “because of the anti-German sentiment”, after Czechoslovakia was “relinquished to Germany”, about 15,000 German-speaking people found themselves impossible to resettle in that country.

In March 1938, like the refugees from Czechoslovakia, many Austrians left their country when it was occupied by the German authority. In May 1938, the League Council took the action to enlarge “the mandate of the High Commissioner to include refugees coming from Austria”. The Council prepared a draft Convention for refugees coming from Austria, “the Council opened for signature in September 1939 a protocol to the 1938 Convention including a definition of Austrian refugees which echoed that already enacted for German refugees”:

The expression refugees “coming from Germany” in...the Convention covers, (a) persons, having possessed Austrian nationality and not possessing any nationality other than German nationality, who are proved not to enjoy, in law or in fact, the protection of the German government and (b) stateless persons not covered by any

previous Convention or Arrangement... also included in this definition (Hathaway 1984: 366 & 367).

Thus, according to above analysis it is clear that the Social perspective of defining refugees did not change the major part of the previous definition of refugees. It only includes the stateless persons in the definition.

The Individualist Perspective: 1938-1950

The third stage of the development of international definition of refugees is marked by individualist perspective. A refugee by individualist standards is “a person in search of an escape from alleged injustice or fundamental inappropriateness with her home state”. “Refugee status viewed from this perspective is a means of facilitating international movement for those who were in search of personal freedom” (Giri 2003: 11; Chimni 2000: 12). The definition of refugees by individualist perspective is actual define by the Intergovernmental Committee on Refugees (IGCR), United Nations Relief and Rehabilitation Administration (UNRRA) and the International Refugee Organisation (IRO).

The IGCR, which was established in 1938 when President Franklin D. Roosevelt called an international conference at Evian, France, in 1938 to resettle the Jews refugees who were coming from Germany and Austria (Loescher 2001: 32). According to the Committee refugee definition:

Persons who have not already left their countries of origin, but who must emigrate on account of their political opinions, religious beliefs and racial origin, and
Persons as defined in (1) who have already left their country of origin and who have not yet established themselves permanently elsewhere (Hathaway 1984: 371).

UNRRA was set up on November. 1943, as the temporary agency of the United Nations, to repatriate the refugees and displaced persons to their country of origin. It was created before the establishment of UN and it became the first UN agency to deal, in a comprehensive way, with the problem of refugees and displaced persons (Loescher 2001: 35; Ahmad 2004: 31).

UNRRA was set up to repatriate the refugees and displaced persons in their country of origin, not outside their country. "UNRRA Resolution 71, enacted in August 1945, resulted in a shift in the focus of the organisation's work to include refugee protection". It provided that the aid of the agency might be extended to "other persons who have been obliged to leave their country or place of origin or former residence". The Washington Office of UNRRA "interpreted the vague wording of Resolution 71 to apply to political dissidents" (Hathaway 1984: 373). In December 1945, the field officers were informed to interpret the Resolution to include:

"Post-war refugees...if they were displaced from their home during the war they are entitled to UNRRA assistance. In other words, if their internal displacement occurred during the war, it is immaterial that their external displacement only occurred post-war" (Hathaway 1984: 373).

The London office of UNRRA also criticised the effort to include "post-war political refugees", the office interpreted the refugee definition in following words:

... As [the US] directive now stands, any inhabitant of a liberated area who wishes to leave his country for economic reasons qualifies for UNRRA care on what appears to us the purely fortuitous circumstances of internal displacement. This leaves the door wide open to political refugees of every kind, which is likely to cause a strong reaction against the use of UNRRA funds for the support of malcontents (Hathaway 1984: 373).

These political migrants are included under the constitution of International Refugee Organisation (IRO). The main concern of the UNRRA was to repatriate the refugees in their country of origin. But the United States was not in favour of repatriation. It provided 70 percent funds of the UNRRA budget. On the other hand, in February 1945, at the Yalta Conference, the major powers desired to repatriate the refugees to the Soviet Union, but the Soviet Union did not allow UNRRA to work in its territory. At the time of this debate UNRRA expected that refugees would voluntarily seek repatriation and it adopted the policy to rehabilitate them in their country of origin. The United States did not accept agency's repatriation policy. Therefore, the US ended its partnership from

agency. In the place, of UNRRA the US worked to create a new International Refugee Organisation, which had as its main objective, not repatriation, but the resettlement of refugees and displaced persons, which were uprooted by the Second World War (Loescher 2001: 35- 38). Thus, the IRO was established by the United Nations in December 1946, to provide assistance to the hundreds of thousands of refugees and persons displaced by the war, who remained in the occupied zones of Europe. (Hathaway 1984: 374).

The Constitution of the IRO offers the “protection to individual”. For the first time, the international community accepted the refugee eligibility as individual ground and “accepted the individual’s right to flee from political persecution” (Loescher 2001: 38). The definition of the refugee and stateless persons according to the constitution of the IRO is following:

...Persons outside their country of nationality or of former habitual residence (whether they have retained this nationality or are *de jure* stateless) who belong to any of several specified categories commonly recognised as having a refugee status, and persons outside their country of nationality or former habitual residence who as a result of events subsequent to the outbreak of the Second World War are unable or unwilling to avail themselves of the protection of the Government of their country of nationality or (in the case of stateless persons) of former nationality (United Nations 1951: 580).

In addition, Holborn categorised three types of refugees, who received the IRO assistance: the persons who were living in camps, the persons who were living outside the camps and the persons who were *de jure* or *de facto* stateless persons and receiving only legal protection” (Holborn 1975 :31).

Thus, the definition of IRO recognised refugee eligibility as individual rather than group. It recognise the person who leave their country because of “persecution, or fear, based on reasonable grounds... race, religion, nationality or political opinion” (Loescher 2001: 38). It assisted the person who was living in camps or outside the camps and who was stateless person.

Table 1: The Definition of Refugee before the Establishment of UNHCR

| Perspective | Period | Definition | Agency/Scholar |
|---------------------------|-----------|--|--|
| Juridical Perspective | 1920-1935 | Group of persons and they have not the protection of their country of nationality. | Fridtjof Nansen and Mr. Comnene. |
| Social Perspective | 1935-1938 | Persons who had migrated from their country of origin, due to lack of protection of their country of origin. It excluded the persons who leave their home for personal reasons. It recognise that persons keep the two nationalities in some specific situations. It includes the stateless persons in refugee definition. | The High Commissioner for Refugees coming from Germany and the Council of the League of Nations. |
| Individualist Perspective | 1938-1950 | Persons who were in search of personal freedom. IGCR recognised the persons as refugees, who remain within their own country. | IGCR, UNRRA, IRO. |

Source: Hathaway 1984: 350-376.

The IRO was also unable to fulfill its task in the allotted period. "There was inevitably a residual group of refugees in countries of first asylum who had been neither repatriated nor resettled abroad or assimilated in their countries of asylum and in addition new refugees were arriving in the asylum countries every month". Thus, the UN concerns to deal refugee problem with "political as well as humanitarian" issues (Holborn 1975: 57). The UNHCR considers political as well as humanitarian propaganda.

Before, highlighting the evolution of the UNHCR the study is continuing with the definition of refugee, under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Convention Governing the Specific Aspects of Refugees Problems in Africa in 1969 and Cartagena Declaration on Refugees in 1984.

The 1951 Convention Definition

The 1951 Convention Relating to the Status of Refugees provides the definition of refugees, which includes refugees resulting of events occurring before 1 January 1951. The Convention states that any person,

As a result of events occurring before 1 January 1951 and 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 their 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 their former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it (Convention Relating To The Status Of Refugees 1951).

Thus, conventionally a refugee is a person who is driven from their native land by violence or deprivation for being a member of a hated community, race ethos, or by their political opinions, they are treated differently by their persecutors and by their host countries (Kumar 1998:14).

Another writer stated, "Refugees are migrants in the broadest sense of the term; yet, they continue to be a distinct category of people. As specified in the 1951 Convention relating to the Status of Refugees, they are outside their country of nationality and are unable or unwilling to return due to a well founded fear of persecution on account of race, religion, nationality or membership of a particular social or political opinion" (Riera 2006: 31).

The definition of the 1951 Convention was the most widely accepted definition of a "refugee" at that time. However, it had some limitations. The definition is Euro centric³ and it is narrowly constructed, as for example it binds countries that fit its term. The scope of the Convention was limited to events occurring before 1st January 1951. The Convention gives the space to the Western countries to use a political weapon against the former socialist states, which were more vulnerable and the definition only identifies those persons as refugees who crossed their international border.

³ Article 1 B para 1 defines that " events occurring before 1 January 1951" shall be understood to mean either "events occurring in *Europe* before 1 January 1951" or "events occurring in *Europe* or elsewhere before 1 January 1951". The terminology of para singles out Europe exclusively (Emphasis added) (Convention Relating To The Status Of Refugees 1951).

As for the above limitations this definition is not applicable in intra-state refugee situations, this is only applicable in inter-state refugee situations. Therefore, other refugee definitions came into force to expand the definition given by the 1951 Convention.

Other Definitions

Among these other definitions are the 1967 Protocol which sought to delete the geographical limitation from the 1951 Convention. The 1951 Refugee Convention had been developed with regard to a largely European refugee problem of the late 1940s and early 1950s. The 1960s developed the refugee problem in other parts of the globe as well. They had not fled as a result of the events occurring before 1st January 1951, nor could many of them meet the persecution criteria outlined in the international legal enforcement. Then, instead of simple amendment under the 1951 Convention, member countries signed a Protocol. Through these ways necessary modifications was developed to bring about in the light of changed situation. Thus, the 1967 Protocol expanded the scope of the Convention. The Protocol modified the definition from “as a result of events occurring before 1 January 1951” to “as a result of such events”⁴ (Protocol Relating To The Status Of Refugees Of 31 January 1967 1967).

In addition to the Convention, the Protocol and some 30 other international agreements on refugees, around 20 regional instruments have been introduced to deal with the issue of refugee problems. By far, widest in scope is the 1969 Organisation of African Unity (OAU) (Khan & Talal 1987: 20). It established the first regional refugee Convention. The Convention Governing the Specific Aspects of Refugee Problems in Africa expanded the 1951 definition of refugee by including the “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 their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality” (Convention Governing The Specific Aspects Of Refugee

⁴ Article 1 para 2 of the Protocol Relating to the Status of Refugees of 31 January 1967 explain the term refugees with consuming that any person within the definition of Article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951” altered “as a result of such events” were accepted (Protocol Relating To The Status Of Refugees Of 31 January 1967 1967).

Problems In Africa 1969). These refugees were different in nature from those who were envisaged by the 1951 Convention because this time they were not individuals, but they were mass flows of refugees and they were leaving their country of origin because of war and violence due to the process of decolonisation (Bwakira 2001: 279).

After the Organisation of African Unity, the Organisation of American States (OAS) extended the regional refugee definition by using terms like “generalised violence”, “internal conflicts” and “massive violence of human rights”. It was adopted by 10 Latin American states in 1984 (Wallace and Dale-Risk 2001:300; Giri 2003: 27). This definition is also known as the Cartagena Declaration. It was the first international declaration, which recognised that the victims of massive human rights violations deserved refugee status. Thus, the term “refugee” is a dynamic concept, which has undergone change in different situational context, and it has undergone further change in the post-Cold War era.

Rights and Duties of Refugees

The 1951 Convention of Refugees is called the “Magna Carta”, the great charter of refugees, because it provides the first unified codes of rights and duties of refugees affording them protection from arbitrary treatment by states (Giri 2003: 47). The Convention broadly elaborates the social, political and economic rights of the refugees and asylum seekers. As for example, article 33 para 1 contains that no any contracting State shall forcefully return a refugee, where their security and life is in danger. The article assumes that refugees have right that they could not to be returned to a country where they are likely to face persecution. This is called the principle of non-refoulement⁵.

⁵ However the principle of non-refoulement according to the 1951 Convention incorporates that not any contracting states shall expel or return a refugee within the frontiers of territories where their life or freedom would be threatened. But B.S. Chimni argues that the principle of non-refoulement must now be understood beyond the narrow confines of this article. He said that non-refoulement is not just about returning refugees to countries of first asylum. State practices broadened the principle of non-refoulement by confirming that the duty of non-refoulement extends beyond expulsion and return, it established the principle in international law by extending its application to a broader category of refugees. Today the application of the principle of non-refoulement is independent from the state and international organisation's determination. Non-refoulement is applicable as soon as certain objective conditions occur. A state, which returns foreign nationals, must therefore justify its actions in the light of the conditions of the country of origin (Chimni 2000 109-110).

Article 32 consumes that “contracting states shall not expel a refugee lawfully in their territory on grounds of national security or public order”. Article 4 gives the right to freedom of “religion”. Article 31, para 1 protects the refugees from “penalties” for unlawful entry or presence. Article 26 contains the rights for refugees to “choose their place of residence and to move freely within its territory”. Article 27 and 28 of the Convention recognised that refugees have right to “identity papers” and “travel documents”. And finally, article 22 deals with the right of “elementary education”, it contains that the contracting states should give the rights to refugees that they shall receive same treatment as nationals (Convention Relating To The Status Of Refugees 1951).

Thus, the 1951 Convention covers the civic and socioeconomic rights of refugees. The other rights of refugees according to the Convention are the right of movable and immovable property, gainful employment, housing, labour legislation and social security. It incorporates the principle of non-refoulement and outlines the minimum standards of the treatment of refugees, including basic rights to which they are entitled. It also contains the duties of refugees, which they owe to the country of refuge. It elaborates the rights of refugees to juridical status, employment and welfare of the persons (Chimni 2000).

UNHCR provides the special attention to the refugee women and children. The Convention reaffirms the Universal Declaration of Human Rights with the principle “...that human beings shall enjoy fundamental rights and freedoms without discrimination”. Through this provision UNHCR gives the special attention to the refugee women and children (Convention Relating To The Status Of Refugees 1951).

Inter-war Mechanisms

Organised international efforts for refugees began in 1921 when the League of Nations appointed, “Norwegian pioneer in the field of refugee aid”, Fridtjof Nansen as the first High Commissioner for refugees (Khan & Talal 1987: 20). The League developed strict guidelines for the assistance of refugees. It was “mandated that aid be limited to Russian

refugees” and League funds be spent only to meet administrative case and not on direct relief “and that refugee assistance be considered temporary”. “For most of the interwar period, the international refugee regime” had “extremely limited ad hoc budgets”. Aid to refugees and host governments had to depend on financial assistance from individual states and voluntary agencies. Despite these “shortcomings of the interwar refugee regime, the appointment of Nansen as High Commissioner constituted the first formal acknowledgement of an international responsibility toward refugees. Nansen proved to be a highly innovative and successful advocate for them particularly in facilitating assistance to certain groups of refugees”. He devised an identity card and document known as the Nansen passport⁶ that was recognised by many countries. With these documents not only Russian refugees but also others could legally move from area where they stay temporarily, often illegally, to more hospitable area in Europe and elsewhere. After the death of Nansen, duties involving the protection of “refugees was placed under the aegis of the League Secretariat, while responsibility for administering the remaining limited assistance programmes was transferred to an agency that became known as the International Nansen Office” (Loescher 2001: 24-26, 30).

The League established “another fragile refugee organisation” in 1933 to the care of Jewish refugees, the High Commissioner for Refugees from Germany. Later, the “International Nansen Office” and the High Commissioner for Refugees from Germany were merged into the “fourth High Commissioner for Refugees” and this functioned until after the end of World War II till 1946. “The new High Commissioner was Sir Herbert Emerson and his powers were even more rigidly limited than had been the case in the past”. He was denied the authority “to enter into any legal commitment...on behalf of the League of Nations and the League assumed no responsibility, legal or financial, for his activities. He had no power to engage in material assistance and was assisted only by a skeleton staff” (Loescher 2001: 30-32).

⁶ Apart from the travel documents, Nansen successfully negotiated with a set of refugee rights that is education and employment. Nansen worked with the International Labour Organisation to help refugees to find jobs (Barnett and Finnemore 2004:76).

On December 31, 1946 the mandate of the High Commissioner of the League of Nations was terminated and on January 1, 1947, Intergovernmental Committee of Refugees (IGCR) assumed responsibilities, which is outside the purview of the League. Although the Committee was created in 1938 on the initiative of the President Franklin D. Roosevelt, in order to help refugees coming from Germany to negotiate with Germany about Jewish migration. During the IGCR Conference in London, a travel document for those refugees who came within the mandate of the IGCR and were not covered by the previous agreements, was approved. Despite this development the international community respond to the plight of Jews in Europe was very limited. Therefore, in 1946, its mandate was extended to all refugees, which is subsequently covered by the Draft Constitution of the IRO (Giri 2003: 33-34).

The UNRRA was established by 44 nations in November 1943, to provide temporary emergency assistance for millions of displaced persons (DPs) who fall into allied hands. "However, it was not strictly a refugee organisation" as "...it aided all those who had been displaced by the war but only incidentally dealt with refugees with political fears". UNRRA had also very limited mandate. It had no power to resettle refugees and DPs to third countries. Its goal was simply to return to their homes as soon as possible that had been uprooted and displaced by the war. Unlike the interwar period, the enormous amount of money was donated by UNRRA's forty-four member states for relief purposes. From its inception in November 1943, until its disbandment in June 1947, UNRRA funds expanded to nearly \$3.6 billion and at the peak of its activity it enlarged to include 27,800 people (Loescher 2001: 35).

The United States had been strongly criticising the UNRRA's operations, in particular its repatriation and rehabilitation programmes in Eastern bloc countries, it felt that these programmes only served to consolidate Russian political control over Eastern Europe. However, the Soviet Union also did not allow UNRRA to works in its zones. The Eastern bloc asserted that assistance should be given only to displaced persons who returned home, while the Western countries insisted that each individual should be free to decide whether or not to return home. Thus, the UNRRA became a controversial issue between

the Soviet Bloc and the United States. By the end of 1946 the United States refused to provide further grant to the agency and it worked to create a new organisation that had as its main function, not repatriation, but the resettlement of refugees and displaced persons (Loescher 2001: 35-37).

On the place of UNRRA, the United States with its allies created the IRO, in 1946, to take overall responsibility from IGCR and UNRRA. It was created as non-permanent specialised agency of the UN to deal with all categories of refugees. "According to Article 2 of IRO Constitution, the main objective of IRO was repatriation, identification, registration and classification, care and assistance, legal and political protection, transport and resettlement and reestablishment in countries able and willing to receive them of refugees and displaced persons, who were the concern of the organisation" (Ahmad 2004: 32). Previously, the international organisations dealt only with specific categories of refugees, such as Russian and German refugees. For the first time, the IRO recognised refugees as individual rather than the group. The major difficulty, which the IRO faced in the performance of its functions, was the constant change in international politics and economic conditions. The thinking of the UN members in setting the IRO was that the refugee problem was an immediate post-War problem and it could be solved in a limited time by international co-operation and financing. But the IRO could not fulfill the plan of the UN members. It left some problems unsolved, like material assistance for certain categories of refugees for whom resettlement or repatriation was not possible and for the continuing influx of new refugees (Giri 2003: 36-37).

Thus, a new discussion took place within the UN from 1948 to 1950 regarding the termination of IRO and the creation of a new international refugee organisation. After the termination of IRO, "two possibilities were worked out in the General Assembly". The first option was to transfer this task to the United Nations Secretariat Department and the second to "establish an ad hoc body, which could act independently within the administrative and financial framework of the United Nations". The second formula was adopted. At the same time, member states debated matters such as the longevity of the

proposed agency, its relationship to the Secretary-General, its sources of funding and general functions (Giri 2003: 42-43).

Table-2: International mechanism before the establishment of UNHCR.

| Name of the Organisation | Period | Affiliation | Major Problem | Provision for Refugees |
|--|-----------|-------------------|---|--|
| High Commissioner for Refugees | 1921-1930 | League of Nations | It considered the specific responsibilities of Russian refugees only. League provided fund only for administrative cost not for direct relief and refugee assistance. Aid to refugees and host governments depended on direct financial assistance from individual states or voluntary agencies. The refugee regime lacked the political and financial support of most League members. | The "Nansen Passport" included not only Russians but also others who legally move from one area to another. |
| International Nansen Office | 1930-1938 | League of Nations | Economic depression affected the employment of refugees. Decline in the prestige and the moral influence of the League due to the failure of the collective security in the Sino-Japanese and Italo-Ethiopian conflicts. The Soviet Union reduced the League activities on behalf of refugees. The rise of the new refugee problem in Germany from 1933. | It handled the remaining responsibility for administering the assistance programme for the protection of refugees after the death of Nansen. |
| High Commissioner of Refugees from Germany | 1933-1938 | League of Nations | The High Commissioner was restricted by several ways. He was instructed to avoid the discussion of the causes of refugee flows. His task was limited to negotiate with host governments for the settlement and emigration of refugees and the provisions for travel document. To avoid the criticism at a time when Germany was still the member of the League, this organisation was setup outside the formal structure of the League of Nations. In contrast to its predecessors, the agency did not receive funding for the administrative expenses of the Office. | - |
| High Commissioner for Refugees under the Protection of the League of Nations | 1938-1946 | League of Nations | High Commissioner denied the power to enter into any legal commitment on behalf of the League and the League assumed no responsibility, legal or financial for her activities. | The High Commissioner not gave any new provision for refugees. He was authorised to co-ordinate the humanitarian opportunities and supervising the application of various arrangements and conventions in the field of international protection. |
| IGCR | 1938-1946 | - | The international community's response to the plight of Jews in Europe remained limited. Thus, the IGCR faced the problem to protect these refugees. | The agency approved the travel document for those refugees who came within the mandate of the IGCR and were not covered by the previous agreements. |
| UNRRA | 1943-1947 | United Nations | The unwillingness of the US to support the repatriation programme. | - |
| IRO | 1946-1951 | United Nations | It was created for a limited period to assist the World War II refugees. Because the UN members considered the refugee problem as an immediate post-War problem and assumed that it could be solved in limited time by international co-operation and financing. But the IRO could not fulfill the overall responsibility in its limited time. | Identification, registration, classification, care and assistance were made it possible for the first time under the IRO mandate. |

Source: Loescher 2001: 24-26, 30-32; Giri 2003: 31-36.

United Nations High Commissioner for Refugees

After a one-year debate the General Assembly by the resolution 319 A (IV), decided on 3 December 1949 to establish the Office of the United Nations High Commissioner for Refugees (UNHCR) and after this resolution it was established under the subsequent resolution 428 (V) of 14 December 1950, (Statute Of The United Nations High Commissioner For Refugees 1950). It is stated in the very first sentence of the Article 1 of the Statute that,

The United Nations High Commissioner for Refugees would act under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute... (Statute of the United Nations High Commissioner For Refugees 1950).

Which means that it is the subsidiary organ of the UN General Assembly. The drafters of the *UNHCR Statute* and the 1951 Convention Relating to the Status of Refugees were influenced of the experience of post-World War Europe. The Soviet Union and its allies did not take part in the negotiations for the establishment of the UNHCR and during the writing process of the United Nations 1951 Convention. The United States was feeled very tired by financing international refugee programmes with the expensive experiences of UNRRA and IRO. Therefore, US policy-makers were not interested in expanding their financial and legal obligations to refugees. The US sought to establish a temporary refugee agency with limited authority and functions. The policy-makers of this country were interested that the main concern of the “proposed Office should be international legal protection” (Loescher 2001: 43-44). In contrast, the European states predicted a “forward looking organisation” rather than a limited authority organisation that “could provide a healthy international response” to the Second World War refugee crisis. For instance, initially France wanted a strong, multilateral, permanent, independent and empowered refugee agency, which raises its own finances. Other European governments supported the French position, regarding strength of refugee agency (Barnett and Finnemore 2004: 80-81). Non-European states particularly India and Pakistan also favoured the view of France. They “argued that the UNHCR should be a strong,

permanent organisation with the ability to raise funds for material assistance on a voluntary basis". The creation of the UNHCR did not satisfy the view of the Europeans, it was established according to the US position, as it was created with few responsibilities, little autonomy and few available mechanisms. Consequently, while the United States sanctioned the creation of UNHCR, it quickly moved to establish and support other refugee agencies, for example the International Committee for European Migration (ICEM)⁷ and the United States Escape Program (USEP)⁸ (Loescher 2001: 44). The Statute of the UNHCR placed no geographical limitation on the High Commissioner's mandate, but the 1951 Convention placed the geographical limitations by stating, "events occurring in Europe or elsewhere before 1 January 1951" (Loescher 2001: 45; Convention Relating to the Status of Refugees 1951). The Statute of the UNHCR defines refugees using the same ideological criteria as similar to the 1951 Convention. The High Commissioner would extend its competence,

Any person who has been considered a refugee under the previous Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organisation.

And the person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of *her* nationality and is unable or, owing to such fear or other than personal convenience, is unwilling to avail *herself* of the protection of that country, or who not having a nationality and being outside the country of *her* former habitual residence, is unable or unwilling to return to it (Statute of the Office of the United Nations High Commissioner for Refugees 1950) (Emphasis Added).

The central feature of the UNHCR's definition is its narrowness, because it deals with the refugees who left their country of nationality, it does not recognise the problem of IDPs. Moreover, persecution narrowed the definition of refugee as it excluded large numbers of peoples who might be forced to leave their country on the account of their

⁷ The ICM was formed on December 1951 to assist the European national migrants and refugees. It was independent from the United Nations operations programmes (Ahmad 2004: 33).

⁸ In 1952 the United States established the United States Escape Program to resettle the communist block refugees. USEP was regarded as part of a "new American foreign policy". President Truman set up the USEP to facilitate defections from the communist bloc (Loescher 1993:63).

economic need, international and internal wars, famines and for the political reasons. Barnett and Finnemore comments, “UNHCR was born as a backward looking rather than forward-looking organisation and so it was expected to help those who already were refugees and not future refugees” (Barnett & Finnemore 2004: 81).

Structure

The Office of the UNHCR is flexible in nature. It is guided by the principle of international solidarity and burden sharing⁹ (Ahmad 2004:35). The Office of the UN High Commissioner for Refugee consists a High Commissioner, a Deputy High Commissioner and Assistant High Commissioner. Regarding the growing complexity of humanitarian operation in post-Cold War, the High Commissioner established the post of Assistant High Commissioner with particular responsibility for policy planning and operations. The Assistant High Commissioner has been tasked with developing a research capacity within the Office and with strengthening UNHCR’s cooperation with external research institutions. To assist the High Commissioner in this task, in March 1996 the High Commissioner decided to reorganise and strengthen the former Centre for Documentation on Refugees and to establish a new Centre for Documentation and Research (CDR). The CDR will be engage in policy research, analysis and dissemination and will continue to be responsible for the development of UNHCR’s documentation (Executive Committee of UNHCR 1996). According to the Statue “the High Commissioner would be elected by the General Assembly on the nomination of the Secretary-General for three years and the High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own”. The General Assembly or Economic and Social Council give the policy directives to the High Commissioner. The High Commissioner reports annually to the General Assembly through the Economic and Social Council, her report is considered as a separate item on the agenda of the General Assembly (Statute Of The United Nations High Commissioner For Refugees 1950; GA Res. 2004).

⁹ During the earlier period the principle of burden-sharing had been used to describe how the richer and developed countries carried some of the financial responsibility for protection of poorer and neighbouring countries and for resettling refugees by providing them a durable solution to their lack of protection. But in the 1990s, European burden sharing identifies the term with distributing the protection responsibility between a group of co-operating developed states within one continent (Selm in Newman & J.V. Selm 2004: 83).

Apart from the High Commissioner, Deputy High Commissioner and Assistant High Commissioner the Office of the High Commissioner has been divided into 13 divisions or departments. These are:

- a) Division of International Protection,
- b) Centre for Document and Research,
- c) Division of Financial and Information Services,
- d) Division of Operational Support,
- e) Division of Human Resources Management,
- f) Operations for Central, East and West Africa,
- g) Southern African Operations,
- h) Great Lakes Operations,
- i) Bureau for Asia and the Pacific,
- j) Bureau for Europe,
- k) Bureau for the Americas,
- l) Bureau for Central Africa, South West Asia, North Africa and Middle East
- m) and the Staff Council.

All the divisions have been divided into further subdivisions, sections and desks. They work in close co-operation with each other. The UNHCR performs its responsibilities with the help of all the regional offices and their staffs (Giri 2003: 43-44).

The High Commissioner shall appoint the staffs of the UNHCR. The High Commissioner holds the key position and performs her duty in terms of co-ordination and formulation of policy and effective planning.

An Advisory Committee on Refugees was established in 1951 to guide the High Commissioner in exercise of her functions (Chimni 2000: 235). The Statute stipulates that if "the High Commissioner in the exercise of her functions, more particularly when the difficulties arise and any controversy regarding the international protection of refugees the High Commissioner to request the opinion of the advisory committee, if it is

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created” (Statute of the United Nations High Commissioner for Refugees 1950). This Committee was established in 1951, and replaced four years later by the United Nations Refugee Fund (UNREF) Executive Committee, whose function was to supervise the High Commissioner’s material assistance programme financed by the fund. In 1958, the General Assembly called for its replacement by the Executive Committee of the High Commissioner’s programme, which was set up by the Economic and Social Council (Chimni 2000: 235). The main task of the Executive Committee is to approve the High Commissioner’s assistance programmes, advice the High Commissioner in the exercise of her functions and administer the Offices financial and administrative efforts (Ex Com 2003).

However, India is not the signatory to the 1951 Convention or its Protocol, but it is member of the UNHCR’s Executive Committee, which meets annually in Geneva, to review the agency’s work and policies (UNHCR 2004: 63-64). India and most of the South Asian countries did not sign the 1951 Convention. These countries have not the capacity to restrict the large population entry due to lack of administrative, military and political capacity. These cross border movement in South Asia affects the internal security, political stability and international relations. These refugee flows changes the linguistic or religious composition of the receiving area and they can affect the economic infrastructure. Thus, the local population is anxious to assimilate these people, for these reasons the South Asian governments concluded that these are the “matter of bilateral not multilateral relations” and “the international agreements could constrict their freedom of action...” (Chimini 1994: 394 - 396).

Funding

UNHCR’s assistance programmes almost depend upon exclusively on voluntary contributions from governments, intergovernmental and non-governmental organisations and individuals. This dependence on voluntary contributions is the most significant weakness of the UNHCR’s functions (Chimni 2000:214). Although the UNHCR also

received the regular budget¹⁰ of the United Nations, which covers some 200 administrative posts, but this represents only two percent of UNHCR's total budget and the Office must raise 98 percent of its financial requirements each year. The dependence on voluntary funds results in funding shortages, which directly affect UNHCR's ability to respond to the needs of refugees and other populations of concern. For the most part of its funding is provided by fifteen donors, among them fourteen are governments and one European Commission. UNHCR is constantly seeking ways to enlarge its circle of donors. It also receives financial support from the private sectors, which includes the general public, corporations, foundations and Non-Governmental Organizations (NGOs). NGOs traditionally implement UNHCR's programmes during the field operations. It contributes to UNHCR's annual budget by making public appeals, through radio, television, press and other channels, on behalf of UNHCR for a number of operations. Till 2000 the UNHCR's activities were divided into two types of programmes:

- General Programmes.
- And Special Programmes.

General Programmes mainly focused on protection and care for refugees in exile, whereas Special Programmes covered assistance and protection during emergencies, voluntary repatriation and assistance for persons outside the refugee mandate but still of concern to UNHCR, including internally displaced persons, victims of war and returnees. On 1 January 2000, all UNHCR's programmes have been consolidated into one unified budget, the Annual Programme Budget, to provide governments and others interested in UNHCR's work with an overall, transparent and comprehensive picture of the totality of its operations in terms of protection and assistance (UNHCR 2000: 16-17 & 19).

Functions

According to the Statute "the High Commissioner would be of an entirely non-political character; it shall be humanitarian and social...". At the time of the establishment of the

¹⁰ The fifth Committee of the general assembly discussed the question of budget estimates for the Office of the High Commissioner for refugees at its 311th, 318th, 328th and 329th meetings on 13 and 18 December 1951 and 17 January 1952. At its 311th meeting the fifth Committee undertook a provisional examination of the budget estimates for the Office of the High Commissioner for Refugees. The secretary General had included in his original estimates \$727,100 to cover the costs of the High Commissioner in Geneva and the Branch Offices. At its 328th and 329th meeting, the Fifth Committee re-examined the budget and finally \$500,000 was recommended for approval (UN 1951: 533-534).

UNHCR the UN General Assembly decided that initially it should be non-operational. Originally, UNHCR was conceived as neutral, passive and reactive, the rationale for its continued existence is its humanitarian activities for protection, with recognition that assistance is commonly essential not only for survival, but also for the solutions of the refugee problems (Goodwin-Gill, G. 2006: 3).

The core function of the UNHCR is “providing international protection” and “seeking permanent solutions” by “voluntary repatriation of such refugees or their assimilation within new national communities according to their will”. As Article 1 of the Statute stated that:

The United Nations High Commissioner for Refugees acting under the authority of the General Assembly shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees.... by facilitating the voluntary repatriation and their assimilation within new national communities (Statute Of The United Nations High Commissioner For Refugees 1950).

Article 8 of the Statute stipulates that the High Commissioner would provide the protection to refugees who fall under the competence of the Office. According to this Article the High Commissioner shall provide the protection falling under the competence of her Office by promoting the effective conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments; promoting through the special agreements with governments to take the steps to improve the situation of refugees and to reduce the number requiring protection; assisting governmental and private efforts for promoting voluntary repatriation and assimilation within new national communities; promoting the admission of refugees to the territories of states; taking the steps to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement; obtaining from governments information concerning the numbers and conditions of refugees in their territories and the laws and regulations concerning them; keeping in promoting the relationship with governments and inter-governmental organisations; establishing contact with private

organisations for dealing with refugee questions and facilitating the co-ordination of the efforts of private organisations concerned with the welfare of refugees.

The subsequent Articles recognised that "...the High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine..." (Statute of the United Nations High Commissioner For Refugees 1950).

Hence, the High Commissioner cannot direct any operations without the further approval of General Assembly. The role and the function of the Office of the UNHCR has expanded in post-Cold War period. In this era, the UNHCR not only providing "international protection" and "seeking permanent solutions" for the problems of refugees, it also acted as a "teacher of refugee norms"¹¹. It monitors the "international standards"¹² for the protection of refugee norms. UNHCR has communicated the importance of refugee norms, by convincing newly independent states about the benefits of signing this refugee instrument and joining the UNHCR Executive Committee either as a member or as an observer (Loescher 2001: 5-6).

Thus, the primary concern of the UNHCR is to assist "those human beings who fall into the category of refugees as defined in its mandate" and for those who suffer from irregular or unusual status in their host country. Therefore, "it acts, on behalf of millions of people" they are "refugees, displaced persons, stateless and others in similar circumstances" (Holborn 1975: 1427). The function of the High Commissioner "involves" with voluntary repatriation, local integration or third country resettlement programme (Holborn 1975: 1430). Voluntary repatriation is possible "when the condition of the country of origin have changed so much that refugees believe that their lives or liberty is not threatened" (Giri 2003: 58). If the voluntary repatriation is not possible than

¹¹ "Norms are a standard of appropriate behaviour for actors within a given identity" (Finnemore and Sikkink 1998: 891). The asylum provider countries have not any obligation to protect the refugees, but they protect and secure the settlement of those persons who for well founded reasons are unable or unwilling to return to their country of origin. This implies with international refugee norms.

¹² The first international standard for the protection of refugees was established by the League of Nations. It called the first High Commissioner for Refugees, to define the status of refugees, to organise their repatriation or allocation to potential resettlement countries (Goodwin-Gill, G. 2006: 1-2).

the High Commissioner settle the refugees in their first asylum country. This can only be facilitated by agreement between the asylum country and the UNHCR. The third durable solution, which is facilitated by the High Commissioner, is the resettlement in the third country. When the refugees has been denied protection in the country of asylum and they cannot repatriate in their country of origin than the High Commissioner assimilate them within new nationality (Giri 2003: 61-62). Although, material assistance was not included as a function of the Office at its inception (Holborn 1975: 1430), but nowadays the most significant change in the functions of the UNHCR is its focus from legal protection to material assistance. Originally, UNHCR provided only legal protection to the refugees. Barnett and Finnemore (2004: 82) points out that the meaning of legal protection in the view of the UNHCR staff, “the legal protection not carried the material assistance, such as food, shelter, health services, education, social welfare and possible employment”.

Today, the UNHCR is not only “concerns with preserving asylum or protecting refugees rather its chief focus is humanitarian action”. For this humanitarian assistance UNHCR provides food, shelter and medicine to refugees and war-affected populations (Loescher 2001: 363). But programmes of material assistance require more funding and this is the big obstacle for the assistance programme of UNHCR.

Theoretical Approach

The regime theory seems to be useful in understanding the subject matter of the study. According to Stephen D. Krasner, “regimes can be defined as sets of implicit or explicit principles, norms rules and decision-making procedures around which actors expectations converge in a given issue area of international relations”. In this definition the defining characteristic of regime is principles, norms rules and decision-making procedures. Principles, reflect the idea of beliefs of fact, causation and rectitude. Norms, concerns the standards of behaviour. Rules, concerns the specific prescription of action and decision-making procedures concerns the idea of prevailing practices for making and implementing collective choices (Krasner 1983:186).

The international refugee regime is the collection of conventions, treaties, intergovernmental and non-governmental agencies and funding which governments have adopted and supported to protect and assist those displaced from their country by persecution or displaced by war in some regions of the world where agreements or practices have extended protection to persons displaced by the general devastation of war. The most significant norms, rules, principles and decision-making procedure of the international refugee regime can be found in the 1951 Convention Relating to the Status of Refugees, its 1967 protocol and the Statute of the Office of the UNHCR. Inclusion of persons displaced by war or any other man-made disaster as refugee is based on the Charter of the Organisation of African Unity and the Cartagena Declaration (Keeley 2001: 303-304). The refugee regime can be conceived by two different elements. One is that govern the responsibilities of states towards refugees who reach their territory. Second is which governing the responsibilities of states towards refugees who remain in the territory of another state that is principle of burden sharing. In the period of Cold War the first world countries emphasised the principle of burden sharing, because most of the refugees are coming from Communist countries. In North America especially in the United States, the Capitalist countries refugee regime took the form primarily of resettling those coming from Communist countries. The goal of the Western countries in regard to refugee was to create domestic support for a policy of opposing and weakening Communist Government.

The UN refugee agency is the institutional expression of the refugee regime. It was born in the immediate post-War period with a focus on Europe. The UNHCR was created to deal with the issue of European refugees in the wake of World War II and the 1951 refugee Convention in order to reflect their legal binding. Thus, the UNHCR had a clear Western and European focus at its creation. All of the organisation's funding came from Western governments. In the absence of a clear normative or legal framework on burden-sharing, the UNHCR has attempted to overcome collective action programme, through facilitating a series of ad hoc initiatives designed to address the refugee situation in the South through North-south burden-sharing. For example, the Indo-Chinese

Comprehensive Plan of Action of 1989 represents the most significant examples of the successful international co-operation in the history of the regime (Kourula 1997).

The Statute of the Office of the UNHCR and the 1951 Convention Relating to the Status of Refugees has severely restricted by the authority of the international community. The UNHCR depends for its decision-making procedure to the United Nations General Assembly and the Economic and Social Council.

The 1951 Convention definition of refugees also no longer provides a suitable legal framework to address new kind of refugee, i.e. internally displaced persons (IDPs). Due to the changed nature of war from inter-state conflict to intra-state conflict, ethnic and religious conflicts, social inequalities and competition for scarce resources, the number of persons needing international protection has increased. Therefore, the UNHCR has extended its protection activities to new categories of persons who are IDPs and brought into being a new guideline to handle IDP situations.

This dissertation attempts to address the following hypotheses and research questions.

Hypotheses:

- The role of the UNHCR is more extensive in post-Cold War period than Cold War era.
- UNHCR transformed from a refugee organisation to a humanitarian agency in aftermath of a Cold War.
- Resource constraint is one of the major impediments for the effective function of the UNHCR in the post-Cold War situation.

Research Questions:

- What is the policy of the UNHCR to protect the refugee in post-Cold War decade?
- How does UNHCR works with the collaboration of other agencies under the UNPKOs?
- Is UNHCR successful in post-Cold war era as a humanitarian agency?

To prove the hypotheses and the research questions the study is divided into five chapters. The first chapter discusses the changing definition of refugees. The chapter traces how the refugee issues were handled before establishment of the UNHCR and then highlights the origin and evolution of the UNHCR. It discusses the regime theory is an appropriate theoretical approach for understanding the way the international communities handles the refugee problem. The second chapter explores the role and the functions of the UNHCR in Cold War period. It examines the emergence of East-West conflict and how it affects the UNHCR's functions. It highlights the expansion of the UNHCR in developing countries. It discusses the search for new approaches for the refugee problems. It also highlights the downgrading of protection role of the UNHCR in Cold War era and finally it concludes with the challenges of the UNHCR in Cold War era. The third chapter examines how the changed nature of conflicts led to new kinds of problem. Refugees were forced to remain within their territorial boundary as IDPs. This changed nature of refugees made the role and the function of the UNHCR more extensive and humanitarian in post-Cold War period. The fourth chapter, addresses the challenges and prospects of UNHCR in future. Concluding chapter sums up the finding of the study.

The study involves in a comparative study. In order to prove the hypotheses it compares the role and the function of the UNHCR during the Cold War era to that of the post-Cold War. Both deductive and inductive methods are used for carry out this study.

CHAPTER 2

United Nations High Commissioner for Refugees in the Cold War Period

The establishment of United Nations High Commissioner for Refugees (UNHCR) in 1951 coincided with the beginning of the Cold War rivalry. The global refugee regime was based on the *Convention Relating to the Status of Refugees 1951* and its 1967 Protocol and the Statute of the Office of the UNHCR. The UNHCR was initially a temporary arrangement. It was established for three years in a Cold War context, which centered on a Western concern to assist people seeking refugees from communist countries (Newman 2004: 5).

As with any post-war international organisation, the creation and development of UNHCR was naturally linked to and shaped by evolution of the bipolarisation of international relations. From its founding, the UNHCR became most vulnerable issue in international politics of the East-West conflict. Refugees were also perceived as elements of power in this bipolar rivalry. "Refugee issues in general and the work of the UNHCR in particular were used by the West in the ideological struggle against the Soviet Union" (Elie 2007: 3). As Loescher says, "during the Cold War the grant of asylum was generally used to reaffirm the failures of communism and the generosity of the West" (Loescher 2001: 7).

This chapter attempts to examine the role and functions of the UNHCR in Cold War era. After briefly reviewing how the Cold War politics affected the establishment and operations of the UNHCR, the chapter analysis why the United States and the Soviet Union had adopted negative attitude towards the UNHCR at the initial stage and what consequences they had on the functions of the agency. Then, it analysis the Cold War politics of the UNHCR expansion in developing countries, specifically highlighting the rational of changed attitude of the United States towards the UNHCR. It also focused on how the UNHCR emerged as co-coordinator in the international endeavour to handle the

refugee problem and how by 1980s a new focus on repatriation developed. It ends with analysis of major challenges encountered during the Cold War in addressing the refugee problem.

Initial Effect of the Cold War:

During the 1950s, refugee problems emerged as almost exclusively East-West conflict. The movement of refugees was seen as part of the global struggle between East and West. Loescher says "the US policy makers considered the refugee issues within the same policy framework as national security and even formally defined refugees as only those fleeing communism...thus refugees became an important symbol in the ideological rivalry of the Cold War and it represents the instrument of power and sources". Further, he points that the Western governments created the UNHCR for their own benefit and the thought behind the establishment of this organisation was that "it would neither pose a threat to their sovereignty nor impose new financial obligations on them" (Loescher 2001b: 35).

The Western countries set up the UNHCR to "destabilise" the communist regime rather than to control "the unwanted flows and protect the persons" who left their country due to their race, religion, nationality, political opinion or membership of a particular social group (Keely 2001: 313).

Many refugees from Eastern and Central Europe left their homes due to fear from persecution and they seek asylum in the West. The ideological division between the East and West started before the establishment of the United Nations. Soviet Union never supported the efforts of the League of Nations for the protection of refugees. It raised the strict objections to international efforts to help the thousands of defeated white Russian Army Soldiers after the Russian civil war.

After World War II, relations between the Western countries and the Soviet Union rapidly deteriorated. Within the mandate of the International Refugee Organisation (IRO) the Western bloc insisted "the mandate of the IRO be broad enough to offer protection to individuals with valid objections to repatriation..."(Loescher 2001:38).

United States did not support the repatriation as the function of the IRO, it supported the resettlement of refugees and displaced persons in country of first asylum or third country. While the East European countries opposed the resettlement of refugees in another country and they insisted on repatriation (Lavenex 1999: 6-7) but the Western countries considered that most of the refugees within Europe were “political refugees”, therefore preference should be given to resettlement, not to voluntary repatriation (Kourula 1997: 175). The Charter of the IRO is drafted according to the Western countries view, therefore Eastern European countries refused to join the agency.

Thus, according to above argument it emerges that the Western preference to handle the refugee problem was resettlement, but the Eastern preference to solve the problem was repatriation. Barnett and Finnemore quotes that the Soviet Union asserted, only those who returned home should be eligible for assistance, whereas the West asserted that individuals should be allowed to receive assistance even if they refused to repatriate. The West would not force individuals to return in Soviet controlled lands. The United States greeted the persons, which were coming from Soviet Union by claiming that it will provide them more freedom, which they were not getting in the Soviet Union yet. The Soviet Union was unwilling to suffer this ideological slap (Barnett & Finnemore 2004: 79). The Western government encouraged the movement of refugees from East to West, to weaken the communist governments ideologically and to gain political legitimacy for their Cold War struggle. For example, the Federal republic of Germany offered the asylum to all East German refugees. This was the largest movement of the refugees from Eastern bloc in 1950s. Until the early 1950s, the international border of the Germany could easily crossed by the migrants. Some 197,000 East Europeans entered in West Germany in 1950; in 1951, 165,000; in 1952, 182,000 and in 1953, 331,000 East European refugees entered in West Germany. The mass movement of East Germans to West Germany continued throughout the 1950s and it created a major labour shortage in the region. To stop this, East-West flow permanently, the Berlin Wall was constructed in 1960 (Loescher 1993: 59-60).

After the suspension of League of Nations this East-West controversy was continued in the United Nations. In this hostile atmosphere the General Assembly decided to

establish the Office of the UNHCR in 1950. The necessary lack of the participation of Soviet Union in the UNHCR, led the space for the United States to act as the dominant actor in the organisation. Apart from the Soviet Union, not any communist countries participated in the agency at the time of its establishment (Elie 2007: 16). Even no any Soviet bloc countries participated during the writing process of the 1951 Refugee Convention, except from the Yugoslavia. Soviet Union opposed the UNHCR, because this agency did not accept the repatriation as the prime goal. According to the view of Eastern countries the UNHCR is an instrument of Western powers. But on the other hand United States recognised that the UNHCR was not under its control (Loescher 2001:45,51). Therefore, the UN refugee agency at the time of its establishment was without any powerful supporter.

During the Cold War period the Western groups used the work of the UNHCR as the ideological struggle against Soviet Union. UNHCR wanted to work as an autonomous body. Although it did not wish to involve in Cold War politics, still this conflict could not be ignored by the agency.

Initial Attitude of the United States and Soviet Union:

Like its predecessors, UNHCR was also the creation of the Cold War politics. United States was primarily interested to assist those persons who had come from communist countries. US policy deliberated to weaken their ideological rivals and gain political legitimacy in the Cold War struggle, by exposing the inadequacies of the communist governments. At the height of the Cold War, American leaders considered that the refugee policy is too important and they did not want the intervention of the United Nations to control it (Loescher 2001:7). They used the refugee policy as the ideological weapon against the communist countries. From the very beginning, the United States “distrusted” the UNHCR, because they think, “it was not totally under their control” (Elie 2007: 6). The UNHCR did not have an Office in Washington D. C. until 1980 (Loescher 200:183) and America did not sign the 1951 Convention till 1968 (Loescher 1993: 57). Though, UNHCR was established according to US view, but the US quickly moved to support this agency. American hostility to UNHCR originated in the election

of the first High Commissioner Gerrit Van Heuven Goedhart. The delegates of the US expressed their view that the UN Secretary-General should appoint the High Commissioner. The thought of the US delegates behind this appointment process of the High Commissioner is that if not through the veto, but through the choice of the Secretary-General the US could control the UNHCR. The French delegates rightly stated, "the appointment of the High Commissioner by the Secretary-General would simply be another way of reducing the agency" (Holborn 1975: 67). But the other participant for the debate to the method for the selection of the High Commissioner in Third Committee did not consider the US proposal.

In the Hungarian refugee crisis UNHCR did not act according to the US view. US initially opposed the UNHCR's involvement in this crisis. But success of the UNHCR in this crisis presented that "even though the UNHCR was undoubtedly dominated by Western powers, it had some capacity for autonomy and hardly acted as an instrument of the West in the Cold War struggle" (Elie 2007: 5-6). Because, the UNHCR not fulfilled the political ideology of the US; therefore the Americans did not support the activities of the agency in this period. Instead, US created the International Committee for European Migration (ICEM) and the "US Escapee Program" (USEP). The primary purpose of the USEP was to assist refugees who were coming from communist countries in Eastern Europe (Holborn 1975: 577). Apart from the USEP and ICEM America supported the creation of the two other UN agencies, which worked for the refugees. These were United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Korean Reconstruction Agency (UNKRA). Both organisations were located in regions of key geopolitical interest of US, the Middle East and the Korean Peninsula (Loescher 2001: 56).

The Soviet Union resisted the creation of the UNHCR, because it wanted the repatriation as a primary goal rather than resettlement in third country or country of first asylum. But according to the Statute of the UNHCR repatriation was not only primary goal of the agency for the protection of refugees, it also deals with local integration and resettlement in third country. Therefore, Soviet Union resisted from the participation in UNHCR.

Initial Functioning of the UNHCR:

Between 1951 and 1956, the survival of the UNHCR was very much in doubt. The contracting states created UNHCR in 1951 to the protection of refugees and help states to carrying out their obligations under the 1951 refugee Convention. Contracting states designed the organisation with very little autonomy and “to do what they told it to do”. They made office completely dependent on voluntary contributions from states, NGOs and individuals (Barnett & Finnemore 2004: 73). UNHCR was created to deal mainly the problem of European refugees after the Second World War. Therefore, at the initial period the UNHCR had two limitations for it’s functioning. First, the refugee definition was limited by the “events occurring before 1 January 1951” (Statute of the Office of the United Nations High Commissioner for Refugees 1950). Second, the work of the UNHCR is guided by the 1951 Convention and the Convention also limits the role of the agency by stipulating the refugee definition as “events occurring in Europe or elsewhere before 1st January 1951” (Convention Relating to the Status of Refugees 1951).

While the UNHCR’s programme has been less costly than either the IRO or the UNRWA, still the Office has grown since it was set up, by extending its activities, finances and staff. It also expanded its status within the UN family (Holborn 1975: 1428). Peter Browne says, when Goedhart assume his Office as the first UN High Commissioner for Refugees in Geneva he found “three empty rooms and a secretary”, after twelve months, at Christmas in 1951, the secretariat was still small and poorly funded (Browne 2006: 117). The contracting states were interested to give it the task of only helping them to carry out and co-ordinate their obligations, which is given under the 1951 Refugee Convention. But the UNHCR was also mandated with moral authority that derived from its mission to help and protect refugees and standing as a humanitarian agency (Barnett & Finnemore 2004: 73). Holborn argues that the “UNHCR, created as a non-political, problem-oriented coordinating body has proved, in its maturity, to be reflection of our times. In a world in which desperate human problems transcend, but cannot escape national and regional authorities, functional arrangements such as those exemplified in the work of UNHCR are increasingly relevant to the solution of the global problem of the twentieth century” (Holborn 1975: 1428). The power of the

UNHCR was both constitutive and regulative. It is constitutive as it involved in defining the categories of refugees. It is regulative because it regulates states for dealing with refugees and providing protection to displaced persons (Barnett & Finnemore 2004: 74). Through these activities the UNHCR gradually expanded its area of concern.

UNHCR has demonstrated its authority by responding multinational crisis. For example, in Berlin refugee crisis, High Commissioner Goedhart expanded the scope of the UNHCR by independently raising funds and increasing his budget. His successor Auguste Lindt expanded the activities of the UNHCR by maintaining good terms with United States. He was personally a good friend of the second UN Secretary-General Dag Hammarskjold. Therefore, the United Nations completely supported the activities of the UNHCR during the Hungarian refugee crisis. UNHCR was also completely supported by the United States in first time, thus the second High Commissioner for refugees was able to assume the good will that UNHCR was earned during its own actions in Hungary (Loescher 2001:81). Initially United States opposed the UNHCR's involvement in this crisis as the agency repatriated nearly ten percent Hungarian refugees (Elie 2007: 6). The crisis broke the complete isolation of the UNHCR from Socialist countries. During this operation the High Commissioner approved assistance to former Yugoslavia; this was also a communist country (Loescher 2001: 85).

In 1952, the High Commissioner initiated three programmes for the protection of refugees. These were; "emergency aid" programme, "long-term" plans for economic development and development of the "measures" to examine that, refugees received an adequate advantage of the UNHCR programme (United Nations 1954: 492). Goedhart also explained the three-point programme for the protection of refugees. These were, "protection", "promotion of emigration and assimilation" and material relief to the most needy groups of persons (Office of the United Nations High Commissioner for Refugees 1953: 2-3). Apart from these functions, initially UNHCR started camp clearance programme, assistance for non-settled refugees outside camps and assistance for local integration in Europe.

Camp Clearance: Programme for the camp clearance had been primary concern of the UNHCR from the very beginning, under this programme UNHCR emphasised on local integration to achieve permanent solutions for refugees. Between 1 January 1955 and 31 December 1959, 16,712 refugees were settled from camps (Holborn 1975: 471-472).

Assistance for Non-Settled Refugees Outside Camps: In 1959 the High Commissioner undertook larger projects on behalf of refugees who were not living in camps. While the camp clearance programme concentrated in Austria, Germany, Greece and Italy, the High Commissioner extended its assistance to non-settled refugees in North Africa, Middle East and Latin America. But the priority was given in Greece and Turkey. The High Commissioner designed the project to assist these refugees to enable them to become self-supporting. Refugees living outside of camps required more assistance than the refugees who were in camps. For example they required educational facilities, vocational training, rehabilitation and counseling. These refugees were resettled by providing small loans for the establishment of crafts and trades. Handicapped refugees were given priority under the High Commissioner's programmed (Holborn 1975: 473-474).

Assistance for Local Integration in Europe: For local integration in Europe UNHCR initiated a number of programmes that included statistics, housing and employment and training and education. A new reporting system was devised for the improvement of scope and accuracy of the implementation statistics and the adequate control of the programme. UNHCR provided housing and employment to post-war refugees in Europe. But the certain factors made the difficulties before the UNHCR to implement the process. These are increased price of land, building costs and the lack of skilled labour. Despite these difficulties between 1955 and 1965, UNHCR constructed 10,164 housing units in Austria, West Germany, Greece and France for the benefit of 11,121 refugees. UNHCR made several efforts to reduce the building costs. It co-operated with governmental authorities and building societies, which enabled the agency to secure subsidies for reducing the cost of houses. Training projects for young refugees have been financed by the UNHCR to facilitate the provision to gain employment in crafts,

trades and agriculture. In Austria the UNHCR signed an agreement with the Ministry of Agriculture for the employment of refugees in agriculture (Holborn 1975:481-484).

Initially, the area of the functioning of the UNHCR was mainly in European countries, it struggled to identify the extent of the refugee problem and bringing attention of the international community for the permanent solutions. According to the Statute, legal protection¹³ was the primary function of the UNHCR, but material assistance was the practical concern of the agency from the very beginning (Holborn 1975: 133, 135). Loescher also explains that according to Jacques Vernant the refugees, in 1951, who were under the care of the UNHCR, are “in need of material assistance as much as legal protection” (Loescher 2001: 63). After Second World War, UNHCR provided the material assistance for an estimated 400,000 “hard core” displaced persons who were the agency’s direct responsibility and were still in camps. These refugees are TB victims, blind and old persons, paralytics and increasing numbers of those who were attempting suicide (Loescher 2001: 62).

In the early period, the UNHCR largely performed its supervisory role. The High Commissioner Goedhart, familiarised with the seriousness of the conditions of refugees who were living in and outside camps by visiting the affected areas. He met many people who had lost their hope, initiative and integrity and who had unable to cope with normal life. In 1952, at the seventh General Assembly, meeting the High Commissioner presented a comprehensive survey on the refugee situations in different countries. He requested to the General Assembly to assist him in solving three problems of these persons. These are, the distressing circumstances of 8,500 refugees of European origin in China; the disastrous fate of more than 130,000 persons under the High Commissioner’s mandate living in camps in Austria, West Germany, Greece and Italy and the financing for the integration programme (Holborn 1975: 136, 139-140).

¹³ Through legal protection UNHCR assisted refugees by “identifying them, issuing travel documents, obtaining recognition of their various legal statuses and advocating ever more precise guidelines for handling recognised refugees” (Barnett 2001: 253).

But these programmes required money and most of the funding of the UNHCR comes from voluntary contributions. Although a remainder of IRO budget had provided a grant of \$236,698. Despite this grant the gap between emergency needs and available resources was large. The biggest problem before the Office to tackle its functions was the selectivity and hostile behaviour of the donor governments to granting fund to the UNHCR for its operational activities. Thus, the UNHCR had faced the problem of funds and political support to carrying its programmes. UNHCR not only find itself excluded from the American aid, but also from the support of the European countries, these countries spend large amount on local refugee settlement rather than contribution to the UNHCR (Loescher 2001: 61-62).

To overcome these obstacles, the High Commissioner used all possible ways of raising funds. First, He declared the sale for \$14,000 of an inherited bar of gold which the Nansen Office had purchased (Holborn 1975:136). Second, on the request of the High Commissioner, Goedhart, a proposal for a limited relief fund of \$3 million has been passed by the General Assembly resolution 538 (VI) on 2 February 1952, and authorised him to launch an appeal for government donation but this money could only be used for emergency purposes not for long-term solutions (Loescher 2001:63). Third, due to lack of governmental support and the US opposition, the High Commissioner turned to private sector for help (Loescher 2001:67). In July 1952, the Ford Foundation has announced its decision to grant the sum of \$2.9 million to the UNHCR, which enabled the office to actively involve itself in administering assistance to the refugees in West European asylum states and coordinating the activities of NGOs. This approval expanded UNHCR activities in several respect, such as funds were to use for pilot projects to promote the integration of refugees in communities where they lived (Loescher 2001:67). The positive results of the Ford Foundation pilot schemes and the expansion of the office for five years spurred Dr. Van Heuven Goedhart to propose with practical planning for long-term programmes (Holborn 1975:370). Fourth, although the US Congress removed Goedhart proposal for a \$5,00,000 contribution to the United Nations Refugee Emergency Fund (UNREF) in July 1954 but US delegation co-sponsored a four-year plan for permanent solution, which is known as United Nations

Refugee Fund (UNRF). The overall target for this programme was \$16 million and this was a significant breakthrough for the UNHCR (Loescher 2001:70).

Expansion into Developing Countries:

UNHCR was established with limited autonomy for three years. But under the impulsion of successive High Commissioners and the increasing complexity of refugee problem in outside of Europe, it managed to overcome the limitations of its Statute and continued its activities in affected areas through the series of General Assembly resolutions. Dr. Lindt pointed out that;

His Office was charged with the supervision of the 1951 Convention, with determining eligibility procedures or with helping to determine eligibility itself in certain countries. His Office was concerned with legal matters affecting the status and situation of the refugees. Although in 1956 approximately 55,000 refugees in Europe became naturalised, but there were still around one million refugees in need of protection. He concluded that prolongation of his Office was necessary because of the long-range nature of the refugee problem of international protection.

Regarding this argument the General Assembly on 26 November 1958 recognised that “the need for international action on behalf of refugees would still persist” after 31 December 1958 and further the Assembly considered a valuable work of the UNHCR in providing international protection to refugees and in promoting permanent solutions for their problems and therefore Assembly extended the Office for further five years (Holborn 1975: 420-421). The functions of the UNHCR were not ended in 1963. On 12 December 1963, through the resolution 1959 (XVIII), the Assembly requested to High Commissioner to continue its practices for international protection to refugees and pursue his efforts on behalf of the refugees, particularly by giving the special attention to new groups of refugee. In 1963, UNHCR provided international protection to some 1,250,000 refugees (United Nations 1964:367). The General Assembly, on the High Commissioner’s proposal accepted the Protocol Relating to the Status of Refugees and eliminated the time provision and geographical limitation from the Convention. The third High Commissioner of the UN refugee agency had taken a significant role regarding the

repatriation of Algerian refugees in Morocco and Tunisia and undertaken a various missions in East, Central and West Africa, Latin America and also in Western European countries. For promoting UNHCR's work in Africa he visited nine African countries, these are Tanganyika, Uganda, Burundi, Rwanda, the Kivu Province of the Congo, Nigeria, Dahomey, Togo and Ghana. In October 1965 he attended the Organisation of African Unity (OAU) Conference of Ministers in Accra as an observer. Regarding this expanded area for the functioning of the UNHCR, General Assembly on 11 December 1967 voted to continue the Office for another five years from 1 January 1969 (Holborn 1975: 513-514). Therefore, due to growing complexity of the refugee problem in outside of Europe the UN General Assembly regularly voted to continue the Office.

Jeffrey Crisp argues that, when the UNHCR was established in 1950, the majority of the world's refugees were to be found in the industrialised countries. Thus, the 1951 UN Refugee Convention restricted the refugee definition to people displaced as a result of events occurring in Europe before 1 January 1951 and the decision to exclude the Palestinian refugees from the UNHCR's mandate, presents the notion that refugee questions were primarily a concern of the world's most prosperous regions (Crisp 2001 168-169). These bureaucratic boundaries of the UNHCR were also reduced, when it started their operations in Africa and other low-income regions of the world. Crisp sees these programmes as "standard settlement model". He says as Barbara Harrell-Bond observed in her seminal critique of refugee assistance programmes:

There are three stages to the settlement programme. First, refugees are given relief aid and transported to camps, to inhabit house built for them or which they are expected to build for themselves. In the second stage, they are provided with land, tools, seeds and primary education. During this period refugees are expected to be motivated to work and get on their own feet quickly, by being told that there will be a gradual reduction in their food rations after the first harvest. In the third stage aid is withdrawn, on the grounds that the refugees should by then be self-sufficient and integrated into the local community

Thus, the international expenditure on refugees steadily growing, but the assistance did not provide in developing countries, particularly in Africa as a basis for their development activities that would benefit the long-term assistance to both the refugees

and the local populations. By the mid 1960s, international communities and governments started the “integrated zonal development approach” in Africa for refugee assistance. However, few efforts had taken to implement this approach, but these efforts did not meet the greater success (Crisp 2001: 168).

Until 1945, two-third countries were under the colonial powers. Since, the end of World War II, the demand for independence in Asia and Africa increased dramatically. This demand generated a movement all over the world, which finally laid to the freedom struggles in Asia and Africa and they became independent after a long struggle. These newly independent countries became the members of the United Nations and by 1960 the membership under the United Nations reached one hundred, with seventeen new members from developing countries. With rapid increase of the UN membership the Western hegemony under the United Nations was almost ended and the developing countries gain the voting power within the UN system and they acted as a pressure group for their international assistance. Through the United Nations these countries attracted the international community to solve their economic problems. As these countries gained the voting power within the UN system, the UNHCR had also attracted to meet the interest of these newly independent countries (Loescher 2001:121).

The decolonisation process in these countries was violent and it produced a large number of displaced persons. Initially, UNHCR had the problem to provide international assistance to these refugees; particularly it faced the political and some organisational problem. In Europe, where refugee problems were perceived as an East-West context a political consensus among Western countries regarding international approaches was definite. In dealing with developing countries refugees, the situations were considerably different from European countries; UNHCR faced the political problem to protect these refugees. In many cases, refugee situations were involved directly either the political interest of the Western colonial powers those were also among the founding members of the international refugee regime or the security of newly independent countries who were the new members of the UN. To overcome these situations the UN General Assembly granted new authority to the High Commissioner so that he could take action. Thus, for the next two decades, the UN member countries

were willing to authorise the UNHCR to meet the needs of new and different group of refugees who were in the developing countries. On the other hand, some of the UNHCR's staffs were not willing to expand the activities of the agency beyond the Europe. Until 1961, the UNHCR was still predominantly a European organisation. The 80 professional staff of the agency was mainly from Britain, France and America, no individual staff from Asia and Africa (Loescher 2001: 92. 109).

On 26 November 1957, the UN General Assembly passed a resolution 1167 (XII) to cover the new categories of refugees. Through this resolution, the General Assembly authorised the High Commissioner to use his "good offices" formula to encourage the contributions to assist those who did not fully come within the statutory definition. The Office of the UNHCR firstly used this formula to assist the large number of Chinese refugees in Hong Kong (UNGA Res. 1957). These Chinese refugees had posed an "insoluble problem" before the UNHCR. These refugees concerned the need for increased material assistance, this assistance could not be provided without the involvement of international agency, such as the UNHCR. But the two competing Chinese governments made it difficult for the General Assembly to declare that these refugees were within the mandate of the UNHCR and without such a declaration, the Office had powerless to meet the needs of these persons. In 1957, this problem had reached a serious crisis, therefore the General Assembly recognised that "the problem of Chinese refugees in Hong Kong... is such as to be of concern to the international community". Therefore, the Assembly had passed three significant resolutions in 1957 to give a wider and more flexible role in any emergency situation relating to new refugees, not only in Europe but elsewhere. UNHCR had played an important role in the search for funds and their distribution to governments and agencies, which was responsible for caring the Chinese refugees (Holborn 1975: 424). By lending its good offices formula the Office was able to seek immediate aid for specified group of refugees regardless of their legal status (Holborn 1975: 657). After Indo-China, UNHCR enlarged its good-offices activities in other developing countries. For example, the UN refugee agency had expanded its activities in Burundi¹⁴ and Algeria and it

¹⁴ UNHCR opened its first Office outside Europe in Burundi in 1962 (Keeley 2001: 307).

became “more and more UN agency that operated in developing countries” (Keeley 2001: 309). Similarly, after the UNHCR’s expansion in Algeria and Cambodia, good offices formula was applied in Angola. Thus, the continuation of this process represented the commitment to carry on the protection of non-mandated refugees of UNHCR.

From 1965, the language of the refugee definition had changed and became more composite, when the General Assembly requested the High Commissioner to assume the universal character of the refugee definition, and requested an adequate international protection to refugees and provide durable solutions to various groups of persons (UNG A Res. 1965).

As the 1970s progressed the global refugee problem were also increased, from 2.4 million in 1975 to 4.6 million at the end of the decade. By the end of 1970s, a large number of refugees were residing in developing countries. The following table shows the increase in the number of refugees from 1970 onward, in various regions around the world than Europe

Table 3: Refugees and other persons of concern to UNHCR by region from 1970-1985.

| Year | Total Refugee in Africa (in million) | Total Refugee in Asia (in million) | Total Refugee in Europe (in million) | Total Refugee in Latin America (in million) |
|------|--------------------------------------|------------------------------------|--------------------------------------|---|
| 1970 | 0.24 | 0.15 | 0.65 | 0.02 |
| 1975 | 1.1 | 0.09 | 0.56 | 0.11 |
| 1980 | 1.97 | 2.72 | 0.58 | 0.17 |

| Year | Total Refugees and Other Persons of Concern* in Africa (in million) | Total Refugees and Other Persons of Concern in Asia (in million) | Total Refugees and Other Persons of Concern in Europe (in million) | Total Refugees and Other Persons of Concern in Latin America (in million) |
|------|---|--|--|---|
| | | | | |

| | | | | |
|------|------|-----|-----|-----|
| 1985 | 3.00 | 5.1 | 0.7 | 0.4 |
| 1990 | 4.00 | 6.8 | 0.8 | 1.2 |

Source: United Nations 1972:485-486; United Nations 1978:551-552; United Nations 1983:932-933; UNHCR 1995; UNHCR 2001: 310.

*Note: other persons of concern refer to groups or individuals who fall into one or another category of persons of concern, but whose membership has not yet determined or agreed with the concerned States, but they benefited from UNHCR's protection and assistance activities. They are also the persons who are not directly concerned within any of the categories of persons of concern, but UNHCR extends its protection and assistance activities on humanitarian or other special ground. Stateless persons were included in the category of "others of concern" until 2003 (UNHCR 2007). During 1970, 1975 and 1980 in Asia it is not necessary that the number of refugees are concerned with the UNHCR.

Since 1975-1990, in Africa number of refugees and other persons of concern of the UNHCR are more than in Europe. Since 1980-1990 these numbers are more in Asia than in Europe. In 1990 this is more in Latin America than in Europe. To respond this global refugee problem UNHCR started several programmes in developing countries, "refugee aid and development strategy" was one of among them. This approach stipulated that assistance should be development oriented and it enables the beneficiaries to become self-sufficiency. It focused the need for refugee-populated areas. This approach emphasised that international assistance should be used to promote sustainable development and both refugees and the local population should be benefit from this process. Various activities were envisaged under the refugee aid and development process: For example,

Projects to provide agricultural, wage-earning and income-generating opportunities to both refugees and local population; initiatives to strengthen the physical and social infrastructure in areas where large number of refugees had settled; and new efforts to combat the environmental degradation damage resulting from the long-term presence of large-scale refugee populations (Crisp 2001:170).

Despite these activities, at a global level the refugee aid and development approach proved to be false, because as Crisp stated the review of UNHCR that;

the efforts made to date in the area of refugee aid and development have had limited results, mainly due to lack of funding. Paradoxically, the projects which have not been funded are mainly those in Africa, where large numbers of refugees are to be found in some of the least developed countries of the world..." (Crisp 2001: 171-172).

Donor states felt that if refugees were incorporated into development projects, such as in settlement schemes, they would become potential contributors to the host country's development. The refugee aid and development approach was also affected by operational problems that derived from the fact that UNHCR is not a development agency (UNHCR Evaluation Reports 1994).

In 1976, the Vietnamese case presents another opportunity before the UN refugee agency to expand its role and activities in developing countries, when the Executive Committee of the UNHCR spoke about asylum seekers who had left their country in small boats (Giri 2001:65). Through these various phases of expansion in developing countries, UNHCR truly became a universal organisation.

Both the Super Powers supported the UNHCR's expanded role in developing countries in different context, because neither East nor West regarded refugee relief as solely a non-political humanitarian effort. In fact their support to the UNHCR was the direct result of their competition to expand their influence through the agency in the developing countries. Their supports were many a time aimed to score a point against their opponent in the Cold War game. In this process, the UNHCR could receive benefits of their support from both the sides. After the expansion of the UNHCR in Africa and Asia, the refugee emergencies also expanded in other parts of the world. Without the co-ordination with other UN agency it could not assist the refugees effectively. Therefore, it expanded its area of activities as an UN coordinator.

Changed Attitudes of the United States:

Initially, the United States opposed the establishment of a permanent solutions fund, but in mid 1954 the American opposition towards UNHCR was little reduced. The Eisenhower administration took the step to seek the approval of American Congress for

a \$500,000 contribution to the UNREF. For the first time, Goedhart was hopeful about a gradual change of the American attitude towards UNHCR (Loescher 2001: 70). The United States changed their attitudes towards the agency due to new “Soviet redefection campaign”. The former Soviet Union granted general amenities, rehabilitation, the release of political prisoners and it reformed the Judiciary and police system in Eastern Europe. US viewed this former Soviet Union attitude as a direct threat to its own “escapee programme”. Therefore, the US also increased the funding of its refugee programme in Europe. For the first time, the UNHCR benefited from the ideological rivalry between East and West (Loescher 1993: 67). During 1960s and 1970s, the Cold War was extended from Europe to developing countries. Decolonisation and post independence civil conflict and warfare in Africa generated a vast number of refugees. In this period both the Super Powers were willing to capture the Asian and African region. In these regions the US and the Soviet Union built the local allies through their economic aid, political support and weapon delivery programmes (Loescher 2001:38).

From the 1970, “the US has supported the efforts of the UNHCR to extend the principle of asylum for refugees worldwide”. The extent to which the Americans recognise this principle was established in the public response in November 1970 of a Lithuanian seaman, Simas Kudrika. He was a crewman on a Soviet vessel. When Kudrika by default turned to the Soviet vessel towards the US territory then he tried to defend himself. Soviet captain requested for his return and after a long discussion Soviet party was allowed to board the US vessel, but the sailor was forcibly seized. Due to this, the public and the press were aroused in anger and distraught citizen from all over the country “poured letters into Congressional offices”. Within days an immediate report was ordered by the President and a full Congressional meeting was held in December. During this period the High Commissioner also gave a letter in which he brought to the mind of US government to respect the 1967 Protocol. The ultimate result of this event “was the issuance of new Guidelines by the Secretary of State... to Reinforce the US policy on the Right of Asylum”. The Guideline states that;

The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by US personnel and the basic objective of the policy on right

of asylum was to promote institutional and individual freedom and humanitarian concern for the treatment of the individual (Holborn 1975: 574-575).

Thus, through this new asylum policy the hostile behaviour of the US towards UNHCR gradually shifted. The US President John F. Kennedy still gave strategic priority to the European countries, but the American policy makers also began to take note of refugee development in Africa, Asia and Latin America. The thought behind this step was that if they will not help in development of these countries, the Soviet Union would persuade their hegemony in these regions. Thus, this new political interest in the developing countries caused the Americans to foster close relations with the UNHCR (Loescher 2001:126).

While in Africa the US policy makers supported the UNHCR programme, tensions continued between the US and the UNHCR over refugees and asylum issues in Europe and Northern America. The United States Escapee Programme (USEP) cares all eligible persons from the Sino-Soviet bloc-seeking asylum with the assistance of US charitable agencies and to assist resettling such persons in Western countries. The USEP encourages additional escapees and refugees particularly those persons who are able to add valuable information of the Soviet country (Loescher 2001: 129). But when the European problem diminishes, then the US has reduced its organisational and financial contributions in Europe and started its efforts on such other areas of the world where the needs and the national interest of the country were identified (Loescher 2001:130). Thus, the US had supported the expansion of the UNHCR in other parts of the world.

America increased its support to the refugees following the recommendation of President Kennedy in a message to US Congress on 11 July 1961, Congress enacted, in June 1962, the "Migration and Refugee Assistance Act". The policy grants permanent authorisation for annual funding to various multilateral organisations, refugee operations and other refugee agencies. It also granted the permanent authorisation for annual funding to the UNHCR. US provided its assistance in most refugee situations through the programmes, which is administered by the Office of Refugee and Migration (ORM) Affairs of the Department of State, International Committee for European Migration (ICEM), International Red Cross Society (IRCS), UNHCR and American Voluntary

agencies. US funds for refugee assistance in 1972 totaled \$263.5 million. In addition, US contributed more than \$1 million to the UNHCR's operations, after the appeal of the UNHCR, in 1972, for aid to resettlement and repatriation programmes for Sudanese refugees (Holborn 1975: 572-575)

The UN Coordinator

As we have seen that during 1970s the UNHCR started its activities to meet the needs of developing countries, the focus of the international refugee problem has shifted from Europe to developing countries. Therefore, it is necessary to restructure the organisational chart of the UNHCR according to its expanded activities. Barnett and Finnemore also highlights that "if the UNHCR was going to emphasise field operations and repatriation and downgrade legal protection, then it would be necessary to restructure the organisational chart" (Barnett & Finnemore 2044:102). The Office had intervened in a number of tense political and security situation around the world. In the early 1970s a new area for the refugee protection was emerged, UNHCR enlarged its area of concern from Africa to Asia and Latin America. According to James Read, the Deputy High Commissioner of the UNHCR, "since the early years of the High Commissioner's activities has assumed even greater importance as the geographical scope of its operations has been extended and its services multiplied" (Loescher 2001:151).

A large number of these refugee situations led to the increase of the staff and budget in UNHCR. An annual programme budget of UNHCR grew from \$8.3 million in 1970 to \$69 million in 1975 (Loescher 2001: 151). Many UN agencies and other international actors involved in these endeavours, therefore, it became necessary for co-ordination of the UNHCR among other UN agencies. Although, according to the Statute, the High Commissioner advised to maintain the close relationship with concerned international organisations, which were working in the area of migration, education and health. These contacts were valuable for the High Commissioner, but these agencies did not support the UNHCR to carrying its principal responsibilities. The UNHCR cannot handle refugee matters alone. Through, General Assembly resolutions

and request by the UN Secretary-General, the Office increased the co-ordination activities with other UN agencies. For example, UNHCR assumed the function of focal point in 1971 Bangladeshi refugee crisis, when the UN Secretary-General U. Thant requested the High Commissioner to act as the focal point for the co-ordination of relief activities. This operation was beyond the technical and administrative capacity of any one agency. Therefore, the UNHCR co-ordinated with various other agencies within the UN system, notably, United Nations Children Fund (UNICEF), World Health Organisation (WHO), and the World Food Programme (WFP) and acted as coordinator of the activities of not only UN agencies but also with other actors, which involved in vast scale operations. The refugee crisis of the 1970s was so large that the involvement of entire UN system was not sufficient, the involvement of other actors, such as governments and non-governmental organisations (NGOs), apart from the UN agencies, was also necessary. To expand his activities the High Commissioner acted as a coordinator of the programme with various other concerned agencies. For instance, in Hungarian refugee emergency, the High Commissioner provided aid and resettlement with the help of governments and NGOs in 1956. By the 1970s, the scale of natural disasters had increased dramatically. To provide the assistance to the victims of these disasters the number of NGOs and other UN specialised agencies had also grown up and the consensus among the countries were emerged that overall co-ordination of relief work is essential if the international community wanted to handle the international humanitarian action effectively (Loescher 2001: 151,154). In 1970s the Office made several efforts to make the UNHCR most important humanitarian organisation under the UN system and the UN General Assembly passed the resolution for humanitarian activities of UNHCR. The General Assembly resolution 3143 (XXVIII) of 14 December 1973 authorised the High Commissioner with essential humanitarian actions and it mentioned “the increasingly useful co-operation between the High Commissioner and other members of the UN system...”. Thus, the High Commissioner in Cold War emerged as a leading actor in major humanitarian events among various agencies and governments. For example, the major humanitarian crisis in Africa and South East Asia needed active collaboration among states and various international organisations. “It is

the High Commissioner who alone has to work out proper co-ordination of international effort” (Singh 1984: 48).

In 1974, the General Assembly identified that repatriation is the most durable solution to refugee problems in certain circumstances, “particularly where the principle of self-determination was involved and urged the international community to provide rehabilitation assistance” (Loescher 2001: 154). In Cold War thousands of refugees have returned their home through the effort of the UNHCR, particularly in East Bengal and Sudan. Later, this successful repatriation the UNHCR expanded its programme in Zaire, Angola, and Nicaragua. In 1981, at the request of the UN Secretary General, UNHCR repatriated, 6,00,000 refugees from Zimbabwe (Giri 2003: 58).

These programmes were so large that only one organisation could not operate it alone. Thus, the expansion of scope and scale of refugee programmes, in which involvement of other agencies and actors increased and made it necessary to have co-ordination. UNHCR emerged as coordinating agencies of international efforts towards addressing the refugee problem.

The Search for New Approaches:

By early 1980s, the donor governments were tired to provide funding to the UNHCR’s care and maintenance operations. The number of refugees had also increased from 10 million in the early 1980s to 17 million by the end of the decade. Originally the donor governments were the Western countries; they had their own political priorities to provide the fund to the UNHCR’s operations. They were very selective to provide fund to UNHCR’s emergency assistance programmes. Therefore, some emergency assistance programmes were inadequately funded. Donor governments were not willing to provide the fund in Africa, because it did not fulfill the geopolitical interest of Western powers. Thus, African governments stressed to the greater needs on burden sharing to manage the impact of refugees on their economies and environments. To respond this, the High Commissioner Paul Hartling started the “refugee aid and development strategy”, but this

programme had never accepted by the donor countries. Therefore, this idea was ended “after the departure of Hartling” (Loescher 2001: 227-228).

On the other hand, in 1980 a debate was started to address the “root causes” of refugee movements. The United Nations now became quite active to address the area of human rights and draw the connection between human rights violations and refugee movements. The root causes approach led to the conclusion that if the governments wanted to find the lasting solutions of the refugee problems, they had to develop a comprehensive regional and international strategy to address the conflict, human rights and poverty (Loescher 2001: 228).

Traditionally, UNHCR’s approach to solve the refugee problem was reactive, exile-oriented and refugee-specific. But these approaches were also inadequate in many ways to meet the contemporary needs. The UNHCR approach was reactive, because it primarily worked with the people when they left their country of nationality and reached neighbouring countries, in this approach little attention was given in the country of origin. The second approach was exile-oriented, because the UNHCR staff concentrated their activities on assisting refugees in camps and negotiating with host and donor countries for support. This approach placed the responsibility of refugees on the host country rather than the states from which they had fled. For example, the 1951 UN Refugee Convention deals with the obligation of asylum provider countries, but the Convention nothing says about the role and responsibilities of countries of origin. But recent experiences emphasise that only few host countries are now prepare for the long-term settlement and integration of large refugee populations. The third approach for the refugee problem was refugee-specific, because it focused almost exclusively on people who were fall within the 1951 UN Refugee Convention definition, OAU definition and Cartagena definition. These definitions were not included IDPs, returnees and economic migrants. Therefore, the UNHCR expanded very little time, efforts or resources to protect these groups, who were displaced within their own countries, who had returned to their home, asylum-seekers whose claims for refugee status had been rejected and who had migrated to other countries for primarily economic reasons (Loescher 2001a: 172; UNHCR 1995).

Number of IDPs has also increased from mid 1970s. For example, in Somalia the internal displacement was started in mid 1970, due to drought and attacks on civilians (Hasan 2007: 29). Number of returnees had also increased from late 1970s. For example, 2,00,000 Burmese returned from Bangladesh in 1978 (Giri 2003: 58). But the traditional approaches to refugee problems were very inadequate to meet the problems of these persons. Thus, in subsequent years the UNHCR had adopted the new approaches to the refugee problems. The next chapter will analyse the new approaches for the refugee problem.

Challenges:

The primary function of the UNHCR is to provide “international protection” and for “seeking permanent solutions” to refugees who fall under its Statute definition. In Cold War whenever the refugees’ problem were “political” in nature then the UNHCR always made efforts to solve this problem at the political level with the co-operation of governments concerned. When the refugees’ problem was legal, then the agency tried to resolve it through the promotion of an international “treaty” or “national legislation” (Goodwin-Gill 2001: 130). Holborn also says “since the granting of asylum has never been fully assured, the High Commissioner is seeking to develop positive international law in this field. He has sufficient endorsement of his proposal for a draft convention of territorial asylum, embodying the principle of non-refoulement” (Holborn 1975:1430).

In Cold War the refugees’ issues became highly politicised due to tussle between United States and the former Soviet Union. The UNHCR was established as a “non-political” agency, to remain as a universal organisation. In 1950, there was very tense political environment, nations were divided between two groups: Western and Eastern blocs. At that environment, it was very difficult for UNHCR to remain as a non-political agency. Because most of the fund of the UNHCR comes from voluntary contributions from governments, therefore, it was necessary for the UNHCR to fulfill the interest of both groups. If the agency became restricted to one group of countries then it would get excluded from other groups. But both the Soviet Union and the United States initially resisted the participations from the UNHCR.

Because the organisation was basically a Euro-centric in nature, thus few countries had supported the UNHCR, at the time of its inception. Even Soviet Union and any other communist countries also did not participate in the agency till 1956.

The other challenge in Cold War was the diversity of the application to protect the refugees among host government. Because very few countries were the members of the UNHCR Executive Committee and the non-member countries of the UNHCR's Executive Committee did not accept the definition and implementation of refugee policy as it is given under the Statute. However, from 1960s, the UNHCR enlarged its area of activities from Europe to developing countries. But there was only 40 members of the Executive Committee of the High Commissioner's Programmes as constituted since 1979 and most of the countries among them are European countries (Singh 1984: 86). These European countries had their own interest in the UNHCR, thus they did not want the expansion of the agency in developing countries. Both the capitalist and the communist countries used the refugee policy according to their own interest.

Because most of the donor countries of UNHCR were Western governments and they provided the fund to UNHCR according to their own political interest. Therefore, some operations of the UNHCR were inadequately funded. For instance, it was very easy to raise the fund for Indo-Chinese and Afghanistan refugee crisis, they are located at the key interest area of the super powers, but it was very difficult for African government to raise the fund for its development oriented programme, where donor governments had not any political interest (Loescher 2001: 227).

Thus, the UNHCR faced the problem of funding and resources whenever it focused its attention outside the area of political interests of the donor countries. Initially, the UNHCR also faced the difficulties to compete with other refugee organisations such as with UNRWA, UNKRA and USEP because these agencies were regularly funded by US. Goedhart felt that the negligence of US created the numerous other international refugee agencies and it also created unnecessary and expensive duplication and overlapping of programmes. According to him, "one of the most unfortunate aspects of this development in the refugee field is that every international or governmental

organisation for refugees operates on the basis of its own definition of refugee...”, that is not similar to the Statute definition. Goedhart further considers that “...it is clear that this development also militates against the interest of the refugees themselves in that it tends to introduce political considerations into a humanitarian problem”. Because most of these agencies were supported by the America, thus US initial opposition made the gap for the co-operation among these agencies, it was a “deleterious” challenge before the UNHCR. UNHCR was established as a non-operational agency and had to find voluntary agency to implement its refugee programmes, but these refugee agencies were reluctant to co-ordinate with UNHCR, due to US political interest. The US government recognised the political significance of the refugee issues in Cold War and encouraged the voluntary agencies to act according to its political interest in the field. In this highly politicised environment these agencies willing to utilised the US fund and implementing the programmes that were undoubtedly humanitarian and it also benefited refugees according to the direct political interest of US. By this way, the UNHCR and other American refugee agencies, particularly ICEM engaged in “an intense competition for ties with NGOs” (Loescher 2001: 65-66).

Conclusion

During the Cold War period, the entire UN system was caught up in the crossfire between the US and the Soviet Union and the UNHCR was no exception. There was difference between two super powers on the various issues related to the organisation. Initially, both the US and the Soviet Union adopted a negative attitude towards the UNHCR. Initially, US did not support the activities of the agency and on the place of UNHCR, it established the ICEM and USEP. The US policy makers wanted to use the refugee policy to weaken their ideological rivals and to gain the political legitimacy in the Cold War struggle. The US did not participate in the agency, because the agency was not totally under their control. The agency has not acted according to US view. For example, in Hungarian refugee crisis, UNHCR repatriated 10 per cent of the Hungarian refugees. Initially US did not support the repatriation in any socialist country. Whereas, the Soviet Union did not support the agency, because they thought that the agency was totally under the control of Western powers. The Cold War

scenario ensuing distrust between the US and the Soviet Union and did not allow them to make room for adjustments for accommodating each other demand. That made it difficult for UNHCR to function smoothly. The US and the Soviet Union tried to use UNHCR as an agency for promoting their respective ideological agenda and borrow their interests. Although, there was influenced of the Western and the European countries on the UNHCR, at the time of its creation, but UNHCR hardly acted according to the view of Western countries in this period.

The financial resource constraint and lack of political supports has the major challenges of the UNHCR from its very beginning, still the agency expanded its functions since mid 1950s in different regions of the world. The US also changed its attitude towards the UNHCR and supported the activities of the agency in developing countries. Thus, the UNHCR was benefited in this Cold War struggle. Furthermore, it is stated in the Statute that the UNHCR will co-ordinate with other humanitarian agencies of the UN as well as governments and intergovernmental-organisations concerned. But during the Cold War period these agencies did not support the UN refugee agency to carrying out its principal responsibilities and the donor governments also not supported the expansion of the agency in outside Europe. As a result, it became difficult for the UNHCR to perform its functions. Though, it faced myriad problems due to the Cold War politics and lack of participation among UN agencies, yet it retained its relevance due to the massive problem of refugee on the global level.

In the Cold War period, UNHCR adopted reactive, exile oriented and refugee-specific approaches for the refugee problems, but these approaches were very inadequate to respond the current refugee problems, thus the agency had started search for new approaches.

Despite some of the initial difficulties for the functioning of the UNHCR, the activities of the agency proved to be fruitful for refugees and some new groups of persons of concern. There are certain challenges of the agency in the Cold War period, which remains in the post-Cold War era and it needs to be redressed to make the agency more successful in future.

CHAPTER 3

United Nations High Commissioner for Refugees in the Post Cold War Era

When the Berlin Wall came down in 1989, it was widely expected that threats to international peace and security would be substantially reduced. But the end of Cold War ushering in a new world order of peace and stability, brought in disorder, violence and instability. The conflict within countries emerged as a predominant feature in the post-Cold War era. Civil conflicts in many parts of the world emerged due to ethnic, religious differences and scarce economic resources. Some of the prominent civil conflicts during post-Cold War era occurred in Burundi, Georgia, Former Yugoslavia, Rwanda, Sierra Leone, Somalia, Tajikistan and Zaire and many other countries.

There have been “nearly 100 armed conflicts in the world since 1990, and all but five belonged to the intrastate category, causing death to millions” (Murthy 2001: 210). Among them the genocide in Rwanda was example of brutal intra-state conflict, where more than half a million Tutsis and “moderate” Hutus were “butchered” within four weeks in 1994. Similarly, in Yugoslavia thousands of Muslims, Serbs, Albanians and other ethnic minorities suffered due to ethnic violence (Murthy 2001: 210). This war led to a deep humanitarian crisis as “it soon became obvious to the United Nations High Commissioner for Refugees (UNHCR) that civilian displacement...was not a consequence but an objective of the war” (Mendiluce cited in Loescher 2001: 296). By 1993, all the major armed conflicts were internal or intra-state. In 1996, due to this internal warfare in Russia 10,000-40,000, in United Kingdom 1500, in Turkey more than 19,000, in Afghanistan more than 20,000, in Bangladesh 3,000-35,000, in Cambodia more than 25,500, in India 20,000, in Philippines 21,000-25,000, in Sri Lanka more than 35,000, in Tajikistan 20,000-50,000, in Algeria 30,000-50,000, in Sierra Leone more than 3,000, in Peru more than 28,000 people were killed (Sipri 1998: 19-24). Thus, “humanity came face to face with the brutalisation of armed conflicts”, at a scale it was not

witnessed during the Cold War period. Regarding the nature of war, former UN Secretary-General, Kofi Annan reported to have said,

Wars since 1990s have been mainly internal. They have been brutal and they claim approximately 5 million lives. Humanitarian Conventions have been routinely flouted, civilians and aid workers have become strategic targets and children have been forced to become killers. These wars are driven by political ambition and they have preyed on ethnic or religious differences (Murthy 2001: 210).

Thus, the nature of conflict during the post-Cold War era was more brutal which poses entirely new challenges before the humanitarian agencies. Furthermore, while the “old wars were those between states and their Industrial Age regular armed forces”. During the Cold War the regular armed forces of both sides were organised, such as in World War II the armed forces were organised by both sides. In contrast the new wars in the post-Cold War period are principally internal in which at least one of the warring party does not carry state authority (Gray 2007: 227). Therefore, “the old paradigm was that of interstate industrial war. The new one is the paradigm of war amongst the people” (Smith cited in Gray 2007: 228). Due to the changed nature of war, there was a change in the nature of refugees. In Cold War when most of the conflicts were interstate, refugees crossed the international boundary, but in the post-Cold War period they remained within their own country.

This chapter attempts to analyse the changing role of the UNHCR, which commensurate with the changing nature of United Nations Peacekeeping Operations (PKOs). This chapter attempts to focus on how and why the UNHCR shifted its area of function from that of protection to humanitarian activities. It highlights how the UNHCR handled Internally Displaced Persons (IDPs) and why it expanded its role in the post-conflict reintegration. It also discusses the UNHCR’s relation with NGOs and new approaches to refugee problems. It concludes with comparison of its role and functions in the post-Cold War with that of the Cold War period.

Changing Role of the UNHCR

On January 1992, UN Secretary-General Boutros-Ghali issued his “Agenda for Peace”. In order to this preventive diplomacy the Secretary-General also outlined four humanitarian activities of the United Nations. These are:

- *Peace-enforcement*: it called upon the UN to act without the consent of warring parties.
- *Peacemaking*: it entitled the UN to bring warring parties to agreement to maintain peace through peaceful means, such as, “judicial settlement”, “mediation” and “negotiation”.
- *Peacekeeping*: it called the UN to present in the field, “hitherto with the consent of all the parties concerned as a confidence building measure” to monitor the agreement between the warring parties.
- *Post-conflict Reconstruction*: it authorised the UN to foster economic and social development after the war.

Therefore, an Agenda for Peace is an important instance of the “evolution of UN doctrine” to maintain peace more effectively (Doyale and Sambanis 2007: 497-498). With the changes in role of the UN, the role and the functions of UNHCR have also changed in the post-Cold War period.

Although the UN remained as a “state-centric” and it “refuses to interfere in the domestic matters” of countries, it is “increasingly involved in rectifying gross violations of human rights” within the international arena. The UN Security Council now deals with the refugee problem “as a threat to international peace and security under chapter VII of the UN Charter”. In 1991, UN involvement in Iraq was the beginning of its activities toward humanitarian interventions in the post-Cold War period; in this operation it treated refugees and IDPs equally (Barnett 2002: 252-253). In these humanitarian interventions UNHCR played a supplementary role with the UN peacekeeping forces.

In 2005, UNHCR was concerned with 6.6 million conflicts generated IDPs in 16 countries compared to 5.4 million in 13 countries at the end of 2004 (United Nations High Commissioner for Refugee 2006a). In 2006, the global persons of concern to the UNHCR is 32.9 million, it has been a significant increase compared with 2005 (UNHCR 2007). Now, the total persons of concern to UNHCR are 32,196,000 (UNHCR 2007-2008).

UNHCR started its operations from Western Europe, where most of the refugees came from communist countries. Thus, initially it concentrated on protecting only European refugees. This situation started to change when the global refugee problem began to shift from Europe to Africa, Asia and other developing countries. Traditionally, UNHCR assisted only refugees and asylum-seekers. But due to changed nature of war, the agency provides assistance to a broader category of displaced persons. Such as IDPs, returnees, stateless persons and others. The following table provides these broader categories of persons of concern to UNHCR:

Table 4: Persons of Concern to UNHCR by Region

| | Refugees | Asylum Seekers | IDPs | Returnees | Stateless People | Others |
|---------------|-----------|----------------|------------|-----------|------------------|-----------|
| Africa | 2,608,000 | 244,000 | 5,373,000 | 1,356,000 | 100,000 | 72,000 |
| Asia | 4,538,000 | 90,000 | 3,879,000 | 1,221,000 | 5,027,000 | 157,000 |
| Europe | 1,612,000 | 240,000 | 542,000 | 21,000 | 679,000 | 332,000 |
| Latin America | 41,000 | 16,000 | 3,000,000 | - | - | 486,000 |
| North America | 995,000 | 148,000 | - | - | - | - |
| Oceania | 84,000 | 2,000 | - | - | - | - |
| Total | 9,878,000 | 740,000 | 12,794,000 | 2,598,000 | 5,806,000 | 1,046,000 |

Source: UNHCR 2007-2008: 13.

Building Local Institutions to Prevent Forced Displacement

Under the rubric of UN peacekeeping forces UNHCR launched several humanitarian operations in the former Soviet Union. Since the establishment of the UNHCR, the Soviet Union had viewed the agency with suspicion. In the mid 1980s, when the new Soviet leader Mikhail Gorbachev inaugurated his policies of perestroika, which refers the restructuring process and glasnost, which refers the openness of the country, the Soviet attitude towards the agency began to change. It increasingly recognised the benefits of the co-operation of the UNHCR after the resolution of the conflict in Cambodia and Afghanistan, which entailed the return of large number of refugees (UNHCR 2001).

After this changed attitude of the Soviet Union towards UNHCR, it developed a several operations in the region to prevent further forced displacement. For instance, the Office developed a “comprehensive approach”, which not only provided the provision of emergency relief but also built up local institutions to prevent further forced displacement in this region. One of the most comprehensive programmes was launched in Tajikistan. In early 1993, the UNHCR along with the ICRC (International Committee of Red Cross) initiated operations for the return of IDPs and refugees. With the collaboration of other international and regional agencies, the Office played an active role in promoting the repatriation of refugees from Georgia to Abkhazia and South Ossetia. In 1995 in Chechnya, UNHCR launched the first UN humanitarian operation in the “Russian territory”. Working with ICRC and other agencies the UNHCR provided emergency assistance to IDPs and the victims of war (Loescher 2001: 278-279).

In September 1991, to stop the forced displacement in this region, the Office approved the proposal to open a regional office in Moscow and in October 1991, it organised the first training activity for emergency preparedness. In former Soviet Union territory “UNHCR sought to pursue a policy which would strengthen its operational capacity and enable it to play a preventive and early warning role” (UNHCR 2001).

Apart from the ICRC, UNHCR worked with Russian Red Cross (RRC), Medecins Sans Frontieres (MSF), United Nations Children’s Fund (UNICEF) and the World Food

Programme (WFP). UNHCR also built local alliance with the Conference on Security and Cooperation in Europe¹⁵ (CSCE). In September 1991, the High Commissioner during the conference on CSCE, suggested that the question of displaced persons be placed on the CSCE agenda and called for more direct dialogue between CSCE member states and UNHCR. At the further CSCE meeting in June 1992, the participant countries submitted a draft resolution and expressed concern with the problem of refugees and displaced persons. In March 1992, UNHCR collaborated with CSCE in Nagorno-Karabakh (UNHCR 2001).

Despite the initial difficulties to build the local institutions for emergency relief programmes, UNHCR substantially increased its humanitarian activities in Eastern Europe. For instance, the UNHCR's humanitarian assistance programme in Georgia catered for some 300,000 refugees and IDPs (United Nations Yearbook 2000: 1249). It continued to focus its activities on protection, the promotion of refugee law, institution building and the operation of limited assistance programme (United Nations 1994a: 1086). Since 1992, some 30,000 refugees and asylum-seekers from outside Commonwealth of Independent States (CIS) had been registered by the UNHCR. In 1997 over 1.3 million persons were registered in the Russian Federation, most of them were from the CIS countries (United Nations 2000: 1249).

Resolution of Cold War Conflicts and Repatriation of Refugee

Since the end of the 1980s the UNHCR has played an essential part in comprehensive peace-plan operations, which is undertaken by the United Nations. These operations are referred to as "multidimensional peacekeeping operations". The second-generation peacekeeping operations are multidimensional peacekeeping operations. It requires the consent of the parties unlike the first generation. Apart from military functions it also performs non-military functions, like, police and civilian tasks for long-term settlement of the conflicts. Thus, according to Karns and Mingst (2004; 312) the second-generation peacekeeping operations are described as "complex peacekeeping because their mandates involve both civilian and military activities and multidimensional tasks".

¹⁵ It is predecessor to the Organisation for Security and Co-operation in Europe (OSCE).

These multidimensional functions of the second-generation peacekeeping forces included economic reconstruction and institutional transformation, such as reform of the police, army and judicial system, elections and civil society rebuilding (Doyale and Sambanis 2007:502). As the UN Secretary-General states:

Virtually every part of the United Nations System is currently engaged in one form of peace-building or another, including in the fields of: disarmament, demobilisation and reintegration of former combatants including children; strengthening of rule of law or institutions; human rights; electoral and governance assistance, including to national human rights institutions and national machinery for the advancement of women; the development of civil society and the support of free media; and promotion of conflict resolution and reconciliation techniques (Chimni 2004;211).

The United Nations has tremendous record of success in second-generation, multidimensional peace operations in Namibia, El Salvador, Cambodia, Mozambique and Eastern Slavonia (Doyale and Sambanis 2007: 502-503).

UNHCR played a supporting role in these operations, where its primary responsibility was repatriation. By repatriation of refugees, UNHCR has tried to maximise the number of returnees for their participation in national electoral process. In these operations UNHCR not only repatriates refugees, but also undertake the reintegration and rehabilitation projects in returnee populated areas (UNHCR 2001: 135). Therefore, in 1990s UNHCR's programmes have been shifted from country of asylum to country of origin, in close association with UN-mandated peacekeeping forces (Loescher 2001:287). Apart from reintegration and rehabilitation, UNHCR and other UN agencies are involved in the various peace-building activities, such as, human rights education, monitoring and enforcement actions, clearing land mines, and organising civil administration and rebuilding the police and Judiciary System (Karns and Mingst 2004:312). For example, in Namibia the United Nations Transition Assistance Group (UNTAG) considered that the return and peaceful reintegration of the Namibian refugees was necessary for elections and successful transformation of Namibia into an independent, democratic country, but in this country UNHCR provided very short and limited assistance. UNHCR's assistance in

Namibia was limited to food and material assistance and it withdrew from the country when it considered that the repatriation operation is over (UNHCR 2001: 133-136).

Under the second-generation peacekeeping operations, in Cambodia, UNHCR acted as a lead agency for the repatriation operation. The “Paris Peace Agreement” authorised the organisation to act as a lead agency for the repatriation operation and to assume primary responsibility for the reintegration of returnees and displaced people. The “UN Advance Mission in Cambodia” coordinated with UNHCR during its repatriation and resettlement programme (UNHCR 2001: 144-145). To ensuring the provision of land for the returnees, the UNHCR, in collaboration with the United Nations Development Programme (UNDP), embarked a series of Quick Impact Project (QIPs) in an effort to help reintegrate the returnees and also helping the local population (Loescher 2001: 282). The other example of the second-generation peacekeeping operations where UNHCR handled its repatriation and reintegration operations under the rubric of United Nations peacekeeping forces is in Mozambique, where UNHCR collaborated with UN mine clearance operations (UNHCR 2001: 152). The agency has started the long-term reconstruction and development programmes with the UNDP, Food and Agriculture Programme (FAP) and the World Bank (WB) (Loescher 2001: 282).

Moving towards of Humanitarian Activities

The above operations highlighted the expanded task of the UNHCR under the rubric of UN peacekeeping forces. In 1988, the UN operated just five peacekeeping missions, but at its peak in 1993, it operated 18 peacekeeping operations. From mid 1990s, the peacekeeping operations became “peace support operations” or “peace operations”. This development is marked as the third-generation of peacekeeping operations.

“The key feature of third-generation peacekeeping operations is the absence of consent from all parties and the need for greater use of force to protect refugees and civilians from attack or genocide, to impose a ceasefire and perhaps to compel parties to seek a peaceful solution” (Karns and Mingst 2004: 316). In 1990s, the refugee crisis was seen as a matter affecting the security of both refugee-producing and refugee-receiving countries.

States viewed these refugee movements as potential threats to international and regional security. In this backdrop the UN member states are also willing to invoke the phrase “threat to peace” in the UN Charter to intervene in internal conflicts involving humanitarian concerns. In recent years, the UN Security-Council is called to involve in humanitarian interventions to prevent further mass movement of war-affected populations. At the same time, governments are also reluctant for involving UNHCR for operating on both sides of borders where there is conflict, to assist and protect civilians during fighting and immediately after the conflict. An increasing proportion of work of the UNHCR is involved within countries of origin in close association with UN mandated peacekeeping forces. In carrying out its operations in these new areas, UNHCR also extended its services to a much wider range of people, such as, “returnees”, IDPs, “war-affected populations”, the “victims of mass expulsions” as well as asylum-seekers and refugees (Loescher 2001a: 172-173). The good offices concept also allowed the UNHCR to extend its protection and assistance to new groups of persons (Barnett 2001: 254).

In 1991, the UN Secretary-General requested the UNHCR to act as a UN lead agency and lend its humanitarian expertise to provide protection and assistance to affected persons in former Yugoslavia. Prior to receiving the mandate from the UN Secretary-General, UNHCR was also requested by the “Yugoslav Federal Government” to assist those persons who were displaced after the war (Office of the United Nations High Commissioner for Refugee 1994). Loescher (2001a: 173) also highlights how the functions of UNHCR have evolved over time,

While carrying out these new activities, UNHCR has extended its services to a much wider range of people who are in need of assistance including returnees, internally displaced people, war affected populations, the victims of mass expulsions and unsuccessful asylum-seekers as well as refugees... “War affected populations”, that is people who had not been uprooted, but needed humanitarian assistance and protection, comprised a substantial proportion of UNHCR’s beneficiary population during the height of Yugoslavian conflict and the bulk of UNHCR’s total budget for the former Yugoslav was allocated to this group. Worldwide refugees now constitute less than 50 per cent of UNHCR’s beneficiaries. Consequently, UNHCR has in many senses expanded from a refugee organisation into a more broadly based humanitarian agency.

Furthermore, Loescher comments “the most significant change in the UNHCR’s organisational culture in recent years has been the shift in the agency’s focus from legal protection to material assistance” (Loescher 2001: 363). It might be noted that the provision of material assistance was not conceived as a function of the Office at the time of its establishment (Holborn 1975: 1430). “Today, the UNHCR is not mainly concerned with preserving asylum or protecting refugees, rather its chief focus is humanitarian action” (Loescher 2001: 363).

The United Nations General Assembly and Economic and Social Council by their “successive resolutions” also expanded the mandate of the UNHCR. These resolutions called the UNHCR to assist refugees who were fleeing from generalised violence and also “other groups or persons of concern” (Kelley and J. Durieux 2008: 7). Thus, the UNHCR’s traditional protection role accordingly expanded,

These include the provision of emergency humanitarian relief assistance and long-term care and maintenance; material and logistical support to returnees; programmes to promote refugee protection principle and human rights; more targeted interventions on behalf of refugee women and children; efforts to build democratic governance and conflict prevention; and efforts to promote the channeling of development assistance to benefit of refugees, returnees and local communities (Kelley and J. Durieux 2008:8).

The refugee crisis of the 1990s put several challenging role and function for the UNHCR. Sadako Ogata addresses the refugee problem in its totality, by providing return and reintegration, through a strategy of emergency preparedness and response, the pursuit of solutions and the development of preventive activities. As the UNHCR reoriented its activities and expanded its agenda the Office assumed the responsibility to protect the IDPs, which is “far beyond the parameters set for the agency 50 years ago by its founders”. The Office became involved with new actors to respond its “vast range of new activities”, such as, co-operation with the UN human rights bodies, co-operation with UN development agencies to provide economic development for repatriation and reintegration and co-operation with the UN peacekeeping forces to secure the protection and security of displaced and threatened people (Loescher 2001: 33).

UNHCR expanded its activities and operations in conflict zones and strengthened its role as the lead coordinating agency in emergency operations. It also expanded its links with development institutions, including the WB and the United Nations Development Programme (UNDP), as well as it expanded its network with NGOs and human rights bodies to address the issue of “relief to post-conflict reconstruction” (Troeller 2004:57). Thus, now UNHCR has reconstructed its traditional protection activities by reintegration, rehabilitation and development process in returnee areas. To provide assistance to returnees the UNHCR aided economic development programme in its protection activities. It was not part of its traditional activities and international development or financial institutions were also not reluctant to “develop programmes in returnee-populated areas”. To fill this gap the Office developed “a new strategy of returnee aid and development”. This strategy is emphasising on “long-term development assistance” (Loescher 2001: 284) and by adopting these approaches, the agency became more broadly a UN humanitarian refugee agency.

Inclusion of Internally Displaced Persons (IDPs)

IDPs remain within their own countries. They may be denied freedom of movement by their own government or may be restricted by outside countries on their right to seek asylum. Such as in the case of Afghanistan, the Taliban rulers severely restricted Afghans from moving freely within the country. As a result, a large number of refugees did not cross the national border and the number of internally displaced in Afghanistan climbed from 1.5 million to over 2 million (Mooney 2004: 159).

Traditionally, UNHCR assisted the refugees in host countries. But in the post-Cold War period, the agency rehabilitates the refugees within their own country. However, the phenomenon of internal displacement is not new and the UNHCR has provided assistance in these situations since early 1970s. For example, UNHCR involved in situations of internal displacement in Bangladesh in 1971, South Sudan in 1972, Mozambique and Cyprus in 1974, Vietnam and Laos in 1975, the Horn of Africa, Ethiopia and Uganda in 1979, Zimbabwe in 1980, Chad in 1981, Lebanon in 1982 (Kourula 1997: 185). But this assistance to IDPs was not regular. In 1990s, it has regularly been asked to prevent the

cross border movement and protect the refugees within their country of origin (Bwakira 2001:280).

Neill Wright mentions, UNHCR has been protecting and assisting IDPs for more than 30 years, but our engagement has become more predictable in recent years and we are now actively involved in some 25 IDP operations (UNHCR 2008). In post-Cold War era the UNHCR's first major involvement with IDPs was in the former Yugoslavia. . The Office perceived this operation as an opportunity to enlarge its scope (Loescher 2001: 296). In this country, UNHCR provided relief assistance to nearly 1.3 million displaced persons. The agency started a number of protection activities at various levels. These are monitoring through continuous field visits, the level of displacement pressures and the treatment of displaced persons, direct intervention with the local or central authorities, safe passage of persons compelled to flee by crossing frontlines, working with ICRC to making necessary arrangements for tracing and family reunification in certain exceptional cases such as family members of ex-detainees, facilitating to prevent the life threatening situations and prevent involuntary return of displaced persons(Office of the United Nations High Commissioner for Refugees 1994). This Bosnian crisis transformed the UNHCR into the world's largest relief agency.

Over the last 50 years, the mandate of the UNHCR has been expanded by a series of UN General Assembly resolutions. Through these resolutions the General Assembly authorised the UNHCR to take the humanitarian assistance and protection activities on behalf of IDPs. For instance, in 1972, the General Assembly passed the resolution 2958 (XXVII) for the UNHCR's work on behalf of refugees and other displaced persons in Sudan (UNGA Res.1972a). Another resolution, 2956 (XXVII), reaffirmed the High Commissioner's participation in the humanitarian activities for which its Office has particular experience and expertise, at the request of the Secretary-General (UNGA Res 1972). These resolutions provide the fundamental legal basis for numerous special operations to be undertaken by the UNHCR at the request of UN Secretary-General, most of them including activities on behalf of IDPs (Protection aspects of UNHCR activities on behalf of Internally Displaced Persons 1994).

Though, the UNHCR “does not have a general competence for IDPs”, yet, the General Assembly has consistently supported the work of the agency with IDPs throughout 1990s¹⁶. Although, the creation of a new agency for the IDPs was proposed at the beginning of 1990s, but there was neither fund nor the political will to create such agency at that time. Other humanitarian agencies demonstrated that they had already developed some expertise in the field of internal displacement and therefore there was no need for the creation of a separate IDP agency. In 1993, Netherlands proposed that the UNHCR should take overall responsibility of the IDPs. This proposal was based on three arguments that are: the agency’s long-standing experience in working with displaced persons, the protection aspect of its activities and the link with its current mandate, as most IDPs are potential refugees. Some other states saw this proposal as a potential interference in their internal affairs and so they opposed the extension of UNHCR’s mandate to protect the IDPs (Phuong 2004: 80-87). This debate was resurfaced in March 2000. The President of the Security Council Richard Holbrooke suggested, “the mandate for internal refugees should be given to a single agency, presumably the UNHCR. This proposal was based on the opinion that there is no real difference between the refugees and IDPs” (Phuong 2004: 87). Some other participants argued that the increased involvement of UNHCR in situations of internal displacement would compromise the traditional mandate of the agency and would also lead to the further politicisation of its work. On the other hand, IDPs advocates have argued that there is no contradiction between in-country activities and the provision of asylum. If protection can be effectively provided to IDPs, they will not feel compelled to move further and leave their country. UNHCR’s present involvement with IDPs can be seen as “merely the culmination of a decade long process of evolution of its intentionally dynamic mandate” (Phuong 2004: 87-94).

Based on these processes and a series of UN General Assembly resolutions have authorised the UNHCR for humanitarian activities in situations of internal displacement.

¹⁶ The UNHCR’s involvement with IDPs are set out in resolution 53/125 of December 1998 (Feller 2006:11).

In particular the Assembly resolution 48/116 of 1993, stipulates the criteria to guide UNHCR's involvement in IDPs operations (UNHCR 2000). By, this resolution the General Assembly for the first time, articulates that the UNHCR could undertake protection activities on behalf of IDPs, without any open-ended mandate (Kourula 1997: 188).

This resolution together with article 9 of the UNHCR Statute provides the legal basis to UNHCR to protect the IDPs (UNHCR 2000). By this way, the gap of institutional mandate of UNHCR has gradually removed. In the light of the changing role of the UNHCR it is facing new problems and challenges to provide the protection to IDPs. For example, apart from the gap in institutional mandate, the UNHCR face the lack of co-ordination with other humanitarian organisations and NGOs to protect the IDPs. These humanitarian agencies have separate mandate and they independently raises funds from donor governments to implement their own programmes either directly or more often in sub-contractual arrangements with NGOs. Apart from co-ordination among various other agencies, one of the major gaps in the international response system is lack of predictable response for the protection of IDPs. "No UN agency can be counted upon to respond automatically when there is a crisis involving massive internal displacement". Agencies choose the situation to intervene in the situation of IDPs protection, according to their own mandate, resources and interests (Loescher 2001: 354-355). Lack of sufficient resources also reveals the serious difficulties before the UNHCR to protect the IDPs. In 2008, UNHCR appealed for more than \$90 million for its IDP operations (Cohen 2005: 10).

To co-ordinate the activities of the humanitarian agencies, firstly, "Consolidated Appeals Process" (CAP) came into existence. It reduces the burden of separate appeals on the donors and makes them more willing to provide regular funds on predictable basis. But the CAP does not cover all appeal for humanitarian emergencies (Loescher 2001: 353-354). Consequently, the issue of better co-ordination has developed for providing protection to IDPs. To enhance this issue the "cluster approach" has developed for more effective co-ordination among the humanitarian agencies. It recognises that "no single

UN agency has the mandate and resources to protect and assist IDPs". The Inter-Agency Standing Committee (IASC) developed a "collaborative approach, which called for agencies to pool resources and response capacity". In 2005, a "Humanitarian Response Review" which was commissioned by the "UN Emergency Relief Coordinator" found that critical gaps in humanitarian response remained. Therefore, "to ensure a more predictable and efficient response", the IASC confirmed the "cluster approach" in December 2005. Under this arrangement UNHCR assumed the leadership responsibility "for three of nine clusters, namely protection, emergency, shelter and camp coordination and management" (UNHCR 2007: 2).

Due to this approach the UNHCR effectively collaborated with other humanitarian agencies in various IDP operations. For instance, at the end of 2007 there were 1.3 million IDPs in the Democratic Republic of Congo. Under the cluster approach UNHCR organised the camp coordination and camp management programmes in this country (UNHCR 2008).

Apart from the "cluster approach" the "Guiding Principles on Internal Displacements" (GPID) also provides an appropriate framework for the protection of IDPs (Kalin 2005: 8), they presents the framework before the international agencies to protect these persons.

In 1992, at the request of the Commission on Human Rights, the UN Secretary-General appointed a representative on IDPs to study the causes and consequences of internal displacement and the status of the internally displaced in international law. Dr. Fransis M. Deng was elected as a representative of IDPs. After some observations Dr. Deng presented his review before the Commission on Human Rights. According to this review the existing international legal instruments provide sufficient protection for IDPs but it does not gives any specific approach for these persons. After this reviewing he compiled all relevant norms into one single document. As a result, the "Guiding Principles on Internal Displacement" were presented to the UN Human Rights Commission in 1998. It came into existence to address the specific needs of IDPs worldwide by identifying rights

and guarantees relevant to their protection. The definition of Guiding Principles covers all those:

Persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or man-made disasters and who have not crossed an internationally recognised State border (Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commissioner Resolution 1997/39: Addendum Guiding Principles on Internal Displacement 1998).

The principles are based on international human rights law, international humanitarian law and international refugee law (Kalin 2005: 8). The Principles addresses the full range of rights that may become relevant for protection against displacement. It facilitates a broad understanding of protection, which encompasses through all activities for ensuring full respect for the rights of the individuals, in spirit of the relevant bodies of law, such as human rights law, international humanitarian law and refugee law (Kalin 2005: 8).

These Principles identifies the right of equality for IDPs, for example Principle 1 states that “internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country”. Principle 20 identifies that every human being has the right to recognition as a person before law. These Principles argues the rights and guarantees relevant to the protection of IDPs in all phases of displacement, it provides protection against arbitrary displacement, protection and assistance during displacement and return or internal resettlement and reintegration. It comprises that IDPs must not be discriminated due to their race, sex, language, religion and social origin. The Principles underscore the responsibility of national authority for providing assistance to internally displace. As Principle 3 stipulates, “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”. IDPs have the right to seek asylum in another country. The Principles emphasise the importance of “voluntary and safe return”. Principle 28 confirms this provision by stating “competent authorities have the primary duty and responsibility to

establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country". Principle 27 argues, " international humanitarian organisations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard". The Principles also intended to assist international agencies and NGOs to work with the internally displaced. Principle 29 ensures that "internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services". These victims of violations have been provided with effective remedies including reparation or rehabilitation (Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commissioner Resolution 1997/39: Addendum Guiding Principles on Internal Displacement 1998).

Although, these Guiding Principles are not a legal binding document like a treaty, yet they systematically analyse and identify the important protection needs of IDPs (Kalin 2005: 8). The Principles assigned the respective roles and provide guidance to the representative of the Secretary-General on internally displaced persons, states when they faced with the phenomenon of internal displacement, all other authorities, groups and persons and intergovernmental and non-governmental organisations when they involve in internal displacement situations (Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commissioner Resolution 1997/39: Addendum Guiding Principles on Internal Displacement 1998). By these Principles the United Nations and civil society, developed comprehensive policies and plans of actions that cover all the protection needs of internally displaced (Kalin 2005: 8).

UNHCR is "now poised to take on a leading role in protecting IDPs". According to Cohen "national authorities have the primary responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction". In recent years the

international community has increasingly recognised the collective and complementary protection responsibility of IDPs in situations where states are unable or unwilling to safeguard the rights of their citizens. In this situation the UNHCR and other humanitarian actors encourage and assist states to assume responsibility for the protection of their citizens by their collaborative approach (Cohen 2005: 9). Therefore, with the help of the Guiding Principles UNHCR makes an important framework to give response to the needs of internally displaced and affected communities (Feller 2006:11).

Expansion into Post-Conflict Reintegration

In 1990s the protection activities of UNHCR has expanded after the increasing number of the persons of concern to UNHCR in post-Cold War period. Today, the agency has not only provided the protection, repatriation and rehabilitation to needy persons, but it also deals with the rehabilitation or reintegration of refugees and IDPs. According to Cernea (2000: 35) “the primary objective of any resettlement process should be to prevent impoverishment and to reconstruct and improve the livelihood of resettlers”. The Mozambican repatriation and reintegration is the largest repatriation and reintegration activity of UNHCR, where the agency assisted 1.7 million returnees (Chimni 2004:201).

Reintegration of the displaced persons is not easy after the war; the warring parties do not honour their words for returning of IDPs and refugees to their homes. For example, in Bosnia, the parties of the conflict refused to fulfill their commitments either to permit Bosnian refugees and IDPs to return to their homes in Eastern Bosnia or to allow Serbian refugees to return to Muslim dominated Sarajevo. In spite of this obstacle the “UNHCR initiated a number of confidence building measure and programmes, including a shelter programme (Loescher 2001: 323). Now, UNHCR along with other international agencies and institutions provides its efforts and resources to rehabilitate the refugees and IDPs after the war. For example, in Bosnia, along with Office of the High Representative (OHR), UNHCR assumed the responsibility for the reintegration of refugees and IDPs. To rehabilitate the returnees in their home countries, UNHCR and OHR established the Reconstruction and Return Task Force (RRTF). UNHCR and the OHR, directly or

through the RRTF, assisted the returnees and negotiated with the communities (Fagen 2004: 221,234).

Housing and property rights have been the most important components of the post-conflict reintegration. On 26 August 1998, the “UN Sub-Commission on Prevention of Discrimination and Protection of Minorities” adopted resolution 1998/26, namely “Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons”. This resolution urged the UNHCR for developing policy guidelines to promote and facilitate the rights of all refugees (Chimni 2004: 208). By this way UNHCR enlarged its activities in areas of reconstruction.

Thus, in the post-Cold War era, the work of the UNHCR shifted from only relief to development assistance and providing protection in emergency situations. In Central America, since late 1980s and early 1990s, after the end of the various wars in the region, UNHCR started large-scale reconstruction of infrastructure and successful reintegration of returnees and displaced persons (UNHCR 2000). The transition from relief to development has often been difficult, because every financial institutions and the developmental agencies has specialized functions that require to proceed in different time and policy frameworks and they are often unwilling to take programmes in which they have had no formative role (UNHCR 2000: 142). These agencies are not willing to fund “in the more distant and marginal border areas, typically affected by refugee and returnee movements” (Loescher 2001: 357).

Thus, UNHCR has suffered for decades due to the lack of co-ordination between relief and development organisations during its refugee emergencies programmes. This development assistance of the agency requires skilled specialised staffs in different areas, such as during making house, providing food, shelter, water and medicine. But most of the UNHCR’s staffs are not trained or often they are not specialised to act during its humanitarian assistance activities.

Relations with Non-Governmental Organisations

Like other United Nations specialised agencies UNHCR also started co-ordination with various non-governmental organisations (NGOs). The Statute of the UNHCR provides that the High Commissioner has the responsibility to provide “international protection” and for “seeking permanent solutions” for the problem of refugees by assisting governments and private organisations for facilitating the voluntary repatriation of such refugees or their assimilation within new national communities (Statute of the Office of the United Nations High Commissioner for Refugees 1950). To facilitate this, the High Commissioner establishes contracts with private organisations. Today, NGOs are UNHCR’s “lifeblood”. The Assistant High Commissioner, Kamel Morjane, “declared that the refugee agency “cannot do it alone”. Now, UNHCR works with more than 500 NGOs who carry the protection and assistance activities to more than 20 million refugees and other persons of concern (UNHCR news stories 2003).

In 1990s, the UNHCR has broadly transferred its focus from legal protection to material assistance. Now, the UNHCR is not only concerned with preserving asylum or protecting refugees, it also provides humanitarian action to concerned refugees (Loescher 2001: 363) and NGOs co-operate with the UNHCR in providing necessary humanitarian support during its operational programmes.

UNHCR relies on NGOs’ knowledge and expertise to carrying out its refugee programmes. Its strategy to protect refugees cannot be implemented without greater involvement of NGOs. NGOs can be seen as implementing partners as sources of providing information, as advocates of refugee rights and are helpful in policy formulation. This relationship with NGOs became fundamental for the success of UNHCR’s work. The new world order requires a “...search for association with a wider segment of society, interested and involved in the search for solutions” (Chimni 2000: 259). Therefore, a wide range of NGOs partnership with UNHCR has grown. In 1993 UNHCR channeled some \$300 million directly or indirectly, through NGOs (Chimni 2000:259) and in 2006, it channeled some \$359.4 million through various NGOs. Today, UNHCR has formal project agreements with 649 NGO (UNHCR 2007:13, 6).

In order to widen the partnership between NGOs and UNHCR a number of programmes were introduced. In 1994 the Partnership in Action (PARinAC) programme came into existence. It is clearly stated in Recommendation 32 of the PARinAc “Oslo Declaration and Plan of Action” that “UNHCR should develop a closer relationship in resettlement activities with NGOs in the area of resettlement needs for vulnerable group. UNHCR should formalise its co-operation and consult with NGOs in the field as well as in resettlement countries to better utilise the resettlement needs assessment as a tool to maintain, increase resettlement quotas established by governments” (UNHCR 2004: X/8). Therefore, the PARinAC policy formulates the close relationship between UNHCR and NGOs. Additionally it is stated in this declaration that “in the spirit of this programme, UNHCR and NGOs effectively promoted the international refugee protection needs, specific regional solutions for refugee crisis and specific refugee groups who are in need of resettlement” (UNHCR 2004).

The Agenda for Protection also identifies the need of co-operation between UNHCR and NGOs. It requires the continuation of UNHCR to strengthen the partnership for protection and awareness raising, not only with host and donor governments but also NGOs, other actors of civil society, as well as refugee men, women and children (Executive Committee of the High Commissioner’s Programme 2002: 13).

UNHCR co-ordinated with NGOs at all levels, including at the field level and at headquarters. It plays a co-ordinating role with NGOs during assessment, planning and implementation of the refugee programmes and the returns of refugees in their country of origin (UNHCR 2007:11). For example, in Afghanistan more than 200 NGOs from all over the world have played a significant role in providing protection and assistance to refugees. It supported development and income-generating projects by co-ordinating with NGOs.

In 1990s a large number of people were displaced within their own territory. To assist these people UNHCR started co-operation with NGOs and UN peacekeepers. For

example, while 15,000 peacekeepers have already begun its operation with positive effect in Liberia, UNHCR worked closely with NGOs like the international Committee of the Red Cross (ICRC) and the WFP to assist refugees and displaced people in this country. UNHCR and NGOs also developed their close partnership in the field of emergency response (UNHCR 2007: 16). In Chad, where some 65,000 Sudanese have fled in 2003, UNHCR with its emergency team gave the assistance to refugees with the help of Medicins Sans Frontieres¹⁷ (MSF) (UNHCR news stories 2003).

New Approaches to Refugee Problems

The traditional approaches to explain the refugee problems are in many ways inadequate to meet the contemporary needs of refugees, therefore from “reactive”, “exile oriented” and “refugee-specific”, UNHCR has adopted “proactive”, “homeland” oriented and holistic approach.

Proactive Approach: Firstly, UNHCR adopted the “proactive approach”, this approach consists the concept of preventive actions. It stipulates that refugee movements can be averted if action is taken to reduce the threats which force people to leave their own country and to seek sanctuary elsewhere. The concept of prevention “includes activities, such as monitoring and early warning, diplomatic intervention, economic and social development, conflict resolution, institution building, the protection of human and minority rights”. These activities are taken by UNHCR with other members of the international community, most significantly, the governments of the countries where refugee movements and internal displacement were taking place (UNHCR 1995). Thus, this approach is proactive in the sense that the office is more involved in preventing human rights abuses and situations that gives rise to forced displacement (Troeller 2004:57).

Homeland Oriented Approach: The second approach, which is adopted by the UNHCR in post-Cold War era, is “homeland oriented approach”. This approach focuses on the

¹⁷ MSF was awarded by the Nansen medal for 1993, in recognition of its exceptional service to refugees (United Nations Yearbook 1994a).

right to return in countries of origin, this notion is known as the “right to remain” or the “right not to be displaced” (UNHCR 1995). Now, UNHCR is “increasingly emphasise not only the duties of asylum countries but also the responsibilities of countries of origin”(Troeller 2004:57). This is an emerging trend that countries of origin are involved in the efforts to resolve the refugee problems, therefore it is easy for UNHCR to rehabilitate the refugees with the consultation of state government. For example, in Nicaragua UNHCR rehabilitated approximately 70,000 returnees with the help of the state government. During 1990s the emphasis of UNHCR’s assistance component shifted from only assistance to self-reliance empowerment programme. To protect refugees and IDPs, UNHCR introduced Development Assistance of Refugees (DAR). Although the homeland oriented approach emphasised to rehabilitate the refugees within their country of origin, despite this UNHCR also started the programme to rehabilitate the displaced people in host country. DAR project is the example of this type of activities. To close the gap between emergency relief and longer term development the DAR project would be applied in protracted refugee situations for providing any of the three durable solutions which is given in the Statute of the UNHCR. This project was firstly introduced in 2001 on the Executive Committee of UNHCR’s session. The general aspect of the project is the better quality of life and self-reliance of refugees. This project is established to achieve the burden-sharing with host country, compensation for the burden aspect of the host community, development of the host country, development of the host community, gender equality, dignity and improved quality of refugee life, empowerment and enhancement of productive capacities and self-reliance of refugees, particularly of women (UNHCR 2003). Apart from the DAR project UNHCR also introduced the “Development through Local Integration Programme” (DLIP) in May 2003. It depends upon the situation of host countries where the host countries accepted the integration of refugees with local population (UNHCR 2004a).

Holistic Approach: Thirdly, UNHCR adopted the holistic approach to address the issues of refugee problems. Now, the agency is “endeavoured to pursue a more comprehensive, long-term approach to the problem of forced displacement that emphasises the needs of not only refugees but also the needs of internally displaced,

returnees, asylum-seekers and stateless persons and others of concern” (Troeller 2004: 57).

The various organisations, organs and specialised agencies of the United Nations, which are related to other specific areas, such as North Atlantic Treaty Organisation (NATO), the Organisation for Security and Co-Operation in Europe (OSCE), Economic Community of Western African States (ECOWAS), European Union (EU), the UN Centre for Human Rights (UNCHR) and the UN Development Programmes (UNDP), are now lending their resources and expertise to support the UNHCR during the situation of human displacement and providing protection to new groups of persons. The UN Security Council is directly involved in the resolution of the refugee problems in post-Cold War rather than in Cold War. Financial institutions, such as WB and the regional development banks also play an important role in refugee issues to address the social and economic condition of refugee movements and in the process of post-conflict reconstruction (UNHCR 1995).

Comparison of post-Cold War with that of the Cold War Era

The role and the function of UNHCR are expanded in post-Cold War period from Cold War period. The following details examine the extended task of the UNHCR from Cold to post-Cold War period:

Expansion of Geographical Area: Initially, UNHCR only concentrated in European region. Gradually, its area of function has shifted from Europe to other parts of the world and in post-Cold War period, with the dissolution of the Union of Soviet Socialist Republics (USSR) and the demolition of the iron curtain, the UNHCR got an opportunity to intend its work in this region which was otherwise beyond its field of operations. Therefore, the geographical area of its operations now extended into the Soviet Union and its satellite and included countries, like Chechnya, Tajikistan, Georgia etc. These areas were very untouched in the Cold-War period. In the early 1990s, the dissolution of the USSR caused the vast population displacements. Over 9 million persons were uprooted in this region. The former republics were unable to contain these pressures and

therefore there was a need for a massive and comprehensive international response to restrict the growing migration crisis in the former USSR. Initially, the international community established UN offices in Moscow and in other newly independent republics and drafted comprehensive plan for humanitarian relief for the Commonwealth of Independent States (CIS) both by the UN Department of Humanitarian Affairs (UNDHA) and by the UNHCR.

Breakup of the former Soviet Union opened an entirely new region for the work of UNHCR (Loescher 2001: 277). Russia joins the organisation after nearly a century of refusing to co-operate with the international refugee regime (Barnett 2002: 250). In this region, UNHCR mostly involved in country of origin rather than country of asylum because much of wars were internal.

Assistance to New Group of Persons: From reactive, exile oriented and refugee-specific, the agency has adopted proactive, homeland oriented and holistic approach. In the Cold War period, UNHCR provided assistance to those persons who left their countries of origin and reached other countries where they required protection and assistance (Loescher 2001a: 172). In the post-Cold War era the UNHCR is involved in activities of preventing human rights abuses and situations, which caused to forced displacement (Troeller 2004: 57). In the Cold War era, UNHCR concentrated its activities on assisting refugees in camps and negotiating with host and donor governments for support. In this period, the agency has placed the primary responsibility of refugees on host countries (Loescher 2001a: 172). In the post-Cold War period, the UNHCR also included the responsibility of countries of origin as well as host countries (Troeller 2004: 57). In the Cold War era, the UNHCR focused only to provide protection to refugees. In post-Cold War the agency has adopted a more comprehensive, long-term approach to the problem of forced displacement that included the needs of not only IDPs, returnees, unsuccessful asylum-seekers, stateless persons and others as well as refugees (Troeller 2004: 57).

Humanitarian Functions: Humanitarian functions were added to its already existing functions as it is working alongside the UN peacekeeping forces. In the Cold War period, UNHCR only repatriated the refugees, it was not involved in functions, like reconstruction, reintegration and rehabilitation. But in post-Cold War era, it started providing housing facilities and shelter, for instance it initiated the QIPs under which it provides facilities in areas of health, education, training, infrastructure, transportation, crop production, live stock and income generation and rehabilitation of schools or health centers, repair of ferries or bridges, installation of an irrigation system and providing seeds to a group of farmers (Crisp 2001: 180-181). In the Cold War period, the work of the UNHCR was limited to legal issues. It only used to suggest the governments to adopt the laws and procedures to implement the 1951 UN Refugee Convention. During the 1990s, UNHCR became more involved in situations of ongoing-armed conflicts. As, Bwakira (2001: 280) argues that in the post-Cold War era UNHCR increasingly became involved in situations of ongoing-armed conflict.

Consequently, the work of the agency has been shifted from legal protection to material assistance. Today, UNHCR is not mainly concerned with preserving asylum or protecting refugees, rather its chief focus is humanitarian action (Loescher 2001: 363).

Conclusion

Thus, from the above discussions it emerges that the role and the functions of the UNHCR has extended due to changing nature of international political arena. It has taken a number of functions which were not included in the formative stage of its mandate, like comprehensive building measure programme, reintegration, rehabilitation, reconstruction, economic development programme, development assistance for refugees, development through local integration and community based rehabilitation programmes. UNHCR could not do this job alone; therefore it promoted the co-ordination with non-governmental organisations and various other UN development agencies.

The “Guiding Principles on Internal Displacement” provides an appropriate framework for the protection of IDPs and the UNHCR has taken a leading role for providing

protection to IDPs in post-Cold War period. The agency adopted the new approaches to handle the refugee problems in this period, which focused on preventive actions; right to return in country of origin; comprehensive, long-term approach to the problems of forced displacement and emphasised the needs of not only refugees but also IDPs, returnees, asylum-seekers and stateless persons.

Despite these developments there are certain challenges remains in the post-Cold War period, which needs to be improve for effective functioning of the agency. These are lack of co-ordination with other UN humanitarian and development agencies, lack of specialised staffs and resources, gap in institutional mandate for the protection of IDPs. Though, the international community has taken the several efforts to initiate the co-ordination between the UNHCR and other humanitarian agencies. For example, IASC established the “cluster approach” to enhancing the co-ordination among UN humanitarian agencies for IDP protections. But without the necessary resources, UNHCR would not provide the necessary staff training for the IDP protection. Thus, there is need of more predictable funding to ensure humanitarian assistance for IDP populations.

CHAPTER 4

Challenges and Prospects

The refugee and IDPs crisis of the post-Cold War severely challenged the UNHCR and made it to undergo the drastic shift of its focus from protection to humanitarian assistance and ventured into many areas of untested water like expansion into post-conflict reintegration, monitoring human rights violations. In the process of taking over various kinds of new tasks in a bid to provide a holistic approach, it spread its scarce resources and capacities too thinly. On the one hand, it could not stand up against the major powers that restricted entry of refugees into their territories. They are not willing to share the burden of caring for refugee. On the other, its dilution of functions regarding to protection of refugee led to erosion of refugee rights. These challenges and obstructions, greatly affected its functions and reputation to a great deal. This chapter intend to analyse the major challenges faced by the UNHCR in the course of its activities in the post-Cold War period and it also intend to conclude with addressing the future prospects of the UNHCR.

Effect of Globalisation:

It is worth noting that there has been a continuous increase in the numbers of international migrants. According to one such estimate, world international migrants grew from about 100 million in 1960s to 185 million in 2005 (Library Highlights Latest Titles: February 2007 2007). Moreover, this rapid surge in the number of international migrants has taken place in the era of globalisation. Globalisation facilitates free movement of people across the globe. Various activities associated with globalisation, such as “democratisation of technology”, “democratisation of finance” and the “democratisation of information”. Because of these major developments, the sanctity of state has severely been challenged and people to people interaction has become inevitable (Dragos 2006). All these factors have facilitated free flow of people across international borders. The spread of technology and financial transactions, declining authority of the

state and “the hugely increased volumes of trade and travel facilitate transnational criminal activities” (UNHCR 2001: 276). The growth in Multinational Corporation (MNCs) put the pressure on governments to facilitate the inter-country movements of executives, managers and other personnel. Bilateral, regional and international trade regimes have an important effect on migration. As the North American Free Trade Agreement permits freer movement of professionals, executives and others. The General Agreement on Trade in Services (GATS) is another examples of trade negotiations which affecting the migration policies. For example, in GATS, the US guaranteed a minimum of 65,000 visas per year for admission of foreign professionals who are authorised to remain in the US for three-years (Martin 2001: 9). The range and influence of economic interests are so huge and widespread that the states cannot control it directly. States have less power to direct the flows of capitals and goods and to protect the weakest members of society. Social safety has decline when the people exposed to job shortages or job losses. This caused the widespread anxiety and frustration. This insecurity increases in the number of immigrants, asylum-seekers and refugees (Ogata 2000).

Better communication and transportation and other improvements in quality of life of people have increases the expectations to work in other places and enhance their ability to migrate. The communications, information and transportation revolutions have mixed effects on migration trends. On the one hand, travel is cheaper and easier than ever before, therefore people can easily move from one place to another. Inexpensive transport and telephone systems also permits the people to remain in touch with their families and making migration less distressing step than it was in earlier periods. These factors contributed to increased migration (Martin 2001: 9-12). As we know that the free circulation of goods and capital has created wealth, opportunities for work and better life for many people. Moreover, the rapid movement of investment capital in certain regions has contributed, together with other factors, to some of the worst financial crisis. “Social destabilisation frequently leads to political crisis, and, especially in developing countries, to the further impoverishment of the poor strata of society, or to the exclusion of minorities... This turn may cause the further population movement” (Ogata 2000). Thus, the process of globalisation increases the movement of economic migrants and illegal

migrants, which presents very complicated situations before the states. They face the problem to distinguish between refugees and other migrants. More than 130 countries have been obliged not to return refugees to where they have well founded fear of persecution and to provide assistance and protection to refugees whom they admit within their territory, these countries have signed the 1951 Convention. But due to increasing number of illegal migrants, these governments have established various asylum adjudication procedures to make these determinations. In some cases where other immigration procedures are restrictive, these processes are the only or principal means through which migrants are able to obtain asylum in these countries regardless of their reasons for immigration. Due to uncontrolled migration, states imposed various mechanisms, like visa requirements and carrier sanctions. But these mechanisms fails to make a distinction between refugees and other migrants and limit the protection of the persons who find asylum elsewhere. In some cases these persons for self-defeating, turn to more sophisticated smuggling and trafficking operations that enable them to circumvent the immigration controls. This cycle presents particular challenges before the UNHCR (Martin 2001: 1-2). The Office of the UNHCR deals with refugees as a global problem as Statute rests on international refugee law (Ogata 2000). Refugees are also part of the total migrant population, therefore the measures designed to control the migration and unauthorised movements can effects the protection of refugees. Refugees and other forced migrants may be seriously harmonised, if these immigration policies and procedures prevent to enter another country to escape from persecution or if these policies forced them to return in their country of nationality, even the conditions are not changed (Susan 2001: 2).

Furthermore, by analysing the impact of globalisation in migration, Collinsion argues, “globalisation of financial, commercial and other international relations is bringing about enormous and significant changes in the broader political, economic and social context in which cross-border migration takes place” (Marfleet 2006:22).

Kaplan argues that world integration do not fulfill the ideologies of “prosperity” and “harmony”. He says, “ the threat posed by migration should not be underestimated”.

“Refugees and rural urban migrants, would transform the world cities: uneducated by newly empowered millions would replace the sophistication of urban life with the crudities of culture and tribe” (Marfleet 2006:3).

Financial Challenges:

In the post-Cold War period there is a greater need to better arrangement of funding for repatriation. But the UNHCR’s availability of resources is unpredictable and inadequate, because it totally relies on voluntary contributions for its operational activities. This method of UNHCR’s fundraising affects the nature of its operations and their humanitarian and political consequences (Varynen 2001:161). Ninety-nine per cent of the funds of the UNHCR come from voluntary contributions from member states of the High Commissioner’s Executive Committee (Cunliffe and Pugh 1997:140). As article 20 of the Statute clearly states:

The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commissioner, shall be borne on the budget of the United Nations, and all other expenditure relating to the activities of the High Commissioner shall be financed by voluntary contribution (Statute Of the Office of the United Nations High Commissioner 1950).

In 2006 all funds of the UNHCR came from the ten leading donor governments. The following table deals the contribution of ten major donor countries in 2006.

Table 3: Top ten donors in 2006

| Donor Countries | Contribution (in US dollar) |
|--------------------------|-----------------------------|
| United States of America | 329,340,441 |
| European Commission | 79,570,844 |
| Japan | 75,149,096 |
| Sweden | 68,059,734 |
| Netherlands | 66,671,367 |
| Norway | 55,196,801 |

| | |
|----------------|------------|
| United Kingdom | 51,992,181 |
| Denmark | 50,661,166 |
| Germany | 31,087,430 |
| Spain | 27,874,622 |

Source: UNHCR Global Report 2006: 79-93.

The above table highlights that on the one hand, the absolute financial burden of the UNHCR is covered by the United States and European Commission and on the other, the small industrialised countries covers the financial burden of the agency.

Presently, UNHCR not only repatriate the refugees, but it also operates the development activities, which is related to reintegration and rehabilitation (Stein 1997). These development activities require more funds and resources. In intra-state conflict situations, due to increasing number of persons of concern to the UNHCR, the demand for the total number of expenditure to the agency also increased, but the contributions were not come according to its requirement. Table 4 highlights the UNHCR's fund requirements and contributions from 1991 to 2005.

Table 4: UNHCR's Fund Requirement and Contribution from 1991-2005

| Year | Requirement | Contribution |
|-------|--------------------|------------------|
| 1991 | \$862.5 million | \$904 million |
| 1992 | \$ 1,071.9 million | \$1,082 million |
| 1993 | \$1307 million | \$1,195 million |
| 1994 | \$ 1.2 billion | \$ 1.07 billion |
| 1995 | \$1.17 billion | \$ 1 billion |
| 1996 | \$1.3 billion | \$ 970 million |
| 1997 | \$ 1.2 billion | \$ 806 million |
| 1998 | \$ 1.1 billion | \$ 769 million |
| *1999 | \$915 million | \$ 911.6 million |
| 2000 | \$ 942.3 million | \$705 million |
| 2001 | \$ 953.7 million | \$ 779 million |

| | | |
|------|-----------------------------------|------------------|
| 2002 | \$ 1,030 million | \$ 816 million |
| 2003 | \$ 1,150 million | \$929 million |
| 2004 | \$ 1,126 million | – |
| 2005 | Initial budget \$ 974.6million | \$ 1,096 million |

* 1999 was characterised by three successive emergencies, Kosovo, East Timor and Northern Caucasus and by budget reductions due to funding shortfalls in several other General and Special programmes, particularly in Africa.

Source: United Nations 1992a; United Nations 1993; United Nations 1994a; United Nations 1995; United Nations 1997a; United Nations 1998; United Nations 2000; United Nations 2001; United Nations 2001a; United Nations 2002; United Nations 2003; United Nations 2004; United Nations 2005; United Nations 2006.

The table shows that however, the contributions to the agency from 1991 to 1994 is more than its requirement, but from 1995 to 2005 the contributions of the agency has reduces.

To fulfill the financial requirements the UNHCR heavily dependent on its donor countries and most of them are major industrialised countries. For example, in 1999 the United States, Japan and European Union contributed 94 percent of all government contributions to the UNHCR (Loescher 2001). In 2006, the United States of America contributed \$ 329,340,441, it has contributed the highest amount to the UNHCR. Japan contributed \$75,149,096 and European Commission contributed \$ 79,570,844 (UNHCR Global Report 2006).

Apart from the obstacle in financial contributions UNHCR has also some other resource constraint during its operations. An internationally recognised repatriation movement depends upon UNHCR's various activities, such as, registration procedures, transport facilities and reception arrangements. For example, in Cambodia when the UNHCR repatriated the people "to meet an electoral deadline" the agency had some resource limitations. The resources are required for this movement is not available at the

time of repatriation. In addition, therefore, some refugees are unwilling to wait for UNHCR repatriation programme and they may simply prefer to go home by their own steam. For example, in 1996 in Afghanistan, some three million refugees had returned to the country. "This movement was achieved without the aid of an organised cross-border logistics operations, without comprehensive repatriation and reintegration assistance from UNHCR and without the presence in areas of return of major rehabilitation and reconstruction efforts by UN development agencies" (Patil and Trivedi 2000: 156).

Burden Shifting Challenges:

The problem of refugees and its subsequent solutions have led to a plethora of issues. Many industrialised countries have implemented the measures to prevent entry of refugees into their territories and restricted access in their asylum procedure, by the provision of visa requirements, sanctions against carriers that undocumented asylum seekers have used. There has been a perpetual tussle between the industrialised and African countries regarding burden sharing. There are many industrialised countries that often complain about the number of refugees crossing their borders annually. On the other hand, there are many host countries from the developing world, particularly Africa that have constantly been talking about the effective burden sharing. They complain that international protection never functioned adequately. According to African countries, the major part of the burden, to meet the protection needs of refugees, has always primarily rested on developing countries whose weak economies, environments and social and political stability have been threatened in the process of providing refuge to millions of refugees. But they receive fewer funds for rehabilitation of the needy persons. African governments argue that while the countries within their continent host two-thirds of the world's refugee camps, UNHCR care and maintenance programmes are inadequately funded, therefore, they are unable to meet the minimum standard to provide refugees with a means which are essential for respectable self-reliance programmes. They claim that money moving to high-profile emergencies, like Afghanistan and Iraq has drawn more attention rather than Africa and elsewhere (Kelley and J. Durieux 2008: 10-11). For instance, in 1995, the UNHCR got more money to provide emergency assistance to former Yugoslavia rather Africa, which deserved equal share (Loescher 2001a:192).

African countries further allege that there has been a discrimination in the distribution of humanitarian aid and also in durable solutions, which is promoted according to interest of donor countries. They are constantly raising the issue of burden sharing with industrialised countries. Essentially they argue- why they should keep their borders open to refugees and provide local integration while donor countries are shutting their borders for providing asylum to refugees. The capacities of these developing countries to integrate the refugees with their local population has come to face many problems, which are resulting in their own underdevelopment and other related social tensions. Therefore, they desire to engage in burden shifting, not in burden sharing with these industrialised countries (Kelley and J. Durieux 2008: 11). However, "The Organisation of African Unity"(OAU) contains a clear provision for the principle of burden sharing. It is clearly stated in article II (4) of the "Convention Governing the Specific Aspects of Refugee Problems in Africa" (1969), that:

Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

Thus, the Western States are practicing burden shifting by closing their doors to refugees. They are also unwilling to share the financial burden of the developing countries, which hosts the significant number of the world's refugee population. Then the developing countries have also argues about the burden shifting. Many developing countries started the burden-shifting programme for a long time now. The lack of support in sharing the responsibility to protect the refugees has led the obstacle before the host countries when the costs are sky-scraping and "refugees face a multitude of serious protection concerns". Thus, in these ways, the dispute between industrialised countries and developing countries present the real crisis in international protection regime.

Challenges Relating to Political in Nature

The UNHCR was designed to appear as a non-political, humanitarian and social actor within the framework of the United Nations. As Article 2 of the Statute states:

The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule to groups and categories of refugees (Statute of the Office of the United Nations High Commissioner for Refugees 1950).

This strategy provides that it is not mandated to intervene politically against governments or opposition groups, despite the clear evidence of human rights violations (Loescher 2001a: 187). Despite the UNHCR's characterisation as a non-political, humanitarian and social agency, the Office is a highly political actor and it is shaped by the interest of super powers (Loescher 2001: 350). To avoid the politicisation of the agency the founders of the UNHCR had recommended that the High Commissioner would be nominated by the UN Secretary-General and elected by the General Assembly. Furthermore, the High Commissioner is supposed to follow the policy directives, which are handed over to him by the General Assembly and ECOSOC. To further consolidate the accountability of the Office, the High Commissioner is required to report to the General Assembly.

The founding fathers of the Office had wisely realised that if the Secretary-General will give the policy direction to the UNHCR, it might be possible that mandate of the agency would be partially "breach". Yet, the founders took extreme care and steps to separate the work of the High Commissioner from political decisions of the Secretary-General, but one recent events highlight that the Secretary-General does not support the independent activity of the UNHCR. In the case of former Yugoslavia Boutros Ghali ordered, the High Commissioner to resume humanitarian assistance in the region when Sadako Ogata had withdrawn it in protest. This event shows that the High Commissioner may not be only answerable to the General Assembly (Gilbert 1998: 356-357), even the Statute stipulates that the "High Commissioner shall be entitled to present *her* view before the General Assembly, the Economic and Social Council and their subsidiary bodies" (Statute of the Office of the United Nations High Commissioner for Refugees 1950).

Therefore, according to above discussion it is clear that, one of the major challenges before the UNHCR is that it is not able to perform its functions as an independent political organ of the United Nations. Like all other UN bodies, it is subject to the decisions of the Security Council, requests by the Secretary-General and to the formal control of the UN General Assembly, to which it is obliged to report back each year on issues relating to refugees (Loescher 2001: 350). Sometimes, this long process creates the obstacles during the emergency assistance programme of UNHCR.

Quite astonishingly, high levels of violent activities are reported within and outside of the refugee camps, these include harassment, exploitation and attacks by national authorities and local population. Other forms of serious violence, such as domestic violence, sexual harassment and rape are continuously occur in large and protracted refugee situations. Refugees and asylum- seekers, in both situations i.e. when they cross international borders in-group and when they cross individually, face discrimination in host country on account of their race, religion and national or ethnic origin. This can affect their basic civil rights related to employment, education and access to social services (Kelley and J. Durieux 2008: 11-12). According to one estimate, almost two third of the world's refugees live in Africa and they live in insecure environment. For example, they live "...in exile for over five years and are confined to camps or organised settlements and many of which are located along insecure borders, vulnerable to attack. They are commonly in remote, environmentally inhospitable areas, which do not receive development assistance". These situations present another major challenge before the international refugee protection regime (Kelley and J. Durieux 2008: 12).

It is beyond any doubt that the donor countries were not willing for the expansion of the UNHCR outside of their political interest areas. Therefore, they do not fund the operations of the agency in Africa and some other parts of the developing countries. UNHCR is normally dependent, for its massive relief operations, at the mercy of its donors and host governments. About 98 per cent of the Office's funding comes from voluntary contributions from governments, among these governments most are from small number of major industrialised nations, which in return control its activities and

operations (Loescher 2001: 349). The shift in UNHCR's activities from protection to humanitarian assistance depends upon funding from these donor governments. These countries are very selective to channel their contributions. They select the programmes and operations, according to their own strategic importance (Gilbert 1998: 360-361). As a consequence, UNHCR has been unable to handle all refugee crisis equally. Some crisis situations have attracted greater international attention and support than others (Loescher 2001a: 191-192).

Hence, financial dependency restricts the UNHCR in carrying out its core function, which is "providing international protection" and "seeking permanent solutions" to all the needy people or the areas where the involvement of the agency is considered to be necessary. UNHCR, due to its financial resource constraint, is in a weak position to challenge the policies of its donors and host governments towards refugees. To meet its huge financial and relief responsibility, the UNHCR, sometimes remains silent about human rights protection activities. For example, during 1990s humanitarian aid was essential in Africa, but donor governments gave a very small amount of aid to world's "well-known" crisis of this continent. In Sierra Leone, Liberia and Guinea the World Food Program (WFP) had cut emergency aid to more than 1.8 million refugees "because international donors had provided less than one-fifth of the \$106 million...". The donor governments are also responsible for ignoring the serious needs of displaced people in Democratic Republic of Congo and Uganda while they showered huge chunks of money in Kosovo. All these factors have concluded that UNHCR has acted in a discriminatory manner during world's famous humanitarian crisis. Thus, in 1999, due to negligence of donor countries the international humanitarian organisations criticised the attitude of the donor governments (Loescher 2001: 349-351, 335).

Apart from the donor governments, UNHCR also depends upon various UN humanitarian agencies and non-governmental organisations (NGOs) for its operational activities. As Goodwin-Gill argues, "UNHCR has a pre-eminent role and specific responsibilities, but it is also dependent on donor governments, on implementing partners within the United Nations and non-governmental sectors, and on refugee advocates at

home and abroad” (Goodwin-Gill 2001: 134). To provide asylum to refugees, states make the final decision of granting the asylum to refugees. It falls within their discretion to grant or deny asylum, they keep the right as part of their national sovereignty and they are not willing to transfer this authority to UNHCR or any other intergovernmental body (Loescher 2001a: 186).

Therefore, the activities of the UNHCR are limited by the state’s practices and their territorial integrity. It has been observed that states limit the actions of UNHCR by constantly raising question of their sovereignty and particularly those international norms, which restrict intervention in the domestic affairs of a state. It is true that globalisation challenges the supreme authority of a state, but state sovereignty remains strong, especially within most powerful Western states and others like in Russia, China, India, Iran and also in many other developing countries. In the evident from the behaviour of the “United States have been highly selective about whether and to what extent to get involved in political crisis and humanitarian emergencies”. Statute does not give the authority to UNHCR to intervene politically against governments or opposition groups. In internal war situations, the UNHCR staffs are also unfamiliar with human rights and humanitarian law and they are very uncertain about the reaction of governments and opposition groups. The agency find itself in a very critical situation, because “it has neither the resources nor the mandate to deal with” these issues (Loescher 2001c: 28).

Sometimes, UNHCR seeks the protection of refugees not only in the host state, but also in areas where independent groups are in control of territory where the operations are still going on. For instance, in Bosnia-Herzegovina, UNHCR needed the support of UNPROFOR, because the Bosnian forces could not provide protection in Serb-held areas, in the former Zaire, UNHCR was left with no UN protection in the camps and had to rely on 1,500 elite guard of former President Mobutu. According to Mooney, “support was not always forthcoming. UNPROFOR did not have access to all parts of Bosnia-Herzegovina; some towns were reached through the Krajina in Croatia” (Cited in Gilbert 1998:371). It has been observed that UNHCR is highly dependent upon its donor

countries for financial liquidity. Thus, considering its vulnerability, it is extremely difficult for UNHCR to maintain neutrality during its operations. To overcome such prejudices, it is necessary to evolve a more transparent and accountable financial system, which can cater to all its financial requirements. However, Article 35 of the 1951 Convention stipulates that, States parties should co-operate UNHCR in the exercise of its functions, but according to Gilbert the Office has pointed out:

Governments do not always respect this responsibility and in recent years they have manifested a growing tendency to challenge the basic tenets of refugee protection. In these difficult circumstances, UNHCR relies to a great extent on its moral authority...to ensure that states and other actors act in accordance with international refugee law and humanitarian principles (Gilbert 1998: 373, emphasis added).

Challenges of Co-ordination:

All the international organisations, governments and non-governmental organisations are the product of the humanitarian crisis. Their independence, flexibility, mobility, credibility and their capacity to collaborate with other actors are essential for their effective functioning (Raper 2004: 350). The process of reintegration cannot be tackled by only one agency, because reintegration of refugees occurred after the conflict, therefore it is concerned with conflict resolution and post-conflict development programmes. Although, UNHCR is not a development organisation, but it plays a leading role during the repatriation and reintegration programme, but it cannot do this job alone. The operational activities of the agency require a more comprehensive co-ordination with other UN agencies. But all these agencies have separate entities; their own mandates, governing boards, independent fundraising mechanism and resources. They do not view the present refugee emergencies as a whole problem (Stein 1997). For example, Crisp also pointed that the UNHCR faces difficulties to make relationship with the development agencies, especially with UNDP. These agencies have their own plans and priorities for developing their close relationship with governments and these plans or priorities are relatively small in “returnee-populated areas”, which is UNHCR’s primary concern. Therefore, it is difficult to offer a coherent and comprehensive approach and solutions for the refugees (Crisp 2001: 179-180).

The Statute gives the authority to the High Commissioner to invite the various other specialised agencies for co-operation during its operational activities. Although, in 1990s UNHCR became more humanitarian, operational and effective, but at the same time the institutional framework for the humanitarian operations of the UN system also changed. The Gulf War highlighted the problem of co-ordination in a “rapid and effective humanitarian assistance”. Due to lack of co-ordination between UN agencies the Secretary-General established the Department of Humanitarian Affairs (DHA) for the humanitarian assistance co-ordination, in March 1992. As the lead agency for the humanitarian operations UNHCR opposed the functions of the DHA and like UNHCR other UN agencies also opposed the DHA. Regarding this holistic behaviour the DHA was eliminated in 1997. The 1997 UN reforms also highlights the major tension among UN humanitarian agencies and the hatred behaviour against the UNHCR, when Maurice Strong suggested the “amalgamation” of all the UN agencies for the humanitarian assistance and he believe that UNHCR is to be most suitable to take these roles, all the other UN humanitarian agencies opposes this decision, particularly World Food Program (WFP) and United Nations Childrens’ Fund (UNICEF), they believe that through this decision UNHCR will capture all the humanitarian assistance field (Loescher 2001: 291-293).

Due to this lack of co-ordination among UN agencies the “Agenda for Protection” was jointly adopted by states and UNHCR and appreciated by the UN General Assembly, in 2002. It is a “comprehensive plan of action for UNHCR, governments, NGOs and other partners”. The Agenda emphasise on international protection activities that can be enhanced by multilateral commitments and co-operation. Specifically, the Agenda focuses on six points. These are:

- Strengthening the implementation of the 1951 Convention and its 1967 Protocol.
- Providing protection to refugees within broader migration movements.
- Burden sharing with more equitable pattern and building capacities with other partners to provide protection to refugees.
- Addressing security related concerns more effectively.

- Redoubling the search for more durable solutions and meeting the protection needs of refugee women and children (Kelley and Durieux 2008: 13).

Similarly, in 2003, the UNHCR launched the “convention plus” to strengthening the co-operation among states and UNHCRs’ partners and in 2005 the Inter Agency Standing Committee established the “cluster approach”.

Moreover, the Office of the UNHCR, in order to increase its staffing and logistic capacity, worked on strengthening the standby agreements with its existing partner agencies in terms of recruitment process and rosters. “It also reviewed all current technical standby agreements, such as those with Save the Children, RedR and the Centre for Disease Control and Prevention and started developing additional in-house standby capacity for technical expertise, in particular in shelter and camp co-ordination, but also for water, sanitation and health” (UNHCR Global Report 2006: 38).

Challenges of Accountability:

In the post-Cold War period, UNHCR emerges as an operational humanitarian organisation but it has “very limited analytical and thinking capacity”. Although, the agency initiated a number of policy and programmes for evaluation, policy analysis and selective input from external researchers, still the Office is unprepared and understaffed for its humanitarian operational requirements. The staffs of the UNHCR are not recruited on the basis of their merit, they appointed through their personnel networks rather than of competence and they give the little attention for “genuine reflection” even the emergencies are “complex” and “stressful”. UNHCR does not give the attention to train its staffs for developing its “critical research capacity”. Only few staffs have been offered to learn in university or policy research centers and for very brief periods. Staffs also do not view the intellectual and research skills as useful criteria for their job promotion. The general feeling among the senior staffs and the government delegates of the UNHCR’s Executive Committee also reduces the accountability of the agency, they considered that the priority of the agency should be to focus on its operations in the field, not on research, even they know that this activity can improve overall operational efficiency of the

agency. Due to these negative attitudes the UNHCR facing several difficulties, such as to identifying staff members to fill its policy research posts. Independent external research has had little impact on UNHCR policies or research programmes. Communication and information from outside observers are also not systematically provided to the agency for its decision-making and policy-making procedures (Loescher 2001: 358-360).

Thus, UNHCR's accountability mechanisms are inadequate in current situations; "they neither offer adequate sanctions nor remedies when the fundamental rights of refugees and stateless persons have been directly violated". To overcome these shortcomings the UNHCR established an "Evaluation and Policy Analysis Unit" (EPAU), which came into effect in 1 January 2003, for enhancing its capacity in organisational learning, performance review, public accountability and increasing their level of evaluation activity in a phase and principle manner (United Nations 2004: 1201).

Future Prospects:

UNHCR was established as an *ad hoc* body of the United Nations and since then its functions and activities have been advanced considerably. Now it has called upon to perform expanded operations, which is more humanitarian and international in scope (Barnett 2002: 257). In the history of its 57 years of existence, it had many successes and failures. Its failures has relies on various reasons, such as slow and inadequate responses to the refugee crisis, inadequate staffs have sometimes risked the lives of number of refugees (Loescher 2001c: 28). A number of internal and external constraints reduce its operational capacity. For example, strict notion of territorial sovereignty has made many obstacles into its proper functioning. "Individual refugee is the subject of the right of state to grant asylum...it is not right of the individual to gain that status". Thus, UNHCR has been obstructed by the conventional notion of territorial sovereignty, which stipulates for the "respect for territorial sovereignty". This situation must be resolved so as to ensure further progress of the agency. To achieve more universal character UNHCR must go beyond from its traditional state-centric notion (Barnett 2002:258). Moreover, both industrialised and developing countries has to share the responsibilities of refugees on equitable terms. In the contemporary time refugee problem is a global problem, whose

solution goes beyond the capacity of any single state. At present, there exists very low level of co-operation among states to tackle various refugee problems. Due to unequal proportion of burden sharing, it has been noticed that some countries are getting the bulk of refugees, while others receive only a few refugees and asylum-seekers. So here arises the question of burden sharing, which can jeopardise the effective functioning of UNHCR. In these circumstances it is necessary for UNHCR to make “some form of institutionalised sharing of responsibilities”, which can solve the problem of burden sharing among receiving states. There is an urgent need for new immigration programmes, which can rehabilitate migrant workers and their families. All Western states should improve their asylum system. Refugees should be admitted quickly under the protection mandate of states or UNHCR, illegal migrants who do not come under the protection mandate of UNHCR and states, should be returned their country of origin as soon as possible. UNHCR should monitor this procedure to confirm that these persons “carried out fairly or humanely” (Loescher 2001: 366-367). To effectively solve the refugee problems, the international community looks to the UN agencies for greater international co-operation.

Moreover, the post-Cold War era is the era of internal conflicts, and in this period UNHCR has called upon to perform various peacekeeping and peace enforcement functions throughout the world. These tasks cannot be solved effectively without a greater degree of governmental support. There is also a need to promote the support for the collaboration of other such humanitarian agencies, such as Office of the UN High Commission for Human Rights (OCHA) and various NGOs (Loescher 2001: 369). To establish intimate relationship among UNHCR, UN agencies and NGOs, an institutionalised framework is needed to be established, by which information and evaluation can be exchanged without much bureaucratic maneuvering (Loescher 2001: 375).

The growing number of intra-state conflict in post-Cold War has led to surge in the numbers of refugees, particularly those who are forcibly displaced within their own country. Considering the difficulties faced by such displaced people, more and more attention should be given to the measures, which can provide protection and assistance to IDPs within their own homeland (Loescher 2001: 373). Although UNHCR is not

mandated to protect the IDPs, but due to its past experiences, the international community has given the overall responsibility of IDPs to UNHCR.

Moreover, there is an urgent need to augment the organisational capacity of UNHCR. The Office should strengthen and consolidate its accountability measures. UNHCR takes decisions that affect hundred of thousands of displaced persons and refugees worldwide, therefore there is a greater need for the organisation to be more accountable for the persons of concern. For the said purposes an institutionalised, countervailing force should be established which can put the pressure on UNHCR to carry out its mandate more effectively. An “external ombudsman” and “annual external protection and management audit” should be established to undertake the challenging activities of UNHCR. An independent ombudsman should also be established to supervise state activities, when these states provide protection and assistance to refugees (Loescher 2001: 375-376;).

Another thing which has proved to be an impediment for its proper functioning is the role played by the Executive Committee of UNHCR. The Committee also does not effectively shape the policy of the agency. Since the Committee includes those members who have not signed the Statute or are themselves the cause of refugees’ flows. These countries acted according to their own national interests, which sometimes makes it increasingly difficult to achieve consensus. It has been noticed that the overall policy-making decision of UNHCR depends upon the Committee, but it does not effectively shape the policy of the agency in the right direction due to lack of agreement among member states for refugee issues. Therefore Excom should be made an effective advisory body of the agency with serious field functions and capacity for organizational guidance (Loescher 2001: 376).

The most important gap of the UNHCR’s organisational culture is the selection criteria of its High Commissioner. There is no set job description for the post of High Commissioner. There is no any mission statement and no any professional qualifications are mentioned for this very highly demanding job. The post of the High Commissioner shall be proposed by the UN Secretary-General and subsequently approved by the

General Assembly. Normally, each new High Commissioner is selected by the most powerful countries of the world in “consultation” with the Secretary-General. In the post-Cold War period, the post of High Commissioner has become a very highly demanding job and it requires “exceptional qualities”, such as, “diplomatic skills”, “fund raising abilities” and “the capacity to manage and lead a large and complex” UNHCR. Considering the sensitive nature of the job, it is necessary to evolve a new selection procedure. The General Assembly should select the High Commissioner by the “open election” procedure rather than the choice of the Secretary-General (Loescher 2001: 378). The candidate should be selected in accordance with the above mentioned criteria.

Resource constraint and lack of international political attention is one of the major obstacles in the operational activities of UNHCR. In post-Cold War period UNHCR is largely involved in post conflict reintegration and reconstruction activities, which requires more funding, resources and international political attention. Thus, more resources and political attention should be given to it to handle such demanding scenarios (Loescher 2001: 373). Adequate resources are also necessary for the comprehensive protection training of UNHCR staffs at all levels, particularly at the management level. Although, the progress has been made in recent years by improving professional development of the personnel, the Office is required to ensure that the entire staffs receives regular training of all kinds. Furthermore, priority should be given to train the “heads of missions” to handle the emergency operations (Loescher 2001: 377). To fill this gap, the UNHCR established three “Emergency Response Team” (ERT) in 2006 which were trained for timely response within 72 hours. The Emergency Preparedness and Response Section (EPRS) organised the workshop on Emergency Management to train UNHCR staff and its partners. The EPRS also organised three inter-agency workshops for emergency training on leadership programme. The aim of this new programme is to strengthen the quality of leadership in humanitarian operations, improving co-ordination among agencies and establishing the development of best practices in emergency management (UNHCR Global Report 2006: 37).

From 1980s onwards, UNHCR is essentially involved in the voluntary repatriation of refugees. However it was criticised for the lack of mechanisms, which could ensure the voluntary nature of repatriation and safety of refugees, after they returned in their home. The case of some 230,000 Rohingya refugees is a case in point. During 1992 to 1997, when UNHCR repatriated Rohingya refugees, the government of Bangladesh regularly threatened the returnees. Faced with such inhumane treatment, they had little choice but they had to return. UNHCR was also criticised that it did not inform the Rohingyas refugees about the human rights situations of their places of return. Most astonishingly, they were kept it dark about the right of refusal to repatriation. Thus, one can argue to be an effective organisation, UNHCR should have the mechanism to ensure voluntary nature of repatriation as well as safety of the refugees when they return their home (Loescher 2001b: 48).

Conclusion:

Although, UNHCR has shifted its activities from protection to humanitarian assistance, but to tackle these activities, the agency has faced several problems in post-Cold War era. In the post-Cold War period, globalisation increases the movement of people. The illegal migrants and economic migrants easily reached in neighbouring country or elsewhere. UNHCR face the difficulties to distinguish between refugees, economic migrants and illegal migrants. In intra-state conflict situations, due to increasing number of persons of concern to UNHCR, the expenditure of the agency has also grown up. But the donors have not contributed according to its requirements. The industrialised countries and the developing countries have not share the responsibility of refugees. The developing countries, particularly African countries argue that, while they hold two third of the world's refugee camps, but the international protection never functioned adequately within their region and the durable solutions are also promoted according to the interest of industrialised countries, because most of the contributions for UNHCR's operations has given by industrialised countries. The donor governments were not willing to expansion of the UNHCR, outside of their political interest areas. This negative attitude made the difficulties before the agency to assume universal character.

Thus, UNHCR normally depends on the mercy of its donor governments. UNHCR is established as a non-political actor, but due to its funding and lack of other resource, the agency remains in a weak position to challenge the policies of its donors. To avoid the politicisation of the agency, the founders of the UNHCR give the authority to UN General Assembly to elect the High Commissioner by the nomination of the Secretary-General. The UN Secretary-General proposes this post through the consultation of most powerful governments of the world. Thus, the selection of the High Commissioner is also depends upon the choice of the developed countries.

UNHCR has also some internal problems, it has very limited analytical thinking capacity to evaluate the functions of the agency. The other UN humanitarian agencies have also adopted distrust behaviour towards the UNHCR in post-Cold War era as well as in Cold War period. They would not like to see the agency as a leading UN humanitarian agency.

Thus, the end of the Cold War has replaced one set of problem with another equally challenging set of problems. Yet, it is no exaggeration to say that it remains as a leading humanitarian agency of the UN in the post-Cold War period, the international community and the UNHCR itself, innovated several programmes for the effective functioning of the organisation.

Despite this there is certain requirements remains to be solved. The following are the requirements for the agency:

- The traditional notion for the respect of territorial sovereignty must be changed.
- An international arrangement for the burden of refugees should be established.
- Resources and international political attention should be given equally in both developing and developed countries in post-conflict situations.
- More attention should be given to implement the measures for IDP protection.
- The agency should recognise particular job description for the post of the High Commissioner and the General Assembly should select the High Commissioner

by the consensus of all the member countries rather than the choice of the Secretary-General.

- UNHCR should have the mechanism to ensure the voluntary nature of repatriation and safety of refugees after returning their home countries.

CHAPTER 5

Conclusion

The issue of refugees has existed for a long time in the history of mankind. However, the institutional response to handle the problem relating to refugees developed only in the twentieth century. In 1921, the League of Nations established the Office of the High Commissioner, in 1928 Arrangement relating to the Legal Status of Russian and Armenian refugees and then the Intergovernmental Committee on Refugees (IGCR), United Nations Relief and Rehabilitation Administration (UNRRA) and International Refugee Organisations (IRO) were brought into existence. But the first legal framework for the definition of refugees was established under the 1951 Convention Relating to the Status of refugees. It provides the first unified code of rights and duties of refugees and it protected them from arbitrary treatment by states. The Protocol of 1967, the Organisation of African Unity (OAU) and the Organisation of American States (OAS) also provide the protection to expanded category of refugees.

As a successor of the League of Nations, United Nations recognised that the task of refugee protection is a matter of international concern and states should assume the collective responsibility for those who are fleeing from persecution. The United Nations established, the United Nations High Commissioner for Refugees (UNHCR) as a temporary agency with limited autonomy to provide protection only to the European refugees who became displaced in the aftermath of World War II. The core function of the UNHCR was to provide only “international protection” and “seeking permanent solutions” for the problem of refugees from Europe.

Like its predecessor, UNHCR also could not avoid the struggle between US and the Soviet Union. Both the Super Powers resisted the participation in the agency for separate reasons. The US policy-makers used the refugee policy to weaken their ideological rivals and to gain the political legitimacy in the Cold War struggle. Therefore, they did not want the intervention of the United Nations to control the refugee movement. Due to the

Western focus of the UNHCR, the Soviet Union also did not participate in the agency. Thus, UNHCR was born without any powerful support.

UNHCR was established to deal mainly with European refugees and had a clear Western and European focus at its creation. But the Hungarian Crisis shows that though the agency was born with a Western and European focus, it had hardly acted as an instrument of the West in the Cold War struggle. Whenever the UNHCR enlarged its area of activity outside Europe, the donor governments did not adequately fund the operations of the UNHCR. Still the agency expanded its functions since mid 1950s, by responding to multinational crisis and by maintaining good terms with Super Powers. For instance, in Berlin, the UNHCR expanded its activities by independently raising funds and Auguste Lindt maintained its good terms with US policy-makers.

Financial resource constraints and lack of political supports have been the major problems of the functioning of the UNHCR from its very inception. To overcome, these obstacles the General Assembly passed several resolutions for a limited relief fund. The Ford Foundation gave funds to aid UNHCR. These grants enabled the agency to expand its activities in developing countries.

By the decolonisation process a number of countries became independent and they got membership in the United Nations. Through the membership in UN, they also attracted the UNHCR for their economic development programmes. This decolonisation process created a number of refugees in various regions around the globe. To protect these persons the UN General Assembly called the UNHCR. The General Assembly Resolution 1167(XII) enables the UNHCR to use the "good offices". By lending the "good offices" the agency enlarged its area of functions in various developing countries, like Algeria, Angola, Cambodia etc. US also changed its attitude towards the UNHCR and supported the increasing role of the agency in the developing countries. Both the Super Powers desired to increase their power in these newly independent countries. To defeat their ideological rival, the US supported the activities of the UNHCR in these countries.

However, the UNHCR was not able to handle these refugee problems alone. Thus, the agency had started coordination with other UN agencies, non-governmental organisations (NGOs) and governments. In 1973 the UN General Assembly passed the resolution 3143 (XXVIII) for the essential humanitarian actions of the UNHCR. Although, through the General Assembly resolutions UNHCR enlarged its activities in outside Europe, but by the early 1980s the donor governments were reluctant to provide funds to UNHCR's operational activities in outside their political interest areas. They did not provide funds to UNHCR's operations in Africa, because this region did not cover the interest of the donor countries. To help these countries the agency started the "refugee aid and development programme". But this programme could not be successful because this it required funds which the donor governments never approved.

In the Cold War period, UNHCR adopted a reactive, exile oriented and refugee-specific approach to counter to the refugee problems. Primarily, UNHCR worked with those persons who left their country and reached neighbouring countries. The agency had provided its assistance in refugee camps and placed the responsibility of refugees on host governments rather than the country of nationality. The agency had protected the persons who fall within the definition of the 1951 Convention and its 1967 Protocol, 1969 OAU Convention and the Cartagena Declaration definition. But these approaches were not adequate in the changed situation of refugees. Thus, in subsequent years, the UNHCR adopted new approaches to handle the new groups of persons and refugee movements.

Because of the changed nature of international political environment, the role of the UNHCR transformed from a refugee organisation into a humanitarian agency in the aftermath of the Cold War. In this changed international political arena the operations of the UN became more humanitarian. The UN adopted programmes for "peace-enforcement", "peacemaking", "peacekeeping" and "post-conflict reconstruction". The United Nations has increased its activities in cases involving gross violations of human rights. In these humanitarian activities UNHCR played a supplementary role with the UN peacekeeping forces.

Initially, the functions of the UNHCR was limited to legal issues, it only took the steps to furthering the 1951 Convention by convincing the governments to adopt the laws and procedures. But in the post-Cold War period, UNHCR became more involved in situations of ongoing-armed conflicts. In this period, UNHCR got the opportunity to work in the former Soviet Union region, which had not signed the 1951 Convention. This was a very untouched area for the agency in the Cold War period. The work in entirely new region was a very challenging task of the agency. But the UNHCR successfully launched various operations in this region, such as “comprehensive approach” programme, under which it provided the emergency relief and built local institutions to prevent further mass displacements. The agency collaborated with International Community of Red Cross (ICRC), Russian Red Cross (RRC), Medecins Sans Frontieres (MSF), World Food Programme (WFP), United Nations Children’s Fund (UNICEF) and with the Conference on Security and Co-Operation in Europe (CSCE). Through these programmes and collaborations UNHCR successfully launched its humanitarian activities in the region.

By the end of 1980s, the UNHCR became an essential component of the UN in its comprehensive peace-plan actions. It took an essential part in the second-generation peacekeeping operations and third-generation peacekeeping operations. These peacekeeping operations are humanitarian in nature by various ways, because they included economic reconstruction, institutional transformation and protected refugees and civilians from attack or genocide. The UNHCR has taken a number of programmes under the second and third-generation of peacekeeping operations. Under the second-generation peacekeeping operations UNHCR has provided its activities to strengthening the rule of law, human rights provisions, electoral and governance system, national machinery for the advancement of women and civil society and promoted the conflict resolution activities. The agency has taken reintegration and rehabilitation projects in carrying out its activities in returnee populated areas with the assistance of various UN agencies. Third-generation peacekeeping operations are largely related to humanitarian interventions. In carrying out its activities under the UN humanitarian interventions,

UNHCR extended its services for returnees and internally displaced persons (IDPs). The agency has provided several humanitarian functions, like, food distributions, protection to civilians against attack and forced displacement, relocating and evacuating civilians from conflict areas and assisting war-affected persons who were unable or unwilling to move from their home.

Primarily, the UNHCR focused on local settlement and third country resettlement rather than repatriation. It was assumed by the international community that the refugees were the responsibility of country of asylum rather than the country of origin. But in the changed post-Cold War context UNHCR has shifted its activities from that of country of asylum to country of origin. In carrying out its activities in countries of origin UNHCR covers a wide range of new groups, like returnees and IDPs. The agency has also given its assistance to war affected people. By these activities UNHCR transformed from a refugees organisation into a humanitarian agency instead of an agency for providing only legal protection.

The role of the UNHCR is more extensive in post-Cold War period than Cold War era. When the organisation transformed into a humanitarian agency the role of the UNHCR also expanded. The agency has adopted several programmes in post-Cold War period, which were not included in Cold War era, like reconstruction, economic development programme, material and logistical support to returnees, building democratic governance, encouraging confidence building measures, Development Assistance of Refugee (DAR), Development through Local Integration (DLI) and community based rehabilitation programme. The agency initiated the Quick Impact Project (QIPs), under which it provides facilities in areas of health, education, training, infrastructure, transportation, crop production and income generating projects and reconstruction of schools and hospitals etc. UNHCR has also extended its functions in emergency situations. For example, in recent attempts at helping the earthquake-affected persons in China, the UNHCR has delivered 11,000 tents and emergency shelters. In the cyclone-affected region in Myanmar, the agency has delivered 33 tones of food materials.

To respond to these extended activities, the UNHCR expanded its link with new actors, such as UN human rights body and development agencies as well as with NGOs. In the post-Cold War period, UNHCR along with other agencies provided its assistance and resources to rehabilitate the refugees and IDPs after the war. For example, in Bosnia, under the UN Peacekeeping Operations (UNPKOs) the agency along with Office of the High Representative (OHR) assumed the responsibility for the reintegration of refugees and IDPs. NGOs have been also the effective implementing partners of the UNHCR and they are the sources of information, advocates of refugee rights and are helpful in the process of policy formulation for refugees. The international community also recognise the partnership between UNHCR and NGOs. The “Partnership in Action” (PAR in Ac) and the “Agenda for the Protection” identify the need of co-operation between UNHCR and NGOs.

In the post-Cold War period, the UNHCR also extended its activity in providing relief to IDPs. In the Cold War period the UNHCR’s activities in IDPs was very few, but in post-Cold War period UNHCR largely involves on IDPs operations. Though, the UNHCR does not have general competence regarding IDPs, but the agency has been largely involved in IDP protection after the end of Cold War.

The “Guiding Principles on Internal Displacement” provide the protection norms for IDPs. They provide the protection from arbitrary displacement and protection and assistance during displacement, return, resettlement and reintegration. These Principles are based on ideas of human rights law and international humanitarian law. The Principles reaffirms that IDPs shall enjoy the same rights and freedoms under international and domestic law as well as other persons in their country. The Principles give the right to liberty of movement and freedom to choose their residence and specify that IDPs have the right to move freely in and out of camps and settlements. The Principles mention that the competent authorities have the primary responsibility to establish conditions as well as provide means to IDPs to return voluntarily to their homes or resettle voluntarily in another part of the world. After returning home these persons shall not be discriminated for their having been displaced. They shall have the right to

participate equally in public affairs and have equal access to public services. The IDPs should be assisted in the recovery of their property and possessions, which they left behind. If the recovery of such property and possessions is not possible then the competent authorities shall provide or assist these persons in obtaining compensation. The Principles are also intended to assist international agencies and NGOs to work in internal displacement situations, whenever the states are unable or unwilling to provide the required assistance to IDPs. International humanitarian organisations and other appropriate actors have the right to offer their services to internally displaced. At the same time, such offer shall not be provided as interference in a state's internal affairs and it shall be considered as good faith. The Principles reiterate that the protection and assistance for IDPs first and foremost rests upon the national authorities. The Principles provide guidance to the representative of the Secretary-General on IDPs, states, inter-governmental and non-governmental organisations and all other authorities, groups and persons in their relations with IDPs to take appropriate measures for addressing the issues of IDPs. Thus, the Principles provide an important framework for the protection of IDPs. Although, the Guiding Principles recognise the responsibility of national authorities for safeguarding these persons, but some states are unable or unwilling to protect the rights of their own citizens. In this situation, UNHCR encourages the states to assume their responsibility.

In the post-Cold War period, from a reactive, exile oriented and refugee-specific approach the agency has adopted a proactive, homeland-oriented and holistic approach and policies based on such an approach. In the post-Cold War period, the UNHCR extended its activities in preventing human rights abuses and forced displacement. The agency is included the responsibility of country of origin as well as country of asylum. A more comprehensive, long-term approaches to the problem of forced displacement included, in the function of the UNHCR that emphasise the needs of not only refugees but also IDPs, returnees, asylum-seekers, stateless persons and others.

In the post-Cold War period, the UNHCR shifted its activities to address the issues of root-causes of refugee movement. This major change in handling of refugee issues,

transformed its focus from that of merely providing relief to refugees to that of preventing refugee flows.

Thus, this study finds considerable proof in the favour of the hypothesis that the role of the UNHCR is more extensive in post-Cold era and the agency has metamorphosed into a humanitarian agency, instead of an agency for providing mere legal protection.

Although, the UNHCR expanded its task in post-Cold War period, yet the agency is facing many problems and challenges. This study shows how resource constraint is one of the major impediments for the effective functioning of the UNHCR in the post-Cold War situations. The Office of the UNHCR functions on voluntary contributions as authorised by the UN General Assembly or the ECOSOC. According to the Statute of the UNHCR, only administrative expenditure shall be provided by the United Nations and other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions, which are raised by governments, non-governmental organisations and individuals. In the post-Cold War period, the number of persons of concern to UNHCR has gone up, accordingly the expenditure of the UNHCR has also risen. But the donor governments have not contributed according to its requirements. These donors are not willing to expand the agency outside their political interest areas, particularly in Africa. Here it is important to note that about 98 per cent of the Office's funding comes from voluntary contributions from governments. Thus, due to its fund requirements UNHCR could not challenge the policy of its key donor governments. Among these donor governments most of them are from major industrialised countries and the shift of UNHCR's activities from protection to humanitarian assistance depends upon funding from these governments. To meet its huge financial and relief responsibilities, the UNHCR sometimes remain silent about human rights protection problems. For example, in 1990s, humanitarian assistance was necessary for Africa, the donor governments have given very small amounts of aid in this region.

In examining whether the UNHCR has been successful as a humanitarian agency in the post-cold war period this study found that the agency continues to suffer due to the lack

of fund and more so of political will to expand its area of activity. This has seriously impeded the UNHCR from working as a humanitarian agency and from assuming a universal character in the post-Cold War era as well as in Cold War period.

Apart from the financial restrictions and lack of political will to expand the UNHCR's functions in developing countries, the UNHCR has faced several problems. First among them are the effects of globalisation. Globalisation is resulting in the increase in the movement of economic migrants and illegal migrants. Due to these types of movements, UNHCR faced the difficulties in distinguishing between refugees, economic migrants and illegal migrants. Second, in the post-Cold War period, UNHCR expanded its activities in development oriented programmes. These programmes require skilled specialised staffs in such areas. But most of the UNHCR's staffs are not specialised. They are not recruited on the basis of their merit, they appointed on the basis of their personnel links. They are very small in number to fulfill an adequate protection role. Thus, the lack of human power also restricts the effective functioning of the agency. Third, although the UNHCR initiated a number of programmes and policies to develop its organisational capacity, the problem of accountability remains in the organisation. Fourth, the Western countries that are big donors of the UNHCR, did not share the burden of refugees with developing countries, while the developing countries host two-third of the world's refugee camp. Sixth, the other UN humanitarian agencies also adopted an attitude of distrust towards the UNHCR. By the innovation of "cluster approach", the UNHCR was supposed to act as a leading humanitarian agency, but the other UN humanitarian agencies disputed the claim of the UNHCR as a leading humanitarian agency. Therefore, they did not always participate during the operations of UNHCR.

Despite various challenges and obstacles, UNHCR tried to address the various humanitarian problems in the post-Cold War period. To make the organisation more effective the world community needs to be committed towards strengthening the UNHCR. The UNHCR also needs to give priority to its functions according to its mandate and capability to maintain its credibility and effectiveness.

ANNEX I

Statute of the Office of the United Nations High Commissioner for Refugees

Adopted by General Assembly resolution 428 (V) of 14 December, 1950

Chapter I. General Provisions

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of an advisory committee on refugees if it is created.

2. The work of the High Commissioner shall be of an entirely nonpolitical character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

3. The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.

4. The Economic and Social Council may decide, after hearing the views of the High Commissioner on the subject, to establish an advisory committee on refugees, which shall consist of representatives of States Members and States non-members of the United Nations, to be selected by the Council on the basis of their demonstrated interest in and devotion to the solution of the refugee problem.

5. The General Assembly shall review, not later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1963.

Chapter II. Functions of the High Commissioner

6. The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of the present paragraph.

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

- (a) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (b) Having lost his nationality, he has voluntarily re-acquired it; or
- (c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (e) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience, for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or
- (f) Being a person who has no nationality, he can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country.

B. Any other person who is outside the country of his nationality or, if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

- (a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or

(b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or

(c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or

(d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article 6 of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

8. The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by:

(a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

(b) Promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;

(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;

(d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;

(e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;

(f) Obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;

(g) Keeping in close touch with the governments and inter-governmental organizations concerned;

(h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;

(i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.

10. The High Commissioner shall administer any funds, public or private, which he receives for assistance to refugees, and shall distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. The High Commissioner may reject any offers which he does not consider appropriate or which cannot be utilized.

The High Commissioner shall not appeal to governments for funds or make a general appeal, without the prior approval of the General Assembly.

The High Commissioner shall include in his annual report a statement of his activities in this field.

11. The High Commissioner shall be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies.

The High Commissioner shall report annually to the General Assembly through the Economic and Social Council; his report shall be considered as a separate item on the agenda of the General Assembly.

12. The High Commissioner may invite the co-operation of the various specialized agencies.

Chapter III. Organization and Finances

13. The High Commissioner shall be elected by the General Assembly on the nomination of the Secretary-General. The terms of appointment of the High Commissioner shall be proposed by the Secretary-General and approved by the General Assembly. The High Commissioner shall be elected for a term of three years, from 1 January 1951.

14. The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own.

15. (a) Within the limits of the budgetary appropriations provided, the staff of the Office of the High Commissioner shall be appointed by the High Commissioner and shall be responsible to him in the exercise of their functions.

(b) Such staff shall be chosen from persons devoted to the purposes of the Office of the High Commissioner.

(c) Their conditions of employment shall be those provided under the staff regulations adopted by the General Assembly and the rules promulgated thereunder by the Secretary-General.

(d) Provision may also be made to permit the employment of personnel without compensation.

16. The High Commissioner shall consult the governments of the countries of residence of refugees as to the need for appointing representatives therein. In any country recognizing such need, there may be appointed a representative approved by the government of that country. Subject to the foregoing, the same representative may serve in more than one country.

17. The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.

18. The Secretary-General shall provide the High Commissioner with all necessary facilities within budgetary limitations.

19. The Office of the High Commissioner shall be located in Geneva, Switzerland.

20. The Office of the High Commissioner shall be financed under the budget of the United Nations. Unless the General Assembly subsequently decides otherwise, no expenditure, other than administrative expenditures relating to the functioning of the Office of the High Commissioner, shall be borne on the budget of the United Nations, and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.

21. The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General.

22. Transactions relating to the High Commissioner's funds shall be subject to audit by the United Nations Board of Auditors, provided that the Board may accept audited accounts from the agencies to which funds have been allocated. Administrative arrangements for the custody of such funds and their allocation shall be agreed between the High Commissioner and the Secretary-General in accordance with the Financial Regulations of the United Nations and rules promulgated thereunder by the Secretary-General.

ANNEX 2

CONVENTION RELATING TO THE STATUS OF REFUGEES

Preamble

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1: Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and 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.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4 - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5 - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6 - The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7 - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfill the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall

not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9 - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or

their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12 - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13- Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the

territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16 - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III

GAINFUL EMPLOYMENT

Article 17 - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country

in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20 - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21 - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 2 - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non- contracting States.

CHAPTER V

ADMINISTRATIVE MEASURES

Article 25 -Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such

assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26 - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28- Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such

documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29 - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their

life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32 - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory saves on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33 - Prohibition of expulsion or return ("refoulement")

1. 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.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34 - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35 - Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36 - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37 - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

FINAL CLAUSES

Article 38 - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39- Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It

shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40 - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of

this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41 - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42 - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43 - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44 - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45 - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46 -Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

ANNEX 3

COMMISSION ON HUMAN RIGHTS

Fifty-fourth session

Item 9 (d) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Report of the Representative of the Secretary-General, Mr. Francis M. Deng,
submitted pursuant to Commission resolution 1997/39

Addendum

Guiding Principles on Internal Displacement

Introductory Note to the Guiding Principles

1. Internal displacement, affecting some 25 million people worldwide, has become increasingly recognized as one of the most tragic phenomena of the contemporary world. Often the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in which discrimination features significantly; displacement nearly always generates conditions of severe hardship and suffering for the affected populations. It breaks up families, cuts social and cultural ties, terminates dependable employment relationships, disrupts educational opportunities, denies access to such vital necessities as food, shelter and medicine, and exposes innocent persons to such acts of violence as attacks on camps, disappearances and rape. Whether they cluster in camps, escape into the countryside to hide from potential sources of persecution and

violence or submerge into the community of the equally poor and dispossessed, the internally displaced are among the most vulnerable populations, desperately in need of protection and assistance.

2. In recent years, the international community has become increasingly aware of the plight of the internally displaced and is taking steps to address their needs. In 1992, at the request of the Commission on Human Rights, the Secretary-General of the United Nations appointed a Representative on internally displaced persons to study the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutional arrangements and ways in which their protection and assistance could be improved, including through dialogue with Governments and other pertinent actors.

3. Accordingly, the Representative of the Secretary-General has focused the activities of his mandate on developing appropriate normative and institutional frameworks for the protection and assistance of the internally displaced, undertaking country missions in an ongoing dialogue with Governments and others concerned, and promoting a systemic international response to the plight of internally displaced populations.

4. Since the United Nations initially drew international attention to the crisis of internal displacement, many organizations, intergovernmental and non-governmental, have broadened their mandates or scope of activities to address more effectively the needs of the internally displaced. Governments have become more responsive by acknowledging their primary responsibility of protecting and assisting affected populations under their control, and when they cannot discharge that responsibility for lack of capacity, they are becoming less reticent to seek assistance from the international community. On the other hand, it is fair to say that the international community is more inclined than it is prepared, both normatively and institutionally, to respond effectively to the phenomenon of internal displacement.

5. One area in which the mandate of the Secretary-General's Representative has made

significant progress has been in the development of a normative framework relating to all aspects of internal displacement. Working in close collaboration with a team of international legal experts, the Representative prepared a "Compilation and Analysis of Legal Norms" relevant to the needs and rights of the internally displaced and to the corresponding duties and obligations of States and the international community for their protection and assistance. The Compilation and Analysis was submitted to the Commission on Human Rights by the Representative of the Secretary-General in 1996 (E/CN.4/1996/52/Add.2).

6. It is important to note that the Office of the United Nations High Commissioner for Refugees (UNHCR) has developed a manual, based on the Compilation and Analysis, for the practical use of its staff, especially in field operations. There are also indications that other organizations and agencies will follow the example of UNHCR in making use of the document.

7. The Compilation and Analysis examines international human rights law, humanitarian law, and refugee law by analogy, and concludes that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Besides, the provisions of existing law are dispersed in a wide variety of international instruments which make them too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced.

8. In response to the Compilation and Analysis and to remedy the deficiencies in existing law, the Commission on Human Rights and the General Assembly requested the Representative of the Secretary-General to prepare an appropriate framework for the protection and assistance of the internally displaced (see resolutions 50/195 of 22 December 1995 and 1996/52 of 19 April 1996, respectively). Accordingly, and in continued collaboration with the team of experts that had prepared the Compilation and Analysis, the drafting of guiding principles was undertaken. The Commission on Human Rights, at its fifty-third session in April 1997, adopted resolution 1997/39 in which it took

note of the preparations for guiding principles and requested the Representative to report thereon to the Commission at its fifty-fourth session. The Guiding Principles on Internal Displacement, completed in 1998, are annexed to the present document.

9. The purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified in the Compilation and Analysis. They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.

10. The Principles are intended to provide guidance to the Representative in carrying out his mandate; to States when faced with the phenomenon of displacement; to all other authorities, groups and persons in their relations with internally displaced persons; and to intergovernmental and non-governmental organizations when addressing internal displacement.

11. The Guiding Principles will enable the Representative to monitor more effectively situations of displacement and to dialogue with Governments and all pertinent actors on behalf of the internally displaced; to invite States to apply the Principles in providing protection, assistance, reintegration and development support for them; and to mobilize response by international agencies, regional intergovernmental and non-governmental organizations on the basis of the Principles. The Guiding Principles are therefore intended to be a persuasive statement that should provide not only practical guidance, but also an instrument for public policy education and consciousness-raising. By the same token, they have the potential to perform a preventive function in the urgently needed response to the global crisis of internal displacement.

12. The preparation of the Guiding Principles has benefited from the work, experience and support of many institutions and individuals. In addition to the legal team cited above, many experts from international humanitarian and development organizations, the Office of the United Nations High Commissioner for Human Rights, regional bodies, scholarly institutions, non-governmental organizations and the legal community have made valuable contributions. Appreciation in particular is owed to the Centre for Human Rights and Humanitarian Law of the Washington College of Law of American University, and also to the American Society of International Law, the Faculty of Law of the University of Bern, the Ludwig Boltzmann Institute of Human Rights of the University of Vienna and the International Human Rights Law Group.

13. Support for the development of the Principles was gratefully received from The Ford Foundation, the Jacob Blaustein Institute for the Advancement of Human Rights, the European Human Rights Foundation, the Hauser Foundation, and the John D. and Catherine T. MacArthur Foundation.

14. The development of the Principles also benefited from the Brookings Institution-Refugee Policy Group Project on Internal Displacement, which received generous support from many sources, including the Governments of the Netherlands, Norway and Sweden and the McKnight Foundation.

15. The Government of Austria hosted an expert consultation in Vienna in January 1998, for the purpose of finalizing the Guiding Principles, which is most gratefully acknowledged.

GUIDING PRINCIPLE ON INTERNAL DISPLACEMENT: INTRODUCTION SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as

during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

(a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;

(b) States when faced with the phenomenon of internal displacement;

(c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not

be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar

criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent that proper accommodation is provided to the displaced persons that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavour to involve those affected, particularly

women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular

any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international

organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;

(b) Basic shelter and housing;

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be

protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced

persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation..

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

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