

***Contemporary Refugee Crisis and the Application of Preventive  
Measures : An Overview***

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**CERTIFICATE**

Certified that this dissertation entitled; "Contemporary Refugee Crisis and the Application of Preventive Measures: An Overview" which is being submitted by Mr. T.V.G.N.S. SUDHAKAR, in partial fulfillment of the requirements for the award of the Degree of Master of Philosophy has not been previously submitted for any degree of this University or any other university and is his original work.

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*Dedicated  
to  
My Parents*

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## ABBREVIATIONS

G.A. Res	=	General Assembly Resolutions
ICCPR	=	International Covenant on Civil and Political Rights
ICJ	=	International Court of Justice
ICRC	=	International Committee of Red Cross
IDPS	=	Internally Displaced Persons
IHL	=	International Humanitarian Law
IJRL	=	International Journal of Refugee Law
ILM	=	International Legal Materials
IRRC	=	International Review of Red Cross
LTTE	=	Liberation Tigers of Tamil Elam
OAS	=	Organisation of American States
OAU	=	Organisation African Unity
ORC	=	Open Relief Centers
S.C.Res	=	Security Council Resolutions
UDHR	=	Universal Declaration of Human Rights
UNDP	=	United Nations Development Programme
UNHCR	=	United Nations High Commissioner for Refugees
UNHRC	=	United Nations Human Rights Commission
UNO	=	United Nations Organisations
UNO	=	United Nations Organisations
UNWFP	=	United Nations World Food Programme
WHO	=	World Health Organisations

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## CHAPTER - 1

### INTRODUCTION

Humanity is an act which springs from the common consciousness of mankind and may be described as an intangible mercy ever shown towards human suffering. The humanitarian outlook is an age old custom which has been written with the fingers of nature in the hearts of mankind. A humanitarian approach towards those who flee persecution and violence has been practised, since times immemorial, through offering such individuals assistance and protection. Such a humanitarian voice may be heard in the international society whenever people move from one country to another in search of protection of their lives and liberties owing to political instability, social unrest, wars and conflicts, or other forms of disturbances. Besides these causes there may be some other man made disasters which force people to move for the protection of their lives. This segment of people are in common parlance termed "refugees".

## 1.1 Historical Development of Refugee Protection:

The idea of protection of refugees is not a new phenomenon. Prior to this century there was little organised concern with the refugee, since most of those who chose not to move to the "New World" were readily received by rulers in Europe and elsewhere. The practise of sheltering those compelled to flee was not perceived as a burden, but rather as a necessary incident of power, and indeed as a source of communal enrichment.<sup>1</sup> After the first world war there was a severe refugee crisis in various parts of the world, caused *interalia* by the Russian revolution and the collapse of the Ottoman Empire. In 1921, the League of Nations appointed Fridtjof Nansen as the first High Commissioner for Refugees. This move may be described as the first concerted international legal action undertaken under the auspicious of the League of Nations for the protection of refugees. When the League of Nations was replaced by United Nations, an International Refugee Organisation (IRO) was established for the protection of refugees of the Second World War. The IRO

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<sup>1</sup> James C. Hathaway., *The Law of Refugee Status* (Toronto, Butterworths, 1991), p.1



was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR).

**1.2. Establishment of Office of the United Nations High Commissioner for Refugees:**

The office of the United Nation High Commissioner for Refugees (UNHCR) was established by the General Assembly Resolution 428(V) of 14 December 1950. The General Assembly called upon the Governments to cooperate with the High Commissioner in the performance of his functions concerning refugees falling under the competence of the office. In accordance with the Statute, the work of the High Commissioner is humanitarian and social and of an entirely non-political character. The functions of the High Commissioner are defined by the Statute and in various resolutions subsequently adopted by the General Assembly.<sup>2</sup>

**1.3. The 1951 Convention Definition of Refugee Status:**

The primary standard of refugee status is that which is derived from the 1951 Convention relating to the Status of Refugees.

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<sup>2</sup> *Some Basic International Legal Documents on Refugees and Human Rights* ( UNHCR, New Delhi), p. 1

The term refugee has been defined by the 1951 Refugee Convention as follows:

(A) For the purposes of the present Convention, the term "refugee" shall apply to 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, 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 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 it, 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.<sup>3</sup>

In the strict legal sense the definition provide no meaningful answer to the plight of the people who are leaving their homes due to armed conflicts. The definition also leaves out internally displaced persons who are similarly situated with the legally recognisable refugees merely on a ground that they did not cross national frontiers.

#### **1.3.1. The Organisation of African Unity: Definition of Refugee Status**

The 1969 Organisation of African Unity (OAU) Convention on specific aspects of Refugee Problem in Africa however provides a wider definition. The Convention defines the term "refugee" as follows:<sup>4</sup>

1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is

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<sup>3</sup> Ibid., p.9

<sup>4</sup> Ibid., pp. 84-85.

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.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

**1.3.2. The Organisation of American States (OAS):  
Definition of Refugee Status:**

The Cartagena Declaration 1984, also provides a wider definition of refugee. It includes "persons who fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order".<sup>5</sup>

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<sup>5</sup> Hathaway., op.cit., p.20.

The definitions adopted by the OAU Convention and Cartagena Declaration appear to contain a more acceptable and viable definition of refugees.

#### **1.4. Contemporary Refugee Crisis:**

In the contemporary international society no continent can be said to be free from refugee crisis: from Balkans to the Great Lakes region of Africa and from South Asia to Central America. Some countries are facing a multiple refugee crisis. For example, Tanzania is facing refugee movements from both Burundi and Rwanda. On the other hand, there are the long standing armed conflicts ravaging the fate of the refugees in Afghanistan, Palestine and Mozambique. The Afghan refugees are considered to be the largest refugee segment in the world today with 2.8 million refugees. The Palestinian refugees are next to the Afghan refugees occupying second place and the Mozambique refugees are the third largest refugee population. One should also focus attention on the internally displaced persons as their numbers are growing alarmingly. The recent Kenyan political struggle resulted in the internal displacement of 2,60,000 people. Sri Lanka is another country vulnerable to internal displacements.

Further the massive influx of refugee movements is a fast growing factor in generating the potential refugee crisis. In view of this fact the UNHCR's task of protection of refugees is increasing substantially. The organisation is also fulfilling this task with greater courage. When approximately 2,50,000 Rohingya refugees (a Muslim Minority) were driven from Myanmar to Bangladesh, the Office of the UNHCR provided its assistance to Bangladesh in tackling the situation effectively. After the establishment of the UNHCR, the organisation has faced several refugee crisis across the Globe, such as, refugees from Indo-China, Cambodian, Vietnamese refugees etc. The organisation has taken care of more than 28 millions of refugees, returnees and internally displaced persons from across five continents. Recently the UNHCR has reported that half a million Sierra-Leone refugee population are in Guinea Liberia and these refugees continue to arrive at a rate of 300 people everyday. Refugees are also moving from the Guinea-Bissau to Senegal border and desperately waiting for protection. In sum, whether it is Asia, Africa or Europe, it makes no difference and refugees are moving from all corners of the globe due to the human rights violations, civil wars and conflicts and these refugees are moving in search of international protection. In the context of the contemporary refugee problems many states are facing refugee crises.

Tanzania hosting 2,60,000 Burundian refugees 2.8 million Afghan Refugees are stationed in Pakistan and Iran. India is facing multiple refugee problem from eight different countries such as Afghanistan, Sri Lanka, Tibet, Bangladesh etc. These are only a few examples of refugee crisis. These refugees are moving from one country to another and may impose severe burden on the neighbouring countries. Refugees hail from different social, economic and cultural backgrounds and may affect the social atmosphere of host countries.

90 percent of the refugee problems are in the third world countries, especially Africa and Asia. Africa is considered to be the poorest Continent in the world but most of the refugees in African continent are found in the least developed countries and these countries are unable to cope up with the influx of refugee movements since they are not in a position to provide basic needs even to their own population. "The refugee flows imposes intolerable security social and economic burdens on the countries that have generously provided and continue to provide Asylum".<sup>6</sup>

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<sup>6</sup> Recommendation 5 of the Addis Ababa document on "Refugees and Forced Population Displacements in Africa", adopted by OAU in UNHCR symposium, October 8-10, Addis ababa, Ethiopia.

reach a point where an application could be made".<sup>7</sup> The Western industrialised states are, in short, unwilling to allow the refugee movements into their territories in view of the prevailing economic and industrial recession and unemployment. Because of the acts of the industrialised countries the protection of refugees faces unprecedented constraints.

Further refugees do not easily agree to go back to their home countries inspite of the restoration of peace. Therefore, the time has come to deal with the refugee crisis from a different perspective so as to reduce the burden of countriesfaced with a refugee influx.

#### **1.5. The Concept of Prevention:**

Prevention can be considered as an alternative solution to defuse the refugee crisis. Prevention of refugee crisis does not mean erecting physical barricades to prevent refugee movements. The term prevention means extending protection in the country of origin and identifying the root causes for refugee flows and addressing them to avert the forced population migrations based upon the concept of "right to remain".

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<sup>7</sup> Irene Khan, "The Refugee Problem: Forging a New Strategy", *Bulletin on IHL & Refugee Law*, Vol.1(1996), No. 1, p. 114.



The term "right to remain" means the right of individuals to stay in their homeland. States are called upon to ensure a safe environment for the exercise of peoples right to remain. Human right violations, civil wars and armed conflicts are the main root causes for the outbreak of refugee crisis and these should be identified and addressed for the prevention of refugee flows. To put it differently, there should be prevention of human rights violations, prevention of conflicts and protection of civilians in armed conflicts. These may, therefore be described as preventive measures. More specifically, there should be monitoring and early warning of human rights violations and conflicts, anticipations of population movements and creation of open relief centres and safe havens in the country of origin.

#### **1.6. Objective and Scope:**

The focus of the present study is on examining the need for the application of preventive measures. In the course of this study, we will examine the relevant rules and principles of international law applicable to the prevention of a refugee crisis.

The study also seeks to examine the problem of offering international protection in the country of

origin. In this context it will elaborate and examine the "right to remain", since it is an essential element in the prevention of refugee crisis. Article 13(1) of the Universal Declaration of Human Rights (UDHR), as well as Article 12(1) of the International Covenant on civil and Political Rights (ICCPR), guarantees the right to residence in one's own country. The right to remain should be regarded as an integral part of the right to residence. UDHR, adopted by the General Assembly in 1948, is considered as part of the customary International Law. It should be implemented.

The present study will also examine the prevention of human rights violations, prevention of armed conflicts, and protection of civilians in the armed conflicts for these are essential to guarantee the right to remain to the individuals. They are preventive measures to avert refugee flows.

The present study would also focus upon the international protection in the country of origin by the establishment of an international presence by UNHCR in the country of origin or setting up of Open Relief Centres (ORCs). Such centres should provide refuge to the people who do not feel safe and secure. Otherwise, the displacement of people might lead to massive flow of forced population migration across international

frontiers and create the refugee crises in other countries.

Preventive measures in response to potential refugee crises require cooperation and coordination between the organs and specialized agencies of the United Nations. It is pertinent to find out what role if any the UN Security Council can play in the prevention of refugee crises. On what basis can it create safe havens and safety zones in the country of origin? It seems that if safe havens and safety zones are to be protected, then there should be peace-keeping forces and these areas should be handed over to UNHCR for administering humanitarian relief.

However, the present study is not going to deal with the problems of displacements owing to the natural disasters and development projects. The study is also not dealing with the protection of combatants in the armed conflicts.

The present study consists of four chapters. The second Chapter deals with the concept of "right to remain" by identifying the root causes such as human rights violations, out break of armed conflict and the failure to protect the civilians in the armed conflict.

The third Chapter deals with international protection in the country of origin through setting up of ORCs and establishment of safety zones in order to give humanitarian assistance. It also seeks to examine the relevant durable solutions to the contemporary refugee crises.

The fourth and final Chapter contains conclusions and suggestions regarding the solutions to the global refugee problem.

## CHAPTER - 2

### RIGHT TO REMAIN

The prevention of forced population migrations is heavily reliant on the concept of the right to remain. Therefore, this concept needs to be explained and understood in a systematic way. The term "right to remain" means extension of protection to displaced persons in their own country. Basically, this concept embodies a homeland oriented approach. The right to remain means right to live in safety and peace. Once this right is guaranteed to the people, they can remain in their own country. Article 13(1) of the UDHR and Article 12(1) of the ICCPR guarantee a right to every individual to residence. The right to remain is to be understood as an implicit part of right to residence. Further, article 9 of the ICCPR 1966 guarantees a right to the individuals not to be forced to live in exile. As the UN High Commissioner for the refugees has observed, the basic right not to be forced into exile implies the concomitant duty of the state to protect people against coerced displacement.<sup>1</sup> However, the right to remain should not be misconceived to imply that

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<sup>1</sup> *The State of World's Refugees: In Search of Solutions*; UNHCR (Oxford University Press, New York, 1995), p. 69.

the people may be forced to live in their own country, inspite of there being no safety and security. It only makes it incumbent on a state to promote an atmosphere where the people can remain in their own countries. The promotion of such an atmosphere is based on the prevention of human right violations, prevention of armed conflicts and the protection of civilians during armed conflicts. The aforesaid three points may be considered as essential elements of a right to remain, each one of which are discussed separately below.

#### **2.1. PREVENTION OF HUMAN RIGHTS VIOLATIONS:**

Since times immemorial every individual has certain basic inviolable rights and these are recognized in natural law. The UDHR is considered as an important landmark in the assertion of the basic fundamental non-derogable international human rights such as the right to life, liberty and equality. The UDHR is considered as part of customary international law and should be implemented by all states. The development of human rights jurisprudence did not however end with the UDHR. In 1966, the ICCPR was adopted which elaborated several rights contained in the UDHR. Since then several other conventions have been adopted which, either directly or indirectly, deal with the human rights. These include the Convention on Elimination of all Forms of Racial

Discrimination against Women 1979, the Convention against Torture, 1984 and the Convention of Rights of Child, 1989. Taken together these conventions have significantly strengthened the international regime of human rights and refugee protection.<sup>2</sup> These conventions impose certain legal obligations on the states. The failure to discharge international obligations incumbent upon a state constitutes an international wrong, for the consequence of which the erring state is responsible.<sup>3</sup>

#### 2.1.1. Human Rights and Domestic Jurisdiction

Prior to the establishment of the United Nations it was considered that the subject of human rights fell exclusively within the domestic jurisdiction of states. But the trend has since then changed. Human rights have become a part of international law and found an important place in the UN Charter which has placed some obligations on states as concerning the protection and promotion of human rights. Under Articles 55 and 56 of

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<sup>2</sup> Brian Gorlic, "The Refugee Definition and Links to Human Rights," *Bulletin on IHL & Refugee Law*, Vol. 1 (1996), No. 2, p. 247.

<sup>3</sup> Mann F.A. "The Consequences of an International wrong in International and National Law", 48, *British Year Book of International Law*, 1976-77, 1-65. Cited by Chaloka Beyani in "State Responsibility for the Prevention and the Resolution of Forced Population Displacements in International Law", *International Journal of Refugee Law*, Special Issue (1995), July, 1995, p. 132.

the UN Charter members have pledged themselves to the protection and promotion of human rights.

States can not and should not violate the human rights of the people living on its territory under the cover of domestic jurisdiction.

"One could argue that the purpose of internationally-recognized fundamental human rights standards is to circumscribe and constrain unbridled sovereign state action, 'Universal' human rights, declaration identified general parameters of acceptable State action. States whose domestic action go beyond these parameters could then be seen as in violation of international law and as threats to the maintenance of international peace and security".<sup>4</sup>

States cannot justify their acts of violations against human rights. "Today, these principles of humanity and justice have been elaborated by human rights standard. Legal developments brought about by human rights leave no doubt that the conduct of a state with regard to the treatment of its own population is matter of international law, rather than exclusive

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<sup>4</sup> Gregg. A. Beyer, "Human Rights Monitoring and the Failure of Early Warning: A Practitioner's View", *International Journal of Refugee Law*, Vol. 2 (1990), No. 1, pp. 62.



domestic jurisdiction. In any case the jurisdiction in international law is an essentially relative concept which depends upon developments in international relations. As such, it lacks a fixed content and its exercise must be consistent with the performance of international obligations and legal interests of the other states. An important consequence of this development is that, without losing its original form, the application of the theory of state responsibility has to vary and extend to the consequences of illegal conduct of a state in breach of human rights obligations."<sup>5</sup>

Though states are sovereign, their sovereignty is restricted once they become parties to international conventions. And although states are independent, domestic law is constrained by international law. Therefore, domestic jurisdiction limitation can not be invoked in human rights cases, at least where it is a persistent pattern of gross violation of human rights. The numerous international instruments dealing with the human rights problem as well as certain specific references in the UN Charter can be said to have shifted human rights from the area of domestic jurisdiction to that of international concern and consequently have

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<sup>5</sup> Ian Brownlie., *Principles of Public International Law* (4th ed.), 1992, pp. 512-513.

rendered the principle of non-intervention inapplicable to those cases certainly, as far as UN action is concerned and to actions by states as well.<sup>6</sup>

The international community cannot remain a silent spectator if any state persistently violates the human rights of its own population. Since those human rights violations may produce forced population migration and create a refugee crisis. Thus, "if the international community is really interested in averting new flows of refugee concerted international and national action is required. Deteriorating human rights situation must be identified early and problems must be prevented from developing into human rights crisis which could produce new flows of refugees. Action will have to be focused on several aspects of a situation and implemented according to an agreed upon integrated strategy if such action is to be effective. It must be coordinated by an organization with recognized lead responsibility over such activities."<sup>7</sup>

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<sup>6</sup> Richard Lillich, Cited by Subhas Chandra Khare, *Human Rights and United Nations* (New Delhi. 1977), p.43

<sup>7</sup> Beyer, op.cit.

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But sometimes a state may fail to protect or prevent the human rights violations or a state may itself violate the human rights of a section of the population living in its territory. A state whose conduct forcibly displaces a section of its population may be in breach of international laws which amplify its duty to protect persons within its territory on the basis of human rights.

In the area of human rights it is clearly prohibited to displace population groups by subjecting them to practices amounting to genocide, torture, cruel or degrading treatment, ethnic cleansing or violence aimed to at dispersing the minorities or other ethnic groups from their homeland.<sup>8</sup>

In some situations the state itself may collapse owing to a protracted armed conflict: "in some countries, important civil institutions have been destroyed by years of armed conflict. In others, the central government controls only a part of a state, does not command the confidence of every minority group, or does not exist at all".<sup>9</sup> At this juncture one should remember the collapse of the state machinery in Somalia,

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<sup>8</sup> Brownlie cited by Beyani, *op.cit*, p. 136.

<sup>9</sup> See *The State of the World's Refugees, op.cit*, p. 71.

Liberia, Rwanda and Burundi. It results in serious human rights violations and leads to the massive flows of population migration across the frontiers creating a refugee crisis.

Once human rights violations take place and result in human displacement it may have transboundary implications. Such a situation may call for an international presence to prevent the human displacement and migratory movements. This can only be done by extending the protection to the people in the country of origin. The establishment of international presence should, if possible, take place much before the situation worsens: "Ideally international personnel should be deployed at a very early stage of a human rights and refugee problems before attitudes have become intractable battle lines have been drawn and armed conflicts have broken out".<sup>10</sup> The establishment of an international presence in the country of origin can create confidence in the minds of the people and help avert population displacement:

One of the most effective means of providing protection to people who are threatened or displaced within their home land is the

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<sup>10</sup> Ibid.,

establishment of an international civilian presence. This approach has now been used in a number of different countries, although the precise form it has taken has varied considerably from place to place.<sup>11</sup>

The Open Relief Centers (ORCs) established by the UNHCR in Sri Lanka and in some other countries, providing refuge to the displaced who did not feel safe and secure, is perhaps an important mode of international presence. Such a step may prevent a humanitarian catastrophe.

The UDHR and the two 1966 Covenants are considered to be the *Magna Carta* of mankind and should obviously be implemented by the states for the effective implementation of the human rights. The fundamental rights of individuals either in their breach or in their protection are a basic element in any refugee situation and restoration of acceptable human rights conditions in countries of origin can be the key to successful resolution of long standing refugee problems.<sup>12</sup> The prevention of human rights violations and the improvement in the human rights conditions are expected

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<sup>11</sup> Ibid., p. 75.

<sup>12</sup> Gorlic, op.cit, pp.239-250

to resolve many of the humanitarian and refugee problems. It is one of the key elements of the preventive measures for the prevention of the refugee crisis. It is obvious that, if greater protection is to be afforded to the people, more and more rights must be treated as non-derogable.<sup>13</sup> Especially basic rights, those essential for their peaceful existence of mankind should be considered as non-derogable such as right to life, right against torture and right against cruel, inhuman and other degrading forms of punishment. Although many of the states have incorporated the international legal instruments relating to human rights into their municipal law, still human rights violations are reported and non-implementations of the human rights from various corners of the globe. Therefore there should be accountability of states with regard to the enforcement of human rights and maintenance of human rights standards in all walks of human life. This can only be done through an international supervision and monitoring of human rights situations. The primary responsibility to ensure the protection of all its nationals belongs to the state as a duty and responsibility flowing from sovereignty. States should

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<sup>13</sup> U.V Kadam "Protection of Human Rights During Internal Conflicts: Convergence of International Humanitarian Law and Human Rights Law," *IDL Bulletin & Refugee Law*, Vol. 1 (1996), No. 2, pp. 229

uphold the rights provided for under international and national law in favour of internally displaced persons.<sup>14</sup>

The prevention of human rights violation includes the protection of rights of minorities. 1966 ICCPR also guarantees certain rights to the minorities in Article 27. It spells out that "In those states in which ethnic religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right in community with the other members of their group who enjoy their own culture to profess and practice their own religion or to use their own language".<sup>15</sup> It should be noted here that minorities are the prime targets for the human rights violations. Their fate is often threatened with state sponsored atrocities. It may be recalled that the ethnic Albanian minorities in Cassava of Yugoslavia are subjected to brutal attacks by the Yugoslavian regime. It amounts to flagrant violation

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<sup>14</sup> Recommendation 13 of the Addis Ababa document in Refugees and Forced Population Displacements in Africa: Adopted by OAU in UNHCR Symposium, October 8-10, 1994, Addis Ababa, Ethiopia.

<sup>15</sup> See International Covenant on Civil and Political Rights, *Some Basic International Legal Documents on Refugees and Human rights*, (UNHCR, New Delhi), and also see Gilbert, Geoff "The 'Best Early Warning' is Prevention: Refugee Flows and European Responses", *International Journal of Refugee Law*, Vol.9(1997), No. 2, pp. 207-227.

of human rights of the ethnic minorities. It produced a massive scale of human displacements. Hundreds and thousands of people were forced to move out of Yugoslavia. And now they spread around various parts of Europe and facing many difficulties to survive with a human dignity.

Therefore steps should be initiated at national and international levels to prevent the recurrence of such situations. Otherwise those events may produce the large scale human displacement. The prevention of human rights violations is a potential element to ensure the preventive protection and to achieve the preventive solution to all humanitarian problems such as displacement and refugee crisis.

## **2.2. Creation of Safe Havens:**

The improvement of the human rights situation, the protection or the prevention of the human right violation can best be ensured through monitoring and early warning which will also enable for the prevention of forced population migration. The monitoring and early warning should be done by an agency which has the competency to do so. It may be expected that the UN Human Rights Commission (UNHRC) can play a vital role in monitoring and early warning.



Although it may not be possible for UNHRC to deploy human rights monitors in each country, committees can surely be established for monitoring and early warning at regional and sub-regional points. The UNHRC can submit periodic reports of human right situations to the United Nations on the basis of which the world body can take appropriate action for the improvement of the human rights situation: If the human rights violation escalates in a grave fashion, such a situation may require a direct role of the Security Council for the creation and protection of safe havens. Such action should not be considered by the states as an unlawful intervention in the domestic affairs of states. States need not fear for the Security Council action because it cannot play any role other than the creation of safe havens and handing over the safe havens to the humanitarian agencies.

The Security Council's interference in Northern Iraq and the creation of safe havens set a strong precedent for humanitarian intervention. If the Security Council would not have intervened in Northern Iraq in 1991, it would have resulted in a humanitarian catastrophe. The timely action of the Security Council in Northern Iraq produced some relief to the Kurdish population when they were virtually stranded at the

Iraqi-Turkish border when they were forced by the Iraqi security forces and not allowed to move into Turkey.

The General Assembly and Security Council may both be assigned a concerted role in the prevention of human rights violation and refugee crises. It may be recalled that; "On 19 December 1991, the General Assembly adopted resolution 46/182 on strengthening the co-ordination of the United Nations humanitarian emergency assistance. Annexed to that resolution was a set of guidelines, principles and proposals, which included the standards of humanity, neutrality and impartiality as the essential basis for the provision of humanitarian assistance; but also respect for 'the sovereignty, territorial integrity and national unity of states', and recognition of the responsibility of each state, 'first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory'.<sup>16</sup>

The creation of safe havens can be considered as an extension of protection in the country of origin. Such

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<sup>16</sup> See Goodwin. S. Gill, *Refugees in International Law* (Oxford University Press, Oxford 1996), Second edn., pp. 223-224.

an international protection can certainly mitigate the refugee flows.

### **2.3. Prevention of Armed Conflicts:**

Armed conflicts are the most serious and violent forms of battles which take place between two parties. Some times it may be between two states then it may be termed as an international armed conflict. Further, a conflict may erupt between a government on one side and a rebel faction on the other, which may be designated as a non-international conflict. Conflicts produce large scale destruction. The widespread humanitarian disasters which armed conflicts generate calls for techniques and mechanisms for their prevention:

the international community needs to invest a great deal more in preventive measures. Indeed, such measures can potentially save thousands of lives and prevent widespread destruction; what is more, they cost far less than any peace keeping or humanitarian relief operation. As the former UN Secretary-General stated, preventive diplomacy is the most important issue facing us today. It could

cost about one percent of what we are paying after a conflict escalates.<sup>17</sup>

Sometimes due to the prolonged armed conflict a state may collapse and situation may turn into chaos and lawlessness. Such was the situation in Rwanda, Burundi, Somalia and Liberia. They are the classic instances of the break down of state machinery. Therefore conflicts should be resolved at the earliest possible with amicable solutions.

If the conflicts continue for several years there may be escalation of international displacements and refugee crisis and may also remain as an obstacle for the return of refugees to their countries of origin. During the conflict in former Yugoslavia the international community witnessed large scale population displacement. The Great Lakes region of Africa is another familiar region so far as conflicts and displacements are concerned. If the conflicts are prevented or resolved at an early stage, it can rescue the fate of thousands of people from the holocaust of displacements.

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<sup>17</sup> Cornelio Sommaruga "Humanitarian action and Peace Keeping Operations", *International Review of the Red Cross*. (1997), No. 317, p. 186.

If a state has strong and well founded democratic institutions there may be less chances of outbreaks of conflicts. Parties to conflicts must also be required to seek a solution to their disputes through methods contemplated in Art 33 of the UN Charter such as negotiations, mediation, conciliation, arbitration, judicial settlement, regional agencies or arrangements or through other peaceful means. The UN machinery also may be used to settle disputes and conflicts. It may convene conferences for resolving the conflicts and also holding negotiations and can perform a mediatory role in the resolution of conflicts. It has settled several disputes and resolved the conflicts and brought lasting peace to countries like Angola, Cambodia and Mozambique.

The UN sponsored negotiations are producing positive results in the prevention of the armed conflicts. "The increased involvement of the Council in conflict prevention, resolution and peace building brought about a greater understanding of the causes and consequences of contemporary refugee movements".<sup>18</sup> The prevention of armed conflicts aimed to prevent the human

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<sup>18</sup> Pirkko Kourula, "International Protection of Refugees and Sanctions: Humanizing the Blunt Instrument", *International Journal of Refugee law*, Vol.9 (1997), No. 2, p. 257.

displacements since it could have transboundary implications.

The economic disparities among the states and within the states also fuel the outbreak of conflicts. The international financial institutions should come forward with financial and other packages to the fragile and shaky economies of the less developed countries. Further, promoting development is one of the important measures for the prevention of the conflicts.

#### **2.4. Protection of Civilians in Armed Conflicts:**

In armed conflicts, civilians are the most vulnerable section; in today's armed conflicts more civilians suffer than combatants.<sup>19</sup> The Lieber Code of 1863 inflicting civilian casualties. The 1864 and 1929 Geneva Conventions did not address the protection of the civilian population in armed conflicts. In the absence of any formulation of legal protection to the civilian population during the time of the Second World War the civilian population had become prime targets to the enemy combatants. In its aftermath new conventions for

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<sup>19</sup> David P. Forsythe, "The International Committee of the Red Cross and Humanitarian Assistance: A Policy Analysis", *International Review of the Red Cross* (1996), No. 314, p. 512.

the protection of civilians in the time of war was adopted in 1949 at Geneva. They have become a part of international humanitarian laws and extend protection to non combatants (i.e., the civilian population). Indeed, the protection of civilians in armed conflicts is one of the major concerns of international humanitarian law.

#### **2.4.1. Significance of International Humanitarian Law:**

A question may arise as to what is international humanitarian law? The definition of humanitarian law gives a more concrete view of the contents of this branch of international law. The expression international humanitarian law applicable in armed conflict means international rules established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts to use the methods and means of warfare of their choice or protect persons and property that are, may be, affected by conflict.<sup>20</sup>

Though the conventions for the protection of civilians during armed conflicts was adopted in 1949 it

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<sup>20</sup> Denise Plattner, "International Humanitarian Law: An Introductory Note", *Bulletin on IHL & Refugee Law*, Vol. I (1996), No. 1, p. 38.

did not solve the problems of human suffering. Because the conventions can be applied only to the international armed conflicts and not to the non-international armed conflicts. In view of the fact that most of the contemporary armed conflicts are internal rather than international there is a growing need to strengthen international legal norms that deal with internal armed conflicts.<sup>21</sup> An effective protection to the civilian population in armed conflicts has been accorded by the two additional protocols of 1977 of the 1949 Geneva Conventions. Protocol-I deals with the protection of civilians in international armed conflicts while Protocol-II provides protection to the civilians in non-international armed conflicts.

Therefore, the protection to the civilians in armed conflicts was widened with the adoption of two additional protocols of 1977. The Common Article 3 of four Geneva Conventions and the two additional protocols are in line with the need to provide protection to civilians in international as well as non international armed conflicts. In the *Nicaragua vs United States* case, the International Court of Justice (ICJ) considered the Common Article 3 of the four Geneva conventions 1949 to be *Jus Cogens*, that is, peremptory

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<sup>21</sup> See Kadam, *op.cit*, p. 226.



norms of international law. The Court pronounced that Article 3 defines the rules which are applicable to both conflicts of a non-international character and to conflicts of all international character. Articles 1 and 3 thus constitute a common yardstick to the convention as a whole, applicable in addition to the more elaborate rules' governing in the case of international conflicts. The provisions of Article 3 set forth what the ICJ has called in the past cases 'elementary considerations of humanity'. The ICJ stressed the centrality of the provisions of Article 3 of the Geneva Conventions: Because the minimum rules applicable to international and to non-international conflicts are identical, there is no need to address the question whether those actions must be looked at in the context of the rules which operate for one or the other category of conflict.

The international humanitarian law in the form of two additional protocols 1977 guarantees protection and certain rights to the civilian population in the event of international and non-international armed conflicts. "Civilians have a fundamental right under international humanitarian law to be protected from attack, torture and other violations of their physical and moral integrity. The term humanitarian,

as used in international humanitarian law, gives rights to and confers obligation on those concerned by armed conflict, that is, primarily, the parties to the conflict and victims, but also third states and international and non-governmental organizations. The law emphasizes the right of the victims to receive humanitarian assistance. The corresponding duty upon the state in which the conflict is taking place is to agree to a relief action which is humanitarian and impartial in nature and whose purpose it is to provide aid essential for the survival of the civilian population, such as food and medical supplies".<sup>22</sup>

Whether a conflict is international or non-international, the civilian population especially women and children should have special protection. Women should enjoy the protection against rape and forced prostitution. Further, children should be protected from being forced to participate and recruited in active conflicts. Civilians should not be subjected to army attacks. Starvation should not be used as a method of warfare. In armed conflicts civilians should have the

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<sup>22</sup> Sommaruga, op.cit, pp. 181-182.

right to humanitarian assistance and the right to food, shelter and medical supplies. In the event of armed conflicts if the state is unwilling or unable to provide humanitarian assistance to the civilian population there should be humanitarian intervention to rescue the civilian population. According to Art 17 of the Additional Protocol-II.<sup>23</sup>

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved, or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
  
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflicts.

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<sup>23</sup> Additional Protocol-II 1977 of Four Geneva Conventions of 1949.

This right may be considered an important one for the prevention of the human displacement. "The armed forces must always distinguish between civilians and combatants and between civilian objects and military objects. It is prohibited to attack civilians and civilian objects and all precautions must be taken to spare the civilian population. It is prohibited to attack or destroy objects indispensable to the survival of the civilian population (e.g. food stuff, crops, livestock, drinking water installations and irrigation works).<sup>24</sup>

Protocol-II of 1977 provides certain rights to civilian population such as right to life, right against torture, protection against cruel treatment and also guarantees to reside within their country. The rights guaranteed in Protocol-II are almost similar to the rights guaranteed in 1966 ICCPR and most of the rights of ICCPR have been reaffirmed in this Protocol. Therefore, human rights law is applicable and operative even in armed conflicts along with the international humanitarian law. The line of distinction between

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<sup>24</sup> Jean-Philippe Lavoyer, "Refugees and Internally Displaced Persons: International Humanitarian Law and the Role of the ICRC", *International Review of Red Cross*, (1995), No. 305, p. 165.

international humanitarian law and international human rights law becomes rather thin with the adoption of additional protocols of 1977. According to Menon, "humanitarian law is really a part of the Human Rights Law applicable in armed conflict".<sup>25</sup> Although the distinction between international humanitarian law and international human rights law is gradually disappearing, many of the human rights have been read into the international humanitarian law especially in non-international armed conflicts both international humanitarian law and international human rights law are applicable. "Although humanitarian law and international human rights law are two separate branches of public international law they have a common goal namely to protect the human beings. Humanitarian law safeguards the most basic human rights in the extreme situation take the form of armed conflicts. Thus, these two bodies of law plus refugee law should be considered as complementary".<sup>26</sup> Therefore, the effective implementation of both international humanitarian law

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<sup>25</sup> P.C.B. Menon, "Human Rights Humanitarian Law and Refugee Protection", *Bulletin on IHL & Refugee Law*, Vol. I (1996), No. 2, 1996, p. 181.

<sup>26</sup> Lavoyer, *op.cit.*, p. 164.

and international human rights law is a paramount consideration before the international community. "Governments are principally responsible for the implementation of international human rights and humanitarian law during periods of armed conflicts".<sup>27</sup>

The effective implementation of the international humanitarian law and human rights law would curb human displacements. The civilian population should be protected both in international and non-international conflicts and their rights should be respected by the parties to the conflict and they should be supplied with adequate food, water and required essential amenities. The parties to the conflict should respect the principles of international humanitarian law and international human rights law. Recommendation 14 of the Adis Ababa symposium of 1994 provides that "all parties to a conflict are whose control are as where internally displaced persons are located should cooperate with relevant organization involved in humanitarian activities enabling them to gain access to the displaced

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<sup>27</sup> David Weissbridt and Peggy H. Hicks, "Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflicts," *Journal of Refugee Studies*, Vol. 9 (1996), No.3, p.274.

so as to serve their needs. This type of access for humanitarian purpose should not be considered as infringing on the consent of the contrary the consent of the states to such access to ensure saving the lives of the internally displaced persons is an exercise of a provortial function of sovereignty."<sup>28</sup>

#### **2.4.2. Security of Humanitarian Operations and Relief Workers:**

The parties to a conflict should give free passage for the movement of humanitarian aid convoys and should also allow humanitarian personnel and relief workers to distribute and deliver the food and other essential humanitarian supplies. But sometimes humanitarian aid such as distribution of food and other assistance may not be possible due to the non-respect of parties of conflict to the humanitarian law and human rights law. To overcome such a situation, the safety and security of the aid convoys and relief workers should be ensured by providing military protection. But there is some resentment in the International Committee of Red Cross

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<sup>28</sup> Recommendation 14 of the Addis Ababa document on Refugees and Forced population Displacements in Africa, Adopted by OAU in UNHCR Symposium, October 8-10, 1994, Addis Ababa, Ethiopia.

(ICRC) to carry out humanitarian operations with military security. The ICRC strongly believes that humanitarian operations may not yield positive results if it is carried out with coercive force. In the humanitarian operations in former Yugoslavia, the ICRC refused to carry out the humanitarian operations with military security. The ICRC accepted military protection only for the release and exchange of prisoners of war, whereas the UNHCR carried out its humanitarian operations under military protection. But the view expressed by the ICRC does not appear to be sound because some situations may require humanitarian assistance with heavy security protection due to the ongoing armed conflict and non-respect shown by either of the parties of the conflict to the humanitarian law and human rights law. In such a situation military protection may become inevitable.

During the humanitarian operation in former Yugoslavia the Security Council repeatedly demanded the safety and security of the UN humanitarian aid personnel. The General Assembly also expressed concern over the safety and security of the relief workers involved in humanitarian operations. In 1994, the General Assembly adopted a Convention on the Safety of



United Nations and Associated Personnel. The Convention defines United Nations personnel "as persons engaged or deployed by the Secretary-General as members of a military, police or civilian component of a United Nations Operation, as well as officials and experts on missions of the United Nations and its specialized agencies". The definition extends to associated personnel, that is persons assigned by a government or an inter-governmental organization, under agreement to carry out activities directly connected with a United Nations operation. Also included are those engaged by the Secretary General or a humanitarian non-governmental organization or agency under agreement with the Secretary General or with a specialized agency. However, the Convention will not apply to a UN operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter, in which the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.<sup>29</sup> However to strengthen the humanitarian law and to provide humanitarian aid to the civilian population in armed conflicts adequate security should also be extended even to the relief workers in the operation initiated under Chapter VII of the UN Charter. The very success of the humanitarian

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<sup>29</sup> Goodwin, op.cit, p. 263.

interventions can be achieved only if operations are carried out under Chapter VII of UN Charter.

In the event of armed conflicts civilians should be guaranteed the right to lead a life which they could have led in the normal peaceful environment. Such an environment can certainly prevent the population displacement with a view to ensure effective protection to the civilian population. Some of the areas should be designated as safety zones and safe havens to protect the civilians. The creation of safe havens and safety zones is based upon the concept of humanitarian intervention.

States should also promote the steps for the implementation of international humanitarian law at domestic level. If the states are unable to carry-out humanitarian assistance, protection or relief to the civilian population, States should cooperate with the relevant aid agencies and organizations for the humanitarian operations. "While states ever more ardently defend their sovereignty, which does little to improve international cooperation, and as the application of humanitarian law in armed conflicts declines, men of good will throughout the world are

doing their utmost to reverse these trends".<sup>30</sup> The very significance of protection of civilians in armed conflicts is co-related with the prevention of human displacement and it would eventually lead to avert the new flows of population movements across the frontiers.

The concept of "right to remain" does not mean constructing physical barricades for the movement of the refugees or forcing the refugee population to remain in their country of origin inspite of no safety and security. The concept of right to remain has been understood in a manner so as to address the root causes for the refugee flows. Human rights violation, outbreak of the armed conflicts and failure to protect civilians in armed conflicts are understood to be the major factors for the population displacement and refugee crisis. The present chapter also discussed how to guarantee the right to remain through prevention of human rights violation, prevention of armed conflicts and protection of civilian in armed conflicts. These are essential elements of a right to remain and the same elements can also be described as preventive measures

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<sup>30</sup> Maurice Terrelli, "From Humanitarian Assistance to Intervention on Humanitarian Grounds", *International Review of Red Cross*, No. 288, (1992), p. 228.

for the prevention of forced population movements. Once the safe and conducive environment is created through the enforcement of preventive measures, there can be prevention of human displacement and refugee flows.

## CHAPTER - 3

### INTERNATIONAL PROTECTION IN THE COUNTRY OF ORIGIN

This chapter will discuss the measures and ways to protect the population in their country of origin with an international machinery. If a state is involved in the gross violation of human rights of its own population or unable to protect civilians in armed conflicts there may be no other alternative. Only two options are open before the people: either to die in the conflict or flee their homes and become refugees. A third alternative is to call for international presence with a concerted plan of action to provide international protection to the besieged population in their country of origin. These could *inter alia* assure the form of open relief centers (ORCs) or safe havens.

#### 3.1. Open Relief Centers:

In the past decade ORCs have secured prominence in ensuring the international protection in the country of origin. What is an ORC? "An Open Relief Center (ORC) can be broadly defined as temporary place where displaced persons on the move can freely enter or leave and obtain essential relief assistance in a relatively

safe environment"<sup>1</sup>. ORCs can be created to provide refuge to the people who do not feel safe and secure due to an on going armed conflict and widespread human rights violations. Individuals would be free to enter into ORCs whenever they feel insecure. These centers can be created at the earliest stage in the trouble torn countries, of course, with the consent of the concerned state. In the absence of any empowering rule of international law these ORCs can not be created without the consent of the state. But once the consent is secured international agencies like the UNHCR can offer the international protection to the displaced people in the country of origin through opening ORCs, as in Sri Lanka. In Sri Lanka, UNHCR staff were stationed in a number of ORCs situated in areas inhabited by large number of returnees and displaced people (IDPs) and provided temporary refuge to these who did not feel safe or secure.<sup>2</sup>

In other words, ORCs can create confidence in the minds of displaced persons and also promote voluntary

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<sup>1</sup> W.D. Clarence, "Open Relief Centers: A Pragmatic Approach to Emergency Relief and Monitoring during Conflict in a Country of Origin", *International Journal of Refugee Law*, Vol.3(1991), No.2, p. 325.

<sup>2</sup> UNHCR, *The State of the World's of Refugees: In Search of Solutions* (Oxford University Press, Oxford, 1995), pp. 75-78.

repatriation which is considered to be the ideal durable solution for the refugee problem. They also help prevent a wave of refugee flows.<sup>3</sup> The refugee who return to their country of origins can remain in the ORCs before they are finally repatriated to their respective homes. It should be noted here that at the time of creation of ORCs, if there is an on going armed conflict, it is desirable to secure the consent of the parties to the armed conflicts to their creation. Only then, can these centers work effectively. Otherwise, the centers may be targeted by either party to the conflict. In the Sri Lanka, though there was no consent of the Liberation Tigers of Tamil Elam (LTTE) the ORCs were never subjected to armed attacks.<sup>4</sup> But the same kind of environment may not be found in all the cases.

ORCs should be extended proper protection in the country of origin by the state. It is expected to provide proper security and protection around the ORCs. Since the UNHCR is assigned the task of refugee protection it is the competent UN agency to create and manage ORCs in view of the existing factual relationship

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<sup>3</sup> Henrik Ankerstjerne, "Role of UNHCR and International Protection of Refugees," *Bulletin on IHL & Refugee Law*, Vol.1(1996),No.1, p.129

<sup>4</sup> See. Karin Landgren, "Safety zones and International Protection: A Dark Grey Area", *International Journal of Refugee Law*, vol. 7 (1995), No. 3, P. 452.

between population displacements and the outbreak of refugee problems. It should also be remembered that the ORCs are expected to provide adequate food, water supplies and health care and other living conditions to the residents of these areas. Therefore, there should be cooperation and co-ordination between UNHCR and other related UN agencies such as United Nations Development Programm (UNDP), United Nations World Food Programme (UNWFP) and world Health Organization (WHO). Such co-operation and coordination is required to make the ORCs more viable safe areas.

The UNHCR should initiate steps for furthering the ORCs wherever possible and feasible in the country of origin where the gross violation of human rights takes place. By setting up of ORCs in Tazakisthan temporary protection was provided to the returnees in such a way that it encourages voluntary repatriation. At the same time the ORCs can promote the cordial atmosphere in mitigating the crisis.

### **3.2. Protection of the Internally Displaced People:**

In the contemporary state of the world affairs no international organization has clear global mandate for the protection of IDPs. However, it is quiet essential to protect the IDPs since internal displacement is



identified as a major root cause for the population movements and refugee crises. There is an inter-linkage between population displacements, (internally) displaced people and the refugee flows. Today's internally displaced people are tomorrow's refugees. Unless proper protection is extended to the displaced people they will become refugees and could generate the potential refugee crisis. Therefore, the ORCs can be said to be providing preventive protection. The ORCs can provide utmost protection to the IDPs. But it must be ensured that the displaced population should be properly rehabilitated to stand on their own feet. Only then it will yield positive results in averting refugee flows. Therefore, the UNHCR should assume responsibility in rehabilitating the IDPs to bring them back to the national mainstream. The state should also cooperate with the UNHCR in furthering their efforts for the prevention of refugee movements. The UNHCR can also monitor the human rights condition in countries where ORCs are established. Although the task of human rights monitoring is not assigned to the UNCHR, it may be desirable to do so to determine the duration of the ORCs.

The aftermath of the cold war era witnessed the emergence of the open relief centers as matter of extending the international protection in the country of origin. These function as centers for harmony and peace

in the trouble torn countries and ensuring protection. The little publicized open relief centers in Sri Lanka have been described with considerable honesty, as relatively safe areas. Although controversial 1990 they have provided relative safety to the large number of people. These centers in Sri Lanka functioned effectively and reduced the refugee flows from Sri Lanka to India.

### **3.3. Safe Havens:**

Ever since many states in recent years have shut their asylum doors, the concept of safe havens has emerged as a mode of providing international protection in the country of origin. Safety zones may, in formal terms, be defined as clearly demarcated space in which individuals fleeing danger can seek safety within their country.<sup>5</sup> However the creation of safe havens and safety zones are not supposed to stop people from seeking asylum abroad. The safe havens should never function with a prison environment by restricting the freedom of the refugees and other displaced people.

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<sup>5</sup> B.S. Chimni., "The Incarceration of Victims Deconstructing Safety Zones", in Najeeb Al-Nauni and Richard Meese (eds)., *International Legal Issues under the Decade of International Law* (Martinus Nijhoff, Dorderechtt 1995) p.825.

The idea of safe havens is not entirely new. In the time of war the military forces are prohibited to attack the areas where civilians are taking refuge. Under the 1949 Geneva Conventions, safe havens and safety zones can only be created with the consent of the respective state. But however, in the contemporary world most of the conflicts are internal rather than international. It is often difficult to secure the consent of the state to create safe havens and extend the protection to the deserved section of the population. The state is usually unwilling to give consent on the ground of sovereignty and territorial integrity. But it should be noted here that "historically safety zones developed as a mechanism for the protection of civilians in wartime. It is a truism to note that the waging of war has changed: at the beginning of this century, ninety percent of war casualties were military; now, ninety percent are civilians".<sup>6</sup> Further, the large scale human rights violations generates human displacement and potential refugee flows. Therefore, the failure of human rights situation and civil wars force large numbers of refugees across frontiers posing a threat to international peace and security. These conflicts, produce transborder implication. Although the states are sovereigns, the

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<sup>6</sup> Landgren.op.cit., p.437.

states are obliged not to perform any acts on its territory which may produce the consequences beyond its territorial limits and which may effect the safe environment of their neighboring countries.

In situations of failure to protect human rights states have a responsibility to provide humanitarian assistance and humanitarian relief to the people. But if state is unwilling or unable to provide humanitarian relief to its own population, there should be humanitarian intervention, to reaffirm the people's right to relief and right to humanitarian assistance. By the creation of safe havens and safety zones we can ensure the international protection in the country of origin where the population is not in a position to flee to their neighboring countries due to the closure of the borders and asylum doors. Once the safe areas are created, the people can seek sanctuary in the said areas instead of fleeing their homelands. The designated safe areas and safe havens is based upon the concept of right to remain. Safe haven can also provide internal asylum to the section of the population when the external asylum is closed or such asylum is still to be processed.

Therefore the safe havens are promoting the preventive ways in defusing the refugee crises. The

gross violations of human rights, civil wars and armed conflicts produce problem like population displacement. State should provide humanitarian relief and protection. If the states are unwilling or unable to provide humanitarian relief and protection in order to prevent humanitarian disaster, the Security Council may consider such situations as threats to international peace and security and invoke Chapter VII of UN Charter<sup>7</sup> with a view to giving effect to its purposes and principles. By the creation of safe havens and safety zones the Security Council can play a direct role in the prevention of the refugee crises. However, certain amount of fears are mounting in some states regarding the honesty of the Council's actions and uncertain attitudes of Council members. Third world states, also feel that the Security Council may interfere in their domestic affairs in the name of human rights violations. With the disappearance of Cold War era and emergence of a unipolar world, it is a fact that the Security Council, does not reflect the aspirations of third world countries. There is the concern that the United Nations is now the hostage of the United States. And that, the Security Council sign blank cheques when pressed by the

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<sup>7</sup> Ibid., p. 455

sole super power<sup>8</sup>. Therefore, the UN Security Council should act impartially without yielding to any pressure tactics.

One may argue whether the consent of the states required to create the safe havens or safety zones is necessary. Once the states give the consent they will respect the neutrality of safe havens. But sometimes states may be reluctant to give its consent. Then what does the Security Council do? The Security Council will, in these circumstances, have no option except to resort to humanitarian interventions. Basically, the creations of safe havens and safety zones are aimed to ensure humanitarian intervention.

The creation of safe havens are concomitant on the deployment of mandated military forces. In 1991, under the resolution 688 of 1991<sup>9</sup>, the U.S led coalition forces established safe havens in Northern Iraq with an idea to provide international protection to the Kurdish exodus across the Iraqi-Turkish border. These safe havens provided some sort of protection to the Kurdish population on whom atrocities were committed by the

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<sup>8</sup> V.R. Krishna Iyer, "The Roots and Growths of Humanitarian Law in India and the World ", *Bulletin on IHL & Refugee Law*, Vol.1(1996),No.1,P.5.

<sup>9</sup> *International Legal Materials*, Vol.30 (1990),p.858.

Iraqi forces. The Kurdish population was driven to flee from Iraq and were prevented by Turkey by closing its borders. The Kurdish refugees were virtually stranded at the Iraqi-Turkish border and were desperately awaiting international protection. It is significant that the creation of safe havens in northern Iraq halted the Iraqi attacks on the Kurdish people.

The Security Council also established safety zones in former Yugoslavia under resolutions 776 of 1992<sup>10</sup>, 819 of 1993 and 824 of 1993<sup>11</sup> Six areas were designated as safe havens viz., Bihac, Gorazde, Sarajevo, Srebrenica, Tuzla and Zepa with view to protect civilians from attacks and to provide humanitarian assistance. Safe havens were also created in Rwanda (1994). The French led intervention designated certain areas as safe humanitarian areas. It provided protection to the large number of population. The Security Council under resolution No. 929 of 1994 legitimized the creation of safe humanitarian areas in south west Rwanda.<sup>12</sup> The creation of safe humanitarian areas in Rwanda are not free from the shadow of doubt and French interventions are strongly questionable since it was done without proper U.N Mandate. Nevertheless,

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<sup>10</sup> *International Legal Materials*, Vol.31(1992),p.1472.

<sup>11</sup> Landgren.op.cit., p.444.

<sup>12</sup> *Ibid* , p.448

these safe areas halted the massacres. But unfortunately, these areas were also used as shelter for the militia. The French intervention and the subsequent legitimization by U.N Security Council intensified the fears that there may be interventions by a state or group of states in the domestic affairs of relatively weaker states. Therefore, any concerted action or plan of action for the creation of safe areas in any country should be initiated by the United Nations alone. Each case must be dealt on its own facts and circumstances for designating the safety zones. When the Security Council is invoking Chapter VII of U.N Charter for deploying the mandated forces for the protection of safety zones, those forces should be kept and operated under the unified U.N command. Further, at the time of creation of safety zones the geographical limits should also be specified in clear terms and also the establishment and maintenance of the safety zones shall in no way derogate from the territorial integrity and political independence of the state in which it is established.<sup>13</sup>

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<sup>13</sup> See Chimni, *op.cit.*, p.853.



#### **3.4. Protection of Safe Havens or Safety Zones:**

The created safe havens should ensure safe environment in and around the safe havens. Therefore, the territorial air space above the designated safe areas should also be declared as "no fly zones" or "air exclusive zones" to avert any possible military attacks. After the creation of safe areas, these should be handed over to any humanitarian agency. It should be identified by the Security Council as a lead agency to manage the humanitarian relief. UNHCR can be identified as a lead agency and safe areas could be handed over to it in view of the fact that the operations of UNHCR are non-political and purely humanitarian in nature. This is essential to avoid unwarranted politics in the humanitarian affairs. The UNCHR also has a larger interest in the protection of displaced population and averting refugee flows.

The security provided around the safety zones and the mandated forces deployed to guarantee the security of safe havens and humanitarian relief should be kept under a unified UN command. The security of safe havens is a major concern. If the security is not adequate the safe havens will be the most unsafe place in the world. There should also be suspension of hostilities around the safe areas to enable the humanitarian agencies to

carry out humanitarian relief. The humanitarian intervention is not a political act and purely based upon principles of humanity. There should be no objection to humanitarian interventions where there is an overwhelming evidence that many people are starving and these involved in the conflict are deliberately preventing the international community from delivering assistance to those who need it.<sup>14</sup> The U.N forces should provide the security to the humanitarian convey and ensure the safe environment for the delivery of the humanitarian relief and should also provide protection to the relief worker involved in the humanitarian operations. In the safe areas other intergovernmental, governmental and non-governmental organization should be allowed to participate in the humanitarian assistance. In former Yugoslavia along with UNHCR, ICRC and several governmental and large number of non-governmental organization took part in the humanitarian operations.

The states should not consider the humanitarian intervention as an infringement of their sovereignty and an unlawful intervention in their domestic affairs. The International Court of Justice in the case of *Nicaragua*

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<sup>14</sup> James O.C. Jonah, "Humanitarian Intervention", in Thomas G.Weiss and Larry Minear(ed.), *Humanitarianism across the Border* (London,1993), p.70.

vs.USA stated that "there can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their policy objectives, cannot be regarded as unlawful intervention or as in any other way contrary to international law."<sup>15</sup> Further, to ensure the effective delivery of humanitarian assistance there should be cessation of hostilities around these safe havens. In former Yugoslavia some of the safety zones were lacking the human standards due to the presence of governmental forces inside the safety zones. The military forces of the rival parties of conflict used these areas as their military barracks and to launch their military activities. As a result of it, these safety zones were targeted and subjected to sporadic shelling. It hampered the relief operations and rendered the lives of inhabitants of safety zones miserable. The key element of one of the safety standards is that the safety zones should be kept free from all military activities. The safe havens should not provide shelter to the military personnel engaged in the conflict.

One should understand that these safe havens and safety zones are never substitutes to the institutions of asylum. But it is only a temporary mechanism to

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<sup>15</sup> *ICJ Reports* 1986, cited in Chimni, op.cit., p.830.

provide protection to the needy people. The 1951 refugee Convention provides refugee status to a section of population who are persecuted on the grounds specified in the Convention and does not cover the people seeking refugee status due to their uprootment on the grounds of human rights violation, civil wars and armed conflicts. However, a significant number of those who flee their countries do so not because they are persecuted but as a consequence of generalized violence or cold wars. Many of them do not meet the legal definition of a refugee but are equally uprooted and in need of protection. Their problem is no less deserving of a humanitarian response, and the UNHCR has found it necessary to provide them with humanitarian protection. Their situation is particularly precarious because they fall outside the international definition of refugee and are on the margins of institutional mandates.<sup>16</sup>

ORCs and safety zones can provide protection to the needy people. Thus, in the Great Lakes region three proposals have emerged and one of them is to create safety zones within the countries of origin where the present refugees should be repatriated and where future forced migrants could possibly be contained and

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<sup>16</sup> Refugee and Human Right Statement by Thorvald Stollenberg, former United Nations High Commissioner for Refugees, to the 4615 session of the United Nations Commission on Human Rights 22 February 1990. p.277.

protected.<sup>17</sup> However the repatriation of refugees should only be done on voluntary basis (voluntary Repatriation).

### **3.5. Solutions to the Contemporary Refugee Crisis:**

The preceding two chapters predominantly dealt with the prevention of the refugee crisis by identifying the root causes and addressing them and, by providing international protection in the country of origin. Little attempt was made to discuss the solutions for the contemporary refugee problems. However, it is found necessary to describe further the durable solutions for the contemporary refugee crisis.

Solutions such as resettlement, reintegration and voluntary repatriation, can be said to be the three solutions for the contemporary refugee crisis. "The UNHCR has been authorized to aid the full range of involuntary migrants, including the victims of all forms of both man-made and natural disasters. Moreover, the organization has been requested to assist refugees who remain within their country of origin, and to contribute to the resettlement of refugees who are returning

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<sup>17</sup> See Banaventure Rutinwa, "Beyond Durable Solutions: an Appraisal of the New Proposals for Prevention and Solution of the Refugee Crisis in the Great Lakes Region", *Journal of Refugee Studies* Vol.1 (1996), No.3, p.313.

home.<sup>18</sup> However, resettlement and reintegration now exist only in a diluted form. These should be effectively strengthened to mitigate the refugee crisis. The refugee who is enjoying asylum due to the long standing prolonged armed conflict should be reintegrated in the country of asylum or they should be resettled in a third country as a matter of lasting solution. Statelessness is also one of the growing concern for the emergence of the refugee crisis. Therefore, the stateless people should be reintegrated wherever they found.

The international financial institutions should also encourage the countries by providing aid packages to those who are carrying out resettlement programme for the refugees. Since resettlement and reintegration impose severe strain on the developing countries they should receive assistance in this regard. Therefore, the developed countries should extend their co-operation as a matter of burden sharing. After all, western societies should also be considered responsible, for many of the armed conflicts in Africa and Asia. They are encouraged and fueled by the western countries with a view to destabilize the democratic forms of governments in the developing countries. And these so called western

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<sup>18</sup> James C. Hathaway, *The Law of Refugee Status* (Toronto, Butterworths, 1991), p.13.

nations also provide military and financial aid and abetment to the parties of the armed conflict in their fight against their respective governments. For example, the contra rebels in Nicaragua were financially and militarily aided and abetted by the US to fight against the Sandnista government led by President Daniel Ortega.

Further ,these durable solutions can also work as solutions to the contemporary refugee crisis. Among the three durable solutions as stated earlier the voluntary repatriation is the ideal solution. Therefore, we should concentrate more attention on voluntary repatriation.

Identifying the root causes and addressing them is also one of the preventive and punitive solutions. For instance, the prevention of human rights violations or improvement in the human rights situation can work as solutions for the contemporary and future refugee crisis. And it can also clear the confidence in the minds of the refugees and would further lead to the promotion of voluntary repatriation. Refugees should be repatriated to the country of origin to enable them to exercise their right to return to their countries as envisaged in Article 13 (2) of UDHR and Article 12(4) of ICCPR.

But the repatriation should always be voluntary. Since the refugees are well protected from any forcible repatriation as provided in Article 33 of 1951 refugee Convention. According to that Article:

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 particular social group or political opinion.<sup>19</sup>

Further the repatriation should be held under the auspices of the UNHCR. But the question may arise when should the refugee be repatriated and on what basis. Naturally, the refugees, hosting states, country of origin and UNHCR will have the interest and responsibility in the repatriation of refugees. Therefore, the countries hosting the refugees and UNHCR should supply the adequate information to refugees regarding the political stability and the improvement in the human rights situation in the country of origins. Further, the General Assembly at its 50th Session reaffirmed that the voluntary repatriation is the ideal

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<sup>19</sup> See Statute of the Office of the United Nations High Commissioner for Refugees, in *Some Basic International Legal Documents on Refugees and Human Rights*, (UNHCR, New Delhi), pp. 20-21.



solution to refugee problems and called upon countries of origin, countries of asylum, and the international community as a whole to do everything possible to enable the refugees to exercise their right to return home in safety and dignity. The Assembly also reiterated the right of all persons to return to their countries and emphasized the prime responsibility of countries of origin for establishing conditions that allows voluntary repatriation of refugees.<sup>20</sup>

When there is an improvement in the situation in the country of origin the UNHCR should undertake the steps to promote the voluntary repatriation. They should provide the facilities of transportation of refugees to their respective homelands. And these refugees should be rehabilitated and should be provided with minimum basic needs to lead a normal way of life . Otherwise, the situation may turn into another displacement. The country of origin should also agree to take back the refugees and should allow the refugees to return their home lands to allow them to exercise their right to return and right to remain in their home lands. Further after repatriation refugees should not be subjected to any penal action. The UNHCR for the

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<sup>20</sup> AALCC-UNHCR Seminar to commemorate the 30th Anniversary of the Bangkok Principles on Burden Sharing, held in Manila on 11-13 December, 1996 (unpublished), p.11.

time being should monitor the plight of the repatriated refugees until they are finally reintegrated in the social main stream of the country of origins.

Laying of the land mines also causes the large scale displacement of people. Currently it is estimated that there are nearly 100 million land mines laid and standing as an impediment in the way of repatriation of refugees. Therefore steps should be taken for the elimination of the land mines to make voluntary repatriation more viable.

### **3.6. Summation:**

It is widely acknowledged and an inescapable truth that some of the safety zones created in former Yugoslavia failed to maintain certain human standards such as delivery of adequate food and medical supplies , water and in providing security in and around the safety zones from sporadic shelling by the parties to the conflict. But the safe havens created in Iraq were relatively much more safer than the safety zones of Yugoslavia. However, we should not reach to a conclusion that the international protection by creation of safe havens and safety zones in the country of origin is not a futile exercise in view of the fact that the persons compelled to leave their country of

origin as a result of international or national armed conflict are not normally considered refugees under the 1951 Convention and the 1967 protocol."<sup>21</sup> Therefore they can also take refuge in the open relief centers and safe havens.

The open relief centers established by UNHCR are proved to be a great success both in Sri Lanka and Tazakhistan to provide protection to the returnees, displaced people and other resident population. "The UNHCR is currently operating in Sri Lanka three ORCs, and several Sub centers, on Mannar Island. In September 1992, Madhu the largest of the centers reportedly contained some 29,000 residents, while the other two pesalai and palmpiddy, sheltered fewer."<sup>22</sup> These open relief centers made significant contribution in reducing the refugee flows from Sri Lanka to India.

Further Safety zones can be created when the grave form of human rights violations take place either in the time of peace or in the time of civil war. It can be done to ensure the people's right to relief and right to receive humanitarian assistance. Such humanitarian

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<sup>21</sup> Mark R. Von Sternberg, "The Plight of the Non-Combatant in Civil War and the New Criteria for Refugee Status" *International Journal of Refugee Law*, Vol.9 (1997), No.1 p. 165-166.

<sup>22</sup> Chimni, op.cit., p.846.

intervention is a new dimension to prevent the refugee crisis.

ORCs can be distinguished from the safety Zones, since the ORCs should only be created with the consent of the concerned state as a matter of extending the humanitarian assistance. But safety zones, although can not be created without the consent of the states, but some times these can be created even without the consent of the state to provide humanitarian relief as a matter of humanitarian intervention.

However one should not forget the fact that the safe areas can provide only temporary protection, in view of the fact that civil wars and conflicts some times take place for several years together. In such a situation we can not expect the people to remain in the safe havens for a prolonged time. Therefore, these safe havens should be understood as a temporary mechanism designed to provide temporary protection in the country of origin.

## CHAPTER - 4

### CONCLUSION

In the light of the global refugee crisis, the idea of prevention acquires significant prominence. Identifying the root causes and addressing them is the main thrust of the policy of prevention. It focuses on the extension of protection in the country of origin in order to reduce refugee flows. The concept of prevention is based upon the human right to remain. The prevention of human rights violations, armed conflicts, and protection of civilians in conflicts are the essential elements of a right to remain. These can also be referred to as preventive measures.

The right to remain is the right of individual to stay in his or her own country. But it can be only secured when there is a safe environment. Such an environment can be ensured by addressing the root causes for the refugee movements. States are under an obligation under international human rights law to ensure such a safe environment. Where such a safe environment is not provided international protection can be given through creation of ORCs and safety zones. However, refugees should not be forced to remain in the country of origin if there is no peace and security.

In this regard, the UNHCR's experience in creating ORCS in Sri Lanka and Tazakhstan proved a success in mitigating the refugee flows.

The UN Security Council has been identified as an important organ to play a direct role in the prevention of refugee crisis. The cooperation and coordination between the UN organ and other specialized agencies is also crucial in the prevention of a refugee crisis. Human rights violation is considered to be the core issue in addressing the root causes of refugee problems. States can no longer consider the human rights issue as essentially falling within their domestic jurisdiction. There is a need for international supervision by the United Nations over the implementation of human rights by states.

The prevention of armed conflicts is the second issue in addressing the root causes for the refugee flows. It can be done through early settlement of disputes before they escalate into conflicts. Strengthening the basic institutions of the state such as the administrative machinery, judiciary and the establishment of an effective criminal justice system is needed. In brief, there is a need to strengthen civil society and democratic institutions.

Protection of civilians in the armed conflicts is the third basic issue in terms of addressing the root causes of refugee flows. States should take steps to promote and implement international humanitarian law at the national level. If the states are unwilling or unable to protect or provide humanitarian assistance to its own population, humanitarian intervention may be called for to avert refugee movements. Humanitarian intervention may also be understood as the extension of international protection in the country of origin through establishing safety zones. These safety zones should ensure humanitarian standards and adequate protection to its inhabitants. Otherwise, these safety zones may turn into most unsafe areas. Furthermore, it should not be forgotten that safety zones can only provide temporary protection and not a permanent solution.

ORCs can be distinguished from the safety zones since there cannot be established without the consent of states. Whereas safety zones may be created even without the consent of states at times of aggravated forms of human rights violation and conflicts.

The definition of refugees as envisaged in the 1951 refugee convention and 1967 protocol does not include the people fleeing their countries on the grounds of

human rights violations and armed conflicts. But the 1969 OAU Convention provides a wider definition including both the failure of human rights and armed conflicts. Since the violation of human rights and armed conflicts are the dominant causes for the refugee flows these should also be included in the 1951 refugee convention to enable people fleeing their homelands for international protection. Otherwise, this section of population neither falls in the refugee definition nor can secure asylum. It can be done by holding a new international conference on the status of refugees. Such a conference is required to be convened to adopt a wider definition and to convince the member states of the international community to exceed the refugee instruments so as to extend the greater protection to the refugees. The protection of refugee is the corner stone of the office of the UNHCR and it should initiate steps for adopting an expanded definition since the present definition is out of tune with the current needs.

International protection in the country of origin is a temporary measure to mitigate human misery. Therefore, it can eliminate a refugee crisis altogether. If the conflicts goes on for several years how can we expect that the displaced people and other beseized population can remain in the safety zones? Although



many states are not in favour of granting permanent asylum they should at least grant temporary asylum to such people till they finally secure permanent asylum or are resettled.

The 1951 Convention considers the crossing of an international border as a prerequisite for the grant of refugee status. It reveals the sad plight of displaced people who are not able to cross international borders. The failure to cross the border has been legitimised as a legal barrier to negate the protection to those who are similarly situated. Therefore, IDPs should also be recognised as refugees since they too need international protection. The protection of the IDP is the responsibility of states. Some times states can ensure proper protection without the outside assistance. Though India is having IDPs it is able to tackle the situations of displacements on its own without the assistance of the UNHCR. But some States may not be in a position to face such a humanitarian crisis without international assistance. And those States can seek and allow international assistance to the displaced persons. The UNHCR can also give emphasis on the protection of IDPs. If IDPs are recognised as internal refugees then states may be obliged to give the consent to establish ORCs in the country of origin and will provide protection to them.

The right to remain should be recognised as one of the international human rights so as to impose a legal obligation on the states to ensure a safe environment to the individuals to exercise their right (right to remain). Then the states will be required to concentrate more on eliminating the root causes and secure the safe environment. Such a revolutionary change should be brought in the evaluation of newly recognized international human rights law and refugee jurisprudence to solve all existing and future refugee problems.

Promoting development is considered to be one of the essential measures for the prevention of refugee movements. Poverty and unemployment are the major challenges to the least developed countries. The economic disparities often results in the outbreak of civil wars and conflicts. The generation of more employment opportunities and improvement of living standards of the people would mitigate refugee flows. The international financial institutions should assist the less developed economies to sustain their economic development.

In the post Cold War era the UN Security Council has become more active in international affairs. Therefore, there is every possibility of misusing the power. The role of the Security Council contemplated in

the UN Charter is of vital importance but the difficulty arises with the application of its powers by the five permanent members. It often abuses its power in the absence of an impartial approach. Therefore, the time has come to curb the powers of the Security Council if it goes beyond the role envisaged in the UN Charter. It can only be done through opening the doors for new membership from the developing world, including permanent membership to enable them to assume responsibility of protecting the interests of the international community. Their present representation is clearly inadequate.

In this background, humanitarian intervention should not be considered as a general rule of conduct. It should be administered only in the last resort.

Further, when the Security Council is invoking Chapter VII of the UN Charter, it should not impose sanctions, since the sanctions are counter productive and impose unnecessary hardships on innocent people.

The United Nations system should extend its cooperation whenever a state so requests for rebuilding their wartorn countries and to strengthen democratic institutions of the state. Steps should also be taken to promote disarmament with a view to discourage the use

of most dangerous weapons in armed conflicts. Much emphasis should be laid on the implementation of the anti-personal land mines convention. In many countries, during the period of armed conflicts thousands of land mines have been laid posing a great risk to refugees returning to their countries. Once these mines are defused there will be more encouragement for the promotion of voluntary repatriation and it can also decrease refugee flows.

In almost all the countries of the world there is the existence of a sizeable number of foreign population and other religious and ethnic minority groups. Such a segment of population is often threatened with state sponsored violence. Therefore, this section of population requires more care and protection. As a matter of extending the protection to the minorities some special rights should be guaranteed such as the right to religion and the right to culture to create confidence and trust in their minds to lead a normal way of life.

The furtherance of democratic forms of government and promotion of good governance are the key issues for the prevention and resolution of refugee crises. The resettlement, reintegration and voluntary repatriation besides common burden sharing should be considered as

paramount measures of durable solutions for the refugee crises. Therefore, the mechanisms contemplated in the 1951 refugee convention require to be strengthened to ensure the greater protection of refugees and to solve the problems of refugee crises. The developed countries should also assume responsibility of burden of refugee crises being faced by developing countries. The developed countries should specify certain quota for the resettlement of the refugees.

The establishment of the war crimes tribunal for the prosecution of persons who are responsible for human displacements and forced population migration in the armed conflicts would also act as a deterrence. Therefore, the establishment of International Criminal Court on a permanent basis is need of the hour. The establishment of International Criminal Court will set forth a responsible model for approaching violations of international humanitarian law in the future.

The prevention of refugee crisis by identifying and addressing the root causes may be described as an innovative approach which calls for state responsibility and co-operation between states and United Nations and its specialised agencies interse. After the Second World War the UNHCR was established with a view to secure a refugee free world. But even after five

decades of its existence there is no sign of a refugee free world and it is highly impossible that a refugee free world its become a reality in the near future. As long as human rights violations and armed conflicts go on the idea of securing the refugee free world will remain a distant dream.

## APPENDIX

### STATUTE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

General Assembly Resolution 428(V) of 14

December 1950

**The General Assembly,**

In view of its resolution 319 A (IV) of December 1949.

1. Adopts the annex to the present resolution, being the Statute of the Office of the United Nations High Commissioner for Refugees:
2. Calls upon Governments to co-operate with the United Nations High Commissioner for Refugees in the performance of his function concerning refugees falling under the competence of his office, especially by :
  - a) Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions:
  - b) Entering into special agreements with the High Commissioner for the execution of measures

calculated to improve the situation of refugees and to reduce the number requiring protection :

- c) Admitting the High Commissioner in his efforts to promote the Voluntary repatriation of refugees;
  - d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;
  - e) Promoting the assimilation of refugees, especially by facilitating their naturalization;
  - f) Providing refugees with travel and other documents such as would normally be provided to other aliens 'by their national authorities, especially documents which would facilitate their resettlement:
  - g) Permitting refugees to transfer their assets and especially those necessary for their resettlement;
  - h) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them.
3. Requests the Secretary-General to transmit the present resolution, together with the annex attached thereto, also to States non-members of the United Nations, with a view to obtaining their co-operation in its implementation.



## "REFUGEE" DEFINITION

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 refugees being accorded to persons who fulfill the conditions of paragraph 2 of this section;

- (ii) 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 I, Section A, shall be understood to mean either
- (a) "events occurring in Europe 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:
- (i) He has voluntarily re-availed himself of the protection of the country of his nationality; or
  - (ii) Having lost his nationality, he has voluntarily re-acquired it; or
  - (iii) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
  - (iv) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
  - (v) 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(1) 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;

- (vi) Being a person who has no nationality he is, because the circumstances in connection with which he has been organized 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(1) 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) The 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 reasons, 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 Conventions shall not apply to a person who is recognized by the competent authority 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 who there are serious reasons for considering that:
- (a) he has committed 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 of 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.

**OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE  
PROBLEMS IN AFRICA**

Adopted by the Assembly of Heads of State and Government at its Sixth  
Ordinary Session (Addis Ababa, 10 September 1969)

**"REFUGEE" DEFINITION**

1. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to

avail himself of the protection of the country, 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.

2. The term "refugee" shall also apply to every persons who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.
3. In the case of a person who has several nationalities, the term "a country of which he a national" 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 which he is a national 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.
4. This Convention shall cease to apply to any refugee 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 reacquired 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 was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,
- (f) he has committed a serious non-political crime outside his country or refugee after his admission to that country as a refugee, or,
- (g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has 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 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 organization of African Unity;
  - (d) he has been guilty of acts contrary to the purposes and principles of the United Nations.
6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

**RESOLUTION 688 (1991)**

**Adopted by the Security Council at its 2982<sup>nd</sup> meeting,  
on 5 April 1991**

**The Security Council**

**Mindful** of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

**Recalling** Article 2, paragraph 7, of the charter of the United Nations,

**Gravely concerned** by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region,



**Deeply disturbed** by the magnitude of the human suffering involved,

**Taking note** of the letters sent by the representatives of Turkey and France to the United Nations dated 2 April 1991 and 4 April 1991, respectively (s/22435 and s/22442),

**Taking note also** of the letters sent by the Permanent Representative of the Islamic Republic of Iran to the United Nations dated 3 and 4 April 1991, Respectively (s/22436 and s/22447),

**Reaffirming** the commitment of all Member States to the sovereignty territorial integrity and political independence of Iraq and of all States in the area,

**Bearing in mind** the secretary - General's report of 20 March 1991 (s/22366),

1. **Condemns** the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;
2. **Demands** that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;
3. **Insists** that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq

- and to make available all necessary facilities for their operations;
4. **Requests** the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities;
  5. **Requests further** the Secretary-General to use all the resources at his disposal, including those of the relevant United Nations agencies, to address urgently the critical needs of the refugees and displaced Iraqi population;
  6. **Appeals** to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts;
  7. **Demands** that Iraq cooperate with the Secretary-General to these ends;
  8. **Decides** to remain seized of the matter.

**Memorandum of understanding signed on 18 April 1991**

- (a) This memorandum summarizes the results of discussions held in Baghdad between the Government of the Republic of Iraq, in the context of its request to the Secretary-General of the United Nations in relation to the suffering of the Iraqi population affected by recent events and Security Council resolution

688 of 5 April 1991, which has not been accepted by the Government of Iraq, and

(b) From 13 to 18 April 1991, the United Nations Mission led by Mr. Eric Suy, Personal Representative of the United Nations Secretary-General, and

(c) From 16 to 18 April, the United Nations Inter-Agency Mission led by Prince Sadruddin Aga Khan, Executive Delegate of the United Nations Secretary-General for the United Nations Humanitarian Programme for Iraq, Kuwait and the Iraq/Iran and Iraq/Turkey Border Areas.

Both Missions have been welcomed by the Government of Iraq.

1. Both Sides recognize the importance and urgency of adequate measures, including the provision of humanitarian assistance, to alleviate the suffering of the affected Iraqi civilian population.
2. The Government of the Republic of Iraq welcomes the United Nations efforts to promote the voluntary return home of Iraqi displaced persons and to take humanitarian measures to avert new flows of refugees and displaced persons from Iraq. It pledges its full support to and cooperation with the United Nations and its specialized agencies and programme in this regard.
3. Both sides agree that the measures to be taken for the benefit of the displaced persons should

be based primarily on their personal safety and the provision of humanitarian assistance and relief for their return and normalization of their lives in their places of origin.

4. For this purpose, the Government of the Republic of Iraq agrees to cooperate with the United Nations to have a humanitarian presence in Iraq, wherever such presence may be needed, and to facilitate it through the adoption of all necessary measures. This shall be ensured through the establishment of United Nations sub-offices and Humanitarian Centers (UNHUCs), in agreement and cooperation with the Government of Iraq.
5. Each Center will be staffed by United Nations civilian personnel which, in addition to the regular staff members of the relevant United Nations agencies, may also include staff co-opted from the non-governmental organizations, the International Committee of the Red Cross and the league of Red Cross and Red Crescent Societies. The Red Crescent Society of Iraq shall be called upon to play a role in the implementation of humanitarian assistance and relief projects.
6. UNHUCs shall facilitate the provision of humanitarian assistance to the needy and would include, *inter alia*, food aid, medical care, agricultural rehabilitation, shelter and any other humanitarian and relief measures geared to

the speedy normalization of life, in conformity with the principles of this to the speedy normalization of life, in conformity with the principles of this memorandum. UNHUCs shall also monitor the overall situation in this regard to advise the Iraqi authorities regarding measures needed to enhance their work.

7. Routes of return, with relay stations along the way as well as logistic back-up capabilities, will be set up urgently in cooperation with the Iraqi authorities to provide to civilians, particularly the women and children as well as the aged and the sick going back to their home areas, the food aid, shelter and basic health care they will need along the way. United Nations staff will accompany such groups, as required.
8. The United Nations shall take urgent measures, in cooperation with the Government of Iraq, for the early stationing of staff as well as the provision of assistance and relief in all designated centers and, as a matter of priority, those close to the Iraqi borders with its neighboring countries. For this purpose, the United Nations may, in agreement and cooperation with the Government of Iraq, organize air lifts to the areas concerned, as required, as well as transportation by road of humanitarian assistance and relief goods from and through the neighboring countries under United Nations or

- other humanitarian auspices. The Government of the Republic of Iraq shall adopt the necessary measures in order to render such aid in a speedy and effective manner.
9. United Nations humanitarian assistance and relief shall be provided simultaneously to the displaced persons, returnees as well as all other populations covered by the relief Programme in order to encourage a speedy normalization of life.
  10. The basic framework for United Nations humanitarian action outlined above is intended to facilitate the task of coordination, effective implementation and monitoring of humanitarian assistance and relief operations. Further specifications are contained in the paragraphs which follow.
  11. It is agreed that humanitarian assistance is impartial and that all civilians in need, wherever they are located, are entitled to receive it.
  12. All Iraqi officials concerned, including the military, will facilitate the safe passage of emergency relief commodities throughout the country.
  13. The Government will establish forthwith, together with the United Nations, a relief distribution and monitoring structure to permit access to all civilians covered by the relief Programme, as soon as possible.

14. A coordinator, at the assistant Secretary-General level, has been assigned to Baghdad to coordinate, under the Executive Delegate's direction, the implementation of the Humanitarian Relief Programme. He will have permanent access to a high-level government official responsible for emergency activities in the country, to discuss and resolve policy and operational issues that may arise during the implementation of the Programme.
15. The Government of Iraq shall cooperate in granting United Nations field staff access to the parts of the country requiring relief, by air or road as needed, to facilitate the implementation and monitoring of the programme.
16. Intergovernmental organizations, NGOs and other relief agencies will be encouraged to participate in the implementation of the Programme, in close cooperation with the United Nations and under clearly defined terms of association agreed with the Government.
17. The Government of Iraq will help in the prompt establishment of United Nations sub-offices in support of UNHUCs and other programme in towns. These will be selected so as to facilitate the relief Programme when required, to encourage the voluntary return of, and to provide essential assistance to, internally and externally displaced, as well as to local populations covered by the Programme.

18. A United Nations radio communication system which is an indispensable instrument for the success of relief and rehabilitation activities will be set up. The system will cover communications requirements with Baghdad and other cities covered by the relief Programme and with in and outside the country, as appropriate.
19. In order to facilitate implementation of , and resource mobilization for, the relief Programme, the Government will make available cash contributions in local currency to help cover in-country operational costs while pursuing discussions regarding the establishment of a special exchange rate for relief operations carried out by the agencies and organizations participating in the Programme.
20. The implementation of the above-mentioned principles shall be without prejudice to the sovereignty, territorial integrity, political independence, security and non-interference in the internal affairs of the Republic of Iraq.
21. The above-mentioned principles shall apply for a period ending on 31 December 1991. Two weeks before the expiration of the said period, the principles and their operational modalities shall be reviewed with a view to assessing any further need for their operation.

Done at Baghdad on 3 Shawal 1411 of the Hijri, corresponding to 18 April 1991 A.D.



## **Annex**

1. Following the agreement in principle for the deployment of a United Nations Guards Contingent, discussions were held on 17 and 18 May 1991 to clarify the principal elements associated with the deployment of such guard units, within the framework of the existing Memorandum of Understanding, signed on 18 April 1991 in Baghdad by H.E. Mr. Ahmad Hussain, Minister of Foreign Affairs of the Republic of Iraq and Prince Sadruddin Aga Khan, Executive Delegate of the Secretary-General of the United Nations for the Humanitarian Programme for Iraq, Kuwait and the Iraq-Iran and Iraq-Turkey border areas.
2. As a first step, ten United Nations Guards have been dispatched to Dohuk, on 19 May 1991, in order to establish a United Nations presence at the sub-office and depots in the town. This unit also liaises with the transit camps in the Zakho plain, with a view to enabling the United Nations to assume control thereof. In addition, the unit collaborates with the local civilian administration which is stepping up the rehabilitation of services in the town. The Dohuk/Zakho-based unit of the Contingent will be built to a strength of 50-60 Guards as soon as possible.
3. In addition to transit camps in the Zakho plain, transit centres/zones (which can best be described as strengthened and enlarged humanitarian centers)

will be established along communications routes in other areas of Iraq, wherever such presence may be needed, in agreement with the Government of Iran. United Nations Guards will be assigned as needed to any transit centers, United Nations sub-offices and Humanitarian Centers (UNHUCs) which may be established by the United Nations in Iraq.

4. The number of Guards in the Contingent will be kept under review as further units are dispatched, but will not exceed a total strength of 500. In order to ensure their mobility, special arrangements will be made to import the required number of suitable vehicles. Arrangements will be made to ensure that United Nations-marked helicopter(s) will be allowed to land in Dohuk, Zakho and Mosul, as well as in the other areas, for the movement of United Nations personnel. Necessary arrangements will also be made to provide the Contingent with the required means of communication and the necessary logistical back-up.
5. The number of Guards assigned to the various regions will be decided in consultation with the Government authorities concerned, but would not exceed 150 in any one region. They will move freely, as their duties require, between humanitarian reception points, transit centers and relay stations, as well as sub-offices, using appropriate existing accommodation facilities in the provincial capitals, other towns and villages, or ad hoc field accommodation at transit centers.

6. United Nations Guards will be authorized to carry side-arms (pistols/revolvers), which will be provided by the Iraqi authorities (subject to the approval of the United Nations with respect to make, model, caliber and munitions). While it is not anticipated that all Guards will be so armed, United Nations guidelines and practices will be followed in this regard.
7. The Iraqi authorities will appoint a Chief Liaison officer at each center to facilitate their work with the Iraqi authorities, The Iraqi authorities will grant appropriate facilities in Baghdad and elsewhere, including office space, maintenance and repair support, maps, etc.
8. This annex shall be an integral part of the Memorandum of Understanding signed on 18 April 1991. It shall be governed by the terms of that Memorandum; it shall be implemented in cooperation and coordination with the Iraq authorities and expire at the end of the period stated there in (31 December 1991).

**RESOLUTION 776 (1992)**

**Adopted by the Security Council at its 3114<sup>th</sup> meeting,  
on 14 September 1992**

**The Security Council,**

**Reaffirming** its resolution 743 (1992) of 21 February 1992 and all subsequent resolutions relating to the United Nations Protection Force (UNPROFOR),

**Expressing** its full support for the Statement of Principles adopted and other agreements reached at the London Conference, including the agreement of the parties to the conflict to collaborate fully in the delivery of humanitarian relief by road throughout Bosnia and Herzegovina,

**Having examined** the report of the Secretary-General of 10 September 1992 (S/24540),

**Noting with appreciation** the offers made by a number of States, following the adoption of its resolution 770 (1992) of 13 August 1992, to make available military personnel to facilitate the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina, such personnel to be made available to the United Nations without cost to the Organization,

**Reaffirming its determination** to ensure the protection and security of UNPROFOR and United Nations personnel,

**Stressing** in this context the importance of air measures, such as the ban on military flights to which all parties to the London Conference committed themselves, whose rapid implementation could, *inter alia*, reinforce the security of humanitarian activities in Bosnia and Herzegovina,

1. **Approves** the report of the Secretary-General;
2. **Authorizes**, in implementation of paragraph 2 of resolution 770 (1992), the enlargements of UNPROFOR's mandate and strength in Bosnia and

Herzegovina recommended by the Secretary-General in that report to perform the functions outlined in the report, including the protection of convoys of released detainees if requested by the International Committee of the Red Cross;

3. **Further urges** Members States, nationally or through regional agencies or arrangements, to provide the Secretary-General with such financial or other assistance as he deems appropriate to assist in the performance of the functions outlined in his report;
4. **Decides** to remain actively seized of the matter in particular with a view to considering, as required, what further steps might be necessary to ensure UNPROFOR's security and to enable it to fulfill its mandate.

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