

UNHCR AND INDIA

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MASTER OF PHILOSOPHY

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CERTIFICATE

This is to certify that the dissertation entitled "*UNHCR AND INDIA*" submitted by *MR. SAUMITRA MOHAN* in partial fulfilment 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. This is his own work.

We recommend that this dissertation may be placed before the examiners for evaluation.

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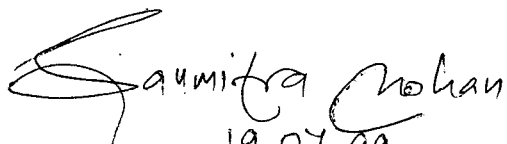
*Dedicated to
my parents*

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INTRODUCTION

INTRODUCTION

The principal purpose of this study is to explore the various dimensions of the United Nations High Commissioner for Refugees' (UNHCR) involvement in India and the implications thereof. The study will attempt to unravel the various facets of the relationship emerging from UNHCR's operation in India. To gain a better understanding of this functional relationship, an analytical description of the historical evolution of the structure and organisation of the UNHCR is also undertaken. The study will proceed to describe the refugee situation in India and will also examine the status of refugees in India. Finally, the UNHCR's involvement will also be studied and analysed through a focus on two specific refugee groups.

The refugee problem has existed since the emergence of the nation-state. The process of nation-building and state-building has been itself responsible for producing a vast number of refugees. Besides, war, famine and political oppression have been the other reasons contributing to population displacement¹. The plight of refugee is symptomatic of the imperfections which continue to characterise the anarchical structure of the international system today.

Though the phenomenon of population displacement is quite old, the forcing of people from their established and known habitat emerged with the birth of a

¹ Mel Gurtav, "Open Borders : A Global-Humanist Approach to the Refugee Crisis", World Development, Vol. 19, No. 5, Pergamon Press plc, 1991, p. 485.

territorial nation-state², gradually assuming religious, racial or ideological character and identity. The very process of the emergence of such identity has resulted in discriminatory practices against minorities and those groups of people who do not share the ideological or religious predilections of the dominant groups. This process of refugee generation continued as the conflicts of state formation spilled over into inter-state conflicts and tensions and stabilisation of territorial boundaries of ethnically, religiously and ideologically defined state.

The scale of refugee movements has expanded dramatically in recent years.³ According to one estimate, during the nineteenth and early twentieth centuries intercontinental migrations involved some 50 million people, many of whom were fleeing persecution in Europe.⁴ In early 1995, there were 27 million refugees and other people of concern to the United Nations High Commissioner for Refugees (UNHCR).⁵ This figure included 14.5 million refugees as well as other related groups such as returnees and other displaced people who have not crossed an international border. In 1997, there were still more than 22 million refugees in the world. As a matter of fact, refugees in the legal sense of the term

² S.D.Muni and Lok Raj Baral (ed.), Refugees and Regional Security in South Asia, Konark Publishers Pvt. Ltd., Delhi: 1996, p. 1.

³ Georges Vernez, "Current Global Refugee Situation and International Public Policy", American Psychologist, Vol. 46, No. 6, June 1991, p. 627.

⁴ Gil Loescher, "Refugee Movements and International Security", Adelphi Paper 268, IISS, London, 1992, p. 9.

⁵ Basic Facts About The United Nations, The UN Department of Public Information, New York, 1995, p. 224.

now constitute little more than half this number.⁶

Derived from the Latin 'refugium', the word 'refugee' literally means "shelter, security, or a haven".⁷ According to the 1951 Convention Relating to the Status of Refugees, a refugee is one 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 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 it⁸.

However, the broadened definition of a refugee has now come to include a variety of different groups : internally displaced and war-affected populations, asylum seekers, stateless people and others whose nationality is disputed as well as returnees - refugees and displaced people who have been able to go back to their homes, but who still require some support from the international community.⁹

Although numerous private and governmental agencies exist to attend to the needs of refugees on the local, national and international scales, the oldest, most

⁶ The State of the World's Refugees 1997-98 : A Humanitarian Agenda, UNHCR, Oxford University Press Inc, New York, 1997, p. 289.

⁷ Joseph M. Kitagawa (ed.), American Refugee Policy: Ethical and Religious Reflections, Fund for World Relief, New York, 1983, p. 87.

⁸ Convention and Protocol Relating to the Status of Refugees, UNHCR, Geneva, 1996, p. 16.

⁹ The State of the World's Refugees 1997-98: op.cit. p.X.

prominent and best funded is UNHCR. Established in 1950 as a replacement for the United Nations International Relief Organisation [(UNIRO), founded in 1946 to aid Europeans after World War II], the UNHCR is the major international body mandated to aid refugees. With the exception of Palestinians (who are administered to by the United Nations Relief and Works Agency for Palestine Refugees in the Near East), all refugees who elect to register for aid fall under UNHCR's jurisdiction.¹⁰

The core functions assigned to UNHCR by its 1950 Statute involve "providing international protection" and

seeking permanent solution to the problem of refugees by assisting governments ... to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.¹¹

UNHCR aims to provide protection and ensure the respect of fundamental rights for all those under its concern. In the case of refugees, the most basic need is protection from refoulement or forcible return to a country in which they have reason to fear persecution or attack.

UNHCR also provides assistance to those persons of concern who cannot meet their own basic needs, and when there are no other resources available. The types of assistance include emergency help for major influxes; case and maintenance programmes that meet basic needs on a more routine basis; voluntary

¹⁰ Martin S. Kenzer. "Focus : Global Refugee Issues at the Beginning of the 1990s". The Canadian Geographer 35, No. 2, 1991, p. 189.

¹¹ UNHCR Information Paper. UNHCR Secretariat, Geneva, 1997, p. 4.

repatriation; local settlement assistance to promote self-sufficiency and local integration in host countries; and resettlement in third countries for refugees who cannot return to their homes and who face particular protection problems in their country of first asylum.¹²

UNHCR began operations in 1951 on the initiative of the UN General Assembly.¹³ However, it first opened its office in India, at New Delhi only in February 1969 to assist about 1,00,000 Tibetan refugees. 3,00,000 US dollars were allocated for health, housing, industrial employment, agriculture and other rehabilitation activities. In 1970, 2,00,000 US dollars were given mainly for settlement of Tibetans in agriculture. In April 1971 UNHCR was appointed the focal point for all UN assistance to over ten million refugees from East Pakistan. In the largest refugee operation ever, 120 million US dollars were channelled to the Indian Government for aid and later repatriation to Bangladesh in 1972.

Since March 1981, UNHCR has recognised over 50,000 refugees in India, mainly Afghans. Of them, 9,800 have since been resettled in third countries. Around 3,000 repatriated voluntarily to Afghanistan with UNHCR assistance, joining some 2.5 million compatriots returning from exile in Pakistan and Iran. All returnees benefit from UNHCR's extensive reintegration activities in Afghanistan, including building of shelters and roads, canals and wells. Since 1992, UNHCR

¹² UNHCR by Numbers, Public Information Section, UNHCR, Geneva, 1996.

¹³ A. Leroy Bennett, International Organisation : Principle and Issues, Prentice Hall, Englewood Cliffs, New Jersey, 1988, p. 290.

started assisting Government of India in the repatriation of Sri Lankan refugees from Tamil Nadu by verifying the voluntary nature of their departure.

Though over 65,000 Sri Lankan refugees living in 133 camps in Tamil Nadu are assisted directly by the Government of India, under an agreement with Government of India in 1992, UNHCR has been assisting in the repatriation of Sri Lankan refugees from Tamil Nadu by verifying the voluntary nature of their departure. UNHCR also helps in the reintegration of returnees from India with small community-based projects in Sri Lanka. Repatriation of Sri Lankan refugees has been temporarily suspended since 1995.

UNHCR has also been involved in training the personnel of the Office of the Tamil Nadu Relief and Rehabilitation Commissioner. Present in northern Sri Lanka since 1988, UNHCR helps in the reintegration of returnees from India with small community-based projects. UNHCR also protects and assists civilians displaced by conflict in northern Sri Lanka in Open Relief centres, thereby reducing the compulsion to flee.¹⁴

Despite this substantial involvement of UNHCR with refugees in India, India has not yet acceded to the 1951 Convention on the Status of Refugees.¹⁵ Notwithstanding this, India has been substantially cooperating with UNHCR in the administration of refugee situation in the country. She has been more of a refugee

¹⁴ UNHCR in India, UNHCR, New Delhi, 1998, p. 5.

¹⁵ B.S.Chimni, "The Legal Conditions of Refugees in India", Journal of Refugee Studies, Vol. 7, No. 4, 1994, p. 379.

receiving than a generating country due to its easily accessible borders, socio-cultural identities, economic opportunities and a democratic and generally soft state.

In this study an attempt will be made to study the multi-dimensional relationship between the UNHCR and India. India's very birth as an independent state saw the generation of a large number of refugees. But it has not acceded to the 1951 Convention on Status of Refugees. Nevertheless, UNHCR in its present and earlier avatars, has been involved with refugees in India. An objective description and analysis of UNHCR's this involvement with refugees in India would be analysed in this study. In the process, a detailed analytical discussion would cover various facets of this relationship including an examination of the refugee situation in India and the status of such refugees. Also, two case studies of Tibetan and Afghan refugees would be undertaken to study this relationship in some finer detail. This study would also present in detail the 'micro' and 'macro' level structural organisation of the UNHCR. This study would be different from many such other works in the sense that there has never been an attempt to study the one-to-one relationship between the UNHCR and India. Studies done in this field merely talk about the refugee problem in India focussing more on various case studies. They, more often than not, only describe the causes, effects and various implications of the particular case study under consideration.

An attempt will also be made to analyse the reasons behind UNHCR's

partial involvement in this country. Some of the questions sought to be answered include the following: What could be the factors guiding the Indian approach towards the refugees? Why do refugees choose India as their country of refuge? What are the factors facilitating or inhibiting UNHCR's functioning in India? Why does India still find it difficult to ratify the 1951 convention on the Status of Refugees?

Though much has been written on refugees generally there is very little work done on the refugee situation in South Asia. However, recent years have seen a surge in scholarly interest in refugee issues in the region. Students working on refugees have to, however, mainly rely on primary sources with most of the secondary source materials coming from journals, periodicals and newspapers. There are still very few books available on the subject.

Most of the literature on the above topic is descriptive in nature. While a book edited by S D Muni and Lok Raj Baral titled, *Refugees and Regional Security in South Asia* gives a general profile of the refugee problem facing South Asia in general with some insights in some of the cases, an article in *The Annals* (Vol. 467) by Aristide Zolbeg entitled, 'The Formation of New States as a Refugee Generating Process' enables one to locate the causes of the Bangladeshi refugee crisis.

This is made easier as one comes across the observations made in the books, *Ethnicity and Nation-Building in South Asia* by Urmila Phadnis and

'Regional Migrations, Ethnicity and Security: The South Asian Case' by Lok Raj Baral. The latter are helpful also in understanding the refugee problems emanating from Tibet and Afghanistan.

On Tibetan refugees, Girija Saklani's book *'The Uprooted Tibetans in India: A Sociological Study of Continuity and Change'* and Tanka B. Subba's book, *'Fight and Adaptation: Tibetan Refugees in the Darjeeling Sikkim Himalaya'* are quite helpful in detailing the problem and their migration, but again they do not go into the details of their rehabilitation. The same can be said about the work done on the Bangladeshi and Afghani refugees. Here books by Dhiren Mullick titled, *Indira Speaks: On Genocide War and Bangladesh*, Richard Sisson and Leo E. Rose's Book, *War and Secession: Pakistan, India and the Creation of Bangladesh*; Edwan W. Anderson and Nancy H. Hupree's edited book, *The Cultural Basis of Afghan Nationalism* and Rene Van Rooyen's paper on, *Repatriation of Afghan Refugees: A UNHCR Perspective* are particularly helpful. The principal limitation with these studies is that they do not focus on the rehabilitation of the refugees. There is also little work done on UNHCR's involvement in India nor has there been any comparative study of the differential response of the UNHCR towards various refugee crisis in India including those of Tibetan, Bangladeshi and Afghan refugees.

However, journals, periodicals and newspaper reportings are particularly helpful here. But a huge gap exists even here as there is no focused treatment of the

UNHCR's role in India. One hopes that this study will bridge this gap as far as possible.

This study is organised in three chapters. The first chapter is titled "UNHCR: Organisation and History". It will trace the origin and evolution of UNHCR through various stages. It goes on to describe the organisational structure of the UNHCR.

The second chapter is titled "Refugee Situation in India: Legal and Empirical". This chapter describes the overall refugee situation in India.

In the third chapter, two case studies of Tibetan and Afghan refugees are taken up. In this chapter, an attempt is made to examine the pattern of UNHCR's involvement in the refugee problem in a country which does not allow it a full-fledged participation.

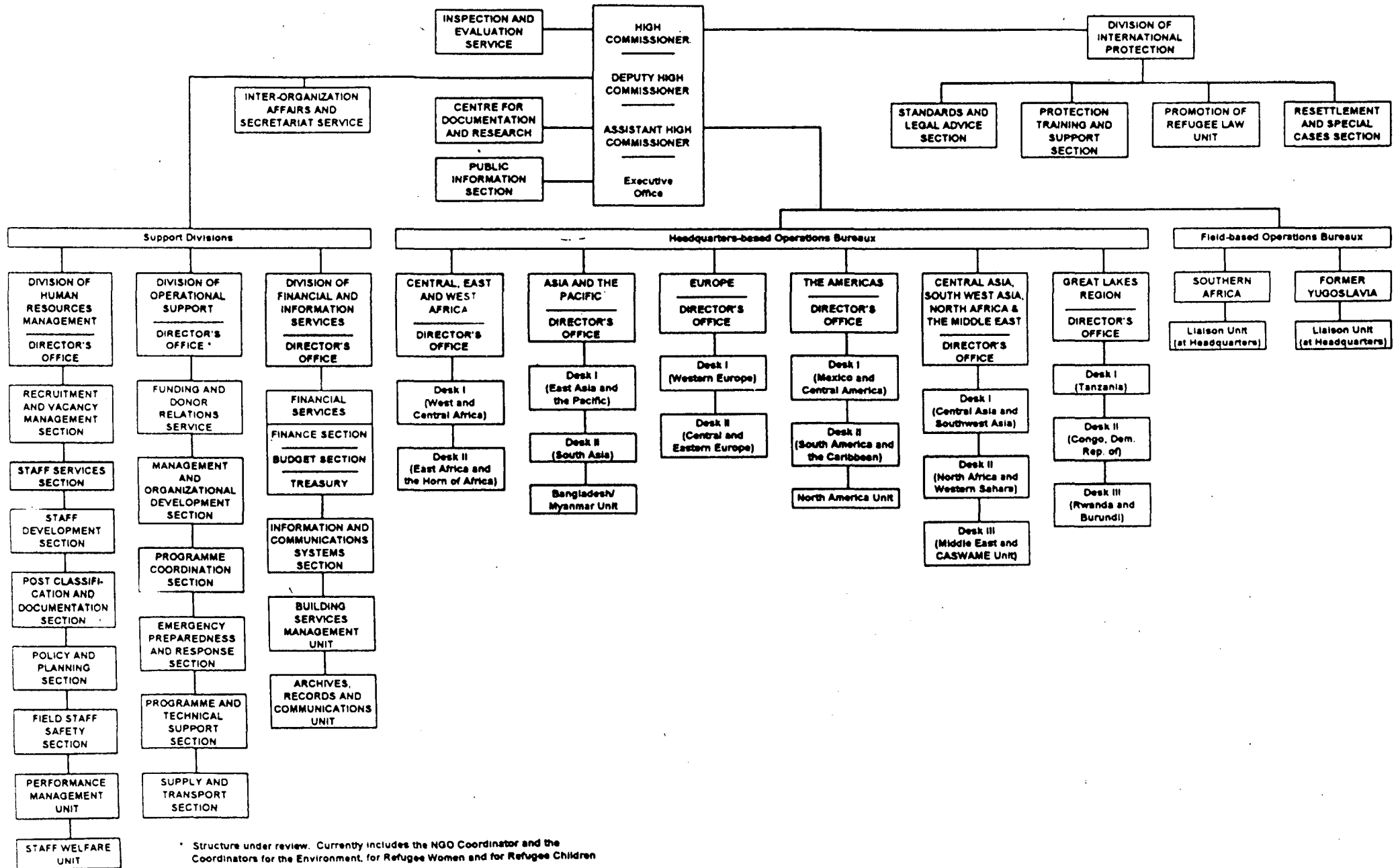
The conclusion will draw the main arguments of the three chapters in the context of UNHCR's relationship with India.

For this study, histori-analytical method, descriptive method and case-study method have been adopted. Both primary and secondary sources have been consulted. Various reports and records with the UNHCR, different human rights bodies and the government of India have proved a valuable source for this study.

CHAPTER I

UNHCR: HISTORY & ORGANISATION

UNHCR HEADQUARTERS ORGANIZATIONAL STRUCTURE¹



¹ Structure under review. Currently includes the NGO Coordinator and the Coordinators for the Environment, for Refugee Women and for Refugee Children

UNHCR - HISTORY & ORGANISATION

The problem of refugees has a long history, but concerted international action to tackle involuntary displacement has its origin in the League of Nations². The first demonstration of this international solidarity emerged after World War I, to deal with mass movements produced because of the revolution in Russia and the collapse of the Ottoman Empire.³ In order to deal with the emergent refugee situation, the League of Nations elected Fridtjof Nansen of Norway as High Commissioner for Refugees.⁴ Most of the original groups of refugees resulted from the Russian Revolution of 1917, but the flow of additional numbers at periodic intervals from other sources resulted in the conversion of a temporary programme into a permanent activity. The High Commissioner developed the Nansen passport, which was accepted by more than fifty states as a permit for displaced persons to cross national boundaries in search of permanent homes. Without authority or monetary resources, the Nansen office could only solicit cooperation and aid from governments and private agencies and try to guarantee

¹ Overview of UNHCR Activities 1997-1999, Executive Committee of the High Commissioner's Programme, UN General Assembly, August 1998 (A/AC.96/900), p.247

² An Introduction to the International Protection of Refugees, UNHCR, Geneva, 1992, p. 3.

³ UNHCR Information Paper, UNHCR Secretariat, Geneva, 1997, p.1.

⁴ A. Leroy Bennet, International Organisation: Principle and Issues, Prentice hall, Englewood Cliffs, New Jersey, 1988, p. 289.

legal rights to displaced persons⁵, which numbered a total of 30 million people in the first quarter of the 20th century.⁶ His "Nansen Passport" proved the forerunner of today's Convention Travel Document for Refugees. It enabled thousands to return home or settle in other countries, and represented the first in a long and still evolving series of international legal measures designed to protect refugees.⁷

In the years preceding the outbreak of World War II, several more developments took place which contributed to the evolving international organisation for refugees. The International Nansen office for Refugees was created, after Nansen's death in 1931, as an autonomous body under the authority of the League. It was concerned with humanitarian relief work, and went into liquidation as from the end of 1938. A German High Commissioner for Refugees was appointed in 1933, following Hitler's rise to power. This office was liquidated in 1938 at the same time as the International Nansen Office. A High Commissioner for Refugees was appointed again in 1938 by the League of Nations, with headquarters in London. It amalgamated the two bodies mentioned above. It had a limited role and ended in 1946. An Intergovernmental Committee on Refugees was also created in 1938, following a Conference in Evian on the question of

⁵ Ibid. p. 289.

⁶ UNHCR Information Paper, op.cit. p. 1.

⁷ Ibid. p. 1.

involuntary emigration from Germany and Austria. The work of this Committee was extended in the course of World War II to all refugee groups. It was replaced in 1947 by the International Refugee Organisation.

During the years of World War II, several million people were forcibly displaced, deported or resettled. It was against this background that an organisation called United Nations Relief and Rehabilitation Administration (UNRRA) was created by the Allies in 1943. It organised the return of several million people to their countries or areas of origin. Many others, however, were increasingly reluctant to return to states where new political ideologies now reigned. Their reluctance signalled the emergence of a major refugee problem that would dominate the post-war years.

The Bermuda Conference, which took place in 1943, extended the mandate of the Intergovernmental Committee to all persons wherever they may be who, as a result of events in Europe, have had to leave their countries of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs.

The refugee problem was included as a priority item on the agenda of the first session of the U.N. General Assembly, in 1946. The action required was to be based on the following principles :

- a) The refugee problems were international in scope and character;
- b) No refugees or displaced persons who had finally, and in complete

freedom, expressed valid objections to returning to their country of origin should be compelled to return:

- c) The future of such refugees and displaced persons should be the concern of an international body to be established; and
- d) The main task was to encourage and assist in any way possible their early return to their countries.

This was followed by the creation of International Refugee Organisation (IRO) in 1947 as a specialised agency of the United Nations to deal with the residual problem of refugees, left after World War II. It was the first international agency to deal comprehensively with every aspect of the refugee problem including registration, determination of status, repatriation, resettlement, legal and political protection. It continued its activities until 1951.

Although repatriation was initially its main objective, political developments in post-war Europe shifted its priority towards resettlement. The IRO developed basic standards for dealing with large-scale migration, and showed that much could be achieved through a coordinated effort within the framework of an international agency. However, opening as it did in a period of heightening East-West tension, the IRO was severely attacked by states who claimed that repatriation was the ideal solution and that resettlement was either a means of acquiring a cheap source of manpower, or a way of offering shelter to subversive groups who may threaten peace and social stability. Moreover, the resettlement of

large numbers of refugees was a costly operation, funded by only eighteen of the fifty-four governments who were then members of the United Nations. At the same time, however, it became clear that even after the settlement of the immediate post-war refugee problem, continuing international action was going to be needed. All the above developments finally led to the creation of UNHCR.

For the reasons mentioned above, there was opposition to continuing the activities of the IRO. Some states were opposed to any further UN involvement in refugee questions. Several others were keen to ensure that any new body would not be involved in direct operational activities comparable to those of the IRO. After much discussion and negotiations, those who pleaded for a broad protection mandate, with a more limited mandate in the field of assistance, won the day. In December 1949, the General Assembly, with thirty-six votes in favour, five against and eleven abstentions, decided to establish UNHCR for an initial period of three years, beginning on 1 January 1951, as a subsidiary organ of the General Assembly under Article 22 of the United Nations Charter^{*}. But in response to an almost continuous series of refugee emergencies over the last half century, UNHCR's mandate to protect refugees and find solutions to their problems has been extended every five years.

As of 1 January, 1998, UNHCR is responsible about some 22.4 million

^{*} Statute of the Office of the United Nations High Commissioner for Refugee, Geneva, 1998, p.2.

refugees and other persons of concern⁹ to the office through its 290 offices in 124 countries. It is one of the world's principal humanitarian agencies and has twice been awarded the Noble Peace Prize for its work.

The Mandate:

UNHCR's mandate is to protect refugees and seek durable solutions to their plight. The 1951 Convention Relating to the Status of Refugees defines a refugee as "a 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 that country."¹⁰ Over the years, the General Assembly has requested and the international community has endorsed, UNHCR's involvement with persons who are outside their country of origin because of persecution, armed conflict, generalized violence, foreign aggression or other circumstances which have seriously disturbed public order, and who, therefore, require international protection. Another way of protecting refugees and others of concern to UNHCR is by providing humanitarian assistance. There are several General Assembly resolutions, conventions and declarations calling upon international community to provide material assistance

⁹ 1999 Global Appeal : Programme Overview, UNHCR's Funding and Donor Relations Service, Geneva, 1998, p.2.

¹⁰ Radha Kumar, "Who is a Refugee", Seminar 463, March 1998, New Delhi, p. 14.

to those of concern to the agency when the host government can't do so itself. Some of these include Universal Declaration of Human Rights, 1948; UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 and UN Convention on the Rights of Child, 1989.

The organization's work is guided by the Office's Statute, the 1951 Convention, relevant General Assembly resolutions and the decisions and conclusions adopted by the Executive Committee of the High Commissioner's Programme. The Office's Statute defines UNHCR's mandate as protecting refugees and seeking durable solutions to their problems. The preferred solution is voluntary repatriation, in which refugees return home and resume their lives in their country of origin. When repatriation is not possible in the foreseeable future, UNHCR tries to help refugees settle in the country of asylum. When neither of these solutions is possible, the agency explores the possibility of resettlement in a third country. While resettlement remains an important instrument of international protection, the number of refugees who have resettled in a third country has declined since the late 1980s. Consequently it is the solution of voluntary repatriation which is emphasized as resettlement has lost its use for western states after the end of the Cold War¹¹. In the period preceding the Cold War, politico-diplomatic constraints impelled one bloc to give shelter to dissenting

¹¹ B.S.Chimni, "Voluntary Repatriation : A Critical Note", International Journal of Refugee Law, Vol. 3, 1991, pp. 541-547.

groups from the rival bloc if only to score some ideological brownie points over the latter. It was done with a purpose to show the systemic fragility or weakness of the other bloc. But end of the Cold War has ended such rationale for resettling refugees in one's own territory. Also the rising negative pressure of refugee resettlement in one's territory owing to its economic, cultural and political implications has been other important reason inhibiting states from opting from resettlement as an option. Hence, their increasing emphasis on repatriation of the refugees rather than resettlement.

The High Commissioner:

The High Commissioner is nominated by the UN Secretary-General and elected by the General Assembly. There have been eight High Commissioners since UNHCR was established in 1951.¹²

The Executive Committee:

UNHCR reports annually to the General Assembly through the United Nations Economic and Social Council (ECOSOC). The High Commissioner's Annual Report details the agency's main activities and concerns. UNHCR's Executive Committee (EXCOM)¹³ was created by the General Assembly to

¹² UNHCR Information Paper, op.cit. p.3.

¹³ Established under General Assembly resolution 1166 (XII) and ECOSOC resolution 672 (XXV). Ibid. p. 3.

approve the High Commissioner's assistance programmes, advise the High Commissioner on his/her protection operations, and scrutinise all financial and administrative aspects of the agency. The 53 EXCOM members, all of whom are Governments, meet formally every October at UNHCR Headquarters at Geneva, Switzerland. The work of the EXCOM is supplemented by that of its Standing Committee¹⁴, which meets at least four times a year, with the precise number of meetings determined by the requirement of good governance.

Headquarters:

UNHCR Headquarters located in Geneva, Switzerland, provide all operational and administrative support to the agency's field activities. As of November 1998, nineteen per cent of UNHCR's total staff of 4,416 is based at Headquarters.

The Executive office of the High Commissioner, based in the Geneva Headquarters, informs operational units of executive decisions and political developments while also keeping the High Commissioner apprised of developments in the field.

The Division of International Protection, also located at Headquarters, oversees the agency's worldwide protection activities. These include formulating

¹⁴ Established by the Executive Committee in 1995 (A/AC.96/860, Para 32(a), Ibid, p.3.

international protection standards and norms, ensuring a consistency of approach to protection issues, providing training and support in the area of refugee law and advocacy, and organizing and facilitating resettlement.

UNHCR maintains an operational presence in 124 countries. The agency coordinates its field operations through six Headquarters-based and two field-based operations bureaux : Central, East and West Africa (CEWA); the Great Lakes region; Asia and the Pacific; Europe; the Americas; Central Asia, South-West Asia, North Africa and the Middle East (CASWANAME) - all Headquarters-based; and Southern Africa (Pretoria) and the former Yugoslavia (Sarajevo), both field-based, though both are also assisted by a liaison unit at Headquarters.

Headquarters is also the home of a number of support divisions that provide essential assistance to UNHCR's field operations. These advise and assist in the formulation of policies in a range of areas. They are also responsible for activities related to emergency preparedness and response; donor relations and fund-raising; financial control; preparation of programme budgets; procurement; public information, evaluation and oversight; human resource management; training; staff security; programme management and technical support to operations; documentation and research; and Liaison with Non-governmental organisations (NGOs).

Emergency Preparedness and Response Section (EPRS) :

This Section (EPRS) responds directly to refugee emergencies when the local UNHCR presence requires additional resources. It also maintains and bolsters the preparedness and response capability of UNHCR by providing assistance, training and export logistical knowledge in dealing with crises, such as mass refugee movements in unstable areas.

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Special emergency-response teams, consisting of UNHCR staff, are kept on standby for emergency deployment. Team members are drawn from various duty stations in the field and from sections of Headquarters. They participate in an intensive training course in which they are taught practical skills necessary during an emergency, such as personal security, telecommunications, projections, logistics and first aid. Special workshops are also organised to train UNHCR's operational staff in emergency management. Often, NGO representatives also participate. Additional staff, also on standby for emergencies, are provided through agreements between UNHCR and a number of NGOs and government agencies.

Through a new initiative that began in 1998 emergency management workshops are organised for managers at Headquarters. The aim is to strengthen Headquarters' capacity to provide support to field operations during emergencies. In 1999, EPRS will also promote the integration of contingency planning into mainstream country planning.



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Donor Relations and Fund Raising :

UNHCR is almost entirely funded by direct, voluntary contributions from governments, non-governmental organisations and individuals. There is also a very limited subsidy from the regular budget of the United Nations, which is used exclusively for administrative costs.¹⁵ The Funding and Donor Relations Service is the main focal point within UNHCR for relations with the donor community. The Service is responsible for mobilizing resources from traditional donors as well as for broadening the donor base in an effort to achieve more equitable burden-sharing.

Financial Management:

The Division of Financial Management Services under the direction of the Controller advises and assists the High Commissioner in formulating financial policies and ensures that the management of funds is consistent with relevant financial and budgetary policies, procedures and guidelines. Financial, accounting and budgetary support is provided to organizational units at Headquarters as well as to field operations. The service comprises three sections : finance, budget and treasury. The Controller also oversees the effective management of assets.

¹⁵ "How UNHCR is Funded". Refugees IV. UNHCR Public Information Section, Geneva, 1995, p. 8.

Procurement:

The Supply and Transport Section (STS) provides timely and cost-effective sourcing and delivery of goods and services to UNHCR's operations worldwide. While some procurement is decentralized to the field, other relief items are still procured from Headquarters, mainly under long-term frame agreements established between UNHCR and some 50 suppliers.

Public Information:

Protecting and assisting refugees around the world requires broad public support. To mobilise this support, the Public Information Section at UNHCR Headquarters reaches out to civil society in a variety of ways: through relations with the media; by producing written and audio-visual information materials, including, with the Centre for Documentation and Research, UNHCR's site on the World Wide Web; by conducting public awareness activities and private-sector fund-raising; and, most recently, by offering mass-information activities that provide refugees and others of concern to UNHCR with the objective information they need to make informed decisions about their future. The section also advises UNHCR units on the development and implementation of information activities aimed specifically at refugees and returnees and provides guidance to UNHCR public information and external relations officers in the field.

Evaluation, Inspection and Oversight :

Inspections regularly review the management and overall impact of both field operations and units at Headquarters. During 1997-98, inspections have focused on major UNHCR operations, such as those in the Great Lakes region of Africa and in the former Yugoslavia. After a final inspection report is issued, the inspected office is asked to detail progress on its compliance with the inspection's recommendations. In 1999, field-level inspections are planned for 16 countries.

Evaluations examine operational aims and the extent to which they are being achieved. They also assess whether operations are having the desired impact and are being conducted in an efficient and cost-effective manner. New systems will help field managers better assess the effectiveness and impact of their work. The use of a decentralized system will facilitate the exchange of best practices and lessons learned as well as improve the quality of reporting and level of accountability and transparency. A review of the "Enhancement of the Evaluation Function in UNHCR" in late 1998 recommends that evaluation be given higher priority and visibility and that a culture be created in which managers regard evaluation as one of their core responsibilities.¹⁶

The Director of the Inspection and Evaluation Service, the focal point for investigation in UNHCR, can initiate investigations into possible misuse of funds.

¹⁶ 1999 Global Appeal, op. cit. p. 41.

resources, or facilities, or other illegal or improper conduct involving UNHCR staff, staff of implementing partners or contractors. An Investigation Coordinators post has been approved and will be filled in 1999.¹⁷

The Oversight Committee, chaired by the Deputy High Commissioner, reviews issues related to oversight (including audits), and works to ensure effective follow-up to oversight reports.

External audits of UNHCR's accounts are conducted annually by the United Nations Board of Auditors, in accordance with the Financial Rules and Regulations of UNHCR and the United Nations. Internal audits are carried out by a UNHCR section of the Audit Management Consulting Division (AMCD) based at the United Nations in Geneva. It reports to the Office of Internal Oversight (OIOS) in New York.

Human Resources Management:

The Division of Human Resources Management (DHRM) administers more than 4,000 staff members and advises and assists the High Commissioner in the development and formulation of adequate personnel policies and in their implementation. While an increasing number of responsibilities have been delegated to field operations, DHRM at Headquarters still oversees international

¹⁷ Ibid. p. 41.

recruitment, staff development, staff welfare, performance management and post classification.

Training:

Training programmes focus on protection and refugee law, emergency management programme management, people-oriented planning, food aid and registration, nutrition, logistics, security awareness, the environment and resettlement. Besides, management development training is also important to UNHCR, especially as more responsibility is delegated to field operations.

Staff Security:

UNHCR and its implementing partners often work in hazardous and volatile conditions. Arbitrary killings, arrests, illegal detentions and kidnappings are of grave concern to the Office. The abduction of a UNHCR staff member, Vincent Cochetal, in North Ossetia in early 1998,¹⁸ has reinforced the priority given to staff security. The High Commissioner is catalyzing efforts to address the issue in collaboration with other United Nations organizations.

¹⁸ Ibid. p. 42.

Programme Management & Technical Support :

To best meet the needs of refugees and other persons of concern to the Office, programmes must be developed according to solid needs assessments and criteria for refugee protection and assistance must be applied consistently. To this end, UNHCR provides regular training on programme matters to staff who conduct projects in the field. Special regional workshops covering topics such as needs assessment, project design, implementation, monitoring, evaluation, and reporting are organised throughout the year.

Documentation and Research :

The Centre for Documentation and Research (CDR) consists of the Policy Research Unit and the Documentation and Information Management Unit. The policy unit is responsible for reflection on, and review of, UNHCR's policies on a number of issues directly related to efficient execution of the Office's mandate. To this end, it provides the UNHCR Policy Committee with pertinent position papers and undertakes research on a range of policy issues. The Policy Unit is also responsible for the development of a cooperative framework with the research community and the production of the biennial publication, *The State of the World Refugees*.

Liaison With NGOs:

As UNHCR's activities have expanded and diversified over the years, its relations with NGOs have become increasingly important. NGOs frequently act as UNHCR operational partners in implementing specific projects and, more generally, as advocates for the refugee cause. The NGO Coordination Unit facilitates the agency's joint activities with numerous local and international NGOs.

The Operations Management Systems (OMS):

It provides the means by which the organisation ensures that all aspects of its operations are appropriate, consistent and effective. It will specify the sequence of relevant actions at different levels and locations, and establish responsibilities accordingly. OMS also involves the establishment of operational guidelines, standards and norms that aid the planning, implementation and review of UNHCR's activities.

The efforts of OMS are focused on formulating new planning mechanisms, designing a new budget structure, and establishing new processes, procedures, tools and accountability mechanisms that will help UNHCR work more effectively and efficiently. The OMS will consist of two integrated elements : a management framework for the implementation of UNHCR's policy and programmes, which will consist of manuals, guidelines and help tools to identify processes and

procedure; and a range of information technology systems and tools for the management of protection activities, programmes, finance, supply-chain activities and human resources. Together they will provide a comprehensive management system for carrying out the organisation's mandate.

Budget:

UNHCR's total requirement for 1999 is 914.8 million US dollars.¹⁹

The initial 1999 projections for the Field (including other Programmes) are set at 236.5 million dollars, while the initial 1999 estimates for Headquarters have been set at 88.1 million dollars.²⁰

UNHCR in India:

Though still not a party to the 1951 Convention Relating to the Status of Refugees, India has allowed UNHCR to operate in India. And since February 1969, UNHCR has been caring for the hordes of refugees coming to India, officially as well as unofficially. UNHCR has been involved with the refugee categories in India: Tibetan, Bangladeshi, Afghan and Sri Lankan.

¹⁹ Ibid. p. 48.

²⁰ Overview of UNHCR Activities 1997-99, by Executive Committee of the High Commissioner's Programme, August 1998. (A/AC. 96/900, para 185 and A/AC. 96/900 para 1888), pp. 74-77.

Since 1995, India has also become a member of 53 member EXCOM of the Office of the UNHCR.²¹ Today, UNHCR operates in India through its Office of Chief of Mission at Delhi and also has a sub-office at Chennai which is basically meant for repatriation of refugees from Sri Lanka. The Chennai office works under a Repatriation Officer.

The office of the UNHCR in India is mainly composed of four units which include the Legal Unit, the Social Service Unit, the Public information unit and the Programme Unit.²²

The Legal Unit:

As the name suggests, this unit deals chiefly with the determination of refugee status and promotion of the protocol. All asylum seekers are individually interviewed by Legal Officers at UNHCR. Those found to have genuine fear of persecution, arising out of series human rights violations in their country of origin, are recognised as refugees. They are issued refugee certificates for identification.²³

²¹ B.S.Chimni, "In International Law", Seminar 463, March 1998, New Delhi, p. 20.

²² The information about the structural organisation of UNHCR's India office is mainly based on an interview with the UNHCR's Public Relation Officer in India, Mr. Ashim Chaudhury.

²³ India Fact Sheet, UNHCR, New Delhi, August 1998, No. 2, p.1.

The 1951 Convention and its 1967 Protocol are the principal international instruments for the protection of refugees. They have been ratified by 134 countries. India has not ratified the Convention nor does it have specific domestic laws on refugees. Refugees are dealt with under the Foreigners Act, 1946, which does not distinguish between refugees and other foreigners. In order to raise awareness about these issues, and to build a favourable public opinion, UNHCR has been undertaking a host of promotional activities. These include interactive activities with the academia, including students, researchers and teachers of international law and international relations as well as with NGOs and others.

The Unit is led by a Legal Officer aided by two Assistant Legal Officers. As of January 1999, there are about 17,700 refugees registered with UNHCR, Delhi.

The Social Service Unit:

Consisting of a Social Service Officer and five social service workers, it mainly looks after various aspects of the needs of refugees such as healthcare, education, employment and settlement. Assistance is provided to the refugees through projects implemented by NGOs. For instance, the Young Mens Christian Association (YMCA) assists refugees with education, vocational training, social

counselling and income generation activities. Another NGO, Voluntary Health Association of Delhi (VHAD) provides medical assistance, referral services and medical counselling to refugees.

A legal NGO, Public Interest Legal Service and Research Centre (PILSARC) offers legal counsel to refugees facing legal protection problems in India. The entry, stay and departure of refugees are handled by the foreigners' section of the Ministry of Home Affairs and Foreigners Regional Registration Officers throughout the country.²⁴ In some cases involving detention and deportation of refugees, UNHCR intervenes directly with the Government of India to secure their release, and seek appropriate solutions.

In some cases UNHCR provides financial assistance to refugees for a limited period of 6-12 months, and to those suffering from disability, chronic illness or other forms of vulnerability.²⁵

Programme Unit:

This mainly looks after the overall administration of various projects and programmes undertaken by for refugee welfare as well as the financial aspects related thereto.

²⁴ UNHCR in India : An Information Paper for Refugees and Asylum Seekers in India. UNHCR, Delhi, 1998, p.5.

²⁵ India Fact Sheet. op.cit, p.1.

Public Information Unit:

Consisting of a sole Public Relations and Information Officer, it undertaken various usual public relations exercises apart from those related to refugee welfare. It also interacts with students, researchers and any other person interested in the informational aspects of the UNHCR.

Located at 14 Jor Bagh, New Delhi, UNHCR in India is led by a Chief of Mission assisted by a Deputy Chief of Mission who is also responsible for programming. The total number of staff at UNHCR, Delhi is 25 including 7 project staff from UNDP and excluding 20 contracted staff. The total budget for its India operation is 1.6 million US dollars which it gets from the UN and many donor countries and institutions.

Since 1981, UNHCR has been associated with about 50,000 refugees of whom over 30,000 have been repatriated. Some of them are also resettled in India and other countries. For this, UNHCR works in association with various embassies in India who take refugees as per the quota of their country. But as far as possible, UNHCR strives for their voluntary repatriation by often arranging their passage.

One of the thrust areas of UNHCR's advocacy efforts in India has therefore been to highlight the absence and the need for laws to protect the rights of refugees. In this endeavor, UNHCR has over the years built an institutional relationship with the judicial community in India. In collaboration with well-known

lawyers. UNHCR has held several seminars and workshops on Refugee Law and International law relating to refugees. One of the key partners in this effort has been SAARCLAW, together with whom UNHCR held a major seminar in 1997. UNHCR has also sought the services of PILSARC, an implementing partner, to provide legal assistance to refugees facing protection problems.

The Indian Centre for Humanitarian Laws and Research (ICHLR), another Implementing Partner of the UNHCR in India, has been conducting seminars, workshops and conferences on refugee issues throughout the country. ICHLR, in collaborating with the *Informal Consultations on Refugees and Migratory Movement in South Asia*, has also brought out a draft National Model Law on Refugees for countries in South Asia. To disseminate the draft National Model Law, UNHCR plans to support NGO efforts to translate it into the national languages of various South Asian countries. UNHCR is also supporting NGO efforts to bring out a handbook on well known court cases in India relating to refugees. This will serve as a useful reference in future cases relating to refugees.

UNHCR, also collaborates with the National Human Rights Commission (NHRC) of India to strengthen the protection of refugees, who are very often victims of human rights violations.

Stressing on the importance of a legal framework, UNHCR has also endowed a Chair on Refugee Law in the National Law School of India University (NLSIU) in Bangalore, in 1996. Similarly, UNHCR supported the Centre for Refugee Studies, Department of International Law, Jadavpur University, Calcutta.

in conducting several short courses for lawyers and law professors. UNHCR also interacts with the Department of Rehabilitation in Chennai. Under an agreement with the Government of India, UNHCR monitors the voluntary repatriation of Tamil refugees returning to Sri Lanka.

One of the main partners in spreading information and awareness of refugees has of course been the media, whether print or electronic. UNHCR has responded to queries from journalists, and has from time to time motivated them to take up refugee issues to a broader audience. Since the subject is one of human interest the press has consistently taken a deep interest in the plight of refugees. For instance, Doordarshan, Calcutta had collaborated with UNHCR in producing a 55 minute programme on Refugees in 1997. The programme featured, among others, eminent former refugees like Mrinal Sen, Sunil Gangopadhyaya and Jogen Choudhury all household names in Bengal.

The Statesman in Calcutta and the West Bengal Federation of United Nations Association have UNHCR's partners for the last two years in conducting an annual inter-school debate on refugees. Similar debates and essay writing competitions have been organised in Chennai also. Children being future citizens, UNHCR feels it important to foster in them a spirit of tolerance and acceptance of people seeking refuge. After all, refugees do not leave their home willingly, but under threat of persecution and to save their lives and beliefs.

CHAPTER II

REFUGEE SITUATION IN INDIA : LEGAL AND EMPIRICAL

REFUGEE SITUATION IN INDIA : LEGAL AND EMPIRICAL

India's experience of coping with refugee problems goes back to the partition of the subcontinent, when eight million refugees, from the areas which are now Pakistan and Bangladesh, moved into India and were successfully integrated into the population.¹ However, alongwith other South Asian countries, India is not a party to most international refugee conventions.² According to one scholar, "part of the reason for India not ratifying the 1951 Convention was ideological in nature and related to the politics of the Cold War. Now that these politics were no longer relevant, a case could be made for accession."³ According to a report, India, in fact, is considering signing the 1951 Convention on Refugees. This she is intending because of growing complexities over the refugee issues in the SAARC (South Asian Association for Regional Cooperation) region and the absence of a national legislation on refugees. "The Government is examining the issue of refugee protection and India's international obligations, including the option of signing the 1951 UN Convention", sources in the Ministry of External

¹ Dr. Najma Heptulla, "Special Address", "Refugees in the SAARC Region : Building a Legal framework", a seminar jointly organised by SAARC LAW, an association of the legal fraternity from the South Asian countries believing in the objectives of SAARC and UNHCR, 2-3 May, 1993 at New Delhi, p. 25.

² Irene Khan, "Opening Remarks", *ibid.*, p. 29.

³ "Regional Consultations on Refugee and Migratory Movements in South Asia", UNHCR, Delhi, 1996, p. 10.

Affairs said".⁴

India and International Law on Refugees:

Notwithstanding India being a non-party to the 1951 Convention, she has acceded to certain international Covenants, treaties and such other international instruments which by implication are also available to refugees and bind Government of India to respect refugee rights. In April 1979, India acceded to the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights. Article 13 of the ICCPR instrument deals with the expulsion of a person lawfully present in the territory of the state. India has reserved its right under this article to apply its municipal law relating to aliens. In December 1992, India acceded to the 1989 Convention on the Rights of the Child; Article 22 of this Convention deals with refugee children and refugee family reunification. The 1963 Convention on the Elimination of All Forms of Racial Discrimination was ratified by India in 1969, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women was ratified in 1993.

Applicable non-binding international human rights instruments include the 1948 Universal Declaration on Human Rights whose Article 14(1) states that, "Everyone has the right to seek and to enjoy in other countries asylum from

⁴ "India may sign Convention on Refugees", World Focus, January 1999, p. 19.

persecution.”⁵ Also included are: The principle of non-refoulement incorporated in the Asian-African Legal Consultative Committee’s 1966 Principles Concerning the Treatment of Refugees (Bangkok Principles)⁶, which specifically includes non-rejection at the frontier. More recently, the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights included a special section on refugees which reaffirmed the right of every person to seek and enjoy asylum, as well as the right to return to one’s own country.⁷

India and Domestic Law on Refugees:

Dr. Rose Verghese, Secretary General, Indian Centre for Humanitarian Laws and Research, New Delhi has noted that while India lacked a formal legal framework for refugee protection, its administrative policies over the years have generally been in line with international refugee law principles. However, as this policy is directed towards refugees from South Asian countries, the problems of asylum seekers from countries outside the immediate region are not addressed in a systematic manner. Even with respect to the former group of asylum seekers, in

⁵ Rumki Basu, “The United Nations”, Sterling Publishers Pvt. Ltd., New Delhi, 1992, p. 357.

⁶ Shrinivas Gupta, “Influx of refugees and international law”, Link, November 22, 1992, p. 29.

⁷ Smrithi Talwar, “Building a Regional Consensus on Asylum: The Indian Perspective”, “Regional Consultations on Refugee and Migratory Movements in South Asia”, UNHCR, Delhi, 1996, p. 45.

the absence of legislation, there are some discrepancies and treatment of refugees is affected by domestic or foreign policy considerations. While courts in the country have been humanitarian in their treatment of asylum seekers, they have been hampered by their inability to enforce provisions of international human rights instruments and refugee law norms in the absence of accession to relevant treaties or incorporating national legislation.⁸

Article 37 of the Indian Constitution provides that the Directive Principles of State Policy in Part IV are fundamental to the governance of the Country and that it shall be the duty of the state to apply these principles in making laws. Article 51(c) in Part IV of the Constitution provides that the state shall endeavor to foster respect for international law and treaty obligations.⁹ Thus, while Indian courts are not free to direct the making legislation, they do adopt principles of interpretation that promote rather than hinder the aspirations enshrined in Part IV of the Constitution.

And as of now, India has not passed refugee-specific legislation to regulate the entry and status of refugees with the result that India has no general legislation on refugees. They are treated under the law applicable to aliens.¹⁰ The principal

⁸ Ibid. pp. 6-7.

⁹ The Constitution of India, Central Law Publications, Allahabad, 1994, p. 21.

¹⁰ The word 'alien' is nowhere defined in Indian Legal corpus. However, it does appear in the Constitution of India (Article 22 para 3 and Entry 17, List I, Schedule 7), in section 83 of the Indian Civil Procedure code, and in section 3(2)(b) of the Indian Citizenship Act, 1955, as well as several other statutes.

Indian laws relevant to refugees are : Foreigners Act, 1946 (Section 3, 3A, 7, 14); Registration of Foreigners Act, 1939 (Section 3.6); Passport (Entry into India) Act, 1920; Passport Act, 1967 and Extradition Act, 1962.

Though jurisdiction over issues of citizenship, naturalisation and aliens rests with the Union Legislature vide item 17 of the Union List,¹¹ influxes of refugees have been handled by administrative decisions rather than through legislative requirement. This administrative decision is exercised within the framework of the 1946 Foreigners Act, and refugee policy in the country has essentially evolved from a series of administrative orders passed under the authority of section 3 of the said Acts.¹²

What are the rights available to foreigners or aliens which by implication are available to refugees in India as well? In its judgement in the case Luis de Readt Vs Union of India as affirmed later in Khudiram Chakma Vs Union of India, the Supreme Court of India has held that article 21 of the Constitution of India, which protects life and personal liberty by stating that they may not be deprived except according to procedure established by law is applicable to aliens

¹¹ The Constitution of India, op. cit. p. 191.

¹² Section 3 provides the power to make orders and is drafted very broadly- "The Central Government may by order make provision, either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating, or restricting the entry of foreigners into India or their departure therefrom or their pressure."

in Indian territory.¹³

Indian Judicial Decisions on Refugees:

Indian courts do not have the authority to enforce the provisions of the above international human rights instruments unless these provisions are incorporated into municipal law by the legislature, and this process of incorporation in the Indian context has been largely ignored with respect to the above treaties. Parliament is under no obligation to enact law to give effect to a treaty, and in the absence of such law, the judiciary is not competent to enforce obedience of the treaty obligations by the Executive. Thus, while India has the duty to carry out in good faith its obligations arising out of international law and the Indian government cannot offer acts or omissions on the part of their legislative or executive organs as an excuse for failure to fulfil the above obligations. In the event of failure of the government to bring its municipal law in line with its international obligations, international law does not render such conflicting municipal law null and void.

Various judicial decisions have, in the absence of a concrete legislative structure, tried to provide solutions to the problems of refugees, primarily with regard to the principles of non-refoulement, right to seek asylum and voluntary repatriation. The courts have, however, arrived at their decisions without entering

¹³ Smrithi Talwar, op. cit. p. 50.

into a discussion of international refugee law. It may be noted, however, that courts cannot take treaty provisions mentioned earlier into account. More recently, the Supreme Court, in National Human Rights Commission Vs Union of India,¹⁴ appears to have gone further in establishing protection to refugees in the face of imminent expulsion from the country. The All Arunachal Pradesh Student Union (AAPSU), a non-governmental body, had issued "quit India" notices to all alleged foreigners including the Chakma refugees living in the state, with the threat of use of force if its demands were not acceded to. Justice A.M. Ahmadi held that as the constitutional rights in Articles 14 and 21 are available even to non-citizens, the state is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the state. The Court recognised that the "quit India" notices amounted to a threat to life and liberty as understood by Article 21, and that Chakmas could not be evicted from their homes except in accordance with law.

The decision is limited to threats of expulsion posed by an activist student union and it does not enter into a discussion of issues pertaining to expulsion notices issued by the central government even if they constitute a violation of Article 21. Nevertheless, protection even against expulsion orders issued by the government has been provided to refugees through a staying of deportation orders.

¹⁴ Ibid. p.50.

In *Malavika Karlekar Vs Union of India*,¹⁵ twenty-one Burmese facing deportation from the Andaman Islands filed a writ petition with the Supreme Court pleading a violation of their rights under Article 21. The Court directed that the deportation order was to be stayed to allow the asylum seekers to approach UNHCR for refugee status. In some instances detainees have been granted leave to travel to New Delhi, where the Office of UNHCR is located, in order to seek determination of refugee status e.g. *Khy-Htoon and others Vs the State of Manipur*, Gauhati High Court, 1990; *Bogyi Vs Union of India*, Gauhati High Court, 1989; and *Zothansangpuli Vs the State of Manipur*, Gauhati High Court, 1989. In *Bogyi Vs Union of India*,¹⁶ even in the absence of a pending application for refugee status, the Gauhati High Court ordered the temporary release of a Burmese man from detention for a two month period so that he could apply for refugee status with UNHCR.

The petitions in these cases usually allege violation of Article 21 of the Constitution in the event that the deportation orders are carried out. While the absence of reasons given in passing these interim motions staying the deportation orders results in an unclear legal position with respect to non-refoulement, the implication of the decisions would appear to be that a successful application for refugee status by an asylum seeker preempts refoulement. According to

¹⁵ Ibid. p. 51.

¹⁶ Ibid. p. 51.

B.S.Chimni. "In the context of refugee rights, it can be argued that Article 21 encompasses the principle of non-refoulement which requires that a state shall not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"¹⁷.

Assistance benefits granted to different groups of refugees in India appear to be determined by the situation of the refugees in relation to the local people e.g. ethnic ties between refugee groups and the local population impacts upon assistance provided and to the relative burden they impose on the states concerned. This is particularly true for subjects like education that fall under the State List in the Indian Constitution. Thus the Chakma refugees in Tripura are worse off economically than are the Sri Lankan refugees in Tamil Nadu.

Administrative discretion is also paramount in the treatment of issues like the regulations of stay in the country of foreign nationals who are recognised as refugees under UNHCR's mandate. Afghan refugees recognised by the UNHCR in New Delhi have their residential permits regularly extended on the basis of renewal of their refugee certificates while Sudanese refugees with the UNHCR are often issued "Leave India"¹⁸ notices by the government upon the expiry of their student visas.

¹⁷ B.S.Chimni. "The Legal Conditions of Refugees in India". Journal of Refugee Studies Vol. 7, No.4, 1994, p. 380.

¹⁸ Smrithi Talwar. op. cit. p. 52.

The 1993 Protection of Human Rights Act established a recommendatory body called the National Human Rights Commission that has power to inquire into the "violation of human rights or abetment thereof."¹⁹ The Commission is not restricted to investigating issues of concern to citizens only and, in fact, it has visited both the special camps for Sri Lankan refugees in Tamil Nadu and the camps for Chakmas in Tripura to investigate living conditions there. It has also filed a petition in the Supreme Court on the threatened expulsion of Chakmas in Arunachal Pradesh. An issue here is whether a body like the Human Rights Commission may be used to take up cases of discriminatory treatment between refugees, especially in light of the fact that some of the areas in issues like access to primary education, fall clearly within the preview of recognised human right.

An examination of the potential role of the National Human Right Commission is also pertinent in the face of recent judicial decisions establishing standards with respect to non-refoulement and voluntary repatriation. As these judgements may be limited in their scope of application to particular refugee groups in identified areas of the country, a standardization of the norms established may take place through recommendations of the Commission. A denial of non-refoulement and voluntary repatriation standards applicable to other groups of refugees in the country, especially if these are other groups of refugees recognised by the governments is clearly violative of human rights norms.

¹⁹ Smrithi Talwar, p. 53.

In this context, it needs to be stressed that repudiation should only be voluntary and be carried out in conditions of absolute safety. In the only case decided on the issue in India, the Madras High Court, in *Pedumaran and Dr. S.Ramadosh Vs Union of India*, has set standards with regard to the repatriation of refugees by emphasising the voluntary character of repatriation.²⁰ A writ petition was filed seeking interim relief in the form of an injunction to restrain the authorities from repatriating refugees against their will. It was argued by the petitioners that the Indian government was using force by reducing rations, limited movement of refugees, and stopping the financial assistance that was previously given and stopping the financial assistance that was previously given. The court in finding that Indian government had acted properly and in accordance with international law, laid special emphasis on UNHCR's role as an impartial third party in verifying the voluntariness of repatriations and on the fact that individual refugees had signed forms in English and Tamil where they had expressed their willingness to return. The state government was, however, ordered to translate the court order in Tamil and to circulate it in refugee camps. The court also ordered that a circular in Tamil be posted in all refugee camps indicating that no refugee would be forcibly repatriated.

The court did not address the issue of whether reduction of rations, limitation of movement of refugees and the stoppage of financial assistance

²⁰ B.S.Chimni, "In International Law", *Saminer* 463, March 1998, New Delhi, p. 21.

constituted "coercion" so as to render the repatriation involuntary. However, by presuming from the start that repatriations are necessary to be voluntary, and by examining whether the government's actions had sufficiently established "voluntariness", standards governing voluntary repatriations have been set by the court. The moot question is whether these standards are extendable to all other refugees in the country. The Court in this case was asked to pronounce judgement upon a very specific situation where the government already had in place a repatriation policy. In its judgement, the Court merely approved the policy and did not make any observations about the larger refugee context in the country.²¹

Plight of Refugees in India:

In 1992, India was host to nearly 4,00,000 refugees from eight countries²², but by 31st August, 1996 this figure came down to 2,38,000 refugees comprising 1,08,000 Tibetans, 56,830 Sri Lankans, 53,465 Chakmas from Bangladesh, 18,662 Afghans²³ and 1,043 refugees of other nationalities. Among these, the Tibetans, Sri Lankans and Chakmas, are for all practical purposes, recognised as refugees by the Government of India. Even with regard to these groups, a common administrative procedure is not followed. While the Tibetans and Sri Lankans are

²¹ Smrithi Talwar, p. 53.

²² US Committee for Refugees, World Refugee Survey, 1993, p. 89.

²³ 18,000 as per 1999 Global Appeal: Programme Overview, UNHCR's Funding and Donor Relations Service, Geneva, 1998, p. 159.

issued refugee identity documents (the Tibetans are also issued travel permits), no such document is issued to Chakmas in the camps in Tripura state. Lists of refugees are posted in these camps and they serve the same function as the identity documents of the Tibetans and the Sri Lankans i.e. they serve to identify people eligible for certain assistance benefits.²⁴ The Indian government, however, considers Afghans and refugees of other nationalities to be foreign nationals temporarily in India and does not officially recognise their refugee status. Therefore, it is upto the UNHCR to recognise them as refugees and assist those in need. With respect to the Sri Lankans, the Indian government has allowed UNHCR a limited role of monitoring the voluntariness of their repatriations.

Factors Responsible for Refugee Generation:

From a theoretical perspective, there are six broad causal factors responsible for refugee creation namely (i) anti-colonial wars and self determination movements; (ii) international conflicts; (iii) revolutions, coups and regime changes; (iv) ethnic, communal and religious conflicts; (v) creation and restructuring of state boundaries, and (vi) population transfers²⁵. However, Muni and Baral identify three broad categories of refugee-generating factors in South Asia ²⁶ which

²⁴ Smrithi Talwar, op.cit. p. 52.

²⁵ Noilot, "The Era of Homeless Man", Geography, Vol. 72, No. 2, 1987, pp. 109-121.

²⁶ S.D. Muni and Lok Raj Baral (ed.), Refugees and Regional Security in South Asia, Konark Publishers Pvt. Ltd., Delhi, 1996, pp. 9-18

obviously applies to India as well. First, the breakdown of colonial rule and the rationalisation of some of the colonial legacies created refugee flows. The largest of such flows was between India and Pakistan, resulting from the partition of British India. Similar exodus of refugees resulted in the aftermath of independence of Burma and Sri Lanka. Second, factors related to state and nation-building processes, which precipitated not only political, ethnic and religious conflicts but created economic and environmental conditions that forced people to migrate within or outside their respective countries. The first and also the largest refugee flow generated by such factors was in 1971, from the then East Pakistan to India. Similar is the case of Sri Lanka, where the state, through a gradual process beginning in 1956, acquired a Sinhala-Buddhist identity. The simmering ethnic conflict that exploded in July 1983, sent more than 220,000 refugees to India and 75,000 outside the region. Later, Bangladesh' drift towards authoritarian political order and assertive Islamic identity strengthened the flow of Hindus and Buddhist Chakmas to India. A vigorous policy of Bhutanisation in Bhutan has led to massive outflow of the Southern Bhutanese of Nepali origin. Approximately, 25,000 to 30,000 Nepalese of Bhutan have taken refuge in India's West Bengal and Assam. Further, there have been economic migrants from the neighbouring countries to India.

Finally, refugee-generating factors in the subcontinent also relate to the developments outside the region. So far, such extra-regional refugees have come

from Tibet, Afghanistan and Burma.

Basically, it is India's democratic polity, large size, a soft-secular state, federal constitutional structure, a porous border and better economic opportunities which account for the flow of refugees to the country.

A Brief Profile of refugees in India:

Tibetans :

Beginning with Tibetan refugees, about 1,00,000 Tibetan refugees were granted asylum in India in 1950s. In fact, in terms of numbers, the Tibetan refugee problem is not so significant. On 31st August, 1996, the total number of Tibetan refugees in India was 1,08,000.²⁷

The flow of Tibetan refugees into South Asia has been the result of Communist China's military action in Tibet during the fifties. The Tibetan struggle for autonomy and the Chinese actions to suppress that struggle have continued since then and so also the flow of refugees. The intensity of this flow has varied, depending upon the intensity of conflict in Tibet, which was most serious in 1959, when the Dalai Lama, the religious and political leader of the Tibetans, with thousands of his followers came to India for asylum. Subsequently, Tibetan refugees have come to India during the second half of the sixties when the cultural

²⁷ Louise W. Holborn, Refugees : A Problem of Over Time, The Scarecrow Press Inc. Methuchen, N.J., 1975, p. 737.

revolution in China caused extensive disturbances. Since 1988-89, Tibet's struggle for autonomy has picked up again, generating more refugees. In 1967 and 1993, the Government of India further gave asylum to 1,500²⁸ and 3,500 refugees²⁹. As the issue of Tibetan autonomy gains momentum, it is hoped that the Tibetan question would increasingly come under sharp focus in view of renewed international support.

At the end of 1993, there were nearly 1,19,000 Tibetan refugees in India.³⁰ Though India did not support the independence or autonomy of Tibet and has recognised it as an integral part of China,³¹ the continued presence of the Dalai Lama and his followers has always been an irritant in Sino-Indian relations. Rajiv Gandhi, during his visit to China in December, 1988, assured the Chinese leaders that the Dalai Lama and his associates would not be allowed to indulge in political activities against China. This assurance was greatly resented by the Tibetans. Tibetan demonstrators against the Chinese Premier Li Peng, during his visit to India in December 1991, were treated harshly and there have been instances of clashes between the Tibetan refugees and local inhabitants in Himachal Pradesh. The fate of Tibetan refugees and prospects of repatriation are closely

²⁸ The Times of India: 30 May, 1994, p.1.

²⁹ Smrithi Talwar, op.cit. p. 44.

³⁰ Bill Frelick, "The Year in Review", The World Refugee Survey, 1994, US Committee for Refugees, Washington DC, 1994, p.9.

³¹ B.S. Chimni, "The Legal Condition of Refugees in India", op. cit., p. 381.

linked to the changing dynamics of the Tibetan question and Sino-Indian relations.

Refugees from Bangladesh :

In the wake of the brutal repression unleashed in East Pakistan during her freedom movement in 1971, about ten million refugees, mostly Bengali Hindus, who were specially vulnerable, marched into India. Nearly seven million among them were put up in camps while the other three million stayed with friends and relatives. There was no question of turning any refugee back as it provided India with an opportunity to disprove Pakistan's "two-nation" theory on the basis of religion. It was also a good opportunity for India to embarrass Pakistan on the issue of human rights' relations of her own citizens. Furthermore, it was also time when India could transform the geo-strategic scenario of the subcontinent in her favour by setting her eyes on division of Pakistan and thus ending the need to fight on two fronts in a war with Pakistan. Even Zolberg et al., who argue that, "the refugees were an important part of the conflict", concede that "India's ability to derive political mileage from the refugee situation does not deny its objective reality".³² The refugees quickly returned home after the liberation of Bangladesh.³³

The Chakma Refugees :

Since the creation of Bangladesh and even prior to that, the Chakma

³² A. Zolberg, A. Suhrke and S. Aguayo, "Escape from Violence", OUP, 1989, p. 144.

³³ Partha Nath Mukherji, "The Great Migration of 1971 : Return", Economic and Political Weekly, Vol. IX, No. 11, March 16, 1974, p. 449.

refugees have been seeking refuge in India from persecution at home.³⁴ In the year 1964, thousands of Chakma families entered India fleeing the then East Pakistan because of religious persecution.³⁵ They were initially sheltered in government camps in Assam and later shifted to a camp within the state of Arunachal Pradesh which was then known as the North Eastern Frontier Agency (NEFA). In the years 1966-68, the Indian government drew up the Chakma resettlement schemes. Schemes were sanctioned for the resettlement of 3,100 families. According to an estimate, the refugees at present number more than 60,000.³⁶ In 1993, the Indian Supreme Court held that the Chakmas are not entitled to citizenship under section 6-A of the Citizenship Act³⁷ and the AAPSU, with the support of state Assembly, has been agitating for their repatriation to Bangladesh.³⁸

In so far as the flow of refugees in recent years is concerned, there were an estimated 56,000 refugees, primarily Buddhist Chakmas from Bangladesh's Cittagong Hill Tracts (CHT), area once described by the Government of India Act

³⁴ Aurobindo Ghose and Syed Iftikhar Gillani, "Life and Times of the Chakmas", Mainstream, July 3, 1993, pp. 25-27.

³⁵ S. Dutta, "Chakma-Hajong Refugee Problem in Arunachal Pradesh : Historical Background", IASSI Quarterly, Vol. 15, No. 1, 1996, p. 112.

³⁶ "The Chakma choice", Statesman, (Calcutta), 12 June 1993.

³⁷ B.S. Chimni, "The Legal Condition of Refugees in India", Journal of Refugee Studies, Vol. 7, No. 4, 1994, p. 482.

³⁸ Sanjoy Hazarika, "Refugee within, Refugee without", Himal South Asia, April 1996, p. 44.

1935 as a "Totally Excluded Area,"³⁹ living in camps in India's Tripura state. In 1993, the year of indigenous peoples, there was considerable pressure on Bangladesh to bring home the Chakma refugees. But a parliamentary team from Bangladesh which visited India in May, 1993 failed to convince the refugees to return despite promises of improved conditions in the CHT. Mr. Upendralal Chakma, the President of the Refugee Welfare Association, and a former Bangladeshi minister, has stated time and again that the refugees would not go back unless a 13 point charter of demands was accepted including the withdrawal of the army, the eviction of Muslim settlers from Tribal land, and more political autonomy for the tribals.⁴⁰

The Indian authorities have ruled out any forcible repatriation of refugees.⁴¹ Further negotiations between the Bangladesh government, the refugees, and Indian officials resulted in the planned repatriation of 400 families. Bangladesh had agreed to consider sympathetically the demands of the refugees and pay a Rs 1,600 (about 50 US dollars) subsistence allowance per family for the first six months.⁴² The repatriation went ahead on February 15, 1994 despite

³⁹ Rajashri DasGupta, "Victims of an Unforgotten Past and Unforgiving Nation", The Economic Times, 29 August, 1993, p.8.

⁴⁰ "Chakma Hesitancy", Statesman (Calcutta), 9 August, 1993.

⁴¹ Sheuar Data, "Chakma talks may not succeed.", Telegraph, (Calcutta), 7 May, 93.

⁴² Shekhar Datta, "Pact on Chakmas :Triumph for Bangla.", Telegraph, Calcutta,1994.

claims that the refugees were being pressurised to go back to Bangladesh.⁴³ And according to a report, by 1997 almost all the Chakma refugees have returned to the CHT.⁴⁴

Tamil Refugees from Sri Lanka:

The state of Tamil Nadu is home to India's 55 million Tamils, who have linguistic, religious and political affinities with their Tamil neighbours across the waters in Sri Lanka. It is, therefore, not surprising that it is in the state of Tamil Nadu, that Sri Lankan Tamils sought refuge from persecution at home.

The response of the Indian government was to allow asylum and give aid to the refugees⁴⁵. The Sri Lankan refugees who thus entered India, by their numbers alone, posed a formidable problem to Tamil Nadu and the Indian government which had to house, feed, care for them and provide security. It is estimated that since 1990 approximately 1,20,000 Sri Lankan Tamils have been living in Southern India in refugee camps run by the Government of India while another 80,000 were living outside.⁴⁶ The Sri Lanka Tamil refugees came to India to the state of Tamil Nadu in two waves. The first exodus of refugees commenced on 24. July, 1983 and continued till 29 July, 1987. During the period,

⁴³ Suhas Chakma, "Forced Repatriation," The Pioneer, 23 Feb, 1994.

⁴⁴ Refugees, UNHCR, Geneva, Spring, 1998, p. 24.

⁴⁵ Ben Barber, "Feeding Refugees or War? : The Dilemma of Humanitarian Aid", Foreign Affairs, Vol. 76, No. 4, p. 10.

⁴⁶ Muni amd Baral, op.cit., p. 195.

1,34,053 refugees arrived in India. Following the India- Sri Lanka Accord of 1987, refugees began to return to Sri Lanka. Between 24 December 1987 and 31 August 1989, 25,585 camp and non-camp refugees returned to Sri Lanka by chartered slips. Remaining refugees either returned to Sri Lanka without government assistance or continued to stay in Tamil Nadu either with their relatives or by their own means.

The second Elam War triggered a fresh exodus of refugees. After 25 August, 1989, 1,22,000 refugees came to Tamil Nadu. Of these 1,16,000 were destitutes and were accommodated in refugee camps. The return of the refugee commenced again on 22 January 1992. According to UNHCR, between 20 January 1992 and 20 March 1995, 54,188 refugees have returned to Sri Lanka

UNHCR's Involvement with Tamils :

In July 1992, the GOI announced that it would permit UNHCR presence in India and UNHCR could ensure that "those refugees who don't wish to return are not sent back."⁴⁷

The decision to permit the UNHCR to operate in India and monitor the repatriation has facilitated the safe return of Tamil refugees to Sri Lanka. Though the UNHCR officials are not permitted to visit the refugee camps, any refugee can contact the UNHCR if he/she wishes to do so. According to UNHCR sources, they have conducted interviews with roughly 70 per cent of the refugees to verify

⁴⁷ Ibid. p. 223.

the voluntary nature of their return and they are convinced that the refugees have not been subjected to any coercion. Only 19 families, comprising 68 persons, complained that they have been repatriated under duress and they were permitted to return to refugee camps following UNHCR intervention. The UNHCR presence in Tamil Nadu has also facilitated better coordination.

Afghan refugees started coming into India following the Saur revolution of Afghanistan in 1978 and the far-reaching socio-economic changes introduced by the Taraki regime. Within a year and a half, the Taraki regime was overthrown by Hafizullah Amin in September 1979, who in turn was removed by Soviet military intervention in December 1979. Some 25,000 to 50,000 refugees are supposed to have come to India whose number is said to have come down to about 18,000.⁴⁸ According to Muni and Baral, since these refugees do not belong to the erstwhile Afghan resistance groups, they are likely to continue until lasting peace and harmony return to Afghanistan.⁴⁹

There are also 25,000 to 30,000 Nepalese from Bhutan who took refuge in India in the wake of the adoption of a vigorous policy of Bhutanisation, through the imposition of cultural and dress code as well as citizenship qualifications carried out in 1988. Repressive implementation of these policies precipitated violent reactions and conflict and generated refugees. Since the number of these

⁴⁸ 1999 Global Appeal, op.cit. p. 159.

⁴⁹ Muni & Baral, op.cit. p. 22.

refugees is not very significant. India is apathetic to the issue. But the conspicuous Indian indifference to the refugee issue seems to have encouraged Bhutan, thus prompting some Nepalis to see a kind of Indian connivance with Bhutan.⁵⁰ Initially these refugees, whether forcefully evicted or a victim of insecurity due to mass exodus, took refuge in India but they were asked to leave West Bengal and, in fact, were carried in trucks and dumped near the Nepal border. The Indian decision reflects its strategic consideration regarding the implications these refugees could have on the volatile politics of the Gorkhas in West Bengal. Moreover, the decision to a certain extent was dictated by the cordial relations between India and Bhutan and New Delhi's reluctance to get entangled in a matter which it considered purely bilateral.⁵¹

Stretching the definition of "refugee", it is important to talk briefly about economic migrants also. The Treaty of -Peace and Friendship between India and Nepal makes it possible for the two-way flow of people. Better economic opportunities in India have regularly been attracting economic migrants from Nepal and a similar inflow has been noticed in case of migrants from Bangladesh.

Thus, we find that India has been major Third World region of concern in the context of refugee movements. Almost all the refugee generating factors have been active here and have impinged on the refugee situation in the country.

⁵⁰ Ibid. p.167.

⁵¹ Smruti S.Pattanaik, "Nepal. Bhutan Bilateral Talks and Repatriation of Bhutanese Refugees". Strategic Analysis. Vol. XXII. No.10, January, 1999. p. 1611.

The Indian state has shown remarkable capacity and resilience in absorbing and dealing with these refugees and this is perhaps one reason that the refugee situation here does not seem to be alarming. But it remains a fact that over two lakhs of refugees who are still in country, do strain an already overburdened economy, sometime even inviting hostility from the local population. Apart from straining a weak economy, it also has implications for the security of the country. The pressure of hundreds of thousands of refugees has often harvested conditions for destabilisation and disruption of political, economic and social systems in the country. The extent and intensity of this threat naturally depends upon the number of refugees and their demands and expectations.

Internally Displaced Persons:

The concept of internally displaced persons (IDPs) has become a familiar feature of the humanitarian vocabulary during the past decade (1990s). Indeed, the recent emergence of a new protection paradigm, focussing less exclusively on the situation of refugees in countries of asylum and more systematically on the plight of vulnerable populations in countries of origin, has pushed this issue to the top of the humanitarian agenda.

Commenting on this trend, the UN High Commissioner for Refugees has observed that "the scale and scope of this problem, the human suffering which underlies it, as well as its impact on international peace and security, have rightly

made internal displacement an issue of great international concern."⁵²

Although the notion of IDPs is now widely used by humanitarian agencies and policymakers, there still remains a lack of clarity about its precise meaning. The international community has not yet established a formal and legal definition of the term, and while a number of efforts have been made to fill this conceptual gap, many of the definitions offered have tended to be either too broad or too narrow, and therefore of limited value for either analytical or operational purposes.

However, the term has been loosely used to denote those "persons who, as a result of persecution, armed conflict, violence, or [developmental programmes], have been forced to abandon their homes and leave their usual place of residence, and who remain within the borders of their own country".⁵³

Internal displacement has most frequently been associated with highly visible and destructive armed conflicts such as those in Bosnia, Chechnya, Rwanda and Sri Lanka, where large numbers of people have been forced to flee at short notice and have congregated in specific areas. But in recent years (1990s), there has been a greater awareness of the problem related with development-induced displacement and a growing recognition of the important human right issues raised by this phenomenon.

⁵² Sadako Ogata, 'Statement at a roundtable discussion on United Nations human rights protection of internally displaced persons', Nyon, February 1993, on Refworld CD-Rom, UNHCR, Geneva, 1998.

⁵³ The State of the World Refugees 1997-98: A Humanitarian Agenda, UNHCR, Oxford University Press Inc., New York, 1997, p. 99.

Some of the affected groups of people include the Kayapo people of Brazilian Amázonía, the Saami people of Norway and the people living in the vicinity of Sardar Sarovar dam in India.⁵⁴ There were 33, 014 and 4,000 families affected by Sardar Sarovar Dam Project on Naramada river in India in Madhya Pradesh and Maharashtra states respectively in 1999.⁵⁵

As of January 1999, in all there were .25 million IDPs in India.⁵⁶ In India, IDPs also include economic migrants who leave their homes in search of a job and go over to other states and are often at risk facing the ire of local population for encroaching on their meager resources. Prominent examples include Assam and Maharashtra. While in Assam, the ire against outsiders "arose out of the indigenous Assamese population feeling outnumbered and marginalised in its own home ground",⁵⁷ in Maharashtra the targets became "the community of non-Maharashtrians particularly the South Indians whom the followers of Bal Thackeray (the Shiv Sena Chief) contemptuously called 'loongiwallahs'".⁵⁸ Kashmiri Pandits constitute yet another community of IDPs who fled their state in the wake of terrorist attacks on them. According to one estimate, "nearly two lakh Hindus

⁵⁴ *ibid.* p. 101.

⁵⁵ V.Venkatesan. "A Triumph for Gujarat". *Frontline*, March 25, 1999, p. 46.

⁵⁶ Mahendra P. Lama, "Refugees in South Asia", *World Focus*, January 1999, p. 3.

⁵⁷ T.V.Satyamurthy, "Impact of Centre-State Relations on Indian Politics: An Interpretative Reckoning 1947-1987", in Partha Chatterjee (ed.), *State and Politics in India*, Oxford University Press, Delhi, 1998, p. 266.

⁵⁸ J.C.Johari, *Indian Politics*, Vishal Publications, Delhi, 1990, p. 219.

[Kashmiri Pandits] fled Jammu and Kashmir between 1988 and 1991.⁵⁹

Despite the world's growing interest in the situation of internally displaced and other war-affected populations, many of the humanitarian issues associated with their plight remain to be resolved. Although a number of different international organisations have contributed to the welfare of IDPs during the past few years (late 1990s), no single humanitarian agency has been given statutory responsibility for their protection.

⁵⁹ Ram Ahuja, Social Problems in India, Rawat Publications, Jaipur and New Delhi, 1997, p. 433.

CHAPTER III

REFUGEE RELIEF IN INDIA: TWO CASE STUDIES

REFUGEE RELIEF IN INDIA: TWO CASE STUDIES

Refugee relief in India assumes great complexity because of the Government of India's (GOI) non-accession to the international refugee regime and the absence of national legislation on refugees. In the absence of a formal legal framework governing the treatment of refugees, GOI has chosen to manage influxes of refugees through administrative decisions. The ad hoc administrative policies, through which refugee problems are handled in this country, are, nevertheless, broadly in line with international refugee law principles.

The motivation behind non-accession and non-legislation on refugees may be emanating from the following factors:

- a. the difficulties to provide national assistance;
- b. the desire to avoid "pull factors";
- c. the long term objective of voluntarily repatriating the refugees;¹
- d. the question of security/instability seems to have dissuaded this country more against joining international refugee regime; and
- e. the very fact that refugees, at times, turn out to be a serious political risk, a threat to the cultural identity and a socio-economic burden² may also

¹ Muchkund Dubey, Rose Verghese and PKS Madhavan. "Country Update: India". Fourth Informal Consultation on Refugee and Migratory Movements in South Asia. Dhaka, 10-11 November 1997. UNHCR. p.46.

² Mahendra P. Lama. "Refugee Situation in South Asia". Bulletin on IHL and Refugee Law. Vol.3. No.1. Jan-June 1998. Centre for Humanitarian Law and Research, New Delhi. p.99.

have been a factor.

The lack of an adequate legal regime to ensure the rights of refugees, who as aliens are among the most vulnerable members of society, is a major problem. Having lost the protection of their country of origin, refugees often lack legal recourse to "ensure their basic human rights including the right to non-refoulement i.e. non-expulsion to one's country of origin". But this has its own advantages in that it allows for flexibility in the granting of asylum. India has generously accepted large groups of refugees fleeing their countries not just for reasons relating to individual persecution, but also due to generalised violence as in the case of Sri Lankan Tamils. However, this does not hold good for all groups as certain refugees like Afghans, Iranians, Iraqis, Somalis, Sudanese and Myanmarese are not recognised by the GOI. It was due to this reason that UNHCR has had to intervene by determining and granting refugee status under its mandate.

This differential treatment of refugees is a fundamental problem. It negates the provision of legal rights and assistance which would normally be granted by an asylum country. Moreover, as two officials from the UNHCR point out, it is

"not clear what legal status or rights accrue to a person as a result of registration by the GOI as a refugee, nor the relationship between refugee status granted by the Government and corresponding national laws governing

³ Refugees in the SAARC Region SAARC LAW and UNHCR, New Delhi, 1999, p.2.

the entry and stay of foreigners."⁴

GOI has itself been tackling cross border flows (those from within South Asia) and does not allow UNHCR access to this population, though lately it has conceded it some role in ensuring the voluntary nature of repatriation in case of certain groups of refugees such as the Sri Lankan Tamils and the Chakmas. However, with respect to asylum seekers and refugees from outside the sub-continent, the GOI has permitted UNHCR to continue to deal with these persons, but itself handles such persons within the framework of immigration/foreigners laws⁵.

In this chapter two cases are studied: the Afghan and the Tibetan refugees. While in the case of former, UNHCR has been actively involved since their arrival in this country, in case of the latter it has disengaged itself for over a decade after initially being involved. This chapter will seek to describe and analyse the extent of the involvement of UNHCR and the role played by the government.

⁴ Brian Gorlick and Sumbul Rizvi Khan, "Refugee Protection as Human Rights Protection: International Principles and Practice in India", Bulletin on IHL and Refugee Law, Vol.2, No. 2(A), July-Dec., 1997, Centre for Humanitarian Law and Research, New Delhi, p.347.

⁵ Rose Verghese, "The Contemporary Refugee Problem and the Concept of Asylum in South Asia", Bulletin on IHL and Refugee Law, Vol.1, No.1, Jan-June 1996, Centre for Humanitarian Law and Research, New Delhi, p.139.

The Afghan Refugees:

Although the initial inflows of the Afghan refugees started almost immediately after Sardar Daud's coup in 1973⁶, the large scale migration of the Afghans followed the Saur revolution of April 1978.⁷ Subsequent events like the introduction of Hafizullah Amin's hurriedly contrived reforms and the Soviet invasion of Afghanistan in December 1979 accelerated the flow of refugees.

By the end of 1979, 4,00,000 Afghans had fled to Pakistan and another 200,000 to Iran. By the end of the following year, the total number of Afghan refugees had risen to 1.9 million – the biggest single group of refugees in the world. As the country developed into arguably the last and worst of the Cold War proxy battlefields, the number of refugees kept rising. From 1985 to 1990, when they finally peaked at a staggering 6.2 million in Iran and Pakistan alone, Afghan refugees consistently accounted for just under half the world's total refugee population.

In 1997, with 2.7 million remaining in Iran, Pakistan and other countries in the region, Afghans have the unhappy distinction of remaining UNHCR's

⁶ Muni and Baral, op. cit., p.180.

⁷ Parvez Iqbal Cheema, "The Afghanistan Crisis and Pakistan's Security Dilemma", *Asian Survey*, Vol.23, No.3, March 1983, pp.234-37.

biggest single refugee caseload in the world for the 17th year in succession.⁸

Refugees from Afghanistan have been coming to India since 1981 and they numbered 19,000 in 1996.⁹ As of 30th April, 1999 the total number of Afghan refugees recognised by the UNHCR stood at 15,770 which was approximately 93.5 per cent of the total refugees (16,903) in India recognised by UNHCR by that date. Besides, about 9,800 Afghan refugees from India have been resettled in third countries and around 3000 were repatriated voluntarily to Afghanistan with UNHCR assistance, as part of around 2.5 million compatriots returning from exile in Pakistan and Iran.¹⁰

New arrivals from Afghanistan have continued at the rate of some 100 persons per month. The Afghan refugee population of concern to UNHCR in India is, however, still the largest urban refugee group being assisted by the Office of the Chief of Mission. (OCM).

The total number of Indian origin Afghan refugees (IOA) in and around Delhi is approximately 10,816 while the rest are ethnic Afghans. Further analysis reveal that there are 4,044 refugees who fall in the age group between 21 to 55

* Rupert Colville. "The biggest caseload in the world". Refugees, II-1997. Public Information Section, UNHCR, p.4.

⁹ Ibid., p.7.

¹⁰ UNHCR in India, UNHCR, New Delhi, 1999, p.5.

years which is normally considered to be an active working age range. Gender classification shows that female refugees are 62 per cent as compared to 38 per cent male.

Different types of vocational courses run by YMCA for Afghan refugees to provide them with means to sustain themselves include beauty culture, tailoring, motor mechanic's work, TV and VCR repairing, refrigeration and air-conditioning repairing, stenography, training in computers, commercial art, air ticketing and cooking and banking. While YMCA provides them with educational and vocational training; Voluntary Health Association of Delhi (VHAD) with health care and legal assistance is provided by Public Interest Legal Service and Research Centre (PILSARC) and Indian Council of Humanitarian Law and Research (ICHLR).

Lump sum approval of grants according to following scale are provided to those refugees capable of productive activities:-

Single refugee	- 15.000
Refugee with upto two dependents	- 20.000
Refugee with 3/4 dependents	- 25.000
Refugee with five dependents	- 30.000
Refugee with six or more dependents	- 35.000

For budgetary purposes, an average amount of Rs. 26.000 per family has been used. In 1998, approximately 1,252.667 US Dollars was the total amount

spent on Afghan refugees. Subsistence allowance are paid at the following monthly rate to meet their basic need for food, clothing, temporary accommodation at cetera:-

Head of family	-	Rs.1200 per month.
First three dependents	-	Rs.500 per month.
Next three dependents	-	Rs.400 per month.
Further dependents	-	Rs.200 per month.

For budgetary purposes, a monthly average amount of Rs.675 per refugee has been used.

The various problems faced by Afghan refugees are enumerated below¹¹:

- a. Displacement causing insecurity, uncertainty and psychological pressure;
- b. Low self-confidence;
- c. Lack of motivation;
- d. lack of self - esteem;
- e. Individualism as compared to community spirit due to heterogeneity by age, sex, socio-cultural norms, geography etc;
- f. Subsistence allowance perceived as the only way out for sustenance;
- g. Very low formal educational base;
- h. Limited traditional skills as majority belongs to commerce and trade business background;

¹¹ Annual Protection Refugee Exercise Report, UNHCR, Delhi.

- i. Limited access to information/opportunities, markets and resources:
- j. Fear of failure is restraining risk-taking abilities:
- h. Male dominance is restraining female role to household and other traditional practices and moves:
- l. Lack of regular saving habits:
- m. Non or low equity base:
- n. Limited physical space for commercial activities; and
- o. High and appreciating property rents along with fear of evacuation.

External Constraints with Afghans:

- a. Lack of access to finance especially NGOs:
- b. Lack of access to banking institution for borrowing and saving:
- e. Limited technological access:
- d. Limited skills development opportunities constrained by finance and administrative procedures:
- e. Legal restriction on commercial licensing local by-laws due to refugee status:
- f. Limited institutional capacity with YMCA to support skill development activities and self-employment initiatives due to limited human, financial and technological resources:
- g. Limited information on institutions, NGOs, markets etc: and
- h. Limited networking with other institutions.

Economic Status of Afghan Refugees in 1998

	Male PA'	No. of Dependents	PA female	No. of dependent	total (1+3)	Total (2+4)
Income earning	142	669	151	151	175	815
Excellent living conditions	137	617	94	396	231	1013
Own property	158	728	108	515	266	1243
Local support	119	539	302	1255	421	1794
LSG**	842	4494	225	1080	1067	5574
SA*** cares	1477	-	1416	-	2893	-
Total	2875	7042	2178	3397	5053	10439

- * PA = Principal Applicant
- ** LSG = Lump Sum Grants
- *** SA = Subsistence Allowance

The GOI does not recognise Afghans as refugees and considers their stay to be temporary. The government does not participate in the assistance programme for Afghan refugees and has not favoured the use of local implementing partners by UNHCR. Though implementing arrangements have gradually been entered into, the role of these agencies has been limited. As a result, Office of the Chief of Mission (OCM) in India has had to assume a number of operational functions.

The government's policy towards Afghan refugees has also inhibited a

variety of programme objectives. Repatriation of the majority of Afghan refugees and resettlement in third countries for the select few are the only possible durable solutions. Care and maintenance pending these solutions has thus been the objective of the assistance programme for over a decade. This has, however, led to widespread dependency on UNHCR financial assistance and a proliferation of "abusive" cases who seek UNHCR recognition primarily for financial gains.

To redress the situation a survey of the refugee caseload was undertaken by UNHCR, Delhi. The findings of the survey revealed that a significant number of refugees subsisting with the assistance of UNHCR financial aid get either remittances from relatives and/or have small scale income generating activity. Others are willing to undertake productive activities but are financially not in a position to do so. Keeping this in view, in the last quarter of 1994, the assistance programme was revised to provide lump sum grants to refugees equivalent to one year of subsistence allowance aimed at self-sufficiency. As a result, the number of Afghan refugees in need of subsistence support was reduced from 16,000 persons at the end of 1994 to some 4,200 persons at the end of 1996. Refugee beneficiaries are now not entitled to further UNHCR assistance in the form of subsistence allowances but would continue to receive medical and educational assistance. In 1995, a total of 4500 refugees (900 families) received lump sum payments in lieu of monthly subsistence allowances. In addition, financial assistance to 2000 refugees with an independent source of support is being phased

out through individual assessments, thereby reducing the number of refugees receiving financial assistance for subsistence. The same process has been continuing since then (1994).

In 1996, the medical assistance programme has also been reorganized to limit the provision of primary health care by UNHCR to the seriously/chronically ill and the handicapped. A medical assistance and referral service (to local governmental and non-governmental services) has been established with the assistance of VHAD, which operates two assessment centres and a mobile van for this purpose. Efforts to intensify vocational and skills training facilities for these refugees have also been undertaken with the assistance of YMCA. YMCA provides comprehensive needs assessment and self-sufficiency services to the residual caseload of Afghan refugees. In addition to vocational and language training, this service identifies and develops low cost individual and cooperative income generating activities for refugees who would otherwise be unable to achieve self-sufficiency.

Afghans who have been in India for over a year and who are in a position to undertake productive activity are given one time lump sum grants. The seriously/chronically ill, the handicapped and those unable to provide for themselves continue to receive bimonthly subsistence allowance. Refugee with close family links with countries of resettlement will continue to receive assistance for their resettlement in third countries. Refugees who wish to repatriate to their

country will be assisted to do so. In addition, all refugees will be entitled to receive medical assistance for the seriously/chronically ill and the handicapped and educational assistance for primary and lower secondary education. Vocational training will be provided for those willing to develop their skills or acquire new ones. The level of UNHCR financial support is inadequate to meet all refugee demands and will remain of a supplementary nature only.

While it is anticipated that financial needs of individual cases will have to be reviewed periodically and assistance will need to be restarted for some cases, the introduction of rigorous needs assessment criteria will result in a significant number of refugees seeking their own solutions.

The OCM also helps those refugees who have requested to be assisted in their repatriation. Travel arrangements and bookings are made by OCM. Economy Class Tickets are purchased by OCM. The refugees' departure is subsequently confirmed with the airlines from New Delhi to the place of repatriation. Those who cannot meet the required expenses such as transport upto the airport and other expenses related to their departure and airport tax are given a maximum of Rs. 1,150. In addition, provision is also made for local travel of staff.

Refugees who cannot afford to bear the travel and related costs are assisted by the OCM for repatriation. They are interviewed by the OCM staff to assess the needs and the voluntary nature of their repatriation. Refugees are also requested to sign a voluntary repatriation declaration. The OCM assists in the required exit

formalities such as obtaining an exit permit from the Ministry of Home Affairs, the Income Tax Clearance Certificate from the Income Tax Office and provides air tickets and related travel expenses, viz. local transport, airport tax and pocket money.

The OCM will continue to assist Afghan refugees to regularise their stay in India by obtaining Indian residential permits. There are indications that the GOI is becoming increasingly restrictive in renewing Residential Permits for refugees who have been in India for many years and problems in this respect are anticipated. Refugees who are detained for illegal entry into India are assisted with legal support by UNHCR. UNHCR, thus, has multiple programme objectives for Afghan refugees.

The Tibetan Refugees

Following the occupation of Tibet by Chinese armed forces after 1950, and the military defeat of the Tibetan resistance movement in 1959, approximately 85,000¹² people fled into the neighbouring countries of India, Nepal and Bhutan. Many of these displaced Tibetans followed the Dalai Lama, the political and religious leader of the Tibetan people, into exile to cope with an uncertain future. He himself had managed to escape Chinese arrest and secured asylum in India.

¹² Tibetan Refugee Community: Integrated Development Plan- II, 1995-2000. Planning Council, Central Tibetan Administration of His Holiness the Dalai Lama, Dharamsala, 1994, p.2.

which was granted by then Prime Minister Jawaharlal Nehru.¹³

Central Tibet -- that part of Tibet ruled from Lhasa demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law.¹⁴ In 1950, there was a people, a territory, and a government which functioned in that territory, which conducting its own domestic affairs free from any outside authority. From 1913-1950, the foreign relations of central Tibet were conducted exclusively by the Government of Tibet. Central Tibet was thus, at the very least, a de facto independent State when, in the face of a Chinese invasion, it signed the "17 point Agreement" in 1951¹⁵ surrendering its independence to China. Under that Agreement, China gave a number of undertakings, including promises to maintain the existing political system of Tibet, to maintain the status and functions of the Dalai Lama, to protect freedom of religion and the monasteries and to refrain from compulsory "reforms". These and other undertakings were violated by China. The government of Tibet was entitled to repudiate the Agreement as it did in 1959.

¹³ Thomas Methfessel, "Socio-economic Adaptation of Tibetan Refugees in South Asia Over 35 Years In Exile", paper presented at the 7th Seminar of the International Association for Tibetan Students, Marburg, 1995, p.1.

¹⁴ "Tibet: Human Rights and the Rule of Law", a press release by International Commission of Jurists, Geneva, 1997, p.24.

¹⁵ A. G. Dulaney, D.M. Cusack and M.V.W.V. Praag, The Case Concerning Tibet, Tibetan Parliamentary and Policy Research Centre, New Delhi, 1998, p.1.

Even when the refugee problem caused by the partition in 1947 had not been fully settled, India had to face another refugee influx in 1959. As a result of the Chinese takeover of Tibet (China had only suzerainty over Tibet)¹⁶, Dalai Lama, alongwith his 13,000 followers, crossed over to India. The GOI solved the potential refugee problem by granting political asylum to Dalai Lama. After a preliminary screening procedure, the Tibetan followers of Dalai Lama were registered as refugees and given registration certificates. At the time of the initial influxes of Tibetans into India, no formal refugee status determination were undertaken and the Tibetans were issued "Indian Registration Certificates" on a prime facie basis under an executive decision. These certificates are valid for one year and are renewable. They identify the bearer as a "refugee with Tibetan nationality". Children of registered Tibetan refugees have to be in turn registered at age 18. These certificates serve as an identity document and a residential permit. Holders are associated with one of the settlement provided by the government and are entitled to membership of the cooperative¹⁷ associated with the settlement. Registration certificates have not been issued to Tibetans entering the country after

¹⁶ J.N. Saxena. "Proposals for a Refugee Legislation in India". Bulletin on IHL and Refugee Law. Vol.2. No.2(a) July-Dec. 1997. p.371.

¹⁷ These Cooperatives are largely agricultural in nature. They are all registered under the Indian Cooperative Societies Act.

the initial mass influxes.¹⁸

A travel document called the "Identity Certificate"¹⁹ is also issued by the GOI upon completion of the Application for Issurance of Certificate of Identity,²⁰ and after obtaining the "No Objection to Return to India" (NORI) Certificate by the concerned State government. NORIs are renewable every two years while the Identity Certificate is renewable after a six year period.²¹

According to a statement of the GOI in the Parliament, there were 80,000 Tibetan refugees in India on 23rd August 1994.²²

When the refugees from Tibet first began to arrive in India in 1959, the responsibility for them was placed not in the Home Ministry but in the powerful Ministry of External affairs headed by Prime Minister Nehru himself. Apart from providing land and economic assistance, the Kripalani Committee, in 1959, set up

¹⁸ Currently, approximately 150 Tibetans enter India annually. This includes persons who enter India only for temporary stay.

¹⁹ This document is not restricted to Tibetans. Pakistani, Bangladeshi and Chakma refugees have also utilized this travel permit.

²⁰ Issued by the Ministry of External Affairs after the Internal Security Department of the Home Affairs Ministry is made cognisant of this issue.

²¹ Smrithi Talwar, "Building a Regional Consensus on Asylum: The Indian Perspective", Bulletin on IHL and Refugee Law, Vol.1, No.2, July-Dec, 1996, p.256.

²² J.N. Saxena, "Proposals for a Refugee Legislation in India", op. cit. p.371.

the Central Relief Committee of India (CRCI) for Tibetan refugees whose purpose was to coordinate various relief efforts and to channel all non-governmental aids through CRCI.²³

With increased assistance from overseas agencies and government after 1962, the CRCI made a Master Plan for Permanent settlements in India. In 1964, the CRCI drew up a detailed plan for rehabilitation of the Tibetan refugees in India. Almost all the Western NGOs supported CRCI's Master Plan and channelled their funds through it. Besides, the GOI took several other steps and coordinated and cooperated with the Office of the Dalai Lama in dealing with the problem of rehabilitation and resettlement of Tibetan refugees.

They were settled in different parts of northern India especially near hill stations. The certificates of identity issued to them enable them to engage in gainful employment, economic activities and even travel abroad and return to India at will. Though they have not acquired Indian citizenship, they enjoy nearly the same privileges as any citizen of India except, of course, political rights.

All these refugees left their country to save their religion and culture and came to India with the hope for security of life and religious freedom. They were victims of politico-religious persecution. Their status falls into the matrix of the conventional definition of refugees of persecution. In India, Tibetans are called

²³ Dawa Norbu, "Refugees from Tibet: Structural Causes of Successful Settlement," paper presented at the Fourth International Research and Advisory Panel Conference on Forced Migration: held at University of Oxford from 5-9 January, 1993, p.18.

refugees in a political sense and most of the benefits which derive from refugee status are made available to them²⁴.

Here, the Dalai Lama's complex organization in Dharamsala has performed three vital and integrative functions. It has assumed a virtual monopoly to represent and act on behalf of the refugees in negotiation with the GOI and the NGOs concerning relief, rehabilitation and settlement of Tibetan refugees in India and to a lesser extent in Nepal and Bhutan. It organised the scattered refugees into several settlements and established its direct control over them.

Around 50 per cent of the Tibetan refugees belong to the agricultural settlements, most of which are located in south and central India²⁵. These refugees were given on an average one acre of land each by GOI. Moreover, they received agricultural equipment such as tractors and other tools of the trade. Each agricultural settlement now has a cooperative society to help the settlers market their goods outside the refugee enclosures. In addition, many families took to cattle-raising. As the income earned from agriculture is fairly low, it is often supplemented by carpet weaving or seasonal business in Indian cities. Tibetan families thus creatively combine agricultural work in the summer with selling garments from Indian factories during the winter months.

²⁴ N.L.N. Rao, Indian Practice of International Refugee Law, M. Phil. dissertation submitted to Jawaharlal Nehru University, New Delhi, 1991, p.12.

²⁵ Thomas Methfessel, *op. cit.*, p.14.

More than 10 per cent of the refugees live in handicraft centres and the so-called agro-industrial settlements. Settlements conforming to this type are located mostly in north India and Nepal. In the mountainous areas, there was much less land available as compared to the south Indian plains. Therefore, alternative economic enterprises emerged. The most important source of income for Tibetan refugees in the Himalayan region is carpet weaving. In some places, carpet weaving is supplemented by the production and sale of other traditional Tibetan articles including handicrafts. In addition, tailoring fashionable garments for tourists has also emerged as an income generating activity.

The third type comprises all the Tibetans in scattered communities which are independent of the rehabilitation programmes. They form roughly 25 per cent of the total refugee community. These Tibetans engage in some kind of business, ranging from hawkers with only a small amount of capital to large-scale entrepreneurs dealing in Tibetan carpets or antiques. Businesses include the service sectors with Tibetan restaurants as well as private handicrafts production. Agricultural and handicrafts-based settlements absorbed more and more Tibetans, whereas road-work camps played a major role in the first decade of exile. Only about 10,000 refugees coming before 1980 are still to be resettled, while a growing number have created an independent economic base for themselves.²⁶

²⁶ Ibid., p.15.

The GOI further facilitated this cultural preservation by allowing Tibetans considerable autonomy and, in particular, by permitting the office of the Dalai Lama to exercise administrative control over the settlements.²⁷

In India, the Tibetan polity, its settlements, its enterprises, and its religious-political structure have not only flourished but have transformed and developed from the prototype in Tibet into an active part of the modern world.²⁸

Since 1959, 53 refugee settlements have been established in India, Nepal and Bhutan. Of these, 26 are agricultural settlements, 16 are agro-industrial settlements and 11 are settlements based around handicraft centres.

In India and Nepal, 171 monasteries, nunneries and temples have been constructed since the Tibetans came into exile. Besides being religious institutions, these are important educational and cultural centres as well and are symbols of Tibetan identity. Around 13,500 refugees (roughly 18 per cent of the population) are monks and nuns.²⁹

All the settlements and most of the scattered communities have educational

²⁷ Melvyn C. Goldstein, "Ethnogenesis and Resource Competition Among Tibetan Refugees in South India: A New Face to the Indo-Tibetan Interface," in James Fisher (ed.) Himalayan Anthropology, Mouton, The Hague, 1978, p.398.

²⁸ Franz Michael, "A Nation in Exile: Building an Alternative Tibet", Tibetan Review, June 1986, p.9.

²⁹ Life in Exile, His Holiness the Dalai Lama's Central Tibetans Relief Committee, the Department of Home, the Central Tibetan Administration, Dharamsala, 1992, p.11.

facilities, starting from pre-primary and going upto Class XII in some settlements and upto class X in most settlements. There are several Tibetan boarding schools in different parts of India. Almost 25,000 children attend the 84 Tibetan schools in India, Nepal and Bhutan. Approximately 92 per cent of all Tibetan children in exile between the ages of six and 17 go to school, and 84 per cent attend Tibetan schools.

Because of diplomatic relations with People's Republic of China, the "Indian government has not formally recognised the Tibetan leadership in India as a government in exile."³⁰

But the Office of the Dalai Lama also taken initiatives through the UN to raise the status of the Tibetan issue to a new and sustainable level, and to ensure that the question of Tibet is placed permanently on the agenda of the international community as a political issue that requires a comprehensive political solutions. The Central Tibetan Administration (CTA) aims to achieve this through three principal avenues: first, by providing governments with accurate information and a comprehensive understanding of the situation in Tibet; secondly, by broadening its formal and informal bilateral and multilateral relations with other Governments; thirdly, by escalating pressure on China through the UN. In August 1991, this initiative succeeded in getting the UN subcommission on Human Rights to pass a

³⁰ Franz Michael, "Survival of a Culture : Tibetan Refugees in India", Asian Survey, Vol. 25, No.7 July 1985, p.740.

resolution censuring China's human rights record in Tibet.

The CTA maintains Representative Offices in ten countries in Asia, Europe and North America. These Office spearhead CTA's international relations and UN initiatives.

One of the greatest problems for the Tibetans is the growing population in the settlements due to the increasing number of births in the community and the steady stream of new refugees, which has increased since 1980 when travel restrictions from Tibet became more relaxed.

Since 1980, over 10,000 Tibetans have sought asylum in India, and the majority of these are children and young people under 25. This has put a severe strain on the already fragile economy and infrastructure of the settlements and the housing, sanitation, healths clinics, schools and other facilities are no longer equipped to deal with the number of people in the settlements. To add to the problems, the land allotted to the settlements, which has not increased in proportion to the population growth, is growing less fertile.

Furthermore, the lack of employment opportunities, especially for the educated young, means that more and more people have to leave the settlement to search for work outside and this threatens to undermine the whole reason for establishing the settlements in the first place.

Also, the Tibetan refugee economy is concentrated in agriculture, handicrafts and garment-selling. This narrow economic base makes the community

vulnerable to fluctuations in the market. Diversification is necessary to make the economy more stable and young people need to develop skills in such areas as technology and commerce.

Tibetan refugee community is said to be the relatively more secure when it comes to financial assistance. Apart from the different UN agencies, its principal donors include Swiss Aid, Norwegian Refugee Council, Indo-German Social Service Society, Christian Aid (UK), American Emergency Committee for Tibetan Refugees, Tibetan Refugee Aid Society (Canada), Oxfam (UK), Arbeiter - Wohlfahrt (West Germany) and Deutsche Welthungerhilfe (West Germany).

Comparing the two refugee groups we find that refugees receiving governmental recognition and patronage like the Tibetans are in a much better position than those recognised and assisted by the UNHCR.

Afghan refugees have not only been facing financial difficulties, their economic activities are a lot limited and constrained while the Tibetan refugees have freedom to take up employment activities or start a business. In case of Tibetan refugees, GOI itself has volunteered to coordinate the relief activities and even given land, financial aid and technological support for their rehabilitation which is not true for Afghans or for even other refugee groups recognised by GOI.

Afghans do not have liberty to freely move in or out of the country like the Tibetans have been allowed. The former because of their temporary status and

other factors are not in a position to pressurise the home government through international diplomacy or minor political activities which the Tibetans have been engaging in in this country.

But again while it remains true that the governmental recognition and support helps the matter but for the refugees, it definitely does not mean that the refugees recognised by UNHCR and not by the government, are harassed by the government. The GOI had allowed them to stay on but keep the pressure on for early repatriation or resettlement in a third country. In recent years, the GOI has conceded the same role to UNHCR by allowing them to verify the voluntary nature of repatriation of certain refugees groups.

UNHCR phased out assistance to refugees from Tibet over a decade ago. The GOI and the Office of the Dalai Lama continue to provide protection of the Tibetan refugees and assist them and UNHCR involvement with this group is not required. Periodic contacts are, however, maintained by UNHCR with the Office of the Dalai Lama in New Delhi regarding the continued flow of Tibetan refugees to India via Nepal.

ECONOMIC WELFARE

Employment in the Community - Table 1:

Employment Profile of Tibetan Refugee Community (percentage of working population in each occupation)				
	% in settlements		% in	% in
Occupation	Primary Employment	Secondary Employment	Scattered Communities	Total Population
Agriculture	46.7	40.3	3.5	29.8
Animal husbandry	6.1	10.1	0.2	3.8
Carpet - weaving	8.6	5.6	8.3	8.0
Handicrafts	0.9	0.3	2.9	2.2
Other cottage Industries	0.5	0.2	0.0	
Knitting	0.2	0.3	0.0	
Sweater - Selling	13.8	30.9	10.0	11.9
Other trading	4.9	6.3	45.0	19
Services	7.8	3.8	20.6	14.2
Other	10.5	2.2	9.5	10.6
Total	100.0	100.0	100.0	100.0

Table 2: Population of Tibetan Refugee Community

REGION	No.	POPULATION
SOUTH INDIA		32635
Settlements	5	32572
Scattered Communities	2	63
CENTRAL INDIA:		8436
Settlements	3	6015
Scattered Communities	3	2421
UTTAR PRADESH:		14289
Settlements	6	3581
Scattered Communities	7	10708
HIMACHAL PRADESH:		20307
Settlements	13	6387
Scattered Communities	14	13920
NORTH EAST INDIA:		8622
Settlements	3	5022
Scattered Communities	8	3600
WEST BENGAL AND SIKKIM:		12839
Settlements	4	1750
Scattered Communities	36	11089
LADAKH		7558
Settlements	3	7558
NEPAL:		15000
Settlements	10	5086
Scattered Communities	15	9914
BHUTAN:		1457
Settlements	7	1457
TIBETANS ABROAD		4634
TOTAL		1,25,777

CONCLUSION

CONCLUSION

As noticed in the previous pages, we find that despite being non-signatory to the international refugee regime, India has hosted some of the largest refugee movements of modern times. However, the GOI has consistently preferred to deal with the refugee issue on a bilateral basis and without international involvement. The GOI abstained from voting on General Assembly Resolution 428 (V) establishing the Office of the UNHCR since it considered UNHCR's mandate and role to be of little relevance to refugee situations in the Indian subcontinent.

Early UNHCR involvement in India was limited to assistance provided for Tibetan refugees through the League of Red Cross Societies in the 1960s and assistance to refugees from former East Pakistan (now Bangladesh) in the 1970s. Moreover, the closure of UNHCR's Office in 1973 blocked the opportunity to develop sustained cooperation with the Indian authorities.

On the other hand, refugee groups such as the Afghans, with whom UNHCR in India has dealt directly for over a decade, are not considered to be refugees by the government and of marginal interest to it. In India, UNHCR was, therefore, for many years seen to have a mandate of little relevance to India and dealing with issues of limited relevance to the government.

Since the reestablishment of a UNHCR presence in India in 1981, the government has made a clear distinction, as stated above, between those refugee groups who are considered as refugees by the Indian authorities and assisted by

them and to whom UNHCR has not been permitted access nor allowed to play any role, and, those persons who are not considered as refugees by the government and for whom UNHCR is allowed to exercise its mandate. For the first category UNHCR's protection mandate is, however, informally recognised and the OCM is able to intervene with the government to register its concern and to seek a limited role.

In recent years, there has been a significant shift in the level of cooperation between the Indian authorities and UNHCR. The organization's role in the Sri Lankan repatriation has led to a deeper appreciation of the mandate of the OCM and greater interest in its functioning. Indeed, close working relations with the Indian government on UNHCR's verification of the repatriation process has affected cooperation in a wider arena. The GOI's decision to seek membership of the Executive Committee is a reflection of this new concern. Although, UNHCR in India has functioned under the UNDP umbrella since 1981 and has not been permitted to establish an independent presence, it is time the Indian authorities enter into a Branch Office Agreement with UNHCR as soon as possible. It will facilitate better conduction and coordination of the refugee relief work. By being on the Executive Committee of UNHCR, the GOI has already, by implication, conceded the importance and utility of UNHCR.

The Primary objective of the OCM, in India should be to seek a formal accreditation of the Office in India, extend its role, gain access to all refugee

groups in the country and secure accession of India to the 1951. Convention and/or 1967 Protocol. In fact, it has been actively soliciting greater Indian participation in refugee affairs and trying to create public interest on refugee issues through a vigorous programme of promotional activities relating to the discrimination of refugee law, encouragement of research and studies on refugee issues and creating awareness of refugee problems with local institutions of higher learning, NGOs and professional bodies.

Complimenting the Indian response to refugees, a study of the US Committee for Refugees observed,

"Despite the curbs on international assistance and monitoring, India has accorded a welcome to asylum-seekers that is as generous as for any refugee groups in Asia. The record is not unblemished, to be sure. There have been instances of pushbacks and coercive measures to promote repatriation, but it has largely been the case that any person who has landed on the shore and asked for refuge, has been granted refuge."¹

And it is owing to this generosity that today there are an estimated 240,000 refugees in India,² including Tibetans, Sri Lankans, Tamils, Chakmas, Afghans and other categories assisted by UNHCR.

In spite of the fact that India has faced on many occasions in the last fifty years, and is still facing, acute refugee problem, leaving aside the minor influxes,

¹ V. Vijayakumar, "Should India Ratify the Refugee Convention and Protocol?: A Policy Perspective", Bulletin on IHL and Refugee Law, Vol.2, No.2 (A), July-Dec. 1997, p.326.

² J.M. Castro Magluff, "A Global Overview of the Refugee Problem", Bulletin on IHL and Refugee Law, Vol.3, No.1, 1998, p.86.

it is neither a party to the 1951 Refugee Convention, and/or 1967 Protocol nor it has a specific legislation on Refugee Law. The government generally meets its humanitarian obligations towards refugees and asylum seekers, but prefers to do so as a matter of administrative policy rather than as a legal requirement. It has, however, handled this issue at the political and administrative levels well. A virtual consequence is that refugees have to be treated under the law applicable to aliens in India, unless it makes a specific provision as it did in the case of Ugandan refugees of Indian origin when it passed the Foreigners from Uganda Order 1973.³

The concept of 'Refugee Law' in the Indian judicial system has evolved over a period of time. Due to lack of a refugee specific statute, the judicial system is constrained to enforce upon refugees, laws which are applicable to foreigners in general, thereby 'consciously or subconsciously ignoring the unique predicament peculiar to refugees'.⁴ Continued developments through the courts, government and international fora will all contribute to the process of making additional space for the humanitarian and legal concerns of forced population movements which result in refugee flows.

³ J.N. Saxena, "Refugee Rights", Bulletin on IHL and Refugee Law, Vol.3, No.2, July-Dec. 1998, p.245.

⁴ Sumbul Rizvi, "Response of the Indian Judicial System to the Refugee Problem", Bulletin on IHL and Refugee Law, Vol.2, No.1, Jan-June 1997, p.65.

The general principles of international law relating to refugees must be taken as incorporated directly into the Indian Constitutional Law via Article 21 particularly in view of the fact that India has acceded to the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child, and the 1979 Convention of the Elimination of All Forms of Discrimination Against Women. No provision either is the Foreigners's Act 1946, nor the Registration of Foreigners' Act 1939, nor the Passport (Entry into India) Act 1920, nor the Passport Act 1967 deals in any manner with refugee law. But there is also "no domestic law in conflict with international conventions, treaties and resolutions related to refugees".⁵

Also, the domestic Constitution and practices of the Republic of India are clearly embedded in human rights principles. The respected judicial system of this country has also been the high moral legal authority on human rights. The establishment by an Act of Parliament of 1993 of the National Human Rights Commission⁶ has further demonstrated India's commitment to uphold the international human rights regime. The Constitution, the Judicial system, the

⁵ Colin Gonsalves, "The Somewhat Automatic Integration of International Refugee Conventions in Indian Law", Bulletin on IHL and Refugee Law, July-Dec. 1998, p.253.

⁶ Augustine P. Mahiga, "Refugees and Human Rights", Bulletin on IHL and Refugee Law, July-Dec. 1998, p.222.

Commissions, the dedicated organisations and individuals in the field of human rights have all contributed in the promotion and strengthening of the human rights regime in India.

In recent years, there has been a rise in regional processes of consultation, many of which have been initiated by UNHCR in partnership with NGOs and eminent personalities. Such initiatives have included annual sessions of the Asian - African Legal Consultative Committee, the Fourth Informal Consultation on Refugee and Migratory Movements in South Asia (also known as the Eminent Persons' Group) and the Third Meeting of the Asia - Pacific consultations. In addition, local NGOs have begun to take the initiative to convene discussion on refugee issues in South Asia lately. This is exemplified in the Regional Consultation or 'Refugees and Forced Migration: Need for National Laws and Regional Cooperation' held in New Delhi in 1998. The consultation, organised by regionally-based human rights NGOs, is an important step on the path towards evolving a regional consensus on standards of refugee protection. Such meetings are a valuable part of the ongoing efforts, both formal as well as informal, to promote attention to refugee issues in South Asia.

It is hoped that with the changed global political scenario today as well as the emergent dynamics of the 21st century, India would make an earnest attempt to look into its decision and revise the same positively and become a party to the Refugee Convention and the Protocol.

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APPENDIX

APPENDIX I

CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951

United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Geneva, 2-25 July 1951

Date of entry into force: 22 April 1954

PREAMBLE

The High Contracting Parties Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms, Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement, Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation, Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees will do everything within their power to prevent this problem from becoming a cause of tension between States, Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner, have agreed as follows:

CHAPTER I: GENERAL PROVISIONS

Article 1

DEFINITION OF THE TERM "REFUGEE"

- A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:
 - (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken

by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

- (2) As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

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

- B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either
 - (a) "events occurring in Europe before 1 January 1951"; or
 - (b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

- C. This Convention shall cease to apply to any person falling under the terms of Section A if:
 - (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
 - (2) Having lost his nationality, he has voluntarily re-acquired it, or
 - (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
 - (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
 - (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under Section A(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:

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

Provided that this paragraph shall not apply to a refugee falling under section A(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. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

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

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

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

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 GENERAL OBLIGATIONS

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

Article 3 NON-DISCRIMINATION

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

Article 4
RELIGION

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

Article 5
RIGHTS GRANTED APART FROM THIS CONVENTION

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

Article 6
THE TERM "IN THE SAME CIRCUMSTANCES"

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

Article 7
EXEMPTION FROM RECIPROCITY

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

Article 8
EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9
PROVISIONAL MEASURES

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

Article 10
CONTINUITY OF RESIDENCE

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

Article 11
REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II: JURIDICAL STATUS

Article 12

PERSONAL STATUS

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

Article 13

MOVABLE AND IMMOVABLE PROPERTY

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

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

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

Article 15

RIGHT OF ASSOCIATION

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

Article 16
ACCESS TO COURTS

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

CHAPTER III: GAINFUL EMPLOYMENT

Article 17
WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: (a) He has completed three years' residence in the country, (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse, (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18
SELF-EMPLOYMENT

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

to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV: WELFARE

Article 20

RATIONING

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

Article 21

HOUSING

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

Article 22

PUBLIC EDUCATION

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

Article 23
PUBLIC RELIEF

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

Article 24
LABOUR LEGISLATION AND SOCIAL SECURITY

- (1) The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
 - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining; (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations: (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition; (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
- (2) The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
- (3) The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.
- (4) The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V: ADMINISTRATIVE MEASURES

Article 25

ADMINISTRATIVE ASSISTANCE

- (1) When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
- (2) The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
- (3) Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
- (4) Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
- (5) The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26

FREEDOM OF MOVEMENT

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

Article 27

IDENTITY PAPERS

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

Article 28

TRAVEL DOCUMENTS

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

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

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

Article 29

FISCAL CHARGES

- (1) The Contracting States shall not impose upon refugee duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
- (2) Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30

TRANSFER OF ASSETS

- (1) A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
- (2) A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE

- (1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
- (2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain

admission into another country.

Article 32
EXPULSION

- (1) The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
- (2) The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
- (3) The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33
PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")

- (1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34
NATURALIZATION

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

CHAPTER VI: EXECUTORY AND TRANSITORY PROVISIONS

Article 35

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

- (1) The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
- (2) In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) the condition of refugees,
 - (b) the implementation of this Convention, and
 - (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36

INFORMATION ON NATIONAL LEGISLATION

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

Article 37

RELATION TO PREVIOUS CONVENTIONS

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

CHAPTER VII: FINAL CLAUSES

Article 38

SETTLEMENT OF DISPUTES

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

Article 39

SIGNATURE, RATIFICATION AND ACCESSION

- (1) This Convention shall be opened for signature at Geneva on 28 July 1951 and shall hereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
- (2) This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- (3) This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40

TERRITORIAL APPLICATION CLAUSE

- (1) Any state may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
- (2) At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
- (3) With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

Article 41
FEDERAL CLAUSE.

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

- (a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States.
- (b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment.
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42
RESERVATIONS

- (1) At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16(1), 33, 36-46 inclusive.
- (2) Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43
ENTRY INTO FORCE

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

Article 44
DENUNCIATION

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

- (2) Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
- (3) Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45
REVISION

- (1) Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
- (2) The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46
NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

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

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

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

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

**THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES
AND THE PROTOCOL**

Date of entry into force: 22 April 1954 (Convention), 04 October 1967 (Protocol)

States Parties

As of 18 November 1997

Total Number of States Parties to the 1951 Convention:	131
Total Number of States Parties to the 1967 Protocol :	131
States Parties to both the Convention and Protocol :	127
States Parties to one or both of these instruments :	135

APPENDIX II
UN PROTOCOL RELATING TO THE STATUS OF REFUGEES OF 31
JANUARY 1967

Entry into force: 4th October 1967, in accordance with Article VIII

Text: United Nations Treaty Series No. 8791, Vol. 606, p. 267

The States Parties to the present Protocol

Considering that the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951.

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention.

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951.

Have agreed as follows:

Article 1
GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and " and the words " as a result of such events", in Article 1A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1 B (1) (a) of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.

Article 2
CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE
UNITED NATIONS

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

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent Organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
 - (a) The condition of refugees;
 - (b) The implementation of the present Protocol;
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 3

INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article 4

SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 5

ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

FEDERAL CLAUSE

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

- (a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- (b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the

legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment:

- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article 7

RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article I of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under Article 40, paragraphs, 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article 8

ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of

deposit by such State of its instrument of accession.

Article 9
DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article 10
NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article 11
DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.

General Assembly Resolution 2198 (xxi)
Protocol relating to the Status of Refugees
The General Assembly,

Considering that the Convention relating to the Status of Refugees, signed at Geneva on 28 July, 1951 covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the date-line of 1 January 1951,

Taking note of the recommendation of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees that the draft Protocol

relating to the Status of Refugees should be submitted to the General Assembly after consideration by the Economic and Social Council, in order that the Secretary-General might be authorized to open the Protocol for accession by Governments within the shortest possible time.

Considering that the Economic and Social Council, in its resolution 1186 (XLI) of 18 November 1966, took note with approval of the draft Protocol contained in the addendum to the report of the United Nations High Commissioner for Refugees and concerning measures to extend the personal scope of the Convention and transmitted the addendum to the General Assembly,

1. takes note of the Protocol relating to the Status of Refugees, the text of which is contained in the addendum to the report of the United Nations High Commissioner for Refugees;
2. Requests the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol.

1495th plenary meeting, 16 December 1966.

APPENDIX III
OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS ON
REFUGEE PROBLEMS

Adopted by the Assembly of Heads of States and Government at its Sixth Ordinary Session (Addis Ababa, 10 September 1949)

Entry into Force: 20 June 1974, in accordance with Article XI

Text: United Nations Treaty Series No. 14691

PREAMBLE

We, the Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,
2. Recognizing the need for an essentially humanitarian approach towards solving the problems of refugees,
3. Aware, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,
4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,
5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,
6. Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,
7. Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,
8. Convinced that all the problems of our continent must be solved in the spirit of the Chapter of the Organization of African Unity and in the African context,
9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,
10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State

and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa.

11. Convinced that the efficiency of the measures recommended by the present Convention to solve the problems of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High - Commissioner for Refugees. Have agreed as follows:

Article 1

DEFINITION OF THE TERM "REFUGEE"

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 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.
3. In the case of a person who has several nationalities, the term "a country of which he is 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 re-acquired it, or,
 - (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,
 - (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or,
 - (e) he can no longer, because the circumstances in connection with which he 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 of refuge 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 provisions 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.

Article II

ASYLUM

1. Member States of the O.A.U. shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.
2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.
3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article 7, paragraphs 1 and 2.
4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the O.A.U., and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.
5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his re-settlement in accordance with the preceding paragraph.
6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article 3
PROHIBITION OF SUBVERSIVE ACTIVITIES

1. Every refugee has duties to the country in which he finds himself which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the O.A.U.
2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the O.A.U., by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article 4
NON-DISCRIMINATION

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

Article 5
VOLUNTARY REPATRIATION

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the O.A.U., inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and inter-governmental organizations, to facilitate their return.

Article 6
TRAVEL DOCUMENTS

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.
2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.
3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognised and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article 7
**CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE
ORGANISATION OF AFRICAN UNITY**

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning:

- (a) the condition of refugees;
- (b) the implementation of this Convention, and!
- (c) laws, regulations and decrees which are, or may hereafter be in force relating to refugees.

Article 8
**CO-OPERATION WITH THE OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES**

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees. 2. The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Article 9
SETTLEMENT OF DISPUTES

Any dispute between States signatories to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the Commission for Mediation Conciliation and Arbitration of the

Organization of African Unity at the request of any one of the Parties to the dispute.

Article 10
SIGNATURE AND RATIFICATION

1. This Convention is open for signature and accession by all Member States of the Organization of African Unity and shall be ratified by signatory States in accordance with their respective constitutional processes. The instruments of ratification shall be deposited with the Administrative Secretary-General of the Organization of African Unity.
2. The original instrument, done if possible in African languages, and in English and French, all texts being equally authentic, shall be deposited with the Administrative Secretary-General of the Organization of African Unity.
3. Any independent African State Member of the Organization of African Unity, may at any time notify the Administrative Secretary-General of the Organization of African Unity of its accession to this Convention.

Article 11
ENTRY INTO FORCE

This Convention shall come into force upon deposit of instruments of ratification by one-third of the Member States of the Organization of African Unity.

Article 12
AMENDMENT

This Convention may be amended or revised if any member State makes a written request to the Administrative Secretary-General to that effect, provided however that the proposed amendment shall not be submitted to the Assembly of Heads of State and Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article 13
DENUNCIATION

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.
2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article 14

Upon entry into force of this Convention, the Administrative Secretary-General of the O.A.U. shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article 15

NOTIFICATIONS BY THE ADMINISTRATIVE SECRETARY-GENERAL OF THE ORGANIZATION OF AFRICAN UNITY

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:

- (a) of signatures, ratifications and accessions in accordance with Article X;
- (b) of entry into force, in accordance with Article XI;
- (c) of requests for amendments submitted under the terms of Article XII;
- (d) of denunciations, in accordance with Article XIII.

Made this 30th day of December, 1992.

FLT-LT JERRY JOHN RAWLINGS

Chairman of the Provisional National Defence Council

Date of Gazette notification: 27th August, 1993.

APPENDIX IV
CARTAGENA DECLARATION ON REFUGEES

Adopted at a colloquium entitled "Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios" held at Cartagena, Colombia from 19 -22 November 1984

Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the bases of which the Colloquium fully shares and which are reproduced below:

- (a) "To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees."
- (b) "To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants."
- (c) "To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above."
- (d) "To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State."
- (e) "To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate."
- (f) "To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR."
- (g) "To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees."
- (h) "To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety."
- (i) "To ensure that programmes and projects are set up with a view to ensuring the self-sufficiency of refugees."
- (j) "To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies."
- (k) "To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies."
- (l) "To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be

transferred to a third country against his will."

- (m) "To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem."
- (n) "To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps."
- (o) "To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation."
- (p) "To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees."

III

The Colloquium adopted the following conclusions:

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.
2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.
3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underline the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.
5. To reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens.
6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiency and integration into the host society.
7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.
8. To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx.
9. To express its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.
10. To call on States parties to the 1969 American Convention on Human Rights to apply this instrument in dealing with asilados and refugees who are in their territories.
11. To make a study, in countries in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their economic, social and cultural rights.
12. To reiterate the voluntary and individual character of repatriation of

refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation.
14. To urge non-governmental, international and national organizations to continue their worthy task, co-ordinating their activities with UNHCR and the national authorities of the country of asylum, in accordance with the guidelines laid down by the authorities in question.
15. To promote greater use of the competent organizations of the inter-American system, in particular the Inter-American Commission on Human Rights, with a view to enhancing the international protection of asilados and refugees. Accordingly, for the performance of this task, the Colloquium considers that the close co-ordination and co-operation existing between the Commission and UNHCR should be strengthened.
16. To acknowledge the importance of the OAS/UNHCR Programme of Co-operation and the activities so far carried out and to propose that the next stage should focus on the problem raised by massive refugee flows in Central America, Mexico and Panama.
17. To ensure that in the countries of Central America and the Contadora Group the international norms and national legislation relating to the protection of refugees, and of human rights in general, are disseminated at all possible levels. In particular, the Colloquium believes it especially important that such dissemination should be undertaken with the valuable co-operation of the appropriate universities and centres of higher education.

IV

The Cartagena Colloquium therefore

Recommends:

- That the commitments with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.
- That the conclusions reached by the Colloquium (III) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.
- That a volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents, and that the Colombian

Government, UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.

- That the present document should be proclaimed the "Cartagena Declaration on Refugees".
- That the United Nations High Commissioner for Refugees should be requested to transmit the contents of the present declaration officially to the heads of State of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombian authorities, and in particular to the President of the Republic, Mr. Belisario Betancur, the Minister for Foreign Affairs, Mr. Augusto Ramírez Ocampo, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de Indias and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolivar and the City of Cartagena. It also thanked the people of Cartagena, rightly known as the "Heroic City", for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practised by the Colombian people and authorities. Cartagena de Indias, 22 November 1984