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Rights of Refugees and Internally Displaced Persons with a special reference to South Asian region.

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ABSTRACT: *"From the initial idea and path breaking work on Refugee and Internally Displaced People's rights by the Norwegian Diplomat and Humanitarian Fridtjof Nansen at the turn of last century to the evolution of refugee rights legal framework at the turn of 21st century, the principles and corpus of law related to it has been widely studied and put in action. But the recent influx of the Syrian IDP's as refugees in EU especially Hungary and Greece as transit points and Germany, France and UK as the final destination has led to a compassion fatigue. On the other hand in the near neighborhood of South Asia though not even a single nation has signed and ratified the 1951 Convention on Refugee Rights and its 1967 Protocol it has done commendable work in hosting and providing legal and physical protection to Refugees and Internally Displaced persons by enacting Principles and National Laws as the case in the point are SAARCLAW and Model National Law."*

KEYWORDS: *1951-Refugee Convention, 1967- Protocol, Internally Displaced Persons, Guiding Principles, Non-Refoulement, Naturalization, OAU Convention Bangkok Principles, Cartagena Declaration, Schengen Agreement-1985, Dublin Agreement -1990,Rome Statute, Customary International Law, International Humanitarian Law, SAARCLAW, Model National Law, Safe Haven and Compassion Fatigue.*

This research paper is divided in to three parts the first part deals with the origin and development of International Refugee Principles and Organization and an overview of Refugee's and Internally Displaced situation in the Contemporary World, The second section deals with Refugee scenario in South Asia and Refugee Rights in the Region with special reference to SAARCLAW and National Model Law and in the last section of the paper Definition of IDP's and its definitional difference with that of refugees, Guiding Principles and development in the legal protection of IDP's with special reference to India as a leading South Asian Nation are discussed.

Origin and Development Of International Refugee Principles And Organization.

In the development of refugee law, there has always been a western influence that got established through a series of events, rather than a global influence.

In modern times the development of refugee law and principles can be traced back to the conclusion of World War I when under the aegis of League of Nations, an office of High Commissioner was established on June 27, 1921 under Dr. Fridtjof Nansen of Norway for Russian refugees (Dr. Nansen was appointed the first High Commissioner on Aug 20, 1921, In 1921 after an International Convention, he devised a so called League of Nations Passport, commonly known as 'Nansen Passport', a travel document that gave the owner the right to move more freely across national boundaries; He also came out with an another novel approach to help out poor refugees by taking 5 gold francs from richer refugees in lieu of Nansen Stamps) this convention was adopted by 53 countries, subsequently similar instruments were adopted to extend such benefits to the Armenian, Chaldean, Assyrian, Turkish and other group of refugees.

The functions of the High Commissioner as laid down were (a) To coordinate the actions of governments and private organizations for the relief of Russian refugees. (About 1 million of them were avoiding persecution and massacre by emerging state of USSR during 1917-22)

b). To regulate the legal Status of a large class of persons who have been rendered stateless and

c). To assist them in their needs to find permanent homes & work etc.

After the death of Dr. Nansen in 1930, the assembly of League of Nations abolished the High Commissioner's post and the task of the protection to refugee was entrusted to the Nansen International Office for Refugees. The supreme authority in office was rested in governing body headed by a president nominated by the Assembly. The problem of refugees assumed disproportionate dimension after Hitler's Accession to power in 1933 & later on during the IInd World War which dislocated the unarmed civilian population in huge numbers.

In 1933 another Convention was held relating to the International Status of Refugees. At this Convention, the first reference is found to an international agreement to the principle of Non Refoulement under article 3.

Subsequently the League of Nations appointed a separate High Commissioner to take care of some of refugees from Germany. This office was created in addition to the Nansen's Office and had no links with the High Commissioner's Office created earlier. Thus two different High Commissioners' for refugees existed, to take care of two different groups of refugees. However on 30th September, 1938, the League of Nations decided to have a single authority in place of the two High Commissioners'. The new office was called the High commissioner for Refugees. This new office was given tenure of 5 years and had its Headquarters in London. Sir Robert Emerson, a British civil servant was appointed to the newly created office and assigned the following functions.

1. Coordination of humanitarian work.
2. Promotion of resettlement opportunities and
3. Supervision of the application of various Conventions & Instruments on International protection.

At Evian in France, 32 States assembled and formed an International Committee for Refugees to consider various measures to facilitate the migration of refugees from Germany and Austria. In 1943 the mandate of the committee was extended to include refugees from Spain and all other groups of refugees who emerged during World War II. The end of war witnessed an unprecedented influx of refugee population. To meet these situation 44 allied nations established a new agency called the UN Relief and Rehabilitation Administration on 9th Nov 1943. (Soviet Union did not permit UNRRA to operate in Soviet Zone).

Its main function was limited to extending assistance to displaced persons and did not cover refugees specially.

The developments during this period under the League of Nations, excepting the last one, would indicate that the status of refugees was based on a specific group or class of people fleeing their country of origin. The individual refugee was not the focus. One important contribution of this period to refugee law was the establishment of the principle of Non-Refoulement which is now considered part of the Customary Principles of International Law.

The task of caring for refugees indicates an international concern because of:

a).A moral obligation imposed on nations.

b).The humanitarian aspect of the refugee problem, recognized by the UN Charter, which has distinct provisions for receipt and protection of human rights as provided under Articles 1 and 55 (c).

c).The ever increasing refugee influxes due to various natural and man-made disasters and

d).That the refugee problem can be effectively tackled only by a properly established International Organization with regular and specialized manpower. The first moral duty must be to understand purely as a self-imposed obligation on the part of the receiving State & no legal implications may be attached to that obligation.

However with 145 nations becoming party to the 1951 Refugee Convention or the 1967 Protocol or to both there exists a clear legal obligation arising out of these Instruments.

The UN General Assembly passed a resolution on 12th February, 1946, in which it expressed its concern over the plight of refugees and also laid down three broad guidelines or principles to deal with the situation they were:

1. The refugee problem should be viewed as International in scope and nature.
2. That there should be no forced repatriation and
3. That the repatriation of displaced persons should be pursued and assisted.

On 15th December, 1946, another resolution was passed by the General Assembly through which an IRO was established. Since UNRRA & the International Committee for Refugees were nearing the end of their tenure (1947) and the mandate of the leagues High Commissioners for Refugees was also terminating. Till then these three agencies had helped 21 million people scattered through-out Europe. The IRO was created as a temporary, specialized field agency with a lifespan of 4 and1/2 yrs. Its main task was the protection & resettlement of about 2 million people who were reluctant to return their homeland from where they had been uprooted. A preparatory commission for IRO, PCIRO was established and on July 1st, 1947 took over the functions & activities previously exercised by UNRRA on behalf of refugees and displaced persons. It performed the functions until August, 20th 1948; IRO succeeded the preparatory commission on the same day. It ceased its operation in February, 1952 (settling about 2 million refugees) the assistance provided by it included the care and maintenance of refugees in camps, vocational training orientation for resettlements and an extensive training service.

UNHCR

Statute and role of UNHCR with development of Regional and International arrangements.

The present convention that has been widely accepted was drafted between 1948 and 1951, the General Assembly on December 3rd 1949 decided to establish UNHCR, it in its resolution 428 (v) of 14th December 1950 adopted the Statute of the office of the UNHCR. The statute itself was annexed to this resolution which entered into force on 22nd April1954.

UNHCR came into existence on January 1, 1951, UNHCR was set up initially for a period of three years, later General Assembly decided to prolong the mandate for a further period of 5yrs and made it renewable beginning from Jan 1st 1954. UNHCR is a subsidiary organ of the General Assembly. The High Commissioner is required to report annually to the General Assembly through the ECOSOC and its report is considered as a separate item. Its Head Quarters are in Geneva, Switzerland which coordinates, the activities of 274 subordinate offices located in as many as 68 States. The office also develops appropriate policy to curb the refugee problems. The High Commissioner is elected by the General Assembly on the nomination of the Secretary General and is responsible to the Assembly.

The High Commission's program me is administered by a 30 member executive committee, which generally meets twice a year at Geneva. It consists of representatives of members of the United Nations and of the specialized agencies, who are elected by the ECOSOC on the widest geographical basis from among those states with a demonstrated interest in and devotion to the solution of the refugee problems.

Mandated refugees, as defined in the UNHCR statute are person who, owing to well-founded fear of persecution for reason of race, religion, nationality or political opinion, are outside their country of origin and cannot or, owing to such fear do not wish to avail themselves of the protection of that country. UNHCR is not of course, concerned with all refugees, throughout the world. For instance, refugees considered as nationals by the countries which have granted them asylum are not a UNHCR responsibility, nor is UNHCR concerned with refugee for whom another United Nations body has assumed full responsibility, such as the Arab refugees from Palestine under the mandate of UNRWA.

The work of UNHCR is humanitarian, social, and non-political. Its basic tasks are to provide International protection to the refugee's within High Commission's mandate and to seek permanent solution to their problems by facilitating their voluntary repatriation or their assimilation within new national communities. The UNHCR initially focused its efforts on aiding refugees and displaced persons in Europe after World War-II, but in later decade's effort was shifted to resettling refugees who were the victims of war, political turmoil or natural disasters in Africa and parts of Asia and Latin America. The UNHCR was awarded the Nobel peace prize twice in 1954, and 1981 for its excellent work.

UNHCR's mandate was to protect refugees but in recent years it has been involved in programs for IDPs as well. The agency can act to help these people at the request of the Secretary General of UN's or a competent principal organ of the UN's and with the consent of the government of the country involved. At various times and in operations of diverse magnitude UNHCR has helped IDPs in Afghanistan, Angola, Azerbaijan, Bosnia and Herzegovina , Croatia, El Salvador,, Ethiopia, Georgia, Iraq, Syria and Yemen.[1.]

An Overview of Refugee's and Internally Displacedin the Contemporary World

The latest figures available show that the number of refugees of concern to UNHCR in mid-2014 stood at 13million. A further 5.1millionregistered refugees are looked after in some 60 camps in the Middle East by United Nations Relief and Work Agency for Palestinian Refugees in the Near East(UNRWA), which was set up in 1949 to care for displaced Palestinians. The refugees of concern to UNHCR are spread around the world, with half in Asia and some 28 percent in Africa. They live in widely varying conditions, from well-established camps to makeshift shelters or living in the open.

More than half of all refugees of concern to UNHCR live in urban areas. They all face three possible solutions i.e. repatriation, local integration or resettlement.

The growing number of refugees around the world is over shadowed by the even greater number of IDP's, who have not crossed the international border in search of shelter and safety.

As of end of 2014,a record breaking 38million people were forcibly displaced within their own country by violence, up from 33.3million for 2013.A massive 11million of these were newly uprooted during 2014 according to annual figures from Norwegian Refugee Council's Geneva based Internal Displacement Monitoring Centre(IDMC).

By the mid-2014, the UN refugee agency was caring for around 26million of the world's IDP's population. Like refugees, they are forcibly displaced by conflict, generalized violence and human rights violations. UNHCR helps IDP's as part of a wider intervention by the international community.

The IDMC's global overview 2015 reported that the majority of the increase in new displacement during 2014 was the result of protracted crises in Democratic Republic of Congo, Iraq, Nigeria, South Sudan and Syria. These five countries accounted for 60 percent of new displacement worldwide.

Iraqi civilians suffered the most new displacement due to ISIS insurgence with at least 2.2million displaced in 2014, while at least 40 percent of Syria's population, or 7.6 million people, have been displaced-the highest number in the world. And Europe, for the first time in more than a decade, suffered massive enforced displacement. This was caused by war in eastern Ukraine, where more than 6, 40,000 people fled home's in 2014.

Over the years, the number of UNHCR personal, operations and offices has increased to meet new and growing needs around the world. In recent years, the refugee agency has been cutting back staff in headquarters and allocating more resources to field operations. On financial front, UNHCR has been appealing for more and more from generous donors in the public and private sectors in recent years. The annual budget is USD 7 Billion in 2015.The figure rose as the agency based its appeals on the real needs of people of concern.[2.]

By the end of 2014 Syrian refugees surpassing 4 million have become the largest source of refugees surpassing Afghanistan and renewed conflict and security concern in Afghanistan meant that by the end of 2014 the number of IDP's in that country was estimated at 805,000.

Developing countries host 86% of world's refugees, compared to 70% ten years ago. While Turkey hosts most of the refugees in the world at 1.59million, Lebanon has the highest per capita refugee population in the world.[3.]

Refugees in South Asia an Overview

South Asia, like other parts of the world, is faced with the growing humanitarian, political and economic challenges posed by movements of forcibly displaced persons. It is estimated that : the South Asian region hosts around 1.5 million Refugees who have fled across international borders due to war, persecution and human right violations in their country of origin. These refugees are largely cared for by Governments and the Office of the United Nations High commissioner for Refugees. In addition, the SAARC region hosts large number of Internally Displaced Persons who have also fled their homes but remain within the boundaries of their homeland in refugee like conditions. As well, Stateless persons are another distinct group who have been subjected to forced movement across international borders, but may be unable to find acceptance and durable solutions to their problems.

Refugees in South Asia account for nearly one tenth of the global refugee population, yet there is visible lack of a refugee regime in all the SAARC countries. Although by and large South Asian countries have been generous

in granting asylum to refugees despite their strained resources, policies towards refugees have been based on ad hoc administrative decisions with no legislative framework to clearly define parameters.

The situation is further compounded by the fact that none of the SAARC countries have acceded to the 1951 UN convention and the 1967 Protocol relating to the status of Refugees, the main international instruments for protecting refugees. There is neither a regional treaty nor declaration on refugees, nor have any of the SAARC countries adopted a national legislation for the protection of refugees. The lack of an adequate legal regime to ensure the rights of refugees, who as aliens are often among the most vulnerable members of society, is an ongoing problem. Having lost the protection of their country of origin, refugees often lack legal recourse in host countries to ensure their basic human rights including the right to Non-Refoulement i.e. Non-expulsion to one's country of origin.

The most important direction of refugee flows has been within the Third World; from one South Country to the other. What has facilitated most of the South-South refugee flows are the factors like contiguous and porous borders, socio cultural identities of the people across the borders and encouragement by the neighboring states for strategic or humanitarian reasons.

If we look at the South Asian refugee situation in the long term perspective, taking into account nearly twenty million refugees that crossed newly created international borders between India and Pakistan between 1947 and 1950, about 10 million refugees that came to India from the then East Pakistan in 1970-71 during the emergence of Bangladesh, and more than 3.5 million Afghans who took refuge in Pakistan during the early Eighties in the wake of the then Soviet military intervention, the region would clearly be one of the most persistently and seriously affected one.

The traumatic birth of modern India resulted in large scale population movements, the likes of which had never before been witnessed in this part of the world. While still recovering from the rehabilitation process, India gave refuge to Tibetans, who currently number over 100,000 and in 1971 India also provided temporary refuge to over ten million refugees from erstwhile East Pakistan until they returned home voluntarily to an independent Bangladesh. Today India hosts approximately 40,000 Chakma's from Bangladesh, 100,000 Sri Lankan Tamil refugees and over 17000 refugees of other nationalities, including Afghans. India has also facilitated the repatriation of a large number of Chakma & Sri Lankan refugees.

Most of the South Asian Countries have been receiving as well as generating refugees. Where ethno-cultural and religious moorings have been the major factors in Pashtuns, Lhotsampa's Tamils and Rohingya's relocating to the neighboring countries. India has been more of a refugee receiving than a generating country due to its easily accessible border, socio cultural identities, economic opportunities and a democratic and generally soft state, in relation to almost all the neighbors.

If the flow of refugees from East Pakistan in 1970-71 is discounted, Pakistan has also been on the receiving side of refugees, but then Pakistan does not have common border with any other South Asian Country except India. And most of the refugees received by Pakistan have not been from India but from Afghanistan, due primarily to geographical proximity and socio cultural identities. Sri Lanka's island status has spared it from being a host to asylum seekers.

Bangladesh, which has generally been a refugee generating country, and there are Bangladeshi refugees all over South Asia in India, Nepal, and Pakistan, It also had to receive Muslim refugees, Rohingya's, from Myanmar, when in 1978, the Myanmar government started cracking down on non-nationals. The Myanmar government's contention was that these people did not have any nationality certificate with them as they were in fact the recent illegal migrants from Bangladesh.

Similarly Nepal, which has generally been a source of migrants to India and, to a much smaller extent, Bhutan, not only received refugees from Tibet, and has been complaining of large scale migrants from India and to a lesser extent from Bangladesh, since the late Seventies.

In recent years, Nepal has also received nearly 85,000 persons of Nepali origin from Bhutan as a consequence of ethnic conflict between the Nepalese of Southern Bhutan and the highlander Drukpa's of Tibetan origin. Bhutan refuses to accept them as its nationals and pleads that many of them were economic migrants from Nepal or India, who came to work on the kingdom's various developmental projects even during the British period in

South Asia. Bhutan also had to accept Tibetan refugees but in the mid-eighties, it forced them out because of ethnic tensions between the Tibetans and local residents.

Refugee Rights in South Asian Region

Though none of the South Asian nations have ratified the 1951 UN Convention and the 1967 Protocol, at least three of them are the members of the EXCOM of the UNCHR. In the process, they have reduced the status of fleeing humanities to political arbitrariness. The grant of refugee status has been at the discretion of the political authorities. For example, Pakistan gives refugee status only to Afghans. Others are mostly declared as illegal immigrants not eligible for work permits or public education.

No South Asian countries have any constitutional provisions to deal with the refugees. As a result most of them deal with them on an ad hoc basis. In many cases the refugees have been used as pawns in regional geo-politics. Each country has different arguments to offer for not ratifying the 1951 UN Convention and 1967 protocol. For instance, India does not agree with the very definition of the refugees and wants these Convention and Protocol to have strong provisions for insulating the refugee influx-prone developing countries against massive influx. In other words, it wants the affluent developed nations to share at least equitably the increasing refugee burdens. It is worried at the closing down of gates by the developed market economies.

On the other hand Pakistan feels that without ratifying these international instruments also, it has been able to host and manage refugees in a scale much larger than the developed market economies. Many scholars have now started focusing on enabling national laws and organization like India Centre for Humanitarian Laws and Research has even drafted Model National law on refugees. At the regional level, the SAARC can play an instrumental role in formulating, a regional convention on refugees management. The SAARC already has two major conventions viz., Agreement on Establishing the SAARC Food Security Reserve (SFSR-1987) and a later Convention which embodies and gives a regional focus to many of the well-established principles of International Law in this respect. Under its provisions member States are committed to extradite or prosecute alleged terrorists thus preventing them from enjoying safe havens. This convention also envisages preventive action to combat terrorism.

SAARCLAW

Taking the lessons from other regional arrangements like that of organization of African Unity (1969) and Cartagena Declaration (1984) some kind of debate has been initiated in South Asia also towards a comprehensive regional convention that could incorporate the aspirations of the regional member countries in a more forthright and nondiscriminatory manner. This can in fact be realized through the SAARC forum using the SAARCLAW as the pressure group.

The **SAARCLAW** is an Association for persons of the legal communities of the SAARC countries, established in 1991 and is the first body (SAARC Chamber of Commerce and Industry—SCCI, 1992 was the second one recognized by SAARC as a regional apex body. The success brought about by the consistent pressure of the SCCI on the SAARC member countries in introducing South Asian Preferential Trading Arrangement (SAPTA) and South Asian Free Trade Are (SAFTA) by 2001 can be cited as a major breakthrough in the thinking process in South Asia. Therefore, the offices of the SAARCLAW stand to be most effective instrument in trying to evolve a regional convention on the refugees. This has three distinct immediate advantages. Firstly, this will pave the way for the member States in designing their own national laws. Secondly, it will also expedite the process of ratifying the 1951 UN Convention and the 1967 Protocol by the South Asian nations. And thirdly, regional approach may persuade the other nations in the UNHCR to make the definition more comprehensive. In fact some of these countries are yet to examine the benefits these non-signatory nations have foregone as compared to the signatory nations and the price these non-signatory nations have to pay in not ratifying these instruments.

A UN Convention on the Status of Refugees held in 1951 defined a refugee as any 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.

A growing community of scholars and practitioners in the field of refugee problem tend to follow a broader framework of refugee status in order to be as helpful as possible. An important aspect of legally defining the refugee status is that such definition decides entitlement of support and protection from international community, particularly the organizations such as UNHCR and also a number of humanitarian inter-national organizations.

The presence of an adequate regime governing the admission, treatment and voluntary repatriation of refugees would serve to address various concerns regarding refugees such as:

Exclusion from Refugee Status

Asylum seekers found to have committed war crime or crimes against peace, or crimes against humanity; serious non-political crimes outside the country of refuge, or are guilty of acts contrary to the purpose and principles of the United Nations, do not qualify for refugee status under International Law. During the period of asylum, a refugee should be legally entitled to the basic rights of humanitarian treatment in terms of right to life and liberty, equality, sustenance, work, health care, primary education etc., subject to certain obligations by the refugee to the host country.

The primary right of a refugee is to seek and enjoy Asylum in another country. This right is protected by **the corner stone principle of Non-Refoulement** which is considered a norm of Customary International Law and ensures the right of non-expulsion, push-back or interdiction of asylum seekers and refugees to a place where they may face human rights violation. Other International Law provisions notably the Convention against Torture enhance this principle of non-return.

Cessation of Refugee Status

Refugee status need not be permanent, it cease when the refugee voluntarily avails the protection of his/her country of origin; voluntarily re-acquires nationality or protection of the country of origin or any other country, or when the circumstances in connection with which the person has been recognized as a refugee have ceased to exist thereby enabling state return.

Durable Solutions

Apart from provision of cessation clause, International Refugee Law and practice provides for three distinct durable solutions depending upon the circumstances; these are: voluntary repatriation to country of origin, local integration in country of asylum, and resettlement to a third country. The international system of refugee protection ensures the protection of refugees, as well as the interests of the State.

However, the benefit of refugee status may not be claimed by a refugee or asylum seeker where there are reasonable grounds for regarding him or her as a danger to the security of the country or who has been convicted by a final judgment of a serious crime and constitutes a danger to the community. It is apparent that the existence of an adequate refugee regime would determine the fate of refugees by the rule of law manner than by ad hoc administrative measures. Many other relevant provisions of International Refugee Law and practice could be relied upon as guiding principles.

The Regional consultations on Refugee and Migratory Movements in South Asia was initiated in November 1994 by a group of eminent persons from the SAARC countries for the purpose of providing a platform for discussing and developing strategies to address forced population displacements in South Asia.

The eminent personalities have evinced concern over the need to protect the basic human rights of refugees who have been subjected to forced movements for reasons beyond their control. As part of its deliberations, the Regional Consultations has focused on possible means of alleviating the plight of refugees to be balanced with the legitimate security concerns of States. To this end, the need for domestic legislation on refugees was unanimously deemed to be of priority in the region.

Towards that end, in 1996 a pilot group led by justice P.N. Bhagwati former Chief Justice of India drafted a Model National Law on Refugees and presented it for appraisal at an SAARCLAW/UNHCR seminar held in May 1997 at New Delhi. An amended draft law was formally adopted at the Fourth Regional Consultations held in Dhaka in November 1997. Consequently, the Fifth Regional Consultations held in Kathmandu in November 1998 agreed that the draft law may be individually taken up by its members with their, respective countries for further country-specific refinement and consideration at the national level.

Being an association of the legal fraternity from the South Asian countries believing in the objectives of SAARC (South Asian Association for Regional Co-operation), and aware of the relevance of rule of law in contemporary society, SAARCLAW is the logical organization to take up the issue of refugee protection in South Asia.

Model National Law

In many instances regional approaches have been an important means of strengthening refugee protection as well as finding solutions to refugee problems, taking into account both the opportunities as well as constraints which exist at the regional level, but which may not be fully appreciated or relevant at the global level. Countries in Africa, Europe and Central America have both acceded to the international instruments and also developed regional treaties or other declarations to meet specific concern.

More specifically, these various approaches can be described as follows.
(i) Legally Binding Instruments and Non Legally Binding Principles and Declarations.

Legally binding instruments which have adopted a regional approach include the OAU Convention Governing specific aspects of the Refugee Problem in Africa (1969) and in Europe the Schengen and Dublin Agreements (1985 and 1990 respectively). Both treaties were sponsored by regional organizations, in one case the OAU and in the other the European Union and both were made possible by strong political consensus on the issues. In the case of Africa, the OAU Convention seeks to broaden the definition of "refugee" to include those fleeing apartheid' decolonization and generalized violence. It also emphasizes voluntary repatriation as an important solution to refugee problems in Africa.

The Dublin and Schengen Agreements on the other hand were drafted in order to harmonize European practices and procedures relating to asylum seekers so as to ease the removal of internal borders of the European Union. The Central American region chose to take the path of a non-binding declaration because government's consensus was lacking in the organization of American States (OAS) on a regional convention on refugees. Different legal traditions prevail in different parts of the region (Latin America believes in the principle of diplomatic asylum which is not recognized elsewhere). Also the United States being an immigrant country has a different approach to receiving refugees compared to other OAS members.

The Cartagena declaration was thereby a product primarily of the non-governmental process, yet it recognized the concerns of the region and reflected consensus on practices and policies in the region to such an extent that Governments have tended to follow it as a matter of policy, even though it is not legally binding on them.

Another example of a non-binding instrument is the 1966 Bangkok principles concerning the Treatment of refugees adopted by the Asian-African Legal consultative committee which is an inter-governmental body. Because of the advisory nature of the AALCC and the divergence among the member countries of Africa the Middle East and Asia who comprise the AALCC the Bangkok Principles have had less of an impact and they remain of value as the only regional refugee document applicable to Asia. However recently interest in the Bangkok Principles has been revived and currently the text are being examined by the AALCC Membership.

The Countries in South Asia have during the past relied on traditional principles of asylum founded in their historical, religious and cultural practices. The principles underlining the traditional practices had by and large confirmed to the standards found in International Refugee Law. This is evident from the absence of severe international criticism of South Asian asylum practices. It is in the above background that the National Model law on Refugees was discussed and approved by the informal consultations on Refugees and Migratory Movements in their 1997 Dacca Session. The Informal Consultations which had the benefit of active participation of eminent jurists and opinion makers in South Asia as well as UNHCR expertise consensually recognized the importance of translating, the traditional practices of asylum in the region into tangible National laws based on a common model. This was considered a prerequisite before proceeding to initiate discussion on a normative regional Declaration or Convention on refugees.

The National Model Law incorporates the fundamental elements of 1951 Refugee Convention and its 1967 Protocol as well as elements from the expanded refugee definitions of the 1969 OAU Convention and the 1984 Cartagena Declaration. National Model law had also drawn from 1966 Bangkok Declarations on principles concerning the Treatment for Refugees of the AALCC. The various conclusions of the Executive Committee of the High Commissioners Office on different aspects of refugee protection, such as minimum standards of treatment the principle of non Refoulement ,voluntary repatriation, special needs of refugee women and children and special situations of mass influx have found their way into the National Model Law making the proposed Model, comprehensive and modern.

Standards of Treatment of Refugees

The minimum standard is a subject of debate. The 1951 Refugee Convention stipulates number of social and economic rights as well as the right to naturalization which are hardly feasible in the developing world furthermore, questions have been raised on the over emphasis placed on refugee rights and not on refugee obligations towards the country of asylum. In an apparent attempt to meet this criticism the National Model Law in paragraph 14 makes provision for rights and duties of refugee as follows:

Every refugee so long as he or she remains within this country shall have the right to:

1. Fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.

2. Receive the same treatment as is generally accorded to aliens under the Constitution or any other laws and privileges as may be granted by the Central or State Government.

3. Receive sympathetic consideration by the Country of asylum with a view to ensuring basic human entitlement.

4. Be given special consideration to their protection and material well-being in the case of refugee women and children.

5. Choose his or her place of residence and move freely within the territory of the country of asylum, subject to any regulations applicable to aliens generally in the same circumstances.

6. Be issued identity, documents

7. For the purpose of travel outside and back to the territory of the Country of asylum unless compelling reasons of national security or public order otherwise require and

8. Every refugee shall be bounded by the laws and regulations of the Country of asylum

Provisions in paragraph 14iv National Model Law for special consideration of women and children is unique feature not found in any other refugee instrument. It is estimated that over 70% of worlds refugees are women and children. Refugee women are rendered vulnerable during war as well as in the refugee camps. Concerns have been raised on sexual violence perpetrated on refugee women in a number of UNHCR Executive Committee Resolutions (39 XXXVI and 64 XLI Refugee Women and International protection), and (73 XLIV Refugee Protection and Sexual violence). The above resolutions dealing International Protection have set out guidelines for special protection of these vulnerable sections of refugee population.

The refugee children without having the basic facilities for education and development in refugee camps in asylum Countries are precariously placed. The Convention of the Rights of the Child ratified by all the countries in the South Asia has special provisions for the protection of refugee children. UNHCR Executive Committee had adopted resolutions on Refugee Children to ensure access to the basic education and provide food security (No. 59 (XL) P. 1989), (No. 47 (XXXVIII) 1982). Many refugee children are often unaccompanied minors needing special care and protection. The provisions in the Model Law for special considerations of women and children assume significance in this context.

The issue of illegal migration from Bangladesh is likely to be one of the major points of contention in the years to come. The demographic changes in some of the Indian districts bordering Bangladesh bear out the dimensions of the movement of the people. Some of the migration is also seasonal. It is an issue that is routinely raised by the Government of India and equally routinely denied by the Bangladesh, though at times the nuances are visible. There are no easy answers and the best way out could be legalizing the movement by the issue of work permits. This is an idea raised sometimes in India but somehow not pursued; this would at least ensure that foreign nationals would not acquire Indian citizenship.

Non Refoulement

The Non-Refoulement provision in the Model law is wider in scope then that in the 1951 Convention, but more restrictive than the OAU Convention. In the Model Law, non Refoulement is applicable to asylum-seekers as well as refugees, thus incorporating the principle of "non-rejection at the frontier". The 1951 Convention

provision on non-Refoulement, on the other hand, refers specifically to "refugee" only and this has been interpreted by States generally to exclude the principle of non-rejection at the frontier. Like the Model Law, the non-Refoulement provision in the OAU Convention and in the Bangkok Principles also specifically covers asylum seekers, the OAU Convention refer to "No person shall be subjected to measure such as rejection at the frontier…" while the Bangkok Principles refer to " no one seeking asylum… shall be subjected to measures such as rejection at the frontier…". The Model Law non-Refoulement provision has wider coverage by using the term "place" in lieu of such terms as "frontiers of territories", "territory' and "State or Country", which are terms used respectively in the 1951 Convention, the OAU Convention and the Bangkok Principles. The word "place" is seemingly wider as it could be interpreted to include any area on land, whether this is a State or frontier or not, as well as any area at sea.

The Model Law is also wider in using the phrase "where there are reasons to believe his or her life or freedom would be threatened" as opposed to the more definitive phrase, "where his life or freedom would be threatened …" as contained in the 1951 Convention and similar phrase in the OAU Convention and the Bangkok Principles.

The exception to non-Refoulement is similar to that in the 1951 Convention. The 1951 Convention however, qualifies the term "serious crime" with "particularly", thus requiring the commission of an extremely serious crime for the application of the exception to non Refoulement .The OAU Convention does not have any exception to non-Refoulement while the Bangkok Principles excepts non-rejection at the frontier on basis of overriding reason of national security of safeguarding the population.

It may further be noted that the 1951 Convention contains provisions covering specifically expulsion of refugees. These provisions prohibit expulsion of refugees save on exceptional grounds of national security or public order and only after due process of law the refugee should also be allowed a reasonable period to seek legal admission into another country. As similar provision exist in the Bangkok Principles. Such a provision does not exist in the Model law.

Cessation of Refugee Status

In regard to the cessation clauses while the 1951 Convention and the OAU Convention contains essentially five grounds for cessation, the Model Law sets out essentially four grounds, omitting the reference to refugees "who having lost their nationality, voluntarily re-acquired it", as a ground for cessation, the Bangkok Principles also does not contain this particular ground and uses the term "return permanently" in place of "re-establishment" in relation to a refugee who has returned to his country origin.

Voluntary Repatriation

There is no voluntary repatriation provision in the 1951 Convention where the focus is assimilation and naturalization of refugees. The Bangkok Principles make broad reference to refugee's right to return to his own country, if he freely chooses to do so and the duty of Country of origin to receive him.

The OAU Convention, on the other hand, contains extensive provisions relating to voluntary repatriation. As in the case of the Model Law, the emphasis is on the voluntary character of safety of the return. There is however, no reference to the "individual character" of the repatriation nor to the requirement that a refugee expresses his desire to return "in writing" of "application means" as is stipulated in the Model Law.

As may be noted the Model Law is very broad in its scope of International protection. Not only does it contain a refugee definition which goes beyond the definitions found in the 1951 Convention the OAU Convention and in the Bangkok Principle's it also caters for situation of mass influx which permits asylum seekers to reside for a reasonable period of time in the asylum Country without the individuals status being determined thus ensuring International protection accorded to those who need entrance and the exclusion clause are far more restrictive than those found in the other instrument reviewed.

Determination of Refugee Status and Role of UNHCR

The National Model law provides for a comprehensive mechanism for determination of refugee status of asylum seekers. The appointment of a senior level official as Commissioner of Refugees for determination of refugee status in the first instance and the establishment of a Refugee Committee as an appellate authority consisting of a retired High Court Judge as Chairperson designated in consultation with the Chief Justice are salutary guarantees of due process in refugee status determination. The provision set out in section 12 of the National Model law to ensure due process during determination of refugee status include the right to be heard directly or

through a representative or a Legal Practioners and when necessary to have the assistance of interpreter are comparable with the rights of due process available to a citizen of a Country. The obligation cast on the Commissioner of Refugees to give reason in writing when rejecting a refugee status application would ensure transparency, accountability and provide an opportunity for the rejected asylum seeker to appeal to the Refugee Committee.

It is in the context of the determination of refugee status that the National Model Law introduces a role for UNHCR. National Model law section 12c states "the asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed to contact a representative of UNHCR". Guarantee of access to UNHCR could ensure application of International standards in the determination of refugee status. The provision also indirectly envisages a legitimate role for UNHCR in the National refugee status determination process. The provisions for UNHCR involvement in paragraph 12 could be considered inadequate when contrasted with the following provisions for cooperation with UNHCR provided in 1951 Refugee Convention in article 35.

Cooperation of the National Authorities with the United Nations

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 function, and shall in particular facilitate its duty of supervising the application of the provision of this Convention. 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 for refugees,
(b) The implementation of this Convention, and
(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Above cooperation provision are closely followed in the 1969 OAU Convention in its Article viii and provision in Article 14 of the 1984 Cartagena Declaration. The only Declaration related to refugees that has judicially avoided reference to cooperation with UNHCR is the 1966 Bangkok Principles which were in fact formulated with participation of UNHCR.

National Model Law is an advanced piece of Model legislation incorporating refugee related legal development since the adoption of 1951 Refugee Convention of United Nations. The Model Law has benefited from the legal development in Africa, Latin America, Asia as well as the resolutions and deliberations in the Inter-governmental executive committee of the High Commissioner's program me. The only area of omission in the National Model Law is the absence of direct or indirect reference to the principle of International burden sharing. South Asian countries have desisted ratification of International refugee instruments in view of the social and economic responsibilities that may result from such ratifications even though there are provision in the Convention for the reservations of such article, South Asia arguably considered the poorest geographical region in the world, would need International assistance to deal with the burden imposed by refugees who are subject of International Law and International burden sharing should go hand in hand with International humanitarian cooperation.

In an overview firstly, the grounds on which a "well-founded" fear of persecution are based are much broader in the Model Law than in the other three instruments it includes sex, and ethnic identity, both of which are not included in any of the other three instruments. Secondly, the Model Law definition includes as refugees, the so called "OAU Convention" definition which includes persons who "owing to external aggression, occupation foreign domination or other events seriously disrupting public order." are compelled to leave their countries. This broadened definition is not contained in the 1951 Convention or in the Bangkok principles. Thirdly, the Model Law definition also includes persons who leave their Countries owing to "serious human rights violation", an idea taken from the Cartagena Declaration on Refugees' and which is not found in any of the other three instruments.[4.]

Internally Displaced Persons (IDP's)

Who are IDP's and how does the law protect them?

The definition of IDPs most commonly used by the international community is the one found in the Guiding Principles on Internal Displacement issued by the United Nations:

"… persons or group of persons who have been faced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border."

(UN doc. E/CN.4/1998/53/Add.2 of 11 February 1998)

Unlike refugees, IDPs are not the subject of a specific International Convention. They are nevertheless protected although not expressly referred to therein – by various bodies of law, including, most notably, national law and human rights law and, if they are in a state affected by armed conflict Under IHL. The displacement of civilians is prohibited. Should it nevertheless occur, IDPs are entitled to the same protection as any other civilians. The party in control of the territory to which they have fled must spare them from the effects of hostilities and ensure that their basic needs are met in terms of food, water and shelter.[5.]

IDP's are different from refugees in also as they are displaced from one area to another within the borders of their own country. Legally, they fall under the sovereignty of their own governments even though that government may not be able to or willing to protect them, IDP's have been defined as persons who have been forced to flee their homes suddenly and unexpectedly in large numbers as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster.

According to the report by the Secretary General Kofi Annan's Representative in charge of monitoring the problem of IDP's since 1993 some 50+ million people worldwide in at least 40 countries have been uprooted from their homes due to war and natural disasters exposing them to physical and psychological dangers and depriving them of basic needs. The number of IDP's has been rising since then. In India, thousands of Hindu families of the valley of Kashmir, namely Kashmiri Pundits were forced to flee in early 90's due to militant insurgency and have settled in other parts of India. Such persons are not considered refugees. To elaborate on the ambit of internally displaced persons ethnic Tamils in Sri Lanka due to insurgency and war as well as people displaced due to environmental concerns i.e. Almatti and Sardar Sarovar Dam etc. and natural disasters like the recent Tamil Nadu floods come under the same. Since Refugee Convention of 1951 defined refugee as any person who is outside the Country of his/her nationality… they are therefore not granted the status of refugees though they have been forced to flee to another part of the Country on the same grounds as refugees. Although a number of human rights violations take place when forced displacement occur, they are denied International protection as given to refugees, the main reason for this apathy is that their movement falls within the domestic jurisdiction of a State and United Nations may not intervene in matters which are essentially within the jurisdiction of any State as per the provisions of Article 2 Para 7 of the UN charter. However if human rights violations are so grave as to create conditions which threaten International peace and security, the Security Council may take action under Chapter VII of the UN charter.

The UN's was not involved earlier on the IDP's issue as it was the view of many governments that it will be an infringement on State sovereignty. However it was realized that IDP's require International protection because of their miserable conditions. They are not only denied basic human rights but camps for displaced persons have been the target of attacks by the conflict parties. International protection is also required as their number has substantially increased and they are spread in at least 40 countries.

Although UNHCR was involved in supplying material aid to IDP's since 1970 in a few countries in accordance with the resolutions of the General Assembly, In 1993 UNHCR established a set of guidelines to clarify the conditions under which the organization shall undertake activities on behalf of IDP's for instance, it shall take primary responsibility when IDP's are prepared to go back to the same area from where they have fled and if IDP's are living alongside a refugee population and have a similar need for protection and assistance.

Later guiding principles on International displacement were prepared by the representative of the Secretary General on IDP's, Mr. Francis Deng which was submitted by him to the Commission on Human Rights in 1996. The Commission requested the representative to develop a normative framework to enhance the protection of IDP's. In response to that request Deng presented a new set of guiding principles on IDP's in 1998 to the Commission on Human Rights. The guiding principles in its introductory section defined the IDP's as persons or group of persons who have been forced to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict situation or generalized violence, and who have not crossed an Internationally recognized State border. It is to be noted that the definition of IDP's given in guiding principles is broader in scope than that given earlier by the representative of the Secretary

General for instance, the word large number as mentioned in the definition of the representative has been omitted, the word's sudden and unexpectedly have been omitted in the definition to include those persons as IDP's who move over a considerable period of time and IDP's are those who are 'forced to flee' or those who are 'forced to leave their homes'.

Guiding principles described about thirty strategies for Governments and Humanitarian organizations to help IDP's. Guiding principles are divided into five main sections:-

(a) General Principles.
(b) Principles relating to protection from arbitrary displacement.
(c) Principles relating to humanitarian assistance.
(d) Principles relating to protection during displacements and
(e) Principles relating to return or resettlement and integration.

It is to be noted that the Guiding principles are neither a treaty nor a declaration and they are therefore not binding on States. However they provide practical guidance to the States who are involved with the problems of IDP's. Since these principles reflect and are consistent with International Humanitarian Law, subsequent to the submission of the principles, the Commission on Human Right in its resolution 1998/50 took note of the stated intention of the representative of the Secretary General to make use of the guiding principles in his dialogue with Governments, Inter-governmental fora and NGO's and requested him to report to the Commission on the view's expressed to him. These principles are likely to prove of immense value in the development of law relating to IDP's in future.

The United Nations in response to the severe crisis of IDP's has set up a new unit in the year 2002… i.e. Unit on Internal Displacement (UID) to provide expertise and to advise and support the UN Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator and to guide the response of the Inter Agency Standing Committee (IASC). The unit will also maintain close links with the UN Secretary General's representative on IDP.

The unit will be led by a Director and Special coordinator on Internal Displacement. It shall also comprise staff seconded from various UN agencies dealing with refugees (UNHCR). Children (UNICEF), Development (UNDP) and Food Security (WFP) as well as the International Organization for Migration (IOM) and the Non-governmental Organization (NGO) community. The unit is located in the Office for Coordination of Humanitarian affairs (OCHA) in Geneva.[6.]

LEGAL FRAMEWORK

International Humanitarian Law expressly prohibits the displacement of civilians. In addition, the rules of IHL intended to spare civilians from the effects of hostilities play an important role in preventing displacement, as it is often violations of these rules that cause civilians to flee their homes. Of particular relevance are:

- The prohibition on attacking civilians or civilian property and on indiscriminate attacks;
- The prohibition on starving civilians as a method of warfare and on destroying objects indispensable to their survival.
- The prohibitions on reprisal against civilians and civilian property;
- The prohibition on collective punishment, which in practice, often consists in destroying homes and thus leads to displacement.
- The prohibition on using civilians as "human shields"
- The obligation for all States and all parties to a conflict to allow the unhindered passage of relief supplies and the provision of assistance necessary for the survival of civilians.

These basic rules protecting the civilian population apply in both International and non-International armed conflicts.[7.]

Development In The Legal Protection Of Internally Displaced Persons- Since The Guiding Principles

According to Cordula Droege, Legal Adviser, ICRC It has been 15+ years since the then special representative of the Secretary-General on Internally Displaced Persons, Francis Deng, Presented the Guiding Principle's on Internal Displacement to the UN Human Right Committee. They resulted from the greater awareness at the U N in the early 1990's of the displacement phenomenon. With the end of the Cold War, armed conflicts and particularly internal armed conflicts were becoming more frequent and forcing great number of people to flee the hostilities.

The process of drafting the Guiding Principles – to which the ICRC actively contributed and the reports by the special representative revealed several strands of thought.
Firstly, the purpose of the Guiding Principles was to reaffirm existing International Human Rights Law and International Humanitarian Law. But it was also meant to "clarify grey areas" and to "address gaps". The Guiding Principles were not intended only to reaffirm the law, they were also meant to develop it. This latter aspect has been dropped in recent years, with emphasis being laid much more on the fact that the Guiding Principles reflected existing International Law. At the time of drafting, the ICRC insisted that existing law had to be reflected in the Guiding Principles, and so the Guiding Principles took up a number of norms which derive directly from International Humanitarian Law.

The ICRC's perspective on the Guiding Principles with regards to their legal value was formulated as follows in 1998:The ICRC, along with other organizations, has made it known that it intends to inform its delegates of the contents of the Guiding Principles and to promote them. When faced with a situation of internal displacement in an armed conflict, the ICRC invokes the principles and rules of Humanitarian Law. The Guiding Principles could nonetheless serve a useful purpose in contexts where Humanitarian Law does not make specific provision for certain needs (such as the return of displaced persons in safe and dignified conditions). The Guiding Principles could also play a very useful role in situations not covered by International Humanitarian Law, such as disturbances or sporadic violence.

The second strand of thought was represented by the special representative's conviction that gathering existing legal norms in one document would increase awareness of the plight of internally displaced people. The Guiding Principles were not only normative, they were also political in nature, and were meant to raise awareness.

Thirdly, the special representative stated that "the implementation of existing standards is more urgent than legal reform", that respect for the law was more urgent than development of new law.

There is no doubt that the Guiding Principles have been instrumental in raising awareness of the situation of internally displaced people. This has been achieved not only by the text itself but also by the work of the special representative. But what of the two other considerations? To begin with, if the Guiding Principles were meant to fill gaps and clarify grey areas, where do we stand in terms of development of the law now, 15 years later? And secondly, how much progress have we made in" implementing" existing law, or rather in respecting and ensuring respect for existing law?

The legal developments of the past decade have not only strengthened and consolidated the law underpinning the Guiding Principles; they have themselves been influenced by the Principles.

The "gaps" that the special representative mentioned in his study was characterized by the following.

- Grey areas caused by the fact that the norms were so vague that they had to be interpreted in order to apply them to internally displaced people in practice (for instance, freedom of movement had to be interpreted as also meaning the prohibition of forced return);

- Real gaps in the law (for instance, there were no rules on personal documentation or compensation for property lost during displacement);

- The fact that in tense situations short of armed conflict, human rights could be restricted or derogated from;

- The fact that most International Law did not bind non-state actors and

- The fact that some States had not ratified key Human Rights Treaties and/or the Geneva Conventions, and thus not formally bound by their provisions unless these were part of customary law.

How has the law evolved from there?
One important development is that many treaties have been ratified by many more States since 1999. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are now ratified by some 160+ States. Most spectacularly, all States in the world are now party to the Geneva Conventions, while Additional protocol I has 168 State Parties and Additional Protocol II 164.

Another significant development is the adoption of the Rome Statute of the International Criminal Court and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and Rwanda. While unlawful deportation and transfer in International armed conflict was already a grave breach of the Fourth Geneva Convention (protecting civilians) and of Additional Protocol I, the Rome Statute recognizes that unlawful deportation and transfer is a war crime in any armed conflict" and a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population, even if this occurs outside the scope of an armed conflict. Furthermore, the International Criminal Tribunal for the former Yugoslavia has recognized that "displacement within a state or across a national border, for reasons not permitted under International Law, are crimes punishable under Customary International Law." The trial chamber has also defined the term "forced" more precisely: it is not limited to physical force, but rather may include the "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of coercive environment", the essential element being that it is "involuntary in nature, where the relevant persons [have] no real choice".

More broadly, the clarification of Customary Law has helped consolidate the legal framework protecting persons from, during and after displacement. The ICRC's Customary Law study identifies a number of Customary Rules of International Humanitarian Law that must be applied by all parties in all types of armed conflict, International or non-International:

- The prohibition of forced displacement;
- The obligation to take all possible measures to receive civilians under satisfactory conditions of shelter, hygiene, health, safety and nutrition and to ensure that members of the same family unit are not separated;
- The right to voluntary and safe return and
- The protection of the property of civilian.

The importance in this respect of weapon treaties should not be underestimated. Explosive remnants of war are one of the main obstacles to safe return, causing as they do immediate dangers to people's life's and access to their homes and disruption of infrastructure and agricultural production, with all this exacerbated by lack of medical support in a weakened medical system. The banning of anti-personnel landmines by the Ottawa Convention, the obligation to clear explosive remnants of war as set out in Protocol V to the Convention on Certain Conventional Weapons, and the Convention on Cluster Munitions, adopted in Dublin in the spring of 2008—all help lessen the challenges facing people trying to rebuild their lives.

Beyond new treaties and Customary Law, much has also been done to incorporate the Guiding Principles – not binding in themselves – into national law, mainly thanks to the efforts of the special representative, Professor Walter Kalin.In light of all this, do we need further development of International Law or have the Guiding Principles filled the grey areas and gaps identified in 1998?

A comparison of the current situation with the findings of the 1998 report shows up great progress in some areas, but some of the gaps and weaknesses in the law identified at the time have not been resolved, for example as regards derogations and non-State actors.

But much more importantly, the real challenge remains respect for, rather than development of the law. Francis Deng's finding that "the implementation of existing standards is more urgent than legal reform" is as true today as it was in 1998.

There are today more structures in place to deal with displacement. States are less prone to simply deny the existence of displaced people. Displacement is taken into account in peace agreements and in national action plans. The International community is better organized especially to provide basic shelter and assistance, even if there remains room for improvement in coordination.[8.]

Remedial Actions-Future Scenario in South Asian Region

Unless the Governments of the region seriously considers various measures of dealing with IDP's generating factors, the exodus may further widen and become complex. The State responsibility is paramount in this

context as deterrence has been a more effective instrument than the usually adopted compliance (humanitarian operations).

These measures must address to:

1. Reduce level of violence against non-combatants, irrespective of the nature of the conflict.
2. Deal with potential and ongoing ethnic conflicts.
3. Minimize non-ethnic civil conflicts.
4. The repressive measures and International action should be preventive more than ameliorative.
5. Consider the development projects in the larger perspective of sustainable development and human needs.
6. Speedy completion of the resettlement and rehabilitation of the ouster's that are lying permanently threatened and
7. A clear enunciation and implementation of national law and policies to deal with multidimensional character of the IDP's.

Respecting the rights of civilian populations in armed conflict and other situations of violence is the best prevention against displacement.[9.]

Conclusion

We have seen in the above work evolution of refugee law regime from the origins and development of refugee principles, convention and protocol to the regional arrangements (Specially the South Asian Approach) and in particular stress on durable solution for this world wide prevalent menace and the various dimensions of IDPs specially the guiding principles and its relevance and utility in South Asian region.

So the need of hour is a more proactive legal (refugee regime) in the South Asian region since none of the South Asian Countries have signed the 1951 refugee convention and 1967 protocol though they have experienced migrations and internal displacement on much massive scale then experienced elsewhere in the world; also they have working experience to deal with it in their limited way since they are developing countries so the requirement in the present times would be a broad frame work specially legal to go about the durable solutions.

Presentlythe four Geneva Conventions 1949, which, since August 2006, have been ratified by every State in the world (194), constitute the foundations of International Humanitarian Law. They are supplemented by further agreements: the two Additional Protocols of 1977 and the additional Protocol of 2006. Many provisions of International Humanitarian Law are now accepted as Customary Law—that is as general rules by which all States are bound. While 145 States are party to the 1951 Rights of Refugee's Convention and 146 States to its 1967 Protocol and though none of the South Asian States have signed and ratified them the CEDAW Convention on elimination of all forms of discrimination against Women passed by UNGA in 1979 and CRC,CROC or UNCRC -Convention on Rights of Child passed by UNGA in 1989 as well its two Protocols passed in 2000,Convention Against Torture-1984(India has Signed) which has been signed by most of the South Asian Nations will help make form an effective body of legal checks to protect the Rights of Refugees and IDP's.

International and Regional Declarations and Instruments such as the Universal Declaration of Human Rights 1948-Art.14(1), the two 1966 Covenant on Civil and Political Rights and Economic, Social and Cultural Rights, Organization of African Unity (OAU) Declaration, The Cartagena Declaration, Dublin Agreement, Non-Binding Intergovernmental declaration in 1966 by Asian-African Legal Consultative Committee-Bangkok Principles, and near home the SAARCLAW and Model National Law has provided a solid foundation for legal protection of the Rights of Refugees and Internally Displaced People in the South Asian Region.The Women are also activelyinvolved through the above legal framework to find durable solution to this bane of human kind.

Here a special mention on the concept of Safe Haven would be relevant. There is a degree of consensus that they have a role to play in situations where people are displaced by a temporary disturbance, and where the number of asylum seeker involved is too large to allow the examination of individual applications.Finally, the safe

haven approach, like temporary protection, must be combined with efforts to bring about a speedy resolution of the problem which exist in the country of origin.

As far as educating public opinion on Safe Haven is concerned North America, Western Europe, East Asia and Oceania have never had it so good. Despite recession, inflation and unemployment, living standards in the industrialized world are still on an upward trend. While ready to reach into their pockets when disaster strikes in a country such as Ethiopia or Rwanda, the citizens of such countries are unwilling to share their comfortable lifestyle with anyone else-particularly if they have a skin color, culture, religion or language which is different from their own.

That is one way of understanding the current public backlash and compassion fatigue against refugees and asylum seekers. But perhaps that judgment is too harsh. Perhaps we need to be more understanding of the people living in the industrialized states, especially those at the bottom of the social hierarchy and those who are living in deprived urban squalor.[10.]

As for the UNHCR's Dual Role as a first step toward improving effectiveness, the High Commissioner must be given resource base that will permit more autonomous operations. Donor governments must resist earmarking fund to promote their political priorities. Refugee's as a persistent feature of International life require sustained financial allocations and sustained attention by the International community. Consideration should be given to funding the UNHCR by assessed rather than voluntary contributions, thereby acknowledging the permanent character of the refugee problem and the need to deal with the issue systematically.[11.]

Lastly it will suffice to say in the case of IDP's the main cause for displacement in armed conflict is failure to comply with the existing rules of war. People are obliged to flee because they are forced out by parties to the conflict, because they are threatened, subjected to extortion, forced recruitment, reprisals or other violations. Or they flee because the belligerents fail to spare the civilian population in their attack, because of indiscriminate attacks or because of the destruction of their homes or of vital facilities. Of course, some people flee without their necessarily being a specific violation or threat, but most displacement is induced by unlawful behavior on the part of the belligerents. Sometimes people are even prevented, in breach of the law, from fleeing the dangers of a conflict.

In other words, the main problem continues to be lack of respect for the basic rules of war. While much has been done to raise awareness of the plight of internally displaced people, we have no cause for complacency since most displacement would never occur at all if the warring parties complied with the laws of armed conflict. And those who were nevertheless obliged to flee would suffer less if the belligerents accorded them the protection to which they are entitled as civilians. In this respect, not much has improved. In short humanitarian action can bring some relief, but the parties to conflict must respect and protect the civilian population.[12.]

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