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REFUGEE PROTECTION AND THE INTERNATIONAL REFUGEE REGIME: CHALLENGES AND FUTURE POSSIBILITIES

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ABSTRACT

Master's Thesis

Refugee Protection and the International Refugee Regime:

Challenges and Future Possibilities

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Refugees issue occupies an important place in both the domestic and international politics. There are massive security issues along with humanitarian concerns toward refugee problems that have increased since the new millennium. The efforts of the international community to contain refugee problems through the creation of a refugee regime have been reduced with challenges in the post-Cold War era particularly after the 9/11 terrorist attacks. States' increasing reluctance to accept refugees are now creating challenges for the United Nations High Commission for Refugees (UNHCR), an organization created with the responsibility to protect refugees' rights throughout the world. There are dissent scholarly views on whether the UNHCR has been able to live up to expectations in fulfilling its responsibilities as to the protection of refugees during the last decade in the face of the incessant nature of refugees' influx. This study addresses this issue by evaluating the various mechanisms of UNHCR on refugee protection. With a view to understanding the effect of the solutions put forward by the UNHCR and the challenges met in the process, the study reviews the scholarly views on refugees. Secondly, this study analyzes the probable causes of refugees' influx and its effects on the host countries. Finally, it explores various recent international initiatives and in particular the recent emphasis of the UNCHR on the so-called durable solutions and their effects on refugee protection.

ÖZET
Yuksek Lisans Tezi
Mültecilerrin Korunmasi Ve Uluslararasi Mülteci Rejimi: Sorunlar Ve Çözüm Olanaklari
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Ingilizce Uluslararasi Ilişkilar Programi

Mülteciler konusu ülkelerin hem iç siyasetlerinde hem de uluslararası siyasette önemli bir yer işgal etmektedir. Yeni binyılın başlangıcından itibaren artan bir şekilde mülteci sorunlarına yönelik büyük güvenlik konuları ve insani temelli kaygılar bulunmaktadır. Uluslararası toplumun mülteci sorunlarını çeşitli mülteci rejimleri oluşturarak ele alma gayreti Soğuk Savaş sonrası dönemde özellikle 11 Eylül terör saldırılarının ardından azalmıştır. Devletlerin mültecileri kabul etme konusundaki isteksizlikleri, dünya çapında mülteci haklarını koruma sorumluluğu ve göreviyle kurulmuş bir örgüt olan Birleşmiş Milletler Mülteciler Yüksek Komiserliği (UNHCR) için zorlu sorunlar doğurmaktadır. UNHCR'ın son on yılda mültecileri koruma görevini yerine getirmesine yönelik beklentileri karşılaması konusunda özellikle mülteci akınlarının doğasındaki süreklilikten kaynaklanan görüş farklılıkları bulunmaktadır. Bu çalışma konuyu, UNHCR'ın mülteci korunmasına yönelik çeşitli mekanizmalarını değerlendirerek incelemiştir. UNHCR'ın mültecilerin korunmasına yönelik kalıcı çözümler aracı ve yeni dönemde örgütün karşılaştığı sorunları anlamayı amaçlayan derin bir araştırma neticesinde mülteciler konusundaki önceki makaleler incelenmiştir. Konular şunları içermektedir: Mülteci kalkınması, mülteci rejimleri ve UNHCR'ın mültecilerin sürekli ve karmaşık doğalı sorunlarını ele almadaki rolü. İkinci olarak bu çalışma, mülteci akınlarının olası nedenleri ve ev sahibi ülkeler üzerindeki etkilerini incelemiştir. Nihai olarak, son dönem uluslararası işbirliği girişimleri

ve özellikle UNHCR'ın kalıcı çözümler aracı ve mültecilerin korunması üzerindeki etkilerini araştırmıştır.

Anahtar Kelimeler: Mülteciler, Mülteci Rejimleri, Mülteci Korunması, UNHCR, Uluslararası Örgütler

REFUGEE PROTECTION AND THE INTERNATIONAL REFUGEE REGIME: CHALLENGES AND FUTURE POSSIBILITIES

CONTENTS

CHAPTER ONE

BACKGROUND TO REFUGEE PROTECTION AND THE EVOLUTION OF REFUGEE REGIME

CHAPTER TWO

POLITICAL AND LEGAL FRAMEWORK OF THE INTERNATIONAL REFUGEE REGIME

CHAPTER THREE

UNHCR'S RESPONSE AND MECHANISM OF REFUGEE PROTECTION

CHAPTER FOUR

CHALLENGES TO INTERNATIONAL REFUGEE REGIME

ABBREVIATIONS

ACHR	American Convention on Human Rights
AI	Amnesty International
ECOWAS	Economic Community of West African States
EU	European Union
EXCOM	Executive Committee of United Nations High Commissioner for Refugees
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GCIM	Global Commission on International Migration
GFMD	Global Forum on Migration and Development
ICIC	International Committee of the Red Cross
IDP	Internally Displaced People
IGCR	Intergovernmental Committee on Refugees
IO	International Organization
IOM	International Organization for Migration
IRO	International Refugee Organization
LON	League of Nations
NIOR	Nansen International Office for Refugees
OAS	Organization of American States
OAU	Organization of African Unity
UNDAF	United Nations Development Assistance Framework
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council

UNRWA   United Nations Reliefs and Works Agency for Palestine Refugees in
the Near East

INTRODUCTION

Refugee-related issues have become important point of discussions among states, local and international organizations, communities, scholars and newspaper editors. Significantly, beyond humanitarian and moral issue attached with refugees, major contemporary problems such as security and developmental issue and, as well environmental and natural resources problem have also been linked with refugees flights. The fundamental duty of any state is to guarantee the basic rights and security of its citizenry. However, an outbreak of war, social unrest and agitation and other forms of instability within the state tend to jeopardize these basic rights. The subsequent upheaval may cause a complete collapse of the security machineries of states, which increases the vulnerability of citizens who ultimately may end up as refugees, if the situation lingers.

The fate of people that fled their countries of origin due to wars, persecutions, prejudices, paranoia, marginalization and many other related reasons, is at the mercy of the receiving countries. Apart from the usual reluctance of recipient countries to grant asylum due to social-economic, political and environmental contingencies, the fleeing often experience bitter experience at the hands of host government and communities that are actually expected to offer safety in line with international refugee laws. One such excruciating and despicable encounter takes place when countries of asylum raise their borders against incoming refugees, forcing them to tussle for protection and survival. Even those that are lucky to get admitted as refugees sometimes cannot avoid prejudices such as homophobia from the citizens of their state of asylum who see them as a threat to the economy and security of their state. Hence, the protection of these vulnerable people has become a responsibility of the international community, which created the United Nations High Commissioner for Refugees (UNHCR) with a mandate to protect refugee rights anywhere in the world.

The UNHCR, established in December 1950, marked its sixty years of existence in 2011 and its achievements so far had been considerable and highly commendable. Today, more than 10 million refugees is been given assistance and protection by the UNHCR throughout the world under the guiding principle of the

1951 Convention of Refugees Status. Its extensive capacity in dealing with the needs of refugees has made the UNHCR an indispensable body for refugee welfare. Nevertheless, there are still bugging questions as to what extent the UNHCR has been able to sufficiently meet its obligations due to the considerable increase in refugee numbers in the post 9/11 era. Also, considering the lack of genuine collaboration amongst the nations of the world, how have the UNHCR policies affected the ultimate wellbeing of refugees?

This research looks into some of the UNHCR's mechanisms for refugee protection and some basic challenges confronting the organization since the beginning of the new millennium, especially from the period of post-September 11, 2001 up till the present. The UNHCR's most invaluable tool remains the durable solutions[1] on which this research is based. The study is divided into four chapters. The chapter one gives a historical background of refugees and the emergence of refugee regimes. It starts with the history of refugees and then differentiates between definitions, terms and various interpretations given to refugees by scholars in the field especially with regards to Internally Displaced Persons (IDP) and refugees. Then it elaborates on the main causes of refugees, which are war, economic crisis, and environmental problems. The emergence of UNHCR in 1950 is traced back to the previous international organizations created for the protection of refugees, and the reasons for their demise are also highlighted.

The second chapter focuses on the political and legal frameworks of the refugee regime. It starts by analysing the mandate of the UNHCR, which is mainly about finding lasting and permanent solutions to refugee problems. The legal framework includes various international and regional legal documents, among which the 1951 Convention on Refugees' Status is the most significant document that serves as a guide for the UNHCR mission. According to the 1951 Convention, a refugee is a person who is outside his/her home country because he/she was persecuted as a result of he/she been from a particular race, religion, nationality, political opinion, member of a persecuted social group or because he/she is fleeing a

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[1] Durable solutions is the mechanism of protection for over 10 million refugees of concern to the UNHCR and involve the promotion by the UNHCR of self-sufficiency, local integration in countries of asylum, voluntary repatriation of refugees to their state of origin, and the resettlement of refugees in the third state of asylum. This UNHCR instrument has been very effective but has also met serious challenges.

war. The inadequate of the 1951 Refugee Convention to address the massive increase in refugees prompted both Africa (the 1969 Organization for African Unity (OAU) Convention) and Central America (the 1984 Cartagena Declaration) to expand their own definition of a refugee to include people who were forced to leave their country as a result of internal or external persecution in their respective region. The principle of non-refoulement (which prohibits states to forcibly eject refugees from their states of asylum), however, remains the hallmark of the international refugee regime, which this study elaborates as to the behaviour of states toward refugees as they continue to violate it or exhibit reluctance to act in line with it.

The third chapter looks into the UNHCR's responses and mechanisms for refugee protection. After its creation, the first refugee crisis that the UNHCR had to deal with was the 1956 Hungarian crisis which had created a massive influx of refugees from Eastern Europe. The UNHCR responded swiftly to this influx by assisting the refugees to resettle in the US and Western European countries. As a product of the Cold War, the UNHCR resettlement policy was highly criticised by Russia as a way of promoting American foreign policy. Hence, it refused to join the organization throughout the Cold War and only joined some years after the end of the Cold War. This chapter also explains the continued surge of refugees in the post-Cold War and how the UNHCR responded to it by coming up with the so-called 'durable solution'. The meaning of durable solution and its impacts on refugees especially in the post 9/11 era are explained in details. The 9/11 incident has certainly limited the possibilities of claiming refugee status throughout the world.

The fourth chapter highlights and examines the challenges facing the organization that are posed by globalization. Due to a number of reasons, including the war on terror, the contemporary world has witnessed the highest number of refugees, which has at the same time created many security and economic problems for the recipient states. The latter are generally reluctant to accept refugees and have come up with a number of restrictive immigration policies including border closure on refugees. Those policies contradict state responsibility as to the protection of refugees and violate the principle of non-refoulement embodied in the 1951 Convention on the Status of Refugees. Apart from states actions which also hinder the programmes of UNHCR on refugee protection, the expansion of UNHCR's scope

in the post-Cold War to include IDPs also serve as a challenge to the organization's capacity to adapt. Other challenges include the political and financial constraints, rejection and forced repatriation of refugees, interception of refugees at extra-territorial borders, safety zone/area problems, and the reluctance of states in sharing the burden of refugees with the recipient states, which are all analysed in this chapter.

The conclusion discusses the findings of the thesis and makes recommendations with a view especially to rendering the UNHCR more effective regarding the fulfilment of its mandate.

CHAPTER ONE
BACKGROUND TO REFUGEE PROTECTION AND THE EVOLUTION OF REFUGEE REGIME

1.1.   RESEARCH QUESTION

In this age of globalization and diversity in international political ideologies, it can safely be predicted that refugee and asylum situation will remain a potential threat to global security. The despicable aftermath of the long-term unrest in the Middle East and other regions with a history of insecurity implies that there will be a continuous influx of asylum-seekers into comparatively secure parts of the world. The United Nations High Commissioner for Refugees (hereafter referred to as UNHCR) is the agency established for the purpose of ensuring and overseeing the safety and protection of these vulnerable people through varying strategies since its inception in 1950. The beginning of the new millennium marked the fifty years of its creation and its achievements have been so far significant in several respects. Its extensive capacity in dealing with the needs of refugees has rendered the UNHCR an indispensable body for refugee welfare. Nevertheless, there are still bugging questions as to what extent the UNHCR has been able to sufficiently meet its obligations owing to the considerable increase in refugee numbers in the post-9/11 era. Also, considering the lack of genuine collaboration amongst the nations of the world, how have the UNHCR policies affected the ultimate wellbeing of refugees?

1.2.   CONCEPT DEFINITIONS

The politics of international regimes have become significant both among states and in the scholarship of International Relations (IR).[2] This is mainly because of the avalanche of security challenges confronting us in the new era.[3] In international relations, it is difficult to precisely define concepts. Regime as an IR concept is no different. This is because there are various scholarly views concerning

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[2] Sevilay Z Aksoy, "The Regime theories: Useful Frameworks for Analysing Human Right Issues?", **Uluslararası İlişkiler,** Vol: 2 No: 5, 2005, p. 2.
[3] Aksoy, p. 2.

the understanding of regime.[4] Regime was defined in many ways by various IR schools of thought.[5] Earlier, Ruggie (1975: 570) defined it as "mutual expectations, rules and regulations, plans, organizational energies and financial commitments which have been accepted by a group of states".[6]

However, a "consensus definition' was later given by Steven D Krasner: "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors expectations converge in a given area of international relations".[7] According to Krasner, "[p]rinciples are beliefs of fact, causation and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice".[8] Regimes are formed in international relations by a group of states with the purpose of finding common solutions for international problems through cooperation.[9]

Although regimes and organizations are sometimes used interchangeably, they are not the same thing. Oran Young defines organizations "as a set of material entities possessing physical locations (or seats), offices, personnel, equipment, and budgets".[10] Organizations also have legal personality which allows them to own property, enter into contracts, sue and be sued and so on.[11] Organizations also serve as a platform at which the actors of international society come together to find a

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[4] Aksoy, pp. 2-3.

[5] For more on how regime is perceived by different schools of thought in IR, see pages Aksoy, pp. 5-11.

[6] Ruggie (1975: 570) as cited in Rey Koslowski, "Global Mobility and the Quest for an International Migration Regime", Revised draft **Paper presented at the Conference on International Migration and Development: Continuing the Dialogue- Legal and Policy Perspectives, at the Centre for Migration Studies (CMS) and the International Organization for Migration (IOM)**, New York, 17-18/01/2008, http://www.albany.edu/~rk289758/documents/Koslowski_global%20mobility_IOM-CMS_2008_v2.pdf (06/02/2014) p. 2.

[7] Krasner (1983) as cited in Aksoy, p. 4.

[8] Krasner (1983) as cited in Koslowski, p. 2.

[9] Aksoy, p. 4.

[10] Oran R Young, **International Cooperation: Building Regimes for Natural Resources and the Environment,** Ithaca: Cornell University Press, 1989. P. 33

[11] Generally due to various reasons (e.g. information gathering, inspection, dispute resolution, and enforcement) regime establishes organizations so that they do not require archives, court systems or police of their own which are peculiar to domestic organizations but less common in international organization. For more on regime and organization, see Oran R Young, **International Cooperation: Building Regimes for Natural Resources and the Environments**, Ithaca: Cornell University Press, 1989, especially chapters 1 and 2.

common ground on divergent issues and regulate the behaviour of one another. For example the United Nations (UN), North Atlantic Treaty Organization (NATO), Organization of African Union (OAU), and the Organization of American States (OAS) are all international organizations that coordinate and regulate behaviours of member states.[12] One also come across various specialized agencies both government and non-governmental organizations in the international arena. For example Amnesty International is a humanitarian non-governmental organization while the United Nations High Commissioner for Refugees is an intergovernmental organization, which is an affiliate of UN. All these international organizations are established under the terms of various treaty and resolutions.[13] Generally speaking, each international regime is served by an organization (affiliated or independent), though this is not always necessarily.[14]

Considering the attributes of UNHCR in line with the aforementioned, the United Nations High Commissioner for Refugees (UNHCR) is an international organization that is imbued with the responsibility for finding solution to refugee problems; in that sense, it can be considered as a fundamental organization of the international refugee regime.

Violence and chaos are consequences of armed conflicts between countries or different groups within a country.[15] Under times of war, the vulnerability of the relatively weak, such as women and children, increases, and they cross international borders seeking shelter and security. Consequently, a continuous increase in refugee influx to the neighbouring countries calls for well-established safety proceedings. Host nations many a times intrinsically rebuff this unexpected population pressure due to its attendant economic and social consequences, or surreptitiously permit it with political undertones. Hence, establishing an international regime that will independently be in charge of giving succour to these refugees and stateless people becomes imperative.

Therefore, for the purpose of this research work, our international refugee regimes remain the United Nations High Commissioner for Refugees (UNHCR). It is

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[12] Young, p. 33
[13] Young, p. 34
[14] Young, p. 26
[15] Harto Hakovirta, "The Global Refugee Problem: A Model and Its Application", **International Political Science Review,** Vol.14, No. 1, 1993, p. 43.

pertinent to clearly differentiate between International refugee's regime and International Organization in terms of goals and responsibilities. International Organizations such as International Organization for Migration (IOM), The Global Commission on International Migration (GCIM) and the Global Forum on Migration and Development (GFMD), are established to control the growing movement of economic migrants, while the sole responsibility of UNHCR is to see to the wellbeing of refugees.

States are expected to protect the properties and lives of their citizenry. However, failure of a state of its responsibility in this respect, perhaps due to lack of capability or inability to maintain harmony amongst citizenry or regions, may generate unrest and struggles, causing people to flee their countries.[16] Such movement of people, if uncontrolled, will threaten international order. Hence the onus of protection for the displaced falls upon the international community.[17] The question then remains is what type of protection is expected from the international community.

1.3.   DEFINING REFUGEES

Who is a refugee and who is not a refugee? Asking and answering this question is very important to this research. This has to do with the fact that most of the literature on refugees seldom deal with the definition refugee. There are different names used to refer to refugees in the literature: asylum seekers, stateless people, environmental refugees, Internally Displaced People (IDP), and so on. Ironically they are all victims, but defining who refugee really is will allow us to understand more about the most vulnerable people on earth.

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[16] UN High Commissioner for Refugees (UNHCR), **Refugee Protection: A guide to International Refugee Law**, 01/12/2001, **Refworld,** http://www.refworld.org/docid/3cd6a8 444.html (10/11/2013).

[17] Human Right Watch (HRW), "Responsibility for Camp Conditions: Host Government", 2002, http://www.hrw.org/reports/2002/kenyugan/kenyugan1002%20ap%20alter-19.htm (4/12/2013)

In the aftermath of the two World Wars, a huge numbers of people were displaced of their home and forced to migrate to neighbouring countries.[18] According to the calculation of UNHCR at the end of 2006, there were 9.9 million refugees worldwide and by the end of 2011, the number had increased to 15.4 million, with an even larger 35.5 million persons of concern to the UNHCR.[19] According to the United Nations 1951 Convention on the status of refugees, "a refugee is defined as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."[20] In other words, refugee refers to someone who has crossed the border of its homeland to seek asylum in another peaceful country. The reason for their flight has to be fear of persecution on the ground of race, religion, nationality and membership of a social or political group, and it must be well established that refugee's home country lack the capacity to protect him/her.

However, when an individual who suffered from the same persecution is unable to cross an international border and remains within the country, then s/he is referred to as Internally Displaced Person (IDP).[21] There is no legal international protection for IDPs under the 1951 Convention.[22] Thus, their protection lies with the government. According to the Geneva Convention, an asylum seeker is someone who arrives at the frontier of a nation and, seeking protection, s/he has the right to be given temporary protection by the state.[23] This is because an asylum seekers claim to protection is not verified; until the verification of his/her claim, s/he remains an asylum seeker. If the verification is positive then the individual will be referred to as

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[18] Jaeger Gilbert, "On the History of the International Protection of Refugees", **IRRC**, Vol. 83, no 843, September 2001, p. 727.

[19] United Nations General Assembly (UNGA), **Report of the High Commissioner for Refugee**. (Sixty-Seven Session Supplement No. 12/A/67/12) New York, 2012, June 30, pp 7-10, http://www.unhcr.org/507ec5169.html (20/2/2014)

[20] United Nations General Assembly (UNGA) Resolution 2198 (XXI), "Convention relating to the Status of Refugees", http://www.unhcr.org/3b66c2aa10.html (20/2/2014).

[21] Elspeth Guild, **Security and Migration in the 21st Century**, Oxford University Press, New York, 2009, P. 70.

[22] Guild, pp. 70-71.

[23] Guild, pp. 70-71.

'refugee' and no longer an asylum seeker.[24] A stateless individual is someone not considered to belong to any nationality.[25] Although stateless people may also sometimes be refugees, the two categories are distinct and both groups are of concern to the UNHCR.[26]

The 1951 Convention was reviewed in line with the regional conventions in Africa, Latin America and the 1967 protocol and any other persons who fled war or other life-threatening violence in their home country was included in the refugee category. Initially, the 1951 Convention on Refugees was more or less limited to protecting European refugees in the aftermath of World War II.[27] The 1967 Protocol expanded the convention's scope and removed its geographical and temporal restrictions, turning the convention into truly universal instrument, as the problem of refugees has spread around the world.[28] The European Union's minimum definition of refugee as stipulated by Directive No. 2004/83/EC narrows down the definition of the 1951 Convention, defining refugees as persons who have fled a war caused by a general violence at certain condition, eligible for a complimentary form of protection called subsidiary protection".[29] This means according to Article 2 (e) of EU Asylum Act that a third country national or stateless person qualifies as refugee only if substantial grounds can be shown for believing that the person concerned if returned back to his/her country will face persecution.

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[24] Guild, pp. 70-71.

[25] United Nations High Commissioner for Refugees (UNHCR), "finding Durable Solutions", **Global Report 2012,** http://www.unhcr.org/51b1d61d0.html (29/11/2013).

[26] UNHCR 2012

[27] (UNGA) Resolution 2198 (XXI), "Convention relating to the Status of Refugees".

[28] Statute of the Office of the United Nations High Commissioner for Refugees, United Nations, UNHCR, (A/RES/428), http://www.en.refugeelawreader.org/index.php?option=com_content&view=article&id=191&Itemid=87 (20/04/ 2014).

[29] European Union: Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 30/09/2004, OJL. 304/12-304/23; 30/9/2004,2004/83/EC, http://www.refworld.org/docid/4157e75e4.html (07/12/2013)

1.4. HISTORY OF REFUGEES

The history of forced migration is long. The idea that people seek a safe haven in another place goes back to the ancient period.[30] During this period, rulers with their anachronistic rule of law in the society had forced people to leave their homes and property to seek refuge in another society.[31] For instance, in 1685 France, Louis XIV enacted a law that forbid the minority Huguenots to practice their religion; this led to an estimated 200,000 Huguenots to flee their homes to different European countries, including the United Kingdom and the Netherlands, for the next 20 years.[32] He created the first recognised displacement of people across Europe.[33] The pogrom of 1881-1920 in Russia where the Jews were cruelly maltreated subsequently left many people dead and about 2 million Jews fled to other European countries and the USA in search of protection.[34] At that time, the pogrom marked the largest movement of people as refugee seeking protection in another society. According to migration historian Robin Cohen, the 18th and 19th centuries, are characterize by the forced transportation of slaves. About 12 million people are estimated to have been transported mainly from Western Africa to other parts of the World.[35]

In the 19th century, a large number of Muslims (called Muhacirs) were exterminated from different Eastern European countries during different wars and they sought refuge in the Ottoman Empire of what is known today as Turkey.[36] This movement alone shaped and put a mark on the political and cultural landscape of the

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[30] Khalid Koser, **International Migration: A Very Short Introduction,** London, Oxford University Press, 2007, pp 1-15.

[31] Chalabi Mona, "What Happened to History's Refugees?" **The Guardian,** 25/07/2013, http://www.theguardian.com/news/datablog/interactive/2013/jul/25/what-happened-history-refugees (17/12/2013)

[32] Chalabi.

[33] Chalabi.

[34] Chalabi.

[35] Koser, pp. 1-15.

[36] Zürcher Erik-Jan, "Greek and Turkish refugees and deportees 1912-1914", **Universiteit Leiden**, January 2003, http://www.transanatolie.com/english/turkey/turks/ottomans/ejz18.pdf (20/12/2013), pp. 2-3.

present day Turks.[37] It should be noted that throughout this period there was no local or international body responsible to take charge of refugees or stateless people. These people were sheltered by states on humanitarian ground only. There were no clearly defined borders that made it easy for people to seek refuge in another society.[38]

However, the World Wars changed all these. The contemporary history of refugee can be traced back to the two World Wars and their aftermath.[39] In the aftermath of the World Wars especially the World War II, the European society was redrawn and borders were created and this alone caused about 30 million people to become refugees, as their homes or villages in their former country were joined with another country and the new country was not willing to accept minority group.[40] A group of Germans living in Poland before the war were not accepted back to Poland after the war as their villages had been joined with Germany and they were forced to go to Germany.[41] Czechs citizen with an estimate of 2 million were forced back to their country. In Romania and Yugoslavia, about 900,000 Germans left for Germany.[42]

Furthermore, the Cold War brought another dimension to the development of refugees with the declaration of independence in most third world countries. In 1947, the partition of India resulted in over 12 million refugees and in 1971 the further partition of Pakistan and the creation of Bangladesh resulted in another 10 million refugees.[43] This shall be discussed fully in the following chapters. It should only be emphasized that it was after the World Wars that the displaced people were officially recognised as refugees.[44]

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[37] A large number of political and administrative leaders that later formed the present day Turkey were all from the Balkans after they have all lost their homeland to the war. For more analysis, see Zürcher, pp. 1-2.

[38] Myron Weiner, "Bad Neighbours, Bad Neighbourhoods: An Inquiry into the Causes of Refugee Flows", **International Security,** Vol. 21, No. 1, 1996, pp. 7-9, URL: http://www.jstor.org/stable/2539107.

[39] Koser, pp. 1-15.

[40] Weiner, pp. 6-7.

[41] Weiner, p. 7.

[42] Chalabi.

[43] Chalabi.

[44] Chalabi.

1.5. REASONS FOR REFUGEE CRISIS

Understanding the root causes of refugee flows is important if we are to deal with, or find a durable and lasting solution to refugee crises that have been one of the major causes of global insecurity in the new era. Through an understanding of these problems, states and in particular the UNHCR can come together and discuss the refugee problem with a view to its resolution. There have been many reasons both in the past and present that contributed to refugee flows. Governmental instability, poverty, environmental problems, societal and regional cleavages, trans-boundary related issues and political power tussle are the main root causes of contemporary refugee flows.[45]

1.5.1. War

War and armed conflict within and between states produce many consequences.[46] The influx of refugees fleeing violence is one of them.[47] The 1917 Russian revolution, the civil war that followed and the 1921 famine in Eastern Europe produced over one million refugees seeking asylum in Europe.[48] The UNHCR points to political instability, economic tension, ethnic violence and environmental degradation as the major causes of refugee flows.[49] The primary cause of refugee flows is violent conflict.[50] People become refugees because they are forced out of their native homes either because of natural disasters, political instability and conflicts such as civil war.[51] Consequently people tend to run for their life and seek safety in another peaceful environment.

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[45] Hakovirta, p. 43.
[46] Hakovirta, p. 43.
[47] Hakovirta, p. 43.
[48] Irial, Glyn., "Asylum-Seeking in Europe in the 1930s and 2010s Compared", **Migration Citizenship Education,** 2009, http://migrationeducation.de/33.2.html?&rid=219&cHash=a2 1915e38b6857b98d81aedf584fb3f2 (30/12/2013)
[49] Lonergan Steve, "The Role of Environmental Degradation in Population Displacement", **Environmental Change and Security Project Report**, Issue. 4, 1998, p. 5, www.wilsoncen ter.org/sites/default/files/ACF1493.pdf
[50] Hakovirta, p. 4.
[51] Martin Susan, "Forced Migration, the Refugee Regime and the Responsibility to Protect", **Global Responsibility to Protect,** Vol. 2, Issue. 1/2, 2010, pp. 38-39, doi: 10.1163/187598410X12602515137338.

During the Balkan War of 1912 about 800,000 people fled, 400,000 of which were Muslims fearing for their life after the declaration of war on the Ottoman Empire by the tiny Kingdom of Montenegro.[52] The Palestine/Israeli war between 1947 and 1949 produced over 700,000 Palestinian refugees.[53] During the Cold war, the fear and spread of communism led to an increase in the number of refugee worldwide, while wars in the Middle East, Asia and Africa in the 1970s also catapulted the increase in the refugees witnessed during this period.[54] The ideological war between the United States and the Soviet Union during the cold war, when economic, political, and military aid were provided to the client states in the South, exacerbated the refugee flows in the El Salvador, Vietnam, Afghanistan, Cambodia, Horn of Africa, Nicaragua, and Angola.[55] In its annual report for 2012, UNHCR estimated that about 43.3 million people were forcibly displaced–the highest figure since 1990-from their homes between 2009 and 2011.[56] In 2011 alone, the world witnessed the highest number of refugees in a decade when, over 800,000 people were forced to abandoned their homes and seek refuge in the neighbouring countries of major West African countries due to the war in Côte d'Ivoire, Libya, Somalia and Sudan.[57] By the end of that same year, conflict and persecution was recorded to have displaced approximately 42.5 million people worldwide which include 15.2 million refugees (10.4 million under UNHCR's mandate, and 4.8 million Palestinian refugees under UNRWA).[58]

Categorizing the causes of refugees flow, Weiner (1996) highlights four distinct wars that led to refugee flows between 1969 and 1992: inter-state wars (including anti-colonial wars), ethnic wars, non-ethnic civil conflicts, and flights

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[52] Zürcher, pp. 1-2

[53] Joel Beinin and Lisa Hajjar, "Palestine, Israel and the Arab-Israeli Conflict: A Primer", **Middle East Research and Information Project (MERIP),** 2014, www.merip.org/primer-palestine-israel-arab-israeli-conflict-new, (2/02/2014), p 5.

[54] Weiner, pp. 7-9.

[55] Charles B. Keely, "How Nation-States Create and Respond to Refugee Flows", **International Migration Review,** Vol. 30, No. 4, 1996, pp. 1055-1057. URL: http://www.jstor.org/stable/2547603.

[56] United Nations General Assembly (UNGA), **Report of the High Commissioner for Refugee.** (Sixty-Seven Session Supplement No. 12/A/67/12) New York. 2012, June 30, pp 7-10, http://www.unhcr.org/507ec5169.html

[57] UNGA, 2012, pp. 7-10.

[58] UNGA, 2012, pp. 7-10.

from repressive authoritarian and revolutionary regimes.[59] Inter-state war is a war that is fought between at least two sovereign entities; it is a war between states and not within. For instance, anti-colonial war is a war between the nationalist and the Western colonial master.[60] Relatively fewer number of refugees resulted from anti-colonial wars. This was because in most of these wars, the indigenous population chose to fight and not to flee.[61] Also, the colonial masters restricted violence by limiting the use of their military might.[62] According to Weiner, in the 1960s and 1970s, the French and Portuguese colonies in Africa witnessed refugee flows from anti-colonial wars. However by the early 1980s, Namibia and the contested region of Western Sahara were the only remaining sources of refugees resulting from anti-colonial wars. The interstate war between India and Pakistan in 1972 was due to the flow of 10,000,000 Pakistani refugees into India as a result of the civil war in Pakistan in 1971.[63]

Other forms of war include ethnic violence and non-ethnic civil conflicts. Ethnic conflicts may result in refugee flow either as a result of ethnic group/s' fight against the central government for self-determination or where territorially dispersed ethnic groups are persecuted by another group or by the central government.[64] The ethnic civil war in Cambodia and Angola produced 117,500 and 237,000 refugees respectively.[65] According to UNHCR (1993) refugee flows have been largely due to conflicts within states rather than between them.[66] One way in which a state tries to implement national integration is by adopting the identity of one of the dominant groups and other groups are required to adapt to the dominant culture.[67] This is the present situation in Ethiopia whereby the state constitutionally adopted Amharic as a federal working language over other 70 languages spoken in the country. Thus, the state forced Amharic on the people in the name of national integration. Although it is

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[59] Weiner, pp. 9-23.
[60] Weiner, pp. 9-23.
[61] Weiner, pp. 9-23.
[62] Weiner, pp. 9-23.
[63] Weiner, p. 13.
[64] Weiner, pp. 19-22.
[65] Weiner, pp. 19-22.
[66] United Nations General Assembly (UNGA). **Report of the United Nations High Commissioner for refugee**, (Forth-Eight Session, Supplement No 12/A/48/12), 1993, http://www.unhcr.org/3ae68c7a0.html
[67] Keely, pp. 1053-1054.

expected that national economic and political structure will be distributed equally, there have been cases where the ruling dominant group has not been willing to integrate other groups, especially minority groups, which in turn led to ethnic tension.[68] In 1993 political tensions in Rwanda witnessed the fierce opposition of the majority Hutu tribe fiercely opposed to any Tutsi involvement in the government. The subsequent war that followed this tension resulted in the flight of over 2 million Hutus over the borders for fear of reprisals and it is estimated that at least 1 million of them sought refuge in neighbouring Zaire, Burundi, and Tanzania.[69]

Man-made violence is peculiar to countries that produced refugees. For example countries like Senegal, Jamaica, and Bhutan that not have had violent conflicts did not produce noticeable numbers of refugees, while most countries that have been involved in very violent conflicts like Bangladesh, Kampuchea, and Afghanistan have been key producers of refugees.[70] If consideration is given to key producers of refugees since the 1950s until 1993, and a comparison is made between their scales of refugee production and that of the intensity of their conflicts, it becomes reasonable to infer that the more relentless the war is, the greater the scale of the refugees flow.[71]

Furthermore, the number of refugees and displaced persons continued to grow in the 1990s because of preventable situations such as war, hunger and diseases.[72] They suggested that international community relief program should focus more on sound health and nutritional information such as creation of shelter, food, sanitation and all other programme that will prevent the high death rate of refugee in host states.[73]However, hardly any state and even the UNHCR could envisage the imminent outbreak of wars and the sudden refugee influx. There are limited resources that would be available during this challenging period. Nutritional information or the quality of health supply hardly meets the requirement of the refugees at this time.

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[68] Keely, pp. 1053-1054.
[69] Bonaventure Rutinwa, "The Tanzania Government's Response to the Rwandan Emergency", **Journal of Refugee Studies**, vol. 9, no. 3, 1996, pp. 292-295.
[70] Hakovirta, p. 40.
[71] Hakovirta, p. 40.
[72] Toole Michael J. and Waldman, Ronald J., "Refugees and Displaced Persons", **JAMA**, Vol. 270, No. 5, 1993, pp. 600-601, doi:10.1001/jama.1993.03510050066029
[73] Toole, & Waldman, pp. 600-601.

Human right abuses especially in most African countries during the 1990s also contributed to the mass movement of people.[74] Some of the largest refugee flows have been from autocratic and revolutionary regimes.[75] And the most affected among those refugees were the vulnerable groups of children and women.[76] Addressing the fifty-first session of the United Nations Human Rights Council (UNHRC) in Geneva in 1995, the UN High Commissioner for Refugees underlined the nexus between human rights abuses and refugee flows and called on states and other human rights agencies to take action against any government found guilty of human rights abuses as a way to tackle refugee flows.[77] Therefore, it is imperative that nations of the world should come to the understanding of the importance of ensuring human rights at all levels. This is because "today's human rights abuses are tomorrow's refugee movements". During the 1990s, the violation of people's right is seen as the major cause of refugees flow though under the context of armed conflict that characterizes the period.[78]

1.5.2. Economic Security

The political composition of nation-state embodies tension. Given the often varied nature of ethnic groups, there is always room for disagreement over the preferred organization of political structure, economy, and society throughout the process of state-building.[79]

Tensions between ethnic groups as a result of severe economic decline or abject poverty, constitutes a major cause of internal conflict and subsequently lead to mass displacement of people.[80] People tend to flee their country of origin as a result of economic pressure. Indeed, poor governance or political and economic

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[74] Weiner, pp. 22-24.
[75] Weiner, pp. 22-24.
[76] Weiner, pp. 22-24.
[77] UN Economic and Social Council (UNESC), **Reports of the High Commissioner for Refugees 1**, (Fiftieth Session, E/1995/52), 1995, Para 25, http://www.unhcr.org/3c90b2801.html.
[78] UNGA Official Record, **Reports of the High Commissioner for Refugees**, (Fiftieth Session, Supplement No 12/A/50/12), 1995, New York, http://www.unhcr.org/3c90b5f94.html.
[79] Keely, p. 1052.
[80] Keely, p. 1052.

marginalization can lead to persecution and bloody civil conflict/war.[81] A good example of this is the Rwandan genocide which emanated as a result of conflict over land possession and its attendant political upheaval. When a dominant ethnic group tries to advance its economic standing over other national groups, bitter politically disputes are likely to erupt over the allocation of resources.[82] The government tends to avoid blame for incessant economic degradation of the country by turning the minority groups into scapegoats.[83] The most vulnerable states are those that are economically weak and lack a well-established mechanism for conflict resolution and redress.[84] It is common place to see such countries degenerating into a haven of continuous violent conflict. Those governments become so decentralized economically that they virtually cease to exist and lack the capacity to protect citizenry.[85]

Keely refers to this situation as 'state implosion'.[86] Most third world countries are relatively young and are being run by economic, political, and administrative structures that to a great degree were imposed on them by their colonial masters.[87] In short when the super/great powers withdrew their external support from most of these countries, they were all about to implode and their economies crumbled due to bad management. State implosion incorporates the absence of an established government in charge of state affairs, lack of an educational system and health care facilities, lack of basic social amenities, improper and archaic economic organization, and a worthless monetary system. This is characteristic of many third world countries and is often due to colonization. Anarchy prevails, with many groups

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[81] Gil Loescher and James Milner, "The Missing Link: The Need for Comprehensive Engagement in Regions of Refugee Origin", **International Affairs (Royal Institute of International Affairs)**, Vol. 79, No. 3, 2003, p. 598, http://www.jstor.org/stable/3569365.

[82] Stanton H. Gregory, "Could the Rwandan Genocide Have Been Prevented?" **Journal of Genocide Research,** Vol. 6, Issue2, 2007, pp 211-228, http://dx.doi.org/10.1080/1462352042000225958.

[83] UNGA 1993, **Report of the United Nations High Commissioner for refugee.**

[84] UNGA 1993, **Report of the United Nations High Commissioner for refugee.**

[85] Weiner, pp. 9-23.

[86] 'State implosion' refers to a situation where all state institution lack functioning due to outbreak of crises in such State, and subsequently lack the characteristics of a State. For more on it see Charles, B. Keely,"How Nation-States Create and Respond to Refugee Flows", **International Migration Review,** Vol. 30, no. 4, 1996, pp. 1055-1056. URL: http://www.jstor.org/stable/2547603.

[87] Keely, pp. 1055-1058.

including the state, fighting for control of the spoils while national insecurity prevails as in the cases of the Democratic Republic of Congo, Somalia, and Liberia.[88]

In countries like these, commercial greed in addition to economic imperatives combined with political and social disputes are all exploited and manipulated by warlords, businessmen, and politicians from inside and outside.[89] Forced labour is employed and populations become forcibly displaced. In barely sustained economies, wars obstruct the production and distribution of food resulting in famine and disease.[90] This was the situation in Sudan during its civil war. Many of the estimated 60,000 people that died either starved or gave in to diseases. The conflict further damages the already fragile economy leading to an exacerbated refugee crisis.[91]

1.5.3. Environmental Crisis

Environmental degradation such as desertification, land degradation, deforestation and global warming has been seen as the direct causes of large-scale displacement of people.[92] In 1993 UNHCR reported that part of African continent that are most affected by soil erosion, drought and other environmental problems are the main hosts of armed conflict, chronic famine, and therefore refugee flows. Disasters such as the drought in Sahel of Northern Africa and the environmental changes such as recurring and devastating floods in Bangladesh can cause displacement of people.[93] The drought during the 1992 Mozambique war caused approximately 100,000 people to flee into the neighbouring country of Malawi in just one year.[94]

Climate change has been a dangerous environmental hazard to many countries particularly the island countries. For instance, Tuvalu Island seriously threatened by

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[88] Keely, pp. 1055-1058.
[89] Keely, pp. 1055-1058.
[90] Keely, pp. 1055-1058.
[91] Keely, pp. 1055-1058.
[92] Astri Suhrke, "Environmental Degradation and Population Flows", **Journal of International Affairs,** Vol. 42, no. 2, 1994, p. 474.
[93] Suhrke, pp. 479-481.
[94] UNGA 1993, **Report of the United Nations High Commissioner for refugee,** para., 84-89.

global warming.[95] Addressing the fifty-eight session of the UN General Assembly (UNGA), the Prime Minister of Tuvalu, Saufatu Sapoanga warned about the constant threat posed by the climate change. "Sea level rise and more severe weather events loom as a growing threat to our entire population. The threat is real and serious", he warned".[96] Due to the storm in 1997, which swept away fifty hectares of Tuvalu Island, the Tuvaluan government signed a deal with New Zealand government to admit 75 Tuvaluans on its territory every year.[97] Approximately twenty-five million people have been affected by natural disasters such as earthquakes and floods.[98] Al Jazeera's Jonah Hull (June, 2013) reported that more than half a million people were displaced in Bangladesh by the rise of sea level caused by global warming.[99] In Brazil, thousands of people were forced to leave their homes as the Madeira River in Western Brazil broke its bank.[100]

1.6. EVOLUTION OF INTERNATIONAL REFUGEE REGIMES

The international community for many decades has been responding to refugees and other immigration problems through various institutions it created.[101] They realized that people tend to become refugees not by choice but because they lack protection especially from their own states government who sworn to protect them but later failed them but instead persecute them.[102] Hence, the League of Nations was created to fill this gap.[103]

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[95] Saufatu Sopoanga, **Prime Minister & Minister of Foreign Affairs of Tuvalu, Statement at the 58th Session of the United Nations General Assembly**, , (September, 24 2003), http://www.un.org/webcast/ga/58/statements/tuvaeng030924.htm (20/02/2014)
[96] Sopoanga.
[97] Patrick Barkham, "Going Down", **GUARDIAN**, 16/12/2002, http://www.theguardian.com /environment/2002/feb/16/weekendmagazine.globalwarming, (20/02/2014)
[98] Barkham.
[99] Jonah Hull, "Bangladeshis Pay Dearly for Climate Change", **Al Jazeera News**, 03/06/2013, http://www.aljazeera.com/video/asia/2013/06/20136374950485325.html
[100] Hull,
[101] Guy S. Goodwin-Gill, "International Protection and Assistance for Refugees and the Displaced Institutional Challenges and United Nations Reform", **Paper presented at the Refugee Studies Centre Workshop, 'Refugee Protection in International Law: Contemporary Challenges', Oxford**, 24/04/2006, http://www.unhcr.org/47e8d2a82.pdf (28/01/2014), pp. 7-8.
[102] Goodwin-Gill, pp. 7-8.
[103] Goodwin-Gill, pp. 7-8.

Protecting the people rendered homeless by the Russian revolution and the two world wars became a significant priority of the international community. The history of international protection starts with the League of Nations (LON).[104] The LON as the first international organization that was established by states to take charge of world order and peace played an important role in planning, coordinating and organizing other international organizations in the protection of refugees.[105] The 1951 UN Convention relating to International Status of Refugees was modelled on the LONs 1933 Convention on the Status of Refugees. Under Article 3 of the 1933 Convention, the contracting parties agreed to the concept of non-refoulement, that is, "not to expel any refugee who has been authorised by the commission to seek asylum on their territories..."[106] Thus, states undertook not to reject any refugees seeking protection in their countries. The two super powers of the time, the United Kingdom (UK) and France along with seven other states ratified the 1933 Convention on Refugees; however, UK did not accents to the second paragraph of the Article which mandate states not to refuse entry to fleeing refugees without travel documents in the frontier of their countries of origin.[107] It should then be argued that the issue of non-refoulement as the focal point of the 1951 UN Convention that defined the Status of Refugees was derived from the 1933 LON's Convention.

Following the WW1 that ravaged the European countries between 1914 and 1922, around 1 to 2 million refugees largely from the Soviet Union's moved, into various European countries including Central and East Asia.[108] In response to this, the International Committee of the Red Cross (ICIC) appealed to the LON to find solution to this influx.[109] The most important outcome of the efforts to find solution was without doubt the creation of the Office of the High Commissioner for Refugees under the auspices of the League of Nations, with Dr. Fridtjof Nansen appointed as the head of the Commission by the LONs.[110] The Norwegian Dr Fridjof Nansen was

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[104] Jaeger, p. 727
[105] Jaeger, p. 727.
[106] Jaeger, p. 730.
[107] Jaeger, p. 730.
[108] Jaeger, pp. 727-729.
[109] Jaeger, pp. 729-729.
[110] "Nansen International Office for Refugees - History", **Nobelprize.org,** Nobel Media AB 2014, http://www.nobelprize.org/nobel_prizes/peace/laureates/1938/nansen-history.html.

the one that first brought up the idea of population exchange between Turkey and Greece which the Greek government did not waste time to accept.[111]

The purpose of the commission was to help and assist the people fleeing from Russian authoritarian rule to settle down in different parts of Europe or to help them find a temporary abode (resettlement).[112] By 1923, the original mandate of the High Commissioner to cover Russian refugees was extended in order to help and assist the refugees from the Ottoman Empire and the Turkish Republic following the successful population exchange between Turkey and the Greece[113]. Now included were the Armenians, Assyrians, Assyrian-Chaldeans and the Kurds in 1928.[114] However, economic decline that hit most European countries means that states are unwilling to accept refugees. Determined to make sure that refugees were accepted by states, Nansen suggested to the LON in 1924 to enter into agreement with International Labor Organization (ILO) who later coordinated the easy movement of refugees identified by the commission through job placement and emigration.[115] Approximately 50,000 refugees were placed on job by ILO by the end of 1929.[116]

After Nansen's death in 1930, the League took over the protection of refugees and the office of High Commissioner for Refugees metamorphosed into the Nansen International Office for Refugees (NIOR) as an autonomous agency responsible for the material wellbeing of the refugees.[117] However, the Nansen Office failed in its responsibilities owing to a number of problems confronted in the latter part of 1931 with the sudden outbreak of World War II: lack of stable and adequate financing; the onset of the depression which closed employment opportunities for refugees; the decline of the prestige of the League after the events of 1931 and 1935; the overwhelming influx of refugees, mostly from Germany, Italy, and Spain; and the reluctance of member states of the League to permit League activities on behalf of persons who had previously been citizens of their countries.[118]

[111] Zürcher, p. 3.
[112] Nobel Media AB, "Nansen International Office for Refugees - History".
[113] Jaeger, p. 729
[114] Nobel Media AB, "Nansen International Office for Refugees - History".
[115] Shauna E. Labman, "Looking Back, Moving Forward: The History and Future of Refugee Protection" **ExpressO,** 2009, http://works.bepress.com/shauna_labman/1. p. 6
[116] Labman, p. 6.
[117] Nobel Media AB, "Nansen International Office for Refugees - History".
[118] Nobel Media AB, "Nansen International Office for Refugees - History".

After the demise of Nansen International Office for Refugees, the League did not relent in its effort and responsibilities to continue to protect the refugees, it created several other agencies including: the Office of the High Commissioner for Refugees coming from Germany (1933-1938), the Office of the High Commissioner of the League of Nations for Refugees (1939-1946),[119] and the Intergovernmental Committee on Refugees (IGCR) with headquarters at London to coordinate relief work for refugees.[120] However, it should be noted that throughout the LON period, refugee definition was basically referred to the Russian and Armenian refugees, and according to Jaeger Gilbert, they were recognised mainly on what he called "identity certificates" of refugees.[121] In short, in the twentieth century, the Russian were the first to receive international protection and to be recognised as refugees.[122]

In 1947, the United Nations Organization (UNO) replaced the defunct LON. The UN dissolved IGCR and LON's High Commissioner for Refugees and established a non-permanent specialized agency named International Refugee Organization (IRO) whose mandate expired in 1952.[123] The purpose of creating IRO was to take charge of the large-scale resettlement of European refugees.[124] IRO's resettlement policies were highly criticised by many states for favouring the West, and given the fact that only few states were supporting it financially, it came to an end in 1951.[125] However by the time its mandate expired, the international community was reluctant to continue with financial commitment to the protection of

[119] Jaeger, p. 729

[120] Hasan-Askari Rizvi, "United Nations and the Refugee Problem", **Pakistan Horizon**, Vol. 38, no. 1, 1985, pp. 47-48, URL: http://www.jstor.org/stable/41404027.

[121] 'Identity certificates' was the first arrangement (Nansen Passport) used by the international community to define Russian and Armenian refugees between 1922 and 1926. See Jaeger, "On the history of the international protection of refugees", **IRRC,** Vol. 83, no 843, 2001, pp729.

[122] Labman, p. 3.

[123] Rizvi, pp. 47-48.

[124] David Kennedy, "International Refugee Protection" **Human Rights Quarterly**, Vol. 8, No. 1, 1986, p. 3, URL:http://www.jstor.org/stable/762045.

[125] UN High Commissioner for Refugees (UNHCR), "Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR", (01/08/2005), http://www.refworld.org/docid/4214cb4f2.html (25/02/2014)

refugees.[126] IRO served as the last international organization that preceded the UNHCR in the protection of refugees.[127]

The evolution of contemporary refugee regime which reflects changes in international political system dated back to the Westphalia Treaty of 1648. The transformation of refugee regime had passed through series of facet especially during the League of Nations, until the final creation of UNHCR as the primary agency of the UN in charge of attending to the needs of the refugees in their state of asylum.[128]

The effort of the United Nations General Assembly (UNGA) to protect refugees in the post-World War II environment culminated in the creation of United Nations High Commissioner for Refugees (UNHCR) in December 1950, with three years mandate and saddled with the responsibility to find a permanent solution to refugee problems.[129] UNHCR was established as a subsidiary organ of the General Assembly by *Resolution 319 (IV) of the United Nations General Assembly* on December 1949.[130] By 1951, the Convention relating to the Status of Refugees became the corner stone of international law on refugees.[131] The UNHCR's easy creation and organization of course was based on the experiences of the previous League agencies saddled with the same responsibility as UNHCR.

Originally, UNHCR was established to take responsibility for the protection of European refugees. But soon, its scope was extended when the UNGA asked it to deal with the refugee crisis in Hungary, Hong-Kong, and the refugees created by the decolonization process in Africa and the Middle East.[132] Since its creation in 1950,

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[126] UNHCR 2005, "Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR", pp. 1-3.

[127] Erika Feller, "International Refugee Protection 50 Years on: The Protection Challenges of the Past, Present and Future", **IRRC,** Vol. 83, no 843, 2001, p. 582.

[128] Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime", **International Journal of Refugee Law,** Vol. 14, No2/3, 2002, p. 247.

[129] Barnett, p. 245.

[130] UNHCR 2005, "Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR".

[131] UNHCR 2005"Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR".

[132] UNHCR 2005"Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR".

the UNHCR has assisted millions of refugees to settle down in various parts of the world.[133]

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[133] UN High Commissioner for Refugees (UNHCR), **Refugee Protection: A guide to International Refugee Law**, 01/12/2001, http://www.refworld.org/docid/3cd6a8444.html (10/11/2013)

CHAPTER TWO
POLITICAL AND LEGAL FRAMEWORK OF THE INTERNATIONAL REFUGEE REGIME

2.1. UNHCR AND MANDATE TO PROTECT

In the post-World Wars environment, the issue of refugees still remains at the forefront of world politics and there is a need to find a lasting solution to the refugee problem. The United Nations General Assembly (UNGA) created the UNHCR as an agency of the United Nations (UN) in charge of refugee issue which is expected to last for just three years.[134] Its mandate is wholly to provide "refugee protection", i.e. to safeguard the right and well-being of refugees; this made it different from its predecessor International Refugee Organization (IRO) with various scopes from temporary protection to issuing passport.[135] According to the UN "its mandate is to provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions for them".[136]

However, it is important to mention the effort made by the UN to resolve the Palestinian refugee problems before the creation of UNHCR. The Palestinian-Israeli war of 1948 referred to also as Nakba meaning "catastrophe",[137] produced one of the largest numbers of refugees in the world. The UN in its effort to help and give assistance to the over 5 million Palestinian refugee produced by this war, set up a special agency in 1948 with the name of: United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[138] This was a

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[134] Hasan-Askari Rizvi, "United Nations and the Refugee Problem", **Pakistan Horizon**, Vol. 38, no. 1, 1985, pp. 47-48, URL: http://www.jstor.org/stable/41404027.

[135] IRO was established in 1949 by UN with a mandate to aid in the resettlement of refugees large flows. For more on IRO see Kennedy, David, "International Refugee Protection" **Human Rights Quarterly**, Vol. 8, No. 1, 1986, pp. 3-4, URL http://www.jstor.org/stable/762045.

[136] Statute of the Office of the United Nations High Commissioner for Refugees, United Nations, UNHCR, (A/RES/428), http://www.en.refugeelawreader.org/index.php?option=com_content&view=article&id=191&Itemid=87 (20/04/ 2014).

[137] Mona Chalabi, "What Happened to History's Refugees?" **The Guardian,** 25/07/2013, http://www.theguardian.com/news/datablog/interactive/2013/jul/25/what-happened historyrefugees (17/12/2013)

[138] UN Relief and Works Agency for Palestine Refugees (UNRWA), "In figures", 30/12/2010, **UNRWA,** http://www.unrwa.org/userfiles/2011080123958.pdf (02/03.2014)

humanitarian gesture from the UN to cater for one of the most displaced people in the world. Approximately 5 million Palestinian refugees and their progeny have had access to basic education, social services, emergency aid and health care through the assistance of UNRWA since 1948 till today.[139] It is the only agency created by the UN to assist refugees in a particular region. It has given assistance to refugees in Jordan, Syria, West Bank, Gaza Strip and Lebanon.[140]

The UNHCR after its creation in 1950 is saddled with the mandate to protect and find durable and permanent solutions for refugees.[141] Its functions are based on the various international and regional treaties and declarations that specifically address the needs of refugees. Its activities are regulated by the provision of international law and standards that include the 1948 Universal Declaration of Human Rights, the four Geneva Conventions on international humanitarian law (1949)[142] and the conclusions of the UNHCR's Executive Committee (EXCOM).[143] However the 1951 Convention on the Status of Refugees remain the main international legal document that set the guideline for UNHCR's international refugee protection.[144]

The 1951 legal statute for refugees defined in accordance the functions and authority of the High Commissioner for Refugees, to protect refugees as stipulated in the Refugee Convention.[145] The General Assembly expanded the scope of the UNHCR's to include given protection to some category of people who are not originally protected under the provisions of the 1951 Refugee Convention and its subsequent 1967 Protocol.[146] As part of the mandate given to it by the United Nations (UN), the High Commissioner for Refugees is expected to coordinate a universal framework for action plans that will resolve the challenges of refugees'

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[139] UNRWA 2010, "In figures".
[140] UNRWA 2010, "In figures".
[141] UN High Commissioner for Refugees (UNHCR), **Refugee Protection: A guide to International Refugee Law**, 01/12/2001,
http://www.refworld.org/docid/3cd6a8444.html (10/11/ 2013), p. 21
[142] UNHCR 2001, p. 8.
[143] Erika Feller, "International Refugee Protection 50 Years on: The Protection Challenges of the Past, Present and Future", **IRRC**, Vol. 83, no 843, 2001, p. 582.
[144] Feller, p. 582.
[145] UNHCR 2001, pp. 8-15.
[146] Gil Loescher, "A Universal Mandate to Protect: The Challenges of Refugee Protection", **Harvard International Review,** Vol. 31, Issue. 3, 2009, p. 46.

protection worldwide.[147] The fundamental objective of UNHCR's is to safeguard the rights and well-being of refugees. In a bid to achieve this objective, the Office created a framework to ensure that the right of everyone seeking asylum in another state is established without the fear of premature repatriation and rejection from the recipient states.[148] The UNHCR works with states to facilitate the protection of people seeking asylum to settle down in their states of asylum.[149] UNHCR serves as the hope of a better life to every individual displaced from his nationality due to any of the earlier stated reasons by assisting them to return after stability has been restored in their country of origin. They also help in resettling refugees in third countries by facilitating their acceptance.[150]

UNHCR was founded with the aim of working with governments, NGOs, and other international organizations with the main purpose of providing protection to refugees and to find a universal lasting solution to refugees' problem.[151] Through international treaties and its supervision, the UNHCR is expected to provide protection to refugees by monitoring and improving refugees' situation in their states of asylum. Furthermore, in collaboration with government, it is expected of UNHCR to help by encouraging voluntary repatriation of refugees and the integration of the others in their new country.[152]

2.2. REFUGESS AND THE LEGAL SYSTEM

When two actors such as sovereign states and an international organization enter into an agreement and it is regulated by an international law to legally bind them, it is called a 'treaty'.[153] State representatives negotiate the terms of the treaty

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[147] United Nations High Commissioner for Refugees (UNHCR b), "finding Durable Solutions", **Global Report,** 2012, http://www.unhcr.org/51b1d61d0.html (29/11/2013)

[148] Statute of the Office of the United Nations High Commissioner for Refugees, United Nations, UNHCR, (A/RES/428), http://www.en.refugeelawreader.org/index.php?option=com_content&view=article&id=191&Itemid=87 (20/04/2014).

[149] Statute of the UNHCR

[150] Statute of the UNHCR

[151] Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime", **International Journal of Refugee Law,** Vol. 14, No2/3, 2002, pp. 246-247.

[152] Barnett, pp. 246-247.

[153] "Refugees and Displaced Persons", **Human Rights Education Associates (HREA)**, http://www.hrea.org/index.php?doc_id=418 (23/ 02/2014)

and sign it after negotiations have been completed on behalf of the states. Ratification of a treaty is the most common way among others that states use to bind themselves by a treaty and, at times states make unilateral reservations to one or more parts of the treaty if the treaty permits it.[154] A treaty then enters into law when the states that have ratified the treaty issue a decree acceding to the treaty and subsequently incorporate it into their domestic law.[155]

Asylum seekers embark on a long and difficult journey before they eventually arrive at the frontier of a potential asylum country. Often refugees are confronted with detention while their asylum claims are being examined and officials use detention as a deterrent to other asylum seekers. Apart from this, their rights to have access to lawyer under refugee law are often denied. Hence, the UNHCR steps in to protect and assist refugees whenever a refugee is experiencing this type of situation in their states of asylum.

2.2.1. Protection of Refugees in International Refugee Law

In 1948, the international community under the auspices of the United Nations General Assembly adopted the Universal Declaration of Human Rights which marks the first global expression of rights, including the right to asylum. This was born out of the experience of the 2nd World War whereby people running away from persecution were denied entry into states in Europe.
Article 14 of the Declaration reads:

> *"1.Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."[156]*

Refugees remain the most vulnerable people in the world. The 1951 Convention on the Status of Refugees and the 1967 Protocol serve as the legal

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[154] HREA, "Refugees and Displaced Persons".
[155] HREA, "Refugees and Displaced Persons".
[156] Peter Danchin, "The Universal Declaration of Human Rights: Article 14: Asylum", http://ccnmtl.columbia.edu/projects/mmt/udhr/article_14.html (27/07/2014)

universal instruments to protect refugees.[157] The conference that gave birth to the 1951 Convention was held in Geneva on 2nd-25th July 1951 with representatives from about 26 states.[158] Presently 140 states are party to the Convention.[159] The 1951 Convention remains the hallmark of international refugee protection system.[160] According to the 1951 Convention: "International refugee law is a set of rules and procedures that aims to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments."[161] The importance of this law is that it serves as a legal and political platform at which states interpret and uphold a common universal framework for refugee protection. The 1951 Refugee Convention gave minimum standards of refugee protection and also contains a number of rights and the obligations of refugees towards their host country. It sets out how refugees should be treated under international law. These include, among others, the fundamental principle of non-refoulement, (rights not to be expelled except under certain strictly defined conditions), the right to education, right to access the courts, rights to work and, rights to freedom of movement within the territory and so forth.[162] According to this principle, a refugee should not be forced out or ejected from the first state of asylum to a country where he or she faces serious threats to his or her life or freedom.[163] Hence, this allows refugees to enter and seek temporary or permanent residence status in a foreign land. Furthermore, the 1951 Convention also condemns discriminating against refugees on the basis of colour, race or religion.[164] International law compels all states that have ratified a treaty or convention to respect its dictates. This also applies to all states that are party to the 1951 Convention: they are required to treat refugees on their territory with respect and dignity.[165]

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[157] UNHCR 2001, **Refugee Protection: A guide to International Refugee Law**, p. 8.
[158] Wouters Kees, **International Legal Standard for the Protection from Refoulement**, Antwerpen: Intersentia, 2009, p. 1.
[159] Wouters, p. 1.
[160] Wouters, pp. 1-2.
[161] "Geneva Academy of International Humanitarian Law and Human Rights", http://www.a dh-geneva.ch/RULAC/international_refugee_law.php (21/02/ 2014).
[162] Feller, pp. 582-583.
[163] Feller, pp. 582-583.
[164] Feller, pp. 582-583.
[165] UNHCR 2001, **Refugee Protection: A guide to International Refugee Law**, p. 14.

UNHCR seeks to ensure the implementation of the provisions of the Refugee Convention by monitoring their implementation by states. Article 35 of the Refugee Convention and Article II of the 1967 Protocol called upon states to cooperate with UNHCR to carry out its mandates.[166] Under Customary international law, all states are expected to uphold the provision of relevant treaties they are a party to and the ones they are not a signatory to. Regional instruments such as Organization of African Unity (OAU) 1969 Convention on Refugee and the 1984 Latin America Cartagena Declaration represent a further set of protection.[167]

2.2.2. The Principles of Non-Refoulement

The principle of non-refoulement is the hallmark of the international refugee protection regime.[168] This principle is contained in a several international and regional refugee instruments. Article 33 of the 1951 Convention prohibits member states from the refoulement (expulsion or compulsory return) of refugees to where his/her life or freedom would be threatened and who pose no threat to the country or community of asylum.[169] Article 33 consists of two paragraphs.
According to paragraph 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".[170]*

Prohibition on refoulement was further restricted in paragraph 2, which states that:

> *"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*

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[166] UNHCR 2001, **Refugee Protection: A guide to International Refugee Law**, p. 11.

[167] "Geneva Academy of International Humanitarian Law and Human Rights", http://www.adh-geneva.ch/RULAC/international_refugee_law.php (21/02/ 2014).

[168] Ninette Kelley, "International Refugee Protection Challenges and Opportunities", **International Journal of Refugee Law**, Vol. 19 Issue, (3), 2007, p. 406, doi:10.1093/ijrl/eem055

[169] Wouters, p. 33.

[170] Wouters, p. 33.

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".[171]

The purpose of this principle is to protect people who are seeking asylum in foreign territory from all forms of human rights violations in host countries.[172] This was borne out of the experience of failure of states to provide adequate protection for the victims of the World War II who were seeking humanitarian help; instead people were turned back from international borders to a dangerous zone of the war.[173]

The provision of Human Rights in regional organizations such as the 1969 OAU Convention on Refugees (Article II) and its subsequent Article 2 of Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World, Article 22 of the American Convention on Human Rights of 1969 and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms further prohibited the forceful expulsion of refugees.[174]

According to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969, Article II (3) relating to the principle of nonrefoulement , stated that:

"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 I, paragraphs 1 and 2."175

Also, Article 22 (8) of the 1969 American Human Rights Convention adopted in pointed that:

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[171] Wouters, p. 33.
[172] Wouters, p. 33.
[173] Shauna E. Labman, "Looking Back, Moving Forward: The History and Future of Refugee Protection" **ExpressO,** 2009, http://works.bepress.com/shauna_labman/1. pp. 9-10
[174] UNHCR 2001, **Refugee Protection: A guide to International Refugee Law**, p. 14.
[175] UN High Commissioner for Refugees (UNHCR), "UNHCR Note on the Principle of Non-Refoulement", November 1997,
http://www.refworld.org/docid/438c6d972.html (26/03/2014)

"In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions."[176]

For over sixty years of its existence, the protection of refugees has been one of the major concerns of the Council of Europe. The European Convention on Human Rights was adopted by the Council of Europe's meeting in 1950 and entered into force in 1953 rejecting the expulsion of aliens on the territories of member states (Protocol no. 4, Article 4).[177] Furthermore, the Committee of Ministers of the Council of Europe on 29 June 1967 adopted the guidelines for its member states on its treatment of asylum seekers who are in danger of persecution. They recommended that:

"1. They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory.
2. They should, in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion."[178]

In addition, Recommendation 773 on the situation of *de facto* refugees was adopted by the Parliamentary Assembly of the Council of Europe on the 26 January 1976.[179] It recommended that *de facto* refugees who had been living in member states and who were unwilling to return to their states of origin had to be accorded all

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[176] UNHCR 1997, "UNHCR Note on the Principle of Non-Refoulement".

[177] European Convention on Human Rights and Fundamental Freedoms, "Securing certain Rights and Freedoms", http://www.echr.coe.int/documents/convention_eng.pdf, (06/04/2014), p. 35

[178] UNHCR 1997, "UNHCR Note on the Principle of Non-Refoulement".

[179] Parliamentary Assembly of the Council of Europe, "Recommendation 773 on the Situation of de facto refugees", 26/01/1976,

http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta76/erec773.htm (20/07/2014)

rights, including the provision of residence and work permits, which would enable them to live suitable and comfortable lives in their new homes.[180]

In order to solve refugee problems, the Council of Europe in cooperation with the UNHCR adopted a memorandum of understanding in 1999, and in 2008, a resolution on co-operation was also agreed and adopted between the United Nations General Assembly and the Council of Europe.[181] To ensure the implementation of the recommendations on member states concerning refugee protection, the Council of Europe made use of two specific monitoring mechanisms: Commissioner for Human Rights and Committee for the Protection of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These mechanisms were used to frequently monitor the member states' treatment of refugees. And since its creation over 20 years ago, the CPT conducted 270 visits to member states and gave a series of recommendations on the improvement of the treatment of refugees. [182]

The humanitarian character reflected in the international refugee convention is second to none. In its determination to protect and ensure the dignity of all refugees, the international community seeks to ensure that refugees are free from all sorts of human rights abuses and can enjoy fully the rights to life, liberty and security, education, movement and the right to be free from all forms of torture and inhumane treatment.[183] Even states that are not parties to the Convention are urged under the customary law to respect the principle of non-refoulement. As we shall later discuss in the subsequent chapter, states have, however, continued to grossly violate this principle through their various immigration laws.

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[180] Parliamentary Assembly of the Council of Europe, "Recommendation 773 on the Situation of de facto refugees".

[181] Council of Europe and the UNHCR, "Protecting Refugees", https://edoc.coe.int/en/index. php?controller=get-file&freeid=5476 (20/07/2014), p. 3.

[182] Council of Europe and the UNHCR, "Protecting Refugees", p. 4-5.

[183] The UN created a special commission called The United Nations Commission on Human Rights, which comprised of 53 member states. Under this commission special Rapporteur or body was created: UN Special Rapporteur on Turture; UN Special Rapporteur on Summary Execution; and UN Working Group on Enforced Disappearance. Through this commission, refugees can take legal action against any states that violated its rights under the principle of non-refoulement. For more analysis on this commission, see, UNHCR 2001, p. 17; UNHCR 1997

2.3. STATES RELUCTANCE IN THE IMPLEMENTATION OF INTERNATIONAL REFUGEE LAW

Are the host state/nations under any obligation to receive or admit refugees? According to the 1951 Convention and the 1967 Protocol, which redefine the status of refugee, as well as the 1969 OAU Convention governing the specific aspects of refugee problems in Africa, states' are obliged to work with the UNHCR in the protection of refugees by offering asylum to the displaced people and as well help to oversee the implementation of the treaties.[184] At its 50th years of existence in 2001, states once again reiterated their promise to work more with the UNHCR by implementing the provision of 1951 Convention of Refugees and help in finding durable solutions to refugees problems worldwide.[185] The 1951 Convention also bound states with the principle of non-refoulement.[186] The principle of non-refoulement stated that no state shall forcibly return refugee to their country. The Convention also delineated clearly the right of refugees in their host country. Rights such as access to fair hearing, education, health care services and so on were guaranteed for refugees in their asylum country.[187]

Third world countries hosted most of the world refugees though temporary. However, most of the world refugees seeks asylum in the Western countries either by helping themselves to cross the border or through the UNHCR resettlement policy. Over 2.5 million refugees from across the regions of Africa, Asia, and the Middle East were admitted to the Western European countries between 1975 and 1990.[188] The end of 1973-74, marked the first experience of massive influx of refugees on the territories of major leading European countries of Germany, France, and Sweden.[189] In 1999, approximately 638,000 refugees and asylum seekers gained residence in the

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[184] Wouters, p. 35.
[185] Kelley, p. 401.
[186] UNHCR 2001, **Refugee Protection: A guide to International Refugee Law**.
[187] "Refugees and Displaced Persons", **Human Rights Education Associates (HREA)**, http://www.hrea.org/index.php?doc_id=418 (23/ 02/2014)
[188] Castles Steven, "Confronting the Realities of Forced Migration", **Migration Policy Institute (MPI),** May 1, 2004, http://www.migrationpolicy.org/article/confronting-realities-forced-migration (23/02/2014).
[189] Jeremy Hein, "Refugees, Immigrants, and the State", **Annual Review of Sociology**, Vol. 19, 1993, p. 45, URL http://www.jstor.org/stable/2083380

United States. This includes about 533,000 awaiting asylum seekers, over 85,000 resettled refugees, and about 20,000 persons were granted residence permits.[190]

However, Darling Kate argued that considering the provisions of international law and the general consensus, there is an assumption that the state has a duty to protect its citizen. Conversely, the state is not under obligation to admit foreigners to its territory. The state therefore, seems justified for any refusal to grant asylum. Then the decision is should the state accept refugees and burne the consequences of their presence on its territories or ignore its duty owing to refugees under international law.[191]

Darling looked into five major Western states domestic law on refugee protection, and was able to show how the stateless people have been marginalized completely from the international refugees' protection. Four Western countries of the United Kingdom, the United States, Canada, Australia and New Zealand, enacted domestic laws which they considered more appropriate and application to refugee situation in their countries. Those laws have been more instrumental, excluding refugees from the protection of international human right laws. In her conclusion, Darling suggested reintegration of international human rights law with domestic laws so as to conform to the standards and recommendation of international law in the protection of refugees.[192] On the other hand, Gilbert Geoff argues that states should not be condemned prioritizing domestic law over international laws; rather, the absence of a supervisory tribunal that will ensure states compliance with the 1951 Convention should be blamed.[193]

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[190] United States Committee for Refugees and Immigrants, **World Refugee Survey 2000**, (01/04/2000), http://www.refworld.org/docid/3ae6a8aa4.html (5/12/2013)

[191] Kate Darling, "Protection of Stateless Persons in International Asylum and Refugee Law", **International Journal of Refugee Law,** Vol. 21, Issue (4), 2009, p. 743, doi:10.1093/ijrl/eep024

[192] Darling, pp. 742-751

[193] Geoff Gilbert, "Is Europe Living Up to Its Obligations to Refugees?" **The European Journal of International Law**, Vol. 15 no.5, 2004, p. 963–987. doi: 10.1093/ejil/chh505.

CHAPTER THREE
UNHCR'S RESPONSE AND MECHANISM OF REFUGEE PROTECTION

3.1. UNHCR AND THE PROTECTION OF REFUGEE DURING THE COLD WAR

The UNHCR, as already discussed, was created for a purpose of helping to find durable and permanent solutions to refugee problems by cooperating with States. The Cold War was an ideological war between the East and West.[194] The UNHCR was created during the Cold War and just like its predecessor was euro-centric in nature.[195] The great power politics of the Cold War influenced the norms and policies of the UNHCR.[196] For instance, the 1956 Hungarian crisis created a mass influx of refugees from Eastern Europe and marked the first assignment for UNHCR.[197] This was followed by the 1968 protection of refugees displaced by the Czech Republic nationalist war against the Communist rule in the former Soviet Union.[198] The UNHCR in its quest to find solutions to refugee problems favoured resettlement policy over repatriation as a lasting solution to refugee plights throughout the Cold War.[199] Russia in particular perceived this interference politically motivated.[200] The West and in particular the United States was accused of establishing an organization driven by its foreign policy agenda.[201] The policy of resettlement and asylum seeking in the West was basically directed towards Eastern

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[194] Charles B. Keely, "The International Refugee Regime(s): The End of the Cold War Matters", **International Migration Review,** Vol. 35, no, 1, 2001, URL: http://www.jstor.org /stable/2676063.

[195] Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime", **International Journal of Refugee Law,** Vol. 14, No2/3, 2002, p. 246.

[196] Barnett, p. 249.

[197] Barnett, pp. 247-249.

[198] Barnett, pp. 247-249.

[199] Barnett, pp. 247-249.

[200] Elizabeth H. Campbell, "Refugee Protection Challenges in the Era of Globalization: The Case of Nairobi", (Doctoral Dissertation), **State University of New York at Binghamton**, 2005, pp. 27-28, available from ProQuest Dissertations & Theses database, (UMI No: 3164737).

[201] Campbell, pp. 27-28.

European refugees.[202] In fact, it was estimated that between 1945 and 1985, the majority of admitted refugees in the United States was basically from Eastern Europe.[203] Hence, Russia refused to join the UNHCR throughout the Cold War and has even continued to ignore it in the post cold war era as Russia favors repatriation over resettlement.[204] Due to this fact, the Eastern European governments prohibit the emigration of its citizen and the authority even punishes anyone for fleeing without permission.[205]

However, by the time the Cold War started, there was need for the expansion of refugee definition to include displaced non-European peoples in other parts of the World.[206] Barnett explains that, expanding the definition of refugee during the Cold War was necessary for a number of reasons: first of all, there was a need for an effective and inclusive stronger organization different from the previous one to actually assume responsibility for the protection of people displaced by the political tussle of that period. Also, the refugee problem has actually gone beyond Europe; the Cold War caused refugee flight in other parts of the world. Furthermore, for easy determination of bona fide refugee and their resettlement into new homes, proper definition of refugee was needed. This last point characterized the early response of

[202] Charles B. Keely, "How Nation-States Create and Respond to Refugee Flows", **International Migration Review,** Vol. 30, No. 4, 1996, pp. 1055-1056, URL: http://www.jstor.org/stable/2547603.
[203] Campbell, pp. 27-28.
[204] Barnett, p. 250.
[205] Though this practice has stopped in some Eastern European countries beginning from the 1970s when former Soviet leader Mikhail Gorbachev favored liberalization during the economy downturn faced by the former Soviet Union and needed the Western technology assistant to revamp Soviet dwindling economy. The fall of Berlin wall signaled the eradication of restriction on emigration in East Germany after the East and West Germany agreed to come together. However emigration restriction still exists in Russia and some other Eastern European countries citing brain drain as one of the reason for the restriction. Only legal emigration is possible which can only occur for either family reunification reasons or to allow members of minority ethnic group such as the Jews, former East Germans, ethnic Hungarians, religious Muslims minority from Bulgarian and Yugoslavia to return to their homeland. For details analysis see Campbell, pp. 27-28; Prauser Steffen and Rees Arfon, "The Expulsion of 'German' Communities from Eastern Europe at the end of the Second World War", **European University Institute Working Paper,** HEC No. 2004/1, European University Institute, Florence, 2004, p. 4, http://cadmus.eui.eu/bitstream/handle/1814/2599/H EC04-01.pdf?sequence=1 (12/03/2014); see also Elizabeth H. Campbell, "Refugee Protection Challenges in the Era of Globalization: The Case of Nairobi", (Doctoral Dissertation), **State University of New York at Binghamton**, 2005, pp. 27-28, available at ProQuest Dissertations & Theses database, (UMI No: 3164737)
[206] Barnett, pp. 246-247.

UNHCR to refugee problem.[207] Hence, quick response was needed especially from regional organization to contain this new surge. Accordingly, regional organizations such as Organization of African Unity (OAU) and the Organization of American States (OAS) started to expand their goals and policies by adopting their own definition of refugee in 1969 and 1984 respectively.[208] Apart from seeing refugee as a victim of 'persecution' as contained in the 1951 Convention on Refugees, they both described refugee as "anybody who had fled his/her country of origin due to external/foreign aggression and massive violation of human rights and or other circumstances that might have seriously disturbed public order".[209]

The Hungarian crisis of 1956 led to the first refugee flow into Western Europe and, was followed by the escaping East German from Czech Republic and not to mention the same surge from Asia, the Middle East and Africa between 1970s and 1980s that sort refuge in Europe and America.[210] The United States through its "Escapee Program" accepted to resettle refugees mainly from the Eastern bloc countries.[211] It was a US tactic aimed at weakening the Communist governments. The USA and Canada mechanism for asylum seekers and refugees throughout this period was giving permanent residence permit.[212] Automatic asylum, generous asylum assistance and citizenship were given to all East Germans by the Federal Republic of Germany during the Cold War.[213] This is starkly different from what is presently obtainable in Germany as refugees are admitted on a temporary basis and, non-refoulement policy has been violated occasionally by the German authorities.[214]

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[207] Barnett, pp. 246 and 248.
[208] Barnett, pp. 247-248.
[209] Barnett, pp. 247-248.
[210] Between 1970 and 1980, the Western European countries including the US witness massive influx of refugees. Apart from the fact that the period was the height of the Cold War and the world has already divided between the West and East, it was also the period where most third world countries are fighting the war of independence which created influx of refugee into major Western European countries. For more analysis see Barnett, p. 247.
[211] Campbell, pp. 27-28; Keely; p. 1058-1059.
[212] Keely, (2001), p. 305.
[213] Campbell, pp. 27-28.
[214] Campbell, p. 28.

3.2. CONTEMPORARY INTERNATIONAL RESPONSE TO REFUGEES PROTECTION

Protecting the citizenry is expected to be the fundamental function of any system of government.[215] This capacity should not be seen as a privilege when exercised by any government, because that and many other functions should constitute the overall purpose of any state leadership. However, many states have virtually lost the real essence of protecting the rights of their citizenry probably due to overwhelming nature of political power or other undemocratic modus operandi. The aftermath effect of these lapses on the part of government is evident in the insatiable quest of such citizenry to leave their countries for another place where security and economic wellbeing are guaranteed.

Apart from the prevention of inter-state war for which the League of Nations (LON) was created, obviously another reason was due to the need of citizens, individuals, or group of people for an established body in which they can seek solace when protection from the own government is less visible.[216] The League of Nations which later metamorphosis into Unite Nations (UN) with expanded roles and functions in ensuring safety and protection of refugee and dislocated migrants created the UNHCR as an agency for this purpose.[217]

The surge in refugee flows in the post-Cold War continued and there is need for new initiative and response to resolve the refugee problem in the face of globalization.[218] Hence, there is need for UNHCR to redefine its approach to refugee problem. The 1994 UN Program for Action emphasized the importance of finding durable solution to refugee problem.[219] Through this program, a remarkable reduction in the number of refugees was recorded between 1994 and 2003 by 40 percent, while the number of refugee producing countries fell from 49 in 1994 to 36

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[215] UN High Commissioner for Refugees (UNHCR), **Refugee Protection: A guide to International Refugee Law**, 01/12/2001, http://www.refworld.org/docid/3cd6a8444.html (10/12/2013), p. 5.

[216] Keely, p. 1061.

[217] Barnett, p. 241.

[218] Barnett, p. 249.

[219] United Nations High Commissioner for Refugees (UNHCR), XVI, "Population, Refugees and the Millennium Development Goals: A UNHCR Perspective", http://www.un.org/esa/population/publications/PopAspectsMDG/15_UNHCR.pdf (02/03/2014)

by the end of 2003.[220] The reason for this reduction in global refugee trend between these periods was because the majority of refugees who volunteered to return back to their country of origin (14.5 million) are more than people who became refugees.[221]

In the protection of most vulnerable victims of displacement, UNHCR is presently working in over 125 countries around the world, while Turkey, Lebanon, Jordan, Syria, Afghanistan, Pakistan, Iraq, Colombia, Democratic Republic of the Congo, and Mali remains where the UNHCR is massively working.[222] Barnett Ninette argues that, the post-Cold War increase in the number refugees and the emergence of globalization influenced the UNHCR to redefine and transform its laws, policies and approaches to refugee protection.[223] She claims that UNHCR has moved away from its original mandate of protecting the refugees so as to deal with broader security issues such as, providing proactive humanitarian plan and assistance in the 1990s. Subsequently, the UNHCR has become an organization in the post-Cold War that seeks to ensure states compliance with humanitarian law. As a result, UNHCR has come under heavy criticism for failing to protect the people for which it was originally created.[224]

Both David Turton and Peter Marsden and, Gill Loescher, criticized the UNHCR for the manner in which its political relations with states have undermined its ability to fulfil its supposedly non-political mandate to protect refugees. Considering the fact that UNHCR is not absolutely autonomous, its decisions are subject to questioning based on the whims of major stakeholders. For instance, David Turton and Peter Marsden argued that the premature repatriation of Afghans refugee had been political rather than humanitarian. The situation at the time of repatriation to Afghanistan was not conducive enough to accommodate such mass return of

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[220] (UNHCR), XVI, "Population, Refugees and the Millennium Development Goals: A UNHCR Perspective".
[221] (UNHCR), XVI, "Population, Refugees and the Millennium Development Goals: A UNHCR Perspective"
[222] Office UNHCR (A6 UNHCR) Division of Operational Services, Field Information and Coordination Support Section, **Statistical yearbook 2006: trends in displacement,** Geneva, UNHCR publisher, 2007a, Location: RCA/A6 UNHCR/Box 4.
[223] Barnett, p. 249-253.
[224] Barnett, p. 249-253.

Afghan refugees.[225] Hence, the scholars felt that UNHCR has been at the mercy of the donors.

Overall, the UNHCR has been able to help millions of desperate people throughout the world seeking safe home outside their own countries. Through its various programs the office of the UNHCR has been able to help people resettle in another country and also help those who wish to return home do so without encountering prejudice. Since its inception, UNHCR has consistently sought to responds to the needs of refugees.[226] Over 50 millions of refugees have enjoyed the kind gesture of this Commission as part of its mandate in protecting the stateless, dislocated and vulnerable people throughout the world. These and many other humanitarian gestures accorded the Commission two Nobel Peace Prizes.[227]

3.3. DURABLE SOLUTIONS

The UNHCR has a primary purpose of finding 'durable solutions' that guarantee and restore the honor of the refugee in the host country. These and many other goals have enjoyed a considerable success as a result of continuous partnership with international community.[228] Since most of the world refugees (80 percent) live in the developing countries (mostly in Africa and Asia) which find it difficult even to cater for its citizens, the UNHCR is supporting host states through the training of refugees concerning 'self reliance'.[229] Through this program, it is expected that host nations will benefit from refugees' skills and potentials and these contribute to local economy and communities. Hence, refugee could be the agent of 'development in the

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[225] Turton David and Marsden Peter, "Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan", **Afghanistan Research and Evaluation Unit (AREU),** December 2002, http://www.refworld.org/pdfid/47c3f3cb1a.pdf (19/12/2013)

[226] UNHCR, 2001, p. 21.

[227] UNHCR, 2001, p. 21.

[228] UNHCR (2011c), "Durable Solutions", http://www.unhcr.org/pages/49c3646cf8.html (29/11/2013).

[229] UNHCR (2012a), "Refugee and Protection and Durable Solutions in the Context of International Migration and Development", (Session Sixty-Seven Supplement No 12 (A/67/12), New York, www.un.org/esa/population/meetings/.../P21_UNHCR.pdf (20/02/2014)

host nation's communities'.[230] The UNHCR with the assistance of the United Nations Development Assistance Framework (UNDAF) launched this initiative in five developing countries in 2007: 'Pakistan, in relation to Afghan refugees; Tanzania, in relation to Burundian refugees displaced since 1972; Albania, in relation to the stateless Roma; Mozambique, in support of skills-training for Congolese refugees, particularly women and girls in camps under the "Women Leading for Livelihoods" initiative; and Rwanda, in relation to poverty reduction and social vulnerability for Congolese and Burundian refugees pending repatriation home'.[231]

Local integration is another 'durable solution' used by the UNCHR in solving refugee problems.[232] According to UNHCR Global Report 2012, local integration entails requesting from countries of origin to provide passports for former refugees, and from asylum countries to issue long-term legal stay documents that can lead over time to naturalization.[233] Considering the refugees' circumstances, the possibility of a safe haven in their home countries is unthinkable.[234] Hence, they will prefer integration with the first asylum country. In such cases, refugees are granted citizenship in their country of first asylum and can set about rebuilding their lives in close geographical proximity to their home countries.[235] In Western Africa, Economic Community of West African States (ECOWAS) provides a continued legal stay of refugees even if their refugee status has been terminated.[236] Through this provision, the UNHCR was able to establish local integration for Liberian and Sierra Leonean refugees who wish to continue their stay in seven West African countries: Côte d'Ivoire, Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone.[237] UNHCR reintegration program is aimed at promoting enjoyment of

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[230] UNHCR (2012 a), Refugee and Protection and Durable Solutions in the Context of International Migration and Development".
[231] UNHCR (2012 a), Refugee and Protection and Durable Solutions in the Context of International Migration and Development".
[232] UNHCR (2011c) "Durable Solutions".
[233] UNHCR (2011c) "Durable Solutions".
[234] UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".
[235] UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".
[236] UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".
[237] UNHCR (2012 a) UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".

economic, social, legal and cultural rights of refugees, but for reintegration to be sustainable, harmonious relationship and reconciliation at the community level should also be promoted and strengthened.[238] Community-based peace building and coexistence activities are therefore important elements of re-integration efforts.[239]

Another durable solution for protecting refugees is UNHCR's voluntary repatriation. In voluntary repatriation: most refugees prefer to return to their state of origin once the environment is peaceful enough to live.[240] This is a reflection of Bosco Hitimana 2013 report on Rwanda refugees that the government of Rwanda collaborated with the UNHCR to support those refugees who are willing to repatriate and those who wished to apply for citizenship in the host countries. In 2002, the Rwanda government put forward to the UNHCR a Cessation Clause to end the refugees' status of Rwandan in their states of asylum.[241] In cooperation with the Rwandan government through the three-year program for the return and reintegration of Rwandan refugees, the UNHCR assisted more than 11,000 Rwandan refugees to return home.[242] UNHCR also supports those who plan to renew their refugee status in their first state of asylum.[243]

In Asia, the civil war between Pakistan and India in 1971 causes massive displacement of people (about ten million people), however, most of them voluntary

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[238] UNHCR (2012 a), UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".

[239] UNHCR (2012 a), UNHCR (2012 a) Refugee and Protection and Durable Solutions in the Context of International Migration and Development".

[240] United Nations High Commissioner for Refugees Global Report (2012 b), "Finding Durable Solutions", **Global Report,** http://www.unhcr.org/51b1d61d0.html (29/11/2013)

[241] Cessation Clause is a situation if invoke ends refugee status. As part of rebuilding process, the government of Rwanda proposed this clause to the UNHCR in 2002 to end Rwanda refugeehood. The clause requires Rwandan refugees in their state of asylum to choose either voluntary repatriation, apply for citizenship to stay in their host country, or renew their refugee status so as to regain UNHCR protection. Rwandan refugees will lose their refugee status and legal protection if UNHCR-invoke cessation clause is put into practice and they will face forceful deportation without legal claim from their host countries. For more analysis, see Hitimana Bosco K., "54 years of Rwandan Refugees Ending", **The Independent**, 12/07/2013, http://www.independent.co.ug/rwanda-ed/rwanda/7996-54-years-of-rwandan-refugees-ending (08/12/2013)

[242] UNHCR (2012 b), "Finding Durable Solutions".

[243] UNHCR (2012 b), "Finding Durable Solutions".

returned home when stability was restored the following year.[244] Prior to their voluntary repatriation, UNHCR High Commissioner for Refugees, Prince Sadruddin Aga Khan engaged itself in a successful dialogue and reconciliation between Pakistan and India to put an end to the war so as to pave way for the successful voluntary repatriation of Pakistan refugee taking asylum in India. He embarked on a shuttle diplomacy between the two countries.[245] Apart from the peace efforts, different camps was created by the UNHCR to accommodate Pakistan refugees with the biggest one situated in Geneva camp in Dhaka, which approximately accommodated 250,000 refugees.[246]

According to the UNHCR Global Report (2012 b), in Africa and the Middle East in 2012, UNHCR helped in repatriating over 130,000 refugees voluntarily to their home countries.[247] Some 1,600 Chadian refugees were repatriated from Cameroon under a tripartite agreement signed in November 2012.[248] UNHCR also facilitated the repatriation of 6,500 Mauritanian refugees from northern Senegal and more than 6,000 Ivorian refugees from Liberia.[249] In Asia, more than 98,000 Afghan refugees returned home. Over the past decade, more than 5.7 million refugees have repatriated voluntarily to Afghanistan, 80% of this figure owing to the UNHCR's assistance.[250] In 1992/93, 360,000 refugees living in protracted situation in Thai-Cambodia border was repatriated through the assistance of UN Transitional Authority in Cambodia.[251]

A total of 24,000 Mauritanian refugees were assisted by the UNHCR to return home since it started the voluntary repatriation of Mauritanian refugees in 2008. In March 2012, the UNHCR completed the voluntary repatriation of a total number of 6,200 Mauritanian refugees from Senegal.[252] Furthermore, more than 200,000

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[244] Myron Weiner, "Bad Neighbors, Bad Neighborhoods: An Inquiry into the Causes of Refugee Flows*", **International Security,** Vol. 21, No. 1, 1996, p. 7, URL: http://www.jstor.org/stable/2539107.
[245] David Myard, "Sadruddeen Aga Khan and the 1971 East-Pakistan crisis", **Global Migration Research Paper**, No. 1, 2010, pp. 30-46.
[246] Myard, p. 32.
[247] UNHCR (2012 b), "Finding Durable Solutions".
[248] UNHCR (2012 b), "Finding Durable Solutions".
[249] UNHCR (2012 b), "Finding Durable Solutions".
[250] UNHCR (2012 b), "Finding Durable Solutions".
[251] Barnett, p. 252.
[252] UNHCR (2012 b), "Finding Durable Solutions".

Liberian refugees were assisted by UNHCR to voluntarily return back to their country between October 2004 and December 2012. The UNHCR expects to complete the remaining voluntary repatriation of 700,000 Liberian refugees living in Cote d'Ivoire in the future.[253]

However, voluntary repatriation can take place as promoted by the UNHCR only when the return of normalcy has been confirmed in the refugees' state of origin as in the case of Rwandan refugees. At this stage, the state must have entered into a post-conflict whereby internal stability and reinstatement of political and economic structure is underway.[254] Thus, the fleeing citizen is encouraged by both the government and the UNHCR to return home and contribute to the restructuring process going on in the country. Finally, the UNHCR in collaboration with the home government also seeks to ensure that returning refugees are not subjected to any stigmatization of whatsoever. They should be allowed to freely participate fully in state-building process and their freedoms and rights should be protected.

Resettlement of refugees in the third state of asylum is the last durable solution deployed by the UNHCR as a way to finally resolve the refugee problem. According to the UNHCR's Global Trends Reports 2012, over 836,000 refugees (mainly settled in the industrialized countries) have benefitted from the UNHCR's resettlement program over the past 10 years.[255] Resettlement is a process whereby certain refugees are selected and screened by the UNHCR in their first state of asylum, and then are resettled in third countries of asylum that volunteered to protect them on a permanent basis.[256]

There must be some reasons before resettlement can be considered for refugee. Some refugees might be fearful of continued persecution if they should return home.[257] Due to this reason they will be unwilling to return home even when it has

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[253] UNHCR (2012 b), "Finding Durable Solutions".
[254] Nicholson Mike, "Refugee Resettlement Needs Outpace Growing Number of Resettlement Countries", **Migration Policy Institute,** November 2012, http://www.migratio ninformation.org/USFocus/display.cfm?ID=912 (2/12/2013)
[255] UNHCR Global Trends (2012), "Displacement: The 21st Century Challenge", http://www.unhcr.org/51bacb0f9.html (2/3/2014).
[256] Nicholson.
[257] UNHCR Website, (2012 d), "A New Beginning in a Third Country", http://www.unhcr.or g/pages/4a16b1676.html (2/12/2013)

been confirmed that the situation back home has been restored back to normalcy.[258] Also, refugees can be resettled if the condition in the first state of asylum is no more conducive or in a protracted situation whereby refugees have overstayed in the first state of asylum.[259] Hence, the UNHCR resettles such refugees as the only viable durable solution to resolve the refugee problem.[260] However, there are only few and limited spaces for resettlement as millions of refugees are registered with the UNHCR. Only one percent of refugees are resettled yearly out of the 10.5 million refugees of concern to UNHCR.[261] This is due to the unwillingness of some states to participate in the resettlement program.[262] However, the UNHCR in 2011 was still able to help resettle almost 62,000 refugees in 22 countries.[263] The largest of those were refugees from Nepal (18,150), Thailand (9,570), and Malaysia (8,370).[264]

Over 3 million refugees resettled in the USA from 1975 till present and have started new lives in different communities there.[265] The President determines annually the number of refugees that is allowed to resettle.[266] But since the September 11, 2001 incident the resettlement has witnessed a setback. For example the USA generally used to give permission for the resettlement of 60,000 to 90,000 refugees a year, but in 2002 the number dropped to 27,000 only.[267] In 2012, President Barack Obama gave the nod for the resettlement of 76,000 people; however, 58,238 were able to resettle in the USA.[268] In the wake of the 2003 Iraq war that left many Iraqis homeless and subsequently as refugees, the UNHCR in cooperation with the Department of Homeland Security was able to help over 13,000 Iraqi refugees to resettle in the US between October 2006 and September 2008.[269]

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[258] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[259] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[260] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[261] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[262] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[263] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[264] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[265] Nezer Melanie, "Resettlement at Risk: Meeting Emerging Challenges to Refugee Resettlement in Local Communities", Hebrew Immigrant Aid Society, New York, February 2013, p. 4, http://www.hias.org/sites/default/files/resettlement_at_risk_1.pdf
[266] Nezer, p. 5.
[267] Nezer, p. 5.
[268] Nezer, p. 5.
[269] Archive of US Department of State, "Iraqi Refugee Assistance and Resettlement", 20/01/2009, http://2001-2009.state.gov/g/prm/c25771.htm (3/2/2014)

Furthermore, in 2007, the US Department of State's Bureau of Consular Affairs through the special admission program for Iraqis granted 812 special immigrant visas to Iraqi translators and interpreters and their families to assist the US officials in its integration program for the Iraqi refugees.[270] Since 1959, it is estimated that Canada has accepted over 852,184 refugees from around the world. However, its recent immigration policy has really tightened against refugee seeking to enter Canada.[271]

There is also progress in the number of states that committed themselves to resettle Iranian and Afghanistan refugees in the last few years. The UNHCR Global Trends Reports 2012 explain that through multilateral agreement, the Islamic Republic of Iran and Afghanistan refugees' resettlement program have tripled in the past three years.[272] The resettlement program as a strategic way of protection has really helped the office of the UNHCR to launch its various programs with cooperation in other immigration agencies. For example, in order to enhance the integration of resettled refugees, the UNHCR in cooperation with International Organization for Migration (IOM) and European Union (EU) was able to organize through exchange program 'self-reliance' and 'capacity-building' for refugees.[273]

UNHCR resettlement program as a viable solution for refugees has been rewarding and at the same time remains a challenge facing the organization, as very few states are willing to readmit refugees into their territories.[274] Throughout the Cold War, the program was politicized and this situation has continued in the post-Cold War period. However, the refugees that were lucky to be readmitted settled down and started new lives in a new environment. Though, at the beginning life can be hard for refugees in their new asylum countries due to a number of factors, including language barrier, new culture, food etc, they get used to the new life in time, and with the help of officials, they can integrate into the new system and environment. The program has been very rewarding and life changing in general.

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[270] Archive of US Department of State, "Iraqi Refugee Assistance and Resettlement".
[271] UNHCR Website, (2012 d), "A New Beginning in a Third Country".
[272] UNHCR (2012 b), "Finding Durable Solutions".
[273] UNHCR (2012 b), "Finding Durable Solutions".
[274] UNHCR Website, (2012), "A New Beginning in a Third Country".

CHAPTER FOUR
CHALLENGES TO INTERNATIONAL REFUGEE REGIME

4.1. CONTEMPORARY SECURITY CHALLENGES

Since the beginning of 1980s, states individually and collectively have introduced various measures against the arrival of anybody who wishes to lay claim to refugee status on their territory.[275] This is due perhaps to the recent increase in migration movement and in particular economic crises that confronted most of the European countries in the 21st century. Coupled with the pressure at home, states and in particular the rich Western countries enacted various immigration policies such as visa requirement, border closure, extraterritorial border check points, safe area and the like to discourage asylum seekers.[276]

The contemporary world witnessed large movements of refugees due to a number of reasons, including war against terrorism, internal conflicts, and inter-state wars, which caused many to flee their country of origin and seek refuge in a peaceful environment. Yet, states are reluctant and increasingly closing their borders against people for whom they have special responsibility to protect.[277] In his Geneva 2012 UNHCR Executive Committee (ExCom) opening speech, UN High commissioner for Refugees Antonio Guterres confirmed the high influx of refugees as a major challenge of this decade: "Already in 2011, as crisis after crisis unfolded more than 800,000 people crossed the border in search of refuge, an average of more than 2000 refugee every day and this was higher than in the last decade".[278] He called on all states to open their borders and help refugees. The Cold War and its aftermath including globalization and the war on terrorism shaped world politics and the way

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[275] UNHCR, "State of the World's Refugees: A Humanitarian Agenda", **UNHCR**, 2007, http://www.unhcr.org/3eb7ba414.html

[276] UNHCR 2007, "State of the World's Refugees: A Humanitarian Agenda".

[277] Katy Long, "In Search of Sanctuary: Border Closure, 'Safe' Zone and Refugee Protection", **Journal of Refugee Studies**, Vol. 26, No. 3, 2012, pp. 464, doi:10.1093/jrs/fes0 50.

[278] UNHCR Geneva Video, "UNHCR Executive Committee Meeting", **UNHCR Geneva**, 2012, available online at http://unhcr.org/v-5069b4e26 (20/2/2014)

and manner states and policy makers respond to refugees.[279] States now see refugees as a threat to their national security especially since migrants have been identified among the perpetrators of the Sept. 11 2001 terrorist attacks and other major bombings including the London bombing. It was reported that several convicted bombers in the London failed bomb attempts in July 2005 had come to Britain as child refugees.[280] Three of the suicide bombers who died in the successful attacks two weeks earlier were British-born sons of Pakistani immigrants who were well integrated into the British community.[281]

Immigrants with different cultural backgrounds especially those that come from countries that have linkages with terrorism and violence, have now become terror suspects in their host countries.[282] For instance, the immigrant Tsanaev brothers (Tamerlan and Dzhokhar Tsarnaev) from Chechnya to USA who later ironically became US citizen on September 11, 2012 were suspects of the Boston marathon bombings on April 2013 in USA.[283] This is not to say that refugees are terrorists or have easily been used as conduit for terrorist activities. This is just to say that asylum states are now afraid of terrorist infiltration through refugee flows into their territory. Also, asylum process and screening has been very tight nowadays. The international regime protecting refugees has its own method of determining and screening asylum seekers for the security of host nations.[284] The provisions of article 1F of the Refugee Convention prohibit the admission of any person who have perpetuated in any serious criminal activities before their arrival at the frontier of asylum states. While in Article 32(2), a forceful expulsion of a refugee to his/her

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[279] Gil Loescher, "A Universal Mandate to Protect: The Challenges of Refugee Protection", **Harvard International Review,** Vol. 31, Issue. 3, 2009, pp. 44-48.

[280] This is not to say that terrorist have penetrated countries through laying claim to refugee status, but some refugees have been found guilty for taking part in terrorist acts after they became citizen of their host country. Hence, states are reluctant to give permanent resident permit to refugees. For more analysis, see Rotella Sebastian, "Boston Bombing Suspects Echo Home-Grown Terrorists in Madrid, London Attacks", **ProPublica**, 19/04/2013, http://www.propublica.org/article/boston-bombing-suspects-echo-home-grown-terrorists-in-madrid-london-att (20/2/2014)

[281] Rotella.

[282] Khalid Koser, **International Migration: A Very Short Introduction,** London, Oxford University Press, 2007, pp 1-15.

[283] Rotella.

[284] Ninette Kelley, "International Refugee Protection Challenges and Opportunities", **International Journal of Refugee Law**, Vol. 19, Issue (3): 2007, p. 418, doi: 10.1093/ijrl/eem05

country of origin can only be permitted when such refugee is perceived as a present or future threat to the national security of an asylum state.[285]

However, atrocities perpetrated by foreign immigrants inside and outside their host nations have led states to continue to review their immigration policies and security apparatus which always negatively affect and restrict the movement of asylum seekers and refugees. Rather than as victims of violence, refugees are now seen as causes of violence all over the world.

4.2. THE UNHCR AND MANY RESPONSIBILITIES

Starting from the 1990s, the UNHCR was faced with many challenges in its handling of refugee issues: the extension in scope of the office of the organization and mandate; the creation of safety zones; the encouragement of voluntary repatriation on the one hand and the increase in forced repatriation of refugees on the other hand; and states preference for temporary protection over permanent protection.[286]

Today, the UNHCR is finding it difficult to uphold and adapt itself to the changing environment of the international political system for many reasons. One of the challenges confronting the UNHCR in the 21st century is the expansion in scope and program of the organization in the 1990s. For example during the final period of wars against colonialism (for example apartheid South Africa) and war of independence that spread across the Africa, Asia, the Balkans and the Middle East in the 1990s, the office of the UNHCR was given more responsibilities in providing massive humanitarian reliefs to refugees produced by these wars.[287] The organization provided special humanitarian assistance in Ethiopia, Somalia, Iraq and the former Yugoslavia.[288] The office of the UNHCR established emergency programs for over three million vulnerable people from the former Yugoslavia, 420,000 emergency aids were given to refugees in Kenya, about 260,000 Myanmar refugees living in

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[285] Kelley p. 418.

[286] Adams Roberts, "More Refugee, Less Asylum: A Regime in Transition", **Journal of Refugee Studies,** Vol. 11, No 4, 1998, pp. 375-376.

[287] Loescher, p. 46.

[288] Toole Michael J. and Waldman Ronald J., "Refugees and Displaced Persons", **JAMA,** Vol. 270, No. 5, 1993, p. 604, doi:10.1001/jama.1993.03510050066029

Bangladesh were provided with emergency support, and several asylum seekers from Bhutan were helped to settle in Nepal.[289] Furthermore, a team of UNHCR officials were deployed to three Balkan countries (Armenia, Azerbaijan and Tajikistan) for the provision of emergency support. In Africa, the UNHCR provided humanitarian support for over 200,000 refugees from Togo in Benin and Ghana.[290] These entire emergency support rolled out by the UNHCR during this period overstretched the organization and contributed largely to its present challenges in its protection of refugees.

The recent inclusion of Internally Displaced People (IDPs) has further expanded the scope and mandate of the office of the UNHCR.[291] IDPs are the people who are trapped in an internal conflict but are unable to cross the border; they stay inside their country waiting for assistance. These people were beyond the reach of the international agencies dealing with refugees, as their status was not dealt by the law that created the UNHCR. Their condition has become tragic, since states have become increasingly reluctant to deal with such conditions as they do not want to intervene in the internal conflict of other states. Today, millions of these people are in Sudan, Somalia and many other African countries, and other parts of the world.[292] The new initiative in the scope of the organization so as to include the IDPs has been criticized by many scholars, as they are concerned that the UNHCR will lose the focus for which it was created. By taking more responsibility, it is argued, the UNHCR has endangered its refugee protection mandate. Protection of IDPs is not yet clearly stated as part of official mandate of the UNHCR; the organization is helping IDPs basically on humanitarian ground. Antonio Guterres, the UN High Commissioner for Refugees, has reiterated its organization mandate to be the protection of refugees and stateless people.[293]

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[289] United Nations General Assembly (UNGA), **Report of the United Nations High Commissioner For Refugees**, (Forty-Eight Session, Supplement No 12/A/48/12), 1993, http://www.unhcr.org/3ae68c7a0.html

[290] UNGA 1993

[291] Loescher, p. 45

[292] Toole and Waldman, p. 601.

[293] United Nations General Assembly (UNGA, Sixty-eighth General Assembly), "General Discussion Focuses on Asylum, Uneven Burden-sharing, Internal Displacement, Protection, Statelessness", **UNGA Department of Public Information, News and Media Division,** 06/11/2013, GA/SHC/4086, http://www.un.org/News/Press/docs/2013/gashc4086.doc.htm (24/2/2014).

Goodwin-Gil (2006) argues that the issue of IDP should not have been handled by the UNHCR. Since there is no legal backing that bound the protection of IDPs with the UNHCR, their primary responsibility of protection should rest on the territorial state, as there is still law that covers non-intervention in the internal politics of a sovereign state.[294] Hence protection of IDPs poses a great challenge to the UNHCR. The UNHCR itself recognized this fact when in 1994 it noted that its activities concerning IDPs was basically on humanitarian ground and was not trying to redefine its criteria of protection, since IDPs did not have any protection legal backing.[295] Indeed, the expansion of UNHCR's scope so as to give humanitarian assistance to people persecuted by war inside their own state rather than wait for them at the border to give assistance had really refocus the organizations primary mandate.[296]

According to another argument, the inclusion of IDPs in the UNHCR's scope of activities has been purely political and dictated by the Western Powers in order to prevent asylum seekers from coming to Europe. Obliquely responding to this claim in an interview conducted by Think Africa Press, the UK spokesperson for UNHCR, Mr Nyberg Mans pointed to public opinion as an important factor influencing

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[294] Though the relevancy of the principle of non-interference in the internal affairs of state is subject to questioning in the contemporary world with recent violation of the principle by major powers (E.g. USA in Iraq and Afghanistan), however, in international law, under the principle of non-intervention paragraph, it is stated that, "[n]o state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law". For more analysis, see Guy S. Goodwin-Gill, "International Protection and Assistance for Refugees and the Displaced Institutional Challenges and United Nations Reform", **Paper presented at the Refugee Studies Centre Workshop, 'Refugee Protection in International Law: Contemporary Challenges', Oxford**, 24/04/2006, http://www.unhcr.org/47e8d2a82.pdf (28/01/2014), pp. 7-8.

[295] UNHCR Geneva, "Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the Fiftieth Session of the United Nations Commission on Human Rights", 9/02/1994, http://www.unhcr.org/3ae68fac16.html (17/03/2014), para. 26-27.

[296] The UNHCR is created for the protection of people that have suffered persecution and have already cross international border in search of asylum and not people who suffered from the same persecution but were unable to cross international border and stay back in their country. Hence, the UNHCR's engagement with the protection of IDPs can over-stretch it and subsequently lead to failure in its primary responsibilities. However, if the UNHCR deems it necessary to protect these people, it should find a way of getting them out of the conflict area and give protection outside the border rather than endangering the life of its staff by providing protection to people inside the state.

government policies in most Western countries. That is, the anti-immigrant rhetoric among the populace has really influenced their government to rethink their method of response towards refugees.[297] As the anti-refugee rhetoric is growing in these countries, stopping the influx of refugees is necessary as it might further generate xenophobic sentiment leading to conflicts between natives and migrants.[298] Long Katy argues that US closed its doors to Afghanistan refugees to encourage internally-focused IDP efforts.[299]

4.2.1. The UNHCR's Political and Financial Constraints

The expansion of the role of the UNHCR means that the organization has to change gear in order to adjust itself to the new environment. As previously noted, the organization lacked political and financial independence since its creation. To carry out its mandate, the UNHCR has to take the permission of the member states. The Governments then responded by providing funds and assistance to UNHCR's operations on their territories.[300] Hence, the UNHCR as the primary agency responsible for the protection of refugees is unable or reluctant to openly criticize the policies of some states towards the refugees they are hosting. For example, as will be discussed later, the UNHCR refuses to condemn various immigration measures deployed by states against refugees including detention, while they determine their status. Detention has become a norm in Australia's determination of refugees' status.[301] Detention as a means to determine refugee status can only be justified only when a person or an asylum seeker is seen as a threat to state security or absconded. However, states employ this tactic to discourage asylum seekers from coming to their

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[297] Rom Bhandari, "UNHCR: 'Protection or Containment", **Think Africa Press,** 28/06/2011, http://thinkafricapress.com/refugees/unhcr-protection-or-containment (14/12/2013).

[298] Myron Weiner, "Security, Stability and International Migration", **International Security,** Vol. 17, No. 3, 1993, p. 93, URL:http://www.jstor.org/stable/2539131

[299] Long, p. 464.

[300] UN High Commissioner for Refugees (UNHCR), **Refugee Protection: A guide to International Refugee Law**, 01/12/2001, http://www.refworld.org/docid/3cd6a8444.html (10/11/2013), P. 5

[301] Australia has the highest number of refugees waiting for their asylum status to be processed. It has become a norm of determining refugees' status in Australia. The detention centers are usually in the remote areas barricaded with barb-wires; and in the process of waiting for their asylum status, some of the refugees were harshly treated by the security guides. See Ninette Kelley, pp. 430-432 for an in-depth analysis.

country.[302] Yet, the UNHCR, which is said to be a humanitarian and non-political organization, has refused to publicly condemn this policy although some refugees are languishing in detention for years without having their refugees' status confirmed. There is no disputing of the fact that an organization founded by nation-states should also be funded by its founders but contribution is expected to be done altruistically.

Relying on states for financial support in order to carry out its mandate is one of the greatest challenges confronting the office of the UNHCR in the 21st century. Over 97 percent of UNHCR funding comes from voluntary contributions and member states.[303] In an interview a UK spokesperson for the UNHCR, Mr Mans Nyberg talks about how major donors exercise leverage over the organization. Nyberg explains that, 67 UN member states that make up the Executive Council (ExCom) of the UNHCR are also the major contributors to UNHCR funding. Till now, the USA, Japan and the European Union (EU) contributed most.[304] Between 1995-2005 alone, the USA donated a huge amount of about $ 2,960,209,30. Other major contributors include Australia, Norway, United Kingdom (UK) and Sweden.[305] These countries through their contribution and ExCom power in the UNHCR determine where the organization disburses the funds.

In retrospect, countries seldom contribute to an organization altruistically. States generally contributes in line with their interests.[306] For example, strategic interests and foreign policy determines the manner of states contribution to the UNHCR throughout the Cold War. In the post-Cold War era, security and developmental issues drive major donors to contribute to the organization.[307] During the Cold War, people especially from the Eastern Europe were encouraged to seek asylum in Europe. Refugees fleeing persecution from the communist states were welcomed in the UK, Canada, the USA and other Western European countries. Throughout this period the UNHCR was heavily funded as it was active in protecting

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[302] Kelley, pp. 430-432.
[303] Beth E. Whitaker, "Funding the International Refugee Regime: Implications for Protection", **Global Governance,** Vol.14, no (2), 2008, p. 243.
[304] Bhandari.
[305] Bhandari.
[306] Loescher, pp. 46-47.
[307] Loescher, pp. 46-47.

refugees fleeing the Eastern Europe.[308] However, when in the post-Cold War era that the asylum seekers coming to Europe were from regions and places, where the strategic interest of giving assistance is no more of interest to the donors, there was decline in terms of funding the organization.[309] Certainly, they have lost interest in spending huge amount of money on building camps and settlements for refugees, who will end up spending the rest of their life in camps as they depended largely on external assistance, and at the same time they are not interested in international burden-sharing which the host nations viewed as the only lasting solution to refugee problems.[310] However, they are only interested in funding aid relief programmes that will keep refugees in their first state of asylum forever as they are not interested in admitting refugees anymore.[311]

This lack of financial wheel and political independence of the organization constitute barriers in its decision-making in relation to states activities against refugees that are now taking preference over UNHCR activities. For example, in 1999 while the Macedonian government was accused of closing its border on Kosovan refugees and insisted on burden-sharing scheme, the US and other countries supported the Macedonian government policy but the UNHCR maintain that first asylum admission had to be unconditional.[312] However, the sharing scheme

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[308] Charles B. Keely, "The International Refugee Regime(s): The End of the Cold War Matters", **International Migration Review,** Vol. 35, no, 1, 2001, URL: http://www.jstor.org/stable/2676063.

[309] Jeffrey Crisp, "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process", **International Migration Review**, Vol. 35, no 1, special Issue: UNHCR at 50: Past, Present and Future of Refugee Assistance, 2001, pp. 171-173, URL:http://www.jstor.org/stable/2676057.

[310] Crisp, pp. 171-173.

[311] Crisp, pp. 171-172.

[312] By the time the Kosovo refugee crisis started, the Macedonian government played a significant role at the onset by admitting Kosovan refugees unconditionally. But by the time the condition is becoming unbearable it decided to shot its border on the remaining refugees and causing humanitarian concerns. The position of UNHCR on this crisis was that Macedonia was obligated under international law to admit the refugees, since not doing so would be to drive them back in the hands of Hostile Serbs forces and constitute refoulement. The UNHCR maintains that even though burden-sharing might be the right option it has to be discussing after refugee must have been admitted to the first state of asylum. However, the USA and other major donors use their influence and power in the UNHCR and put pressure on the organization to make it bow to the Macedonian request and, as such jeopardizing the effort of the UNHCR to promote its unconditional first state of asylum. For in-debt analysis, see Michael Barutciski and Astri Suhrke, " Lessons from the Kosovo

programme instituted by the Macedonian government for the Kosovo refugees took preference over UNHCR's programmes subsequently undermining the UNHCR's effort to promote unconditional asylum policy.[313] Crisp Jeffrey highlights two factors that might have caused the decline in the funding of the UNHCR: contingent and contextual factors. Contingent factors have to do with the draught, famine and population displacement that confronted most African countries and subsequently inhibited the developmental programmes of the UNHCR and its partner in the 1980s. However, contextual factors related to the changing perception and agreement between the UNHCR, host nation and donors on how to find durable solution to refugees.[314]

Additionally, the UNHCR also sometimes experiences financial shortfalls to carry out its programme particularly in the region, i.e. Africa, which hosts the largest numbers of refugees in the world. The UNHCR in 1991 remarked:

> "The efforts made to date in the area of refugee aid and development has had limited results, mainly due to a lack of funding. Paradoxically, the projects which have not been funded are mainly those in Africa, where large numbers of refugees are to be found in some of the least developed countries of the world, and where the presence of a large concentration of refugees in care and maintenance situations is regarded as an important impediment to development.[315] (Stevens, 1991)"

The promotion of UNHCR's 'self-reliance' programme of urban refugees in Egypt met with lack of funds.[316] In 2002, the Human Rights Watch (HRW) reported that over $ 40,000,000 was needed by the organization to organize its programmes in

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Refugee Crisis: Innovation in Protection and burden-sharing" **Journal of Refugee Studies,** Vol. 14, No 2, 2001 especially pp. 95-101

[313] Barutciski and Suhrke, P. 99.

[314] Crisp, p. 173.

[315] Stevens, Y. (1991). "Review of Efforts to Promote Refugee-related Development-type Projects", as cited in Jeffrey Crisp, "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process", **International Migration Review**, Vol. 35, no 1, special Issue: UNHCR at 50: Past, Present and Future of Refugee Assistance, 2001, p. 173, URL:http://www.jstor.org/stable/2676057.

[316] The UNHCR introduced refugees' self-reliance program in Egypt so as to reduce the reliance of refugees on the UNHCR assistance and also to discourage illegal movement of refugees. However, it was met with lack of funds, and the organization could not get the support it expected. See Stefan Sperl, "Evaluation of UNHCR's policy on refugees in urban areas: A case study review of Cairo", **UNHCR's Evaluation and Policy Analysis Unit (EPAU),** 2001, http://www.unhcr.org/3b3310382.pdf (09/02/2014).

both Kenya and Uganda; but by the middle of the year, a paltry sum of $ 23,000,000 had only been received by the UNHCR.[317] In a recent conversation the UN Deputy High Commissioner for Refugees Alexander Aleinikoff, noted that as of late 2013, a total of about $1.58 billion funding shortfalls in the Syrian Regional Response Plan was estimated by the UNHCR.[318] Hence, the shortfalls in provision of funds to the organization as at when due contributed to the challenges facing it in the new era and subsequently negatively affecting the refugees. For the organization to continue carrying out its refugee protection effectively, a need for a new model of funding the organization must prioritize its donor.

4.3. REJECTION, BORDER CLOSURE AND FORCED REPATRIATIONS OF REFUGEES

The challenge confronting the International refugee regimes particularly the UNHCR concern how to persuade the policy makers and states to fulfil their obligation of protecting refugees by admitting them into their territory.[319] Security challenges and economic difficulties have forced many states to raise or close their borders against refugee influx.[320] The restrictive method of border closure that is often witnessed nowadays is not novel development. In 1938, at the small town of Evian in France, six European countries of Hungary, Yugoslavia, Italy, Belgium, Holland, and Switzerland agreed to raise their border against the influx of Jewish refugees fleeing Nazi-Germany.[321]

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[317] Human Right Watch (HRW), "Responsibility for Camp Conditions: Host Government" 2002, http://www.hrw.org/reports/2002/kenyugan/kenyugan1002%20ap%20alter-19.htm (4/12/2013)

[318] Lindsey Phillips, "Responding to the Syrian Refugee Crisis: A Conversation with T. Alexander Aleinikoff, UN Deputy High Commissioner for Refugees", **Migration Policy Institute (MPI),** 01/11/2013, http://www.migrationpolicy.org/article/responding-syrian-refugee-crisis-conversation-t-alexander-aleinikoff-un-deputy-high (04/11/2013)

[319] Loescher, pp. 45-46.

[320] Kelley, p. 404.

[321] These six European countries agreed to raise their border against the Jews citing their presence as threat to their security. For more on this, see Irial Glyn, "Asylum-Seeking in Europe in the 1930s and 2010s Compared", **Migration Citizenship Education,** 2009, http://migrationeducation.de/33.2.html?&rid=219&cHash=a21915e38b6857b98d81aedf584f b3f2 (30/12.2013).

Apart from the political and financial constraints that have continued to inhibit the UNHCR programmes, another growing concern is how to convince states to open their borders to asylum seekers and refugees, and to prevent the forceful repatriation of refugees back to their states of origin where the circumstances that had made them flee have not change at all. Sending them back amounts to the violation of the principle of non-refoulement: the cornerstone of the international refugee regime.[322]

Border closure and forced repatriation of refugees reflect the refusal of states to accept their obligation of refugee protection under the 1951 Convention on Refugee Status to which they are signatories.[323] The tendency for border closure was on the rise immediately after the Cold War and continued in the new century. This is probably due to the political and economic reasons related with the 9/11 incident and the subsequent similar events that took place in other countries including the UK.[324] Politically, security issue has become a serious concern to policy makers. The governments continue to view the influx of refugees on their territory as a threat to the security of their citizens and thus close their borders against them.[325]

Border closure is mostly practice by those states that are the largest recipients of refugees. For example in 2000, Pakistan and Iran who have been the major recipient of Afghan refugees (together playing host to over 3.5 million Afghan refugees before the US war on Taliban in Afghanistan) decided to temporarily closed their borders against them even when Afghan refugees fleeing Afghanistan during US war on terror exercise in Afghanistan were knocking on their borders, they both refused to open their border and were denied entrance into their territories.[326] In Africa refugees were generally welcomed with open arms; border closure has also become an increasing practice. Tanzania which has a good record of hospitality in hosting one of the largest number of refugees in Africa with an almost over 600,000 refugees, has recently resorted to closing its border and forceful repatriation of refugees.[327] This act was unthinkable of Tanzania several years ago. In 1995, the

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[322] Kelley, p. 406.
[323] Kelley, p. 406.
[324] Kelley, p. 406.
[325] Weiner, p. 93.
[326] Kelley, p. 406.
[327] Bonaventure Rutinwa, "The Tanzania Government's Response to the Rwandan Emergency", **Journal of Refugee Studies**, vol. 9, no. 3, 1996, pp. 295-296.

Tanzanian government which had played host to Burundian refugees suddenly decided to close its border to the rest of Burundians fleeing persecution from the war that erupted in their country. Tanzania Minister of Foreign Affairs would later explain "[w]e are saying enough is enough. Let refugees go home and no more should come".[328] As if that is not enough, the same Tanzanian government forcefully repatriated Rwandan refugees back to their country. About 126 Rwandans were repatriated from Tanzania.[329] Responding to this action, UNHCR appealed to the Tanzanian government to ensure the continued protection of the millions of refugees already inside the Tanzanian borders.[330]

Tanzania is not the only country in Africa that has either closed her border or forcefully repatriated refugees. The Kenya official repatriated around 1,300 Somali refugees back to their country.[331] In January 2007, the Kenyan government closed its border against over 4,000 Somalian refugees at Dholbley town bordering Somalia and forcefully sent back around 360 Somalian refugees waiting for UNHCR's transfer to Dadaab camp from Liboi camp.[332] The Kenyan government cited security concerns for its action towards the Somalian refugees.[333]

The incidents of border closure and repatriation of refugees by host governments are not peculiar to Asian and African countries as it also happens on a daily basis in other parts of the world. In South America, Panama deported a large number of Colombian refugees who had escaped a decade violence that had spread across the country back to Colombia. The swift response of the UNHCR and other

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[328] Rutinwa, pp. 295-296.
[329] Rutinwa, pp. 295-296.
[330] Long Katy, "No entry! A review of UNHCR's response to border closures in situations of mass refugee influx", **UNHCR's Policy Development and Evaluation Service** (PDES/2010/07), 2010, www.refworld.org/pdfid/4c21ad0b2.pd (27/02/2014), p. 27
[331] Rutinwa, pp. 295-296.
[332] Kenya played host to over 200,000 Somalian refugees since the war broke out in that country. Between 1999 and 2007, the Kenyan government closed its border with Somalia not less than three times. Its action was understandable because Somalia at that time had become a pariah state without a central government and was controlled by the Alshabaab rebel group who launched a deadly attack on Kenya for interfering in the Somalia crisis. Closing its border with Somalia perhaps might be the last solution to securing its own citizens. For an in-depth analysis on this and the international response to it, see Long Katy, "No entry! A review of UNHCR's response to border closures in situations of mass refugee influx", especially pp. 51-55.
[333] Long, "No entry! A review of UNHCR's response to border closures in situations of mass refugee influx", pp. 51-52.

international condemnation of the Panama authorities curbed further deportation of Colombians in Panama.[334] In the Eastern Europe, Macedonia has been consistently subjecting the Kosovan refugees to refoulement. Hence, in all ways Macedonia has failed as to its obligation under international refugee law.[335] For example in 1999, Amnesty International reported that the Macedonian authorities closed all borders to approximately one thousand of Kosovan refugees, forcing them back to the dangerous frontiers of Yugoslavia. Though the Macedonian government later gave assurance to the UNHCR that the border would remain open, it insisted that countries wishing to share the burden should do so directly from the border.[336] This shows that despite the verbal assurance, the Macedonian government was not ready to reopen the border to refugees. This is one of the challenges that have continued to confront the office of the UNHCR.

Concerning this state policy of border closure and other immigration measures against refugees, Katy Long argues that international refugee agencies have increasingly turned blind and ceased to condemn these acts but instead, mitigate such closure by creating an alternative policy of 'safety zones'. In retrospect, this 'safety zone' policy has not always been the best and often failed to protect.[337] Though states have the right to control their borders against illegal immigrants and protect the security and property of their citizens but such controls should be subjects to and not supersede the international human rights laws that protect refugees.

4.3.1. Sea and Air border closure

The increased and continuous influx of refugees on international borders in the post-Cold War environment has always attracted the attention of state officials and reinforced the belief of both state elites and their citizens that their presence on their territory poses dangers to their security and economics. The view of these citizens towards refugees especially in the Western countries where public opinion plays a

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[334] Kelley, p. 407.
[335] Amnesty International, "The protection of Kosovo Albanian refugees", EUR 65/03/99, 19/05/1999, http://www.refworld.org/docid/3ae6a9c914.html (2/12/2013)
[336] Amnesty International (1999), "The protection of Kosovo Albanian refugees".
[337] Long, p. 464-467.

major role in government policies is that refugees are 'illegal immigrants' who came only to suck their economy, and not as victims of persecution.[338] Hence, the governments of these countries engaged in extraterritorial immigration exercise controls over and check on both the sea and the air.[339] After the USA-led war on terror in Afghanistan, most refugees produced by this war that headed for Australia by ship in search of sanctuary were intercepted on the sea by the Australian authorities before they got to Australia and were redirected to either Indonesia which had a bilateral relationship with Australia or to Nauru Island or Manus Island in Papua New Guinea where they would spend many months in detention before been allow to enter into another country that is willing to accept them.[340] In July 2013, the Australian government reiterated its stance on asylum seekers who wish to enter Australia by boat by declaring that Australia will not allow them to do so. The Australian government is reportedly spending daily an estimated $1 million on adverts against refugees declaring: "if you come by boat without visa you would not be settled in Australia".[341] Australian immigration policies on refugees have been very tough recently. However, this is a serious concern to the UNHCR, as Australia has been one of the major donors to the organization and its citizens are well known for their relatively benign behaviour towards refugees.

The United States of America is also known to be very tough in offshore border closure; in 1939 it intercepted on water a boat carrying the Jews who had escaped from Nazi Germany and headed to USA by closing its port with Cuba.[342] Recently, the Cuban and the Haitians are the victims of USA interception activities on the sea. The USA officials intercepted many times on the sea the Haitians fleeing persecution and turned them back without any formal process to determine their

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[338] CERIUM, "Who is a Refugee and who is not - the Crisis of Identity as a Challenge to Protection", 17/05/2005, http://www.cerium.ca/Who-is-a-Refugee-and-who-is-not (01/12/2013)

[339] Kelley, pp. 420-423

[340] Kelley, p. 421.

[341] Mike Head, "Australian Labour Government Announces Shutting of Borders on Refugees", **World Socialist,** 23/07/2013, https://www.wsws.org/en/articles/2013/07/22/refu-j22.html (20/2/2014)

[342] Head.

refugee status.[343] In 2004, for example, after intercepting the Haitians on the Caribbean Sea without any formal process and interview, President Bush declared: "[w]e will turn back any refugee that attempt to reach our shore, and that the message needs to be very clear to the Haitian people".[344] This policy of the US was heavily criticized by the Amnesty International for putting the Haitians at risk of violation of human rights in their own country and for undermining international refugee law.[345]

Furthermore, to think that the USA will end its policy of interception on the sea is a mistake. The UNHCR reported that in January 2013, over 180 Haitians were stopped on the Caribbean Sea and forcefully returned back to Cap Haitian, Haiti by the maritime officials.[346] When the matter was taken to the court, the USA defended itself by proclaiming that the laws that prohibit refoulement do not extend to the high sea.[347] This shows how states continue to disregard and manipulate the international law they themselves designed and established. This forceful repatriation on the sea led to boat being capsized and left many dead before they reached the shore. Approximately 2,598 individuals were intercepted on the Caribbean Sea at the end of 2012 as reported by the UNHCR, whereby 71 death was recorded, with 63 missing, and 1,510 were repatriated back to their countries many of whom were Cubans and Haitians.[348] The fear of the UNHCR as to the US was that many of these boat refugees (especially Haitians) were not given a chance to identify/prove their refugee status before they were sent back.

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[343] UNHCR, "UNHCR Urges Adequate Asylum Screening of Haitians Intercepted at the Sea", **UNHCR Washington**, January 25, 2013, http://www.unhcrwashington.org/node/80 (21/02/2014).
[344] Kelley, p. 423.
[345] Gluck Suzanne, "Intercepting Refugees At Sea: An Analysis of the United States' Legal and Moral Obligations*", **Fordham Law Review**, Vol. 61, Issue 4, 1993, p. 867, http://ir.lawnet.fordham.edu/flr/vol61/iss4/5
[346] UNHCR Washington (2013), "UNHCR Urges Adequate Asylum Screening of Haitians Intercepted at the Sea".
[347] Suzanne, p. 868.
[348] UNHCR Washington (2013), "UNHCR Urges Adequate Asylum Screening of Haitians Intercepted at the Sea".

The European Union (EU) in collaboration with many of West and North African countries has been able to easily carry out their own interceptions.[349] Italy order to control both its land and sea borders against refugees had entered into an agreement with the Libyan government to the effect that its vessels would be able to intercept refugee boats on the high sea and send them back to Libya.[350] Hence, potential asylum seekers were denied access to any of the EU countries. Just like the USA policies on the Caribbean Sea against refugees, the EU has refused to distinguish between refugees and desperate economic migrants on their offshore borders control. The major coastal states of Italy, France, Greece, and Spain operate their own interception immigration policy on the Adriatic Sea, the Mediterranean and around the Canary Islands.[351] These areas have been noted as easy access point to get to Europe by both refugees and economic migrants. This in turn prompted the EU through its European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) to increase its maritime authority against the people that want to cross to Europe by boat. Many were able to cross over while many others died in the process, while the ones that were caught were sent back to their port of departure.[352]

Raising borders against refugees and all other immigration policies that are taking their tolls on refugees simply means that states are condemning refugees to death. Refugee move in order to protect themselves from persecution. And indeed it is their own government that is threatens to persecute or persecutes them and thus their protection under that government cannot be guaranteed anymore. Hence, sending them back by closing the border means that states cannot tolerate of their

[349] Brenda Bowser-Soder, "Backgrounder: States' Obligations to Protect Refugees Fleeing Libya", **Human Rights First**, 28/02/2011, http://www.humanrightsfirst.org/resource/backgrounder-states%E2%80%99-obligations-protect-refugees-fleeing-libya (14/12/2013)
[350] Bowser-Soder.
[351] Thomas Gammeltoft-Hansen, "The Refugee, the Sovereign and the Sea: EU Interdiction Policies in the Mediterranean", (Working Paper no 2008/6), 2008, **Danish Institute for International Studies, DIIS**, http://en.diis.dk/files/publications/WP2008/WP08-6_Refugee_Sovereign_Sea_EU%20Interdiction_Policies_Mediterranean.pdf (15/02/2014), p. 16.
[352] FRONTEX is the European Union agency for external border security. It is responsible for coordinating the activities of the national border guards in ensuring the security of the EU's borders with non-member states. For in-depth information on FRONTEX activities, see Lodge Anthony and Azzopardi Alfred, Azzopardi, **Beyond the Frontiers: Frontex: the First Five Years,** FRONTEX Press, Warsaw, 2010.

stay and if other states do likewise, then they are finally condemned to death. The protection of refugees is indeed a global responsibility and must be seen as such by all state. State must understand that borders are said to be 'artificial'.

4.3.2. Visa Restrictions and Documentation

The presence of refugees on states territories has been a major concern of all policy makers throughout the world especially as refugees are increasingly becoming liability as far as state economies are concerned. Hence, coupled with the global economic crisis that affected most of this country in 2007/08, there was an increase in anti-immigrant chant in Europe and their citizen started pressurizing their leaders to reduce the influx migrant on their territories.[353] This pressure has translated into strict immigration measures of securing visa and citizen tests for immigrants. This policy is common especially in Australia, UK and the USA.[354]

The policy of securing visa before embarking on a foreign trip as a means for immigration control is an old policy in Europe.[355] This is another extraterritorial policy enacted by states to control movement of people at their borders. The asylum seekers first encounter this procedure before they start their journey to the country of asylum. The number of nationals who are exempted from visa policies varies and, of course, seldom the nationals of refugee-producing countries will be exempted.[356]

However, obtaining visa and other valid travel documents for refugees may be impossible sometimes due to the sudden outbreak of unrest in the refugee-producing countries and the incapacity of embassy officials to issue visa at the time.[357] In 2007, for example, it was reported by several newspapers that the Syrian government that had been a generous host to over 1 million Iraqi refugees since the 2003 US-led

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[353] Mike Nicholson, "Refugee Resettlement Needs Outpace Growing Number of Resettlement Countries", **Migration Policy Institute**, November 2012, http://www.migrationinformation.org/USFocus/display.cfm?ID=912 (2/12/2013)
[354] Kelley, pp. 419-425.
[355] Kelley, p. 420.
[356] Kelley, p. 420.
[357] "Syria Shuts Border to Iraqi Refugees - UNHCR", **Reuters,** 1/10/2007, http://www.reuters.com/article/2007/10/01/idUS119126393845._CH_.2400 (10/2/2014); also available at: **Uruknet news**:www.uruknet.info?p=37030

invasion on Iraq was re-imposing a visa restriction on Iraqi refugees.[358] The Syrian government cited economic, commercial, transport and, educational reasons for its action and restricted its visa to special skilled Iraqi refugees such as professors, doctors and engineers.[359] The result of this restriction was that other fleeing Iraqi refugees were left with no choice other than to stay in the danger zone of their country and risk persecution. Thus, they became IDPs.

Also in Egypt, which had been one of the hosts to Syrian refugees, the government swiftly took a decision last year and turned back flights carrying Syrian refugees from Damascus and Lakatia due to new visa requirement and security clearance required of all foreigners including Syrians. However, Syrians citizens have been exempted from obtaining visa for Egypt before the outbreak of the Syrian war.[360] This act of the Egyptian government towards the Syrian refugees has violated Article 31 of the International Convention on refugee status: "refugees should not be prejudiced due to their inability to obtain necessary travel document that will enable their free movement from one state to another".[361] Instead of condemning this act, the UNHCR pleaded with the Egyptian government to accept Syrian refugees and stop the deportation of the ones already in Egypt. "I pleaded to the Egyptian authorities as I have to all other governments in the world, to admit and protect all Syrians seeking refuge in their country" said Antonio Guterres the UN High Commissioner for Refugee.[362] Over 476 Syrians have been denied entry or deported since the visa introduction in Egypt was imposed.[363]

We can conclude that through this strategy states are closing their borders on refugees and avoiding their obligation of protection under domestic and international law. Though as have previously stated, states have the legal and unconditional sovereign right to determine who can gain access to its territory, the manner and/or

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[358] Reuters (2007), "Syria Shuts Border to Iraqi Refugees - UNHCR".
[359] Reuters (2007), "Syria Shuts Border to Iraqi Refugees - UNHCR".
[360] UNHCR, "UNHCR Express Concern over New Restriction for Syrian Refugee in Egypt", 12/07/2013, **UNHCR Press Release,** http://www.unhcr.org/51e03ff79.html (24/2/2014); **UN NewsCenter** http://www.un.org/apps/news/story.asp?NewsID=45400&Cr=syria&Cr1=refugee#.UwyiD_QW28c
[361] Kelley, p. 420.
[362] UNHCR Press Release (2013), "UNHCR Express Concern over New Restriction for Syrian Refugee in Egypt".
[363] UNHCR Press Release (2013), "UNHCR Express Concern over New Restriction for Syrian Refugee in Egypt".

the timing of the implementation of these sovereign laws may conflict with human rights law, as refugees also have the right to claim entry into any state under international human right law and enjoy protection under any state.

4.3.3. Interception of the Syrian Refugees on the Sea

The primary responsibility to protect and give assistance to refugees belongs to host states. However, when the refugee host states are unable to do so, then the UNHCR has to provide this assistance and protection.[364] Most developing nations who have been the host to large number of refugees fall under this category. Most of these states with weak economies were overstretched with influx of refugees, and when their call on the international community to help share the burden is not forthcoming, they resorted to harsh measures on refugees. The result has been often that refugees want to leave the first state of asylum by all means for a better place where their survival and assistance can be guaranteed.

Such is the case in Egypt where Syrian refugees have been subjected to many harsh conditions and their rights as refugees were violated with impunity.[365] Many of their attempts to cross the sea for Europe from Egypt were thwarted by the Egyptian marine officers. Amnesty International reported that thousands of Syrian refugees crossed the Mediterranean Sea from Egypt to Italy. Some were intercepted by the Egyptian marine authorities and detained. Some died in the process of crossing the sea to Italy.[366] The desperateness of these Syrian refugees to leave Egypt for Italy or other European country might also be because of the sudden outbreak of the Egyptian revolution against the government that could no longer guarantee their safety and security. The Syrians have been accused of supporting the ousted Egyptian president Mohammed Morsi and have been subjected to series of open

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[364] Human Right Watch (HRW), "Responsibility for Camp Conditions: Host Government" 2002, http://www.hrw.org/reports/2002/kenyugan/kenyugan1002%20ap%20alter-19.htm (4/12/2013).

[365] Amnesty International, "We Cannot Live Here Any More" Refugees from Syria in Egypt", **Refworld,** 17/11/2013, MDE12/060/2013, http://www.refworld.org/docid/525fce0e 4.html (24/02/2014).

[366] Amnesty International (2013), "We Cannot Live Here Any More" Refugees from Syria in Egypt".

xenophobia from both the Egyptian elites and the citizens.[367] For instance, on September 17, 2013, over 200 Syrian refugees travelling by boat from the port of Alexandria in Egypt were intercepted by the Egyptian navy which detained many of them. On the same day at a café in Alexandria, another 70 Syrian refugees were apprehended by the police on the suspicion of illegal immigration; they were also detained.[368] Illegal detention of refugees especially of Afghanistan and Syrian origin is the order of the day in Egypt.[369] There is daily discrimination confronting refugees in Egypt, which has been one of the greatest challenges for the UNHCR as the Egyptian police have not allowed the UNHCR or even the lawyers to have access to refugees in detention.

4.4. THE ALTERNATIVE SETTINGS OR DURABLE SOLUTION

Raising up borders and ensuring the physical presence of various security apparatus to control immigration have been viewed by many countries as the best means to deal with the new security challenges in the post-Cold War environment. This system reflects the new concept of current times. The system provides citizens with the valuable rights to security, freedom and welfare against perceived external threats.[370] The 9/11 incident and its aftermath also heightened the way and manner states respond to security issues.[371] Many states now tightened their security against refugees as terrorist may infiltrate countries through the influx of refugees. Hence, the UNHCR refused to totally condemn various state measures against immigrants

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[367] Amnesty International (2013), "We Cannot Live Here Any More" Refugees from Syria in Egypt".
[368] Amnesty International (2013), "We Cannot Live Here Any More" Refugees from Syria in Egypt".
[369] Amnesty International (2013), "We Cannot Live Here Any More" Refugees from Syria in Egypt".
[370] Jackson Robert and Sorenson Georg, **Introduction to International Relations: Theories and Approaches,** New York: Oxford University Press, 2003, pp. 285-290.
[371] Long Katy, "In Search of Sanctuary: Border Closure, 'Safe' Zone and Refugee Protection", **Journal of Refugee Studies**, Vol. 26, No. 3, 2012, doi:10.1093/jrs/fes050, p. 417.

which also affect refugees' movement and instead came up with what Katy Long describes as 'alternative settings'.[372]

4.4.1. Safe Areas/Zone

Safe zone as a concept has been used to refer to different terms ranging from 'open relief centres', to 'safe haven' and 'safe corridors'.[373] In principle, the concept of **safe area** is not connected to the politics of border closure;[374] rather, it was established in the past to basically give first aid treatment to the wounded, the sick and civilians in conflicts. For instance, *Madrid* was established as safe zone during the Spanish civil war, while in 1937 Sino-Japan war, *Shanghai* was used as a safe area as part of the humanitarian efforts.[375] The goal of 'safe zone' which was later became part of the Geneva Conventions of 1949 and part of Humanitarian International Law (HIL)[376] was to establish a location within conflicting conflicts zones in order to facilitate easy delivery of humanitarian efforts to refugees and as well free from warring factions.[377] Safe zone must be established with the consent of all parties, i.e. the government, the UNHCR and the warring groups and be respected by all.[378] Hence, militarization of safe areas is not encouraged. However, in the post Cold War era, militarization of safe areas has increasingly become the practice, as many times warring groups or rebels have attacked the civilians in safe areas.

During the 1980s, the creation of safe zones in SriLanka was unanimously agreed upon between the UNHCR and the SriLankan government and all other parties involved.[379] In 1990 when the fighting between the SriLankan army and the

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[372] Alternative setting is the creation of safety zone inside the warring state to protect people who are fleeing the war by crossing international border. For more analysis, see Katy Long, "In Search of Sanctuary: Border Closure, 'Safe' Zone and Refugee Protection", **Journal of Refugee Studies**, Vol. 26, No. 3, 2012, doi:10.1093/jrs/fes050.

[373] Landgren Karin, "Danger: Safe Areas", **Refugees Magazine.** Issue 103, 1 March 1996, (article adapted from the **International Journal of Refugee Law,** Vol. 7, No. 3), http://www.unhcr.org/3b5547d64.html

[374] Long, "In Search of Sanctuary: Border Closure, 'Safe' Zone and Refugee Protection", p. 461.

[375] Long, P. 461.

[376] Long, P. 461.

[377] Landgren.

[378] Landgren.

[379] Landgren.

rebels resumed despite the on-going peace talk, a 'relatively safe environment' was created by the UNHCR to shelter the fleeing civilians. This decision was also respected by the rebels.[380] However, this agreement was soon violated when in 2009 the SriLankan army attacked and continuously shelled three different 'no fire zones' killing many civilians including children and women.[381] This prompted the question of 'how safe are 'safety zones' in the protection of refugees?'

The establishment of 'safe havens' in Northern Iraq, Bosnia, Rwanda and recently Somalia has become a common practice in the Post-Cold War era.[382] The establishment of a 'safe haven' in the Northern Iraq for the Kurdish civilians fleeing from Saddam's persecution was as result of Turkey's refusal to open its border to over 300,000 Iraqi Kurds as Turkey is not obliged to do so for Middle Eastern refugees under international refugees law.[383] The fleeing Kurdish refugees were left freezing for many days outside the Turkish border. The only option for the UNHCR was to create a temporary sanctuary for them in the Northern Iraq.[384] The creation of a safe haven in the Northern Iraq however, without the consent of the Iraqi government was a huge success as it catered for the immediate safety of the Kurdish refugees.

In 1994 Rwandan genocide, with the help of France, the UNHCR created 'Zones Humanitaires Sures' (ZHS), 'safe humanitarian zones' for the Hutu ethnic majorities who escaped the massacre of Rwanda genocide.[385] The safe haven in Rwanda accommodated over 300,000 people, the majority of them been the Hutus.

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[380] Landgren.

[381] United Nations, "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka", 2011, pp. 23-36, www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf (02/01/2014)

[382] Long, pp. 461-462.

[383] Before the passing of its new immigration law recently, the legal principle guiding Turkey's asylum policies stem from the "geographical limitation" of the 1951 Refugee Convention of which Turkey is a signatory. In line with these limitations it is only European asylum-seekers that can come to Turkey and seek refuge and will be given refugee status with the possibilities of getting full Turkish citizen, while resettlement to a third country is the only option for non-European refugees in Turkey. For more details, see Landgren, and also Zaid Hydari, "Turkey Brings Refugees out of the Shadows", **Foreign Policy in Focus**, May 6, 2013, http://fpif.org/turkey_brings_refugees_out_of_the_shadows/ (29/03/2014) especially on the new immigration law passed by Turkey parliament last year.

[384] Landgren.

[385] Haspeslagh Sophie, "Safe Haven in Rwanda: Operation Turquoise", **Beyond Intractability,** 1994, http://www.beyondintractability.org/cic_documents/Safe-Havens-Rwanda.pdf (20/2/2014), pp. 1-2.

However, the motive of creating safe haven in Rwanda was questioned by many scholars. Apart from France's 'dubious' motive that was accused of preserving the Hutus from attack, the alleged effort to prevent the influx of Rwandan refugees into Northern Zaire cannot be disregarded.[386]

In 1993, Srebrenica was declared by the United Nations (UN) as a 'safe haven' for Bosnian Muslims fleeing the Bosnian war.[387] Srebrenica was a success at the beginning, as it provided a quick means of safe-guarding the Bosnian Muslims. However, later Srebrenica 'safety zone' failed to protect the civilians as over 8,000 Muslims were brutally massacred by the Serb forces while the over 400 Dutch peacekeepers deployed by the UN failed to prevent the massacre.[388]

The politically correct conclusion is that 'safe zone' as an alternative was given preference especially in the Post-Cold War era to serve two purposes: to protect refugees and prevent the massive influx of refugees. However, it was, above all, politically motivated to serve the interest of states. The UNHCR warned in 1991 as to the consequences of protecting refugees within their own country. "In-country protection needs to be weighed against the right of individuals to leave their own country, to seek and enjoy asylum, to return on a voluntary basis, and not to compel to remain in a territory where life, liberty or physical integrity is threatened".[389] In the case of Rwanda for example, Haspeslagh Sophie argued that one of the reasons for creating safe haven was to prevent the Rwandan refugees from seeking asylum outside Rwanda. He accused France of blocking the right of Rwandan to seek asylum outside Rwanda on the basis that they were being protected inside their country.[390] It is also worthy to note that in all these countries, the creation of safe haven was externally imposed without the consent of governments concerned and was also militarized which led to deviation from the traditional purpose of creating a 'safe zone'. This can be one of the causes of its failure in the post-Cold War environment.

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[386] Haspeslagh, pp.1-2
[387] Milovanovic Selma, "Srebrenica: A Town Still Divided", **Al Jazeera,** 2012, July 12, http://www.aljazeera.com/indepth/features/2012/07/2012710133138811312.html (20/2/2014)
[388] Milovanovic.
[389] Landgren.
[390] Haspeslagh, p. 2.

Katy Long argues that safe havens were established to modify border closure. As the USA failed to get Turkey, Tanzania, Kenya and Macedonia to reopen their borders against asylum seekers in the 1990s, it opted to create alternative sites of safety zone.[391] For instance, Turkey border closure on Kurdish refugees was circumvented by the UN Security council when it passed Resolution 688 to establish a safe haven in Northern Iraq. She further argues that enacting a law to support state policy of border closure simply means supporting states' negligence of their legal obligation of protecting refugees under international law.[392]

In general, safety zone as an ad hoc policy to cater for refugees has saved many lives and at the same time has failed at many instances. It deviated from its original purpose, with the militarization of these areas, with the prevention of refugees to move out of them and with the frequent violation of agreements not to attack cease-fire areas. Therefore, establishing 'safe zones' may not be an alternative to border closure and other immigration policies that have been affecting or blocking refugees' rights to seek asylum.

4.5. RELUCTANCE IN SHARING THE BURDEN

At the beginning of the new millennium when the UNHCR was celebrating its 50th years of its creation, states reaffirmed their commitment to their obligation of protecting refugees.[393] However, the question remains as to how committed states are to their obligation many years after.

According to the 2012 UNHCR Global Report, there are 45.2 million forcibly displaced people around the world of which 15.6 million are refugees. The developing countries, which were hosts to the largest number of refugees (70%), are currently hosting 80% of world refugees.[394] This translates to just 16% of world refugees get settled in the industrialized world while the remaining huge percentage of them settled in the developing countries. Pakistan is the largest host nation of

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[391] Long, pp. 464-466.
[392] Long, p. 464.
[393] Kelley, p. 401.
[394] UNHCR Regional Information Centre for Western Europe (UNRIC), "New Report: Developing Countries Host 80% of Refugees", 20/07/2012, http://www.unric.org/en/world-refugee-day/26978-new-report-developing-countries-host-80-of-refugees- (23/2/2014).

refugees in the world and it's presently hosting more than 1.6 million, in Africa, Kenya is playing host to some 565,000, Iran plays host to 868,200, and Germany with 589,700 refugees.[395] The uneven distribution of refugees has significantly contributed to their perception by those states with large numbers of refugees as a burden on them. On World Refugee Day, the UN Secretary General Ban Ki-moon attested to this uneven distribution between the affluent North and the poor South: "The burden of helping the world's forcibly displaced people is starkly uneven." He continued, "[p]oor countries host vastly more displaced people than wealthier ones. While anti-refugee sentiment is heard loudest in industrialized countries, developing nations host 80 per cent of the world's refugees. This situation demands an equitable solution."[396]

Reluctance to share the burden particularly with the poorer countries led many states to enact various laws against asylum seekers and refugees resulting in border closures. Tanzania, for example, closed its borders on refugees in 1995 because of growing security concerns, economic reasons and shrinking international support to share the burden.[397] In 2007, the Kenya government shot its borders on Somali refugees due to the lack of international support to share the burden of over 200,000 Somali refugees it had been hosting and other reasons.[398]

Recently in the Middle East, the four largest host states of Syrian refugees, i.e. Turkey, Lebanon, Jordan and Iraq, have grown thin in patience of lack of international support for Syrian refugees in their territories who had great effect on their economies, societies and sometimes natural environment. Already settled in their territories are over 2.1 million Syrian refugees excluding the unregistered ones scattered all over their countries living as economic migrants.[399] According to Antonio Guterres the UN High Commissioner for Refugees, 47% of funds required for Syrian refugees have come from these countries. "Turkey alone has covered

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[395] UNHCR, "Displacement: The New 21st Century Challenge", **UNHCR World Global Trends**, 2012, http://www.unhcr.org.uk/fileadmin/user_upload/pdf/UNHCR_Global_Trends _2012.pdf (20/02/2014).
[396] UNHCR Regional Information Centre for Western Europe (UNRIC)
[397] Rutinwa, pp. 295-296.
[398] Long, P. 463.
[399] UNHCR News, "UNHCR Head Says International Community must Share Burden of Syrian Refugees", **UNHCR Geneva**, 30/09/2013, http://www.unhcr.org/52493c516.html (20/2/2014).

almost all of the $2 billion cost of taking care of its Syrian refugees from its own budgets."[400] At the Kilis Container Camp near the border of Syria, 1.5 million Turkish Lira (about $ 900,000) has been spent monthly on electricity supply by the Turkish government without any support from other countries.[401] This shows how the international humanitarian support particularly for the states hosting Syrian refugees has been very limited. The burden is becoming unbearable for these states while their call for international support has greatly fallen on deaf ears.

To ease the burden of host countries, the UNHCR came up with resettlement programme. The resettlement programme is voluntary in nature.[402] 'It is practice through bilateral meetings, regular communications, regional strategic planning meetings and annual tripartite consultations that involve states, international organizations and NGOs where the UNHCR informed its stakeholders about the state of world refugees'.[403] Through this programme it is expected that states will help in resettling some percentage number of refugees from first state of asylum to their respective countries and ease the burden on states playing host to large numbers of refugees (particularly the neighbouring states of refugee producing-countries who suffer most from the influx of refugees).[404]

However, despite the call through this platform (resettlement program) to help share the burden, only a small number of states have taken part in the UNHCR resettlement programme. The UK through its Gateway Program only accepts annually merely 750 refugees.[405] In the case of Syrian refugees, the UK was very critical about its insistence not to accept and participate in the sharing scheme for

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[400] UNHCR Geneva (2013), "UNHCR Head Says International Community must Share Burden of Syrian Refugees".

[401] Mark A. Grey, "Why Syrians in Turkey are Not "Refugees" and Why it Matters", **Small Wars Journal,** 30/08/2013, http//smallwarsjournal.com/jrnl/art/why-syrians-in-turkey-are-not-%E2%80%9Crefugees%E2%80%9D-and-why-it-matters (14/02/2014), pp. 1-3.

[402] Mike Nicholson, "Refugee Resettlement Needs Outpace Growing Number of Resettlement Countries", **Migration Policy Institute**, November 2012, http://www.migrationinformation.org/USFocus/display.cfm?ID=912 (2/12/2013)

[403] Nicholson.

[404] Nicholson.

[405] Mcintyre Philippa, "Europe Must Share the Responsibility for Those Fleeing Northern Africa", **Think Africa Press,** 27/06/2011, thinkafricapress.com/refugees/europe-must-share-responsibility-those-fleeing-northern-africa (14/12/2013)

Syrian refugees.[406] However, after pressure from the UN and other stakeholders, the UK announced last year (December, 2013) to finally resettle 500 Syrian refugees.[407] Yet, six month after, it was revealed that just 24 have actually been allowed to enter UK.[408] As of June 2011, only 80,000 people were lucky to get resettled out of 805,000 refugees waiting for resettlement places throughout the world.[409] Despite Turkey's readiness to airlift refugees to any European country, only few countries responded last year (2013), with Canada and Germany volunteering to resettle certain number of refugees.[410] According to the Deputy UN High Commissioner for Refugees, Mr. Alexander Aleinikoff, as of October 2013, Germany volunteered to resettle approximately 5,000 Syrian refugees who are already living in Lebanon with a possible two-year resident permit and an extension of it if the unrest situation in Syria persists.[411] In 2012, US government gave Syrian refugees a Temporary Protected Status (TPS) and by 2013, the extension of TPS was issued to Syrians who are already in the US. Brazil remains the only country from South America to have responded to the calls to share the burden of Syrian refugees. It has offered a two years humanitarian visa to Syrian refugees.[412]

The 2012 UNHCR Global Report also indicated that the largest number of refugees resides in countries with the lowest GDP per capita of around USD 5,000.[413] The vast majority of these states are struggling to meet the needs of their own citizenry. Hosting a large number of other states' citizens significantly overburdens their already crumbling economies. And when the cry for international help to come and share the burden is not forthcoming, refugees are left in a protracted situation in which many even raise families in shanty camps and dangerous environment, and often their movements are restricted by the host officials. This protracted situation of

[406] Samira Shackle, "How many Syrian refugees has the UK taken in? Just 24", **New Humanist Quarterly Journal**, 27/06/2014, http://rationalist.org.uk/articles/4681/how-many-syrian-refugees-has-the-uk-taken-in-just-24 (02/07/2014)
[407] Shackle.
[408] Shackle.
[409] Mcintyre.
[410] Grey, pp. 1-3.
[411] Phillips.
[412] Phillips.
[413] UNHCR World Global Trends (2012), "Displacement: The New 21st Century Challenge".

refugees can be observed in several African and Asian countries.[414] Given the limits of time and space this work cannot discuss in details such protracted situation of refugees, which is a significant problem on its own.

Going by the definition of UNHCR's resettlement policy in which few numbers of state are currently participating, offering temporary status to refugees still demonstrate the reluctance of state to fully share the burden. The participation of states in resettlement programme has been seen in some cases to have been politically motivated. Mike Nicholson argues that states participate in resettling refugees mainly for political reasons, not to fulfil their legal obligation.[415] However, for any meaningful protection of refugees, 'burden-sharing' must be given priority. Other states and in particular the wealthy nations must come in to help the host states with regards to humanitarian relief delivery and financial support apart from the resettlement programme. These poorer states playing hosts to large numbers of refugee needs help as their already weak economies has been deeply affected by the presence of refugees on their territories.

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[414] Guterres Antonio, "Refugees are the Responsibility of the Whole International Community", **The Telegraph,** 10/12/2008, http://www.telegraph.co.uk/comment/personal-view/3703128/Refugees-are-the-responsibility-of-the-whole-international-community.html (4/12/2013)
[415] Nicholson.

CONCLUSION

Historically speaking, refugees and their international protection are not new phenomenon. They have been in existence for a very long time and are not peculiar to our generation. However, what is new in this age is the changing response to refugee problems. In the past, the European states did not always use to regard refugees as liabilities, but rather as assets contributing to their cultural lives and economic development. Not until during and after the WWII the refugee issues became a focal point of discussion among policy makers and international relations scholars. By the time the Cold War started, the issue of protecting refugees and stateless people had taken another dimension. The UNHCR as the primary agency of the UN was created in 1950 to find a permanent and durable solution to refugee problem. By 1951, the Convention relating to the Status of Refugees came into being as the legal framework for UNHCR activities. Throughout the Cold War, the UNHCR was able to contain the surge of refugees by repatriating most of them to Western industrialized countries, including the USA, who were ready and willing to accept them. Millions of refugees had been resettled in these countries by the time the Cold War ended. However, the international regime of refugee protection witnessed changes in the post-Cold War era in general and in the post 9/11 era in particular, as the sources of conflict that led to refugee surges took on other dimensions. The UNHCR has encountered enormous challenges in dealing with refugees in the post-Cold War era, which mainly include increase in economic migrants making it difficult to distinguish them from refugees, globalization, increase in environmental refugees caused by environmental degradation and global warming, and war on terror. States and in particular the European countries have been increasingly reluctant to accept refugees who are now mainly coming from the developing world and not from Europe any longer. The European governments set up various immigration agencies to take care of their immigration policies and subsequently denied refugees access to their territories. This created the first challenge to the UNHCR's response to refugees. The policies and programs of those immigration agencies are most of the time in conflict with those of the UNHCR. Most significantly, the creation of safety zones/areas within the countries in conflict

has been favored as a way to reduce the number of refugees that will cross international borders and seek asylum in Europe. In addition, the lack of genuine financial support for the office of the UNHCR and the immigration control policies of many states continue to hinder the work of UNHCR and the organization's adaptability to the new post-Cold War environment in order to better protect the refugees. Due to these contemporary problems, the UNHCR now finds itself dealing with complex issues such as security, developmental issues, human rights, and peace keeping.

So far the UNHCR's various mechanisms such as voluntary repatriation, local integration and resettlement programs for the protection of refugees have been awesome and praised by different quarters of international society. The UNHCR has really changed the face of international protection system for refugees. However, in its 60 years of responding to refugee problems we can expect the UNHCR's programs and policies for the protection of the most vulnerable people on earth to get better only if the member states can adhere to and act in line with the essence and spirit of the rules and regulations of the organization they once unanimously created.

FINDINGS

The main thrust of this thesis is to evaluate the effectiveness of the UNHCR's mechanism of refugee protection and the challenges confronting the organization in the complex world of international political system, particularly in the aftermath of the 9/11 incident. To understand the consequences of the 9/11 on refugees, the study traces the history of refugee and refugee protection system, relying on both old and recent information from the UNHCR's main website, news and scholarly works.

The findings of this research work show that the UNHCR's mechanism for the protection of refugees especially in the post-9/11 era has been effective and rewarding and at the same time has been the source of challenges confronting the organization's adaptability to the complex nature of international relations. For example, the UNHCR through its many programs have been able to respond to refugee problems particularly originating from the Middle East and Africa. Apart from its significant role vis-à-vis the Afghan refugees, the UNHCR's quick response

to Iraqi refugees by assisting many Western countries in the repatriation process and its self-sufficient program for refugees in host countries are all commendable. In Serbia, more than 290,000 internally displaced persons living in Serbia in 2003 were reduced to 70,000 primarily due to local integration. Over 100,000 Syrian refugees have been assisted to resettle in third asylum countries in Europe and America. However, states, especially the Western states who are the major donors to the organization, usually give support to the refugees who are coming from a region where their national interests are at stake. For example, the different responses of the international community to the Kosovan refugees and to the Rwandan refugee crisis are noteworthy in this regard. While the USA was able to use its diplomatic pressure and financial power in the organization for the swift repatriation and burden sharing of Kosovan refugees, it took close to a year for the organization to respond to the Rwandan refugee crisis. The USA was also able to convince other states to undertake policies they would have otherwise be reluctant to commit themselves by going against the UNHCR's position as to the Kosovan refugees.[416] The consequences of this are that refugees who are of no interest to the organization's major donors will remain in protracted situation in their first state of asylum. This has been one of the main challenges facing the UNHCR in the recent period.

Furthermore, while the international community and chiefly the political leaders of major Western countries have been swift in their condemnation of terrorism throughout the world and congratulated the citizens in the North Africa and the Middle East for rising against their authoritarian governments, the consequences of the ensuing violence has been paid little attention. Though the UNHCR has facilitated the quick response of finding shelter for over three million refugees produced by the so-called Arab Spring, those refugees continue to face rejection at

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[416] During the Kosovo refugee crisis whereby many Kosovan refugees were denied entry into the Republic of Macedonia by the Macedonian government on the grounds of security, the UNHCR condemned this action and maintained that the Macedonian government had to respect the international refugee law which it is a signatory to and take up its responsibility by opening its border to the Kosovan refugees. The United States, instead of using its influence and power to maintain the same stance with UNHCR, supported rather the action of the Macedonian government by unilaterally calling upon other states including Turkey to take up the responsibility of admitting Kosovan refugees into their territory. This US action was highly criticized in many quarters including the UNHCR itself. The UNHCR could not do anything but rather reluctantly followed the USA in the resettlement process.

the borders of most Western countries. The ones that were eventually admitted are also facing series of resentment in their host communities.

Additionally, the continued absence of diplomatic and financial support for many refugee host nations especially in the developing world has led most of them to come up with various immigration laws that do not distinguish between refugees and economic immigrants. Many states have refused to participate in the UNHCR's burden-sharing program that was established to help the immediate neighboring countries who are most affected by the refugee problems. This and many other developments have rendered the office of the High Commissioner for Refugees ineffective, as the Commissioner often has been obliged to act with regard to the interests of its donors.

The response of the UNHCR to refugee protection in the past few years has taken a new shape. The UNHCR has moved from ordinary protection of refugees and stateless people to include other people such as IDPs for whom provisions were not defined in the original mandate when the organization was established in the 1950s. By taking up the protection of IDPs the little resources meant for its original mandate is expended and overstretched subsequently creating gap in its effective refugee protection plan.

Finally, refugee movements and international protection for them were misconstrued and misinterpreted occasionally. The Western host nations' perception of refugees as a threat to their national security and economy has been disproportionately overblown. Perhaps this was what led to the inequality in burden sharing whereby the vast majority of world refugees reside in the poor South.

RECOMMENDATIONS

In view of these findings, this thesis recommends that independent financial empowerment of the office of the UNHCR should be given priority, as lack of financial power has rendered the organization inactive when called upon to swiftly attend to refugee problems. This is especially urgent, because after the global economic crisis that hit most of the organization's major donors in 2000s and has continued to negatively affect their economies, many states are unwilling to

undertake any new financial obligation. Many receiving African states that are not economically vibrant to attend even to the needs of their own citizens are also reluctant to continue to accept refugees. Hence, for effective protection of refugees in this contemporary world, an independent way of generating financial support for the UNHCR should be devised. Likewise, a 'sincere' financial commitment for the office of UNHCR is needed from governments if they actually want the organization that they created to be functional and effective.

The continued violation of the 1951 Convention on refugees (i.e. the principle of non-refoulement) by many states is also affecting the UNHCR's programs for refugees. This has to do with the fact that the UNHCR has no supervisory body of its own to ensure states' compliance and implementation of the refugee rights in line with the Convention. Independent organizations such as Amnesty International have been monitoring states' performance in this regard. However, the UNHCR's own supervisory body will be paid more attention and be taken more seriously by states if it is created. However, if it is too difficult for the UNHCR to create a supervisory body due to reasons beyond it, the UNHCR should work closely with international organizations such as International Organization for Migration (IOM) and other NGOs dealing with refugee issues to share information on state performance in attending to refugees' problems. NGOs have so far played an important role in the protection of refugees through their various capacity building programs, and their fair and quick public disclosure of the violation of refugee rights by governments.

Educating the citizens of recipient states about the situation of refugees can also help refugees to have a good stay in their state of asylum. Here, the media has an important role to play. The media can help sensitize the public about the situation of refugees and the dangers they will face back home if they fail to get help. The media can help to create respect and promote tolerance for refugees and as well engage the citizen in a debate about refugees by providing a discussion platform. For instance, during the Somali refugee crisis, the Turkish media played a significant part by displaying the situation of Somali refugees, which subsequently led to series of humanitarian efforts from both the Turkish government and its citizens. Both the Turkish businessmen and business organisations aided Somalia and the Somali refugees. Through music concerts, the popular musicians were able to raise funds for

the cause of Somalia. Presently, apart from the humanitarian assistance of Turkish government towards the Syrian refugees, hundreds of Turks are sheltering Syrian refugees in their houses and many more aiding them in other ways. All these were possible because of the Turkish media's sensitisation of the refugee plight. When the citizens understand the reason why their government is giving asylum to refugees, they will not discriminate against them; rather, they will see them as victims of persecution who urgently need help.

Lastly, beyond refugee welfare, the UNHCR has called for the training of refugees by empowering them for self-sufficiency through programmes whiles in camp so that once repatriated, refugee will be able to cater for him/herself. This is a good idea that has been welcomed by many host states, but the UNHCR should caution those host states not to exploit it to deny refugees their basic rights of access to free food, shelter, medical care, education and other entitlements.

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