

**EXAMINING THE PRINCIPLE OF NON-  
REFOULEMENT WITH SPECIAL REFERENCE TO  
EUROPEAN UNION: AN ANALYTICAL STUDY**

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## CANDIDATE'S DECLARATION

I hereby certify that the work which is being presented in this thesis entitled, **“EXAMINING THE PRINCIPLE OF NON-REFOULEMENT WITH SPECIAL REFERENCE TO EUROPEAN UNION: AN ANALYTICAL STUDY,”** in fulfillment of the requirements for the award of the degree of Doctor of Philosophy in Law, in the School of Law, submitted in Galgotias University, Greater Noida, is an authentic record of my own work. The work is carried out during the period from **2018-2023** under the supervision of **Prof. (Dr.) Seema Yadav**.

The matter embodied in this thesis has not been submitted by me for the award of any other degree of this or any other University/ Institution.

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## ABSTRACT

In the modern era, the European Refugee Crisis of the year 2015 shook the European Union and drew the world's attention towards refugees. Further, the news of the death of a 3-year boy named *Aylan Kurdi*, in an attempt to reach from Syria to the Greek Island of Kos, in a group of 23 members, strongly moved the global citizens. The death of Aylan led to the opening doors of many European States for Syrian refugees. Their vulnerability and their needs were recognized; accordingly, they were provided protection, shelter, accommodation and means of livelihood. Ever since then, various events like, wars, persecution, natural disasters and climatic change etc. is constantly leading the inflow of refugees in Europe from its neighboring countries. The *Principle of non-refoulement*, enshrined in the 1951 Refugee Convention provides protection to the refugees. Protection against *refoulement* is the cornerstone of refugee Protection, the principle is also a well established norm. The practice of the state to accept and protect refugees rather than returning them to territories where there is a threat to their life and freedom has taken the shape of customary law. *The 1951 Refugee convention and its 1967 Protocol*, an United Nations multilateral treaty, defines the term refugees, it lays down the rights of individual attaining asylum and the state's responsibilities, granting asylum, the convention also lays down who do not qualify as refugee. The Convention is carved out of Article 14 of *1948 Universal Declaration of Human Rights*, which recognizes a person's right to seek asylum against persecution, in another country.

Ever since the approval of the convention on 28 July 1951 and its entering into force on 22, April 1954, the principle of non-refoulement under the convention still stands for refugee protection. So far, the convention has been updated once, known as the 1967 Protocol. The protocol removed the time bar and geographical location limits within which a refugee would seek protection. Initially the 1951 convention only protected European refugees displaced before 1 January 1951, specifically after World War II.

The principle of Non-Refoulement, imbibed under Article 33(1) of the convention and is the guiding principle for the refugee protection. However, the very safety of the principles is under question. Over the years, since its establishment, the nature of the

principle is weathering away; the principle has been metamorphosed both by the refugees and the states to meet their own interests. The legal and administrative measures adopted by the some states, in dealing with the asylum proceedings and their shifting responsibility of considering asylum seekers, is leading to the refoulement of refugees to their country of origin or to the other country, the state is risking both life and freedom of refugees. At the same time, some refugees, in garb of the protection provided under Article 33(1), are pushing themselves hard to enter European Countries in the quest of job opportunities, standard of living and better life, by illegal means, at the stake of their lives. All they aim is just to sneak into the country and rest they will be protected under the principle. While most refugees move towards the host countries to save their lives, many want to enter Europe for a decent life and jobs.

The protection of refugees under the principle of non-refoulement has always been prioritized. Concerns have always been for the refugees, their safety and wellbeing. However, on the other hand, many times the host countries have faced backlash by the human rights watch on any loop of refugee protection. However not much concern has been raised for the host countries who get equally affected by the sudden mass influx of refugees. The refugee inflow affects the host countries on many parameters, depending upon its being developed, developing or under-developed country. The effect is also dependent upon its geographical location, or its area, its demography, availability of resources etc. The mass influx of refugees in large numbers in the European Union has caused tension on social, economic and national security. It has led to the emergence of threat to national security, emergence of anti-immigrant protests, dislike towards refugees, European States against each other on the issue of burden sharing. Consequently, some European States have arrived at their closing door policy for refugees. Having mentioned that, Europe's closing door policy will not provide them with much solution in fact; it will only lead to increase the anti-Europe sentiments and gross violation of the principle of non-refoulement.

The principle of non-refoulement is being metamorphosed largely because of the shortcoming and the developed ambiguity over the years, in *The 1951 Refugee Convention*. Along with the issue of the host country, we also see the sufferings, difficulties of the refugees moving towards the European Union. We see a gross violation of the principle of non-refoulement by the European States, by refugees

being pushed off-shore and pushed to the third world countries, razor-wire fencing on the European border to make entry of refugees even harder, their rights to life, religion and other rights being put at stake and they are left at the border refugee camps in an uncertain future.

The first documented refugee movement began in the 17<sup>th</sup> Century when the French left their country to escape religious persecution. After that, the movement of people as refugees accelerated and ever since then people leave their country of origin owing to wars, persecution, on the basis of sex, religion, having different political opinions and several other grounds. Moreover, with the passing of time and emerging new issues and changing climates and other factors, the refugee crisis is becoming a common phenomenon across the world. The very term “Refugee” was first coined in France from the French word “*Refugie*” meaning, ‘*hiding place.*’

The refugees got its first modern definition in the League of Nations, in the year, 1921, after the end of World War II. Post that the 1951 Refugee Convention for the Status of Refugee and its 1967 Protocol gave a more concrete definition of Refugees and directly protected under the principle of non-refoulement. The convention was made for the protection of refugees. It defines refugees 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.* The convention provided international protection to refugees Under Article 33 the Principle of non-refoulement. Article 33 of the convention states that, no person shall be returned to a palace where his life is under threat. Refugees are forced to move out of their country for several reasons, some includes, for the safety of their and their family’s life, movement in search of better life, job opportunities people also move out owing to reasons of invasion, armed conflict, post war agreements, ethnic and tribal conflicts etc.

If we look at the contemporary European Union crisis, 2015, we see that Europe initially unprepared to manage the refugee crisis and hence, suffered in every aspect. Countries like Sweden, Poland, Czech Republic, and Germany witnessed a major adverse effect. Subsequently, clashes between the natives and the refugees are in constant increase. In addition, there is a sudden change in the attitude of the host

country towards refugees. The present research is an attempt to study as to what has led to this change in attitude, what could be the consequences of the change, should the European Union close its doors for refugees by modification in their policies. Or should the European Union member states be left to struggle with the burden sharing issues and bitter their relationship, or would forcing the European Union member state to host refugees can be a solution to the crisis. On the other hand, is there a need for a new method to deal with the refugee crisis in Europe?

Further, in the research we see the different kinds of refugees around the world. The major countries from where the majority of refugees come to the European Union and the European Countries where the majority of these refugees move. To understand the refugee issue better, the history of global refugee crisis has been dealt with to understand the nature of refugee crisis around and how, has the principle existed and states abided by the principle and gave shelter to refugees, even without its former definition and incorporation under Article 33 of the Refugee Convention. The chapter has been divided in three phases: the Refugee Crisis prior to the 1951 Convention; post the convention and the refugee crisis of the 21<sup>st</sup> Century. Further the research deal with the European Refugee Crisis in details, the reason for the crisis.

The research work further deals with refugee protection under International Law and European Law. How the legal framework for the protection of refugees gradually evolved over the years to give the 1951 of Refugee Convention. What are the laws that protect the refugees at the International Level and what laws protect the refugees within the European Union. Since the establishment of the League of Nations for the welfare of the refugees until the recent policy, “The New Migrant Return Policy”, introduced in the month of September 2020 we have seen multiple legal frameworks being laid down one after the other, however the refugee issue remains. Thus, further the research work analyzes the effectiveness of the 1951 convention, whether the rights of the refugee and the natives are effectively balanced.

The research work closely analyzes the Reasons, issues, Impact and the current scenario of the European Union. The research analyzes the effect of the crisis on the European Union, both the positive and negative impact of the crisis. Why are they

closing their doors and will the closing of the door will solve the issue. What is the status of European Refugees in Europe according to the World report of 2023.

The present research also analyzes the shortcomings in the 1951 convention, how there is a misuse of the principle of Non-Refoulement, granted under Article 33. There is a viable metamorphosis in the principle of non-refoulement. How the shortcomings in the convention and no upgradation over eight decades is adversely affecting some of the human rights of both the refugees as well as the natives.

With Britain splitting and the Euro-hostile parties on the verge of rising in the countries, we see the whole fabric of the European Union under a close threat. Further closing doors for these refugees will increase the antagonism, alienation and anti-western sentiments towards the European Union further leading to an increase of the Principle of non-refoulement, further threatening its existence. The European Union will be violating its obligations by leaving these refugees to bear the pains. If they are left alone, it will increase their risk of falling prey to extremist recruiters. The point here is that, if the European Union opens its doors for refugees or if it closes its doors, in either cases, Europe Will be troubled and a mere introduction of a legal framework cannot be the new age solution to the existing or the upcoming refugee crisis.

The research work illustrates the judicial discourse to understand what has been the stand of the ECtHR on various refugee related issues involving Principle of non-refoulement. By judicial discourse we understand that where the court is inclined for the protection of refugees and people in need of International protection, in recent times the court in several cases acknowledges that the adoption of restrictive measures for public safety and national security is the State's desecration.

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1. Title- **“THE FUTURE OF EUROPEAN REFUGEES BETWEEN CLIMATE CHANGE AND EUROPE’S CLOSING DOOR POLICIES; AN ANALYTICAL STUDY” (2023)**

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5. Title- **“MEDIA AUTONOMY AND ITS CENSORSHIP: A COMPREHENSIVE STUDY OF EXISTING STATUTORY PROVISIONS” (2019)**

Place- Galgotia’s University.

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## **PAPER PRESENTATION**

**1. THE SOCIO-ENVIRONMENTAL IMPACT OF SHIP BREAKING BUSINESS: AN ANALYSIS OF ALANG, INDIA (WORK PRESENTATION)**

Place- 2<sup>nd</sup> International Conference on Contemporary Legal Issues- 2018,  
(SOL Galgotia's University)

Date- 24 March, 2018

**2. Title - THE SCOPE AND EXTENT OF JUDICIAL INTERVENTION IN ARBITRATION PROCEEDING (WORK PRESENTATION)**

Place- Shardha University

Date- 16/02/18

## ABBREVIATION

<b>ACHR</b>	<i>Arab Charter on Human Rights</i>
<b>AFIS</b>	<i>Automated Fingerprint Identification System</i>
<b>CABIS</b>	<i>Thales Cogent Automated Biometric Identification System</i>
<b>CALL</b>	<i>Council for Alien Law Litigation</i>
<b>CCMA</b>	<i>County and City Management Association's</i>
<b>CEAS</b>	<i>Common European Asylum System</i>
<b>CERD</b>	<i>Co Convention on the Elimination of Racial Discrimination</i>
<b>CGRS</b>	<i>Office of the Commissioner General for Refugees and Stateless Persons</i>
<b>CIPPED</b>	<i>International Convention for the protection of all the persons from Enforced disappearance</i>
<b>CIR</b>	<i>Italian Refugee Council</i>
<b>CIS</b>	<i>Commonwealth of Independent States</i>
<b>CJEU</b>	<i>Court of Justice of the European Union</i>
<b>COVID</b>	<i>Coronavirus Disease of 2019</i>
<b>CRD</b>	<i>The Convention on the Rights of Children Disappearance</i>
<b>CSI</b>	<i>Community Sponsorship Ireland</i>
<b>EASO</b>	<i>European Asylum Support Office</i>
<b>ECDC</b>	<i>European Centre for Disease Prevention and Control</i>
<b>ECHR</b>	<i>The European Convention on Human Rights</i>
<b>ECOSOC</b>	<i>Economic and Social Council</i>
<b>ECtHR</b>	<i>The European Court of Human Rights</i>
<b>ESC</b>	<i>EEuropean Social Charter</i>
<b>EU</b>	<i>European Union</i>
<b>EUAA</b>	<i>European Union Agency for Asylum</i>
<b>EURODAC</b>	<i>The European Asylum Dactyloscopy Database European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</i>
<b>FCNH</b>	<i>Framework Convention for the Protection of National Minorities</i>
<b>GCR</b>	<i>Global Compact on Refugees</i>

<b>GCR</b>	<i>Global Compact of Refugees</i>
<b>GDP</b>	<i>Gross Domestic Product</i>
<b>HRW</b>	<i>Human Rights Watch</i>
<b>IACHR</b>	<i>Inter-American Commission on Human Rights</i>
<b>IAWG</b>	<i>Interagency Working Group</i>
<b>ICCPR</b>	<i>International Covenant on Civil and Political Rights</i>
<b>ICESCR</b>	<i>International Convention on Economic Social and Cultural Rights</i>
<b>ICRC</b>	<i>International committee of the Red Cross</i>
<b>IL</b>	<i>International Law</i>
<b>IMO</b>	<i>International Maritime Organization</i>
<b>IRC</b>	<i>International Rescue Committee</i>
<b>IRC</b>	<i>Initial Reception Center</i>
<b>IRO</b>	<i>International Refugee Organization</i>
<b>IRPP</b>	<i>Irish Refugee Protection Programme</i>
<b>ISCG</b>	<i>Inter-sector Coordination Group</i>
<b>LGBT</b>	<i>Lesbian, Gay, Bisexual and Transgender</i>
<b>M4M</b>	<i>Miles for Migrants</i>
<b>MoU</b>	<i>Memorandum of Understanding</i>
<b>NGOs</b>	<i>Non-Governmental Organizations</i>
<b>NL</b>	<i>Netherlands</i>
<b>OAU CONVENTION</b>	<i>Organization of African Unity convention governing specific aspects of refugee problems in Africa</i>
<b>PoCs</b>	<i>Persons of Concerns</i>
<b>PSEA</b>	<i>Protection from Sexual Exploitation and abuse</i>
<b>PSEA</b>	<i>Protection from sexual abuse and exploitation</i>
<b>RCF</b>	<i>Refugee Coordination Forum</i>
<b>RCM</b>	<i>Refugee Coordination Model</i>
<b>RSOs</b>	<i>Regional Support Organizations</i>
<b>SGBV</b>	<i>Sexual and Gender-Based Violence</i>
<b>SRA</b>	<i>Specific Residence Authorization</i>
<b>U.K</b>	<i>United Kingdome</i>
<b>UASC</b>	<i>Unaccompanied and separated children</i>
<b>UDHR</b>	<i>Universal Declaration of Human Rights</i>

<b><i>UKRS</i></b>	<b><i>United Kingdome resettlement Scheme</i></b>
<b><i>UN Convention</i></b>	<b><i>United Nation Convention</i></b>
<b><i>UNCAT</i></b>	<b><i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i></b>
<b><i>UNCCP</i></b>	<b><i>United Nation Conciliation Commission for Palestine</i></b>
<b><i>UNHCR</i></b>	<b><i>The Office of United Nations High Commissioner for Refugee</i></b>
<b><i>UNHRC</i></b>	<b><i>United Nations Human Rights Committee</i></b>
<b><i>UNRWA</i></b>	<b><i>United Nations Relief and Works Agency</i></b>
<b><i>USA</i></b>	<b><i>United States of America</i></b>
<b><i>WHO</i></b>	<b><i>World Health Organization</i></b>
<b><i>IHRL</i></b>	<b><i>International Human Rights Law</i></b>



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# CHAPTER - 1

## INTRODUCTION

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*“But that life, that time, seems like a dream now, even to me, like some long-dissolved rumor.*

*First came the protests. Then the siege. The skies were spitting bombs. Then came starvation and burials. These are the things you know now.”<sup>1</sup>*

### 1.1 PRELUDE

The 1951 convention for refugees is the key legal document that provides international protection to refugees. The core principle of Convention is the Principle of Non- Refoulement, Article 33. The principle states that a person cannot be returned to a country where there is a grave threat to his life or freedom.<sup>2</sup> The principle is based on *Article 14* of the **UDHR, Universal Declaration of Human Rights**, which grants the right to all individuals to seek and enjoy asylum from persecution in another country. By providing this right, the International Community ensures enjoyment of human right by all individual, which includes the right to life, freedom from torture, cruel, inhuman or degrading treatment or punishment and ensures the liberty and security of all persons. As per the UNHCR the respect of the principle can be most effectively ensured, when the refugee’s claim for the refugee status and asylum are substantially and expeditiously determined. With the usage of the principle of non-refoulement for decades, it has become a “**Jus Cogens**” norm, which is universally accepted and abides by all the countries.

The beginning and one of the first noted historic mass movements of people, even before World War I, can be traced back in the year 1572. It was during this time, ‘After the horrors of ST. Bartholomew’s Day Massacre in 1572, the peace keeper Henry IV’s *Edict of Nantes* of 1598, granted considerable rights to Huguenots, the

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<sup>1</sup>KHALED HOSSEINI, SEA PRAYER (2018), ISBN- 9781526602701, 1526602709, BLOOMSBURY PUBLICATION.

<sup>2</sup>UNHCR The 1951 Refugee Convention The 1951 Refugee Convention | UNHCR. (20/10/2019)

French Protestants who constituted the 10% of the French population in 16<sup>th</sup> Century and there by abided by the principle of non-refoulement as a custom. However a century later in October 1685, the autocratic Louis XIV revoked the said law in the *Edict of Fontainebleau* which triggered violence again, giving rise to persecution rule forcing hundreds of thousands of Huguenots to flee to countries like England, Ireland, America, North Europe.<sup>3</sup> The Huguenots were therefore the first people to coin the word “*Refugee*”; the word later appeared in the English language when the French Huguenots fled. In England and Scotland, the word meant “*One Seeking Asylum*”. Until 1916, the word refugee was referred to civilians fleeing to escape. Further, after the World War I, the word refugee meant, “*One Fleeing Home*”. In addition, ever since then people who fled to other nations to save their lives, started to be referred to as refugees all around the world.

Determination of the refugee status is more declaratory in nature, rather than constitutive. Any person leaving his country to seek asylum does not automatically become a refugee, he must qualify as per the definition of the convention of 1951. However, as per the *UNHCR Excom Conclusion No. 8 (XXVII)* of 1977, to determine the refugee status of a person certain basic requirements must be obtained.<sup>4</sup>

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<sup>3</sup>Andrew Chapman -THE FIRST REFUGEES, 1685, AN INGENIOUS DECEPTION AT SEA, Andrew Chapman, October 2015. The first refugees, 1685 - Histories (gethistories.com) (28/12/2019)

<sup>4</sup>Om Prakash Tewari, “*Protection Of Refugees In International Law With Special Referance To India*” UNIVERSITY OF ALLAHABAD. 2011. <http://hdl.handle.net/10603/241661>.

“Recommended that procedures for the determination of refugee status should satisfy the following basic requirements :

- (i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a contracting State, should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.
- (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
- (iii) There should be a clearly identified authority - Wherever possible a single central authority - with responsibility for examining requests for refugee status and taking a decision in the first instance.
- (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contract a representative of UNHCR.
- (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
- (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal consideration of the decision, either to the same or to a different authority, whether administration or judicial, according to the prevailing system.
- (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.”

If we look at the first recognition of refugees and their issues, it was during the First World War, that refugees and their issues drew the world's attention and thus, gradually various laws, regulations and various instruments were worked upon to address the issues and find definite solutions. It was decided in the 1943 Bermuda Conference<sup>5</sup> to provide protection to people, seeking for protection as a result of various events taking place in Europe. At this point, the focus was to protect the refugees coming from Germany, Italy and Spain. Slowly and steadily, the issue drew international attention and thus definite laws to address the issue was sought for and gradually came into being.

In the contemporary time, refugees are people crossing international borders, fleeing wars, violence, conflicts or persecution, to find another safe country to protect themselves and their family and to start fresh new lives. They often cannot or refuse to return to their country of origin due to various well-founded fear and uncertainty. The term refugee is defined in the "Convention and Protocol relating to the Status of refugees" the 1951 Refugee Convention and its 1967 protocol are the key legal document for the protection of refugees in 149 states around the world the protocol defines and outlines refugee rights as well as the legal obligations of states in refugee protection.<sup>6</sup>

When we analyze the protection of refugees under the principle of non-refoulement, it is imperative to note that, Human Rights are those rights that every individual possesses by the virtue of them being a human. However, the international law *per se* does not provide refugees the right to protection in any particular state or even does not afford the right to enter any particular state, to seek protection. The norm of non-refoulement is applicable at the border and at times further afield.<sup>7</sup> In the contemporary time, the biggest protector of refugees is the 1951 Refugee convention. It provides international protection to the refugees. However, there is no right to asylum under international law. The grant of permanent residence is merely state's

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<sup>5</sup>Aired, THE BERMUDA CONFERENCE AMERICAN EXPERIENCE | AMERICA AND THE HOLOCAUST | APRIL 6, 1994, (28/12/2019)  
<https://www.pbs.org/wgbh/americanexperience/features/holocaust-bermuda/>.

<sup>6</sup> UNHCR, The UN Refugee Agency, India UNHCR - The 1951 Refugee Convention (28/12/2019)

<sup>7</sup>CATHRYN COSTELLO, THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES IN EUROPEAN LAW. 1<sup>st</sup> Dec. 2015. ISBN 978-0-19-964474-2 The Human Rights of Migrants in European Law - Google Books. (29/12/2019)

discretion. The refugee status is not always permanent, though the state may on its discretion grant permanent residence to refugees. However, the one right that is always possessed by a person, by the virtue of him being a refugee, is the right to non-refoulement, provided under Article 33 of the Refugee convention. With due course of time the right to non-refoulement has attained the status of Customary International Law. The soul of the non-refoulements also imbibed in the many International instruments like, United Nations Convention against Torture, ICCPR, CAT, etc., at the regional level the soul of the convention can also be seen in The European Convention for Protection of Human Rights and Fundamental freedom, article (3).<sup>8</sup>

The term “Refugee” is more properly defined Under Article -1 of The Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention or the Geneva Convention 1951. The Convention was initially limited to protecting European refugees. However, after World War II, the provisions also became applicable to refugees from other places. There had been only one amendment so far and that is The 1967 Protocol, under the amendment, the time limits were removed, and the convention started to be applied to refugees "without any geographic limitation". The major attraction of this convention is the principle of non-refoulement. ***The principle of Non-Refoulement*** is derived from the French Word, *refouler*, which means -‘to drive back’. The principle of non-refoulement has been institutionalized into various international legal instruments such as conventions, declarations and in customary international law. In the context of legal framework, the principle of non-refoulement is a fundamental concept for the protection of refugees and the asylum seekers. It is considered the backbone for the whole system of International Refugee Law.’<sup>9</sup> The principle of non-refoulement is a large norm that prohibits any country for expelling vulnerable people to their own state or to the state where their life is at threat or mistreatment. The principle has been a cornerstone for the laws on international migration and forced migrants for a considerable time so much so that it is also considered to be human rights by some. The main objective of the principle of non-refoulement is the protection of refugees from being persecuted. The most significant instrument that enshrines the principle is the Refugee

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<sup>8</sup>Geoff Gilbert\* *Is Europe Living Up to Its Obligations to Refugees?* EJIL Vol. 15 no.5. © EJIL 2004; all rights reserved. Chh15(5).book(chh505.fm) (silverchair.com). (29/12/2019)

<sup>9</sup>NIRAJ NATHWANI, *RETHINKING REFUGEE LAW*. 2003. ISBN 90-411-2002-5. MartinusNijhoff Publishers. *Rethinking Refugee Law - NirajNathwani* - Google Books. (30/12/2019)

Convention of 1951. The principle is also adopted in several other instruments as the soul; they are, Organization of African Unity, Organization of American state for the Americans. Many states have also implemented the principle in their domestic laws and, in their Constitution.<sup>10</sup>

The principle ensures refugee protection and has been codified under Article 33 of the Convention relating to the Status of Refugees (Refugee Convention) Its obligatory nature is not only found in international instruments, but also, in the character of norm of customary international law it has also been in several other international Human Rights instruments. The principle of non-refoulement applies to both refugees and asylum seekers. The principle provides protection against refoulement, which means, a person cannot be returned, however it does not automatically mean that the person has to be granted refugee status and be afforded all of the rights that refugees are entitled to. In all circumstances, however, a State must respect, protect and fulfill the human rights of all persons under its jurisdiction. It is hard within the principle of non-refoulement to determine as to whom they provide protection and for what reasons. For example under refugee law, it protects refugees against return to places of persecution, while under (International Human Rights Law) IHL it only applies to certain categories of persons that are affected by armed conflict.

According to the *United Nations High Commissioner for Refugees* (UNHCR), there will be 117.2 Million people forcefully displaced worldwide by 2023. Out of which 61.2 million are people who are internally displaced, 29.3 millions are refugees, 5.6 million are asylum seekers, and 5.6 million are people in need of International protection.<sup>11</sup>

Refugees across the world are being forced to leave their country of origin owing to various factors. Some of the common reasons why refugees are forced to leave their countries are wars, persecutions, climate change etc. *War forces* a large number of people to leave their homes as refugees, there can be different kinds of war, internal wars (civil wars), or external agitations, and where in the country of origin is at war

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<sup>10</sup>Dr.Sigit Riyanto. *The Refoulement Principle and its Relevance in the International Law System* SH., LLM. July 2010l.SSRN Electronic Journal, DOI:10.2139/ssrn.2211817. PDF The Refoulement Principle and Its Relevance in the International Law System, researchgate.net. (5/1/2019)

<sup>11</sup> UNHCR, Global Appeal, 2023. Global Appeal 2023 (unhcr.org).(5/1/2020)

with another country. Refugees also leave their country owing to *persecution* of people for the reasons of caste, creed, sex, religion etc., or having different political opinions. *Climate Change Refugees*. Other forms of refugees are the ones searching for or in need of a job, better life, sexual orientation (LGBTQ) etc.

The twenty-first century is the century of the migrant. Their global mobility is a highly stratified phenomenon, from the global tourist to the undocumented employee, and from human trafficking to refugees forced to leave their country of origin because of climate changes, poverty or wars.<sup>12</sup>

The emergence of refugees and their problem and the need to provide them protection from *refoulement* is not only the by-product of World War I, World War II, modern dictatorial regime and the ethnic strife, but it is also because of socialistic-economic inequalities. Refugee problem which was once seen as a temporary and limited phenomena, is now acknowledged as Universal, ongoing and recurring problem and the host countries whether signatory or no to the 1951 refugee convention, must protect people in need of International protection and uphold the principle of non-refoulement.

The current ongoing Russia and Ukraine has yet again led to the New Refugee Crisis in the European Union. Europe has taken 4 million Ukrainians this year, besides taking the 365,000 first time asylum applicants.<sup>13</sup> ‘After World War II the noted historic refugee crisis occurred in the year 2015. Popularly known as the ***European Refugee crisis***. The drastic increase in the number of refugees posed unpredictable future challenges towards the European Union. Thus according to an article in “Debating Europe”, Europe is full with 1.2 million of refugees arriving in the year 2015. Another 954,000 arrived in the year 2016 and many Ukrainian refugees arrived in Europe. The number of refugees all together is too many. Consequently, there is an immense pressure on social services like the housing department, health care system, school fails to adjust the large number of students, and concentration of refugees only to a particular geography creates local tensions and strains in the community. There is

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<sup>12</sup>João Estevens MIGRATION CRISIS IN THE EU: DEVELOPING A FRAMEWORK FOR ANALYSIS OF NATIONAL SECURITY AND DEFENSE STRATEGIES 1<sup>st</sup> Oct, 2018. Migration crisis in the EU: developing a framework for analysis of national security and defence strategies | Comparative Migration Studies | Full Text (springeropen.com). (7/1/2020)

<sup>13</sup>Council of European Union. Infographic - Refugees from Ukraine in the EU. Refugees from Ukraine in the EU - Consilium (europa.eu). (7/1/2020)

a shortage of workable distribution schemes and the refugees are unwilling to relocate themselves. Some European states are unfairly burdened, like Germany and Sweden in particular. The argument on the debate as to where to locate the coming refugees places pressure on the solidarity of the European Union. With Britain all set to split and the Euro-hostile parties on the verge of rise in the countries, we see the whole fabric of the European Union under a close threat.<sup>14</sup>

There is a large difference in the number of refugee inflow across the member states despite the fact that all the member states are governed by the same laws. In order to evaluate the difference the roots of the Asylum needs to be reviewed. To deal with the inflow in May 2015, the European commission presented the *European agenda on Migrants*. The document included proposal for:-

Urgent measures for the crisis in the Mediterranean region included rescue operations at sea, tackling trafficking networks, relocation, and resettlement, establishing cooperation with the refugee's country of origin for transit and support for members on the external border. The document included proposed structural measures- that included combating irregular migration, the expansion of Border management, the consideration of the *Common European Asylum System (CEAS)* and the promotion of legal migration. It also included the future measures- that included the expansion of the Common European Asylum System, Joint management by the European States, of the European Union External Border and included the new system of legal migration. The aim was to develop a coherent migration policy. The newly launched and the per-implemented proposal made a fragmented legal framework for visa, border, and asylum and immigration policy.

The Common European Asylum System (CEAS) of 2013 regulates the rights of refugees and asylum seekers, already within the member state. However, the European Union Asylum and Refugee policy and the European Border protection continues to suffer from the very fact that they do not offer Asylum seekers any safety and legal options to come to European Union Member States. This leads migrants to be left with no option than to enter Europe through dangerous routes. (This became the fundamental humanitarian and human rights problem of European Union

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<sup>14</sup>Debating Europe. ARGUMENTS FOR AND AGAINST LETTING MORE REFUGEES INTO EUROPE. 2020. Arguments-for\_against.pdf (griterasmusplus.eu). (10/1/2020)



Refugees protection which does not have any remedy in the new regulation). (Another relevant problem is the safe and legal access to the member state territories and the compliance with the principle of non-refoulement of the asylum seekers where their lives are in danger.) The Dublin System- further which aims to regulate as to which state is responsible for a specific asylum procedure has collapsed. Thus, the European System still awaits solution for a fair and permanent solution of refugee distribution,<sup>15</sup> and ensure that the principle of non-refoulement is not violated.

In the recent past, there is constant violation of the principle of non-refoulement by some of the countries. The governments of several European Countries are closing their borders, making restrictive asylum policies, deploying an army, barricading the borders razor wire, halting asylum procedures, pushing refugees off the shore and sending refugees to another third safe country.<sup>16</sup> All of these are leading to a gross violation of the principle of non-refoulement, and human rights of the refugees and the asylum seekers and thus the very principle, which has been the guiding light for years, is being metamorphosed and the convention is gradually fading at protecting the refugees.

In recent years, the main aim of the migrant policy in the European Union has been on the implementation of border control and externalization of migration management with the cooperation of third countries. The National Human Rights Instruments, several International bodies and the civil society Organizations have reported the instances of pushback at the EU land and Sea borders regularly. As per the reports provided by them, the pushback by the EU often involves great force by the EU States, the authorities, the EU Agencies at the external border. These forces often lead to degrading and inhuman treatment towards the migrants and at times leads to their arbitrary detention.

Even though the European Union States have their rights to decide whether or not to grant the non-Europeans access to EU territory, the decision must be taken as per law and the fundamental rights of the individuals must be safeguarded. The policies must

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<sup>15</sup>Petra Bendel, REFUGEE POLICY IN EUROPEAN UNION PROTECT HUMAN RIGHTS! 03/2016. <https://library.fes.de/pdf-files/wiso/12405.pdf>. (13/1/2020)

<sup>16</sup> Oona A. Hathaway, Mark Stevens and Preston Lim. THE COVID-19 AND INTERNATIONAL LAW: REFUGEE LAW. Mar. 29, 2021 – Cornell International Law Journal, Vol. 54, No. 2, 2021 The COVID-19 Pandemic and International Law by Oona A. Hathaway, Preston Lim, Alasdair Phillips-Robins, Mark Stevens :: SSRN. (13/1/2020)

abide by the obligations under the International Human Rights Law (IHL), the International Human Rights Law and they must abide by the principle of non-refoulement under the 1951 Refugee Convention.

So far, there is no international definition of the Pushback. However, as per the *UN office of High Commissioner for Human Rights*, ‘pushbacks’ are various means adopted by the states, that results in force back of the migrants and asylum seekers, to their country from the where they attempted to enter or crossed the international borders. These individuals has no access to international protection or the asylum procedures or the were denied individual assessment on their need for internationally protection, which further led to the violation of the principle of non-refoulement.’

Instead of showing solidarity and sharing the responsibility among the member states effectively, the EU member states are concerned with securing their own external borders in cooperation with the third countries like Libya and Turkey, to cut the inflow of people in Europe.<sup>17</sup>

If we look at the current refugee status in the world, ‘as per to the world report 2023, nearly 184 million people are currently living outside their country of origin. Nearly 20 percent of the population is refugees. About 43 percent of refugees and migrants live in low or middle-income countries, nearly 40 percent of them live in high-income countries (OECD), and nearly 17 percent lives in the Gulf Cooperation council countries.

A large share of migrants come from middle-income countries that are neither too wealthy nor poor and they can afford to migrate. These people require resources and money and hence they are able to escape. The migration rate in small island developing states is above 25 percent. The central and Eastern European Union countries have 15 percent and above emigration rates, as the eastern European countries further make way to the Western European Countries. The major countries that contribute to the refugee population largely are Afghanistan, Central African Republic, countries like Somalia, South Sudan, Syria, Ukraine, and the Republic of Venezuela. These states account for 7 percent of the population.

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<sup>17</sup>European Parliament. PUSHBACKS AT THE EU'S EXTERNAL BORDERS. Pushbacks at the EU's external borders (europa.eu) Aug. 3, 2021. Pushbacks at the EU's external borders | Think Tank | European Parliament (europa.eu) (20/1/2020)

We find refugees all over the world today in all income level countries from developed, to developing to even Under-developed countries. The main destination countries however for the migrants are USA, Saudi Arabia, The United Arab Emirates, European countries like Germany, France. The other countries includes Australia, Canada, United Kingdom

People feel their country of origin due to various reasons like socioeconomic reasons and in search of International Protection. While some people move out of their country for socioeconomic reasons, the others flee the country to save himself and the family in times of wars and persecution and are in immense need of international protection. However, sometimes he flees the country in search of both economic stability and international protection. A large number of migrants, nearly 80 percent flee to search for opportunities in the country of destination.

The forced displacement patterns are however different. While people fleeing for economic reasons tend to go in any of the economically sound countries. People feeling their country because of fear of war, persecution and violence have a sudden trend of movement; they usually flee along with family and in groups. Even though there are refugees all across the world, the following six countries force nearly 76 percent of the people to move out of their country as refugees. They are Ukraine with 8 million as of February 2023, Syria with 6.8 million, Venezuela with 5.6 million, Afghanistan-2.8 million countries like South Sudan contributes to – 2.4 million and Myanmar accounts for nearly 1.2 million of the world's refugees.<sup>18</sup>

## **1.2 LITERATURE REVIEW**

The literature review in the present research seeks to enhance the first hand information concerning refugees. The literature review helps in identifying the works done by the other authors and researchers in the field of issues concerning refugees. It helps in knowing the key words involved in the study of refugees and thus helps in

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<sup>18</sup>The World Development Report. Map 2.2 Immigrants are spread across the world in countries at all levels of income Ratio of immigrants to destination population, 2020 Source: WDR2023 Migration Database, Chapter – 2, World Bank, Washington, DC, <https://www.worldbank.org/wdr2023/data>. IBRD 47144 | MARCH. content (worldbank.org). (21/1/2020)

identifying the gap in the study. Below are some of the literature that the researcher has reviewed before proceeding towards writing the present research.

## **BOOKS**

The book edited by **B.S Chimni** Professor, International Law, School of International Law at Jawaharlal Nehru University, New Delhi. Sir's is known as the leading scholar in the field of International Law and Refugee Law. His book "International Refugee Law: A Read" is an eminent book that guides the way in International Law. The book, divided into eight chapters, encompasses all aspects of refugee protection. The book deals with the definition of refugees, asylum seekers, refugee protection and the duties of refugees. Further, what is the principle of non-refoulement, its background and what is temporary protection. He has also dealt with the principle of burden sharing, inter-country extradition obligation.<sup>19</sup>

The book Edited by Jordana Silverstein and by Rachel Stevens, (edited- 2021) titled as "**Refugee Journey, History of Resettlement, Representation and Resistance**"<sup>20</sup> deals with the Australian responses to refugees. The book deals with analyzing the history and the future of refugees in the sub-continent of Australia.

The Book by the UNHCR titled "**The State of The World's Refugees 2000 fifty years of humanitarian action**", (Published in 2000), <sup>21</sup> talks about how the humanitarian action towards the world refugees began. It talks about the establishment of refugee relief organizations in the early years. The book deals in detail the various events that led to the emergence of refugees world wide.

The book written by Vincent Chetail, First Edition 2019. "**International Migration Law.**" Very well defines the term refugees and explains the structure of the

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<sup>19</sup>B.S. CHIMNI (ED.), "INTERNATIONAL REFUGEE LAW: A READER", 27 Jul. 2000. ISBN 9780761993629, 0761993622 New Delhi, Sage Publications. (12/3/20220)

<sup>20</sup>JORDANA SILVERSTEIN AND BY RACHEL STEVENS, "REFUGEE JOURNEY, HISTORY OF RESETTLEMENT, REPRESENTATION AND RESISTANCE", edited- 2021 ISBN Online 1232438632, Published by ANU Press, Australian National University Refugee Journeys - Google Books- (20/5/2020).

<sup>21</sup>UNHCR, THE STATE OF THE WORLD'S REFUGEES 2000 FIFTY YEARS OF HUMANITARIAN ACTION, Published in 2000 Published by Oxford University, ISBN 0-19-924106-6-13579108642 (20/5/2020)

refugee definition. The book deals with the migrant law and refugee laws and their protection<sup>22</sup>

The book authored by **Cathryn Costello, Published in 2016**, very well deals specifically with the human rights of the migrants and the human rights of the refugees and their protection under the European Union Law<sup>23</sup>

The book edited by **Alice Edwards and Laura VenWaas. (First Published in 2014)** deals with the topic of nationality and statelessness under the International Law. The book enlightens on the issue of how a person becomes stateless and how having a nationality protects a person from so many vulnerabilities.<sup>24</sup>

In the book edited by **Ingo Venzke, Kevin Jon Heller**, the book gives a very good insight into International Law; it talks about the evolution of the legal framework of refugee protection. It enumerates the rights of the refugees and the duties of the state towards the refugees.<sup>25</sup>

The Book titled **“The International Law of Migrant Smuggling”**, deals with the refugees at the sea; it lays down how the nexus works and how refugees and migrants are smuggled into the host country. It deals with the status of the smuggled migrant and their protection.<sup>26</sup>

## **ARTICLES**

The Journal Article by **Rosemary Byrn and Thomas Gammeltoft-Hansen**, 2020, deals with the contemporary challenges of the prevailing law. The Article submits that

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<sup>22</sup>VINCENT CHETAU, INTERNATIONAL MIGRATION LAW. First Edition 2019 ILI Library- 58790, 341.43. CHE. ISBN N- 978-0-19-966826-7. Oxford University Press (13/5/2020)

<sup>23</sup>CATHRYN COSTELLO , THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES IN EUROPEAN LAW. 2016. (ISBN 978-0-19-964474-2 The Human Rights of Migrants in European Law - Cathryn Costello - Google Books. Oxford University Press.(14/5/2020)

<sup>24</sup>ALICE EDWARDS AND LAURA VENWAAS. NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW First Edition in 2014. ILI Library- 57580, 342.72 EDW. Cambridge University Press. ISBN- 978-1-107-03244-6) (18/5/2020)

<sup>25</sup>INGO VENZKE, KEVIN JON HELLER. CONTINGENCY IN INTERNATIONAL LAW ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES. Edited Book ILI Library Press- 58860, 341 VEN. Oxford University Press. (19/5/2020)

<sup>26</sup>ANNE T. GALLADHER AO FIONA DAVID. THE INTERNATIONAL LAW OF MIGRANT SMUGGLING. ILI Library-57569, Class no.- 341.43 GAL. Ny Cambridge University press.(21/5/2020)

a great sensitivity in the dynamic of scholarly profession is needed to expand the canon of refugee law.<sup>27</sup>

In the researcher, **Tamás Molnár**, (2016), in the published work has dealt with the principle of non-refoulement provided under International Law, the very concept of the principle of non-refoulement was incepted and it gradually grew to provide protection to refugees and people in need of International protection. The work discusses various aspects of the principle of non-refoulement as to what is principle of non-refoulement, its scope, how the protection needs of the migrants can be fulfilled according to the principle of non-refoulement. In his work he explained that the fundamental principle imbibed under *Article 19(2) of the EU Charter of fundamental rights*, states that no one can be removed, expelled or can be extradited to a state posing serious risk or threat to a person's life in form of death penalty, torture or any other inhuman or degrading treatment or any form of punishment.<sup>28</sup>

The research work by **Seunghwan Kim**, published in the *Leiden journal of International law*. The work also discusses the principle of non-refoulement and extraterritorial jurisdiction. Where it discusses the meaning of jurisdiction encompassed under the public International Law as well as the Human Rights Law. The work also discusses various case laws from the European Court of Human Rights and has tried to provide clarity over the tried to establish how the clarity over the jurisdiction was provided through various judicial decisions. Further, it also discusses the state's responsibility.<sup>29</sup>

In another work by - **Hanna Aftonfalk**, the author has discussed the exception under article 33(2), provided under the 1951 Refugee Convention. Hanna has discussed the principle of non-refoulement in the context of Human Rights Law, the relationship between the refugees and the Human Rights Law; the state practices took

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<sup>27</sup>Rosemary Byrne And Thomas Gammeltoft-Hansen., *International Refugee Law Between Scholarship And Practice*. 2020 (Article) , International Journal of Refugee Law, Vol 32, No 2, 181–199 doi:10.1093/ijrl/eeaa01 (22/5/2020)

<sup>28</sup>Tamás Molnár, *The Principle Of Non-Refoulement Under International Law: Its Inception And Evolution In A Nutshell*. 2016  
(ThePrincipleNonRefoulementUnderInternationalHumanRightsLaw.pdf (ohchr.org) (23/5/2020)

<sup>29</sup>Seunghwan Kim *Non-Refoulement And Extraterritorial Jurisdiction: State Sovereignty And Migration Controls At Sea In The European Context*. 13 Dec. 2016. (Cambridge University Press: Non-Refoulement and Extraterritorial Jurisdiction: State Sovereignty and Migration Controls at Sea in the European Context | Leiden Journal of International Law | Cambridge Core) (24/5/2020)

the shape of principle of non-refoulement. In the chapter the author discusses who are the persons undeserving of international protection. How the refugee status under Article 1F can be revoked and refugee status of a person be taken away. Further, what are the consequences of having undesirable but irremovable people in countries like Canada, Australia and Europe.<sup>30</sup>

The Journal Article By:-Geoff Gilbert\* *“Is Europe Living Up to Its Obligations to Refugees”*, illustrates how despite the availability of protection to refugees under the Council of Europe, how people fail to obtain refugee status. The Article talks about protection of refugees under International law, admission statistics, approach of European Union towards the refugees, what are the asylum policies, the burden sharing within the European Union, reception of refugees.<sup>31</sup>

The journal Article written by *Dr.Sigit Riyanto*, puts light on the principle of non-refoulement and its relevance in the International Law system. It deals with the development of the concept of the principle of non-refoulement. The work explains the principle of non-refoulement as Jus Cogens.<sup>32</sup>

The Article written by *Andrew Chapman (2015)* enumerates the history of the refugees, from where they came, their recognition. The Article talks about how the refugees started to be recognized as a group of individuals.<sup>33</sup>

The Article by- *Vladislava Stoyanova (2008)* talks about the state's obligation towards the Asylum seekers, their obligation to grant access to their territories, their interception at the high sea, asylum seekers' rescue at the sea.<sup>34</sup>

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<sup>30</sup>Hanna Aftonfalk, *Of course, but maybe: the absolute prohibition of refoulement and threats to national security and public safety Legal and practical effects of undesirable but unreturnable refugees*, 2022. (FULLTEXT01.pdf diva-portal.org) (25/5/2023)

<sup>31</sup>Geoff Gilbert\* *Is Europe Living Up to Its Obligations to Refugees?* (EJIL Vol. 15 no.5. © EJIL 2004; all rights reserved. Chh15(5).book(chh505.fm) (silverchair.com) (28/5/2020)

<sup>32</sup>Dr.SigitRiyanto. *“The Refoulement Principle and its Relevance in the International Law System”*. (SH., LL.M. July 2010 SSRN Electronic Journal, DOI:10.2139/ssrn.2211817. (PDF) The Refoulement Principle and Its Relevance in the International Law System (researchgate.net)

<sup>33</sup>Andrew Chapman -*The first refugees, 1685, an ingenious deception at sea*, Andrew Chapman, October 2015. The first refugees, 1685 - Histories gethistories.com) (28/5/2020)

<sup>34</sup>Vladislava Stoyanova\* *The Principle Of Non-Refoulement And The Right Of Asylum-Seekers To Enter State Territory*. 2008. Lund University, Law Faculty. The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory by VladislavaStoyanova :: SSRN (2/6/2020)

The research Article by *Giuseppe Grimaldi (2019)* deals with the issues relating the ethnic identification amongst the Italians of Ethiopian and the Eritrean origins. The research Article investigates their ethnic identification in relation to apparent changes in the public discourse on the routes of the Mediterranean.<sup>35</sup>

The Article written by *Dr. Mohammad Zahangeer Alam (2021)* illustrates the reasons why the Rohingyas had to leave their native country Myanmar. How their freedom to movement, marriage, loss of social status, loss of physical safety etc. Of the Rohingya refugees in Myanmar were affected. The Article concludes with a suggestion for the Myanmar government to make a policy for the refugees that will play a vital role in survival of the Rohingya communities.<sup>36</sup>

Working work no.30 by *Brian Gorlick*, puts light on the system of providing International refugee protection during any crisis. The refugee protection regime and human rights focus under several international instruments.<sup>37</sup>

The Article entitled “*An Island Jail in the Middle of the Sea*”, (June 2021) aims at reviewing the relocation of Rohingya refugees from the camps of Cox’s Bazar to the Bhasan Char island. The Article tries to find out the life of the refugees post the relocation, what are the shortcomings, and their new challenges in the new place. The work puts light on why the relocation of refugees is not a good idea.<sup>38</sup>

### **1.3 IDENTIFICATION OF RESEARCH GAP AND NEED FOR THE STUDY**

With the apparent pushing back of refugees at the borders, and some European Union States closing their doors by adopting restrictive policies are causing gross violation

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<sup>35</sup>Giuseppe Grimaldi, *The Black Mediterranean: Liminality and the Reconfiguration of Afroeuropenness*, 2019. Open Cultural Studies 2019; 3; 414-427. <https://doi.org/10.1515/culture-2019-0035> (2/6.2020)

<sup>36</sup>Dr Mohammad ZahangeerAlam, *Why did Rohingya Flee to Bangladesh?* 05 Oct. 2021 ([https://dailyasianage.com/news/272998/why-did-rohingya-flee-to-bangladesh\\_](https://dailyasianage.com/news/272998/why-did-rohingya-flee-to-bangladesh_) (3/6/2020)

<sup>37</sup>Brian Gorlick. *New Issues In Refugee Research*. Oct.2000 ISSN 1020-7473. Working Paper No. 30 Human rights and refugees: enhancing protection through international human rights law. DRAFT - Not for Citation\_ (refworld.org) (06/12/2021)

<sup>38</sup>Human Rights Watch. “*An Island Jail in the Middle of the Sea*” *Bangladesh’s Relocation of Refugees to Bhasan Char*, June, 2021. “An Island Jail in the Middle of the Sea”: Bangladesh’s Relocation of Rohingya Refugees to Bhasan Char | HRW (26/8/2021)



to the Principle of Non-refoulement. Despite the availability of multiple laws and regulations, the European Union needs new innovative long-term solutions to address the refugee crisis.

Despite the existence of a framework for a durable solution to the refugee crisis given by the UNHCR, the problems remain between the refugees and the host nation.

The 1951 Refugee Convention stands as it is for the past 63 years without any upgradation. Thus, the convention is weak in solving the contemporary refugee issue.

One sided inclination can be seen in the majority of previous research work. In the available research works, there appears to be a clear-cut one-sided inclination of the researcher. Some of them talk only for the interest of the refugees and their welfare and some talk only for the welfare of the nation, its national security issues and its burden

With the apparent pushing back of refugees at the borders, and some European Union States closing their doors, shows that despite the availability of multiple laws and regulations, European Laws are weak and less effective at its grass root level.

There is an absence of solutions that talks about the mid-way, for the welfare of the refugees without adversely affecting the socio-cultural and economic aspect of the host nation.

Despite several plans, projects, and legal framework, the irony is that the refugees are unwanted and are considered a burden that the host countries are forced to carry due to International pressure and their moral obligations.

In addition, not much research has tried to find a mid-way solution for the welfare of the refugees without adversely affecting the socio-cultural and economic aspect of the host nation. Also with the rising rate of Climatic Change the number of refugees will only increase thus, what we need for the world is an unbiased legal framework that talks about the welfare of both refugees and the host nations. Not laws that only burdens the host countries or adversely affect the host countries and its citizens so much that they are forced to close their doors for refugees like some of the member States in the European Union.

Thus, the researcher in the present research have tried to address all the above-mentioned issues and have suggested different ways of addressing the refugee issue without affecting the interest of any human or country.

#### **1.4 STATEMENT OF PROBLEM**

The European Union is shifting its policies from an open door to a closed door, but this is an ultimate solution to refugee problems emerging from refugee inflow.

The constant inflow of refugees since the year 2015 is leading to some of the adverse effects of hosting refugees like the rise of crime, threat to culture, demography, the growing anti-immigrant sentiments and clashes between asylum seekers and the native.

In the recent time some of the European countries have adopting restrictive asylum policies, and are pushing the refugees and asylum seekers off the shore, fencing the borders with razor wires, increasing patrolling to prevent the entry either by sea or land, this is leading to gross violation of the *Principle of Non-refoulement*.

Refugees and asylum seekers are often sent from one country to another third safe country, which leads to deterioration of their condition, and pushes them towards an uncertain world and further leads to metamorphoses in the principle of non-refoulement by the states. Thus there is need to highlight and address Where the major groups of refugees are forced to flee to save their lives, there are certain groups or individuals that try to cross borders for a better life at the cost of their lives, (with future intention to bring families by applying family reunification in Under EU Law). Thus, with refugees using the principle as a protection shield to achieve their long-term plan to settle in the EU, they are also *metamorphosing* the meaning and objective of the principle.

With the shortcomings developed in the convention, the principle is being metamorphosed and in the lack of a concrete long term durable solution, both the refugees and the host countries are adversely affected.

There is a lack of better and innovative ideas to address the refugee crisis and better solutions to the issues emerging from these crises.

While some EU countries in the world despite the shortcomings in the convention are upholding the Principle of non-refoulement by implementing several innovative measures and schemes to address the refugee crisis. There are some countries that simply consider refugees a burden and simply are either forbidding their entry or putting them in detention centers and forcing them to return voluntarily and hence violating the principle of non-refoulement.

The Convention is an old one and there had been only one modification, by the 1967 Protocol to the convention. Thus over the years with new developments taking place there appears an absence of clarity, and the convention is no longer exhaustive.

There is a need to find a mid-way solution for the welfare of the refugees without adversely affecting most of the socio-cultural and economic aspects of the host nation.

The aim of the researcher is to make an attempt to examine the principle of non-refoulement in the European Union, how the principle of non-refoulement is changing and being metamorphosed. How EU countries are turning from being welcoming to adopting restrictive policies for refugees, and ignoring the principle amid national security. Further, to suggest possible changes in the 1951 conventions, To highlight the metamorphoses, and suggest ways to curtail the same and ensure welfare of both refugees and the state.

## **1.5 OBJECTIVES OF THE RESEARCH**

In the light of the previously mentioned, following areas are the objective of the present research.

1. To evaluate the historical evolution of the global refugee crisis and the presence of the Principle of Non-refoulement. (Chapter- 2)
2. To Examine the Statutory framework for refugee protection and the Principle of Non-refoulement imbibed in International Law and European Law. (Chapter- 3)
3. To evaluate the reasons, issues, effect of European Union Refugee Crisis, and European State's implementation of Principle of Non-refoulement. (Chapter-4)

4. To study why and how some of the European Union states, and other countries with similar refugee issues are closing their doors for refugees, its consequences on the Principle of Non-refoulement. (Chapter-4)
5. To Examine the effectiveness and the shortcomings in the 1951 Refugee Convention the Principle of Non-refoulement, Article 33. (Chapter-5)
6. To examine the judicial discourse of the Principle of Non-refoulement.(Chapter-6)

## **1.6 RESEARCH QUESTIONS**

1. Whether the Principle of Non-refoulement is upheld in the Global Refugee Crisis? (Chapter-2)
2. Whether refugees are adequately protected in Europe, under International and European Laws? (chapter- 3)
3. Whether the Principle of Non-refoulement is being metamorphosed by some European States? (chapter-4)
4. Are some of the European Union States and neighboring countries with similar refugee issues closing their doors for refugees? (Chapter-4)
5. How are the European Union States upholding the Principle of Non-refoulement with the rising refugee issues, and adverse impact of the recent crisis?(chapter-5)
6. What is the judicial discourse on the Principle of Non-refoulement? (Chapter-6)

## **1.7 HYPOTHESIS**

1. The Principle of Non-Refoulement in the 1951 Refugee Convention is not able to balance the welfare of refugees and the host states.
2. The countries in the European Union are not able to uphold the Principle of Non-refoulement.

## **1.8 RESEARCH METHODOLOGY**

The present work is mainly a doctrinal piece of research using analytical and comparative method and approach. Keeping in mind the nature of the research topic the researcher has used secondary sources of Information. Various books, journals, magazines, newspapers, periodicals, etc. have been referred to gain Information over the topic. The methods used in the recent research are.

### ***Historical***

This method helps in broadening the horizon of knowledge as to the beginning of the global and European refugee issues and the development of laws for their protection, what were the ways to address the refugee crisis and their issues in the past.

### ***Descriptive and Analytical***

The goal of a descriptive method is to identify and learn what exactly took place. The method helps to figure out where things stand currently with regard to the problems, issues, or query concerning refugees. The Analytical method helps us examine the topic in detail and draw reasonable conclusions based on the analysis.

### ***Comparative***

The researcher has used the comparative method to compare the different laws for the protection of refugees at international level and at the European Union Level.

## **1.9 SCOPE OF THE STUDY**

The present research focuses on the reasons, problems and effects of the current refugee crisis in the European Union. It aims at examining the principle of non-refoulement and the shortcomings in the 1951 refugee convention. How and why the principle of non-refoulement is being metamorphosed, and how can it be curtailed. The present research aims at finding possible durable and stable solutions to the European Union's refugee crisis to further uphold the principle of non-refoulement.

## **1.10 LIMITATION OF THE STUDY**

While under International Instruments, the principle of non-refoulement provides protection to '*all persons.*' The present research is only limited to the examination of the principle of non-refoulement in the protection of European Union refugees under Article 33 of the 1951 Refugee Convention.

## **1.11 SIGNIFICANCE AND UTILITY OF THE RESEARCH**

The findings of the present research work will help the European Union lawmakers and the concerned governments of the states to address the metamorphosis happening

in the principle of Non-refoulement and curtail the same with the upgradation and modification of the 1951 Refugee Convention. The present research also aims at providing solutions to protect the principle from being violated, and to ensure the protection of refugees while ensuring the peace and prosperity and security of the host nation.

## **1.12 SOURCES**

The researcher has used both Primary and Secondary sources in the present research. In the Primary source, the researcher has referred to various National and International laws, regulations, conventions, reports, books, Newspapers and statutes.

In the Secondary source, the researcher has used sources like, preexisting researches, articles, journals, websites etc.

## **1.13 SCHEME OF CHAPTERS**

The following sections are incorporated in the present research:-

*Chapter-1- 'INTRODUCTION'*, of the research introduces the topic and provides the background of the study already done, through the review of literature. The chapter enumerates the research gap in the area, through the identification of the research gap; it highlights the problem through the statement of problem, and the objective of the research. It also helps to identify the research questions and the hypothesis involved. The chapter also highlights what methods have been adopted to make this study and what are its scopes and limitations. Finally, what will be the utility of the study and its contribution in the field of International Law and Refugee Law.

*Chapter-2- 'HISTORICAL EVOLUTION OF GLOBAL REFUGEE CRISIS AND THE PRESENCE OF PRINCIPLE OF NON-REFOULEMENT'*, deals with the evolution of the refugee crisis around the world. It tells us how gradual human movement led by various reasons brought acknowledgement and how frequent refugee movements around the world started taking the form of the Global Refugees Crisis. The Global refugees crisis is dealt in three sections, that is, the Global Crisis Prior to the 1951 Refugee Convention, crisis post the convention and the Global

Refugee Crisis during the 21<sup>st</sup> century. The chapter also evaluates where or not the principle of non-refoulement was upheld by the host states.

**Chapter-3-‘PRINCIPLE OF NON-REFOULEMENT UNDER INTERNATIONAL LAW AND EUROPEAN LAW’**, this chapter of the research deals with evolution of the term refugee. It enlightens on the development of the legal framework for the protection of refugees. What legal institutions constituted from time to time for the protection of refugees at the international level by acknowledging refugees and recognizing their early issues. Further, the chapter helps us understand how finally the instrument of legal protection came into being both at the international and European Union level which are working even today to provide protection to refugees and asylum seekers. The chapter also discusses in detail the past and existing International and European laws.

**Chapter-4-‘EUROPEAN UNION REFUGEE CRISIS’**, deals specifically with Europe and its refugee issue. The chapter helps us understand the European refugee crisis, when it began, the reasons for the crisis, the issues of hosting refugees, and the following impact of the crisis. The chapter discusses in detail the impact of the crisis on the host nation and the refugees. The world report of 2023, on the status of Europe has been discussed in the chapter, post that a durable solution for the existing European refugee crisis and the world refugee crisis at large has been discussed. The chapter also deals with the refugee crisis in some of the European States.

**Chapter-5-‘ANALYZING THE EFFECTIVENESS AND SHORTCOMINGS OF THE 1951 CONVENTION AND METAMORPHOSIS IN THE PRINCIPLE OF NON-REFOULEMENT’**, *puts light on the effectiveness of the 1951 Refugee Protection Law in the contemporary time. The chapter helps in understanding and analyses what are the shortcomings that have developed over the period. It also enumerated how there exists visible metamorphosis principle of non-refoulement, how the principle is being metamorphosed both by some of the refugees as well as the states. Moreover, how the changing nature of the convention is affecting some of the human rights of the refugees as well as the natives of the host country.*

**Chapter-6-‘JUDICIAL DISCOURSE ON THE PRINCIPLE OF NON-REFOULEMENT’.** The chapter helps us understand how the principle of non-refoulement has been upheld by various courts like the International Human Rights Court, the European Union Court of Human Rights. How these courts have safeguarded the interest of refugees and people in need of International protection from torture, cruel, inhuman and degrading treatment and Punishment. What is the court’s take on the extradition of refugees. How the courts through its judgment have ensured the EU states responsibility towards refugees. How has the court addressed the instances of Europe’s pushback and the violation of the principle of non-refoulement, how a person in need of International protection has always been protected under the principle imbibed under the *Human Rights Law, the CAT, ICPPED, UDHR, IHRL* etc.

**Chapter -7- ‘CONCLUSIONS AND SUGGESTIONS,’** in this chapter, the research has been concluded with the conclusion which includes the answer to the research question, testing of the hypothesis and what has been the final finding of the research.

Further, towards the suggestion, the researcher has suggested how the metamorphosis can be curtailed and what can be the possible durable solutions to settle the burning issues of the refugee crisis in European Union and how peace, harmony and welfare can be restored both for the refugees and the citizens of the host countries. For the same the researcher has discussed the durable solution suggested by the UNHCR and further the researcher has submitted some possible long term solution that could go a long way in resolving most of the refugee issues of the contemporary time.



## CHAPTER 2

# HISTORICAL EVOLUTION OF GLOBAL REFUGEE CRISIS AND THE PRESENCE OF PRINCIPLE OF NON- REFOULEMENT



Image No-1<sup>39</sup>

## 2.1 INTRODUCTION

A refugee crisis is a circumstance where people in large numbers are forced to leave their homes and their country of origin to seek safety and shelter in another country or region.<sup>40</sup> The word refugee was coined from the French word *réfugié*. The word has its roots in the 17th-century France, when a huge influx of French migrants known as Huguenots left their country in order to escape religious persecution. The French word “*réfugié*” became the English word “refugee.”<sup>41</sup>

The practice of *non-refoulement* followed wherever refugees went for shelter. People moving from one country to another were provided shelter and protection under the

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<sup>39</sup> Migrants are escorted through fields by police as they are walked... News Photo - Getty Images

<sup>40</sup>World Vision UK “WHAT IS A REFUGEE AND WHAT IS A REFUGEE CRISIS?”  
What is a Refugee and a Refugee Crisis? | World Vision UK (06 OCT. 2021)

<sup>41</sup>Byerin Blakemor, HOW DOES A PERSON BECOME A REFUGEE? Published March 16, 2023  
Min Read nationalgeographic.com) (26/04/22)

shadow existence of the principle of non-refoulement. The gradual practice of *non-refoulement*, starting taking the shape of customary law, even without any country intending to do so. We see this in the case of Huguenots. ‘Huguenots were Reformed Protestants who were unable to follow their faith under France's Catholic monarchy. Thus, after the beginning of the persecution of the Huguenots, Tens of thousands of French Protestants went and settled in non-Catholic countries across Europe, some also settled in America and South African colonies to save their lives. However, the most common destination for them was England, specifically the East End of London. The journey to reach the closest safe country was dangerous. A newsletter from the 1681 described boats arriving "with few men in them, they sending their wives and children away first and most of these have run great hazards at sea." Another One pamphlet from that time mocks Huguenots as, "canary birds naturalized in “Utopia” this statement was with reference to a stereotype of Huguenots, who keep pet birds in cages their workplaces. “Utopia” here means England. Many responses towards the Huguenots were unsympathetic. However, the sense of fellowship gained from some English Protestants helped the Huguenots to integrate into the British economy quickly. Accordingly, the Huguenots adapted British life. Some of the most famous figures in British culture and politics having a Huguenot family origin are the actor *Laurence Olivier*, *Peter Mark Roget*, *Sir John Houblon*, the great founder of the Bank of England. However, not all possessed the sense of empathy towards the Huguenots. One 17th-century sermon given by the preacher *Samuel Bolde*, berates its readers for their failure to feel empathy.’<sup>42</sup>

The fact that they were allowed to settle in these sub-continent makes it evident that the non-refoulement was practiced during this time phase, which was way before the inception of the legal status to the *principle of non-refoulement* under any International Law. In the year 1892, at the Geneva Session held at the *Institute de Droit International*, an institute of International Law, the fact that the refugees should not be expelled to another state, unless the set condition is delivered was formulated in the session. However, with the growing International tension during World War I and II, the *principle of Non-refoulement* appeared frequently in various International Conventions stipulating that the refugees should not be returned to the country where

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<sup>42</sup>Leo Hornak. THE WORD 'REFUGEE' HAS A SURPRISING ORIGIN (February 20, 2017.7:30PM)EST<https://www.pri.org/stories/2017-02-20/word-refugee-has-surprising-origin>

their life was in danger, mainly to their country of origin. The context was mainly for the Russian and American Refugees. Similar restriction on *refoulement* was made in another convention signed in 1936-38 for the German refugees.

Further, formulation of the United Nations, post World War II, gave new impetus for the consolidation of the principle of *non-refoulement* in International Law. At this point of history, millions of people were craving to settle down in any host country. It was during this period that prohibition of *refoulement* became universal, it was formulated under Article 45 of the 1949 Geneva convention<sup>43</sup> that under no circumstances a protected person shall be transferred to any country where s/he may apprehend a fear of being persecuted for the reasons of either his religious belief or his political opinion. Further in the year 1951, the principle of non-refoulement gained border protection and positive legal reinforcement universally under Article 33 of the 1951 Refugee convention.<sup>44</sup> The Article states that, - no signatory state shall expel or return a person in any manner to a territory where his life or his freedom would be under threat because of his race, religion, nationality, his membership to a particular social group or because of his political opinion.

The International Refugee Law evolved at the sub-field of the legal discipline in the 1970s. The work of *Pierre Bourdieu*, tells us that this standing as an academic field flows not only from an expanding body of substantive scholarship, but also from relative structural autonomy in relation to the eco-political environment and the educational system where it grew.<sup>45</sup>

The UNHCR ExCom adopted in 1977 reinforced the importance of the *principle of non-refoulement* and further elaborated on its contents as well as conditions of application.

‘In the early 1987, a special group of senior Civil Servants (the Ad Hoc Immigration Group) was established to reinforce the border control and to limit the access of

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<sup>43</sup>The 1949 Geneva Convention Relating To The Protection Of Civilians Persons In Time Of War. (26/4/2022)

<sup>44</sup>The 1951 Geneva Convention Relating To The Status Of Refugees. (26/4/2022)

<sup>45</sup>Rosemary Byrne\* and Thomas Gammeltoft-Hansen. *International Refugee Law Between Scholarship and Practice*. 2020, (Article) , *International Journal of Refugee Law*, Vol 32, No 2, 181–199 doi:10.1093/ijrl/eeaa011(27/4/2022)

asylum seekers into Europe. The group started imposing penalties on the carriers responsible for bringing in undocumented aliens into the European Community. In the landmark judgment of *MR. and Mrs. Elgafaji v. the Dutch Secretary of State for justice*, the court ruled - “that the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that applicant adduce evidence that he is specifically targeted by reasons of factors particular to his personal circumstances; that the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterizing the armed conflict taking place.. reaches such a high level that substantial groups are shown for believing that a civilian, returned to the relevant country as the case may be, to the relevant region, would solely on account of his presence in the territory of that country or region, face a real risk of being subject to that threat”<sup>46</sup>

### ***Refugee of Definition***

The 1951 Refugee Convention defines the term Refugee 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.*”<sup>47</sup> The 1951 Convention Relating to the Status of Refugees is a key legal document that defines the term refugees. The convention was initially limited to the protection of refugees after World War II, however its scope was expanded in its 1967 Protocol, for the protection of refugees. Currently there are 149 countries as members of the convention.

The convention defines refugee as a person who, “owing to a well founded fear of being persecuted for the reasons of race religion, nationality, membership or a particular group or social opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself the protection of that country or to return there because there is a fear of persecution.”<sup>48</sup>

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<sup>46</sup>HELENE LAMBERT, JANE MCADA AND MARYELLEN FULLERTON. THE GLOBAL REACH OF EUROPEAN REFUGEE LAW BOOK- 2013. Cambridge press.

<sup>47</sup>UNHCR. INDIA WHO IS A REFUGEE? UNHCR - WHAT IS A REFUGEE?, The UN Refugee Agency. What is a refugee? | UNHCR (29/4/2022)

<sup>48</sup>Hassan Faruk Al Imran, Md. Nannu Mian,. “ *The Rohingya Refugees in Bangladesh: A Vulnerable Group in Law and Policy.*” 226-253, ISSN 2201- 4624, Journal in Studies in Social Sciences Volum 8, Nov. 2, 2014, (26/5/2022)

The person or a group of persons, need to prove four elements to attain the refugee status under Article 1A (2) of the 1951 Refugee Convention. They are:-

- (a) That they have well-founded fear of persecution.
- (b) That one flees across the border of one's country.
- (c) That there is discrimination based on race, sex, and religion.
- (d) That they are unwilling to return to their country unless safety is guaranteed.<sup>49</sup>

In the European Union, *The Qualification Directive* expands its scope of refugee protection. It does not extend the definition of refugee, but by the creation of another form of complementary protection. It entitles subsidiary protection. Thus, the *Qualification Directive* defines refugees as:

*"[...] a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply."*<sup>50</sup>

As long as refugees are not granted refugee status by the contacting states or UNHRC, they are called 'Asylum Seekers' They are also often referred to as displaced persons, emigrants, aliens, evacuee etc.

### ***Structure of Refugee Definition***

'The structure of the refugee definition is three layered, that is *inclusion, exclusion and cessation* Article 1(A)(2) deals with the inclusion criteria which is based on four cumulative criteria first the refugee is outside his/her country of origin. Second is he or she is unable to or unwilling to avail the protection of his or her country. Third is such inability or unwillingness is because of the well-founded fear of being persecuted. Fourthly, persecution or the lack of protection therefrom is linked to with (race, religion, nationality, membership of a particular group, or the political opinion)

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<sup>49</sup>*Supra, at 1*

<sup>50</sup>Luisa Feline Freier, Jean-Pierre Gauci. *Refugee Survey Quarterly*, Volume 39, Issue 3, September 2020, Pages 321–362, <https://doi.org/10.1093/rsq/hdaa011>. (06 October 2020)

The Exclusion clause states that even if a person satisfies the criteria under Article 1 (A) (2) they cannot enjoy the protection provided under the refugee convention, firstly, if that person is already benefiting under any international or national protection Article 1(D) (E). Secondly, Article 1(F) excludes any person, who has committed any serious crime, (crime against peace, war crimes, any crime against humanity, non-political crime of serious nature, and has acted contrary to the purpose of the United Nations).

The cessation clause is provided under Article 1 (C). It underlines the temporary nature of refugees guaranteed under refugee convention.<sup>51</sup>

### ***Difference between Refugee, Asylum seeker and Migrants***

Every day a number of people leave their homes on a journey to another land owing to various reasons, to rebuild their lives. Some leave their homes in search of jobs and education. Some flee their homes to save themselves from persecution or human right violations. People also flee their homes when they non-longer feel safe within their own country and might have been targeted for who they are, or what their beliefs are. For example, they might be targeted for their ethnicity, religion, sexuality or even for a different political opinion.

The term, Refugee, Asylum Seekers or Migrants are used for people who are on the move; they have left their countries and have crossed their borders. The term refugee and migrant is often used as interchangeable, however they have different definitions.

***Refugee-*** While a refugee is a person who flees their homes, their country of origin owing to risk of serious human right violations and their persecutions. They have a well-founded fear of being persecuted for the reason of their race, religion, political opinion, sex, membership of a particular group. These people cannot return back home or are afraid to do so. Refugees are often protected by the international legal framework by other countries as it is too dangerous for them to return home.<sup>52</sup>

***Asylum Seekers-*** asylum seekers are people who have left their countries and are seeking protection from persecution and other serious human rights violations in

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<sup>51</sup>VINCENT CHETAİL, INTERNATIONAL MIGRATION LAW. (First Edition 2019. Oxford University Press. ILI Library- 58790, 341.43. CHE. ISBN No.- 978-0-19-966826-7). (30/5/2022)

<sup>52</sup>Amnesty International. REFUGEES, ASYLUM SEEKERS AND MIGRANTS. Refugees, Asylum Seekers and Migrants - Amnesty International (5/6/2022)

another country. However, they have not been legally recognized as refugees and are waiting to receive a decision on their asylum claim. To seek asylum is a human right, which means that every person should be allowed to enter other country to seek asylum,<sup>53</sup> is a person who has requested for a sanctuary which has not yet been processed. Once the asylum seekers are recognized as refugees they receive legal and material assistance from the host countries.<sup>54</sup> Thus, Asylum Seekers are people who have fled to another country to protect themselves from persecution and human rights violations, but despite their arrival in the other country, they have not yet been granted refugee status. They are the ones still awaiting their asylum claims to be approved.<sup>55</sup>

***Migrants-*** the term migrant is an umbrella term, it is not defined under the international law. However, migrants are people moving away from their place of residence either within their own country or cross international borders to move outside their country of origin and settle down there temporarily or permanently, for various reasons. The term migrants includes a number of well-defined categories of legal people, like migrant workers, people whose movement is legally defined, such as smuggled migrants. The term migrants also includes those people whose movement is not defined under the International Law<sup>56</sup>

### ***Kinds of Refugees around the world***

Every minute 24 people are displaced across the world<sup>57</sup>. There is often confusion between the two terms, Migrants and Refugees, migrants are people who flee their countries for reasons apart from persecution, they move out in search of better safe living conditions or livelihood. However, refugees are people who are majorly driven by wars, conflicts or persecution. Thus, Refugee is a broader term of people who flee their homes; there are various kinds of refugees around the world who are driven out of their country of origin for various leading factors.

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<sup>53</sup>*Id.* at 51

<sup>54</sup>UN Refugee Organization. WHAT IS ASYLUM? - THE FUNDAMENTALS OF SEEKING SAFETY. What is Asylum? - The Fundamentals of Seeking Safety (unrefugees.org)

<sup>55</sup>REFUGEES, ASYLUM-SEEKERS AND MIGRANTS - Amnesty International (6/1/2022)

<sup>56</sup>IMO UN Migration. WHO IS A MIGRANT. Who is a Migrant? | International Organization for Migration (iom.int) (22 /3/ 2020)

<sup>57</sup>News 9. DIFFERENT TYPES OF REFUGEES: WHY THEY FLEE JOIN THE CONVERSATION DIFFERENT TYPES OF REFUGEES: Why They Flee (news9.com)Sunday, March 22nd 2020, 8:06 am News On 6 (7/6/2022)

There are majorly six kinds of refugees: Asylum seekers, escaping wars, returnees, internally displaced, stateless, Escaping religious and political persecution, escaping discriminating based on, Gender/sexual orientation, climate affected refugees.<sup>58</sup> “Refugees are often highly visible because by definition they have crossed an international border. Most stateless people, on the other hand, remain in the country of their birth (or a successor state) and are mixed in with the general population. As a result, stateless persons are not identified as such in the national statistics.”<sup>59</sup> There are also some African refugees who are driven of their states or countries due to reasons of draught, shortage of food, victims of human rights violation, torture, massacred, expropriators property etc.<sup>60</sup> Following are a brief of some kinds of refugees.

- (a) ***Internally Displaced People***-Unlike Refugees or Asylum seekers, internally displaced people (IDPs) are the ones who do not cross the border or go to another country, but moves from one place to another within their country of origin and are under the protection of its own government.<sup>61</sup>
- (b) ***Stateless Persons***-The 1954 Convention Relating To The Status of Refugees (UNHCR), Article 1, Defines “For the purpose of this convention, the term ‘Stateless Person’ means a person who is not considered as a nationalist by any state under the operation of law’,<sup>62</sup>for example Rohingya refugees from Myanmar.
- (c) ***Returnees***-Returnees are refugees who were earlier refugees but now have returned back home to their country of origin but need government and other organization’s support and guidance in their return and re-settlement.<sup>63</sup>

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<sup>58</sup>Bike Hike. WHY DO REFUGEES TRAVEL TO EUROPE - BikeHike (cyclinghikes.com)

<sup>59</sup>ALICE EDWARDS AND LAURA VENWAAS. NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW. (First Published in 2014) ILI Library- 57580, 342.72 EDW. Cambridge University Press. ISBN- 978-1-107-03244-6) (30/5/2022)

<sup>60</sup>Cultural Survival. ETHNICITY AND REFUGEES IN AFRICA, (February 3, 2010) <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ethnicity-and-refugees-africa>. (08/12/22)

<sup>61</sup>UNHRC. INTERNALLY DISPLACED PEOPLE. Internally Displaced People | UNHCR (6/1/2022)

<sup>62</sup>Ask DAG. WHAT IS THE UN DEFINITION OF “STATELESS PERSON?”. DAG HAMMARSKOLD, Liberty. What is the UN definition of “Stateless Person”? - Ask DAG! (6/1/2022)

<sup>63</sup>RCK REFUGEE CONSORTIUM OF KENYA. REFUGEES, ASYLUM SEEKERS AND RETURNEES – Refugee Consortium of Kenya. (7/1/2022) (rckkenya.org)



(d) **Hunger** – Climatic changes like flood, drought, etc. and problems like deflation etc. leads to hunger problems and often becomes leading reasons for refugees to move elsewhere in search of food, shelter, safety.<sup>64</sup>

(e) **Climate Change refugees**- climate change refugees further becomes or is known as hunger struck refugees as a consequence of climate change hunger strikes forcing people to flee in search of food. Climate change is becoming a frequent problem leaving people deprived of food, shelter, safety, jobs etc. thus when people move out to another country for protection, they are called climate change refugees.

(g) **Other types of refugees**- include Gender and Sexual Orientation based discrimination, etc.

### ***The Five Major Countries from Where Refugees Originates Are-***

Syrian Arab Republic- 6.8 Million

Venezuela- 4.1 Million

Afghanistan- 2.6 Million

South Sudan- 2.2 Million

Myanmar- 1.1 Million<sup>65</sup>

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<sup>64</sup>News 9 DIFFERENT TYPES OF REFUGEES: WHY THEY FLEE Sunday, March 22nd 2020, 8:06 am By: News On 6 (news9.com) (30/7/2022)

<sup>65</sup> UNHRC (The UN Refugee Agency) UNHCR - Refugee Statistics October, 2022, (10/02/2022)

# World refugees

59.5 million forcibly displaced people worldwide in 2014

## Top 16 origins, 2014

UNHCR registered refugees, and people in refugee-like situations

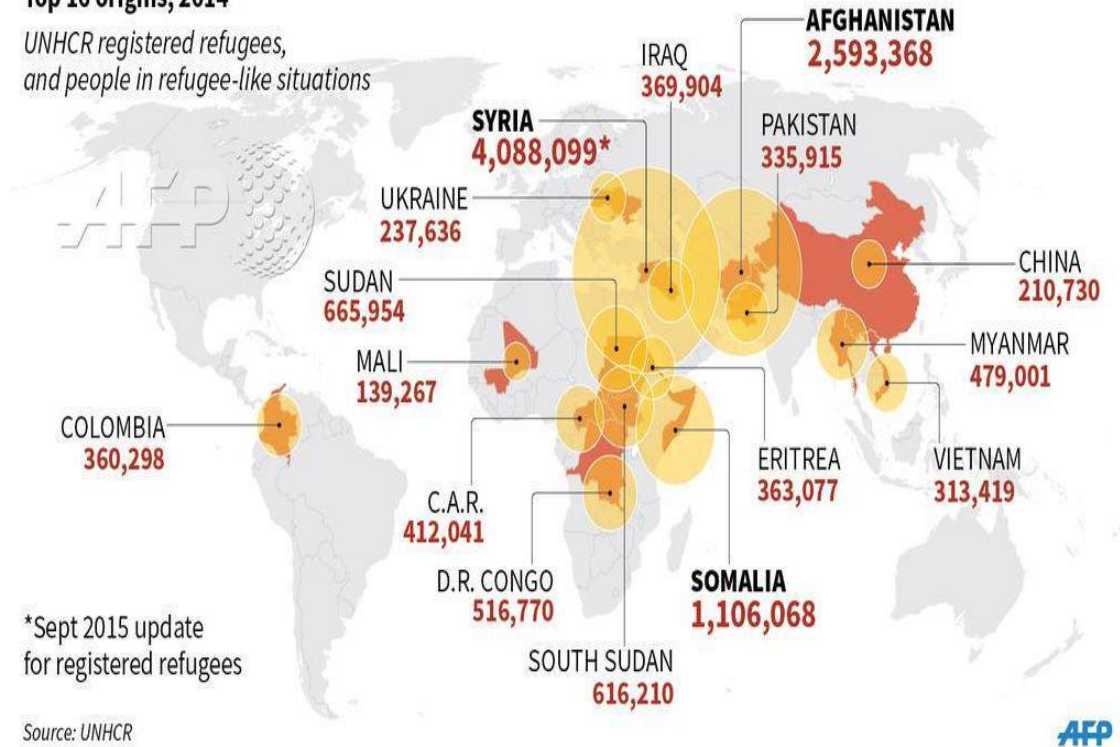


Image no.-2<sup>66</sup>

## *The Five Major Countries Hosting the Major Refugee Population are:-*

Turkey- 3.7 Million, Colombia- 1.7 Million, Uganda- 1.5 Million, Pakistan- 1.4 Million, Germany-1.2 Million<sup>67</sup>

<sup>66</sup> Where do most refugees come from? <https://www.scoopnest.com/user/AFP/641939440902930433> (1/8/2022)

<sup>67</sup>UNHRC (The UN Refugee Agency) UNHCR - Refugee Statistics (10/02/2022)



Image no.- 3<sup>68</sup>

## 2.2 REASONS FOR REFUGEE MOVEMENT OR DISPLACEMENTS

Various leading factors cause or trigger the refugee movement. However any displacement results in either long term or short-term displacement and hence the settlement in the host country is some time for long term, short term and sometime results in permanent settlement.

War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.<sup>69</sup> ‘The other reasons include, search for better life, environmental or climate change, and to protect themselves and their family from future violence. Refugees often travel to the nearby safe countries in times of threat, and many times they make an extra effort to get to developed countries, which can offer them an even better life, job etc., displacements are also cause when the government authorities

<sup>68</sup> World’s top 10 countries to host refugees. <https://www.pinterest.com/pin/189432728067207278/> (4 years ago) By- Amnesty International (10/8/2022)

<sup>69</sup>What is a Refugee UNHCR - What is a refugee? (10/8/2022)

forces people to change their places, in order to save them from injuries to civilians. At times civilians themselves change their place to avoid any immediate danger.

- a) **Wars-** according to the UNHCR, by the end of 2021, nearly 90 million people were displaced, propelled by the new involved and protracted conflict in countries like Ethiopia, Burkina Faso, Myanmar, Nigeria, Africa, and Democratic Republic of the Congo. The recent Ukraine war in the year 2022, forced 8 million people to displace and nearly 6 million to leave the nation.<sup>70</sup>
- b) **Economic Circumstances-** one of the biggest reasons for migration are economic challenges. According to the United Nations World Migration Report 2018, the major drive for the people of West Africa, relocating from countries like Niger, Mali to Ghana and Cte d'Ivoire is because of more opportunities to work and to support their families.<sup>71</sup>
- c) **Climate Change-** sudden or long-term occurring change in the Earth's environment forces people to leave their homes to save themselves. These environmental changes occur either by natural disasters like landslide, volcanic eruption, flood, draught, earthquake etc., or by intensive use of the natural resources of the earth or by causing pollution or by other activities caused by man. Some reasons for the human displacement include, decrease in the freshwater level, extreme weather events, flooding due to rise of the mean sea level, and deforestation.<sup>72</sup> Currently the climate change is affecting areas extending from Afghanistan to Central America, with frequent drought, flooding and other climatic events. Mozambique is experiencing multiple disasters resulting from Cyclone. The Rohingya refugees that have fled the violence of Myanmar are now facing frequent cyclones and flooding.<sup>73</sup>

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<sup>70</sup>United Nation News. UNHCR: A RECORD 100 MILLION PEOPLE FORCIBLY DISPLACED WORLDWIDE. UNHCR: A record 100 million people forcibly displaced worldwide | UN News. (30/03/21)

<sup>71</sup>Olivia Giovetti. FORCED MIGRATION: 6 CAUSES AND EXAMPLES. JUNE 28, 2019. Forced migration: 6 Causes and examples | Concern Worldwide, US (concernusa.org) (30/03/21)

<sup>72</sup>Understanding Global Change. DISPLACEMENT OF HUMAN POPULATION Displacement of human populations - Understanding Global Change. (berkeley.edu) (30/03/21)

<sup>73</sup> UNHCR "CLIMATE CHANGE AND DISASTER DISPLACEMENT." Climate change and disaster displacement | UNHCR (30/03/21)

- d) ***Overlapping of two countries*** - any overlapping of two countries in the border area near another country leads to massive refugee inflow. Examples are the war between Ethiopia and Somalia wherein many Ethiopian refugees moved to Somalia and Djibouti. The other example in the Second World War many Germans were forced to leave the Soviet Union.
- e) ***Invasions***- are also responsible for creating an inflow of refugees in the neighboring countries. Some invasions include the Soviet Union invasion of Afghanistan, where millions of people migrated to Pakistan and Iran. Another invasion by Vietnam's invasion of Kampuchea in 1978 caused thousands of refugees to flee to Kampuchea. Another very recent example is the ongoing Russian invasion of Ukraine.<sup>74</sup>
- f) ***Armed conflict***- People also get displaced and are forced to move when there is an armed conflict between the two countries and some population groups decide to escape from a particular political system. Examples are Indo-China, the recent Russia- Ukraine war etc.
- g) ***Post war agreements between two countries*** - also generates refugee inflow. Examples are- Greeks and Turkey were exchanged post the Greek-Turkish tightening at the early stage of Ataturk's establishment in modern Turkey.
- h) ***Ethnic and Tribal conflicts***- adds to the sources of refugee emergence. Partition of states on the basis of religion, ethnicity, languages, cultures etc., also causes the movement of people as refugees in large numbers. Example is the 1947 creation of Pakistan from India on the line of religion.<sup>75</sup>

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<sup>74</sup>LATEST IN UKRAINE: AS RUSSIA'S WAR STARTS ITS SECOND YEAR, EYES ARE ON CHINA Updated February 27, 2023. Latest in Ukraine: Eyes are on China as Russia war starts second year : NPR (Feb. 27, 2021).

<sup>75</sup>THE REFUGEE PROBLEMS AND INTERNATIONAL RESPONSE. 07\_chapter 1.pdf (inlibnet.ac.in) (02/04/21)

## **2.3 THE GLOBAL REFUGEE CRISIS AND THE PRESENCE OF PRINCIPLE OF NON-REFOULEMENT**

To evaluate the existence of the principle of non-refoulement, the researcher divide the study of Global refugee crisis between three eras, that are-

### **2.3.1 GLOBAL REFUGEE CRISIS PRIOR TO THE 1951 REFUGEE CONVENTION**

### **2.3.2 GLOBAL REFUGEE CRISIS POST TO THE 1951 REFUGEE CONVENTION**

### **2.3.3 GLOBAL REFUGEE CRISIS OF THE 21<sup>ST</sup> CENTURY.**

The right to leave one's country is a basic human right. Socrates regards it as an "attribute of personal liberty". The Magna Carta incorporated it for the first time into National Law, the French constitution of 1791, provided for the same guarantee, and an act of the U.S Congress in 1868 declaimed that "the right to expatriation is a natural and inherited right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness."<sup>76</sup> 'The free entry of the aliens on the territory of a civilized state can only be prohibited in a general and permanent way for public interest and extremely grave motivation or intention.'<sup>77</sup>

### **2.3.1 GLOBAL REFUGEE CRISIS PRIOR TO 1951 REFUGEE CONVENTION**

The beginning of the current refugee crisis can be traced back between the years 1939-1945. During this period World War I and II took place subsequently, World War II is marked with the era of greatest displacement of people, followed by the Indian independence and further partition of India and Pakistan during the year 1947 which led to displacement of 14 million people.<sup>78</sup>

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<sup>76</sup>Gaynor I. Jacobson, *The Refugee Movement: An Overview*. Hebrew Immigrant Aid Society Documentation Volume 11, Issue 4. <https://doi.org/10.1177/0197918397011004> (11/8/2022)

<sup>77</sup>INGO VENZKE, KEVIN JON HELLER. CONTINGENCY IN INTERNATIONAL LAW ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES. ILI Library Press- 58860, 341 VEN. Oxford University Press. (30/5/2022)

<sup>78</sup>Gokul K S. A BRIEF HISTORY OF GLOBAL REFUGEE CRISIS: FROM ORIGINS TO CONTEMPORARY SCENARIO. A Brief History Of Global Refugee Crisis: From Origins To Contemporary Scenario| Countercurrents. (29/07/2018)

Following are the events That Led to the World Refugee Crisis prior to the refugee convention.

### **2.3.1.1 THE GREAT HUNGER OF IRELAND**

The Great Hunger of Ireland also known as the Irish potato famine, between the years ‘1845-1849 – Ireland was badly struck by the great famine during these years the famine lasted for 4 years, people moved out of the country in search of better life. Nearly 1.0 million moved out of Ireland during this natural calamity. People during the famine left the island and moved to countries like North America and Great Britain,<sup>79</sup> where they were provided shelter under the principle of non-refoulement as *jus cogens* norm.

### **2.3.1.2 THE WORLD WAR I**

World War I, also called the Great war, between 1914 –1918- the World war I took place in Europe after the killing of Archduke Franz Ferdinand, belonging to Austria, during this time which went on for 4 years and led to nearly 16 million military men and civilians dead in the war. The time saw an exceptional level of Bloodshed and destruction of man and money.<sup>80</sup> Thousands of refugees fled the soviet territory to find asylum mainly in the Western Europe and the United States.<sup>81</sup> Even though the 1951 Refugee convention and the principle of non-refoulement under the convention was constituted post the World War II

### **2.3.1.3 THE WORLD WAR II**

Between the years 1939-1945- World War II took place during these years, the war lasted for 6 years and left nearly 40.0-60.0 million Europeans displaced again. The war is marked with the lethal conflict in human history. Nearly 50 nations fought on land, in sea and in the air. The time is also known as the Great Depression.<sup>82</sup> Since the refugees and their issues had started gaining the world’s attention and post-World

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<sup>79</sup>History channel. IRISH POTATO FAMINE. IRISH POTATO FAMINE: DATE, CAUSE & GREAT HUNGER - HISTORY. Oct. 2009. (25/8/22)

<sup>80</sup>History Channel. WORLD WAR I. (Oct. 2009) World War I: Summary, Causes & Facts | HISTORY.

<sup>81</sup>Encyclopedia- Refugee (nationalgeographic.org) (25/8/2022)

<sup>82</sup>History channel. WORLD WAR II. (May, 2023.) World War II: Summary, Combatants & Facts | HISTORY. (30/5/2022)

War I various legal systems started developing like the *Aliens Law*, *League of Nations*, *the Nansen International Office of Refugee*, *the High Commissioner of Refugees*, *the United nation Relief and Rehabilitation Administration*. Though all of these legal system were established for the protection of refugee and stalked about non-refoulement, there was no specific Article dedicated to the principle, like that of the 1951 refugee convention

#### **2.3.1.4 THE INDIAN INDEPENDENCE AND PARTITION WITH PAKISTAN-1947-1948**

This time was recorded in history as the Partition of India. After India got independence, in 1947, the nation was divided into two countries, India and Pakistan. People during this time shifted to their country of choice, some shifted from India to Pakistan and some from Pakistan to India vis-a-vis. Approximately 10.0-10.0 million people had to take refuge.<sup>83</sup> Even though there was no specific legal system for the protection of refugees in India back then, India still abided by the *principle of non-refoulement* on humanitarian grounds and accepted millions of people coming from Pakistan. Despite the broken economy and limited resources immediately after India's independence, refugees from Pakistan were provided shelter and protection.

Thus, we see that even before the inception of the principle of non-refoulement, people or refugees were not returned to the place where their lives were in danger and they were provided protection from non-refoulement.

#### **2.3.2 GLOBAL REFUGEE CRISIS (POST- TO THE 1951 REFUGEE CONVENTION)**

According to the UNHCR, data since 1951. An estimated 1.6 million refugees have been recorded worldwide per year for over the last seven decades. In addition, the number has rarely dropped under 10 million registered refugees per year. There is no definite date of the start of the current refugee crisis; however, the displacement number can be seen accelerated over the past 11 years, especially because of the Syrian Civil War. The very sapling of the contemporary crisis was planted back in the

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<sup>83</sup>List of largest refugee crises - Wikipedia (26/8/2022)



9060s somewhere from 1957-1962, when 24 African countries gained their independence from European Colonial Rule. Though the independence process was peaceful, the Europeans left the newly sovereign African nations unstable, which further led to instability and violence. The contemporary UN data confirms 44,000 people fleeing their homes on an average amid conflicts and persecution. Having said that, conflict is not the only cause of people fleeing, there are other humanitarian crises, which aids and accelerates the refugee crisis like famine, drought, and other natural climates.

However, to address the humanitarian crisis, some of the previous legal systems were refined; one being the protocol to the 1951 Refugee Convention and many other legal systems for the protection of refugees and people in need of International protection were established during this time. Legal systems like, IRO, UDHR, ICCPR, UNHCR, 1951 Refugee Convention, ICESCR, CAT convention etc., were established at the International level for the protection of people. At the same time, some regional legal systems for the protection of people were also on the rise like the Organization of African Unity (OAU), American Convention, etc.

### **2.3.2.1 THE KOREAN WAR**

Between the years '1950-1953- The Korean War took place during this span of time. The war continued for 3 years and left nearly 1.0-5.0 million people as homeless refugees. During the war, Korean people moved down south for safety and shelter in a city called Busan.<sup>84</sup> During the 1950's the United Nations and the *Private and Voluntary Aid Organization (PVO's)* provided humanitarian relief to South Korea.<sup>85</sup>

### **2.3.2.2 THE ALGERIAN INDEPENDENCE WAR- 1954-1962**

The Algerian war for Independence took place during these years; the war lasted for about 6 years leading to an average of 1.0 million people displaced. It was amongst the epic wars of the anti-colonial period.<sup>86</sup> In this war of Independence, the 1951

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<sup>84</sup>Britannica. KOREAN WAR. 1950–1953. Korean War | Combatants, Summary, Years, Map, Casualties, & Facts | Britannica. (Jul 29, 2023)

<sup>85</sup>Paul S. Cha. PEOPLE LIKE YOU AND ME”: THE KOREAN WAR, HUMANITARIAN AID, AND CREATING COMPASSION. (MARCH 01 2021) *Journal of Korean Studies* (2021) 26 (1): 95–116. <https://doi.org/10.1215/07311613-8747733>. RESEARCH ARTICLE| 27/8/2022)

<sup>86</sup>Study Smart AI. ALGERIAN WAR. Algerian War: Independence, Effects & Causes | StudySmarter

Refugee Convention was applied to provide protection to the refugees. Since France has signed this convention, in the year 1952, France was therefore committed to provide anyone the refugee rights and protection to whoever met the definition of the 1951 Refugee Convention thus the *principle of non-refoulement* was applied and was abided by countries like France, Morocco and Tunisia. The UNHCR was also directed to assist the people in Algeria. The International Committee or Red Cross also assisted people during the Algerian War of Independence.<sup>87</sup>

### **2.3.2.3 THE BANGLADESH LIBERATION WAR**

The year between 1971-1979- was marked as the Bangladesh Liberation War; this took place in the Indian subcontinent. The conflict between Independent India and Pakistan led to the establishment of the Republic of Bangladesh. The war lasted for 8 years and left around 10.0 million people as refugees.<sup>88</sup> During this time various NGOs, CBI and the UNHCR joined the relief operations. The refugees were given assistance in cash and kind. After almost 9 million refugees being repatriated back and forth, a large number of refugees from both sides settled in India.<sup>89</sup> Thus, we see the principle of non-refoulement was upheld during the time and it may be noted that India was not part of the 1951 Refugee Convention back then and even today.

### **2.3.2.4 THE INDO- CHINA WAR**

The Era between 1975-2000- was the era of the third Indochina War, which lasted for 25 years and left nearly 3.0 million people displaced. The refugee displacement swelled during this time and the humanitarian assistance and aid was required by the countries involved in the war. The United Nations, UNHCR, UNAID operations, provided assistance to the refugees and displaced people.<sup>90</sup> The people during the

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<sup>87</sup>Malika Rahal and Benjamin Thomas WHITE UNHCR AND THE ALGERIAN WAR OF INDEPENDENCE: POSTCOLONIAL SOVEREIGNTY AND THE GLOBALIZATION OF THE INTERNATIONAL REFUGEE REGIME, 1954–63. Published online by Cambridge University Press: (11/3/2022)

<sup>88</sup>Eric A. Strahorn. THE BANGLADESH LIBERATION WAR. The Bangladesh Liberation War | Origins (osu.edu) (29/8/2022)

<sup>89</sup>Dr.Subhradipta Sarkar TREATMENT OF THE 1971 EAST BENGALI REFUGEES: A FORGOTTEN EXPERIENCE. Treatment of the 1971 East Bengali refugees: A forgotten experience (indiatimes.com). Dec. 19, 2021, 12:52 PM IST. (3/9/2022)

<sup>90</sup>Frederic Benson. INDOCHINA WAR REFUGEE MOVEMENTS IN LAOS, 1954-1975: A CHRONOLOGICAL OVERVIEW CITING NEW PRIMARY SOURCES. (Jan. 2015). <https://www.researchgate.net/publication/334454767> (4/9/2022)

Indochina War were provided humanitarian assistance and the principle of non-refoulement was upheld by the neighboring countries

### **2.3.2.5 THE MOZAMBIKAN CIVIL WAR- 1977-1992**

Mozambican Civil War took place during this time, which lasted for 15 years subsequently leaving 1.7 million Mozambique citizens as refugees<sup>91</sup> and the death of another one million.<sup>92</sup> People during the war fled to the neighboring countries where they were given shelter and thereby we see the principle of non-refoulement being abided by the neighboring countries. Mozambique people however returned back to Mozambique after the end of the war, however, after their return they settled down in the countryside.<sup>93</sup>

### **2.3.2.6 SOVIET- AFGHAN WAR- 1979-1989**

The Soviet Afghan War took place during this time leaving 6.0 million people displaced. The war lasted for 11 years. The war was an extended armed conflict that took place in the Democratic Republic of Afghanistan, which was within Soviet-controlled.<sup>94</sup> The UNHCR provided aid to the Afghan refugees and is still looking after the third generation of Afghan refugees since the Afghan War.

The Afghans fleeing to neighboring countries like Pakistan, Iran are provided refuge. Thus, we see the principle of non-refoulement being upheld.<sup>95</sup>

### **2.3.2.7 YUGOSLAV WAR- 1991- 2001**

Yugoslav War took place during this time. This lasted for 10 years and left 2.4-4.0 million people homeless as refugees. Yugoslavia as a separate nation was created

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<sup>91</sup>INTERNATIONAL COMMITTEE OF THE RED CROSS. ICRC. MOZAMBIQUE: BY 40 YEARS OF HUMANITARIAN WORK. MOZAMBIQUE: Over 40 years of humanitarian work | International Committee of the Red Cross (icrc.org) (4/9/2022)

<sup>92</sup>SAMUEL MOMODUTHE. MOZAMBIKAN CIVIL WAR (1977-1992). JULY 4, 2018. The Mozambican Civil War (1977-1992) (blackpast.org) (6/9/2022)

<sup>93</sup>Lena Giesber and Kati Scgindler, THE LEGACY OF CIVIL WAR: THE CASE OF MOZAMBIQUE (Jan. 2011) : <https://www.researchgate.net/publication/227361895> (6/9/2022)

<sup>94</sup>V.S. Khristoforov. THE AFGHAN EVENTS OF 1979–1989: FROM KNOWLEDGE TO UNDERSTANDING AND RECOGNITION.) The Afghan Events of 1979–1989: From Knowledge to Understanding and Recognition | SpringerLink. (08/4/2022)

<sup>95</sup>UNHCR. AFGHANISTAN REFUGEE CRISIS EXPLAINED. Afghanistan Refugee Crisis Explained (unrefugees.org). (28/7/2023)

during this time. People became both internally displaced and refugees. Along with the other national and international humanitarian Aid, the UNHCR also aided in the war. By the end of the war, many Serbians, Romanian, plus the other non-Albanians fled to Kosovo. Thus, the *principle of non-refoulement* was followed by the respective countries.<sup>96</sup>

### **2.3.2.8 THE IRAQI UPRISINGS OF 1991**

The hard time lasted for 8 months and left 1.8 million people homeless.<sup>97</sup> Over 100,000 Kurds and Shi'a people who fled remained inside Iraq and another 70,000 civilians took refuge in Saudi Arabia, Turkey and Iran.<sup>98</sup> Thus during Iraq the Iraqi refugees were provided shelter by the neighboring country.

### **2.3.2.9 SOMALI CIVIL WAR- 1992- UNTIL DATE**

The Somali Civil War is still ongoing since 1991 was almost 31 years. So far it has let to 1.3 million Somali citizens displaced. Another 3.6 million people were in need of humanitarian assistance.<sup>99</sup> The Somali Civilians have fled to the camp at the border of the city or they have some other place within Somalia. In the Somalian, a total absence of the United Nation was seen since Barre was outside in January, 1991, and the ICRC and various other small NGOs were left to meet the end. The UN began its massive food, medical, shelter etc., post 1991.<sup>100</sup>

### **2.3.2.10 THE RWANDA GENOCIDE- 1994-1996**

Rwandan Genocide took place for 2 years at a stretch. It is estimated that about 2.1 million were displaced during this time who tried to escape the massacre. Rwanda

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<sup>96</sup>Andrew Marshall, WHAT WERE THE YUGOSLAV WARS, (1991-2001). What were the Yugoslav Wars (1991-2001)? – Boot Camp & Military Fitness Institute (bootcampmilitaryfitnessinstitute.com)

<sup>97</sup>Micah Zenko.. REMEMBERING THE IRAQI UPRISING TWENTY-FIVE YEARS AGO. (March 5, 2016 12:57 pm. EST) The Council of Foreign Relations. (8/9/2022)

<sup>98</sup>Human Rights Watch. *Endless Torment. The 1991 Uprising In Iraq And Its Aftermath.* by Human Rights Watch. All rights reserved.. Printed in the United States of America.. Library of Congress Card Catalog Number: 92-72351. ISBN 1-56432-069-3. Copyright June 1992 (9/9/2022)

<sup>99</sup>Mark Bradbury and Sally Healy. ENDLESS WAR A BRIEF HISTORY OF THE SOMALI CONFLICT. Accord ISSUE. (21 FEBRUARY 2010). Accord 21\_3Endless war\_a brief history\_2010\_ENG.pdf (amazonaws.com) (9/9/2022)

<sup>100</sup>Human Right Watch. THE HUMAN COST OF THE CONFLICT.& THE STRUGGLE FOR RELIEF. (March 26,1992) Africa Watch.Physicians for Human Rights.. SOMALIA (hrw.org) (11/9/2022)

initially did not receive any help from the International community during the height of the genocide. However, the foreign aid began coming post the formation of the new government. The focus of the aid was the refugees and the internationally displaced people. Aid was provided to the Rwandan refugees staying in the camps of Zaire and Tanzania.<sup>101</sup>

### **2.3.2.11 THE IRAQ WAR- 2003-2012**

For nine long years, the world witnessed the Iraq War during the said time nearly 2.2 million Iraq citizens had to bear hard times and be in a refugee state, trying all their best to save their lives. Before the 2003- 2012 war, Iraq had two more wars, the war of 1980 Iraq – Iran war and the other war of 1990, the Gulf War. The war left one million widows and five million orphans. Nearly 1 million people took refuge in the Arab countries, mainly in Egypt and Morocco. The major expulsion and displacement took place during the 1991 war and they were forced to move to the other part of the country and some were forced to leave the country.<sup>102</sup>

### **2.3.2.12 THE SYRIAN CIVIL WAR- 2011- UNTIL DATE**

A long 13 years and continuing Syrian Civil war has left 13.1 million people in need of humanitarian aid. Almost 12 million Syrians are either internally displaced or are seeking asylum in other countries.<sup>103</sup> The Syrian refugees mainly flee to neighboring countries like Turkey, Lebanon, Jordan, Iraq and Egypt. Many refugees also settled in Germany, which is not the immediate neighbor.<sup>104</sup> Thus, we see that during the crisis Syria was supported and protected by the neighboring countries and we can see the presence of the principle of non-refoulement and its abidance by the countries.

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<sup>101</sup>Shattered Lives. *Sexual Violence during the Rwandan Genocide and its Aftermath*. Human Rights Watch/Africa. Human Rights Watch Women's Rights Project. Fédération Internationale des Ligues des Droits de l'Homme.Human Rights Watch. Copyright © September 1996 by Human Rights Watch. All rights reserved.. Printed in the United States of America.. ISBN 1-56432-208-4. Library of Congress Catalog Card Number: 96-78471 (12/9/2022)

<sup>102</sup>Nasir Ahmed Al Samaraie. *Humanitarian implications of the wars in Iraq*. Volume 89 Number 868 (Dec. 2007) International Review of the Red Cross. Humanitarian implications of the wars in Iraq (icrc.org) (13/9/2022)

<sup>103</sup>Maya Carlin. THE SYRIAN CIVIL WAR: WHERE IT STANDS IN 2022. THE EMBASSY. The Syrian Civil War: Where It Stands in 2022 - 19FortyFive. (5/6/2022.)

<sup>104</sup>UNHCR. SYRIA REFUGEE CRISIS EXPLAINED. Syria Refugee Crisis Explained (unrefugees.org). (14/3/2023)

### **2.3.2.13 THE SOUTH SUDAN CIVIL WAR- 2011-2020**

The South Sudanese Civil War lasted for 9 years in the country of South Sudan leaving around 4.5 million people displaced struggling for a decent safe life of 2.5 million.<sup>105</sup> Majority population of South Sudan flee to neighboring countries like Sudan, Uganda, Ethiopia, Kenya and Democratic Republic of Congo.<sup>106</sup> The South Sudan refugees were protected from refoulement and provided shelter.

### **2.3.2.14 THE LIBYAN CIVIL WAR- 2011—2011**

Along with the above two events of war the year 2011 has also seen the First Libyan Civil War. Even though the war lasted for 8 months, according to the UNHCR nearly 46,247 people were registered as asylum seekers and refugees. During the war nearly 25,738 migrants and asylum seekers fled to Italy and Malta.

The European Union states collaborated with the Libyan Coast guard and provided them training and speedboats to intercept the Libyan citizens and forbid them from entering the EU. The IOM further states that thousands of people who fled to the EU went missing after they were disembarked and taken to an undisclosed location. The Libyan people in need of International protection were arbitrarily detained under inhuman condition by the GNA's Interior Minister some of them were detained in a 'warehouse' run by the smugglers and traffickers, and were subject to torture, sexual assault, ill-treatment, forced labour. Another 2,467 Libyans were detained in the official detention center of Libya, as per the UNHCR.<sup>107</sup> Thus, we see a gross *violation of the principle of non-refoulement* by some European Union States during the Libyan Civil war.

### **2.3.2.15 THE BOLIVARIAN REVOLUTION- 2014- UNTIL DATE**

The Bolivarian Revolution started in 2014 and even though it has been eight long years, the fight is still on. So far, by the year 2018 around 3 million people have left the country as refugees the numbers are still adding up even today. According to the

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<sup>105</sup>Frederick Appiah Afriyie. COMPREHENSIVE ANALYSIS OF SOUTH SUDAN CONFLICT: DETERMINANTS AND REPERCUSSIONS. Journal of Liberty and International Affairs Institute for Research and European Studies -Bitola 6(1):1857-9760 : <https://www.researchgate.net/publication/341104566>, (12/3/ 2020)

<sup>106</sup>UNHCR. SOUTH SUDAN REFUGEE CRISIS EXPLAINED. Syria Refugee Crisis Explained (unrefugees.org). (14/3/2023)

<sup>107</sup>UNHCR. LIBYAN EVENTS OF 2020. World Report 2021: Libya | Human Rights Watch (hrw.org)

UNHCR, the Bolivarian Republic of Venezuela is one amongst the greatest displacement around the world.<sup>108</sup>

#### **2.3.2.16 THE ROHINGYA REFUGEE CRISIS- 2016 - UNTIL DATE**

Around 1.3 million Rohingya refugees have been displaced so far. Large groups of Muslims left Myanmar since the start of the massacre and Rohingya genocide to save their lives, religion and culture. Despite having citizenship, they are left to live as refugees in an infinite darkness. Rohingyas were provided protection in neighboring countries like Bangladesh, India.

In case of the Rohingya Refugee crisis we see that both India and Bangladesh, despite being non-signatory to the 1951 Refugee convention, provided shelter and protection to the refugees and upheld the principle of non-refoulement.

#### **2.3.2.17 THE COVID 19 PANDEMIC - 2022- UNTIL DATE**

After the historic COVID 19 Pandemic, the next disaster that the world witnesses is the Russo-Ukrainian War. The war has accordingly affected the citizens of both the nations as well as the other countries and its citizens, professionals, students from other countries. Nearly 8.0 million people were displaced just in 4 months' time of the beginning of the war.<sup>109</sup>

### **2.3.3 GLOBAL REFUGEE CRISIS OF THE 21ST CENTURY**

When we look at the refugee crisis post the coming of the convention, we see a number of wars took place during this phase, subsequently leading a number of people to leave their homes and find refuge in other countries. However, a strong legal system to access the humanitarian crisis was set up by this time. At the same time where initially the *principle of non-refoulement* was practiced and upheld, the principle started to lose its importance. We saw how some EU states with the collaboration with the Libyan Coast Guard, began to *refoule* the asylum seekers forbidding them to enter the European territory.

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<sup>108</sup>TRT WOLD, WHAT IS VENEZUELA'S BOLIVARIAN REVOLUTION?

<https://www.trtworld.com/americas/what-is-venezuela-s-bolivarian-revolution-23587> (15/9/2022)

<sup>109</sup>List of largest refugee crises - Wikipedia (15/9/2022)

Even though the digital age has changed many things around the world. Certain negative ideologies and problems remain the same, for example, some countries' quest for powers, Religious intolerance, racism, Environmental and natural calamity, territorial expansion. All of these lead to people leaving their homes and finding a safe place. The qualified right to leave one's country can be traced back to the *Magna Carta of 1215*.<sup>110</sup>

The major strong reasons for the people's displacement as refugees anywhere in the world are wars, Persecution, Reasons of race, religion, and nationality, membership of a group, Political opinion, Climate change, and Natural disaster.

Apart from the major reasons of displacement some people seek refuge in other countries owing to their work in the areas of Art, Advertising, Architecture, Business, Fashion and Design, Manufacturing, Music and Dance, Politics, Economy, Political Economy, Psychology and philosophy, religion, science and technology, sports, T.V and Films, Writing and Publishing.

**Following are the 10 major refugee crisis of the recent time, in brief :-**

***2.3.3.1 DEMOCRATIC REPUBLIC OF CONGO REFUGEE CRISIS (1960 ONGOING)***

***2.3.3.2 SOMALIA REFUGEE CRISIS (1990'S- ONGOING)***

***2.3.3.3 VENEZUELAN REFUGEE CRISIS (1999- ONGOING)***

***2.3.3.4 SYRIAN REFUGEE CRISIS(MARCH 2011- ONGOING)***

***2.3.3.5 SOUTH SUDAN REFUGEE CRISIS (2013- ONGOING)***

***2.3.3.6 AFGHANISTAN REFUGEE CRISIS (2017-ONGOING)***

***2.3.3.7 MYANMAR REFUGEE CRISIS (AUGUST 2017-ONGOING)***

***2.3.3.8 ERITREA REFUGEE CRISIS (2020-ONGOING)***

***2.3.3.9 CENTRAL AFRICAN REPUBLIC REFUGEE CRISIS (2020-ONGOING)***

***2.3.3.10 UKRAINIAN REFUGEE CRISIS (MAY 4<sup>TH</sup> 2022-ONGOING)***

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<sup>110</sup>ANNE T. GALLADHER AO FIONA DAVID. THE INTERNATIONAL LAW OF MIGRANT SMUGGLING. ILI Library-57569, Class no.- 341.43 GAL. Ny Cambridge University press. (30/5/2022)



### ***2.3.3.1 DEMOCRATIC REPUBLIC OF CONGO REFUGEE CRISIS (1960'S ONGOING)***

Since the gaining of its Independence in the year 1960, disputes have been ongoing in the DRC. DCR is one of the largest countries geographically. It is one country, which both hosts and outpours refugees. DCR is known for hosting refugees from neighboring countries. Currently the country is hosting half million refugees from the neighboring states and is looking after its five million internally displaced population, which is the largest internally displaced population in all of Africa.

The country hosts refugees from Rwanda, Central African Republic, South Sudan and Burundi, fifty percent of this refugee population includes women and children. Disturbances in the country began post its independence in the year 1960, even though the civil war ended in 2013; the country continues to face violence and disturbances. People in large-scale move mainly to the neighboring countries like Uganda, Southern Part of Africa, and Burundi, to Tanzania, Zambia and Angola.

Besides violence and internal disturbances in the country, the outbreak of Ebola disease in the year 2018 also led people in the Eastern province to move out of the country, there was shortage of food, clean drinking water, access to medical facilities. Unlike in any crisis women and children are the most vulnerable and most affected.<sup>111</sup> In the year 2022, violence broke out in Ituri, the eastern provinces, in North Kivu and South Kivu, the event forced internal displacement of thousands of people, nearly 6.2 million people internally displaced and nearly 1 million have sought asylum within Africa.

### ***2.3.3.2 SOMALIA REFUGEE CRISIS (1990'S- ONGOING)***

One of the most challenging refugee crises or the mass displacement is the refugee crisis of Somali. In the last 30 years due to the political instability and the outbreak of the 1990s civil war in the country, thousands of people have left Somalia. By the end of 2022, there were estimated to be more than 836,000 Somali refugees and asylum seekers in the world. Nearly 80 percent of the Somali refugees are living in the neighboring countries like Kenya, Ethiopia, Yemen and Uganda respectively. The

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<sup>111</sup>UNHCR, *Democratic Republic of the Congo Refugee Crisis Explained. Democratic Republic of the Congo Refugee Crisis Explained | USA for UNHCR (unrefugees.org). (FEB 6 2020.)*

African regions marked as the horn of Africa, are also facing climate change effects with less rainfall and frequent drought, also adding to the reason for internal displacement. Millions of refugees in the areas of Somalia, Ethiopia, and Kenya are internally displaced due to droughts and less rainfall.

Along with the adverse climatic condition and violence, there is water shortage, food insecurities, scarcity of goods and depleting living conditions in Somalia are leading new displacement of people internally and internationally. Somalian refugees have been living in the camps for the last 30 years.<sup>112</sup>

### **2.3.3.3. VENEZUELAN REFUGEE CRISIS- (1999-ONGOING)**

According to UNHCR, there will be nearly 7.13 million Venezuelan refugees by May 2023.<sup>113</sup> Since the beginning of the Bolivarian Revolution in 1999 political strife, human right abuse and no economic opportunities forces people to flee to the neighboring South American states. The Rampant outbreak of violence, growing inflation, gang wars, increasing crime rate and food insecurities, shortage of medical care and shortage of other essential services were the leading reasons for people leaving the country. An estimated 5000 people leave Venezuela every day.

While more than 950,000 of Venezuela have filed claims for asylum, most of them do not have the required document, which makes it difficult for them to gain the access to basic rights. They are thus exposed to high risk of exploitation, human trafficking, further violence, decimation based on sex, race, religion etc. and xenophobia.<sup>114</sup>

According to the new UN data, almost more than seven million people have left Venezuela since the year 2015, in lieu of the ongoing economic and political crisis.<sup>115</sup> Currently about seventeen countries are hosting the 80 percent, which is 5 million people from Venezuela. The crisis is marked as the largest Latin American external displacement of people. Most of the people leaving Venezuela are living in countries

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<sup>112</sup>UNHCR. *Somalia Refugee Crisis Explained. Somalia Refugee Crisis Explained (unrefugees.org)* (19/10/2022)

<sup>113</sup>UNHCR, [www.unhcr.org/emergencies/Venezuela-situation](http://www.unhcr.org/emergencies/Venezuela-situation) Updated January, 2023 (19/10/2022)

<sup>114</sup>UNHCR. *Venezuela Humanitarian Crisis. Venezuela Crisis: Aid, Statistics and News | USA for UNHCR (unrefugees.org)* (19/10/2022)

<sup>115</sup>BBC News. *Venezuela crisis: 7.1m leave country since 2015. Venezuela crisis: 7.1m leave country since 2015 - BBC News.* (17/10/2022)

like Latin America, Colombia, Peru and Ecuador, Caribbean and other low income countries already struggling with their resources.

To help and aid the people in need the U.S Ambassador has announced a sum of \$171 million for humanitarian assistance. Various institutions like the UNHCR, USAID/ BHA and other NGOs are helping the Venezuelan citizens settle in the areas of Brazil, Colombia, Peru, and the other regions. Help in terms of food, shelter, health care services, protection etc. are being provided.<sup>116</sup>

#### ***2.3.3.4 SYRIAN REFUGEE CRISIS (MARCH 2011- ONGOING)***

The main reasons that lead to the emergence of the Syrian crisis was a massive tussle between the Government and the public throughout Syria. The tussle occurred after the arrest of a group of teenagers who were accused of anti-government graffiti in Dara, especially in its southern part. The arrest of these teenagers escalated mass, massive demonstrations throughout Syria, the demonstration was further violently supported by the security forces against their own government. Soon the conflict grew into a big civil war forcing millions of Syrians to flee home and find a safe place. Even though it is 10 years down the line since the beginning of the civil war, more than 13 million refugees from Syria are in need of humanitarian assistance, including the 6 million in immediate need.

The Syrian refugees have taken shelters in 130 countries, who are managing their daily lives but at least they are safe there. The majority Syrian refugees are restricted to the neighboring countries like Turkey, Lebanon, Jordan, Iraq, and Egypt.<sup>117</sup> Turkey is estimated to hold the largest refugee population from Syria, which is 3.6 million. Out of the 92% of the Syrians fleeing their country only 5% of them lives in the refugee camps, the others stays in the rural and urban areas of the neighboring countries. More than 70 percentage of the refugees are estimated to be living in poverty, with very limited access to services, jobs and education. According to World Bank report an estimated 1 million, along with 4.4 million other Syrian refugees

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<sup>116</sup>USAID. *Venezuela Regional Crisis Complex Emergency*. 2023-03-17\_USG\_Venezuela\_Regional\_Crisis\_Fact\_Sheet\_2.pdf (usaid.gov) (17/3/2023)

<sup>117</sup>UNHCR SYRIAN REFUGEE CRISIS EXPLAINED. (March 14, 2023) Syria Refugee Crisis Explained (unrefugees.org) (17/3/2023)

living in Jordan, Lebanon and Iraq are forced to poverty as an aftermath of the COVID19.<sup>118</sup>

#### **2.3.3.5 SOUTH SUDAN REFUGEE CRISIS (2013-ONGOING)**

In the year 2011, a new country namely South Sudan was established post a massive civil war. However, no sooner had its emergence as a new country; conflicts broke out in South Sudan in the year 2013, which was just two years after it became a country. The reasons for the outrage of conflict was declining economy, emergence of several diseases and hunger. The crisis forced people to flee their homes in search of safer life. Out of the 80% of the South Sudan refugees fleeing, 63% of them are just women and children, who are often the survivors of violence and sexual assault.

Majority of these refugees dwell in the neighboring countries like Sudan, Uganda, Ethiopia, Kenya and Democratic Republic of Congo. Kenya's *Kukuma* Refugee Camp and its other expanded site, *Kalobeyeiis* estimated to be hosting more than 106,000 South Sudan refugees, making it one of the largest refugee camps for the South Sudan people in the world.<sup>119</sup>

There is no surety of returning back of the South Sudan refugees back home in the near future as, as per the UNHCR the contemporary condition in South Sudan is not conducive and safe for a dignified return. However, UNHCR also recognizes the refugees right to return home and so provides protection to the ones returning home. An estimated 800 refugees have returned home from neighboring countries and additional 6,000 internally displaced refugees have also returned home according to the UNHCR.

#### **2.3.3.6 AFGHANISTAN REFUGEE CRISIS (2017-ONGOING)**

From conflicts to natural disasters, to conflicts and from chronic poverty to food insecurities, the COVID 19 and the changeover in government authorities have added to the sufferings of Afghanistan for 40 long years now. The agony does not end here; the recent takeover of Kabul by Taliban in August 2021 has further intensified violence in Afghanistan. An estimated 6 million people have left their homes for the

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<sup>118</sup>*Id at.114*

<sup>119</sup>UNHCR. SOUTH SUDAN REFUGEE CRISIS EXPLAINED. South Sudan Refugee Crisis Explained (unrefugees.org). (24/7/2023)

reasons stated above. However, the majority of the Afghans are internally displaced, in the year 2021, another 77,400 refugees added to the number of internally displaced refugees, by the end of the year 2021 there were 3.5 million internally displaced Afghans. The Afghan Refugees during the Afghan Refugee Crisis, where many refugees fled to Pakistan, Iran Germany, Turkey etc., some were taken to emergency processing centers in Spain, Germany, Qatar and Uzbekistan.<sup>120</sup>

Even though the majority Afghans are internally displaced around 2.7 million of them have crossed borders and spread in 98 other countries. Afghan refugees are the third largest displaced group of people in the world.

### **2.3.3.7 MYANMAR REFUGEE CRISIS (AUGUST 2017-ONGOING)**

Rohingyas are one of the many ethnic minorities groups in Myanmar; they constitute the largest number of Muslims in Myanmar and dwell in majority in the Rakhine region. They have lived here for generations still have not been officially recognized as Ethnic groups and hence have been denied citizenship since 1982. On August 25<sup>th</sup>, 2017 the *RohingyanArsa* militants launched deadly attacks on more than 30 police posts, as a result Myanmar troops, backed by the Buddhist mobs, reacted to the even by burning homes and villages, attacking and killing Rohingya civilians, the Rohingya women and girls were also subjected to rapes, gang rapes, torture, abuses, forced displacement.

Around 6,700 Rohingya with 730 children under the age of 5 were killed within the month in which the violence broke out. Around 288 villages were partially or destroyed, most damage was caused to the *Maungdaw* Township.<sup>121</sup> Around 890,000 Rohingya found shelter at *Kutupalong* and *Nayapara* Refugee Camps in Cox Bazar region, Bangladesh making Cox bazar one of the world's largest refugee camps.<sup>122</sup> They have also sought shelters in neighboring countries like Indonesia, Nepal and other countries across the region.

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<sup>120</sup>BBC News AFGHANISTAN: HOW MANY REFUGEES ARE THERE AND WHERE WILL THEY GO? Afghanistan: How many refugees are there and where will they go? - BBC News. The Visual Journalism Team. (31/8/2021).

<sup>121</sup>BBC News. MYANMAR ROHINGYA: WHAT YOU NEED TO KNOW ABOUT THE CRISIS. 23 January 2020 Myanmar Rohingya: What you need to know about the crisis - BBC News. (23/2/2020)

<sup>122</sup>UNHCR. ROHINGYA REFUGEE CRISIS EXPLAINED (unrefugees.org)

The UN describes Rohingyas as “the most persecuted minority in the world. Currently Rakhine Province is known as a site for conflict between the army and Buddhist majority Rakhine Ethnic groups. More than half a million Rohingya are still believed to be dwelling in the North Rakhine Province of Myanmar.

#### **2.3.3.8 ERITREA REFUGEE CRISIS (NOV 2020-ONGOING)**

After 30 years of war, Eritrea gained its independence in 1993, which was headed by the People's Front for Democracy and Justice. The party was elected for 5 years but the next election never happened because of the border conflict between Eritrea and Ethiopia. Today Eritrea is a one party state. The recent global report by UNHCR puts Eritrea in the list of top 10 countries of refugee origin.<sup>123</sup>

The ongoing refugee crisis in Eritrea is still driving thousands of people in exile, including children and women.<sup>124</sup> Fleeing from compulsory military service and the worst dictatorship, people from Eritrea mainly cross the Mediterranean Sea to reach Italy. In 2015, nearly 40,000 refugees and migrants were recorded to have arrived by sea. People coming from Eritrea use Italy mainly as a transit route to reach their destination country like Germany, Netherlands, countries like Sweden and Switzerland to seek international protection and better life. The main reason for the Eritrean people to flee is the dictatorship.<sup>125</sup> In November 2020, the Human Rights Watch documented the artillery attacks launched by Eritrea hitting the Tigrayan towns of Humaera in the western Tigray region. Large-scale massacres took place, along with execution, sexual violence like, rape, gang rape and sex slavery, attacks on refugee camps etc.<sup>126</sup>

#### **2.3.3.9 CENTRAL AFRICAN REPUBLIC REFUGEE CRISIS (2020-ONGOING)**

‘One of a landlocked country in the middle of Africa, Central Africa is one of the most fragile and poorest countries in the African continent and in the world. Its economic condition is mainly because of years of conflict and instability in the

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<sup>123</sup> Lila Hassan. 5 HUMAN RIGHTS CRISES IN ERITREA. 5 Human Rights Crises in Eritrea (pbs.org). (4/5/2021)

<sup>124</sup> UNHCR. ERITREA EVENTS OF 2020. World Report 2021: Eritrea | Human Rights Watch (hrw.org) (4/5/2021)

<sup>125</sup> ALESSANDRO LANNI. 5 THINGS EVERYONE SHOULD KNOW ABOUT ERITREAN REFUGEES. 23, 2016 Understanding through Data. 5 things everyone should know about Eritrean refugees / Open Migration (4/5/2021)

<sup>126</sup> ERITREA EVENTS OF 2021, World Report 2022: Eritrea | Human Rights Watch (hrw.org)

country. The outbreak of violence between different armed groups in the year 2013, forced nearly 640,000 people to leave their homes and flee in search of safety; another group of 630,000 people were internally displaced. The majority of the population flee to the neighboring countries like Cameroon, Chad, Democratic Republic of Congo, also to the Republic of Congo, another small groups of people also feed to Sudan and South Sudan subsequently.

The country continues to experience periodic surge in violence. The most recent outbreak was in the year 2020, which displaced more than 200,000 within two months. Over one third of the country's population is displaced owing to such violence. In the year 2022, nearly 3.1 million were in need of humanitarian assistance. The violence has caused various gender based violence, sexual violence which poses the bigger security threat to women and girls who are internally displaced.<sup>127</sup>

#### ***2.3.3.10 UKRAINIAN REFUGEE CRISIS (MAY 4<sup>TH</sup> 22- ONGOING)***

The Ukrainian Refugee Crisis is the largest refugee crisis of the 21<sup>st</sup> century. The crisis began in Europe, in late February 2022 soon after Russia invaded Ukraine. The invasion led to the largest refugee crisis in Europe ever since World War II. An estimated 8.4 million Ukrainians have left Ukraine since then and around 8 million of them are estimated to be displaced internally. An estimated one-quarter of the Ukrainian population is said to have left the country until March 20 and 90% of the population leaving are women and children.<sup>128</sup> Ukrainian refugees move mainly to Poland, Hungary, Moldova, Slovakia and to Romania.<sup>129</sup>

The Russo-Ukrainian war is centrist to the status of Crimea and important peninsular near Black sea, in Eastern Europe, and Donbas region in the South-Eastern Ukraine. Both the regions of Crimea and Donbas, though internationally recognized as part of

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<sup>127</sup>UNHCR. CENTRAL AFRICAN REPUBLIC REFUGEE CRISIS, Central African Republic Refugee Crisis | USA for UNHCR (unrefugees.org) (12/12/2022)

<sup>128</sup>UKRAINE CRISIS. 24 Feb. 2022. Ukrainian refugee crisis - <https://www.rescue.org/topic/ukraine-crisis> (12/12/22)

<sup>129</sup>Miriam Berger. 400,000 UKRAINIANS FLEE TO EUROPEAN COUNTRIES, INCLUDING SOME THAT PREVIOUSLY SPURNED REFUGEES. (Updated February 27, 2022 at 9:50 a.m.) Ukrainians flee to European countries, including some that previously spurned refugees - The Washington Post (12/11/1022)

Ukraine, were annexed by Russia in the year 2014.<sup>130</sup> During the Cold War Ukraine was the most populous and powerful Soviet Republic out of the other fifteen Soviet Republics.

#### **2.4 THE PRESENCE OF THE PRINCIPLE OF NON-REFOULEMENT IN THE GLOBAL REFUGEE CRISIS AND THE GRADUAL METAMORPHOSIS.**

When we look through the aforementioned three phases of Global Refugee Crisis, we see that even though the reasons of the crisis varied, the one thing that remained constant is the abidance of the principle of non-refoulement by the neighboring countries wherever people as refugees moved. However, the constant abidance of the principle gradually started into partial abidance and the pushbacks began. Even though the convention was initially made for the refugees in Europe during the World Wars, with Latvia and other countries pushing back refugees is turning into partial protection or choice protection of refugees in European Member States.

We see that even before coming of the 1951 convention, and even before the word non-refoulement was envisaged in the convention, people provided shelter to other people coming from other place in search of protection and shelter, and gradually with the constant practice of not returning the people in need of protection gradually became a jus cogens norms.

We see as and when more wars, persecution accelerated, the non-refoulement practice gradually became the part of customary International Law and Treaty Law. After the encapsulation of the principle of non-refoulement under Article 33(1) of the 1951 Refugee Convention, the entire national signatory to the convention became legally bound by the principle.

As a matter of fact, the practice of principle of non-refoulement existed with a name even before the inception of the practice of non-refoulement as a principle. Humankind moved from one place to another, crossing the undivided and undefined national and international borders, as an early nomads in search of food, water,

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<sup>130</sup>Haroun Alfarsi. CAUSES OF THE RUSSIA-UKRAINE CONFLICT: AN EXPLAINER 13 March, 2022 Causes of the Russia-Ukraine Conflict: An Explainer - Profolus (12/12/2022)



shelter, adequate living conditions etc. they did not required any passport or visas, the very right of asylum was accordingly recognized and honored by the people on the other side of the territories and were not denied no-refoulement. These early nomads or refugees were recognized as groups of people moving from one place to another without a fixed habitat or home. They were given different terms in different regions or nations depending wherever they went. Though they were not universally recognized and no specific common term was used to represent them, they were acknowledged and given shelter by the host countries wherever they went. For example in ancient Greece and Rome, the word Asylum referred to any place where people who were facing persecution could seek refuge. Refugees who came to Rome Greece etc., were provided asylum and the principle of non-refoulement was abided with. These places could be a temple of any other place of worship and religious importance.<sup>131</sup> A similar concept existed in ancient Levant, named as the *Cities of Refuge*.

Despite the presence of refugees in different parts of the world since primitive times there were never any major refugee problems or conflicts, for centuries they remained in small communities or groups restricted only to a specific area in the host countries peacefully. However, since the number of such people or groups had never been a very large one, the refugee issues initially were considered as temporary issues and thus temporary solutions were sought for. Over the recent past decade as a by-product of various crises and events today, refugees can be found in every corner of the world forced to live in harsh, hazardous and uncomfortable conditions, which is why 140 countries have signed the 1951 refugee Convention and have come together to address the Refugee issues.<sup>132</sup>

According to the United Nations at the end of 2019, there were nearly 79.5 million <sup>133</sup> forcibly displaced people worldwide, out of which 26 million were refugees in which half of the population was under 18 years of age.<sup>134</sup> Making them most venerable, exposing them to child labour, sexual exploitation. The major refugee population in

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<sup>131</sup>ASYLUM (antiquity)Asylum (antiquity) - Wikipedia (1/7/22)

<sup>132</sup>THE GLOBAL REFUGEE CRISIS, EXPLAINED April 4, 2022. The global refugee crisis, explained | Concern Worldwide (concernusa.org) (1/7/22)

<sup>133</sup>A (very) Short History of International Refugee law – Ralph Janik (1/7/22)

<sup>134</sup>UN. United Nations, Peace, dignity and equality on a healthy planet Refugees | United Nations (27/12/2021)

recent times has emerged from Syria- 6.7 million, Venezuela- 4 million, South Sudan- 2.2 million and Myanmar- 1.1 million.<sup>135</sup> Further, according to the mid 2021 data shared by the UNHCR it is estimated that approximately 84 million people are displaced globally, out of which 48.0 million people are internally displaced, 26.6 million are refugees, 4.4 million are asylum-seekers, 3.9 million are Venezuelan displaced abroad.

The answer to the query whether a person is a migrant or a refugee, lies in the difference, whether his exit from the country of origin is forced or voluntary<sup>136</sup>. Since refugees do not exit their country by choice and are often forced to flee, history has seen many refugees seeking shelters amid wars, persecution, political opinion, natural disaster like flood, drought and famine, earthquake. Other reasons included intolerant human conditions resulting from oppressions by the foreign invaders, slavery, armed conflicts at national and international level.

Also during 1920s and 30s political asylum decreased, due to two reasons that is, growing insensitivity to human sufferings and unpredictable number of refugee inflow. Religious and racial intolerance remained one big reason for refugee movements. For centuries, ethnic groups or communities were pushed out and exiled by the so-called secular, religious heads in the blindness of supremacy. Some noted examples include; Jews expulsion from Spain, Huguenot's exodus from France, after the revocation of the Edict of Nantes, 1685 and the Jews eviction from Germany, Austria and Sudetenland, 1930s which is now the Czech Republic.<sup>137</sup>

The first recorded mass movement can be traced back in the 17th century, when French migrants left their country to escape religious persecution, and ever since then, the people's movement as refugees accelerated.<sup>138</sup> With every passing time the reasons for the refugee movement is only adding up, initially where the movement was just to escape war or prosecution, in the recent past the movement has accelerated

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<sup>135</sup>WHERE DO REFUGEES COME FROM, DRC (Danish Refugee Council) DRC | Where do refugees come from?

<sup>136</sup>*Casey Hess*. LEARNING FROM THE HISTORY OF REFUGEES (SEPTEMBER 26, 2017) Learning From the History of Refugees - The Borgen Project. (1/7/22)

<sup>137</sup>Britannica. REFUGEE | Definition, History, & Facts | Britannica (1/7/22)

<sup>138</sup>BBC News. CHANGE IN PATTERN OF MIGRATION OVERVIEW. MIGRATION – 16TH, 17TH AND 18TH CENTURIES - Changes in patterns of migration overview - WJEC - GCSE History Revision - WJEC - BBC Bitesize(01/12/2022)

because of the increase of violence of certain ethnic groups, Environmental and climate changes and also to attain a better life. In the coming future with even more changing circumstances, the movement is expected to only increase causing a never ending refugee movement.<sup>139</sup> As an adverse impact, we see more global tourists, undocumented employees, human trafficking of refugees, and political spit of countries on the issue of refugees.<sup>140</sup>

The very fact that each nation of the world shares their border with the other, any disturbance in one nation is most likely to affect the others. The same is the case of refugee issues, whenever, there is a sudden unforeseen incident which questions the safety of people in their own nation, the movement of people is triggered to another or adjoining country. The country where the refugee goes is equally disturbed due to the same unforeseen incident. The major mass refugee movements however have been from countries like Syria, Afghanistan, Iraq, Myanmar and Eritrea.

## **2.5 SUMMARY OF THE CHAPTER**

Thus, in the second chapter of the present research, we see how the term *refugee* was coined by the French in the 17<sup>th</sup> century when the reformed Protestants, Huguenots left the country to escape religious persecution. The Huguenots were provided shelter by England and other neighboring countries and gradually with increasing tension during the World War I and II, the principle of non-refoulement, appeared frequently in various International Conventions stipulating that the refugees should not be returned to the country where their life were in danger

The chapter is divided into three parts to discuss the refugee crisis at the global level. That is the world refugee crisis prior to the 1951 refugee convention, where we see that during this phase people in need of humanitarian aid were provided shelter and even though the principle of non-refoulement was not incorporated in the international or regional law, still the principle was followed as customary law by the

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<sup>139</sup>REFUGEES FACES HEALTH THREAT AS CLIMATE CHANGE THREATENS CAMPS. Refugees face health threat as climate change threatens. Refugees face health threat as climate change threatens camps - University of Birmingham. (01/12/2022)

<sup>140</sup>Gabriela Baczynska, Sara Ledwith HOW EUROPE BUILT FENCES TO KEEP PEOPLE OUT. (APRIL 4, 2016. 3:40 PM)How Europe built fences to keep people out | Reuters. (01/12/2022)

concerned countries. Also during this phase several International Instruments started to emerge and prohibited *refoulement*, like the *Aliens Law*, *League of Nation etc.*

In the Second Phase, which is the phase of crisis post the coming of the convention, we see that the principle of non-refoulement was encompassed in the 1951 Refugee Convention and gained legal status. The principle was initially abided by both the signatory and non-signatory countries. We seek the principle of non-refoulement being upheld by the neighboring countries during the Korean War, Algerian Independence War, Bangladesh liberation war, Indo-China War, and many other wars during this phase. However during the times of Libyan Civil War,(2011-12) we see the European Union collaborated with the Libyan Coast guard and provided them training and speedboats to intercept the Libyan citizens and forbid them from entering the EU. Thus, violations by some European Union started surfacing. Further, during this phase we also observe that some non-signatory countries like India and Bangladesh upholding the principle of non-refoulement during the Rohingya Refugee Crisis.

In the third phase that is the phase of the Refugee crisis in the 20th Century. We see that the status of non-refoulement post the coming of the convention and its status in the 21<sup>st</sup> century, the countries became legally bound by the obligation of the principle of non-refoulement. At the same time, it is during this phase that the reported pushback of the refugees started to be reported frequently. We observe that during the Somalian Refugee Crisis, Somalians were provided shelter in Kenya, Ethiopia, Yemen, Uganda, and in the Venezuelan Refugee Crisis, most people moved to Latin America, Colombia, Peru and other neighboring countries which are the Non-European States. Further, during the Syrian Refugee Crisis the majority of the Syrian refugees were restricted to Turkey, Lebanon, Jordan, Iraq, and Egypt. During the South Sudan refugee crisis, countries like Sudan, Uganda, Ethiopia and other neighboring countries provided protection to refugees. The Afghan Refugees during the Afghan Refugee Crisis, where many refugees fled to Pakistan, Iran Germany, Turkey etc., some were taken to emergency processing centers in Spain, Germany, Qatar and Uzbekistan. During the Myanmar Refugee Crisis, neighboring countries like India and Bangladesh provided protection of Rohingya refugees. In the Eritrea Refugee Crisis, people moved to the European Union states like Germany, Netherlands, Sweden and Switzerland. Furthermore, during the Central African

Republic Refugees crisis, people flee to take refuge in countries like Cameroon, Chad, Democratic Republic of Congo etc., and during the Russo-Ukrainian war, Ukrainian refugees move mainly to Poland, Hungary, Moldova, Slovakia and to Romania.

Thus, we see that during each phase of the crisis a large number of people were displaced from their own countries but they found refuge in one of their neighboring countries irrespective of that phase of crisis and even before the establishment of the 1951 convention.

## CHAPTER – 3

### PRINCIPLE OF NON-REFPULEMENT UNDER INTERNATIONAL LAW AND EUROPEAN LAW

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#### 3.1 INTRODUCTION

The very term “Refugee” was first coined in France from the French word “*Refugie*” meaning, “hiding place”<sup>141</sup>. The modern definition of refugee found under Article 1 of the 1951 convention says, a Refugee is “*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.*”<sup>142</sup>

The principle legal instruments on the international plane are the 1951, the United Nations Convention on the Status of refugees.<sup>143</sup> (Hereafter 1951 convention), the 1967 Protocol relating to the status of refugees (here in after the 1967 protocol).

Article 1 of the 1951 convention defines the term refugees in two categories that is; ***Refugees under article 1A (A)*** which refers to the refugees derived from the early international arrangements, the article protects specific categories of refugees, which includes, any person previously been termed as a refugee under the early international arrangements. These agreements are defined only to specific categories of persons, having identity proof and travel documents who are the victims of totalitarian or victims of wars. The first categories of refugees included those once affected in the post-world-war I and refugees under the International Refugee Organization (IRO).

***Refugees under Article 1(A) (2) of the Convention***, - defines the second category of refugees. Who leaves their homes under a well-founded fear of being persecuted?<sup>144</sup>

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<sup>141</sup>Andrew Chapman, THE FIRST REFUGEES, 1685, AN INGENIOUS DECEPTION AT SEA. Oct. 2015 The first refugees, 1685 - by Andrew Chapman - Histories (gethistories.com) (29/12/2021)

<sup>142</sup>UNHCR India. WHO IS A REFUGEE? UNHCR - What is a refugee? UNHRC India, The UN Refugee Agency. (29/12/2021)

<sup>143</sup>Om Prakash Tewari, “*Protection of Refugees in International Law with special Referance to India*” University of Allahabad(e) (4/12/2022)

*The Organization of African Unity Convention (OAU Convention)*, defines the term, “refugee,” shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>145</sup> A female refugee means any female having a well-founded fear of persecution for the reason of race, religion, nationality, membership of a particular social group or political opinion is a refugee, just like the male refugees.

However, there is no proper definition of refugee women under the 1951 convention. The actual definition of refugee as provided in the 1951 Refugee convention has been interpreted from a male perspective. There is an absence of gender-sensitive interpretation. The definition of refugees appears narrow in addressing the claims of non- male refugees that includes women, homosexual, transsexuals. As for a woman, things that account for a well-founded fear can be different. The very lack of gender-sensitive definition of refugees makes it difficult for women and homosexuals to get their claims. Well-founded fear of persecution, for a woman can be many more kinds of fears such as their sexual orientation, their trafficking for forced prostitution etc.

### **3.2 EMERGENCE AND DEVELOPMENT OF LEGAL FRAMEWORK FOR THE PROTECTION OF REFUGEES**

History has witnessed many wars, invasions and colonization. In each of the events, the public were the ones to suffer the most. To protect themselves and find better lives, citizens of the conflicting states have always moved out. However, this mass movement was often not channelized properly and hence would always lead to chaos, violation of human rights, and the vulnerable condition of humanity. It was because of

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<sup>144</sup>Andrew & Renata Kaldor. THE REFUGEE CONVENTION. September 2018 Centre for International Refugee Law. (4/12/2022)  
update:[https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet\\_Refugee%20Convention\\_Sep2018.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_Refugee%20Convention_Sep2018.pdf) (20/09/2022)

<sup>145</sup>OAU CONVENTION: Governing the Specific Aspects of Refugee Problems in Africa[https://au.int/sites/default/files/treaties/36400-treaty-oau\\_convention\\_1963.pdf](https://au.int/sites/default/files/treaties/36400-treaty-oau_convention_1963.pdf) (4/12/2022)

the many mass movements, one after the other that collectively nations felt a need to develop mechanisms to canalize and help the people in the mass movement and thus step by step legal framework to tackle the refugee issue started coming into existence.

***“The Aliens Law*** was the first legal system that denied the states absolute right to treat persons within their jurisdiction in whatever manner they deemed appropriate. The law recognized the vulnerabilities of people on the foreign land thus, established a combination of absolute and contingent duties owed to the aliens.”<sup>146</sup> The modern refugee issues emerged in Europe massively after the first world war which left a large number of people homeless, stateless and jobless. There emerged a large number of refugees after the first World War, a need to address the refugee issue was felt thus the 1<sup>st</sup> international refugee issue was coordinated by ***The League of Nations In 1921. Fridtj of Nansen*** of Norway was appointed as the High Commissioner of Refugees in the League of Nation, he also devised a League of Nation Passport also known as the ***“Nansen Passport”***.<sup>147</sup> After its establishment, the refugee issue was finally recognized as an international issue requiring the world's attention to it. It worked for various refugee groups as and when they needed assistance, for instance League of Nations assisted people fleeing the Russian Revolution of 1917 and subsequent civil war of 1917-1921. Expanding the mandate of the commission, in the year 1923, it assisted people fleeing the Armenian Genocide, where more than one million Armenians left Turkey Asia Minor in 1915 and 1923. Furthering the mandate of the league, it also covered the Assyrians and Turkish Refugees.

After Nansen’s demise in the year 1930, the responsibility and well-being of refugees were entrusted on the ***Nansen International Office for Refugees***<sup>148</sup>. This body however accomplished little before the expiry of its mandate in 1938. Since refugees and there issues increased rapidly around this time and the league felt the need of assistance, the League created a ***High Commission for Refugees*** in the year 1933 to assist refugees emerging from Germany as the consequences of the rise of Nazism. The conflicts and political drifts during the Second World War also led to a mass

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<sup>146</sup>James C. Hathaway. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (Second Edition- 2021). Published- Cambridge university press. ISBN 978-1-108-49589-9. (5/12/2022)

<sup>147</sup>REFUGEE | Definition, History, & Facts | Britannica (5/12/2022)

<sup>148</sup>Encyclopedia. Nansen International Office for Refugees (5/12/2022)

<https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/nansen-international-office-refugees> (5/12/2022)



movement of refugees thus, in the year 1943 the *Bermuda Conference* took place. The conference extended the mandate to the Intergovernmental Committee to “all persons whoever they may be who, as a result of events in Europe, have had to leave their countries of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs” to be given shelter. In the same year 1943, the Allies created the *United Nation Relief and Rehabilitation Administration (UNRRA)*<sup>149</sup> to provide aid to the people in war-liberated areas. The UNRRA was entrusted with the responsibility of providing economic assistance to European nations and to channelize the return of over seven million refugees to their respective country of origin and set up displaced people camps for one million refugees who refused to return.

*United Nation Organization*<sup>150</sup>- In its 1st session of the General Assembly, 1946, the prime agenda was to address the problems of the refugees. “The action required was based on the following principle:

- The refugee problem was international in scope and chapter
- No refugee or displaced person who had finally, and in complete expressed valid objection to returning to their country of origin should be compelled to return.;
- The future of such refugees or displaced persons should be the concern of an international to be established; and
- The main task was to encourage and assist in any way possible their early return to their countries”.<sup>151</sup>

At the end of World War II, on 20<sup>th</sup>April, 1947 *The International Refugee Organization (IRO)* was founded to take over the functions of UNRRA and subsequently the UNRRA was shut down in the year (1947-52). The IRO assisted

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<sup>149</sup>UNITEDNATIONSRELIEFANDREHABILITATION Administration<https://encyclopedia.usmm.org/content/en/article/united-nations-relief-and-rehabilitation-administration> (5/12/2022)

<sup>150</sup>NANSEN INTERNATIONAL OFFICE FOR REFUGEES <https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/nansen-international-office-refugees> (6/12/2022)

<sup>151</sup>Refworld. AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF REFUGEES (RLD 1) June 1992<https://www.refworld.org/pdfid/3cce9a244.pdf> (6/12/2022)

refugees and other displaced people across Europe and Asia. Subsequently the organization was terminated in January 1952.<sup>152</sup>

On December 10, 1950, the *United Nations High Commission for Refugees* was established with its headquarter in Geneva, Switzerland, to support and protect refugees and to assist in providing a durable solution in terms of return or resettlement. Barring the Palestinian Refugees, all the other refugees in the world are under the mandate of UNHRC. Besides UNHRC, **the *United Nations Relief and Works Agency (UNRWA)*** also provides protection and assistance to other categories of displaced people like asylum seekers, states less people, refugees who returned home voluntarily and needs help in rebuilding their homes and lives. UNRWA (The United Nations Relief and Work Agency for Palestine Refugee), was established as an entity by the United Nations, specifically to address the humanitarian emergency relief of the Palestine Refugees. UNRWA came into existence after the failure of functionality of the United *Nation Conciliation Commission for Palestine (UNCCP)* as an agency.<sup>153</sup>

Despite constant efforts, the international community could not build a strong network system and laws to tackle the refugee issue at the global level. However, in between 1950-51. The *United Nations High Commission for Refugee (UNHCR)* and *United Nations Convention Relating to the Status Refugees* were established respectively to address refugee issues and to assure their protection under International Law.

Initially the 1951 Convention applied only to the events occurring before 1951, but looking at the persistent refugee issues a need to extend the ambient of the 1951 convention was felt. Thus, an amendment was made and the 1967 Protocol relating to status of Refugee was added which extended that” equal status should be enjoyed by all refugees covered by the definition in the convention irrespective of the dateline 1<sup>st</sup> January 1951”. The Protocol permitted strong cooperation between the signatory

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<sup>152</sup>INTERNATIONAL REFUGEE ORGANIZATION HISTORICAL UN AGENCY. The Editors of Encyclopaedia Britannica. International Refugee Organization | historical UN agency | Britannica

<sup>153</sup>REFUGEE Refugee - Wikipedia. (6/12/2022)

states and the UNHCR<sup>154</sup> Though the *United Nation Refugee Convention 1951* was initially restricted to Europe, it gave a general definition to the word refugee. The 1951 refugee convention entrusts the state parties to abide by the *Principle of Non-Refoulement*, the principle restricts signatory states from returning the asylum seekers back to the country where they have a well-founded fear of being persecuted and their lives are in danger. Along with providing protection and assistance, the Convention is also entrusted with the responsibility of promoting and monitoring the signatory states to ensure adequate refugee protection in the concerned territory.<sup>155</sup>

### ***THE FORMATION OF THE 1951 REFUGEE CONVENTION, AS REFUGEE PROTECTION LAW***

Most believe that the consideration of refugee protection was an aftermath of World War II to channelize the outpouring of refugees after the war. However the foundation of refugee protection was laid even much before the coming up of 1951. The 1951 Refugee Convention was only the revision and consolidation of the previous International agreements on refugees. The convention was evolved to give legal protection and acknowledgment to refugees.

The Aliens Law was the first legal system that denied the states absolute right to treat persons within their jurisdiction in whatever manner they deemed appropriate.<sup>156</sup> Another major law that provides protection to refugees is, International Law, or *Public International Law or the Law of Nations*, - these are a body of legal rules, norms and standards that apply between sovereign and other entities that are recognized as international actors. The term International Law was first coined by Jeremy Bentham in between (1748-1832).<sup>157</sup>“International law aspires to be worlds Esperanto, Esperanto is international auxiliary language, it was created by multiple communication by speakers of different languages” International Law intended to be

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<sup>154</sup>Carlos Ortiz Miranda\* TOWARD A BROADER DEFINITION OF REFUGEE: 20TH CENTURY DEVELOPMENT TRENDS. Toward a Broader Definition of Refugee: 20th Century Development Trends (cwsl.edu) (14/12/2022)

<sup>155</sup>UNHCR. THE STATES OF THE WORLD'S REFUGEES 2000. The State of The World's Refugees 2000 - Introduction (unhcr.org) (30/12/2022)

<sup>156</sup>James C. Hathaway. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (Second Edition- 2021). Published- Cambridge university press. ISBN 978-1-108-49589-9. (30/12/2022)

<sup>157</sup>Britannica. SHAW INTERNATIONAL LAW. International law | Definition, History, Characteristics, Examples, & Facts | Britannica (30/12/2022)

Easy to learn, politically neutral means of expression that would transcend nationality and foster peace and international understanding among various people.”<sup>158</sup>

The first international organization to address refugee issues was the *League of Nation*. The League of Nations was well suited to combine the moral authorities and represent the rights of the refugees with a particular approach to the problem for the states that lodged these refugee people. The League of Nations failed to handle the refugee chaos post World War II and thus the League of Nations collapsed. In the year 1921, the League of Nations appointed a High Commissioner for Refugees in response to an appeal from the *International Committee of Red Cross (ICRC)*. *Fridtjof Nansen*, who was an arctic explorer, scientist and statesman, from Norwegian, was appointed as the first High Commissioner for Refugees. Nansen was the first to create a refugee travel document known as the *Nansen Passport*. Even though the Nansen Passport was not equivalent to the National Passport, and did not attract any obligation of the concerned government to re-admit the bearer, it did give refugees the legal identity and enabled them to travel anywhere internationally. It was at the time of Nansen’s appointment the League adopted a series of various resolutions concerning the transfer of Russian refugees between various states. However, both Nansen and the League of Nations were conscious of geographical setup, thus they gave equal attention to the burden sharing among the member states in response to the unequal refugee distribution.

In the year 1922, Nansen’s Report on the High Commissioner, while addressing the burden sharing, the report used the language as, “a great step towards a more equitable distribution of Russian refugees.” Thus, the document only protected the Russian refugees initially then extended to Armenia in 1924. The document further brought the Assyrians and other Christian from the Ottoman Empire by the year 1928. Thus, the passport not only promised refugees not to return, it further assisted in the mobilization of refugees in an equitable manner to the willing states. However, this was not very easy owing to the economic depression of that period. Thus in the year 1924, the League of Nations made an agreement with the International Labour Organization (ILO), under the agreement the ILO matched the refugees with suitable

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<sup>158</sup>ANTHEA ROBERTS. IS INTERNATIONAL LAW INTERNATIONAL? (2017) Oxford University Press. Published - (30/12/2022)

countries and matched the employers with the workers. Between the years 1925 and 1929 the ILO coordinated the placement for employment of nearly 50,000 refugees.<sup>159</sup>

After the demise of Nansen in the year 1930, the League of Nations opted to create the Nansen International Office rather than appointing another new High Commissioner. The rise of Hitler in the year 1933, spiked another out-pour of new refugees; these were the Jews from Germany. This refugee crisis forced the League of Nations to appoint an independent High Commissioner for Refugee from Germany. The task of the committee was to coordinate relief and settlement and to negotiate refugee travel in resettlement in the third country. In the year 1936, a special committee report on refugees was presented in the League of Nations, in which it stressed on the importance of burden sharing of refugees whether they be first asylum, resettlement or funds. Thus in the year 1936 the League of Nations adopted the Provisional Arrangement Concerning the Status of Refugees coming from Germany (1936 Provisional Arrangement) to authorize governments to issue travel documents to stateless Germans coming from Germany. In the year 1938, the arrangement was adopted in the Convention Concerning the Status of Refugees coming from Germany (the 1938 Convention).

The first Convention Relating to the International Statute of Refugees was adopted in October 1933 (1933 Convention). The 1938 Convention came to address the resettlement issues. A separate Organization was also created, called *The Intergovernmental Committee on Refugee (IGCR)* in Evian, France, to address the growing refugee crisis. Despite the success of IGCR, the League of Nations could not prevent the outbreak of World War II. Thus, the rise of World War II was marked by the downfall of the League of Nations.

After the downfall of the League, came the United Nations Relief and Rehabilitation Administration (UNRRA) in the year 1943. The organization attempted to repatriate the European Displaced people post the war. After the end of World War II, a new

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<sup>159</sup>Shauna Labman. LOOKING BACK, MOVING FORWARD: THE HISTORY AND FUTURE OF REFUGEE PROTECTION. (Issue 1(2010). 10 CHI.-KENT J. INT'L & COMP. LAW) <https://scholarship.kentlaw.iit.edu/ckjicl/vol10/iss1/2> (3/1/2023)

International forum for the world was established in the year called the *United Nations*, established on 24 October 1945. The United Nations acquired a significant symbolic importance, which was never achieved by the League of Nations. In the year 1946, the International Refugee Organization (IRO) was established by the United Nations General Assembly. Between the years, 1947 and 1951 the IRO resettled approximately 1 million refugees in various European States. The working of the IRO was closed in the year 1951. The United Nations adopted the United Nations High Commissioner for Refugees on 15 December 1950, which began its work from 1951. The Convention Relating to the Status of Refugees was adopted on 28 July 1951. Unlike the other organization, the scope of the 1951 was limited to provide protection to people who became refugees owing to the events occurring before January 1, 1951.<sup>160</sup>

In the contemporary time, the International Human Rights does not only comprises of International convention of 1967 but also range to specialize universal accords, treaties, various conventions, but has also developed within the regional arrangement and institutional jurisprudence under the European court of Human Rights, Africa Union, and Inter-American commission and courts.<sup>161</sup> Today it is evident that each individual holds his or her human rights and he or she is protected and safeguarded under national and international law.

### **3.3 INTERNATIONAL LAW FOR PROTECTION OF REFUGEES AND THE PRINCIPLE OF NON-REFOULEMENT IMBIBED IN INTERNATIONAL LAWS**

There are a number of Laws, conventions, regulations, accords, agreements, treaties etc. both at the national (domestic) and International level for the protection of refugees. All of the refugee protection legal framework talks about providing protection, shelter to the refugees within their territories and fulfilling their basic needs. It becomes the state's responsibility to assure their non-refoulement to the

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<sup>160</sup> *Id.* at 156.

<sup>161</sup> Nafees Ahmad, PROTECTION OF REFUGEES UNDER INTERNATIONAL LAW [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2875755#:~:text=The%20basic%20purpose%20of%20international%20refugee%20law%20is,need%20it%20in%20case%20of%20displacement%20and%20migration.\(22/08/22\)](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2875755#:~:text=The%20basic%20purpose%20of%20international%20refugee%20law%20is,need%20it%20in%20case%20of%20displacement%20and%20migration.(22/08/22))

place where their life is in danger, and by doing so the countries and Law both at the International and regional level is upholding the principle.

When we look at several International Law and regional laws, in the present context, the European Union Law, we see that all above laws aim at providing protection, shelter and wellbeing to the refugees and thus abide by the principle directly or indirectly. Following are the International and European Union laws in which the principle is imbibed.

**3.3.1 INTERNATIONAL REFUGEE ORGANIZATION (IRO), 1946**

**3.3.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1946**

**3.3.3 THE OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEE (UNHCR), 1946**

**3.3.4 THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEE (1951)**

**3.3.5 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, (ICCPR) 1966.**

**3.3.6 INTERNATIONAL CONVENTION ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (ICESCR) 1966**

**3.3.7 THE ORGANIZATION OF AFRICAN UNITY CONVENTION GOVERNING SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA. (OAU) CONVENTION ON REFUGEE, 1969**

**3.3.8 AMERICAN CONVENTION ON HUMAN RIGHTS, 1978**

**3.3.9 CONVENTION AGAINST TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, 1987**

**3.3.10 ARAB CHARTER ON HUMAN RIGHTS (ACHR), 2004**

**3.3.11 PROTECTION OF REFUGEES UNDER INDIAN LAW**

**3.3.1 INTERNATIONAL REFUGEE ORGANIZATION (IRO), 1946**

It is an intergovernmental organization that was founded on 20 April 1946. This body was formed to deal with the problems of refugees during the World War II. In the year 1948, the treaty establishing the IRO entered into force and thus IRO became “*United Nations Specialized Agency.*” The IRO respectively the body ceased to function in the year 1952 on 31<sup>st</sup> of January, and was further replaced by the UNHCR,

United Nations High Commissioner for Refugees. The IRO assumed most of the function of *United Nations Relief and Rehabilitation Administration*. Twenty-six states became members to the IRO.<sup>162</sup> It describes different kinds of refugees. Namely- the Nazi victims, quisling regimes, persons of Jewish origin, or foreigner or stateless persons. It also defines persons as refugees who have been displaced before World War II, for the reasons of either race, religion, nationality, or political opinion. IRO also assisted people who were deported or exiled from their countries and were forced to undertake forced labour. It also provides protection to those who are former residents are unable or unwilling to avail the protection of their government.<sup>163</sup>

Thus, we see IRO worked to provide direct protection to the refugees post its coming in the 1914 and also by protecting the deported and exiled people, we see a direct reflection of the principle of non-refoulement.

### **3.3.2 UNIVERSAL DECLARATION ON HUMAN RIGHTS (UDHR), 1946**

“The power of the Universal Declaration is the power of ideas to change the world. It inspires us to continue working to ensure all people can gain freedom, equality and dignity.”<sup>164</sup> The declaration is an international document adopted by the General Assembly. It enshrines the rights and freedoms of all human beings. The UN committee drafts the declaration and the Universal Declaration of Human Rights was adopted by the General Assembly on 10<sup>th</sup> December 1948 at Paris, France. The declaration has 30 Articles that deal in detail the basic rights and fundamental freedom of individuals and affirming these rights as inherent, inalienable, and applicable to all individuals. The declaration commits nations to the fact that all humans are born free and have equal dignity and the article 1-2 of the declaration establishes the basic concepts of dignity, liberty and equality. It establishes other individual rights under article 3-5, like right to life, prohibition against slavery and torture.

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<sup>162</sup>INTERNATIONAL REFUGEE ORGANIZATION

[https://en.wikipedia.org/wiki/International\\_Refugee\\_Organization](https://en.wikipedia.org/wiki/International_Refugee_Organization) (3/1/2023)

<sup>163</sup> Moussaoud Constalain Chrisnal *The International Legal Framework Of Refugee Protection* I.J.L, (February 2019), Humanities & Social Science© Volume 3, Issue 2 P.P.23-48, ISSN: 2521-0793 [www.ijlhss.com](http://www.ijlhss.com) 23 | P a g e 1 (PhD Candidate, Xiamen University, China and Affiliate to the Refugee law initiative, University of London) [montroisiemearticle.pdf](https://www.ohchr.org/en/universal-declaration-of-human-rights) (3/1/2023)

<sup>164</sup>UNIVERSAL DECLARATION OF HUMAN RIGHTS <https://www.ohchr.org/en/universal-declaration-of-human-rights> (8/9/22)



Under article 6-11, it deals with legalities and specific remedies when there is a violation of human rights. Under article 12-17 it also sets rights for an individual towards the community, including the freedom of movement and residence within each state and right to property and nationality. Article 18-21 of the declaration ensures the freedom of thought, expression, opinion, religion, and conscience, words, peaceful association of individuals, and receiving and imparting information and ideas via media. Article 22-27 deals with the economic, social, healthcare and cultural rights sanctioned to an individual. It also ensures the right to an adequate standard of living, it ensures special care of pregnant women and children. The articles 29-30 establishes means of exercising these rights, irrespective of any gender, nationality, caste, creed, color, ethnicity, religion, language etc. The declaration also led to the formulation of the International Bill of Human Rights, which came into force in the year 1979.

Though UDHR directly talks about the protection of the Human Rights of People, it also protects refugees by them being a human and therefore we see the reflection of the Principle of non-refoulement and indirect protection of refugees under the Institution.

### **3.3.3 THE OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEE (UNHCR), 1950**

The convention marks its establishment on 14 December 1950 by the United Nation general Assembly to ensure the well-being of the refugees. It is the principal UN agency constituted for the well-being of refugees. The mandate of the agency is to lead and coordinate international action for protection of the refugees as well as for resolving their problems worldwide. The primary objective of UNHCR is to ensure the safeguard of the refugees and their well-being. It ensures that everyone has the right to seek asylum and find safe refuge in another country. It is also entrusted with the mandate to help the stateless people. The agency has helped tens of millions of refugees restart their lives for more than six decades.

The UN Refugee Agency is governed by the UN General Assembly and the Economic and Social Council, (ECOSOC). The major work of the UNHCR Executive Committee is to approve the agency's biennial programmer and the corresponding budget. The High Commissioner, who is duly appointed by the UN General

Assembly, presents the budget. The High Commissioner is the head of the agency and is responsible for the direction and control of the UNHCR. The high commissioner directs the work of UNHCR with the assistance of Deputy High Commissioner and Assistant High Commissioner for protection and operation.

The agency has 7,685 national and international staff working in 126 countries all together. Most of the operations of UNHCR is carried out in the field. Its operational work is complex in nature, its operation ranges from recruitment of new staff and ensuring their security, to procurement of everything right from medical supplies and bulk food shipment, to the aircraft charter. It also looks after some specific departments, which are mostly based in Geneva headquarters. It oversees key areas, such as operations, protection, external relations, human resources and finance. The UNHCR core fieldwork is managed from a series of regional offices, branch office, sub-offices and field offices.’<sup>165</sup>

Thus, we see that the UNHCR is directly concerned with the protection and welfare of the refugees and thus directly protects refugees under the principle of non-refoulement.

### **3.3.4 THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES, 1951**

It is “the, most important instrument which deals with the refugees in the United Nations convention relating to status of refugees and exile signed by Geneva on 28 July, 195”<sup>166</sup>. It is a United Nations Multilateral Treaty that defines refugees and sets out the rights of the asylum seekers who are granted asylum. Lately also known as the “Magna carta” of Refugees,<sup>167</sup> and the “centerpiece of international refugee protection.”<sup>168</sup>

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<sup>165</sup>OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES [https://www.un.org/youthenvoy/2013/09/office-of-the-united-nations-high-commissioner-for-refugees/#:~:text=The%20Office%20of%20the%20United%20Nations%20High%20Commissioner,to%20safeguard%20the%20rights%20and%20well-being%20of%20refugees.\(3/1/2023\)](https://www.un.org/youthenvoy/2013/09/office-of-the-united-nations-high-commissioner-for-refugees/#:~:text=The%20Office%20of%20the%20United%20Nations%20High%20Commissioner,to%20safeguard%20the%20rights%20and%20well-being%20of%20refugees.(3/1/2023))

<sup>166</sup> Moussaoud Constalain Chrisna1. *Supra note* 160. (3/1/2023)

<sup>167</sup>Refworld. THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES: ITS RELEVANCE IN THE CONTEMPORARY CONTEXT. Microsoft Word - 99-07 Continuing relevance Convention.doc (refworld.org) (4/1/2023)

<sup>168</sup>WHAT IS THE 1951 REFUGEE CONVENTION—AND HOW DOES IT SUPPORT HUMAN RIGHTS? July 24, 2021 <https://asylumaccess.org/what-is-the-1951-refugee-convention-and-how-does-it-support-human-rights> (4/1/2023)

The convention defines the term refugees. Their rights in the host countries and describes the duties of the host countries towards the asylum. It also specifies persons that do not now qualify as refugees. The convention of 1951 is built on Article of 1948, Universal Declaration of Human Rights, which recognizes the right of a person who seeks asylum. The rights created by the convention still stand today.

The 1951 Refugee convention is the first convention in which the principle of non-refoulement finds its proper place under Article 33 and thus the convention directly implements the principle of non-refoulement and provides protection to the refugees.

### **3.3.5 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), 1966**

It is one of several human rights treaties brought into force for refugees and asylum seekers and others. Together with the International convention on Economic, Social, and Cultural Rights and with universal declaration on human rights. This soft law was turned into binding obligation for the state party. The ICCPR convention contains classic civil liberties such as freedom of opinion, equality before law and due process. Numerous reservations to the ICCPR convention have entered into signature and rectification. However, with exception of very broad reservation on Article 13, very few pertain to these aspects and rights that are of protection to refugee importance and protection.<sup>169</sup>

‘Article 24 of the ICCPR provides how states must address the rights of the minority groups within the state’s border. The office of the High Commissioner for human rights, in the general comments number 23 states that the rights of minority groups must be applied both to visitors as well as the individual, not recognized as permanent residents. The office of High Commissioner for Human Rights in its general comments emphasizes a positive obligation for the protection of minority rights. The commentaries on the International Convention on Economic, Social and Cultural Rights, (ICESCR) establishes that the states have an obligation to integrate but not assimilate refugees.

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<sup>169</sup>Santhosh Persaud NEW ISSUES IN REFUGEE RESEARCH, Paper No. 132 Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights <https://www.refworld.org/docid/4ff150762.html>

Under the covenant, all persons are equal before law and possess equal protection of law, without any discrimination. The covenant prohibits any discrimination against any person because of race, religion, sex, language, political or other opinions, national or social origin property, birth or other opinion.’<sup>170</sup> Article 7 of the ICCPR through its extraterritorial interpretation prohibits torture, and thus indirectly infers the principle of non-refoulement.

### **3.3.6 INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (ICESCR), 1966**

The convention is a resolution written, signed and ratified by the United Nations. It is a multilateral treaty and United Nation’s fundamental document that was adopted by the General Assembly on 16 December 1966 and came into force from 3 January 1976. It came into being after the contribution of an international group of lawmakers working together for the document’s contents. It was developed as the blueprint for achieving international fundamental human rights. The covenant on Economic, social and cultural rights and Universal Declaration on Human Rights are together recognized as “*The International Bill of Human Rights.*”<sup>171</sup>

The covenant works towards the granting and assuring economic, social and cultural rights to the Non-Self-Governing and trust territories and individuals, including that of labour rights and right to health education and right to adequate standard of living. The covenant is said to have 171 state parties to it by the year 2020.<sup>172</sup> The principle is indirectly reflected in the covenant.

### **3.3.7 THE ORGANIZATION OF AFRICAN UNITY CONVENTION GOVERNING SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA. (OAU), 1969**

The convention on refugees, 1969. Means the Organization of African Unity Convention, established to govern specific aspects of the refugee problems in

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<sup>170</sup>International Covenant on Civil and Political Rights. ADOPTED 16 December 1966. BY General Assembly resolution 2200A (XXI)  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (4/1/2023)

<sup>171</sup>International Covenant on Economic, Social & Cultural Rights ICESCR: Summary & Human Rights  
<https://study.com/academy/lesson/icescr-international-covenant-on-economic-social-cultural-rights-summary-human-rights.html> (5/1/2023)

<sup>172</sup>International Covenant on Economic, Social and Cultural Rights  
[https://en.wikipedia.org/wiki/International\\_Covenant\\_on\\_Economic,\\_Social\\_and\\_Cultural\\_Rights](https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights)

Africa.<sup>173</sup> After the African independence many African states encountered challenges of nation building along with the immediate need of protection, assistance and finding durable solutions for refugees displaced in the war of liberation and the struggle against apartheid in South Africa. The Organization of African Unity (OAU), 1963 and the OAU Convention Governing the Specific Aspect of Refugee Problem in Africa (the OAU refugee Convention) 1969, which came in force in the year 1974, were established respectively.

The convention was established by seeing the refugees being ill-treatment, forcibly displaced and turning hostile of the public, their xenophobic behaviors and intolerance towards the refugees thus, the convention imbibes the principle of non- refoulement. The Convention was enacted for the receiving countries for setting standards for refugee treatment.<sup>174</sup> Since its enactments and despite its shortcomings, so far the convention has also operated as a human rights protection safety net to those who would otherwise be denied.

The convention deals with certain shortcomings, for example the convention is silent over the fact whether the victims of natural disaster can be considered as refugees. It does not cover protection and assistance needs of IDP. Since its enactment, the Act stands as it is and there has been no amendment in the same as according to changing times and needs.

Since the convention specifically deals with the refugee issues, the principle of non-refoulement can directly be seen envisaged in the convention. Besides the OAU, the other regional African convention, in which the principle appears is the *1969 Addis-Ababa Convention*. The convention deals with the specific refugee problem in Africa.

### **3.3.8 AMERICAN CONVENTION ON HUMAN RIGHTS, 1978**

The convention is also known as '*The Pact of San Jose*'. The convention is an international human rights instrument, adopted by many countries in the Western

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<sup>173</sup>OAU Convention on Refugees, 1969 definition  
<https://www.lawinsider.com/dictionary/oau-convention-on-refugees-1969#:~:text=%20OAU%20Convention%20on%20Refugees%2C%201969%20%201,refugees%2C%20as%20amended%20by%20the%20New...%20More%20> (6/1/2023)

<sup>174</sup>J O Moses Okello, THE 1969 OAU CONVENTION AND THE CONTINUING CHALLENGE FOR THE AFRICAN UNION (Nov. 2014) <https://www.fmreview.org/faith/okello>. (6/1/2023)

Hemisphere in San Jose, Costa Rica on November 22, 1969. However, it came into force after the eleventh instrument of ratification on July 18, 1978.<sup>175</sup>The two organs or the Organization of American States, responsible to see to the compliance is the *Inter-American Commission on Human Rights (IACHR)* and the *Inter-American court of Human Rights, (IACtHR)* <sup>176</sup>

The important Article that provide protection to the human rights of the refugees and there by reflecting the essence of the principle of non-refoulement are-

Article 1.- obligation to respect rights- the state parties to the convention undertake to respect the rights and freedoms recognized in the convention and to ensure to all person subject to their jurisdiction, the freedom and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political and other opinion, national or social origin, economic status, birth, or any other social condition. The other rights and freedom under the convention are;-

Article 12- Freedom of conscience and religion

Article 13- freedom of thought and expression

Article 16- Freedom of Association

Article 22- security against deportation to a place where the life of the person concern is in danger.

Article 23- provides the civil and political rights to all persons.

Article 27- Suspension of Guarantees

Thus, the American convention is another legal body that goes a long way in safeguarding the refugees in its jurisdiction.<sup>177</sup>

### **3.3.9 CONVENTION AGAINST TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1987**

The convention Commonly known as UNCAT was adopted by the United Nations General assembly on 10 December 1984 the convention come in into force on 26 June

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<sup>175</sup> American Convention on Human Rights.[https://en.wikipedia.org/wiki/American\\_Convention\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/American_Convention_on_Human_Rights) (6/1/2023)

<sup>176</sup>*Id* at 171.

<sup>177</sup>American Convention on Human Rights (ACHR), Article 1, 12, 13, 22, and 17. <https://minorityrights.org/law-and-legal-cases/american-convention-on-human-rights-achr-articles-1-12-13-16-22-and-27/> (7/9/22)

1987. It is an International human rights treaty that intends to prevent torture another cruel, inhuman or degrading treatments or punishments across the world. The convention requires the member states to take action and prevent any tortures activities taking place in their respective jurisdiction.<sup>178</sup> The complete prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment is adopted as a principle of customary international law. By the year April 2022, the convention will be signed by 173 member states.<sup>179</sup>

The structure of the convention is in accordance with the UDHR, ICCPR and ICESCR. The convention has a preamble followed by 33 articles, which are divided into three parts.<sup>180</sup> As the convention stands for protection of all, against torture or other cruel or inhuman, degrading treatment or punishment, it also provides protection to the refugees by virtue of them being a human being. Thus, we see an indirect reflection of the principle.

### **3.3.10 ARAB CHARTER ON HUMAN RIGHTS (ACHR), 2004**

The convention was adopted by the council of the league of Arab States on May 22, 2004. The carted affirms the principles contained in the United Nations Charter, the Universal Declaration of Human Rights, and the International Convention on Human Rights and the Cairo Declaration on Human Rights in Islam. It assures human rights like right to liberty, security, equality before law, protection against torture, right to own property, freedom to practice religion, freedom to peaceful assembly and associations

“All peoples have the right to self-determination and to have control over their wealth and natural resources. By virtue of that right, they have the right to freely determine their political status and to freely pursue their economic, social and cultural development. Racism, Zionism, occupation and foreign control constitute a challenge

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<sup>178</sup>Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, New York, 10 December1984. (7/9/22) <https://legal.un.org/avl/ha/catcidtp/catcidtp.html>

<sup>179</sup> Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment. 10 December 1984 entry into force 26 June 1987 (1)<https://www.refworld.org/docid/3ae6b3a94.html> (7/9/22)

<sup>180</sup> United Nations Convention Tgainst Torture. [https://en.wikipedia.org/wiki/United\\_Nations\\_Convention\\_Against\\_Torture](https://en.wikipedia.org/wiki/United_Nations_Convention_Against_Torture) (7/1/2023)

to human dignity and are a fundamental obstacle to the human rights of peoples. It is a duty to condemn all such practices and to work towards their abolishment.”<sup>181</sup>

The first version of the charter was created on September 15 1994; however, no state ratified it back then. The charter was updated in the year 2004 and it came into force in 2008 after the rectification from seven member states of the League of Arab States. By November 2013, the charter was ratified by states like Algerian, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria and UAE and Yemen.<sup>182</sup>

### **3.3.11 PROTECTION OF REFUGEES UNDER INDIAN LAWS**

Though India is not a signatory country of the 1951 Refugee Convention and has not enacted any since the time immemorial, India has been very generous in hosting refugees and asylum seekers. A number of refugee communities from around the different parts of the world have thrived in the country. Currently India host 212,874 refugees and asylum seekers including that of refugees from the British Indian Territories, (Pakistan and Bangladesh) Tibetan refugees, (1959) Chakma refugees, (1960) Sri Lankan Tamilian refugees (in 1980’s), and recently India provided shelter and protection to Rohingya refugees from Myanmar.<sup>183</sup>

For the protection of refugees India employs the Foreigner Act, 1946 to regulate the Entry, Stay and Exit of Refugees. The refugees in India fall under the term “*Alien.*” which appears in several Indian Laws like, the Constitution of India, Indian Civil Procedure Code (section-83), the Indian Citizenship Act, 1955 (section 3(2)(b)) and the Foreigner Act, 1946.

Under the Constitution of India, refugees are protected under numerous Fundamental Rights (Part-III) and other Article like,

- Right to life and personal liberty (Article - 21),
- Right to equality before law (Article- 14),
- Citizenship at the commencement of the Constitution(Article-5)

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<sup>181</sup>Arab Charter on Human Rights. <https://www.refworld.org/docid/3ae6b38540.html> (7/1/2023)

<sup>182</sup> Arab Charter on Human Rights.

[https://en.wikipedia.org/wiki/Arab\\_Charter\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/Arab_Charter_on_Human_Rights) (7/1/2023)

<sup>183</sup>Wikipedia. Refugees in India. Refugees in India - Wikipedia (7/1/2023)



- Citizenship of certain persons who have migrated from Pakistan(Article-6)
- Citizenship of certain migrants from Pakistan(Article-7)
- Citizenship of certain persons of Indian origin residing outside India (Article-8)
- People voluntarily acquiring citizenship of foreign country will not be citizens of India.(Article-9)
- Person considered a citizen of India under any provision of this part shall continue to be citizen and Will be subject to any law made by the parliament (Article-10)
- Parliament to regulate the right of citizens by law (Article-11)
- article 12 defines the term State (Article-12)
- Protection in respect of conviction for offence (Article-20)
- Protection against arrest and detention under certain cases. (Article-22)
- Right to freedom of religion(Article-25-28)
- Remedies for enforcement of rights conferred by this part (Article-32)
- Power of High court to issue certain Writ. (Article- 226)Are available to non-citizens of India, which includes refugees.<sup>184</sup>

Besides the above mentioned, the other laws that protects the refugees are Convention on the Elimination of Racial Discrimination (CERD), the convention recognizes the limited exceptions. It states that the human rights are to be enjoyed by all persons, and the state parties are under obligation to guarantee equality between the citizens and non-citizens in enjoyment of these rights to the extent it is recognized under the international law. The Convention on the Rights of Children (CRD), the convention specifically applies to children within the jurisdiction of the state parties without any discrimination. All children are entitled to full protection of the instrument irrespective of their nationality or citizenship.

Regional Human Right Instruments, there are certain instruments at the regional level that ensures the protection of all refugees. They are, African Charter on Human and People Rights, The African Charter on Rights and Welfare of Children, African Commission on Human and Peoples Rights, American Convention on Human Rights,

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<sup>184</sup>Harshit Rai and Vaibhav Dwivedi, *Management and Humanities* (2021) IJL, Volume 4, Issue 3, Page 261 – 272. <https://doi.org/10.10000/IJLMH.11446>. (7/1/2023)

The Convention for the Protection of Human Rights and Fundamental Freedom, (European Convention on Human Rights), European Social Charter etc.<sup>185</sup>

Further, the constitutions of the countries also provide direct and indirect protection to the refugees. The national constitutional framework has an enduring influence on the ongoing process of making international refugee laws, especially in the judicial review rights. The Constitution and its due process has influence, So much, so that in some areas of law, judiciaries are more readily in determining the refugee status. In the absence of judicial or quasi-judicial international arbiters of refugee law. The Constitution works in two ways in protecting the refugees.

Firstly, the constitutional framework has a role with regard to status-related or right related judicial review. In the dualist legal system or in the absence of super national enforcement mechanisms, constitutional courts become a prime site for mediating international refugee law's scope and contents or relevance.

Secondly, with regard to determining the question as whether to protect and safeguard special rights, like the social, cultural rights or to give constitutional authority to the principle of customary international law. In some cases, the constitution authorities the judiciary to take account of international law. Thus national constitutions, particularly those that have embraced a right, especially social and economic rights, are an integral piece in the international refugee law puzzle.<sup>186</sup> We also see that the convention is concerned with providing holistic protection to all people and indirectly reflects the principle of non-refoulement.

### **3.4 EUROPEAN UNION LAWS FOR PROTECTION OF REFUGEES**

“Protection in the broadest sense means that a stateless person has access to and can enjoy the right imbibed in the 1951 convention and its other relevant instruments. It

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<sup>185</sup> ANNE T. GALLADHER AO FIONA DAVID. THE INTERNATIONAL LAW OF MIGRANT SMUGGLING. ILI Library-57569, Class no.- 341.43 GAL. Ny Cambridge University press.

<sup>186</sup> Eve Lester. NATIONAL CONSTITUTIONS AND REFUGEE PROTECTION. ANU College of Law Research Paper No 21.34 ANU College of Law Legal Studies Research Paper Series SSRN-id3976744.pdf (26/08/22)

also means official recognition as a stateless person and being granted a legal statute that ensures proper enjoyment of the above rights.”<sup>187</sup>

All the member states in the European Union are bound largely by the 1951 convention relating to the status of Refugee and its protocol 1967. Besides the convention of 1951 European Union (here in after EU) also have several other legal frameworks which help them regulate the refugee issue properly. The main institutions involved in the creation of the European Union Refugee Law are-

- The European Council – the council here sets the European Union overall Political direction but does not have powers to pass laws.
- The European Parliament- the institution is elected by the European Union citizens for their representation.
- The Council of European Union- the council represents the government of individual countries.
- The European Commission – the commission represents the Union as a whole.<sup>188</sup>

All the states in Europe, due to their close geographical location often face common issues thus come together to work out the common problem, constituting a Union. In order to address the refugee issue the European Union have collectively made laws, applicable to all the states party to the Union to deal with the issues concerning the refugees. Following are some European Union Laws that deal with the issues relating Refugees in the European Union and protects them from refoulement.

### **3.4.1 EUROPEAN CONVENTION ON HUMAN RIGHTS**

The convention, signed on 4 November 1950, came into force in September 1953 to protect refugees. The convention governs all the members of the European states as they share the same political heritage. The convention assures all humankind the right to life (article-2), prohibition of torture and slavery (article 3 and 4), right to liberty

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<sup>187</sup>ALICE EDWARDS AND LAURA VENWAAS. NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW. ILI Library- 57580, 342.72 EDW. (First Published in 2014) Cambridge University Press. ISBN- 978-1-107-03244-6 (CHAPTER - 5) (8/1/2023)

<sup>188</sup>UNSW Sydney. REFUGEE LAW IN EUROPE. Andrew & Renata Kaldor Centre for International Refugee Law. Last update: August 2018. (8/1/2023)  
[https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet\\_refugee%20law%20in%20Europe\\_Aug2018.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Factsheet_refugee%20law%20in%20Europe_Aug2018.pdf) (8/1/2023)

and security of person (article-5). Right to fair public hearing within reasonable time by independent and impartial Tribunal (Article-6), prohibition of retroactive criminal legislation (article-7), right to private and family life(article-8). Freedom of thought, conscience and religion (article9), freedom of expression (article 10), freedom of assembly and association (article -11), the right to marry and form a family (article 12), right to remedy before national authority in case of violation of freedom (article 13), non-discrimination regarding enjoyment of rights and freedom under the convention (article-14). Further, several other rights were added in the subsequent protocols of the convention later<sup>189</sup>.

In the convention, the refugees are directly prohibited by the virtue of Article mentioned above.

### **3.4.2 EUROPEAN SOCIAL CHARTER**

The charter was signed in the year 1961. The charter was enacted to deal with disparity within Europe. The charter is a council of European treaty that assures the fundamental social and economic rights as guaranteed under the European Convention on Human rights. It assures the protection of a range of human rights like employment, housing, health care, education and social and welfare protection. The charter emphasizes protection of vulnerable classes of people that includes children disabled people and migrants. The charter is also seen as the Social Constitution of Europe and reflects essential elements to continue the human rights construction.<sup>190</sup> The revised European Social Charter emphasizes that each party will grant refugees lawful stay in its territory and provide treatment as favorable as possible.<sup>191</sup> Thus, we clearly see the reflection of the Principle of non-refoulement in the charter as the charter endures that refugees get to stay lawfully in the territory and that they are not returned.

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<sup>189</sup>Council of Europe portal. The European Social Charter. The European Social Charter - Social Rights (coe.int) (8/1/2023)

<sup>190</sup>Council of Europe portal. The European Social Charter. The European Social Charter - Social Rights (coe.int) (9/1/2023)

<sup>191</sup>Council of Europe. SCOPE OF THE REVISED EUROPEAN SOCIAL CHARTER IN TERMS OF PERSONS PROTECTED. European Social Charter (Revised) Strasbourg, 3.V.1996 Appendix. European Treaty Series - No. 163. CETS 163 - Appendix - European Social Charter (Revised) (coe.int) (9/1/2023)

### **3.4.3 COMMON EUROPEAN ASYLUM SYSTEM (CEAS)**

Seeking asylum is a person's fundamental right and to provide them protection is International obligation of countries under the 1951 refugee convention. All European countries under the European Union share the same values and with their joint approach aims at assuring high standards for refugees. To welcome the asylum seekers in dignified manner, to ensure fairness and uniform standard in the treatment of refugees and their cases, the member states have shared their responsibilities.

However, there is an inconsistency in both the inflow of refugees and their distribution throughout the European Union. Thus in 1999, a Common European Asylum System was established. The Asylum System was proposed to be reform in 2020, through a comprehensive method in the Migration and asylum policy, based on the following three main pillars:

- An effective asylum and return procedure
- Sharing responsibilities and solidarity
- Strong partnership with the third country

*The Common European Asylum System is governed by a set of five legislative instruments and one agency. They are as followed:-*

**3.4.3.1. THE ASYLUM PROCEDURE DIRECTIVE**

**3.4.3.2. THE RECEPTION CONDITION DIRECTIVE**

**3.4.3.3. THE QUALIFICATION DIRECTIVE**

**3.4.3.4. THE DUBLIN REGULATION**

**3.4.3.5. THE EUROPEAN ASYLUM DACTYLOSCOPY DATABASE,  
(EURODAC REGULATION)**

**3.4.3.6. THE EUROPEAN UNION AGENCY FOR ASYLUM**

#### **3.4.3.1 THE ASYLUM PROCEDURE DIRECTIVE**

The procedure used in assessing the asylum seekers is a decisive factor of whether or not he will be provided protection. The Directive works to harmonize the procedural

guarantees provided during asylum procedure and it ensures the quality of asylum decision making amongst the member states.<sup>192</sup>

It also generates a coherent system to ensure efficiency and fairness on the decision on applications for International protection. Ensuring the following:-

- By establishing clear rules of registering and lodging asylum applications.
- By fixing a time, limit for examination of the application
- By allowing the border procedure and the concept of safe country
- By training officials in decision making and ensuring legal assistance.
- By providing support to people in special needs.
- By providing rules on the right to stay and appear before court.<sup>193</sup>

However, some of the provisions of the Procedural Directive potentially breaches the International Refugee Law, which includes the refoulement of people who are in need of International Protection. At the time of the negotiation of the Directive, which took place in 2005, only the MEPs were consulted and at the end of the negotiation, the Council adopted standards that were lower than what was proposed by the commission and that were supported by the EP. This led to the discrepancy in asylum procedure in European Union states and thus the chances of gaining international protection also varies in the member states depending upon where the application is lodged.<sup>194</sup>

#### ***3.4.3.2 THE RECEPTION CONDITION DIRECTIVE***

The directive focuses on ensuring a common standard of reception conditions in the Europe Union. By ensuring the following:-

- By ensuring applicant's access to housing, availability of food, clothing, health care services, access to education and opportunities of employment.
- By providing attention to vulnerable groups of people
- The directive includes rules and regulations relating to the detention of asylum seekers and alternative detention in respect of fundamental rights.<sup>195</sup>

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<sup>192</sup>UNHCR. The Asylum Procedures Directive. 4a9d12ef9.pdf (unhcr.org) (9/1/2023)

<sup>193</sup> By- European Commission. The Asylum Procedures Directive. Asylum procedures (europa.eu)

<sup>194</sup> Supra note. at, 190. (9/1/2023)

<sup>195</sup>The European Commission. The Reception Conditions Directive. Reception conditions (europa.eu) (9/1/2023)

### **3.4.3.3 THE QUALIFICATION DIRECTIVE**

The directive puts light on the grounds of granting International protection. The directive also grants access to rights and integration procedures to the beneficiaries of International Protection. The directive was amended in 2011, under which a minimum standard and qualification of the national from a third safe country or a stateless person posing as refugee or person in need of International protection must be possessed.

The directive lays down sets of standards based on which an individual qualifies as refugees or can be granted subsidiary protection and also lays down the rights granted to refugees. A refugee is granted the right to permit for home, travel document, equal opportunity and access to employment. Right to education, health care facilities, social welfare, accommodation, integration assistance, etc.

The Directive is further responsible to carry out the following works:-

- The directive clearly lays down the grounds for grant as well as withdrawal of International protection.
- It lays down the grounds for exclusion and the cessation to the refugees status. It further harmonise the criteria for qualifying for the international protection and ensures asylum decisions across the European Union.
- It provides the right protection and integration measures to the beneficiaries, and codifies relevant case laws and from the Court of Justice in the EU.
- It takes in account and addresses specific difficulties of beneficiaries, and ensures protection until the ground of persecution or serious harms persist, without affecting his integration prospects.
- It ensures the interest of children and gender equality is maintained.<sup>196</sup>

### **3.4.3.4 DUBLIN REGULATIONS**

The Dublin regulation (also referred to as the *Dublin III regulation*, previously the *Dublin II Regulation* and the *Dublin Convention*)<sup>197</sup> is a European Union Law. The Law determines as to which member state is responsible for examining an asylum

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<sup>196</sup>European Commission. The Qualification Directive. WHO QUALIFIES FOR INTERNATIONAL PROTECTION (europa.eu) (9/1/2023)

<sup>197</sup> Dublin Regulation [https://en.wikipedia.org/wiki/Dublin\\_Regulation](https://en.wikipedia.org/wiki/Dublin_Regulation) (9/1/2023)

application submitted by a person seeking international protection under the Geneva Convention and the *EU Qualification Directive*, when the asylum seeker first enters Europe. The aim of the regulation is to ensure that an individual does not make multiple applications for asylum in various Dublin member states, which includes the member countries of EU, Iceland, Norway, Switzerland and Liechtenstein.<sup>198</sup> The United Kingdom was bound by the Dublin Regulation Until December 31, 2020. The Dublin Regulation is the cornerstone of the Dublin System, which consists of the Dublin Regulation and the EURODAC Regulation.

#### **3.4.3.5 THE EUROPEAN ASYLUM DACTYLOSCOPY DATABASE, (EURODAC REGULATION)**

*This* establishes a Europe-wide fingerprinting database for unauthorized entries in the EU. EURODAC Regulation keeps records of fingerprints of all the asylum applicants from the member states and keeps the record of persons appearing in irregular border crossings. It largely assists the member states in determining asylum applications made in the EU. The main object of the regulation is to assure the implementation of the Dublin III Regulation. The regulation was the first bio metrically enabled system commissioned by the EU and the First Global multinational biometric system. The regulation came into operation on 15 January 2003, and ever since, has undergone a number of expansion and upgrades.

Today, 28 EU Member States are members to the regulation including UK and Associated Dublin States namely Iceland, Norway, Liechtenstein, and Switzerland. After the implementation of the *EURODAC Regulation number 603/2013*, which came into effect in the year 2015, the national Police and *Europol* can now have access to the system and its fingerprint database for the purposes of prevention, detection and investigation of severe crime including terrorism.

The regulation stores basic minimum amount of information about the asylum applicant that is necessary for enforcement of the Dublin III, which includes:

- The ten rolled fingerprint
- The dates sent by the various states

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<sup>198</sup> Marion MacGregor , THE DUBLIN REGULATION – YOUR QUESTIONS ANSWERED Latest update : 2020/07/13 <https://www.infomigrants.net/en/post/25622/the-dublin-regulation--your-questions> (9/1/2023)



- The place and the date of International Protection applicant, (if applicable)
- The asylum seekers gender and their reference number.

The information is stored for 10 years in case of Asylum Seekers and for 18 months in case of the irregular Migrants.<sup>199</sup>The regulation went under some major redesign in the year 2009 and 2015 respectively with “*Eurodac Recast*”. After its redesign, it came out even more effective and produced better, accurate matching algorithms. The effective implementation of the regulation has helped in effectively regulate the asylum applicant and decrease the number of applications considerably, in 2020 the number of first-time asylum application decreased to 416.600, which had reached to 612,685 in the year 2019, which is much lower than the applications recorded in the year 2015-2016.

#### **3.4.3.6 THE EUROPEAN UNION AGENCY FOR ASYLUM**

The agency is responsible for improving the working and operation of the Common European Asylum system. The agency provides operational and technical assistance to European Union member states in assessing the applications by people for international protection in the European Union.

The ultimate objective of the agency is to reach a phase where all the European Union Member states have harmonized the European Union obligations.<sup>200</sup>

Thus, the CEAS together works directly for the refugees and thus it also reflects the protection of refugees against refoulement under the principle of non-refoulement.

#### **3.4.4 EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN DEGRADING TREATMENT OR PUNISHMENT**

The convention was signed in the year 1987, and came into force on 1 February 1989. The convention works for the supervision of persons deprived of their liberty, to prevent torture and other ill-treatment of persons.

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<sup>199</sup>ETIAS. EURODAC REGULATION TO BE UPDATED AND IMPROVED (18/03/2021)  
<https://www.etiasvisa.com/etias-news/eurodac-database> (9/1/2023)

<sup>200</sup>European Union Agency for asylum. WHAT WE DO. What We Do | European Union Agency for Asylum (europa.eu) (9/1/2023)

### **3.4.5 THE COUNCIL OF EUROPE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

It was established to work for the minorities previously. It deals with the minority issues, and worked in the development of the European Charter for Regional or Minority Language. Various measures to promote the use of regional or minority language are suggested, in the fields of Education, court proceedings, Public Service, media, cultural facilities, economic and social life etc.

### **3.4.6 THE CIS CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOM**

The Commonwealth of Independent States was entered into force on 11 August 1998 upon the third ratification.<sup>201</sup> “The CIS Convention links together the former Republic of Soviet Union (with the exception of the three Baltic States), adopted a convention on Human Rights in May 1995. Under this convention standard rights were laid down like Right to life to freedom of religion, expression, assembly and right to marry, right to work, right to social security, right to education, right to every minor child for protective measure, right to persons belonging to national minorities to express and develop their ethnic, linguistic, religious and cultural identity, etc.”<sup>202</sup>

### **3.4.7 THALES COGENT AUTOMATED BIOMETRIC IDENTIFICATION SYSTEM (CABIS)**

This system is used for investigation, identification and verification of civil and border Identification, law and enforcement application. It is a scalable and customizable solution, that helps in performing tasks like, processing, editing the applications, searching, retrieving and obtaining fingerprints, palm print, getting face and iris image and to record objects. It helps in finding fast answers for the forensic expert, from amongst the bulk of daily field cases. By speeding up it helps the government agencies provide better service and protection to the communities.<sup>203</sup>

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<sup>201</sup>MALCOLM N. SHAW. INTERNATIONAL LAW. SEVENTH EDITION. ILI Library- 57964, 341 SHA. Cambridge University Press. (5/5/2022)

<sup>202</sup>*Id* at 198.

<sup>203</sup>Thales. Thales Cogent Automated Biometric Identification System (CABIS). Automated Biometric Identification System (ABIS) (thalesgroup.com) (10/1/2023)

### **3.4.8 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (COGENT AFISES)**

Developed to over 200 applications in more than 80 countries worldwide. Thales solution can be very effective in securing the AFIS system of any country with its strong authentication and encryption solution. Just the way (HSM and Tokenisation) as a company does with India's Aadhaar System, which is the largest biometric database in the world.<sup>204</sup>

### **3.4.9 EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)**

The convention formally known as *Convention for Protection of Human Rights and Fundamental Freedoms* <sup>205</sup>is an International Convention made to protect human rights and political freedom in Europe. The convention was drafted in the year 1950 and came into force on 3 September 1953. All Council of Europe member states are party to the convention and the new members are expected to rectify the convention at the earliest.<sup>206</sup>

The convention safeguards the rights of any person whose rights are likely to be violated under the convention by any of the state parties. In case of violation of rights by the state parties, the individual or group can file a case in the court; the judgment of the court shall be binding on the states. Certain works like to see to the execution of the judgment and to ensure payments awarded by the court, are appropriately compensated to the applicants in case of any damage, and are monitored by another body called "*The Committee of Ministers of the Council of Europe.*"

### **3.4.10 EUROPEAN UNION COURTS**

The courts in the European Union also ensure the well-being of the refugees and to address their issue from time to time. Following are several courts:-

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<sup>204</sup>Eurodac: the European Union's first multinational biometric system <https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/customer-cases/eurodac> Last updated 28 January 2022. (10/1/2023)

<sup>205</sup>European Convention on Human Rights. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (10/1/2023)

<sup>206</sup>European Convention on Human Rights [https://en.wikipedia.org/wiki/European\\_Convention\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/European_Convention_on_Human_Rights). (10/1/2023)

**(i) Court of Justice of the European Union (CJEU)** One of the two major courts includes the Court of Justice of the European Union (CJEU). It is the highest court of justice and has the jurisdiction to hear requests for preliminary ruling, appeal and other matters from the National Court.

**(ii) The court of justice-** the other court is the court of justice; the court has played an important role in overseeing the common application of CEAS.

**(iii) The European Court of Human Rights (ECtHR)** – the court has the jurisdiction to rule the matters concerning interpretation and application of the ECHR. The judgments pronounced by the ECtHR are final and binding on states in case, they are the party. So far, the ECtHR has pronounced significant judgments relevant with regard to the European asylum laws, which concerned the detention of refugees and migrants, the collective expulsion of aliens and application of Dublin System.

The state has the jurisdiction to hear individual applications. The Individuals, communities or the government may also file cases in the domestic court or quasi-judicial bodies to claim their human rights.<sup>207</sup>

Besides the previously mentioned The International Law of the Sea, also ensures protection of refugees at the coastal area and the territorial sea. The Territorial Sea comprises the seabed and its subsoil, the adjacent water, and its air space. At present, there are 137 state parties to the LOSC, who have established twelve nautical miles territorial sea.<sup>208</sup> ‘LOSC is the first international legal instrument made for the collaboration of marine security. Marine security supports international order maintained through rule of law; it relies upon the regulation of, and adherence to the principles of the customary and formal international law, judicial decision, other protocols, and customs. The convention supports border issues of security, prescribes specific enforcement and jurisdiction requirements of states.’<sup>209</sup> Subject to this

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<sup>207</sup>DR.RAJNI ABBI. UNITED NATIONS ORGANIZATION ITS ROLE IN THIRD WORLD COUNTRIES. REVISES. (2017) ISBN- 878-93-82110-20-0. ILI Library-58299, 341.123 ABB. Published by- The Readers Paradise. (3/5/2023)

<sup>208</sup>YOSHIFUMI TANAKA. THE INTERNATIONAL LAW OF SEA. (Second Edition 2015) ILI Library- 57871, 341.225. Cambridge University Press. (3/5/2023)

<sup>209</sup>MARITIME SECURITY, CONVENTION ON THE LAW OF THE SEA. CHAPTER 6. 64 Maritime Security and the Convention on the Law of the Sea. Chapter 6: Maritime Security, Convention on the Law of the Sea – Law of the Sea (tufts.edu) (11/1/2023)

convention, ships of all states, whether coastal or landlocked enjoys the innocent passage through the territorial sea.<sup>210</sup>

### **3.5 PROTECTION OF REFUGEES UNDER THE EUROPEAN LAWS AND THE METAMORPHOSES IN THE PRINCIPLE OF NON-REFOULEMENT**

When we look at the European Union Laws for the Protection of refugees, we notice that where the European Convention of Human Rights, the European Social charter, European Convention for protection from torture, inhuman, degrading treatment. The CIS convention on HR and fundamental Rights, are purely for the protection of people in need of International Protection protects people from refoulement. However, when we look at the Common European Asylum System, even though all states in the European Union share the same value, their joint approach aims at ensuring high standards for refugees. To welcome the asylum seekers in dignified manner, to ensure fairness and uniform standard in the treatment of refugees and their cases, the member states have shared their responsibilities. Not all the Agencies under the Common Asylum System are inclined towards refugee protection. While the Asylum Procedure Directive and the Reception Condition Directive are to provide aid to the refugees and protect people from *refoulement* by giving them the right to stay under the *Asylum Procedure Directive* and ensure common standard of reception under the *Reception Directive*.

However when we look at the Qualification Directive, the Directive appears strict as a person has to qualify the set of standards to qualify as refugees and deals with the cessation and exclusion of refugees. Thus, the Qualification Directive is more inclined towards ensuring that only genuine people in need of international protection enter the European Union. Further, the Dublin Regulation Law that determines which country is responsible for examining asylum applications, is also for the welfare of the state, as it ensures that the states are not overburdened and thus this law is not purely for the protection and welfare of the refugees.

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<sup>210</sup>*Supra note* at 63.

The other CEAS Agency which is the EURODAC Regulation, which is in charge of keeping the record of the figure print of all asylum applicants is also inclined towards ensuring the safety and protection of the member states and is not purely for the refugees or asylum seekers. Further CABIS and Cogent AFISes are also mainly of the protection of the states and not for refugee protection.

### **3.6 SUMMARY OF THE CHAPTER**

Thus, we see the principle of non- refoulement embedded in almost all the above-mentioned International Instrument for the protection of refugees. We see that Article 22(8) of the American Human Right Convention 1969 is clearly included as a human rights obligation. The 1951 refugee convention directly reflects the principle of non-refoulement under Article 33 of the convention. In Latin America, we see the *Cartegen Declaration, 1984* restating the very principle of non-refoulement, referring it as the cornerstone in the protection of refugees internationally and is observed as a *jus cogens* norm.

Under the European Legal Framework, we see that the principle of non-refoulement is the main element of the European Union's fundamental Rights rules, which is clearly reflected in Article 78(1), the *Treaty on Functioning of the European Union*. Article 18 and 19 of the *EU Charter of Fundamental Rights* also prohibits *refoulement*. Article 3 of the *EU convention on Human Rights* and the *EU court on Human Rights* also encompasses the principle of non-refoulement. The European Union Asylum System also prohibits refoulement of any person to a place where there is a serious risk to his life involved owing to indiscriminate violence during an armed conflict.

However, the Council of Europe Framework Convention for the Protection of National Minorities the Thales Cogent Automated Biometric Identification System (CABIS) And the Cogent AFISes do not directly reflect the principle imbibed in them.

The general prohibition of the refoulement is imbibes Under Article 3 of *European Convention on Human Rights* 1950, which proclaims the prohibition of torture as a person's absolute right. *The European Union Charter of Fundamental Rights* assessed that the primary European Union Law of the 1 December 2009, comprises

special provision for the principle of non-refoulement. The Qualification Directive (2011/95/EU) formulates the need for non-refoulement with regards to asylum.

The vulnerability of people globally, leaving their countries amid various armed conflicts, discrimination based on gender, caste, creed, and climate disasters etc. lead the academicians and international agencies to design and to provide legal assistance to refugees around the world. The introduction of the principle of Non-refoulement in the 1951 convention and its protocol, 1967 has emerged as the rule of customary International Law and is considered as the peremptory norm of Just Cogent.<sup>211</sup>

The Discrimination Laws also protect people against Discrimination. It protects people from being treated differently, given opportunities or being served differently, owing to their nationality, race, colour, religion, gender, or disabilities.<sup>212</sup> Sir Fredman Suggests, the common core of non-discrimination law is to ensure “that individuals should be judged according to their personal qualities.”<sup>213</sup> Thus, we see that besides the conventions of 1951 there are several other international laws that directly or indirectly guards and protects the refugees and their interests.

Thus, chapter three deals with the refugee protection laws both at the International level and in European Union laws. The chapter deals with the emergence and development of the legal framework for the protection of refugees and how these laws directly or indirectly reflect the principle of non-refoulement imbibed in them. How one after the other humanitarian crisis led to the emergence of one law after the other, to finally shape the refugee protection law.

The chapter specifically deals with the International laws that directly or indirectly provides protection to refugees. For example IRO, UDHR, UNHCR, 1951 refugee convention, the OAU, ICESCR, ACHR etc. We also see the European Union laws specifically that provide protection to the refugees and asylum seekers in Europe.

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<sup>211</sup>Ishant. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW. (26 Dec. 2020) United Nations High Commissioner for Refugees. <https://legalreadings.com/the-rights-of-refugees-under-international-law/> (11/1/2023)

<sup>212</sup>Upcounsel. DISCRIMINATION LAWS: EVERYTHING YOU NEED TO KNOW. Discrimination Laws: Everything You Need to Know (upcounsel.com) (11/1/2023)

<sup>213</sup>JAMES C. HATHAWAY. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (Second Edition- 2021). Published- Cambridge university press. ISBN 978-1-108-49589-9 (11/1/2023)

These laws are the European Convention on HR, the European Social Charter, the common Asylum System (CEAS), various directives and regulations under the CEAS. The European Convention on prevention of torture, convention for the protection of the minors, the CIS convention, the CABIS etc.



# CHAPTER- 4

## EUROPEAN REFUGEE CRISIS AND THE STATE'S IMPLEMENTATION OF PRINCIPLE OF NON-REFOULEMENT

### 4.1 INTRODUCTION

The European Union is a political and economic alliance of 27 countries. Namely, Austria, Belgium, Bulgaria, Croatia, Cyprus, Crèche Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden. Most of the European Member state are on the Continent of Europe, only European member out of the 27 situated outside the European Continent is Cyprus, Cyprus is situated in Asia.



Image no-4<sup>214</sup>

Europe was suddenly burdened and flooded by refugees in the year 2015 and hence that year is marked as the year of the beginning of the European Refugee crisis. It was

<sup>214</sup> *European Union Member State Map- Europe – mappery [European-Union-Member-States-Map.jpg](#) (2362×1665) (mappery.com) (12/01/23)*

especially post Syrian war and the Iraq Conflict, the number scooted up. The massive inflow was initially welcome and supported by some of the European countries like Germany, Sweden, France, and the United Kingdom. The first marked or known European Refugee Crisis is the 2015 Refugee crisis. Even though the crisis surfaced in the year 2015, the foundation was laid centuries back. At one time in history all that the European Countries did was to colonies countries and continents like Asia and Africa. They drained the wealth, ruled for hundreds of years and when they withdrew themselves, they left these countries in acute poverty and in land dispute with the neighboring countries; examples are India-Pakistan, Israel and Palestine Etc.

It was the accidental discovery of oil by the two American men in Saudi Arabia, which actually paved the way for the contemporary European Union Refugee Crisis. The discovery of oil was a boon both to the natives and to the millions of immigrants who came all the way from Asia and Africa to the Middle East. Also led to the never-ending Geo-political crisis across the regions.<sup>215</sup>

There are many other major reasons that led to the refugee crisis in Europe. The major factors that led to the crisis were Human Rights Violations, Economic strains, Wars in the neighboring countries like Syria, Afghanistan, Iraq, and Libya.<sup>216</sup>

## **4.2 REASONS FOR THE EUROPEAN UNION REFUGEE CRISIS**

There are several reasons, which led to the refugee crisis in the year 2015 and the recent refugee crisis of the 2021 led by Russia waging war with Ukraine. Following are some of the reasons that led to the European Union Refugees Crisis.

### **4.2.1 PERSECUTION IN THE NEIGHBORING COUNTRIES**

One of the main reason of the European Union refugee crisis is persecution of people in the neighboring countries of European Union States. For instance the Christian persecution in Nigeria and the relief discrimination during the COVID-19 was faced by the Christians in Ethiopia, Nigeria, Middle East, Malaysia, Vietnam etc. Thus, these become the leading reasons for people to flee, and since some of the countries

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<sup>215</sup>ALEX ANDREWS GEORGE EUROPEAN REFUGEE CRISIS IN A NUTSHELL - LAST UPDATED ON February 9, 2016. Clear IAS. European Refugee Crisis in a Nutshell - Clear IAS (12/01/23)

<sup>216</sup>Byjus. European Refugee Crisis - Overview and Factors (byjus.com) (12/01/23)

facing the instances of persecution on various grounds are close to European Union States, people flee to EU in large numbers, further shaping the refugee crisis. Persecution of people for the reasons of race, religion, sex, nationality, political opinion, social groups, is one of the main reasons why people move out of their homes as refugees. Religious refugees can be found everywhere in the world, for example- Muslims are persecuted in Myanmar, Christians are persecuted in Central Africa Republic and Hindus are persecuted in Pakistan. A political refugee often has to leave his country for the reasons of having political opinion or belonging to a particular group, having political opinion. Example is Gloria Estefan, who had to flee Castro region in Cuba. Another example is Alexander Ginsburg who had to flee Kremlin at the time of Cold war and Dali Lama had to flee Tibet to claim refugee in India

A gender refugee is a person fleeing persecution for the reason of sex. LGBTQ are the most targeted people in countries, where they are not accepted. They often face gender-based violence, arbitrary detention, face discrimination in employment, are physically attacked and tortured, they are often accused of immoral behavior, they are often deprived of health care and education facilities. Thus, they flee to countries, which has provided them legal status, equal opportunities and treatment and protection.<sup>217</sup>

#### **4.2.2 HUNGER, FAMINE, DROUGHT AND FOOD INSECURITY**

People often flee their homes to protect themselves and their families from hunger, famine, drought and food insecurities. According to the WHO article, 2023. Millions of people in the Great Horn of Africa are facing acute hunger due to shortage of food and water owing to drought in the recent decade.<sup>218</sup>

#### **4.2.3 CLIMATE CHANGE**

Climate change refugees have not yet been recognized as a valid reason for claiming refugee status and they have not been defined in the 1951 refugee convention not in

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<sup>217</sup>Phineas Rueckert. 5 OF THE BIGGEST REASONS WHY PEOPLE BECOME REFUGEES. (August 15, 2017). 5 Of The Biggest Reasons Why People Become Refugees (globalcitizen.org) (10/3/2023)

<sup>218</sup>World Health Organization. DROUGHT AND FOOD INSECURITIES IN THE GREAT HORN OF AFRICA. Drought and food insecurity in the greater Horn of Africa (who.int) (10/5/23)

its 1967 protocol. However the climate change refugees continue to grow as an effect of climate change, they are mostly internally displaced and at times cross borders. The 10 countries affected by the climate change are Afghanistan, Bangladesh, Chad, Haiti, Kenya, Malawi, Niger, Pakistan, Somalia, and Sudan.<sup>219</sup>

Weather conditions are another major reason, which highly determines the refugee mobility. Normally it is the summer season when there is major inflow of refugees in European Countries. It is also those times around the year when the weather is not too bad and harsh.

#### **4.2.4 EASY ROUT WAY TO EUROPE**

The two easy routes to enter the European countries are, 1<sup>st</sup> from Libya to Italy and second one from Turkey to Greece. Libya to Italy was the traditional route for the refugees for many years however the most easy route is the one's from Turkey to Greece but due to its hard restriction it the most difficult and complicated path., until the recent past. Macedonia has lifted the harsh measures of preventing refugees from entering the country, which led to the opening of the Balkan route. Thus, now refugees from Syria, Iraq, Economic migrants of Pakistan and Bangladesh and Afghanistan, cross through Turkey and enter Europe, making further journeys to their desired European Countries.

#### **4.2.5 LESS DISTANCE AND DROPPED TRAVEL PRICE.**

Due to the close proximity of some of the European Countries, the time and money to travel costs less. For example, crossing Greece and Turkey consumes 20 minutes to 1 hour. Since there is less distance to travel and in less time, the price or the cost of the travel decreases, also they are saved from paying extras or too much to the smugglers to get them through the border of the Balkan Countries.

#### **4.2.6 GERMANY'S WORM REFUGEE WELCOME**

Germany has been very lenient with refugees, and with the German Chancellor Angela Merkel's announcement and assurance to grant temporary residence to all

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<sup>219</sup>Concern worldwide US. 10 OF THE COUNTRIES MOST AFFECTED BY CLIMATE CHANGE. August 29, 2022. 10 of the countries most affected by climate change | Concern Worldwide (concernusa.org) (10/5/23)

refugees arriving there, lead to a huge number of refugee inflow. However, it is not clear as to what led to this flow in actual because on being interviewed so many of the refugees say they got encouraged to arrive in Germany by watching the TV footage of Germany welcoming refugees.

#### **4.2.7 CONSCRIPTION OF THE SYRIAN GOVERNMENT**

To fight the rebels against the government, the president Bashar al-Assad has embarked on a drive to enlist reservists to serve in the army. Many Syrians fleeing to Europe have accused the government of forced conscription, according to them men completing 10 years in military service, or basically, all the men under 30 need to join the military.

#### **4.2.8 EASY ATTAINMENT OF PASSPORT IN SYRIA**

Even though the Syrian government went on the path of conscription at the same time it also allowed young men to move out, who did not want to join the military, by just making a payment of \$300. To make the movement easy the Syrian government both in Syria and at the embassies abroad made the passport grants to Syrians easy.

#### **4.2.9 INADEQUACY OR THE UNDERFUNDED INTERNATIONAL AID EFFORT**

The inadequate international funding or improper or unequal funding leads to uneven distribution of refugees in and around Europe. Refugees often move to the countries that can provide them a better life and future. Unlike Europe, the other neighboring countries hosting refugees do not get adequate amount of funding which leads to unsatisfactory living conditions for refugees, and hence the majority of the refugee population pave their ways to European countries. For instance, before the massive influx of people in Europe, nearly 4 million Syrians had fled to Turkey, Jordan and Lebanon, but since life turned out to be miserable there, the others made their move to Europe in the search of better lives. Besides the previously mentioned reasons some other factors that led to refugee crisis are:-

#### **4.2.10 THE DICTATORSHIP REGIMES AND ISLAMIC FUNDAMENTALISM**

The dictatorship regimes and Islamic fundamentalism turned the Middle East into the most violent and disturbed place and the western powers did not take appropriate actions to curtail the same, so as to keep their oil deals smooth and to maintain their status in the Gulf Boom which was created in the early years of 80's.

#### **4.2.11 THE SHIA-SUNNI DIVIDE**

Further contributed to the crisis, by dividing people and society, the division resulted in people fleeing from countries like Palestine during the Iraq-Iran War, people fleeing during the Iraq-Kuwait etc.

#### **4.2.12 WARS**

The wars in the region of Middle East and North African regions and other neighboring countries seem never ending. They start one after the other, these are especially the countries, which have once been colonies of either of the European Countries, and have been left with a one or more number of disputes that have not been settled until date. Hence, to avoid disturbed and uncertain life the refugees face towards European Countries which are more developed and peaceful.<sup>220</sup>

##### *'The Syrian War*

Wars in Europe's neighboring countries have a direct effect on European Countries especially that of the Syrian Civil War. In March 2011, the Syrian Civil War broke out in Syria, which continues even today it is estimated that 11 million refugees have left Syria since then and around 6.6 million of them are still internally displaced. The driving factors of the Syrian refugees towards European countries are; the war itself, Unemployment, shortage of food supply, lack of clean water due to war in Syria, forced migration and uncertainty of future Syrian. On the contrary of living conditions in Syria. Europe offers a better life to the refugees here, this includes, a safe

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<sup>220</sup>The Washington Post. 8 Liz Sly. reasons Europe's refugee crisis is happening now – (Sept. 18, 2015 at 5:00 a.m. EDT) The Washington Post. 8 reasons Europe's refugee crisis is happening now - The Washington Post. (10/5/23)

environment, better standard of life, availability of education, health care facilities and other welfare schemes.

Furthermore,, money can be sent back to friends and family back in Syria ,<sup>221</sup> by the refugees staying in the European Union, bettering the refugees family living conditions and other problems. At the same time, the low-wage workforce to do the jobs in the European Union is leading to the imbalance in the labour force in Syria. In Syria, there has been a shortage of workers due to mass influx in the European Union, which leads to reduction in tax collection further leading to restricted economic growth. The issue of deportation can further lead to imbalances<sup>222</sup>

#### *Ukrainian War*

The Russian Invasion in Ukraine is another reason for the continuous in pour of refugees in the European Union. Millions of people fled to find refuge in the neighboring country Europe, by July 2022, nearly 5.6 million Ukrainian refugees have crossed the European Border and are taking refuge in European states like Poland, Germany, Czech Republic, Turkey and Italy.<sup>223</sup>

### **4.2.13 EUROPEAN UNION PROJECT TO BRING LABOURS TO BUILD EUROPE**

Normal common people often can be seen sandwiched in between the atrocities of ISIS and the ineffective regimes backed by the west results in poverty, and terror. Thus, the only way people see a better life is to drift towards Europe.

Thus we see an upsurge of the cross border movement as a consequences of war, climate change etc. The earlier crisis and the current crisis could been fixed only if the states complied with their respective obligations, international laws were more binding, or there is an availability of more remedies. In addition, when we talk about the refugee mobility, we see that the international lawyers tend to ignore the literature on the Indra-Imperial mobility. A large number of people in the empires like French

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<sup>221</sup>Internet Geography. INTERNATIONAL MIGRATION FROM SYRIA TO EUROPE. International migration from Syria to Europe - Internet Geography. (10/5/23)

<sup>222</sup>Ten years into the conflict: Syrian integration in Europe | European Website on Integration (europa.eu) (11/5/23)

<sup>223</sup>News European Parliament. The EU response to the Ukraine refugee crisis, (Updated 11-07-2022). The EU response to the Ukraine refugee crisis | News | European Parliament (europa.eu) (11/5/23)

and Britain, Dutch Spain and Portuguese led to internal mobility these countries carries out project to bring labours to build their empire for example millions of Chinese and Indian were moved involuntarily as a part of indented labour to the empire. There were also transfer of people from one place to another as part of political imaginary empire and colonial integration.

However, later an effort was also made to restrict internal mobility by the British and French. However, the Intra-mobility could not survive for long as an idea or Practice this was because by the time the empires thought of restricting the intra- mobility the decolonization for both French and United Kingdom coincided and the decades of their economic boom fell by the raise of World War II, soon after the decolonization.<sup>224</sup> Europe again fell in need of labour and hence the mobility started back again.’

### **4.3 EUROPEAN UNION ISSUES OF HOSTING REFUGEES**

The needs of the refugees after leaving their country is the biggest problem. Escaping all kinds of threats and persecution is not the end but beginning of many other problems for refugees. After managing to come to a safe country, refugees often have a hard time facing language barriers, gender discrimination and gender based violence, post-traumatic stress, no legal work permit and income, below standard living conditions and other kinds of problems. Providing necessities like food, water, shelter, healthcare, education, poverty, unemployment, Covid19 pandemic, and enduring protection of some of the human rights of the refugees often become very challenging. Besides the previously mentioned, complications also arise when refugees in big numbers are mostly hosted in countries which themselves are sensitive to future conflicts, violence, or are low on their resources. This further puts the future of refugees at stake, resulting in growing insecurities, anxiety and fear in their minds.

Once a refugee enters the host countries various refugee related issues accompany him to the host country. The refugee issue not only affects the refugees alone but also

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<sup>224</sup> EDITED BY- INGO VENZKE, KEVIN JON HELLER. CONTINGENCY IN INTERNATIONAL LAW ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES. ILI Library Press- 58860, 341 VEN. Oxford University Press. (3/5/2022)



the citizens of the host nations. Following are some issues that are faced by either the refugees or the natives or both.

At times, the population of the refugee inflow can be larger in number and this threatens the cultural and religious fragmentation. The unrest and non-acceptance of refugees only gives rise to hatred for the refugees, which once surfaces calls for reactions from the refugees and vis-a-vis. This is the reason we see several classes between the natives and the refugees and the states trying to settle the conflicts.

The largest number of refugees are usually hosted by not only the developing countries but also by the poor countries. These refugees often settle down in remote areas with high levels of poverty. The refugees have a long-term socio-economic impact on the host population, if the refugees' issues are not adequately addressed, it can create major conflict situations and insecurities in the host country.

Right now, the major refugee issues are burden shearing. Burden sharing of refugees among the member states- is the major issue of hosting refugees. With the new refugee crisis occurring because of Russia waging war with Ukraine after the 2015 European Union refugee crisis. The question of burden sharing raises a major concern.

*Increasing diversity* in the society, *multi-cultism*, difficulties in managing the welfare of the state, the *Native taxpayers are left to pay a hefty toll* as the inflow burdens the state and refugees take time to settle. *Fear of job loss*, a serious *demographic issue* in countries like Germany.<sup>225</sup> No matter what arrangements the concerned states make to manage the refugee inflow and to provide them with material needs; it would never be able to address their emotional needs. Any refugee leaving their country comes with a very heavy heart, having left behind their families, the homes that they built with great emotions and love, missing the comfort and status that they once had in their own countries. Refugees are being forced out of their country and surviving in a strange country, to learn and understand the different way

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<sup>225</sup>Author: Zheng Nie. THE EFFECTS OF REFUGEES ON HOST COUNTRIES. Published: 9/16/2015 12:47:04PM <https://globaledge.msu.edu/blog/post/30996/the-effects-of-refugees-on-host-countries#:~:text=On%20average%2C%20a%20country%20has%20to%20spend%20about,jobs%20from%20locals%20and%20raise%20the%20unemployment%20rate.> (11/5/23)

of living, *language barriers, different laws, lack of communication, non-acceptance*, and just managing everyday survival, is not easy for them. Still they manage because they have less to no option.

The refugees in many of the host countries *face restrictive asylum regulations*, limiting their freedom of movement, access to primary education, limits the access to skills training, affects productive livelihoods, thus, limits their potential human growth and development.

In case of massive inflow of refugees the *European Union's Dublin Regulation* assigns the responsibility for registering and processing the asylum application to the *first Schengen country* in which the refugee first arrives (so for example if a refugee arrived first in Spain, Spain will be his first Schengen country). In order to support Schengen, the common institution created a support system called- *Frontx*, which worked on the border control. Another support system named, *The European Asylum Support Office*. However, they could do only a little, because of which they were neither empowered, nor sufficiently funded<sup>226</sup>

‘Due to lack of clarity in the Dublin III Regulation, the *Court of Justice of European Union (CJEU)*, in the case of *Staatssecretaris van Justitie en Veiligheid, C-745/21*, found that in Article 16(1), of Dublin III Regulation, must be interpreted as not applicable. Especially where there is a dependency link either between an applicant seeking international protection and between the applicant's spouse, legally resident in the Member state, in which the application for protection was lodged, between the unborn child of such applicant and the spouse who is father of the child.

The CJEU also decided to reformulate the question of the referring Court as to whether Article 17 (a) of Dublin III Regulation precludes national Legislation obliging authorities to access asylum application of pregnant applicant, on the basis of best interest of the child, even though the other citations indicate responsibility of a different member state.’<sup>227</sup>

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<sup>226</sup>Stefan Lehna. HOW THE REFUGEE CRISIS WILL RESHAPE THE EU. Article February 2016. How the Refugee Crisis Will Reshape the EU - Carnegie Europe - Carnegie Endowment for International Peace. (11/5/23)

<sup>227</sup>Refworld. L.G. TEGENSTAATSSECRETARIS VAN JUSTITIE EN VEILIGHEID, VERZOEK OM PREJUDICIELE BESLISSING, C-745/21, ECLI:EU:C:2023:113, European Union: Court of Justice of the European Union, (16/2//2023).

## **4.4 THE IMPACT OF CRISIS ON REFUGEES AND THE NATIVES OF THE HOST NATIONS**

Any refugee crisis leads to a number of problems at both the end of the refugees as well as the host nations and both are made to suffer during the crisis, which often can take years to settle down. The host communities or the countries often face immense pressure in hosting refugees and making standard arrangements for refugee families and communities. Mostly refugees move in mass as they share almost the same reasons to leave their countries and that could be a threat to life, hunger struck or very less jobs and income.<sup>228</sup> At times the number of mass refugee inflow could be greater than the population of the host countries and often struggle to find the balance of the rights of both, despite the conflicts the host communities even with limited resources are left with refugee communities for years, at times decades.

When we talk about the refugee inflow impacts on European Countries, we also talk about the impacts on the refugee population in Europe. Any refugee inflow has both positive as well as negative effects on the host countries. At the same time, it also has a positive and negative impact on the refugee population as well. The inflow of the sudden refugee population has received both kinds of gestures from the natives, that is some group or section or states have welcomed the refugee whereas some groups, section, and states have shown absolute none welcome gesture. Below are some of the positive and negative impacts of the crisis on Refugees as well as the Host Country and its citizens.

### **4.4.1 IMPACT OF REFUGEE CRISIS ON THE HOST NATIONS AND ITS CITIZENS**

### **4.4.2 IMPACT OF THE REFUGEE CRISIS ON REFUGEES**

### **4.4.1 IMPACT OF REFUGEE CRISIS ON HOST NATION AND ITS CITIZENS**

The basic problems that the states are facing is that the European Union does not have a formal definition of a federal state; however, the Union has developed some of the

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<https://www.refworld.org/cases,ECJ,63ef86954.html> (25 February 2023)

<sup>228</sup>Action Against Hungary. THE GLOBAL REFUGEE CRISIS. The Global Refugee Crisis: What You Need To Know | Action Against Hunger. (29/06/22)

federal features. The Union lacks the power to enforce its own policies, securities and defense forces; it has to depend on its member states for enforcement of the regulations and policies made at the Union level. Thus, the Union is much more decentralized than the regular federal states.

Following are the impact of refugee crisis on the host country and its citizens:-

#### ***4.4.1.1 THE CULTURAL INFLUENCE***

The sudden inflow also brings in a great cultural diversities which strains both the natives as well refugees. The multi-cultures that come with refugees and the multi-culture that the refugees receive when arriving in other countries seems hard for both to harmonies. Balancing them and promoting them are initially hard and not everyone is comfortable with such adaptation. However, both the refugees and the natives get a chance to learn and experience the variations in religion, politics, culture etc. and both benefit from it. Multiculturalism also brings different forms of arts, dance, music, and contributes to society.

At the same time there is also the Problem of Multi-Cultural-ism- there is fear of great diversity leading to several riots. For example, in 2008-2009 there were riots in Sweden owing to the multi-cultural-ism. Further, in the year 2013 in Stockholm there were protests against the police brutality, youth marginalization and the urban inequality

As cultural exchange Europe also gets a chance to see the Syrian or the other cultures that come along the refugees coming from various disturbed countries. New flavor of food is added to the menus in the restaurant, to try different food, new forms of music and culture is available for the Europeans to explore. Thus, Europe does not get less but more from hosting refugees. However, the influence must not over shelter the existing Culture, food, music and other way of life of the natives of the European Union.

#### ***4.4.1.2 ECONOMY AND THE DEMOGRAPHY***

The history has also shown how the refugees have contributed to the economy of the host countries by their hard work and has shaped the host countries. Examples are

displaced Europeans fleeing to the United States of America, Vietnamese boat people moving to Australia, Ugandan Asian shaping UK, etc.<sup>229</sup>

The population of the Native Europeans is shrinking very fast. Which means that a declining workforce will have to support the older people. It is estimated that by the year 2060, the old age dependency ratio will be 27.8. One of the four solutions presented for the problem is to bring in more refugees. Refugees coming to Europe are majorly young, they are willing to do works that the natives abstain from and they can be easily channelized to the workforce by skill development programmers.

#### ***4.4.1.3 EUROPE'S ADDITION DUTY TO PROTECT SYRIAN CITIZEN BEING TARGETED***

Once citizens manage to enter European countries, their safety becomes an European country's added duty, besides providing them the basic needs for a decent life like shelter, food and other basic requirements.

Referring to the preliminary rule, the standards for the reception of the applicants for international protection, under the directive 2013/32/EU. Under Article 9, the right to remain in any member state during the examination of application- the Directive 2012/33 EU, the examination of first sub-paragraph, Article 8(3)(a) and (b) of Directive 2013/33/EU, of the European Parliament and of the council of June 2013. Laid down standards for reception of the applicants for the international protection, has disclosed that nothing is capable of effecting that provision in the light of Article 6 and 52(1) and (3) of the Charter of Fundamental Rights of European Union.<sup>230</sup>

#### ***4.4.1.4 LOW-WAGE WORKFORCE TO DO THE JOBS LOCAL PEOPLE DO NOT WANT TO DO***

Since the impact of refugee, inflow has both positive and negative effects. With the huge inflow of refugees, a huge inflow of human resource also comes. Europe get

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<sup>229</sup>Debating Europe. ARGUMENTS FOR AND AGAINST LETTING MORE REFUGEES INTO EUROPE. (06.2020). Arguments-for\_against.pdf (griterasmusplus.eu)

<sup>230</sup>K. v Staatssecretaris van Veiligheids Justitie, C-18/16, European Union: Court of Justice of the European Union, 14 September 2017, <https://www.refworld.org/cases,ECJ,59c8d0334.html> (26/2/2023)

labors at a low wage, to get those things done which other wish the European citizens would not do. The given wages are considerably decent for a decent life and to send some money back home, where the value of the European currency is more to afford them a better life. At the same time there is also a *fear of job loss*. The European Union Expansion in the year 2004 further led to the rise of the economic migration from the accession states, this led to the rise of anxiety among the natives as it exerted pressure on the public services, competition for job, organization of several crimes and cultural change in the area of migrant settlement.

#### ***4.4.1.5 PRESSURE ON EDUCATION AND HEALTHCARE***

Europe is suddenly entrusted with added responsibility of Education and healthcare assurance to the big number of refugees flowing in. Some small countries in Europe with very little population find it very difficult to meet the needs in shortage of qualified doctors, nurses and teachers in appropriate numbers.

#### ***4.4.1.6 REINTEGRATION OF THE RETURNEES***

The *reintegration of the returnees*, after the post - conflict situation, poses a major challenge. After the initial humanitarian action of providing protection to the refugees, the reintegration and reconstruction does not happen in the same way.<sup>231</sup>

#### ***4.4.1.7 COMMUNAL CLASHES***

The entry of refugees have intensified the communal classes affecting both the refugees as the natives. These classes can be triggered due to various factors. Some instances of communal classes' are-

- Inter-communal clashes in EL Geneina, in Sudan's West Darfur states, reportedly forced 1860 refugees to cross into Chad.<sup>232</sup>
- On 5 April 2019, clashes took place between the Migrants with Greek riot police outside the refugee camp in Divata. The migrants and the refugees that day gathered to walk to the Greek border to enter Europe.<sup>233</sup>

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<sup>231</sup>UNHCR. FRAMEWORK FOR DURABLE SOLUTIONS FOR REFUGEES AND PERSONS OF CONCERN. (May-2003) UNHCR - Framework for Durable Solutions for Refugees and Persons of Concern (26/2/2023)

<sup>232</sup>UNHCR. WEST DARFUR CLASHES FORCE NEARLY 2,000 REFUGEES INTO CHAD. (13 April 2021) UNHCR - West Darfur clashes force nearly 2,000 refugees into Chad. (26/2/2023)

- Deadly clashes took place in the Palestinian refugee camp of Lebanon. It is reported at least three people were killed between the rival armed groups in the Ain al-Hilweh camp, near the city of Sidon. The clashes took place between the two groups namely the Jund al-Sham and members of Palestinian President Mohmoud Abbas' Fatha movement.<sup>234</sup>
- Fight broke out on 18 January 2022 in Tongo, between unidentified armed groups and federal forces. Nearly 10.300 refugees were looted and burned.<sup>235</sup>

These are only a very few incidences of clashes between the refugees and the government or between the refugees and the natives. Communal classes like these are there for common issues faced by the refugees and the natives.

#### **4.4.2. IMPACT OF THE REFUGEE CRISIS ON REFUGEES**

Under any refugee crisis, refugees or the displaced people are the hardest hit. Their pains, agony, sufferings and their journey of leaving their birth land and loved ones, and finding shelter in a different country, can never be explained or expressed in words. Following are some of the impacts of the crisis on the refugees.

##### ***4.4.2.1 SUFFERINGS OF THE REFUGEES AT THE BORDER AREAS***

The 1951 Convention states that 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.<sup>236</sup>

*'The Common European Asylum System (CEAS) of 2013* regulates the rights of refugees and asylum seekers who are already within the state. However, the Asylum

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<sup>233</sup>Dreamstime. MIGRANTS CLASHES WITH GREEK RIOT POLICE OUTSIDE OF A REFUGEE CAMP IN DIAVATA. Migrants Clashes with Greek Riot Police Outside of a Refugee Camp in Diavata Editorial Stock Image - Image of protest, muslim: 144046059 (dreamstime.com) (26/2/2023)

<sup>234</sup>ALjazeera *Deadly clashes hit Palestinian refugee camp in Lebanon*. (25 Aug 2015) Deadly clashes hit Palestinian refugee camp in Lebanon | News | Al Jazeera. (13//2023)

<sup>235</sup>UNHCR. ETHIOPIA: UNHCR RUSHING AID TO 20,000 REFUGEES FLEEING CLASHES. (4 February, 2022.) Ethiopia: UNHCR rushing aid to 20,000 refugees fleeing clashes | UN News. (13//2023)

<sup>236</sup>Jessica Rodger. DEFINING THE PARAMETERS OF THE NON-REFOULEMENT PRINCIPLE, 2001. <http://researcharchive.vuw.ac.nz/handle/10063/5873> (13//2023)

seekers and Refugee at the border continues to suffer and at the end, they try dangerous means to cross the border, this turns out to be the fundamental humanitarian and human rights problem of European Union Refugees protection, which does not have any remedy in the new regulation.

#### **4.4.2.2 LANGUAGE BARRIERS**

‘So as to harmonize things between the natives and the refugees, a number of Integration programs have been introduced in Europe by the Pan-European Institutions, different Local and national Organizations and European member States. These institutions help and support refugees to integrate into the various aspects of European life. Language teaching is also funded to the people with the refugee status, by the governments of Netherlands, Sweden, Germany and other countries. Removing the language barriers is the utmost important step in bringing around integration and cohesion in the society. The refugees are arriving from countries like Syria, Portugal. Croatia and Estonia are given free language courses, whereas the local councils are funding homes and accommodation facilities in the Czech Republic and Bulgaria.’<sup>237</sup>

Where at one hand it looks like the countries are helping the refugees, by teaching them the regional language and their attempt for the integration and cohesion in the society, they are helping themselves. These groomed and shaped refugees soon become skilled laborers and emerge as a strong human resource power for the European.

#### **4.4.2.3 EFFECT ON THE HUMAN RIGHTS OF REFUGEES AND NATIVES**

“Human rights are standards that recognize and protect the dignity of all human beings.”<sup>238</sup> “These are inherent rights that are granted to all human beings irrespective of their race, sex, nationality, ethnicity, language, religion, or any other state. Human rights includes right to life, liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work, and many more.”<sup>239</sup> Thus, the human rights of both the natives and the refugees needs to be assured and protected.

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<sup>237</sup>European Commission. TEN YEARS INTO THE CONFLICT: SYRIAN INTEGRATION IN EUROPE (19 March 2019) | European Website on Integration (europa.eu) (13//2023)

<sup>238</sup>Unicef. WHAT ARE HUMAN RIGHTS? <https://www.unicef.org/child-rights-convention/what-are-human-rights> (2/03/2022)

<sup>239</sup>United Nations. WHAT ARE HUMAN RIGHTS? Global Issues, <https://www.un.org/en/global-issues/human-rights> (2/03/2022)



Whereas the human rights of refugees in specific are, “rights against Non-Refoulement, freedom of movement, right to liberty and security of the person, right to family life, and other rights like right to education, access to justice, employment and other fundamental freedom such as privilege similarly enshrined in international and regional human rights treaties.”<sup>240</sup>

Thus, we see that the refugees and the natives have the same human rights. However, despite the fact that both refugees and the natives possess the same human rights, there is a lack of fulfillment of the human rights of the refugees in the host nation and as a result, the human right of the natives sometimes is affected.

#### ***4.4.2.4 SLOWING DOWN OF ECONOMIC GROWTH OF THE REFUGEE’S COUNTRY OF ORIGIN***

In Syria- a reduction in the number of labour force, which leads to reduction in tax collection further leading to restricted economic growth. With the youngsters fleeing to the neighboring countries, and the older generations staying back, the countries developments will slow down if not stop. While the host countries will be affected with the great pressure on services such as healthcare and education, and on resources such as food, water and energy resources. For the migrants, they face language barriers, difficulties in adjusting with the different cultures, they have a high chance of being exploited as cheap labour, and they often are exploited for money by the traffickers to cross the Mediterranean Sea they often feel or experience discrimination and racism.

#### ***4.4.2.5 DEPORTATION***

Many times some refugees want to return back home but fail to do so and many a times some refugees who want to stay back in the country of asylum and are settling their new lives are forced to leave the country where they have taken asylum.<sup>241</sup>

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<sup>240</sup>International Justice Resource Center. ASYLUM & THE RIGHTS OF REFUGEES. Asylum & the Rights of Refugees – International Justice Resource Center ([ijrcenter.org](http://ijrcenter.org)) (2/03/2022)

<sup>241</sup>European Commission. TEN YEARS INTO THE CONFLICT: SYRIAN INTEGRATION IN EUROPE (March 19, 2021.) | European Website on Integration ([europa.eu](http://europa.eu)) (2/03/2022)

#### ***4.4.2.6 DISCRIMINATION ON HEALTH CARE FACILITIES DURING PANDEMICS***

A report from the European Centre for Disease Prevention and Control (ECDC) stated the impact of COVID 19 on the migrants. According to the report, the pandemic largely affected the refugees and the migrants. As an effect of the pandemic at the social level, there was an increase in the level of discrimination. The refugees and the migrants as it is had to struggle to get their basic rights and needs, and the pandemic worsened the situation even more. As an effect of the pandemic, they were restricted to work; borders were closed for the ones willing to return home and the asylum process slowed down. The preexisting refugee issues got affected even more, lack of health care support, fear of deportation of the undocumented migrants grew even more due to the pandemic, refugees already struggling with mental conditions were burdened with another seed of tension to grow.

Refugees especially in the refugee camps had to face the harshest time in everyday survivals. According to the ECDC, the containers in the camps were over crowded with about 200 people sharing two bathrooms and one kitchen, which led to fast spread of COVID in some of the camps. Initially groves and masks were given but there was a lack of medication.

*Widening of preexisting barriers during COVID 19-* the lives of the migrants in the Asia-Pacific region especially that of Singapore, Thailand, Malaysia, and Maldives, Bangkok was equally affected. Countries like Middle East and North Africa who were already struggling with limited health care equipment and medicines, during pandemic, the refugees in these regions suffered even more. The preexisting barriers of health care services, language difference and affordability of necessity grew even wider during this time. The demography was also affected by the host nations, especially that of the camps. As the internally displaced people and refugees stayed in close communal settings in densely populated areas, they became very vulnerable situation due to limited supplies of hygiene necessities. Hence increasing the problems of refugees.

The situation in India, Uganda, Cox's Bazar and Mexico was no different according to the UNHCR. Some noted high-risk groups of people of this time were pregnant women, lactating mothers, children, elderly, displaced people, and people with non-

communicable disease. Reportedly, there was also an increase in the sexual and gender-based violence against women, and women were stuck in the abusive situation, as there was restriction on movements during this time.

On the contrary, refugees, undocumented migrants and asylum seekers in Germany were well treated and cared for. Germany had state-specific laws for the displaced people's health care. "Mediburo", an NGO of doctors, volunteers and Social workers made sure that the refugees, asylum seekers and undocumented migrants got medical support. However, when it came to vaccination the refugees and others raised concerns and hesitance in taking it. Later WHO, IOM, and UNHCR monitored the COVID 19 vaccination among the refugees. In the contrary time, according to the latest data published by platforms for International Cooperation on Undocumented migrants, the European countries have now included the migrants in the COVID 19-vaccination programs. So European countries with the initiatives are Portugal, Norway, U.K, Netherlands, Belgium, France, Finland, these are the countries that offered reasonable access while Germany offered limited access."<sup>242</sup>

#### ***4.4.2.7 REFUGEE AND TERRORISM***

The threat of terrorism and the recent terror attacks such as the Madrid Bombing and other attacks in France and other parts of the European Union are some of the problems that are emerging in Europe, that was considerably less in the crisis before 2015.<sup>243</sup>

#### ***4.4.2.8 THE NEGATIVE MINDSET TOWARDS MUSLIM REFUGEES***

This leads to the development of a negative mindset towards the Muslims in general and towards the Muslim refugees. The negative mind set has influenced the European Political debates, which is reflected in the European political opinion. A very dominant view is that Muslims want to be distanced from the rest of the society and

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<sup>242</sup>Vijay Shankar Balakrishna, THE LANCET INFECTIOUS DISEASE. (19/8/22) [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(21\)00410-2/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00410-2/fulltext)

<sup>243</sup>UNHCR. PRESS COVERAGE OF THE REFUGEE AND MIGRANT CRISIS IN THE EU: A CONTENT ANALYSIS OF FIVE EUROPEAN COUNTRIES Report prepared for the United Nations High Commission for Refugees (December 2015) Report authors: Mike Berry, Inaki Garcia-Blanco, Kerry Moore Individual chapter authors: Marina Morani (Chapter 10), Bernard Gross (Chapter 11), Tina Askanius and Tobias Linné (Chapter 12) Researchers: Lucy Bennett, Susan Bison, Marina Morani, Lorena Riveiro Rodríguez, Laura Pomarius, Sandra Kaulfuss, Isabel Sundberg Cardiff School of Journalism, Media and Cultural Studies. (14/5/2023)

do not want to adopt the host nation's customs and way of living. Most Europeans also think the inflow of refugees could lead to an upsurge of terrorism. As a consequence, Anti-immigrant rhetoric has also risen. Attributing to the Islamophobia, some commentators see it as the reason for the sudden spike of anti-Islamic and anti-refugee feelings. This feeling leads the European States to develop the feeling of defensive nationalism, also it brings in a sense of insecurities, as the traditional European stability appears to be under threat. Thus, there is collective unspoken "No", to the entry of refugees, so much so that some of the Eastern European government specifically indicates that they do not want any non-Christian refugees.<sup>244</sup>

#### **4.4.2.9 SOCIAL INTEGRATION OF REFUGEES IN EUROPE**

'Once the refugees enter the host nation, their integration in the host society becomes high on the international Agenda, and it is also lined up with the *Sustainable Development Goal 16*, which aims at establishing prompt, peaceful and inclusive society for sustainable development. It provides justice for all and builds effective, accountable and inclusive institutions at all levels. It ensures public access to information and protection of fundamental freedoms in accordance with national legislation and international agreements.'<sup>245</sup>

The best approach of refugee integration is Berry, 1997. It is a theoretical framework used to understand how immigrants adapt to the new society is Berry (1997). it is a conceptual framework and in includes four strategies:-

- (a) *Assimilation*- when the individual does not wish to maintain their identity in their daily interaction with other culture groups.
- (b) *Separation* - when the refugee holds on to their original cultural identity and avoids interaction with other groups.
- (c) *Marginalization*- when the individual maintains their culture little and has relationships with others groups.

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<sup>244</sup>Por Juan Carlos AntunezAnálisis. REFUGEES AND TERRORISM: THE REAL THREAT. (17/2019) Publication GESI (<http://www.seguridadinternacional.es>) Inicio> Refugees and Terrorism: the Real Threat. Universidad De Granada. (14/5/2023)

<sup>245</sup>Mihaela Robila, REFUGEES AND SOCIAL INTEGRATION IN EUROPE. (16 May 2018) United Nations Department of Economic and Social Affairs (UNDESA) Division for Social Policy and Development. United Nations Expert Group Meeting New York 15 – Ph.D., CFLE. (14/5/2023)

(d) *Integration*- when an individual maintains his/her culture also engages in interaction with the other groups daily.

Social Integration is a two- way process, which can be achieved by cooperation by both the immigrants and the host society, when the host society is open and keeps an inclusive approach towards cultural diversity. Being inclusive means the refugees equal access to housing, health, care, education and training and development.

Refugee integration is not an easy process. How much they can adapt depends on various factors e.g. pre-migration experiences, departure process and the post arrival experiences, the environmental change. In their journey or transit from their country of origin to the host country, they face bitter experiences like per-migration trauma, which includes both mental and physical; at times, they experience massive violence and genocide. At times, they are forced to witness the killing of their family members and friends, face sexual abuse, kidnapping of their children, destruction and looting of their wealth and homes, to face starvation, thirst and absence of shelter.

When the refugees arrive to the host country, they are provided with various relief. However, gradually they develop the feeling of frustration when they encounter new problems in the host country, like language barriers, new laws, unemployment, homelessness, or lack of access to home and health care facilities. The migrants that fled armed conflict and persecution in their own country have a high rate of per-migration trauma and mental health problems at times they are left with post traumatic stress disorder (PTSD) and depression.<sup>246</sup>

There is a general assumption that the presence of refugees in the host country damages the social cohesion. However some studies conclude that the fact states is not true, that despite the initial apprehensions, with due course of time refugees and the host communities may build a close relationship, and can make a peaceful and inclusive social environment.<sup>247</sup>

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<sup>246</sup>*Id.* at 241.

<sup>247</sup>Veronika Fajth<sup>1</sup>, Özge Bilgili<sup>2\*</sup>, Craig Loschmann<sup>3</sup> and Melissa Siegel. HOW DO REFUGEES AFFECT SOCIAL LIFE IN HOST COMMUNITIES? THE CASE OF CONGOLESE REFUGEES IN RWANDA. Fajth et al. *Comparative Migration Studies* (2019) 7:33 <https://doi.org/10.1186/s40878-019-0139-1> Springer Open (14/5/2023)

#### **4.4.2.10 LEGAL ACCESS TO MEMBER TERRITORIES**

Another relevant problem is the safe and legal access to the member state territories and the compliance with the principle of non-refoulement of the asylum seekers where their lives are in danger.<sup>248</sup>

### **4.5. EUROPEAN MEMBER STATES IMPLEMENTATION OF PRINCIPLE OF NON REFOULEMENT**

‘European Union is a group of countries in Europe that have agreed to come together to constitute a union. There are 27 countries/states in the European Union. It was after the two devastating World War that some countries in Europe decided to unite and form a union.

Initially six countries namely Belgium, France, Germany, Italy, Luxembourg and Netherlands, started working as a union, later on the other European countries gradually joined the union. The main aim of the union was to ensure peace, good life of people, to ensure fairness and togetherness of all, respect of all cultures and people, to allow people’s free movement for education, work or stay in any part of the union.’<sup>249</sup>

The Common European Asylum System (CEAS) was established by the European Union Member states to provide international protection to the persons in need of international protection and to limit their exposure to abuse. The aim was to create a uniform standard for protection and to harmonize the reception condition within the Union. Even though the CEAS has its own strengths and weaknesses, it was welcomed by many member states.<sup>250</sup> However, when it comes to responding to the refugee crisis, every country has their own way of responding to the crisis.

The year 2015 is marked as the year of the European Union Refugee Crisis. Nearly one million refugees came to Europe in the said year because of conflict in Syria,

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<sup>248</sup>Petra Bendel, REFUGEE POLICY IN EUROPEAN UNION: PROTECT HUMAN RIGHTS! (03/2016) Refugee policy in the European Union : protect human rights! (fes.de) (14/5/2023)

<sup>249</sup> European Union. EASY TO READ - THE EUROPEAN UNION. Easy to read – about the EU | European Union (europa.eu) (14/5/2023)

<sup>250</sup>Patryk Kugiel. THE REFUGEE CRISIS IN EUROPE: TRUE CAUSES, FALSE SOLUTIONS. (March 20.The Polish Quarterly of International Affairs 2016(4):41-59. (PDF) The Refugee Crisis in Europe: True Causes, False Solutions (researchgate.net) (16/5/2023)

violence in Afghanistan, Iraq, abuse in Eritrea, and poverty in Kosovo.<sup>251</sup> Ever since then conflict, violence and war in the neighboring countries is continuously leading to the in pore of refugees in the European Union, the most recent is the Russo- Ukrainian War.

According to the Eurostat data of 2022, the main European destination countries for refugees are mainly Germany-217,735, France-137,510, Spain-116,135, and Austria-106,380.<sup>252</sup> Countries granting asylum according to the recent data in the year 2023<sup>253</sup> are France- 499,914, Sweden- 240,856, Austria-152,514, Italy- 144,862, United Kingdom- 137,078, Spain- 122,539, Greece- 119.650, Switzerland- 118,829, Netherland-99,585, Belgium- 74,063, Norway- 46,042 , Denmark-36,023, Finland- 24, 078, Cyprus- 16,277. According to world population review. Refugees by Country, 2023. Following are the total number of refugees harbored by the respective countries.<sup>254</sup> Moreover, their response to the crisis and whether the principle of non-refoulement has been followed by the respective countries?

1. FRANCE- 499,914
2. SWEDEN- 240,856
3. AUSTRIA-152,514
4. ITALY- 144,862
5. UNITED KINGDOM- 137,078
6. SPAIN - 122,539
7. LATVIA- 209,869
8. GREECE- 171,676
9. NETHERLAND-107,099
10. FINLAND- 32,470
11. BELGIUM- 74,063 (GRANTED ASYLUM)

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<sup>251</sup>BBC News. MIGRANT CRISIS: MIGRATION TO EUROPE EXPLAINED IN SEVEN CHARTS. (4 March 2016)) Migrant crisis: Migration to Europe explained in seven charts - BBC News. (16/5/2023)

<sup>252</sup> Eurostat. ANNUAL ASYLUM STATISTICS. ANNUAL ASYLUM STATISTICS - STATISTICS EXPLAINED (4 Aug, 2023) Annual asylum statistics - Statistics Explained (europa.eu) (11/9/2023)

<sup>253</sup>Macro Trends. SAIN REFUGEE STATISTICS 1961-2023. Spain Refugee Statistics 1961-2023 | MacroTrends (16/5/2023)

<sup>254</sup>World population review. REFUGEES BY COUNTRY, 2023 REFUGEES BY COUNTRY 2023 (12 June, 2023). World Population by Country 2023 (Live) (worldpopulationreview.com) (16/9/2023)

12. ESTONIA- 72,176
13. DENMARK-48,883
14. IRELAND- 16,629
15. CYPRUS- 16,277 (GRANTED ASYLUM)
16. MALTA- 12,359
17. POLAND- 8,492
18. LUXEMBOURG- 7,017
19. ROMANIA- 5,994
20. HUNGARY- 5,877
21. CROATIA- 5,689
22. LITHUANIA- 5,056
23. GERMANY
24. PORTUGAL- 3,012
25. SLOVAKIA- 2,597
26. BULGARIA
27. CZECH REPUBLIC

#### 4.5.1 FRANCE

In 2022, nearly 156,103 persons were registered as asylum seekers.<sup>255</sup> According to the Ministry of Interior, these were nationals from Afghanistan, Bangladesh, Nigeria, Turkey, Pakistan, Georgia, Albania, Democratic Republic of Congo, Guinea, and Ivory Coast France is in accordance with the International and European Union standards of refugee protection and abides by the principle of non-refoulement. As France successfully applied the Principle of non-refoulement even in the context of Environmental migration, as held in the case of *Teitiota v. New Zealand*, where the court held that the degrading environment may trigger non-refoulement, and thus it, is now a part of International human Rights Jurisprudence<sup>256</sup>.

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<sup>255</sup>France Refugee Statistics 1960-2023. France Refugee Statistics 1960-2023 | MacroTrends.

<sup>256</sup>Shaindl Keshen, Steven Lazickas, and Lucía Solórzano. NON-REFOULEMENT: A LEGAL HOPE FOR THE PROTECTION OF ENVIRONMENTAL MIGRANTS AND THEIR RIGHTS. (November 03, 2021) Non-refoulement: A Legal Hope for the Protection of Environmental Migrants and their Rights | International Organization and United Nations Studies Specialization (IOUNS) (columbia.edu) (16/5/2023)



➤ **French Government Response towards Refugee Situation**

To address the refugee crisis the French government has established various laws, governmental and work with the non-governmental organizations. Following are some organizations that aid in refugee integration and protection.

- **‘Réfugiés Bienvenue-** since the year 2015, the organization helps in finding accommodation to refugees and asylum seekers. So far they have accommodated 150 refugees and 200 asylum seekers across France. The organizations working at the local level offer 3- 12-month programs in which they provide tailored support to the refugees and asylum seekers. They help in the administrative procedures like access to health care services, long term rent, and to find jobs.
- **Action Emploi Réfugiés-**  
The organization helps in facilitating jobs. The organization has helped 500 refugees to gain jobs and has created a network of more than 300 employers in France. In the mid of the year 2019 the organization has matched 60% of refugees to safe and stable jobs.
- **SINGA-**  
Is a citizen- led movement, which aims at creating opportunities for refugees. They have released 1000 entrepreneurs who have further developed 300 entrepreneurial projects since the year 2016. The movement helps the asylum seekers and refugees to grow their startup, by addressing their explicit needs by helping them learn the local language, know the local cultural code and by helping them build social and professional networks. The SINGA movement has four incubators programs those woks in France and eight across Europe, to nurture the newly created companies or startups.
- **La Fabrique Nomade-**  
Is an NGO, which aims at helping refugee artisans to find jobs in France. The NGO has been working since 2017 and aims at passing on the traditional crafts, so far it has supported 35 craftspeople from 20 countries. It has helped 75% of the artisans find jobs and 60% of these artisans work in the arts and craft industry.
- **Emmaüs Roya-**  
Is a community of people in France, who use agriculture as a means to integrate refugees and asylum seekers. Cédric Herrou founded a local NGO. He is a French

farmer and also a migrant rights defender. He has helped thousands of refugees and asylum seekers in crossing Italy into France. The organization helps people to find a place to stay, and helps with food and clothes. The income that comes after selling the agricultural produce is used in supporting the community.

According to the citizens of Le Dail, the asylum seekers and refugees here are useful for society by being a part of the projects which are for common interest.

**Ovale Citoyen** is an NGO that uses sports to foster inclusion and integration of refugees and asylum seekers. So far, it has integrated 500 refugee and asylum seekers. The NGO provides refugee players access to health care services, language classes to learn French. They also provide legal and administrative assistance like opening a bank account and also to find jobs in France.<sup>257</sup>

#### ➤ **France's New Humanitarian Strategy**

The strategy aims at saving lives and ensuring the dignity of people in countries that are affected by natural and man-made disasters by providing them basic needs such as access to water and sanitation, food and shelter, and medical care, etc.

The explosion of crises and conflicts, their growing complexity and prolonged nature closer to Europe, are the most evident and worrying symptoms of a shifting international context. These circumstances lead to a substantial increase in the requirements of people victims of these upheavals.

The French objectives were set out in the Inter-ministerial Committee for International Cooperation and Development. France's Annual contribution of €500 million by 2022 was acknowledged.

France's National Humanitarian strategy is based on three focus areas, that is:-

- **To increase and improve the usage of resources**
- **To integrate humanitarian action to sustain crisis management**
- **To increase compliance with the International Humanitarian Law.**

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<sup>257</sup>Kamilia Lahrichi 6 AMAZING WAYS PEOPLE ARE WELCOMING REFUGEES IN FRANCE AND HOW YOU CAN HELP. (April 22, 2021) 6 Amazing Ways People Are Welcoming Refugees in France and How You Can Help (globalcitizen.org) (16/5/2023)

In the year 2017, France endorsed the **Grand Bargain**. It includes 52 commitments relating to the 10 priorities along with a process to implement them. It is forum where the donors and the aid providers work together for the improvement of the efficiency of the humanitarian actions following are the priorities of the Grand Bargain.:-

- To maintain Transparency
- To create Support for local stakeholders
- To Monetary aid
- Harmonize of procedures and reduce agencies' structural costs
- To Jointly analyses the needs
- To vitally include the aid beneficiaries in decision-making
- To create a Joint multiannual humanitarian and development planning and financing
- To Increase the share of non-earmarked funding
- To Streamline the reporting requirements
- To create Humanitarian-development nexus<sup>258</sup>

#### 4.5.2 SWEDEN

Until recently Sweden has a vast history of host refugees and asylum seekers with more open and generous asylum and immigration policies. When all the other EU countries were strict on hosting refugees during the 2015 European Refugee Crisis, Sweden took more people per capita as refugees than any other country in Europe. Most recently, the Swedish government has planned to admit a quota of 900 refugees in the year 2023.<sup>259</sup> In the previous year, 2022, nearly 102,436 people came to Sweden.<sup>260</sup>

Swedish new policy on migration is undergoing a great shift. The government is using

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<sup>258</sup>*Id.* at 253.

<sup>259</sup>Elliott Davis Jr. SWEDEN, ONCE WELCOMING TO IMMIGRANTS, CHANGES COURSE. (Dec. 30, 2022) Sweden, Once Welcoming to Immigrants, Shifts Course | Best Countries | U.S. News (usnews.com) (16/5/2023)

<sup>260</sup> Statista. Immigration to Sweden 2012-2022. Sweden: immigration 2022. (Feb 23, 2023) Sweden: immigration 2022 | Statista. (16/5/2023)

measures to cut down the number of refugees coming irregularly in Sweden. Attempts are being made to stop the labor migration frauds and abuses but will continue to have a dignified reception standard to people in need at the same time, no protection and legal rights to staying Sweden will be granted to the unqualified person and he shall be expelled.<sup>261</sup>

The migration policy incorporated refugees and immigration policy, return policy, aid for perpetration. The government also seeks global cooperation on the same issue. The main objective of the migration and asylum policy is to assure long-term and sustainable migration policy to safeguard asylum rights, facilitate cross-border mobility, and encourage need-based immigration of labour.<sup>262</sup>

Sweden possesses a well-established system for asylum and protection and long standing commitment for refugee resettlement with programs for comprehensive integration.

➤ **Swedish Government response towards refugee situation**

To address the refugee crisis the Swedish government has established various laws, governmental and non-governmental organizations. Following are some organizations and measures that aids in refugee integration and protection.

- **‘Resettlement-** the Swedish government possesses a leading role of speeding up the global strategy to resettlement of refugees.
- **Family reunification-** with the aid of UNHCR the government with other partners works to lessen and to eliminate legal and financial difficulties and help in family reunification.
- **The organizations that works for the refugees and asylum seekers are:-**  
The UNHCR, Ministry of Justice, Ministry of Foreign Affair, Swedish migration Agency.

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<sup>261</sup>The Government offices of Sweden. SWEDEN’S NEW MIGRATION POLICY. (6 July, 2023). The Government offices of Sweden. Sweden’s new migration policy. Sweden’s new migration policy - Government.se - Search (bing.com) (16/8/2023)

<sup>262</sup>Government offices of Sweden. MIGRATION AND ASYLUM POLICY OBJECTIVES. MIGRATION AND ASYLUM POLICY OBJECTIVES. (08 Nov. 2022). Migration and asylum policy objectives - Government.se (16/8/2023)

Other bodies are institutions like Malmo and Gothenburg University. The civil society actors for refugees and migrants are Churches in Sweden, Red Cross society, save the child and Caritas. The local authorities for refugees and asylum seekers are ‘Are Municipality’.<sup>263</sup>

- **The Integration Programme for refugees and Asylum seekers**

The Swedish government has been setting up integration strategies since the 1970s to foster inclusion of migrants.

- **Employment against exclusion-**

The minister of integration and gender equality, in 2007 established comprehensive strategies for refugees. The aim of the ministry was to maintain the demand and supply of labour. The aim to achieve migrant integration was through equality in school, and through the mainstream policies. The ministry dissolved in 2014, and integration began to be achieved through mainstream and the labour market policy.

Under the objective of the Swedish government on integration is to safeguard equal rights, obligations as well as opportunities to all without any discrimination of ethnic and cultural background.

- **Etableringsprogrammet-**

The programme is for the newly arriving immigrants of age 20-65, who have already been granted residence permit as either refugees or resettled refugees, or an individual in need of protection, or close relative of someone belonging to the mentioned categories. The program helps the new arrivals to learn the Swedish language, find a job to become self-sufficient quickly.

- **Arbetsförmedlingen-**

Is a programme run by the Swedish Public Employment Service. Under its activities – Swedish for Immigrants (SFI), the program offers coaching for jobs like access to internships, gaining validation of educational or occupational experience certificates. The activity also offers a civic orientation course. The course is treated to be equivalent to full-time Job. Under the activity, some people might also be eligible for housing and additional support benefits for children.

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<sup>263</sup>UNHCR, Sweden. February 2021. UNHCR (16/6/2023)

- **Intensivår-**

The program was a yearly program and was introduced in 2021. The program is run by the Public Employment service. The program aids in enhancing fast study of Swedish to help refugees and asylum seekers find jobs quickly.<sup>264</sup>

### 4.5.3 AUSTRIA

According to UNHCR, Austria accounts for around 146,000 refugees, subsidiary protection holders, and around 18,000 asylum seekers. Majority of refugees in Austria come from Syria, Afghanistan and Morocco.<sup>265</sup>

With the implementation of The Integration Act, the government provides clear rules for ensuring social cohesion and social peace. The act is based on the principle of merit-based integration. The Act sets the framework for effective integration of people who settle in Austria, to set clear rules for social cohesion and social peace.<sup>266</sup>

➤ **Austria government response to the refugee's situation**

The federal office for Immigration and Asylum (BFA) is the only public authority dealing with asylum applications and other allied procedures in Austria. To address the refugee crisis the Austrian government has established various laws, governmental and non-governmental organizations. Following are some organizations and measures that aids in refugee integration and protection.

- **‘Computer education and training, (ApfiG) Act<sup>267</sup>** - the act ensures computer education and subsequent training for youths up to the age of 18.
- **The Asylum Act (AsylG)<sup>268</sup>**- the Act deals with the grant of Asylum to the applicants.

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<sup>264</sup>European Commission. GOVERNANCE OF MIGRANT INTEGRATION IN SWEDEN. Governance of migrant integration in Sweden | European Website on Integration (europa.eu) (16/8/2023)

<sup>265</sup>UNHCR. AUSTRIA. Austria | UNHCR. (16/6/2023)

<sup>266</sup>Integration Act: integrating refugees in Austria  
Integration Act: integrating refugees in Austria | The Global Compact on Refugees | UNHCR (globalcompactrefugees.org) (16/6/2023)

<sup>267</sup>Bundesgesetz, mit dem die Verpflichtung zu Bildung oder Ausbildung für Jugendliche geregelt wird (Ausbildungspflichtgesetz – ApfiG). (Name of the Act) (17/6/2023)

<sup>268</sup> Bundesgesetz über die Gewährung von Asyl StF: BGBl. I Nr. 100/2005 (Name of the Act) (18/6/2023)

- **Aliens Police Act (FPG)<sup>269</sup>**- the act is the act on exercise of Aliens' police, the issuance of valid documents for aliens and the to grant them entry permits.
- **The General Administrative Procedure Act (AVG)<sup>270</sup>** - it is the general procedure Act.
- **BBU- G<sup>271</sup>**- under this law federal law aims to established agency of care and support Services Company with limited liability.
- **BFA Procedures Act (BFA- VG)<sup>272</sup>** - this act deals with the general rules for the procedures at federal office for the migration and asylum, international protection, to issue residence permit, deportation, for tolerant stay and issue of termination measures and the issuing of aliens documents.
- **BFA-Einrichtungsgesetz (BFA-G)<sup>273</sup>**- helps in the implementation and organization of federal immigration and asylum offices.
- **BVwGG<sup>274</sup>**- is a federal Administrative Court Act that deals with the administrative legislation.
- **Verwaltungsgerichtsverfahrensgesetz (VwGVG)<sup>275</sup>**- the federal Act on the court's administrative procedure.
- **Grundversorgungsvereinbarung<sup>276</sup>**- is an agreement made on 15 July, 2014 between the state and states under Article 15a, of the constitution, which deals

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<sup>269</sup>Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel. StF: BGBl. I Nr. 100/2005 (18/6/2023)

<sup>270</sup>Allgemeines Verwaltungsverfahrensgesetz 1991. StF: BGBl. Nr. 51/1991 (18/6/2023)

<sup>271</sup> Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung. StF:BGBl. I Nr. 53/2019 (18/6/2023)

<sup>272</sup> Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden (BFA-Verfahrensgesetz – BFA-VG) StF: BGBl. I Nr. 87/2012. (18/6/2023)

<sup>273</sup>Bundesgesetz über die Einrichtung und Organisation des Bundesamtes für Fremdenwesen und Asyl (BFA-Einrichtungsgesetz – BFA-G) idF BGBl. I Nr. 68/2013. StF: BGBl. I Nr. 87/2012. (18/6/2023)

<sup>274</sup>Bundesverwaltungsgerichtsgesetz – Verwaltungsgerichtsbarkeits-Novelle 2012. (18/6/2023)

<sup>275</sup>Bundesgesetz über das Verfahren der Verwaltungsgerichte StF: BGBl. I Nr. 33/2013. (18/8/2023)

<sup>276</sup>Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich. StF: BGBl. I Nr. 80/2004. (18/6/2023)

with the joint action for temporary and basic provision for the aliens seeking protection and help in Austria.

- **Basic Care Act (GVG-B)<sup>277</sup>**- acts for the regulation of basic care of the asylum seekers and other foreigners in the admission procedure.
- **StbG<sup>278</sup>**- the acts works on the Austrian citizenship.
- **IJG<sup>279</sup>**- Labour integration Act- works for the labour market integration of entitled asylum seekers and persons in need of subsidiary protection.<sup>280</sup>

The government provides emergency services like-

- Gender based or Sexual offenses
- Human trafficking
- For finding lost family members
- Medical Emergency
- Fire
- Violence against women

The government also provides psychotherapy and other aid. The following are some organizations working for the welfare and integration of refugees.

- **NIPE Network** - the center provides psychotherapy for the person suffered with mental trauma during their transit at the outbreak of the crisis.
- **AMIKE phone, Diakonia** – the center provides telephonic and mobile counseling to the person at distressed psycho situation.

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<sup>277</sup>Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird. StF: BGBl. I Nr. 405/1991. (18/6/2023)

<sup>278</sup>Bundesgesetz über die österreichische Staatsbürgerschaft. StF: BGBl. Nr. 311/1985. (18/8/2023)

<sup>279</sup>Bundesgesetz zur Arbeitsmarktintegration von arbeitsfähigen Asylberechtigten und subsidiär Schutzberechtigten sowie AsylwerberInnen, bei denen die Zuerkennung des internationalen Schutzes wahrscheinlich ist, im Rahmen eines Integrationsjahres (Integrationsjahrgesetz), BGBl. I No 75/2017, 19. June 2017. (18/6/2023)

<sup>280</sup>EUROPEAN COUNCIL ON REFUGEES AND EXILES. OVERVIEW OF THE LEGAL FRAMEWORK, Austria. Overview of the legal framework – Asylum Information Database | European Council on Refugees and Exiles (asylumineurope.org). (18/6/2023)



- **Language classes for easy integration-** under the Austrian Integration Fund, free online classes, and language classes provided to make integration of refugees, asylum seekers easy.
- **Work and Employment-** the Public Employment Service (AMS), more than one prospective, Just integration, are bodies that helps the refugees, asylum seekers provide jobs and employment

#### 4.5.4 ITALY

Due to its geographical location in the Mediterranean, Italy is the one of the most affected European states by the migrants. Italy is the second country of the first arrivals next followed by Greece. With the increasing number of migrants, each year in Italy has triggered tension over the issue of coping up with the inflow and the transit, the scale of cost of patrolling at its borders. There is an increase in the negative ratings for Muslims in Italy since 2015, which has led to the rise of the right-wing parties with anti-immigrant agenda

Italy hosted around 165,000 refugees and asylum seekers by the end of 2021. The countries of origin of most of these people were Nigeria, Gambia, Pakistan, Afghanistan, and Mali and Somalia.<sup>281</sup>

#### ➤ **Italian government response to the refugee's situation**

‘Italy has worked on the expansion of the third country solution. The programme is called the Humanitarian Corridors, and the Humanitarian Evacuation programmes. The innovative program of Italy received the Nansen award. Due to the change of the government in 2019 and the other factors, Italy has not yet been able to establish the national coordination agreement for implementation of the Global Compact on Refugees. However, through its three thematic operational coordination, Italy is working for the Global Compact of Refugees. They are-

- **Humanitarian Evacuations-**

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<sup>281</sup>Pietro Castelli Gattinara . ARTICLE IN CONTEMPORARY ITALIAN POLITICS · (October 2017) . The 'refugee crisis' in Italy as a crisis of legitimacy.  
<https://www.researchgate.net/publication/320443624>. (18/6/2023)

The Italian government works for the evacuation of people in various kinds of danger and threat to life. The government does this through the aid and support of the Minister of interior, Foreign Affairs, and Italian National health Care Service, the Italian National Police, and the (NIHMP), institution for health, migration, poverty and with the support of the UNHCR and the Airport authorities.

- **National resettlement-** the scheme works for the resettlement plans and execution of the resettlement of the refugees and the asylum seeker. The scheme fosters meetings between parallel entities along with the EU.
- **Humanitarian Corridors-** the initiative works to grant safe and legal entry to people in humanitarian crises, to Italy.

Italy has also worked for the integration and protection of refugees. To strengthen self-reliance of refugees, community based programs have been launched by the government. Through the partnership between organizations like INTERSOS, the UNHCR, and the PartecipAzione programmers, they aim to build refugee-led and community-based organizations for the empowerment of refugees and to ensure social cohesion with the local community.

➤ **Organizations working for refugees in Italy**

- The government of Italy along with the non-governmental organizations and other stallholders has worked on several projects to ensure jobs and livelihood opportunities in the line of the Global Compact, like:-
- **Economic Opportunities-**  
A series of initiatives and projects are supported by the government, which aims at facilitating economic opportunities and inclusion of refugees in jobs. Along with the government, the other organizations working for the initiative are the national civil society, Cambalache, the Fondazione Adecco and the Università Pollenzo.
- **The Welcome Project-**  
A group of 120 companies in support of including refugees in employment have launched the project currently giving employment to 2,850 refugees

- **Through Refugees Welcome-**

The programme is a civil society initiative to host refugees in local families so as to remove their inclusion in the society. Almost 126 refugees have been matched to families in 18 cities.<sup>282</sup>

Following are the main legislative acts in Italy working for reception, detention and protection of Asylum seekers and refugees.

### **TUI**

The Italian government works through the Legislative decree no. 286/1998, which is a consolidated Act. The decree deals with the provisions concerning, migration regulation and the norms for foreign nationals.<sup>283</sup>

- **Qualification Decree-** The decree deals with the minimum standards possessed by a person for the qualification and the status of third country nationals, or a stateless person as a refugee, or a person in need of international protection and also the content of the protection granted.<sup>284</sup>
- **Procedure Decree-** the decree is for the implementation of minimum standards on the procedures in the member states for the grant and withdrawal of refugee status.<sup>285</sup>
- **LD 150/2011-** deals with the additional provisions in the code of Civil Procedure, in the sections concerning reduction and simplification in the cognition civil procedure under Article 54, Law 18 June 2009, n.69.<sup>286</sup>
- **LD 24/2014-** the legislation deals with the prevention, repression of trafficking in person and the protection of victims.<sup>287</sup>

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<sup>282</sup>Global Compact on Refugees. ITALY Italy | The Global Compact on Refugees | UNHCR (globalcompactrefugees.org) (19/6/2023)

<sup>283</sup>Decreto legislativo 25 luglio 1998, n. 286 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero” (19/6/2023)

<sup>284</sup>Decreto legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta” (19/6/2023)

<sup>285</sup>Decreto legislativo 28 gennaio 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato” (19/6/2023)

<sup>286</sup>Decreto legislativo 1 Settembre 2011, n. 150 “Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell’articolo 54 della legge 18 Giugno 2009, n. 69” (20/6/2023)

- **L 47/2017-** the legislation deals with the prevention and protection of unaccompanied minors.<sup>288</sup>
- Several other laws working for the protection integration of refugees and Asylum seekers are - **Decree Law 13/2017**<sup>289</sup>, **Decree Law 113/2018**<sup>290</sup>, **LAW 238/2021**<sup>291</sup>, **LD 18/2014**<sup>292</sup> **Decree Law 13/2017**<sup>293</sup>, **Decree Law 113/2018**<sup>294</sup>, **Decree Law 130/2020**<sup>295</sup>, **Law 173/2020**<sup>296</sup> **Law 238/2021**<sup>297</sup>, Reception Decree<sup>298</sup>.
- **CIR - Italian Refugee Council-**  
The council is an independent organization for humanitarian aid formed in 1990, Italy with UN initiative. The main objective of the organization is to defend the rights of refugees and asylum seekers. It facilitates protection to refugees and asylum seekers. Legal, social, cultural professionals, along with doctors and psychologists who work to provide assistance to the organization, support the organization.<sup>299</sup>

#### 4.5.5 UNITED KINGDOM

The United Kingdom is the original signatory of the 1951 refugee convention. By the end of 2022, the UK received nearly 72,027 applications for asylum seekers. The major country from where asylum seekers came to the UK in 2022 was Albania, with 13,650 applications, followed by Iran, Afghanistan, Iraq and Syria. According to the

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<sup>287</sup>Decreto legislativo 4 marzo 2014, n. 24 “Prevenzione e repressione della tratta di esseri umani e protezione delle vittime”, in attuazione alla direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime” (20/6/2023)

<sup>288</sup>Legge di 7 aprile 2017, n. 47 “Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati”. Overview of the legal framework - Asylum Information Database | European Council on Refugees and Exiles (asylumineurope.org) (20/6/2023)

<sup>289</sup>Modificato: Decreto Legge 17 febbraio 2017, n. 13, conversione in Legge di 13 aprile 2017, n. 46

<sup>290</sup>Modificato: Decreto Legge 4 ottobre 2018, n. 113, conversione in Legge di 1 dicembre 2018, n. 132

<sup>291</sup>Modificato: LEGGE 23 dicembre 2021, n. 238, Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione europea – Legge europea 2019-2020

<sup>292</sup>Modificato: Decreto Legislativo 21 febbraio 2014, n. 18 (20/6/2023)

<sup>293</sup>Modificato: Decreto Legge 17 febbraio 2017, n. 13, convertito con modificazioni dalla Legge del 13 aprile 2017, n. 46. (20/6/2023)

<sup>294</sup>Modificato: Decreto Legge 4 ottobre 2018, n. 113, convertito con modificazioni dalla Legge del 1 dicembre 2018, n. 132. (20/6/2023)

<sup>295</sup>Modificato da Decreto Legge n. 130/2020. (20/6/2023)

<sup>296</sup>convertito con modificazioni dalla Legge 173/2020. (20/6/2023)

<sup>297</sup>Modificato: LEGGE 23 dicembre 2021, n. 238, Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione europea – Legge europea 2019-2020

<sup>298</sup>Modificato: Decreto legislativo n. 142/2015. (20/6/2023)

<sup>299</sup>EUROPA. CIR - Italian Refugee Council. (LAST UPDATED: 04 NOV 2022.) CIR - Italian Refugee Council | Knowledge for policy (europa.eu). (20/6/2023)

UNHCR statistics, by November 2022 a total of 231,597 refugees, and 127,421 cases of asylum seekers and 5,483 stateless persons were there in the UK.

➤ **UK Government response towards refugee's situation**

Under the UK policy for refugees and asylum seekers. For a person to seek asylum must be physically present in the UK. A person cannot apply for asylum from outside the country and the UK does not provide asylum visas. While claiming asylum is not illegal, entering and remaining in the UK in the absence of required permission is an offense for many years. A person-claiming asylum has the legal right to stay in the UK while their application is being considered. The UK government offers the following schemes for refugees and asylum seekers.

● **Resettlement-**

Under the UNHCR's durable solution for the refugees, the UK works along with UNHCR to provide resettlement to refugees. The refugees are selected by UNHCR and are transferred with the agreement of the home office for resettlement. In 2021, the UK home office set out three new schemes they are:-

● **UK resettlement scheme (UKRS) –**

The Scheme is for the vulnerable refugees of the camp of neighboring countries.

● **Community sponsorship scheme-**

Under this scheme, the refugees are matched to the local community groups who have volunteered to help the refugees.

● **Mandate settlement scheme-**

Is a refugee scheme for refugees with close family in the UK who are ready to receive them and who can accommodate them.

● **Refugee Family Reunion Scheme-**

Under this scheme, an adult can join his family, spouse, parents or children under the age of 18 years, if he formed the part of the family even before the refugee fled his country of origin. However, relatives such as parents, siblings, children under 18 are not eligible for refugee family reunification.

### **Other scheme includes-**

- Afghanistan Citizen Resettlement scheme
- Ukraine family scheme
- Ukraine sponsorship scheme
- Hong Kong British National visa<sup>300</sup>

### **Organizations working for refugees in the United Kingdom:-**

- **Refugee Council-**

It works with a number of refugees and asylum seekers to provide crisis advice, support and aid refugees to integrate refugees into the new society. The council also offers mental health and counseling to help them deal with their mental trauma. The council provides national service to support refugees, children and young people arriving in the UK.<sup>301</sup>

- **The Joint Council for the welfare of immigrants-**

The council founded in 1967 is an independent national charity. It focuses on providing justice in immigration, nationality, refugee law and policies. The council voices against the unfair British immigration laws. The council works with a team of lawyers to support people in securing their immigration status and their rights in the UK. The council also works in changing media narratives for refugees and asylum seekers.<sup>302</sup>

- **City of Sanctuary-**

Is an organization that supports and coordinates with community groups, schools, universities, local councils and libraries and theaters to welcome refugees and encourage inclusivity, solidarity and compassion towards forcefully displaced people.<sup>303</sup>

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<sup>300</sup>Sarah Tudor. REFUGEES AND ASYLUM-SEEKERS: UK POLICY. (1 Dec. 2022) Refugees and asylum-seekers: UK policy - House of Lords Library (parliament.uk) (21/6/2023)

<sup>301</sup>Refugee Council. HELPING REFUGEES IN THE UK. (2023) Helping refugees in the UK - Refugee Council. (20/6/2023)

<sup>302</sup>Joint Council for the Welfare of Immigrants. People Move. Migrants Welcome. | Joint Council for the Welfare of Immigrants (jcw.org.uk). (20/6/2023)

<sup>303</sup>City of Sanctuary UK. About - City of Sanctuary UK. (20/6/2023)

- **The IRC's Healing class rooms-**

Healing of refugee children who have witnessed violence, pain and harsh days, for them coming to a new place and starting a new life and adapting to a new place and culture is hard. However, the right kinds of support to these children can transform their present and future lives. Classrooms in schools help children heal from mental trauma. The organization IRC's Healing Classroom provides help to teachers and staff in school to create a space for children to help them learn and thrive.<sup>304</sup>

- **Safe Passage-**

The organization works to provide help to Children in the European Union. The head office of the organization is based in London. It helps refugee children to help them unite with their families. The organization works to provide aid to young refugees from Afghanistan, Ukraine etc. it works with the collaboration with UNHCR.

- **Refugee Action-**

The organization helps refugees and migrants coming to the UK and helps them with the asylum procedure. They help refugees to integrate in the society, the organization also fights against hate speeches and violence against refugees and asylum seekers.<sup>305</sup>

- **Refugee Council-**

Is a charitable organization that works to provide crisis advice and practical aid to refugees to integrate into new life and community. The organization helps with mental health counseling, to help them overcome with traumas<sup>306</sup>

However, in recent times the United Kingdom is using restrictive policies to prohibit asylum seekers from coming to the UK. The newly elected government has also introduced a new bill, which will deny refugees the right to seek protection, instead

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<sup>304</sup>International Rescue Committee. THE IRC'S HEALING CLASSROOMS: HOW SCHOOL CAN BE A PLACE TO HEAL FOR REFUGEE CHILDREN. (Jan. 23, 2023) The IRC's Healing Classrooms: How school can be a place to heal for refugee children. | International Rescue Committee (IRC). (20/6/2023)

<sup>305</sup>IMIX. REFUGEE ACTION. SIX ORGANIZATIONS WHO HELP REFUGEES. Six Organisations Who Help Refugees - IMIX. (21/6/2023)

<sup>306</sup>Refugee Council. Helping refugees in the UK. Helping refugees in the UK - Refugee Council. (21/6/2023)

the asylum seekers entering through the English channels in small boats would face detention and deportation without examining their circumstances. With the passing of the bill, the UK will be violating the 1951 refugee convention.<sup>307</sup>

#### 4.5.6 SPAIN

Refugees in Spain come from Venezuela and Colombia, Latin America. Spain is signatory to the 1951 refugee convention and its protocol. Along with the convention, Spain relies on National asylum legislation of (Law 12/2009). Spain has also agreed on the UN Statelessness Convention in 1997 and 2018. Spain also established a determination procedure in 2001 to deal with the issues concerning refugees and asylum seekers.<sup>308</sup>

According to the Spanish Ministry for Interior, at the beginning of 2023 the total application filed in Spain for international protection was 118,842. The legislative acts that deal with the asylum process, reception, conditions and detentions are- , Asylum Act, Aliens Act, Citizens Security Act, and Administrative Procedure Act. The administrative regulation that regulates the procedure, reception, detention and protection are.<sup>309</sup> :-

##### ➤ **Spanish Government response towards refugee's issues**

The Spanish government responses towards the refugee crisis with the help of the following laws and regulations

- **Temporary Protection Regulation-**

Under the regulation, persons displaced from Ukraine can easily apply for temporary protection and rights associated with it, like the rights to residence and work permit.

- **Aliens Regulation-**The regulation helps the government to issue provisions necessary for application and development of reforms of organic laws, of 4/2000

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<sup>307</sup>United Nations. NEW UK ASYLUM BILL WOULD BE IN 'CLEAR BREACH' OF INTERNATIONAL LAW (8 March, 2023) UNHCR. New UK asylum bill would be in 'clear breach' of international law: UNHCR | UN News. (21/6/2023)

<sup>308</sup>UNHCR, Spain. Spain | UNHCR (8 March.2023). (21/6/2023)

<sup>309</sup>AIDA. STATISTICS SPAIN, Statistics - Asylum Information Database | European Council on Refugees and Exiles. (21/04/23) (asylumineurope.org). (21/6/2023)



on the rights and freedom and integration of foreigners in Spain.<sup>310</sup>

- **Framework for protocol of Trafficking-**

The main aim of the protocol is to establish operational guidelines for detention, identification, support and the protection of victims falling prey to human trafficking. It also aims to foster coordination between the institutions in the process and define mechanisms for developing relationships between authorities in the field. It establishes procedures for identification of the victims of human trafficking and provides guidelines for evaluation of risk involved and other related aspects.<sup>311</sup>

- **Framework protocol on unaccompanied children-**

The framework was signed in the year 2014, it enumerates how various ministries, State Attorney and police must treat an unaccompanied minor in Spain. It allows the state Attorney to pursue medical examinations despite the person holding the valid documents to determine if a person is a minor or an adult. It ensures the child care facilities.<sup>312</sup>

- **Asylum reception regulation-**

It lays down the standards for reception of the applicant in international protection. It seeks to ensure decent condition of living and comparable condition in the other member states<sup>313</sup>

However, according to the report by human right watch, 2023. Spain continues to push back migrants resulting in numerous deaths at its land and its sea borders. In the current years poverty has grown with the rise of inflation and increase in food and

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<sup>310</sup> ROYAL DECREE APPROVING THE REGULATION OF ORGANIC LAW 4/2000 ON THE RIGHTS AND FREEDOMS OF FOREIGNERS IN SPAIN AND THEIR SOCIAL INTEGRATION. BOE-A-2011-7703 Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, on rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009. (21/6/2023)

<sup>311</sup> FRAMEWORK PROTOCOL FOR PROTECTION OF VICTIMS OF HUMAN TRAFFICKING. Microsoft Word - Protocolo Trata-EN.docx (igualdad.gob.es). (21/6/2023)

<sup>312</sup> Fundacion Raices REPORT: VIOLENCE AGAINST UNACCOMPANIED MIGRANT CHILDREN IN SPAIN. (March 2019) March2019\_FundaciónRaíces\_Report-on-violence-against-migrant-children.pdf (fundacionraices.org). (21/6/2023)

<sup>313</sup> Consolidated legislation BOE-A-2022-4978 Royal Decree 220/2022, of 29 March, approving the Regulation regulating the reception system in the field of international protection. (21/6/2023)

energy prices. Thousands of people are still dwelling in an informal settlement near Madrid without electricity for three years.<sup>314</sup>

The present situation of refugee migration can be efficiently managed by close International support, better asylum policies and by adopting innovative new ideas to address the refugee's crisis. Refugees need to be seen as a source of human resource and not as a burden. There are instances of how refugees have built nations together and how they can add to the economy of the country, only if they are taken care of and managed well. Thus, an equal distribution of refugees among the member states and make it easy burden as well as contribute their income

#### **4.5.7 LATVIA**

‘According to the world population review, nearly 209,869 refugees will arrive in Latvia by the year 2023.<sup>315</sup> The both Latvian government and the NGO's have fully supported the Ukrainian refugees in Latvia. Their accommodation, medical needs, financial needs, education, training, employment etc. everything has been taken care of. Following are the support provided by the Latvian Government.

##### **Latvia Government response to refugee issues**

Following are the ways and means of the government response to refugees from Ukraine.

##### **The government immediate aides**

The government aided 36,000 most deprived sections of the Ukrainian refugees and provided 78,000 food packages, nearly 47,000 hygiene and other household goods in packages and provided 7,600 school supplies to children. The government provided free public transportation facilities to the Ukrainian people

##### **Government allowances and financial support**

The government of Latvia released EUR 116,000,000 in the financial year 2022 and around EUR 102,170,576 in the year 2023 to support the Action plans for refugees welfare. To provide financial support to the refugees the government has assured a

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<sup>314</sup>World report. Spain events of 2022 World Report 2023: Spain | Human Rights Watch (hrw.org)

<sup>315</sup>World population review. REFUGEES BY COUNTRY, 2023. (12 June, 2023) Refugees by Country 2023 (worldpopulationreview.com) (23/6/2023)

minimum income allowance of EUR 109. Around EUR 272 is granted to an adult and around EUR190 is granted to children.

### **Accommodation and residence**

From January 2023, onwards the Ukrainian civilians have been granted residence permits for the term of two years. Nearly 2219 refugees from Ukraine have been housed in the asylum seekers center in the office of citizenship and migration affairs. The government also provided Identification numbers to 47,000 Ukrainian refugees and provided residence documents like visas and residence permits to nearly 43,000 refugees

### **Government support for education and training**

The government provided EUR 522,000 scholarship for the Ukrainian students and researchers for education and the communities of scientific research. Nearly EUR 140, to students of all levels who are enrolled in higher education institutions either private or public. The government provided around EUR 900 per month to Ukrainian researchers in Latvia as a research grant.

Separate study plans have been introduced by the government, for the individual Ukrainian Children and students attending the school in Latvia. Additional funding of EUR257 has been granted to the educational institutions to pay more to the teachers taking the Ukrainian People. Another EUR 50 is granted per year for the purchase of tools for teaching.

For the year 2022-23 nearly 1496 children have been enrolled in pre-school and 2,797 have been enrolled in general education and 110 students have enrolled in vocational training and 317 students are enrolled in sports. The government also launched training courses for 12 days to train 100 officials, and trained them in psychological support and to train them in state border guard services.

Language course is also paid attention to in Latvia as knowing the language is the first step towards integration. The Latvian government allocated a fund of EUR 4,000,000 towards developing language skills in the Ukrainian refugees alone in the fanatical year 2023.

### **Government support for Employment and Start-ups**

The Latvia government promotes the refugees, to initiate their start-ups and is encouraging self-employment for which the government granted EUR 620 in 2023. The government further approved 11686 employment and allowance to 179 self-employment

### **Government for the differently abled people and unaccompanied children**

The people with disability are also taken care of and thus nearly 554 adults and nearly 159 differently abled children are provided medical and other support to reduce their disabilities. The government also took care of 1000 unaccompanied children and provided them with a local guardian and provided financial support to the local guardian to take care of the children.

### **Working of NGOs and other societies for refugees in Latvia**

Several societies and NGOs work together to provide assistance to the government of Latvia and also help the refugees. These organizations help the refugees with housing, humanitarian aids and support, and provide basic information about Latvia. They also provide training through culture and sports, to build communities and learn the language. Several other activities are organized for the children and youth from Ukraine. Several entrepreneurs also come together to provide donations to these organizations and help them function properly.<sup>316</sup>

Thus we see that both government and other non-government organizations together work for the welfare of the refugees in Europe.

## **4.5.8 GREECE**

‘According to the world population review, nearly 171,676 refugees will arrive in Greece by the year 2023.<sup>317</sup> According to the human rights watch, though Greece welcomed thousands of refugees from Ukraine, it failed in providing protection to other asylum seekers and instead pushed the new arrivals to Turkey. The government has reportedly engaged in crackdown of NGO’s and has curbed the freedom of media and other surveillance scandals, this has raised concern.

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<sup>316</sup>Cabinet of Ministers Republic of Latvia. LATVIA SUPPORTS UKRAINE, Updated: 18.05.2023. (Aid for War Refugees)Latvia supports Ukraine | Ministru kabinets (mk.gov.lv) (23/6/2023)

<sup>317</sup>World population review. Refugees by Country, 2023 Refugees by Country 2023 (worldpopulationreview.com) (12/6/2023)

## **Greece Government response to refugee issues**

The Greek government initiated temporary protection for Ukraine refugees. After gaining the refugee Status, a refugee or their beneficiary of subsidiary protection are entitled to permit for residence (ADET) valid for three years and the beneficiaries of the subsidiary can be granted protection for one year which can be renewed for a period of two years post the reexamination. Refugees are also entitled to obtain travel documents by the Hellenic Republic. The beneficiary of international protection can also apply for the citizenship<sup>318</sup>

The travel document allows the holder to validate any EU countries for ninety days.

## **Migration Integration**

‘The Migration Integration Centers is responsible for the integration of the new arrivals in Greece. The migrant integration centers provide information, various kinds of service, provide advice on integration and networking to the migrants. The center provides socio-psychological support to all, especially to the women and children. It provides learning support to migrant children of all ages and also provides language training for adult arrivals.

The center also sensitizes the local communities about xenophobia, what is racism and human trafficking. The center also diagnoses the problems and addresses the issues through collaboration and referring requests to special services. Like, homeless people, women who are abused, victims of human trafficking, people of mental health etc. are referred to the respective services that aid the people in need.’<sup>319</sup>

‘**Social Integration Program HELIOS**- aims to facilitate international protection and smooth integration of the beneficiaries in Greek society. It provides facilities like housing, integration courses including (Language classes and social skills). It also provides access to the labor market, creates awareness of the local communities and facilitates social cohesion, to promote an independent living of the beneficiaries.

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<sup>318</sup>Hellenic Republic Ministry of Migration and Asylum. POSITIVE DECISION. Θετική Απόφαση | Υπουργείο Μετανάστευσης και Ασύλου (migration.gov.gr). (23/6/2023)

<sup>319</sup>Ministry of Migration and Asylum. Migrant Integration Centers. Migrant Integration Centers | Ministry of Migration and Asylum. (23/6/2023)

The Migration Integration Center (KEM) - provides language and computer sciences courses and provides career-counseling sessions. KEMs are opened in around 11 Municipalities of Greece.<sup>320</sup>

#### **4.5.9 NETHERLAND**

‘According to the world population review, nearly 107,099 refugees will arrive in the Netherlands by the year 2023.<sup>321</sup> At the Global Refugee Forum, the government of Netherlands pledged to invest US\$ 558 million towards the partnership during the year 2019-2023. ‘The investment is for the protection, education and better livelihood of the forcibly displaced people and their hosting communities in the regions of Middle East, Northern and Eastern regions of Africa, in the Horn of Africa, and in the Great Lake regions. The 2019 PROSPECTUS (the Multi-annual Hybrid Partnership) brought organizations like UNHCR, UNICEF, ILO, IFC and the World Bank to work for humanitarian development. The government of Netherlands also provides backing to the Global Compact on Refugees and leads in aiding mental health and psychological assistance service as per its pledge.’<sup>322</sup>

#### **Allowances for clothing, food and extra allowances**

‘The government of Netherlands provides all the refugees allowances of EUR 56.12, to buy clothing and for personal expenditure. The government also provides food allowances of EUR 215.06, which is provided to all refugees who are unable to get meals at the municipal reception center. A smaller family gets more food allowances than the larger family.

Extra allowances of EUR 93.00 besides food and clothing are paid to the refugees staying with the host families. The extra allowances are to pay public transport, visit family or contribute to the host family etc.

These subsidiary allowances for all the family members however stops once a refugee aged 18 years gets a paid job. The allowances also stop once a refugee's 18+ starts getting unemployment benefits from the Dutch Government.

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<sup>320</sup>Ministry of Migration and Asylum. HELP DESK SOCIAL INCLUSION. Help Desk Social Inclusion | Ministry of Migration and Asylum.

<sup>321</sup>World population review. Refugees by Country, 2023 Refugees by Country 2023 (worldpopulationreview.com) (12/3/2023)

<sup>322</sup>UNHCR operations worldwide. THE NETHERLANDS. The Netherlands | Global Focus (unhcr.org)

## **Child Benefits**

Ukrainian Refugees having a paid employment in the Netherlands are also entitled to child benefits. The benefit is to provide financial assistance provided by the government to meet the cost of reaching a child until he/she reaches 18 years of age.

## **Employment opportunities**

The Ukrainian refugees falling under Directive of Temporary Protection do not need permits for employment for paid employment work. The employer who is hiring the refugees from Ukraine must inform the Employee Insurance Agency (UWV).

Employment also helps the refugees get the residence proof after providing the requisite proof.’<sup>323</sup>

## **4.5.10 FINLAND**

‘According to the world population review, nearly 32,470 refugees will arrive in Finland by the year 2023.’<sup>324</sup> ‘Under the 2023 refugee quota, Finland is to accept 420 Syrian Refugees staying in Turkey and Lebanon. It will accept 210 Afghan Refugees staying in Iran, 160 Congo refugees from Zambia. In addition, it will take in 130 other refugees, rescued from Libya to Rwanda and 30 other stateless refugees. According to the Ministry of Interior, Finland, the government is already providing temporary protection to refugees from Ukraine and the Nordic countries will continue to accept their quota of refugees.’<sup>325</sup>

According to the study by the EMPL Committee (European Parliament), Finland possesses a well-functioning reception center and a system for integration of refugees. The well-functioning quota refugee system and the preparedness plans helps the stakeholders in facilitating the reception and the integration activities.’<sup>326</sup> ‘According to the April 2023 UNHCR report, between the years 2015-2019 several changes took

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<sup>323</sup>Government of the Netherlands. RECEPTION OF REFUGEES FROM UKRAINE. Work and income in the Netherlands for refugees from Ukraine | Reception of refugees from Ukraine | Government.nl. (23/6/2023)

<sup>324</sup>World population review. Refugees by Country, 2023 Refugees by Country 2023 (worldpopulationreview.com) (12/6/2023)

<sup>325</sup>Schengenvisa newa. FINLAND TO ACCEPT 1,050 REFUGEES IN 2023. October 12, 2022

<sup>326</sup>The European Parliament THE INTEGRATION OF REFUGEES IN FINLAND. Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies Author: Susanna MEHTONEN PE 638.397 - August 2019. The integration of refugees in Finland (europa.eu). (25/6/2023)

place in the Aliens Law in Finland. Finland has shown as swift and protection orientated hosting of the mass inflow of refugees in the recent Ukrainian War. In the recent mass inflow of refugees from Ukraine Finland scaled up the reception capacity and processed a large number temporary protection under EU Temporary Protection Directive (TPD).

The government provided the following facilities to the refugees.

### **Access to Territories**

The government has allowed access to the territory of Finland and the right to seek asylum and respect to the principle of non-refoulement.

### **Protection of Children**

Finland has hosted a number of separated children from their families and unaccompanied children. it has fulfilled the requirement of these children and has protected them.

### **Family Reunification**

In recent times family reunification for refugees as well as their beneficiary of subsidiary protection has been severely restricted by some legal, practical and financial obstructions.

### **Integration of refugees**

Integration of refugees is considered prime importance and is a focus point for all the parties in Finland.<sup>327</sup>

## **4.5.11 BELGIUM**

According to the statistics of 2023, Belgium has granted asylum to nearly 74,063 refugees<sup>328</sup> a person having a well-founded fear of being persecuted on return to his home land can apply for asylum in Belgium. In order to get asylum in Belgium a person has to be physically present in the territory of Belgium. One cannot apply for

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<sup>327</sup>UNHCR. *UNHCR recommendations to Finland on strengthening refugee protection in Finland, Europe and globally April 2023*. UNHCR-recommendations-to-Finland-on-strengthening-refugee-protection-April-2023.pdf (26/6/2023)

<sup>328</sup>MacroTrends. *Refugee Statistics 1999-2023 LATVIA REFUGEE STATISTICS 1999-2023 | MacroTrends*. (26/6/2023)



international protection if he is not in the country. However, one can join his family or close relatives in Belgium if he is in any other European Union Country.

In Belgium, the instance protection to refugees is provided under the CGRS.<sup>329</sup> The application is examined by the commissioner, followed by interview and then, on satisfactory report, protection is granted in accordance with both Belgium and EU Integration legislation. The decisions of the CGRS is appealable before the Council for Alien Law Litigation (CALL) between 10-30 days. The government during the pendency of the protection procedure can stay in Belgium under the Dublin III Regulation.<sup>330</sup> Another law protecting migrants and refugees is Belgium Law on foreigners. Belgium however does not have asylum legislation. In case of any asylum application, the case is examined under the 1951 refugee convention.

### **Integration Programme**

The government recognizes the importance of social cohesion within the intercultural society and works towards the same. It provides equal access to services and equal participation. The government focuses on providing Language Courses and Civic education along with vocational training. The two laws concerned with the integration of refugees is “Decree of 7 June, 2013” and “Walloon Code”<sup>331</sup>

The government works through its Anti-discrimination law to fight any discrimination against the refugees and migrants. Moreover, through its “Law of 30 July, 1981” it punishes the racial and xenophobic acts.

### **4.5.12 ESTONIA**

According to the statistics of 2023, Estonia receives 72,176 asylum applications.<sup>332</sup> Estonia is one of the countries in the “comprehensive Ukraine Regional Refugee

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<sup>329</sup>CGRS- Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Asylum in - UNHCR Belgium. (26/6/2023)

<sup>330</sup> UNHCR. ASYLUM IN BELGIUM. Asylum in - UNHCR Belgium (14/6/2023)

<sup>331</sup> “Walloon Code”- Walloon Code for social action and Health. (30/6/2023)

<sup>332</sup> MacroTrends. REFUGEE STATISTICS 1999-2023 LATVIA REFUGEE STATISTICS 1999-2023. (17 July, 2023) Latvia Refugee Statistics 1999-2023 | MacroTrends. (1/7/2023)

Response Plan.”<sup>333</sup> The plan aims aiding the government-led response for the Ukrainian refugees in Estonia, by providing protection and other support activities. Both the government and the civil society and the people of Estonia have come together for the Ukrainian refugees.

The government of Estonia’s key support is for providing the basic needs like food, medical facilities and health, livelihood and housing facilities. The government also aims at providing assistance for a dignified living, and help them get access to equal social and economic opportunities and establish social cohesion for Ukrainian refugees.

The new arrivals and vulnerable refugees also get equal opportunity for employment and public services, food and financial assistance to meet their daily needs. The Ukrainian children in Estonia are provided language training and activities for the youth are organized to help their integration in the society. In addition, counseling programs for seeking jobs and mentoring programs are also offered to start small businesses and grants are released for the same. All of these programs helps the refugees to become self-reliant.<sup>334</sup>

#### **4.5.13 DENMARK**

Denmark registered 48,883 applications in the year 2023.<sup>335</sup> To help the refugees and migrants Denmark has entered into a five year agreement with the UNHCR from 2022-2026 to support the sustainable solution. In 2022, Denmark released USD 106.9 million to UNHCR.<sup>336</sup> The letter by the UN high commissioner for refugees to the Danish government denoted that currently Denmark is hosting the lowest number of asylum seekers in the recent decade and has highlighted new restrictions introduced

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<sup>333</sup>UNHCR. UNHCR AND PARTNERS CALL FOR GLOBAL FINANCIAL SUPPORT TO ASSIST REFUGEES FROM UKRAINE IN ESTONIA. (22.02.2023.) UNHCR and partners call for global financial support to assist refugees from Ukraine in Estonia – UNHCR Northern Europe. (1/7/2023)

<sup>334</sup>UNHCR Nordic and Baltic Countries. UNHCR AND PARTNERS CALL FOR GLOBAL FINANCIAL SUPPORT TO ASSIST REFUGEES FROM UKRAINE IN ESTONIA. (22.02.2023.) UNHCR and partners call for global financial support to assist refugees from Ukraine in Estonia – UNHCR Northern Europe. (1/7/2023)

<sup>335</sup> MacroTrends DENMARK REFUGEE STATISTICS 1960-2023. (11 June, 2023) Denmark Refugee Statistics 1960-2023 | MacroTrends. (1/7/2023)

<sup>336</sup>UNHCR Nordic and Baltic Countries. DENMARK AS A DONOR. (14 June, 2023) Denmark as a Donor UNHCR Northern Europe. (1/7/2023)

by the government in recent times. Denmark's pragmatic shift of 2019 is a major concern, where the government changes the long-term integration into short-term stay in the country. The government is more focused towards returning the asylum seekers as soon as possible.

The UNHCR thus, advised Denmark to resume to the International and European Standards for the protection of refugees by ensuring stability for the long term, by providing security and fair access to family reunification. The UNHCR also warned of future problems of integration resulting out of the restrictions imposed.<sup>337</sup>

Dunja Mijatovic, the Commissioner for human rights in his country, visited Denmark, in 2023. The commissioner raised concern on Denmark's policy shift of providing temporary protection of asylum seekers to foster their early return; the policy has also led to instability and uncertainty in people who have borne the entire pain to get to Denmark owing to persecution in their own country. The commissioner also raised concerns over the immigration detention, families being denied asylum, families whose permits have been revoked, and he raised concern for children living in a state of limbo for many years.<sup>338</sup>

#### **4.5.14 IRELAND**

'According to the world population review nearly 16,629 refugees will arrive in Ireland by the year 2023.<sup>339</sup> Ireland, like some of the other European Union states, takes in quota refugees under the agreement with the UNHCR.<sup>340</sup>

##### **Ireland Government response to refugee**

To tackle the 2015 migrant or refugee crisis the Irish government established the Irish Refugee Protection Programme (IRPP). In the year, 2019 IRPP-II was introduced, in between the year 2022-23 new community sponsorship was initiated. Under Article

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<sup>337</sup>European Parliament. UNHCR URGES DENMARK TO CHANGE REFUGEE POLICY. (11 June 2021). UNHCR urges Denmark to change refugee policy | European Website on Integration (europa.eu). (2/7/2023)

<sup>338</sup>STRASBOURG. COUNCIL OF EUROPE PORTAL. COUNTRY VISIT Denmark: concerns over the impact of shift in asylum policy and need for further progress in the protection of the human rights of persons with disabilities. (05/06/2023) Denmark: concerns over the impact of shift in asylum policy and need for further progress in the protection of the human rights of persons with disabilities - Commissioner for Human Rights (coe.int) (2/7/2023)

<sup>339</sup>World population review. Refugees by Country, 2023 Refugees by Country 2023 (worldpopulationreview.com) (15/6/2023)

<sup>340</sup>National Social Inclusion Office. IRISH REFUGEE RESETTLEMENT PROGRAMME. (15 June, 2023) Irish Refugee Resettlement Programme - HSE.ie (2/7/2023)

19 of the AMIF, 2023, Ireland pledged to settle the 800 refugees from Lebanon and Jordan and 100 people from Afghanistan.

### **Resettlement by the Local Authority**

The local authorities in Ireland have been allocated a refugee quota, to house the families and integrate them in the area, help them resettle, find work, and provide social care. Grant agreements are signed with the local authorities for the EU AMIF and Exchequer funds release for the purposes of the above-mentioned purpose. Interagency Working Group (IAWG) to prepare for the new arriving refugees.

### **Community Sponsorship Ireland (CSI)**

The sponsorship program in Ireland was established in 2018 to facilitate community integration and resettlement. Until the end of 2023 Regional Support Organization (RSOs) are responsible for setting up departments for the implementation of Community Sponsorship.<sup>341</sup>

## **4.5.15 CYPRUS**

According to the statistics published, Cyprus has granted asylum to 16,277 refugees in the year 2023.<sup>342</sup>

### **Cyprus Government response to refugee**

The Ministry of Interior leads the implementation of Global Compact of Refugees (GCR) with the aid from UNHCR. The Asylum Service, the Civil Registry and the Migration department work with the ministry in collaboration with other government departments like the Ministry of Labour, Education and social welfare.

### **Global Compact of Refugees (GCR)**

The Global Compact of Refugees is implemented by the Ministry of Interior in cooperation with UNHCR, in Cyprus. There is a close collaboration between the various government departments and to ensure the implementation of the GCR. The

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<sup>341</sup>Programme From Department of Children, Equality, Disability, Integration and Youth Irish Refugee. IRISH REFUGEE PROTECTION (Protection Published on 29 Jan. 2021. Last updated on 10 February 2023). (2/7/2023)

<sup>342</sup>MacroTrends. Cyprus Refugee Statistics 1968-2023. (13 June, 2023) Cyprus Refugee Statistics 1968-2023 | MacroTrends (2/7/2023)

governmental and non-governmental bodies like the Private institutions and various local authorities and trade unions are also working for the GCR.

Cyprus has received numerous refugees from Italy and Greece for relocation. Refugees are relocated by the government, through the European Asylum support office deployed trained case workers and other staff functioning in the asylum and reception areas.

For the integration purposes, the government has activated the programmers that included the Private sectors, local authorities and the inter-governmental Advisory Board for migrants.<sup>343</sup>

### **Accommodation**

The government is focused on providing emergency temporary accommodation to the displaced people from Ukraine. For this purpose the Minister of Tourism also with the Council of Minister is assigned to establish lease agreements with local hotels units.

### **Access to Labour Market**

People with temporary protection can access the labour market for employment or can engage in self-employment activities.

### **Social Welfare**

The refugees and their beneficiaries are entitled to various social welfare benefits. They have access to medical care and to obtain medicine and other medical assistance by the person with special needs.<sup>344</sup>

## **4.5.16 MALTA**

In the year, 2023 Malta received nearly 12,359 refugee applications.<sup>345</sup>

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<sup>343</sup>UNHCR 2023. Global Compact on Refugees. CYPRUS. AN OVERVIEW OF HOW THE GLOBAL COMPACT ON REFUGEES IS BEING TURNED INTO ACTION IN CYPRUS. (13 June, 2023) Cyprus | The Global Compact on Refugees | UNHCR ([globalcompactrefugees.org](https://www.globalcompactrefugees.org))

<sup>344</sup>EUROPEAN UNION AGENCY FOR ASYLUM. ANNUAL REPORT ON THE SITUATION OF ASYLUM IN THE EUROPEAN UNION ASYLUM REPORT 2022. ASYLUM REPORT 2022 | EUROPEAN UNION AGENCY FOR ASYLUM (EUROPA.EU) (2/7/2023)

<sup>345</sup>MacroTrends. Malta Refugee Statistics 1993-2023. (17 June, 2023) Malta Refugee Statistics 1993-2023 | MacroTrends. (2/7/2023)

## **Malta government response to refugees**

The Jesuit Refugee Service in Malta provides legal services to people in detention centers and open communities. In November 2018, the government of Malta announced the new policy for Specific Residence Authorization (SRA) to give status to asylum seekers whose claims have been rejected and could not return. Under SRA, these applicants are provided two years of residence permit and access to welfare benefits as provided in the Refugee Act. They are also provided employment licenses and educational and medical benefits and training and travel documents.<sup>346</sup> There are several projects through which the government works to provide assistance to the refugees.

‘The UNHCR along with JRS, *Jesuit Refugee Service* works to identify vulnerable people and people with special needs and provide them with requisite support. Special project is carried out by the two bodies in response to address sexual and gender-based violence. They also have clubbed together to provide legal assistance to people of concern. The government of Malta along with UNHCR and other stallholders work on SGBV. Other projects in Malt are-

### **The Monitoring reception of refugees and access to protection in open center and Initial Reception Center (IRC) –**

Under the project, the UNHCR visits the open center and IRC to provide basic information to the asylum seekers like the Dublin regulations, their rights and obligations as asylum seekers.

### **The Monitoring reception at the detention center and advisory for the implementation of alternative detention-**

Under the project, the UNHCR visits the Safi Detention center to monitor the condition there, and to find an alternative to detention in Malta.

### **Child protection and the SGBV prevention and its response-**

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<sup>346</sup>European Commission. 15 November 2018. New Specific Residence Authorization policy implemented in Malta for rejected asylum seekers | European Website on Integration (europa.eu)

The project monitors and strengthens the mechanisms available in Malta, by managing data, capacity building, forming partnerships and by coordination and sharing training resources.’

#### **4.5.17 POLAND**

Poland received 8,492 applications in the year 2023.<sup>347</sup>

##### **Polish government response to refugees**

‘The Polish government works through several bodies for its Regional Refugee Response Plan. The working of Humanitarian organizations is coordinated through Refugee Coordination Model (RCM) and further the RCM is coordinated with Inter-sector Coordination Group (ISCG). The model has been active since March 2022 to deal with the mass influx of refugees.’<sup>348</sup>

##### **Access to Labor Marker-**

Post one year of arrival in Poland the refugees have access to the labor market and access to social services as provided under the European Union’s Temporary Protection Directive. While some refugees need little help only there are many who are vulnerable.

##### **Objective of Polish Government in 2023**

- The government aims at ensuring refugees the access to protection and their rights without any discrimination.
- Pave way for better solutions and expand the access to socio-economic opportunities.
- Ensure that the refugees with special needs have access supports and assistance
- To advance social cohesion among refugees and host communities through interventions.<sup>349</sup>

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<sup>347</sup>MacroTrends. Poland Refugee Statistics 1991-2023. (17 June, 2023) Poland Refugee Statistics 1991-2023 | MacroTrends. (2/7/2023)

<sup>348</sup> Refugee Coordination Forum In Poland. 02 March 2023. Poland: Refugee Coordination Forum in Poland (02 March 2023) - Poland | ReliefWeb (2/7/2023)

<sup>349</sup> Operational Data Portal. UKRAINE SITUATION: REGIONAL REFUGEE RESPONSE PLAN - JANUARY-DECEMBER 2023. (January 2023) Document - Ukraine Situation: Regional Refugee Response Plan - January-December 2023 (unhcr.org) (2/7/2023)

By the end of 2022 the government provided cash assistance to 6000,000 refugees, education benefits to 539,000 children and training to 10,000 persons. Nearly 8000 healthcare providers benefited through capacity building and 262,000 refugees received support. Eighty five thousand refugees received information about the available protection services for GBV. Some 671,000 refugees were giving information of their rights and services and around 41,000 refugees with special need received protection

#### **4.5.18 LUXEMBOURG**

Luxembourg received 7,017 refugee applications in the year 2023.<sup>350</sup> ‘The top countries of origin of the refugees in 2022, coming to Luxembourg were Syria, Eritrea and Afghanistan.

##### **Luxembourg Government response to Refugees**

For the family reunification, Luxembourg collaborated with Miles for Migrants (M4M) to facilitate ten refugee families in Luxembourg. The government with the aid from the UNHCR focuses on refugee integration by assessing the challenges, the available opportunities, good practices and the shortcomings occurring in housing, employment and language learning. Luxembourg created help pages for refugees from Ukraine arriving in Luxembourg.

**Asylum procedure-** Luxembourg has a well-established asylum system. The access to asylum system is guaranteed to the refugees from Ukraine.

Luxembourg has provision for integration and family reunification. However, the UNHCR urged for more flexible family reunification through partnership with M4M. As far as resettlement is concerned, Luxembourg has announced a resettle of 15 refugees in the year 2023 along with 15 others from humanitarian admission and 50 refugees from quota resettlement.<sup>351</sup>

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<sup>350</sup>MacroTrends Luxembourg Refugee Statistics 1960-2023. (03 March 2023) Luxembourg Refugee Statistics 1960-2023 | MacroTrends. (2/7/2023)

<sup>351</sup> UNHCR. (February 2023). Luxembourg Fact Sheet. UNHCR (3/7/2023)



#### **4.5.19 ROMANIA**

By the year 2023, Romania received 5,994 application for refugees<sup>352</sup> by the end of the year 2022 there were 106,786 refugees in Romania, out of which 102,729 were registered and were provided temporary protection.

##### **Romania Government Response to the refugees**

Around 64,587 refugees in Romania were provided basic information, they were provided legal assistance and personal counselling. 700 officials along with the local authorities, various partners and volunteers have been provided training to provide protection to the refugees, including protection of child refugees, victims of gender-based violence. There are 44 different organizations that coordinate and provide Protection from Sexual Exploitation and Abuse (PSEA). Nearly 14,781 refugees in 2022 were reached through Telegram and Facebook, social media platforms.

##### **Cash Assistance-**

Unlike the other European Countries Romania also provides cash assistance for multipurpose. In the year 2022, nearly 43,000 refugees were provided cash assistance.

##### **Socio-economic integration and livelihood-**

To make integration easy and smooth in the year 2022 nearly 390 refugees were given language classes. Around 400 were supported by granting employment in coaching and counseling. Another 600 refugees were provided jobs4UKR.<sup>353</sup>

#### **4.5.20 HUNGARY**

Hungary received nearly 5,877 applications in the year 2023.<sup>354</sup> Nearly 2,835 vulnerable refugees in Hungary received winter requisites by the UNHCR and other partners.<sup>355</sup>

##### **Hungary Government Refugee Response**

The Hungary Regional Refugee Response Plan was launched on 7 March 2023. Since

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<sup>352</sup>MacroTrends. World Refugee Statistics 1990-2023. (04 March 2023) World Refugee Statistics 1990-2023 | MacroTrends. (3/7/2023)

<sup>353</sup> UNHCR. Romania Annual Overview. 31<sup>st</sup> December 2022. UKRAINE REFUGEE SITUATION UPDATE (15/6/2023)

<sup>354</sup>Refugee Statistics 1999-2023 Latvia Refugee Statistics 1999-2023 | MacroTrends (15 June, 2023)

<sup>355</sup>UNHCR. Hungary, January-February, 2023. (15/6/2023). REFUGEE SITUATION OPERATIONAL UPDATE.

its launch of UNHCR/IOM, the Budapest Help Community Center, around 2, 5000 Ukrainian refugees have received help in attaining information, access to legal aid and several social services, and education and healthcare helps.

### **Protection of Women and Children**

With the cooperation of the Hungarian government, the UNHCR works to provide a safe and productive environment to the helpless refugees and their families. UNHCR helps them access basic assistance and protection to refugee women, girls, men, boys and other people with special needs

### **Empowerment of the refugees**

In order to release the pressure on the national system, the UNHCR supports the refugees by including them in the National System and by building socio economic self-reliance of the refugees. The organization like UNHCR/IOM, the Budapest Help Community Center helps in refugee capacity building and empowerment of refugees, by organizing community events for refugees.

### **Legal Counseling**

UNHCR along with the other partner works to provide legal counseling to Ukrainian refugees prior to their arrival in Hungary. They are briefed about the procedure to apply temporary protection and their rights and services.

### **Protection from any sexual abuse and exploitation (PSEA)**

Protecting refugees against sexual abuse, particularly women and girl is the prime importance for the government of Hungary. Attempts are taken to make women refugees aware of their rights, access assistance, how to communicate risk to how to report a sexual abuse instance.<sup>356</sup>

## **4.5.21 CROATIA**

Croatia received 5,689 applications in 2023.<sup>357</sup> Refugees in Croatia come from Bosnia and Herzegovina and Serbia. According to the UNHCR, Croatia's asylum system is in

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<sup>356</sup>UNHCR. Hungary, January-February, 2023. (15 June, 2023) REFUGEE SITUATION OPERATIONAL UPDATE. (15/6/2023)

<sup>357</sup>Refugee Statistics 1999-2023 Croatia. (15 June, 2023) Refugee Statistics 1999-2023 | MacroTrends

accordance with the European Union Standards. In recent times, Croatia is allegedly pushing back refugees at the border. The UNHCR helps the authorities to find solutions for the stateless persons at risk.<sup>358</sup>

According to the Human right watch, the decision given by the Council of the European Union admits that despite substantial reports regarding Croatia's frequent breach of European Union Law and Human Rights law, the border guards of Croatia show disregard to the European Union's Commitment for fundamental rights, human rights and other humanitarian organizations.<sup>359</sup>

#### **4.5.22 LITHUANIA**

Lithuania received 5,056-asylum applications in 2023. There has been continuous pushback of refugees and asylum seekers arriving at the Lithuania border. The government adopted laws to curtail the rights of the asylum seekers and codified arbitrary detention of numerous people, violating their human rights.<sup>360</sup> Refugees and asylum seekers have been held for months in prison-like centers and their human rights have been violated. According to Amnesty International, dozens of people from Camron, Sri Lanka, Congo, Iraq, Nigeria and Syria are unlawfully detained and many were beaten, insulted and humiliated based on race.

##### **Automatic Detention and Denial of Asylum**

Arrivals in Lithuania are detained unlawfully amid the adoption of new legislation, which prescribes automatic detention of people irregularly coming to Lithuania. Many people's asylum claims remain unassessed.

##### **Inhuman Detention Condition**

On the visit to the two-detention center, Amnesty International found that the detention centers have barred windows, security locked doors and high walls. For months, people above the capacity flooded the center.

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<sup>358</sup>Croatia September 2021, CROATIA FACT SHEET. UNHCR (15/6/2023)

<sup>359</sup>Human right watch, EU ADMITS CROATIA TO SCHENGEN WITHOUT REGARD TO ABUSE AT THE BORDER. (December 8, 2022 12:01AM EST) EU admits Croatia to Schengen Without Regard To Abuses at the Border | Human Rights Watch (hrw.org). (15/6/2023)

<sup>360</sup>Index Number: EUR 53/5735/2022. LITHUANIA: FORCED OUT OR LOCKED UP. REFUGEES AND MIGRANTS ABUSED AND ABANDONED. (June 27, 2022) Lithuania: Forced Out or Locked Up. Refugees and Migrants Abused and Abandoned - Amnesty International. (15/6/2023)

#### **4.5.23 GERMANY**

‘Germany has been long known for an open migration policy because of its low birth rate and high demand of labors in the labor markets. The most common countries from where migrants come to Germany are mainly Syria- 16%, Romania- 7%, Poland-6%, and 5% from Ukraine.

According to the statistics of 2022 presented by the new government, there are around 15.3 million people, which makes 18.4% living in Germany, moved to Germany from abroad. One in five person nationwide migrated to Germany and nearly 5 million children are born to migrant parents. The majority of the migrants come from some of the conflicting zones, like Afghanistan, Syria and Ukraine.’<sup>361</sup> By April 2023, there were 1.06 million Ukrainian refugees in Germany, most of them registered. Germany provided the highest monthly financial allowance for the refugees from Ukraine, as compared to any other state in Europe.<sup>362</sup>

#### **Germany’s Response to Refugee Crisis**

In Germany both the Governmental as well the non-governmental organizations work for the refugees. Under Germany’s Foreign Policies, several measures are taken for refugees protection and welfare. Projects like Crisis Prevention Projects are run which works towards the imminent cause that forces the migrants to leave their country. Germany works towards neutralizing the Crisis and its policies work to cut down the outbreak of violent conflict at the European level and at the multilateral level. It also provided humanitarian assistance in the regions hit by the crisis and aims at finding a joint solution for the refugees and the migrants. Germany further aids in creating awareness of the consequences of migration. Germany provides education opportunities, promotes return and reintegration and assists integration of the refugees in Germany. It provides benefits to the refugees in the camp and works for the welfare, protection and integration of refugees.<sup>363</sup>

#### **Comprehensive New Migrant policy in Germany**

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<sup>361</sup>DW news. GERMANY: IMMIGRANTS MADE UP OVER 18% OF 2022 POPULATION, 04/20/2023. Germany: Immigrants made up over 18% of 2022 population – DW – 20/4/2023

<sup>362</sup>Statista Research Development. NUMBER OF UKRAINIAN REFUGEES 2023, BY COUNTRY. (May 11, 2023) Ukrainian refugees by country 2023 | Statista. (15/6/2023)

<sup>363</sup>Deutschland.de. MANY DIFFERENT FORMS OF ASSISTANCE FOR REFUGEES. (20.01.2023) Refugees in Germany – Help from Politicians and Citizens (deutschland.de). (15/6/2023)

In the recent years, Germany has made a considerable amount of change across its element of asylum and integration policies. Following are the areas in which the government of Germany has made policy changes.

### **Speeding the Asylum Procedure-**

The policymakers in Germany have sought to improve and speed up the asylum procedure in order to assure early certainty to the asylum seekers. The cluster procedure used between the years 2015-2017, was time taking. Under the procedure the asylum seekers were divided into different cluster like Cluster A- (country of origin with highest rate of approved asylum applications), Cluster B- is (Country of origin with little protection rate), Cluster C- is (cases of complex nature), Cluster D (Dublin Regulation cases). The longer time taken to process the application subsequently delayed the integration of programmers. Since the early integration is important to keep the value of human capital, the delay in the process created social and economic problems<sup>364</sup>.

### **‘More houses for accommodation-**

The newly elected government under the leadership of Vice-chancellor Scholz assures to build 400,000 new houses each year, and around 100,000 will be publicly subsidized. The government was assured to create a short-term alliance for affordable housing and plans to extend the rent break law.

### **Immigration and Citizenship-**

The government is planning to overhaul the immigration system and the citizenship process. The new government plans to make citizenship thinkable, now a person staying in Germany can apply for citizenship after his five years of stay, which was earlier at eight years, the government is also planning to reduce it from five to eight years the measure if to ensure speedy integration. The government also eases the current strict rule on citizenship, now the government is going to make multiple

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<sup>364</sup>Erbert Brucker, Philipp Jascke and Yuliya Kosyakova, INTEGRATING REFUGEES AND ASYLUM SEEKERS INTO THE GERMAN ECONOMY AND SOCIETY: EMPIRICAL EVIDENCE AND POLICY OBJECTIVES. (December 2019) Integrating Refugees and Asylum Seekers into the German Economy and Society: Empirical Evidence and Policy Objectives (migrationpolicy.org) (15/6/2023)

citizenship possible. People now opting for German citizenship will not have to give up the citizenship of their country of origin.

### **Equality in Society-**

The chancellor Scholz emphasized there should be equality in society. Thus to ensure equality, he aims to make a minimum hike in the wage, which would ensure a good life. The government therefore announced the plan to raise the minimum wage up to 12 Euros, which will further be raised regularly, and up to 10 million people would benefit from this.

### **The Climate digitalization Investment Plans-**

The government aims to make big investments for the protection of climate and digitalization. The German government has agreed 60 billion Euros for the investment in the climate and to build infrastructure for climate-neutral age.

The government aims at coming to the top of digital infrastructure and making Germany the primary European Location for the startups.<sup>365</sup>

## **4.5.24 PORTUGAL**

Portugal received 3,012refugee application in 2023. Portugal has a welcoming environment for the refugees, works towards maintaining solidarity and in active in responsibility-sharing measures. Even during the pandemic while, the other countries had stopped talking refugees, Portugal continued the resettlement of refugees, and it took 33 persons from Italy, and Malta and nearly 78 unaccompanied minors from Greece.

### **Portugal Government Response to Refugees**

The government established a single coordination mechanism in November 2020 to encompass all refugee related issues.

### **Protection of Children**

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<sup>365</sup>Rachel Loxton GERMANY IS AN IMMIGRATION COUNTRY': SCHOLZ SETS OUT FUTURE VISION. . (15 Dec, 2021.) 'Germany is an immigration country': Scholz sets out future vision - The Local. (15/6/2023)

The government provided protection to asylum seekers and children and worked towards anti-trafficking, child protection.

### **Employment and Self-reliance**

The UNHCR in Portugal promotes a community-based approach along with the government and NGOs, to strengthen refugees.

#### **4.5.25 SLOVAKIA**

Slovakia received 2,597-asylum applications in 2023. In the recent Ukraine crisis, Slovakia has extended its support and currently there are 95,179 registered refugees present for temporary protection.<sup>366</sup>

#### **4.5.26 BULGARIA**

Bulgaria was initially treated as only a transit country for refugees but post Covid19, many refugees are settling in Bulgaria. In between April to June, nearly 2,278n migrants came to Bulgaria. There is also an increase in the number of people applying for international protection in Bulgaria. The government adequately addresses and supports the refugee and child migrants under the welfare system. Strategies have been made for GBV survivors. The government has provided food, rent, accommodation and clothing and other needs of the refugees.<sup>367</sup>

#### **4.5.27 CZECH REPUBLIC**

Out of the eight million displaced people from Ukraine, nearly 340,000 Ukrainians have settled temporarily in the Czech Republic. The government and the citizens of the country have shown remarkable support to the refugees, however the large sudden inflow of people has also exerted immense pressure on the government. The focus point of aid to these refugees is to ensure early childhood development. Education of

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<sup>366</sup>RelifWeb. Slovakia Factsheet, September 2022 [EN/SK]. (19 Oct 2022) Slovakia Factsheet, September 2022 [EN/SK] - Slovakia | ReliefWeb. (17/6/2023)

<sup>367</sup>Unicef. Bulgaria – REFUGEE AND MIGRANT RESPONSE (September 2021). UNICEF factsheet bulgaria 09-21 bozza5 (17/6/2023)

children and youth, health care services, and psychological support. Also to ensure social cohesion, adolescent development etc.<sup>368</sup>

Thus, when we look at the European Union States individually, we see that the principle of non-refoulement is not uniformly upheld or abided by.

#### **4.6 COMPARATIVE ANALYSIS OF THE EUROPEAN UNION STATES ABIDING BY THE PRINCIPLE OF NON-REFOULEMENT**

In the present chapter, we analyzed how there were some European Union states who were the hardest hit by the sudden refugee inflow during the 2015 European Union Refugee crisis. Further, how the European states were individually affected and how they responded to the crisis and how they managed their refugee crisis effectively.

We also learnt how besides providing food, accommodation and financial and medical assistance, and beside the government programmers for integration of refugees in collaboration with Private sectors, local authorities and the inter-governmental Advisory Boards, and besides providing temporary protection. Further, besides providing legal assistance and special protection to women, children and people with special needs, and providing livelihood, access to labour market and employment opportunities, access to social services and education and training Following countries in order to address the refugee related concerns are using innovative plans/schemes/programs they are:-

Germany, Latvia, Estonia, supported, countries such as Ireland, France, have introduced Private community sponsorship. Spain has also agreed on the UN Statelessness Convention in 1997 and 2018. Spain also established a determination procedure in 2001 to deal with the issues concerning refugees and asylum seekers. France, to address the refugee crisis the French government has established various laws, governmental and work with the non-governmental organizations.

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<sup>368</sup>UNICEF. UNICEF REFUGEE RESPONSE IN THE CZECH REPUBLIC Supporting families who fled the war and promoting the rights of every child in the Czech Republic. UNICEF Refugee Response in the Czech Republic | UNICEF Europe and Central Asia. (17/6/2023)



Austria, with the implementation of The Integration Act, the government provides clear rules for ensuring social cohesion and social peace. The act is based on the principle of merit-based integration. The Act sets the framework for effective integration of people who settle in Austria, to set clear rules for social cohesion and social peace.

Malta announced the new policy for Specific Residence Authorization (SRA) to give status to asylum seekers whose claims have been rejected and could not return. In Malta, Special project is carried out by the two bodies in response to address sexual and gender-based violence.

Ireland, to tackle the refugee crisis the government established Irish Refugee Protection Programme that is (IRPP) In the year, 2019 IRPP-II was introduced, in between the year 2022-23 new community sponsorship was initiated. In Cyprus, the government has implemented the Global Compact of Refugees to manage its refugee crisis.

Luxembourg is building extra houses to accommodate refugees, it has also created a help page for refugees from Ukraine. Luxembourg has a well-established asylum system and their access to asylum system is guaranteed to the refugees from Ukraine. In Romania, 44 different organizations coordinate to provide Protection from Sexual Exploitation and Abuse (PSEA). Nearly 14,781 refugees in 2022 were reached through Telegram and Facebook, social media platforms.

In Hungary, organizations like UNHCR/IOM, the Budapest Help Community Center help in refugee capacity building and empowerment of refugees, by organizing community events for refugees.

Croatia, according to UNHCR, Croatia's asylum system is in accordance with the European Union Standards. In the recent times, Croatia is allegedly pushing back refugees at the border. The UNHCR helps the authorities to find solutions for the stateless persons at risk.

Portugal has a welcoming environment for the refugees, works towards maintaining solidarity and is active in responsibility-sharing measures. Even during the pandemic

while other countries had stopped taking refugees, Portugal continued the resettlement of refugees, and it took 33 persons from Italy, and Malta and nearly 78 unaccompanied minors from Greece.

Slovakia, in the recent Ukraine crisis, Slovakia has extended its support and currently there are 95,179 registered refugees present for temporary protection Bulgaria was initially treated as only a transit country for refugees but post Covid19, many refugees are settling in Bulgaria. There is also an increase in the number of people applying for international protection in Bulgaria. The government adequately addresses and support the refugee and child migrant under the welfare system

Czech Republic, out of the eight million displaced people from Ukraine, nearly 340,000 Ukrainians have settled temporarily in the Czech Republic. The government and the citizens of the country have shown remarkable support to the refugees, however the large sudden inflow of people has also exerted immense pressure on the government. The focus point of aid to these refugees is to ensure early childhood development.

However, some countries look at refugees as a burden and are engaged in pushing back refugees. They are-

Italy, due to its geographical location in the Mediterranean, Italy is the one of the most affected European states by the migrants. There is an increase in the negative ratings for Muslims in Italy since 2015, which has led to the rise of the right-wing parties with anti-immigrant agenda.

In Sweden, until the recent time Sweden has a vast history of host refugees and asylum seekers with more open and generous asylum and immigration policies. Most recently, Swedish new policy on migration is undergoing a great shift. The government is using measures to cut down the number of refugees coming irregularly in Sweden. Attempts are being made to stop the labor migration frauds and abuses but will continue to have a dignified reception standard to people in need at the same time, no protection and legal rights to staying Sweden will be granted to the unqualified person and he shall be expelled.

The United Kingdom is using restrictive policy to prohibit asylum seekers from coming to the UK. The asylum seekers have to face detention and deportation without even examination of their claims.

Greece is only focused at providing protection of Ukrainian refugees or refugees from selected countries. Greece government fails to provide protection to refugees from parts of the world; in fact, the government is engaged in crackdown of NGO's and restricted media reporting. Country like

Denmark is hosting the lowest number of refugees; it has also implemented restrictive policy. Further, according to the UNHCR Denmark is not in accordance with the International and European Standard for the protection of refugees. Denmark's policy shift has led to instability and uncertainty in people. The commissioner also raised concerns over the immigration detention, families being denied asylum, families whose permits have been revoked, and concerns were also raised for children living in a state of limbo for many years.

In Lithuania, There has been continuous pushback of refugees and asylum seekers arriving at the Lithuania border. The government adopted laws to curtail the rights of the asylum seekers and codified arbitrary detention of numerous people, violating their human rights. Refugees and asylum seekers have been held for months in prison-like centers and their human rights have been violated. According to Amnesty International dozens of people from Camron, Sri Lanka, Congo, Iraq, Nigeria and Syria are unlawfully detained and may have been beaten, insulted and humiliated on the basis of race. On the visit to two detention centers, Amnesty International found that the detention centers have barred windows, security locked doors and high walls. For months the center was flooded by people above the capacity.

#### **4.7 THE CURRENT STATUS OF EUROPEAN REFUGEE AS PER THE WORLD REPORT 2023 AND THE METAMORPHOSIS IN THE PRINCIPLE OF NON-REFOULEMENT**

'European Union showed its positive response to the European Union towards the Ukrainians, following the Russian invasion of Ukraine. Under *The 2001 Temporary*

*Protection Directive*, nearly four million refugees from Ukraine have been registered. Out of which 9% of them are women and children. Even though the Ukrainians are provided protection in European Union states, there is metamorphosis of the principle as not all refugees are provided the same protection; rather they are discriminated based on their religion and the countries they are coming for as the report further highlights European Union's push back of the Afghan asylum seekers.

It states that besides that the European Union is still on its work of pushing back refugees. Even after one year of the Taliban takeover, the Afghan asylum seekers faced pushback at the European Border, and there is a decrease in the recognition rate of refugees in the EU. The European Member states like Bulgaria, Croatia, Cyprus, Greece, Poland and Spain, continue to engage themselves in unlawful pushback and violence at their border. In June 2021, the European Union Court of Justice found violation of the European Union Law, with the automatic detention of the asylum seekers and denial of their right to seek asylum irregularly entering Lithuania by the Belarus route. The right wing were seen responsible for the pushback, abusive detention of asylum seekers, as well as racial harassment in Lithuania. Asylum seekers faced similar abuse on their entry in Poland via Belarus. Pushback was also noted in Estonia.

The report mentions that little positive movement was made towards creating an independent border monitoring system or mechanism in the European Union. The Member states agreed to create measures to undermine the fundamental rights, like proposed "Instrumentation" regulation to allow the states to derogate things like key obligations, like ensuring the right to seek asylum at the external border, and the amendment of the *Schengen Borders Code*.

The non-Ukrainians fleeing Ukraine were discriminated against and received unequal treatments inside the European Borders. Thus in a March regulation, called by the European Parliament, requires the European Member states to admit non-Ukrainian nationals irrespective of their nationality.'

## **4.8. EUROPEAN UNION STATES CLOSING THEIR DOORS FOR REFUGEES**

The main reasons leading some EU states to close their doors are the adverse effects of hosting refugees and the increasing number of crimes in some of the European countries. These reasons are leading to the change in their policies and further leading to closing their doors for refugees. To put an example of the year 2016, large-scale assaults on women by men in Germany took place, soon after they hosted and welcomed a large number of refugees in the country. It is estimated that more than 500 cases were registered, majority of which were cases of muggings, sexual assault, and one alleged rape case on the New Year's Eve. With regard to the incident, out of the 52 identified suspects, 15 of them were people seeking asylum in the country. One person without an identity document was been referred to as refugees.<sup>369</sup>

The question of media protection was raised with the killing of three journalists in the European Member States. In the year 2020, under a report published by Germany's third largest media, approximately 1620 refugees, asylum seekers, including children were attacked. In over 128 cases, the targets were the refugee shelter homes itself. The Right-Wings extremists have taken the responsibility of over 118 incidents.<sup>370</sup>

The previously mentioned incidents are a clear example, how one action calls for the other. This will ultimately lead to a dark world of civil wars. We already can see many countries who were liberal in welcoming refugees have gradually turned their backs and are moving ahead with changing policies and closing doors for the refugees. Turkey, one of the countries hosting majority refugees along with Lebanon, Jordan, has changed its open-door policy to “revolving-door policy” the reason for the shift is the negative effects of hosting refugees.

Between the year 2015-2016, Turkey experienced incidents of multiple suicide bombings and other terrorist attacks, most of which were linked with either ISIS or registered Syrian refugees. Several incidents like this have led Turkish citizens with

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<sup>369</sup>Harpal Brar. ON THE NEW YEAR'S EVE EVENTS IN GERMANY Racism will not be ended by political correctness, but by a united working-class movement for socialism. (Monday 1 February 2016). On the New Year's Eve events in Germany | The Communists

<sup>370</sup>DE News. 1600, ATTACKS ON REFUGEES IN GERMANY. (3/27/2020)  
<https://www.dw.com/en/germany-more-than-1600-crimes-targeted-refugees-and-asylum-seekers/a-52935715> (09/12/22)

distrust towards Syrian refugees and further accused them of posing threat to national security. Thus in 2016 the Turkish government to save guard the interest of their own citizens tightened the border security between Turkey and Syria. Further, Turkey also wishes to join the European Union on this front.<sup>371</sup>

### ***MEANS OF EUROPEAN UNION STATES CLOSING THEIR DOOR***

If we look at the European Nations with regard to the changing policies towards refugees, we see that the governments of ***France and Britain are signing cooperation agreements*** to reduce the number of refugees crossing the English Channel to make it to the United Kingdom. France has consented to increase the number of patrolling officers from 200 to 300 for which the UK will boost France's payments from 55 million pounds to 63 million pounds. However, the two countries deal does not address the return of the migrants that arrive to the United Kingdom with invalid claims to France, or providing safe humanitarian routes for the genuine claims.<sup>372</sup>

- ***'European Union has consolidated its partnership on the issue of migrant control\_with Libya,*** despite its overwhelming evidence of brutality against the migrants and asylum seekers there. The EU supports the Libya Coast Guards, along with the International Maritime Organization's thus causing detention in abusive conditions in Libya.
- ***The Danish Authorities introduced measures for enforcement of "Danish Values"*** designating certain areas as the *ghettos*, on the basis of high proportion of residence, with the ethnic minorities and low social status. Mandates for day-care of children in the said are always made in the name of integration. In the month of August, 2018 a ban on the face veils in public was also imposed in the name of security issues. The EU Fundamental Right Agency report of April, noted discrimination and harassment of the Roma's across Europe in the field of education, employment and health care facilities.<sup>373</sup>

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<sup>371</sup>Celine Park. CLOSING THE DOOR; AN ANALYSIS ON THE SYRIAN REFUGEE CRISIS IN TURKEY. (09/12/22). <https://www.themyriad.news/closing-the-door-an-analysis-on-the-syrian-refugee-crisis-in-turkey/>

<sup>372</sup> PARIS AND LONDON: MORE PATROLS ON THE ENGLISH CHANNEL. (15 November 2022).<https://www.eurotopics.net/en/291701/paris-and-london-more-patrols-on-the-english-channel> (17/6/2023)

<sup>373</sup> World Report 2019. Migrants and Asylum seekers. International Migration 2019 (un.org) (17/6/2023)

- ***Some countries like France and Italy are stuck in a tug of war over the burden sharing responsibilities.*** Where France has allowed the migrants rescue ship Ocean Viking to dock in Toulon, and insisted Italy to comply with its maritime and international laws by allowing the refugees to disembark and suspended plans to take in 3,500 migrants from Italy by next summer. However, despite the pressure, Italy refuses to allow the ships to its ports. Here the government of both the states are behaving childish, immature and running away from taking the responsibility. The consent increase or conflict, disagreements, blame game, running away from responsibility between the states can shake the European Union setup itself in the future.
- ***Austria and the Czech Republic have introduced border control with Slovakia*** to control the smugglers using the country as a transit route. For this a new check post is being made at Slovak Border in the Balkan Route<sup>374</sup>
- ***The Parliament of Poland has approved 366 million Euros for the construction of a physical border with Belarus*** after the constant demand from twelve states in Europe. For the construction of this physical border, the President of Belarus has been accused of deliberately funneling migrants into the EU across its eastern border.<sup>375</sup> However, these measures still seem to be not working.<sup>376</sup>

Thus, we see how the European countries are on the verge of narrowing down or closing its doors to abstain from taking in refugees. The steps taken by these countries are led by the adverse results of hosting refugees.

#### **4.9 EUROPEAN UNION NEIGHBORING COUNTRIES FACING SIMILAR ISSUES CLOSING THEIR DOORS**

Refugees who aim for economic opportunities, their quest for a new life force persuade them to move towards Europe. At the same time, refugees who hope to return once the war ends, choose to take refuge in the nearby countries.

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<sup>374</sup>Euro Topics. BALKAN ROUTE:NEW CHECKS AT SLOVAK BORDER. (30 September 2022.)<https://www.eurotopics.net/en/289202/balkan-route-new-checks-at-slovak-border> (09/12/22)

<sup>375</sup>Euro Topics. POLAND TO BUILD WALL ON BORDER WITH BELARUS. 18 October 2021.<https://www.eurotopics.net/en/269560/poland-to-build-wall-on-border-with-belarus> (09/12/22)

<sup>376</sup>Europe's changing policies- <https://www.eurotopics.net/en/173755/refugee-policy-in-europe>

‘It is not only the European Union issue alone. The countries hosting the largest number of refugees, like *Turkey, Lebanon, and Jordan* are facing similar *demographic shift* problems, all across the Middle East and European States.

In the year *2015 Turkey began to shift its open door policies to closing-door policy*. The shift was led by incidents effecting the national securities like, suicide bombing, and various other terrorist attacks, most of which incidents were linked with ISIS, or registered Syrian refugees. Like in Europe, these incidents led Turkish citizens to distrust Syrian refugees and accuse them of national security.

Thus the Turkish government tightened its border security in the year 2016, reinstated the visa requirements of Syrians. By *2018, Turkey competed a 825 kilometer-long wall on Syrian-Turkish border*, being the third largest wall in the world

Over the recent year, Turkey has resulted in forced displacement of 130,000 Syrian refugees to safe zones. However the term safe zone has led to the emergence of several questions in the International Communities. Syrian refugees in Istanbul have been harassed and beaten and forced to sign deportation works. Thus, Turkey is violating International Law.<sup>377</sup>

The closing doors to these refugees will only increase the antagonism, alienation and anti-western sentiments towards the European Union. Europe will be violating its obligations by leaving these refugees to bear the pains. If they are left alone, it will increase their risk of falling prey to extremist recruiters.<sup>378</sup>

We do not want to see future injustice and wrong consequences of hosting the refugees on the host countries neither leave the refugees to be without a shelter. We do not want to witness the eradicating or fragmenting social set-up, the way of living and the thought process, which has been the identity of the host nation, to fade way. We need to understand here that every state, country or community is different and unique and that is their beauty. We do not want to see the world being painted in one

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<sup>377</sup> Theyriad.News CLOSING THE DOOR; AN ANALYSIS ON THE SYRIAN REFUGEE CRISIS IN TURKEY, BY- CELINE PARK. (09/12/22) <https://www.themyriad.news/closing-the-door-an-analysis-on-the-syrian-refugee-crisis-in-turkey/>

<sup>378</sup> Debating Europe. Arguments for and against letting more refugees into Europe Arguments for and against letting more refugees into Europe - Debating Europe. (17/6/2023)



color. Thus, we must try to preserve the culture and uniqueness of communities whether the natives or the host countries or the refugees that come in.

Being kind and accepting the refugees and addressing their problems is what the Human right watch dogs seeks to promote. What they omit to see is how only doing this much will not solve the refugee problems; rather cause unrest in the settled states and their peaceful. At the same time, we cannot leave the refugees for further more sufferings by not addressing their issues and not giving them a place to live.

In addition, if we ensure the proper integration of these refugees in European Society, by providing proper training and opportunities the danger of them turning to the negative side can be stopped.<sup>379</sup>

Therefore, what we need here for a proper solution is not just one law after the other but a dynamic strategy to suit the refugees in a dynamic world. Bangladesh, a developing nation, has gone a different way in resolving its refugee issues and creating a balance between the human rights of the native and the refugees and not putting one over the other and creating a fair justice to both. It has created a fully furnished and well equipped, separate area of Basan Char for the refugees living in bad condition Cox Bazar.

#### **4.10 SUMMARY OF THE CHAPTER**

The chapter four of the research deals with the European Refugee Crisis. The chapter puts light on the reasons that led to the refugees crisis in Europe and what were the issues the hosting European Countries had to face while hosting refugees when they arrived in the European Union in such a large scale. The chapter further deals with how the inflow and the hosting of refugees affected the natives and the refugees during the crisis. The chapter also examines implementation of the principle of non-refoulement by the European member states, the status of European refugee, 2023 that reflects the apparent metamorphosis of the principle. The chapter further examines the reasons that are leading European Union States to close their doors for refugees and in

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<sup>379</sup>Supra note 2, at 374.

what ways they are closing the door and how looking at EU States and some neighboring states of Europe is closing their doors for refugees.

## **CHAPTER -5**

# **EFFECTIVENESS AND THE SHORTCOMINGS OF THE 1951 CONVENTION AND METAMORPHOSIS IN THE PRINCIPLE OF NON-REFOULEMENT**

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### **5.1 INTRODUCTION**

The 1951 Refugee Convention relating to the status of refugees or the 1951 refugee Convention or the Geneva Refugee Convention of 28 July 1951 is United Nations Multilateral Treaty. It is the first comprehensive document that defines the term ‘refugees’ and is the charters that provides a detailed guideline for the host countries to ensure refugee protection and preservation of their rights. It also set out who does not qualify to be a refugee. The convention is based on Article 14 of the 1948 Universal Declaration of Human Rights. The convention initially had limited scope as it covered the period before 1 January 1951. However, the 1967 protocol of the convention expanded its scope and made it the world’s most relevant international legal regime for addressing the refugee crisis. The origin of the 1951 convention is found in the work of Ad Hoc Committee on Statelessness and Related Problem (‘Ad Hoc Committee’) appointed by ECOSOC Resolution 284(IX) of \* August 1949.<sup>380</sup>

For decades, the convention has guided ways for the member states, in addressing the refugee issues at the same time providing safety and assistance to the refugees.

If we look at India, It is a non-signatory country to the 1951 Refugee Convention, which is the primary legal International Instrument, which enumerates the rights of the refugees and the obligations of the states towards them. We find that the convention’s effectiveness or its shortcomings does not directly concerns India and effects its way of dealing with the refugees coming to India. India has always works towards the refugees keeping in sight the human rights of the refugees. Despite the

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<sup>380</sup>Sir ElihuLauterpacht and Danial Bethlehem. THE SCOPE AND CONTENT OF THE PRINCIPLE OF NON-REFOULEMENT: Opinion, (June 2003). Cambridge University Press, <https://www.refworld.org/docid/470a33af0.html> (19/2/ 2023)

fact that India does not have any specific law to deal with the refugees, or any specific law that directly obliges India to uphold the principle of non-refoulement, still we see India has always upheld the principle of non-refoulement as the essences of the principle if present in the very constitution of India. To put an example in the case of *Nandita Haskar v. State of Manipur*, decided on May 3, 2021, the Hon'ble High Court of Manipur granted permission to seven persons from Myanmar, travelling without documents to reach out to the Delhi office of United Nations High Commissioner for Refugees, UNHCR. The courts' this move was to uphold the principle of non-refoulement, which also encompasses the right to be heard before a competent court. The court also observed that the principle of non-refoulement is encompassed in Under Article 21 of the Indian Constitution, which is right to life. Nandita case is also important, as one of the question involved in the case was, whether the principle of non-refoulement are applied to the entrance? The court in the present case defined the Principle of non-refoulement and as the principle is nowhere directly mentioned under the Indian domestic law, the Manipur High Court relied on the International Law and the also on the Article 51 of the Constitution of India, which deals with the State's duty and further foster respect to the International law and the treaty-obligations

As stated above India not being signatory to the convention has no obligation to follow the principle of non-refoulement. Further, in the recent *Citizenship Amendment Act Case* the state has claimed that it does not see the principle of non-refoulement as part of the customary International Law. However, the court reminded India that, Indian cannot close its eyes to the obligation that it has towards the asylum seekers and refugees, arising out of International Human Rights Law. The Court further highlighted Article 14 of the UDHR, 1948 and ICCPR, 1966, which provides that the Principle of non-refoulement and the inseparable right to dignity, and that India being signatory to both the instruments must abide by the principle. The court also relied on the Global Compact on Refugees for the first time recalling India's endorsement to GCR that helps the government, the International Organizations and other Stakeholders to effectively deal with the refugee situations. The court further held that though India may not be signatory to the 1951 refugee convention never the less its obligation under various other international declarations and conventions as read along with Article 21 of the Indian Constitution, enjoins India to respect the rights of

refugees and asylum seekers to seek protection from persecution and endure the protection of their life and liberty elsewhere.<sup>381</sup>

Thus, we see that even if at some point the Indian states refrain from their duties towards refugees, the Indian Courts keep a constant check and ensures that the principle of non-refoulement is followed and upheld. It is also imperative to note that the principle of non-refoulement over the period has attained the status of customary International Law and thus it is applied to all nations irrespective of them being a party to the convention or not.

## **5.2 EFFECTIVENESS OF THE 1951 CONVENTION**

The 1951 United Nation Convention Relating to the Status of Refugees became the first institution to provide protection to people at risk of persecution in their own countries of origin.<sup>382</sup> The convention is divided into VII parts and has 44 Articles. The convention aims at address the issues relating the General Provisions, Judicial Status, Gainful Employment, Welfare, Administrative Measures, Executory and transitory Provisions and the Final Clauses<sup>383</sup>

According to the United Nations High Commission for Refugees (UNHCR), 82.4 million individuals are forcibly displaced across the world, of which 26.4 million are refugees; over 20 million are under UNHCR's mandate.<sup>384</sup> In between the mass displacement and forced migration, we see the 1951 Convention guiding ways and we realize its importance and its indispensable nature of refugee protection. Despite its limitations, the states and the regional and international organizations have often

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<sup>381</sup>Snehal Dhote. RIGHT TO LIFE ENCOMPASSES NON-REFOULEMENT: INDIAN HIGH COURT ADVANCES REFUGEE POLICY (JUNE 30, 2021 12:30:56 AM.) Edited by: Heidi Johnson | Vermont Law School, US Right to Life Encompasses Non-refoulement: Indian High Court Advances Refugee Policy - JURIST - Commentary Legal News & Commentary. (18/6/2023)

<sup>382</sup>THE PROBLEM WITH THE 1951 REFUGEE CONVENTION, (september 5, 2000) [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp0001/01RP05](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0001/01RP05). (16/09/22)

<sup>383</sup>Convention relating to the Status of Refugees. ADOPTED BY United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. 28 July 1951.<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>. (18/6/2023)

<sup>384</sup>ANASUA BASU RAY CHAUDHURY UNDERSTANDING THE RELEVANCE OF THE 1951 CONVENTION. (08/10/22)Understanding the Relevance of the 1951 Convention | ORF (orfonline.org) (Book) (18/6/2023)

relied on the principles of 1951 convention while formulating the policies and agreements on the refugee rights and protections. The convention has developed and grown through decades remaining fundamental in refugee's protection. It is the product of the Cold War effect and largely reflects both European Nazi wartime persecution and western political interests of the time.

Today most of the refugees are from the Middle East, Africa, Asia and Eastern Europe rather than the Western Europe. In the contemporary time, refugees are less welcomed and unskilled labours are no more required in the developed nations and neither is there any requirement of any ideological or strategic adventure attachment to conferring asylum. Therefore, with the change in the subject matter of refugees, the convention has lost its essence and today it appears to be more of a toothless law with little or no force.

Since its establishment in the year 1951, the convention is now 62 years old in the year 2023. Over the period, with changing scenarios and new development in the refugee issues. Today we see two scenarios simultaneously, where on one hand we have seen the inhuman conditions of Syrian refugees in the year 2021, in immediate need of help, and on the other hand, we see Europe's and North America's negative sentiments towards migrants and asylum seekers. The effects of the negative sentiments are apparent with the rise of agitations, disagreements, and European Union's natives demonstrating against their own governments, the rise of the far right-wing populism and nationality. When it comes to the issue of hosting refugees in their respective country. To address the issue, the United Nation General Assembly adopted the New York Declaration for refugees in the year 2016, which was followed by the Global Compacts; however, the outbreak of the COVID 19 pandemic has pushed the efforts back.

The effectiveness of the convention has also reduced due to several shortcomings that has developed over the several years and its non-upgradation.

### **5.3 THE SHORTCOMINGS IN THE 1951 CONVENTION**

Over the period with changing scenarios and new development in the refugee issues, several new shortcomings are apparent now. To enumerate some are as below:-

### **5.3.1 THE DEFINITION OF REFUGEE NOT EXHAUSTIVE**

The definition of refugee under the convention was defined only through the perspective of male. The definition does not specifically include women, and trans genders, internally displaced people. Due to its no upgradation some new types of refugees like climate change refugees, man-made disaster refugees, sexual orientation refugees are not incorporated in the convention. This makes refugees find refuge and they are deprived of many of their claims as a refugee.<sup>385</sup> The definition is also not gender-sensitive. It appears to be more men oriented and not women, Lesbian, Gay, Bisexual and Transgender (LGBT). It is because of this the women in the 2015 European refugee crisis had to face many miseries.

Thus, there is a need for inclusion of the women and (LGBT) community to be added in the definition to grant them direct protection.

### **5.3.2 THE CONVENTION IS DEPENDENT**

The language of the convention is exclusionary which limits its scope. The convention had worked effectively in protecting the refugees before 1 January 1951, which was (after World War II). Though the convention did not specifically mention protections of refugees from any other place it was left for the states to make declarations that the provision would apply to refugees from other places.<sup>386</sup>

The convention had such geographical limitations that despite its establishment, the convention was silent and was involved in addressing the refugee crisis during the post-colonial independent states of Indian Continents (India Pakistan 1947 division and India Bangladesh division 1971). The convention was also silent during the decolonization of Africa and the formulation of new independent states and civil wars. The need was felt strongly and it was accordingly rectified in the 1967 protocol. Until date the convention is not completely independent and exhaustive, it is

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<sup>385</sup>Bill Frelick. IT IS TIME TO CHANGE THE DEFINITION OF REFUGEE. CLIMATE CHANGE IS AN EXISTENTIAL THREAT TO HUMANITY AND AS SUCH, SHOULD BE INCLUDED IN LEGISLATION ON ASYLUM SEEKING. (January 28, 2020 9:00AM EST) Al Jazeera. <https://www.hrw.org/news/2020/01/28/it-time-change-definition-refugee>. (18/6/2023)

<sup>386</sup>Convention Relating to the Status of Refugees Convention Relating to the Status of Refugees - Wikipedia (18/6/2023)

supplemented by the other international conventions, regional agreements, national legislation, and judicial decisions of the respective states.<sup>387</sup>

The question here is can we think of an exhaustive and independent refugee convention to serve all the states globally? The answer is no! Since each state has laws, policies and a different judicial system and each state in the world is uniquely different and is best left to serve and govern themselves, it is best to leave them to the best of their own government. What can be done is, from time to time, modification, rectifications and upgradation in the parent refugee convention to stand as the guiding light for the member as well as the non-member states in addressing the refugee issues emerging from time to time.

### **5.3.3 IT DOES NOT PROVIDE THE RIGHT TO ASSOCIATION UNLESS THE REFUGEES REACH THE SIGNATORY COUNTRY.**

“Freedom of association is one of the most basic rights enjoyed by humans. It ensures that every individual is free to organize and to form and participate in groups, either formally or informally.”<sup>388</sup> However, the convention does not provide this right. Under article 15 of the convention, right to association is provided only once asylum seekers or refugees reach the host country. However, the journey of the people hit by the humanitarian crisis is often long and can take days to arrive at the host country thus there is a need for the right to association of refugees during the transit period also.

### **5.3.4 THE CONVENTION IS SILENT ON THE ISSUE OF BURDEN SHARING**

The convention when made was to serve a small geographical area of Europe and is western centrist. The convention’s silence leads to burdening of some of the developing countries like Pakistan, Tibet, Bangladesh etc. <sup>389</sup>while the developed nation having financial abilities has less to no burden of hosting refugees. Thus with modification, clarity on burden sharing must be incorporated.

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<sup>387</sup>Supra note. 2, 350.

<sup>388</sup>Human Right House Foyndation FREEDOM OF ASSOCIATION. <https://humanrightshouse.org/we-stand-for/freedom-of-association/> (20/6/2023)

<sup>389</sup>KomalSrivastav. *Burden Sharing in 1951 Refugee Convention*. (International Journal of Law Management & Humanities. [ISSN 2581-5369 Volume- 4, Issue-2; 1857 ) Burden Sharing in 1951 Refugee Convention - IJLMH. (20/6/2023)



### 5.3.5 THE CONVENTION IS SILENT ON THE HOSTING CAPACITY OF THE HOST NATIONS

More refugees than the native population. Since the convention is silent on the number of refugee a country can host there is an irregular and monitored inflow of refugee in the host nation,<sup>390</sup> this threatens the loss of ethnicity, as it is very less likely that the refugees return back home once they settle in a host nation. By the increase in the refugee population in the host nation there is a threat to the natives of the host country. Thus, the convention needs to specify the number of refugees a country can take depending upon its area and economy. Moreover, the convention is not designed and has no guideline for massive inflow of refugees. The absence of guidelines on how to manage the sudden mass inflow of refugee leads to chaos and confusion both for the refugees and the host nation. There is a need to incorporate guidelines and line of actions for the host states in case of sudden flow, since people will always be moving globally owing to one reason or the other. The convention needs a step- by-step guide to monitor and canalize the refugee inflow to avoid any chaos.

However, the in the case of *Khadija Jafari and ZainabJafari (Austria)*. The Court of justice of the European Union on the issue of determination as to which member state is responsible for the determination or is responsible for examining an application for International Protection lodged in any of the member states by a third party national, arriving in an unusually large number. Moreover, on the issue of definition of Visa Article 12, and irregular crossing of the external border by the refugees. Held that, - Article 12 of the Regulation of European Union, No. 604/2013 of the European Parliament along Council of 26 June 2013. On establishing the criteria and the mechanisms for determining the member state responsible to examine an application for international protection, lodged in one of the member states by a third-country national or a stateless person, read in conjunction with Article 2(m) of that regulation. It must be interpreted in a way that it must mean that the authority of a one-member state is faced with the arrival of a large number of third-country nationals to seek transit through the said member state in order to lodge an application for international protection in another member state. The transit state must tolerate the entry into its

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<sup>390</sup>World Population Review. REFUGEES BY COUNTRY 2023. Refugees by Country 2023 (worldpopulationreview.com) (21/6/2023)

territory of those nationals who do not fulfill the entry conditions imposed in the first member state, and is not bound to the issuance of the visa under article 12 of Regulation no.604/2013.<sup>391</sup>

### **5.3.6 NO PROVISION FOR THE REFUGEES AT THE SEA WHO HAVE NOT ENTERED TERRITORY OF THE HOST NATION**

Even though refugee convention is concerned to be the Magna Carta for the refugees, it only talks about safety, protection, and welfare of the refugees once they approach the state. However, there is no mention of the as to who has the responsibility to take care of the refugees that are in journey from the seaway to reach the host country. Many times refugees are pushed off shore and no country takes the responsibility if the same.<sup>392</sup>

### **5.3.7 NO SANCTION TO THE SIGNATORY COUNTRIES IN CASE OF VIOLATION OF THE PROVISIONS OF THE CONVENTION.**

In majority cases, it is the state's failure to control violence that leads to massive numbers of people leaving their country of origin and pouring into neighboring countries. Burdening the neighboring countries with continuous poverty of refugees and affecting the country's economy, suture, demography etc. The countries failure to control violence only gets some criticism. There is no organization to impose sanctions imposed on the countries who failed to control violence which forced refugees out of their homes. Thus, the convention must incorporate monetary sanction on the countries causing their people to flee and a mandate must be imposed on the state to call back their refugees by ensuring their safety.

### **5.3.8 DOES NOT INCLUDE CLIMATE CHANGE REFUGEES**

By the year 2011, the notion of 'climate change' was regarded as inaccurate and reflected a very limited understanding of several factors. However, there are ample evidence now to depict that millions of people are displaced annually because of

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<sup>391</sup>Khadija Jafari and ZainabJafari (Austria), C-646/16, European Union: Court of Justice of the European Union. (26 July 2017) <https://www.refworld.org/cases,ECJ,598dc9d14.html> [accessed 27 February 2023]

<sup>392</sup>Reality Check team. WHO IS RESPONSIBLE FOR HELPING OUT MIGRANTS AT SEA? <https://www.bbc.com/news/world-44458441> (20/6/2023)

various climate related disasters. The annual report by the Internal Displacement Monitoring Center and disaster databases like EM-DAT estimates an increase in the frequency of climatic disasters around the world.<sup>393</sup>

## 5.4 THE PRINCIPLE OF NON-REFOULEMENT

The most important principle of the 1951 convention is the Principle of Non-refoulement, provided under Article 33(I). The principle states that the states signatory to the convention shall not return or expel any person whose life is in danger in the country of origin. The provision has been adopted as customary international law and is applicable both to the countries who are signatory to the convention as well as the countries that are not signatory to the convention. Since its emergence, the convention has acted as a navigator in addressing refugee issues at every level.

The principle of non-refoulement has been institutionalized into various international legal instruments such as conventions, declarations and in the customary international law. In the context of legal framework, the principle of non-refoulement is a fundamental concept for the protection of refugees and the asylum seekers. It is considered the backbone for the whole system of International Refugee Law.<sup>394</sup>

The word non-refoulement has its origin from a French word “refouler” which means, to drive back or to repel. Under article 13 of the Universal Declaration of Human Rights states “Everyone has the right to freedom of movement and residence within the border of each state” and “Everyone has the right to leave any country, including his own, and to return to his country.” Accordingly, asylum seekers have the right to leave their country, but they cannot enter other countries as a matter of right. While the freedom to move within the country is recognized as, the freedom of movement across the international borders is until date controversial. There is an absence of any international norm, which makes it obligatory for any states or states to grant asylum

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<sup>393</sup>UNHCR. THE 1951 REFUGEE CONVENTION ‘IS AS RELEVANT TODAY’. Dec 5, 2016 | News Releases. <https://www.unhcr.ca/news/1951-refugee-convention-relevant-today/?nowprocket=1>. (22/6/2023)

<sup>394</sup>Dr.Sigit Riyanto. “*The Refoulement Principle And Its Relevance In The International Law System.*” (July 2010). SH., LL.M. SSRN Electronic Journal, DOI:10.2139/ssrn.2211817. (PDF) The Refoulement Principle and Its Relevance in the International Law System (researchgate.net) (20/6/2023)

or accept refugees into their territories. Countries like the United States often make narrow interpretations of the principle of non-refoulement Article 33(I) and take advantage of the same. They deny access to their state territories and return the asylum-seekers from Haiti, exercising its extraterritorial jurisdiction. The United States claims that the state is not responsible for its official's actions outside national borders. Such act of returning the asylum-seekers, with a justification that they have not set foot on the state territories and thus the state has no responsibility against them is inconsistent with the framework of the international treaties. The European Court of Human Rights emphasizes that the phrase "within their jurisdiction" includes States responsibility for the actions of their officials in international zones at airports and the actions of the state authorities of the place where the action is committed.<sup>395</sup>

The question as to which country is responsible for rescuing the people in distress at the sea, who is to deal with the coastal obligations, which state ship rescued the asylum-seekers. Despite the fact that both international treaties and the customary law emphasis on rendering assistance to the people in distress at sea. The problem stands, for various reasons like the fact that the asylum seekers do not want to return to their countries and there is no mandate over the state to rescue them.

The Principle of non-refoulement is the soul of the 1951 Convention for refugees. The principle of non-refoulement applies to refugees, asylum-seekers, or any alien who needs shelter outside his country of origin. The principle prevents any states from sending any individual to a place where his/her life is under threat of either persecution, torture, ill-treatment, or any other serious human rights violation. It prevents the states from transferring or removing any individual, sending him/her to another state without having a substantial reason to believe that he/she could pose any kinds of risk in the host country. It ensures the protection of human rights of refugees. The principle has been defined in various international refugee instruments.

*'Commission v. Hungary* (Accueil des demandeurs de protection international) C-808/18. In the said case, Hungary had failed to fulfill its obligations of providing the applicants international protection. For the third-country nationals or stateless persons

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<sup>395</sup>VladislavaStoyanova\* *The Principle Of Non-Refoulement And The Right Of Asylum-Seekers To Enter State Territory*. 2008 Lund University, Law Faculty. The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory by VladislavaStoyanova :: SSRN. (22/6/2023)

arriving from Serbia. Who wished to access the international protection procedure in the transit zone of Roszke and Tompa, but Hungary adopted a consistent and generalized administrative practice suddenly limited the number of applicants authorized to enter the transit Zones daily;- in establishing the system of systematic detention of the applicants seeking international protection in the transit zone or the Tompa, without considering the guarantees provided in Article 24(3) and Article 43 of the Directive 2013/32 and the Article 8,9, and 11 of Directive 2013/33. Hungary allowed the removal of all third country nationals, staying illegally in its territory with exception to only those suspected to have committed any criminal offense, without observing the procedure and safeguard laid in Article 5, Article 6 (1), Article 12 (a) and Article 13 (1) of Directive 2008/115. - in making the exercise by the applicants for International Protection, who fall under the scope of Article 46(5) of 2013/32 of their rights to remain in its territory'<sup>396</sup>

Laws both at the national and international level reflect the presence of the essence of the principle of Non-refoulement. At the *international level*, the principle can explicitly be included in various laws. The principle is often referred to in the context of refugee protection under the 1951 Convention Relating to the Status of Refugees as well as in the regional refugee law instruments. Over the past years the principle has slowly been included in the human rights treaties namely, the convention against torture and other cruel, inhuman or Degrading treatment or Protection (Article 3), the International Convention for the Protection of all Persons from enforced displacement(Article 16) and in regional human rights instruments. The United Nation Human Rights Committee has considered non-refoulement as an integral component for the protection against torture and other cruel, inhuman or degrading treatment or Protection or arbitrary deprivation of life. A similar conclusion was drawn by the regional human rights court (European court of Human Rights) in the case of, *Sovereign v. The United Kingdom*, para. 88. 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989.<sup>397</sup>

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<sup>396</sup>Commission v Hungary (Accueil des demandeurs de protection international) C-808/18, ECLI:EU:C:2020:1029, European Union: Court of Justice of the European Union, 17 December 2020, available at:

<https://www.refworld.org/cases,ECJ,5fdb914e4.html> (25/2/2023)

<sup>397</sup>Tilman Rodenhäuser. "THE PRINCIPLE OF NON- REFOULEMENT IN THE MIGRATION CONTEXT; 5 KEY POINTS".<https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/> (23/6/2023)

*The 1951 Refugee convention* - Article 33 of the convention protects the refugees under the convention. *‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (CAT)*- Article 3(1) of the convention ensures that ‘no state parties shall expel, return(“refouler”) or extradite a from another state where there are substantial grounds for believing that he would be danger of being subjected to torture.’<sup>398</sup> *International Convention for the protection of all the persons from Enforced disappearance (CIPPED)*. Article 16 of the convention protects refugees under the CIPPED. *The International Covenant on Civil and Political Rights (ICCPR)* the convention states, anyone who is within the state boundaries lawfully shall not be expelled from the state without due process of law. However, the same stands suspended when there is a question of national security. Article 7 of the covenant provides protection against torture.

*‘UN Human Rights Committee* has also considered the principal of non-refoulement is an integral component of the convention protection against torture or other forms of cruel, inhuman or degrading treatments or punishment, or arbitrary deprivation of life. *European Courts* the regional human rights courts hold similar conclusions, specially the European Human Rights Court. The above-mentioned opinion was held in the case- *Soering v. The United Kingdom*, para.88. *1949, Geneva Convention* the principle of non-refoulement was also incorporated in the 1949 Geneva Convention, especially with regard to detainee transfer, but at the same time principle was incorporated to protect the civilians. *Customary International Law* the principle is considered to form a part of Customary International Law.’<sup>399</sup>

If we see at the regional level, we can draw a similar conclusion. the principle is explicitly found in, ‘The Inter American Convention on The Prevention Of Torture’, ‘The American Convention on Human Rights’. And, ‘The Charter of Fundamental Rights of The European Union’, ‘International Human Rights Bodies’, ‘Regional Human Rights Courts’, as well as the ‘national courts’, have guided that principle of non-refoulement, and implicit guarantee flowing from the obligation to respect, protect and fulfill human rights.<sup>400</sup>

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<sup>398</sup>Jessica Rodger. *Defining The Parameters Of The Non-Refoulement Principle Faculty Of Law*. (2001) Victoria University Of Wellington. (20/09/22)

<sup>399</sup>Supra note. 2, at 393.

<sup>400</sup>UN Human Rights Office. THE PRINCIPLE OF NON-REFOULEMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW (21

The basic difference between the principle of non-refoulement and the other codifications is the question as to who falls under its protection, for what reasons. For example under the refugee law, the principle protects refugees. Under the Human Rights Law, the principle protects any person under the jurisdiction of the concerned State, provided the person concern's life is in danger in the state he is to be transferred. Depending upon the applicability of human rights treaties, the principle provides protection to individuals against various dangers like death penalty, cruel punishments, etc. That is not covered under other bodies of laws.

If we look at the Procedural Guarantees of the Principle of Non-refoulement in the European Union. The principle of non-refoulement is an integral part of the European Union Law. Under Article 78(1), The Treaty on Functioning of the EU (TFEU) specifies that the European Union's asylum policy must be in harmony with the principle of non-refoulement. Further, the EU Charter on fundamental rights encompasses the principle of non-refoulement under Article 19. The principle protects asylum seekers from *refoulement* by the states, and also provides certain guarantees that they are eligible as soon as they submit their application for international protection. The refusal of admission of an International Protection application, invokes Article 47 of the Charter of Fundamental Rights, which provides the right to move to court for violation of their rights.<sup>401</sup>

### ***EXCLUSION TO THE PRINCIPLE OF NON-REFOULEMENT***

In the light of the above mentioned. Not everyone or anyone can seek protection under the principle of non-refoulement. By allowing the contracting states to settle the refugees in territories other than the metropolitan territories, Article 19(2) reflects the exception of the principle of non-refoulement, contained in Article 33(1). Article 33(2) further provides more lights and clearly. It states that, the benefits provided under article 33(1), cannot be claimed by a person, as a refuges, if, there are reasonable grounds for regarding him/her as a danger to the host society by either;

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Jan,2011)<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (23/6/2023)

<sup>401</sup>Naydes Jeanty. HOW EFFECTIVE IS THE PRINCIPLE OF NON-REFOULEMENT IN EUROPE TODAY? by Naydès Jeanty translated by Jessie Lee & Camille Cottais published by Generation for Rights Over the World (January 2022). How effective is the principle of non-refoulement in Europe today? (growthinktank.org) (23/6/2023)

- (a) Committing crime against peace, or by committing War Crimes or by committing a crime against humanity, defined under international instruments.
- (b) If s/he has committed non-political crime of serious nature, outside the country of his refuge, before his admission as refugee to that country
- (c) Or if he has been guilty of an act which is contrary to the purpose or principle of United National.

The exclusion clause under Article 1F of the 1951 Refugee Convention disqualifies a person from availing the refugee status. The idea of not providing protection to undeserving individuals is the link concerning the ideal of humanity, equality, and the very concept of refuge. The main objective of the exclusion clause is to deprive the perpetrators of any heinous crime, and serious crime of common nature, from the protection of the host country and to prevent the entry of any such individuals that pose danger to the safety and security of the country.

In the absence of the exclusionary clause, and in the presence of permission to provide protection and not to *refoule* the perpetrators of such grave offense, would directly contradict the international protection with national and international law.

## **5.5. EFFECTIVENESS OF THE PRINCIPLE OF NON-REFOULEMENT IN PROTECTION OF REFUGEES IN EUROPEAN UNION**

The Principle of Non-refoulement is the main element of the European Union's fundamental Rights rules, which is clearly reflected in Article 78(1), the *Treaty on Functioning of the European Union*. Article 18 and 19 of the *EU Charter of Fundamental Rights* also prohibits *refoulement*. Article 3 of the *EU convention on Human Rights* and the *EU court on Human Rights* also encompasses the principle of non-refoulement. The European Union Asylum System also prohibits refoulement of any person to a place where there is a serious risk to his life is involved owing to indiscriminate violence during an armed conflict.

'In the European Union, Article 19 of the European Union Charter imbibes the obligation of the principle of non-refoulement. It states that no one may be removed,



expelled, or extradited to any state where there is a serious risk to his/her life by either death penalty, torture or inhuman or degrading treatment or either punishment. Further Article 21 of the Qualification Directive provides that, the member states shall respect the Principle of non-refoulement in accordance with their international obligations. The Return Directive, responsible for setting out common standards and protection for the return of the third country nationals, staying irregularly, also underscores the obligation to respect principle of non-refoulement. Even though the ECtHR is not a part of the European Union Legal Framework, it is binding on all the European Union Member States. The European Court of Human Rights (ECtHR) had read the principle of non-refoulement into the prohibition of torture, cruel and inhuman treatment under Article- 3 of the ECtH.<sup>402</sup>

‘However, if we look at the recent trends of European Union State, the states are keen at pushing back the asylum seekers even before they enter their territory, which is very evident from the state’s construction of their anti-migrant walls. States like Spain (2014) Greece (2014) and (2015) resorted to construct such walls in the name of safeguarding their national security. This act of the state is not compatible with the 1951 Convention as they prevent the potential asylum seekers from entering the state territories. The construction of such walls halt these asylum seekers from exercising their guaranteed rights under the Convention. Thus, we see the falling weakness of the principle of non-refoulement in providing protection to these asylum seekers in need, and thus the violation of the principle is becoming more frequent. In an investigation carried out by Amnesty International, it found the violation of the rights of the asylum seekers where in the potential asylum seekers from Belarus were returned to the Polish border and were left helpless. Expulsions like this are contrary to the International and European Union Law. Adding to the state's violation of principle of non-refoulement, on 20 August 2021, the Afghan nationals at the Polish border, though field application for the International border, were not provided International protection. They were left on their own devices and were not provided with humanitarian aid, further leading to the death of several asylum seekers, which was

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<sup>402</sup>Luisa Feline Freier, Jean-Pierre Gauci. REFUGEE SURVEY QUARTERLY, Volume 39, Issue 3, September 2020, Published: 06 October 2020. Pages 321–362, <https://doi.org/10.1093/rsq/hdaa011> (Journal Article) (23/6/2023)

later reported on 24 September 2021. Poland has faced such allegations several times and such acts of the Polish government have been condemned by ECHR. In the year 2017, Poland's act was condemned on similar facts.

During the outbreak on COVID 19, in spite of the injunction of the UNHCR, prohibited the violation of the principle of non-refoulement, However, many states did not upheld and respected the principle. The signatory European Union States to the European Convention on Human Rights may take measures for the derogation of some provisions of the Convention in the scenario where there is a threat to public health, under Article 15(1). However, the rights established under Article 15(2) of the ECHR cannot be in derogated form. The numerous violations of the principle of non-refoulement raises the question on the effectiveness of the principle in protecting the asylum seekers.<sup>403</sup>

Under the European Union Common European Asylum System (CEAS), there are several agency like the Thales Cogent Automated Biometric Identification System (CABIS), and the Cogent AFISes, and the EURODAC Regulation does not directly reflects the principle imbibed in them.

Further, when we examine the effectiveness of the principle of non-refoulement we see that the ECHR and the ECtHR ensures that the principle of non-refoulement is effective in the European Union. In the case of *M.S.S. v. Belgium and Greece (2011)*,<sup>404</sup> the court ruled that the transfer of Belgium to Greece under the Dublin Regulation would violate Article 3 of the ECHR because of the deficiencies in their asylum system of the concerned host country. The court further held that Belgium should have thus ensured that the transfer of the asylum seeker would not lead to the risk of inhuman, degrading treatment. The solution was further repeated in the Court of Justice in the of *N. S (2011)*<sup>405</sup>

The ECHR is not however always protective of refoulement of the people from the

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<sup>403</sup>Naydès Jeanty How effective is the principle of non-refoulement in Europe today? published by Generation for Rights Over the World (January 2022) contact@growththinktank.org. How effective is the principle of non-refoulement in Europe today? (growththinktank.org) (24/6/2023)

<sup>404</sup>M. S. S. v. Belgium and Greece case (No. 30696/09) of 21 January 2011, How effective is the principle of non-refoulement in Europe Today? By- Naydes Jeanty, 14/01/2022. How effective is the principle of non-refoulement in Europe today? - Grow Think Tank. (24/6/2023)

<sup>405</sup>CJUE, 21 December 2011, N.S., C-411/10 et C-493/10, ECLI:EU:C:2011:865. (24/6/2023)

third country. In the case of *N. v. United Kingdom, (2008)*<sup>406</sup> they deported the applicant, even though they were suffering from AIDS, however, in the judgment the court also ensured that the rights of the applicants under article 3 of the ECHR is not violated.

## **5.6 THE VISIBLE METAMORPHOSIS IN THE PRINCIPLE OF NON-REFOULEMENT IN EUROPEAN UNION**

There is an increase in the violation of the principle of non-refoulement at the end of the states and misuse of the principles by some refugees at times. In the recent past, the principle has been molded and used by the states and the refugees to suit and justify their acts. The principle is metamorphosed means that the basic essence of the principle is being molded and changed. The host countries and the refugees are not following Article 33(1), the principle of non-refoulement as it is. Both refugees as well as the host countries are metamorphosing the convention. \

### **5.6.1 METAMORPHOSIS OF THE PRINCIPLE OF NON-REFOULEMENT BY SOME EU MEMBER STATES.**

### **5.6.2 METAMORPHOSIS OF THE PRINCIPLE OF NON-REFOULEMENT BY THE REFUGEES.**

### **5.6.1 METAMORPHOSIS OF THE PRINCIPLE OF NON-REFOULEMENT BY SOME EU MEMBER STATES.**

Following are some of the acts of the state, through which the states are metamorphosing the convention.

#### **➤ *The states concerned are misusing their discretionary power***

The states concerned have the right to hold discretion to exclude certain people from invoking the principle of Non-refoulement. Like in some circumstances, some states determine the number of refugees it can host. Thus the discretionary power is being misused by the States, making the principle itself redundant. The very window in the convention has given a gateway to many Economically sound countries like, some

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<sup>406</sup>CEDH, judgment N. c. United Kingdom, Requête no 26565/05, 27 mai 2008. (24/6/2023)

states in European Union, United States, China and Australia to show their lack of interest in hosting refugees.<sup>407</sup>

The two acts of the European states to show that the principle of non-refoulement being metamorphosed at the end of the states are, by their introduction of the closing door policies in their respective states and by their pushing back of refugees

➤ ***European State's Closing Door Policy***

‘Countries are metamorphosing the principle by sending the asylum seekers to another country, not even letting them enter their border. Where in the principle itself said that no person shall be sent back to a place where his/her life is in danger. Here the countries are not even pushing the refugees back from where they are coming, rather letting them die at the sea, in between nowhere, neither at their home country nor at the asylum seeking states. The countries are breaching the 1951 convention by pushing themselves to introduce sweeping bills, which are cruel, unworkable and unlawful and illegal bills. E.g.- U.K has introduced a new legislation against the illegal migrants, banning those crossing the English Channel through boats to claim Asylum in the U.K. the legislation will reportedly detain and remove them to either their homes, Rwanda or to any other nation that UK deems safe.

Instead of keeping themselves to accept refugees whose lives are in danger the countries are introducing closing doors policies which will only lead the asylum seekers to endanger their lives and involve unlawful and illegal practices which are inconsistent with Human rights and Refugee Law to enter the host nation.’

Sweden, which was once the most preferred destination for the refugees from Syria, Afghanistan and others, introduced its border control, restrictive and reunification law in the mid-2016 and made a major policy shift.<sup>408</sup>

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<sup>407</sup>Kavitha Surana. WHY DO SOME COUNTRIES GET AWAY WITH TAKING FEWER REFUGEES? [why-do-some-countries-get-away-with-taking-fewer-refugees-united-states-china](#). Why Do Some Countries Get Away With Taking Fewer Refugees? – Foreign Policy. (24/6/2023)

<sup>408</sup>REFUGEE POLICY: WHAT'S GONE WRONG AND HOW TO MAKE IT BETTER — Refugees InternationalEuropean Refugee Policy: What's Gone Wrong and How to Make It Better — Refugees International. The noose is tightening around refugees and migrants in West Africa | Mixed Migration Centre. (24/6/2023)

➤ *Countries pushing back Refugees*

During the pandemic, the EU member states used illegal operations to push back nearly 40,000-asylum seekers from the European Border.<sup>409</sup>

‘According to the reports received by the UNHCR, some of the European States are reportedly restricting access to asylum. The countries are not only pushing the refugees back after they have reached the territory or territorial water. The push back of these asylum seekers are being carried out in a very violent and systematic way. Boats with refugees are being pushed back, people being rounded up after their landing and pushed back to the sea, refugees are also reported to have faced violence and abuse by the states. On the other hand people arriving by land have been informally detained and returned to the neighboring countries by force. Even their need for International Protection has not been considered.

However, these pushbacks are not ignored and some work by the UNHCR is being carried out to create national independent monitoring mechanisms. The UNHCR has urged the European States to uphold their commitments of protection and admitting asylum-seekers at their respective borders, to rescue the ones at the sea, allowing their registration and disembark-men. However, a lot needs to be done.’

The violation of the principle is because of the unclear nature of the rule. Example of violation of the principle is the return of the boat people to Tampa. In the chain of events, Norway had sent refugees in vessels to Australia, which it denied to accept and drove back to Norway. Norway denied accepting them back, Australia further sent the vessel full of refugees in harsh conditions to Indonesia, stating the vessel had not entered the Australian water bodies and thus they are not responsible for the refugees in the vessels. Further, the Indonesian government also refused hosting these refugees and reported Australia to the UN High Commission for Refugees and International Maritime Organization for alleged failure of Australia in obeying its duties under International Law.<sup>410</sup> The refugees from Tampa were finally transferred to a small island country of Nauru by the Australian Navy vessel where they were

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<sup>409</sup> Lorenzo Tondo. Revealed: 2,000 refugee deaths linked to illegal EU pushbacks. 7 May, 2021. Illegal EU pushbacks linked to 2,000 refugee deaths - Taipei Times. (25/6/2023)

<sup>410</sup>The Guardian (News website of the year)  
<https://www.writework.com/essay/refugees-sea-recentissue-involving-tampa-boat-people-hasa>

kept in detention camps. They were gradually granted asylum and progressed to attaining citizenship and later united their families. This act of Australia was largely criticized internationally, especially by Norway.<sup>411</sup> The Tampa affair incident raised two very pertinent questions as to who is a refugee and where he should find refuge.<sup>412</sup>

Contrary to the violation of the principle of non-refoulement by the states, many a times the refugees too misuse the protection provided under the 1951 convention. In the revolutionary era of better transportation and communication systems, poverty in the refugee's country of origins, and never-ending internal conflicts has accelerated the feeling of discontentment in the third world. Which further accelerates the mass movement of people globally.

However, over the recent time due to the changes and development in the fields of politics, social-economic developments, and changing environment globally, there has been a magnificent increase in the number of refugees. Since the establishment of the 1951 Convention, there has been only one upgrade / modification in the convention and that is the 1967 protocol. Ever since its establishment the world had changed drastically over the years and so had the refugee issues and needs. Thus, over the period the convention appears to be weak and inadequate in doing justice to what it was established for. The convention in recent times appears ambiguous and incomplete. As a consequence many member countries as well as the refugees are misusing the ambiguity and taking advantage of the new gaps in the convention, and thus the convention appears old and weak in fulfilling the purpose for which it was established. As a result, some developed countries have flouted the norms set by the convention, like Australia or the US.<sup>413</sup>

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<sup>411</sup>Tampa affair From Wikipedia, the free encyclopedia.[https://en.wikipedia.org/wiki/Tampa\\_affair](https://en.wikipedia.org/wiki/Tampa_affair). (25/6/2023)

<sup>412</sup>Damon9. 2004 REFUGEES AT SEA - THE RECENT ISSUE INVOLVING THE TAMPA BOAT PEOPLE HAS RAISED TWO PERSISTING QUESTIONS. WHO IS A REFUGEE AND WHERE SHOULD HE OR SHE FIND REFUGE?, High School, 12th grade, B-, April 2004. <https://www.writework.com/essay/refugees-sea-recent-issue-involving-tampa-boat-people-has>

<sup>413</sup>GP-ORF. SERIES OBSERVER RESEARCH FOUNDATION. (Jan 13 2022) <https://www.orfonline.org/research/understanding-the-relevance-of-the-1951-convention/> (25/6/2023)

As the convention gets less impact in its application and is being misused by some of the developed nations. There is no fear of sanction to the member states, in not fulfilling their respective duties or delegating their duties on to the safe third country, with respect to process the deportation and holding the refugees their own country and not allowing them to enter developed nations. The ongoing Syrian refugee crisis once again got the world talking about refugees and their issues. The inhuman condition in which they were forced to live has opened political debate and has started from both ends now. From the end of refugees as well as from the end of the natives of the host countries. Concerns like national security, demo-graphical and loss of ethnicity have increased due to irregular inflow and unequal distribution of refugees, without intimation.

➤ ***The European Union State's international agreements undermining the non-refoulement obligation-***

The European Union State's international agreements are undermining the non-refoulement obligation in three ways. They are, either by changing the facts, displacing jurisdiction, or by presenting outright norm conflict.

The first approach, despite the strong protection to the refugees under the refugee convention, the European States are coming together to a mutual agreement among themselves, indirectly, avoiding the principle of non-refoulement and pushing the individuals to the dangers that threaten their lives. For this, the states are using diplomatic assurance or building treaties.

The second approach or techniques that the states are using is the Headquarter Agreement on Jurisdiction, now, by using the agreement with the International Organizations like the Human Rights, that generally applies the control theory of Jurisdiction, however it appears that it does not apply its jurisdiction consistently. Thus, the states go ahead in using organizations like these to manipulate their human rights jurisdiction.

The third approach, used by the states to evade the principle of non-refoulement is by adapting those treaties that creates normative conflict. For example, the Hague

Convention insists on prompt return of the adult children and independent assessment of the cases of non-refoulement. However, this appears incorrect.<sup>414</sup>

Several Judicial Decisions of the European Commission of Human Rights held that expulsion or extradition may in certain exceptions be contrary to the European Human Rights Convention. Particularly Article (3) of the convention (that prohibits cruel or inhuman treatment), “if in the country to which the person is to be sent, due to the very nature of the regime of that country or to a particular situation in that country, the basic human rights, such as are guaranteed by the European Convention might be either grossly violated or entirely suppressed.”<sup>415</sup>

The European Commission dealt with the case of *Amerakane V. UK*. In August 1974. In the case Amerakane, had taken part as the Air Force Officer in an attempt to save the life of King of Morocco. On Amerakane fled to Giralta, he was forcibly returned to Morocco where he died. Thus in the case, the widow of Amerakane was the “*Ex gratia*” payment of damage amounting to £375,000.

In the case of *US ex ret. Weinberger V. Schloffeldf*, the district court of the Northern District of Illinois, in the US, decided a case on the deportation of Jew to Czechoslovakia, in the year 23 November 1938. The court held that it is a well-known fact that in Central Europe the Jews were persecuted, their properties were confiscated, and they seek sanctuary in other countries. Moreover, if a Jewish alien has never been arrested, except for being fined for traffic violence and if had never been guilty of a crime that involved moral turpitude, they could not be deported to Czechoslovakia. Such deportation would be cruel and inhuman punishment, thus in this case Habeas corpus was granted.<sup>416</sup>

### **5.6.2 METAMORPHOSIS OF THE PRINCIPLE OF NON-REFOULEMENT BY SOME REFUGEES.**

The principle of non-refoulement is metamorphosed by the refugees by their constant attempts to enter the European Union states by illegal means. Some refugees in quest

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<sup>414</sup>William Thomas Worster, “*Contracting out of Non-Refoulement Protection Translated law and Contemporary Problem.*” Vol. 27, 2017. Contracting Out of Non-Refoulement Protections by William Thomas Worster :: SSRN. (25/6/2023)

<sup>415</sup>UNHCR. THE REFUGEE CONVENTION, 1951. THE TRAVAUX PREPARATOIRES ANALYSED WITH A COMMENTARY BY DR PAUL WEIS. 4ca34be29.pdf (unhcr.org) (25/6/2023)

<sup>416</sup>*Id.* at 411.



of a better life, standard of living, jobs, and head towards the European States these refugees are not feeling as a consequence of any wars or persecution but out of their own personal desire, there is no fear of loss of life. They so desperately want to enter the desired country that they even risk their lives<sup>417</sup>.

The refugees are well aware of the principle of non-refoulement and they are aware of the fact that once they manage to enter the border of the desired state, they cannot be returned.

In the year, 2021 there were reportedly over 200,000 illegal borders crossing the European Union border. This was higher than that recorded in the year 2017, where 204,000 illegal migrants crossed the EU border. The peak of border crossing was recorded in the year 2015, with around 1.8 million illegal border crossings.<sup>418</sup> In the first two months of the year, 2022, the illegal border crossing increased up to 61% at all entry of European Union States.<sup>419</sup>

Some refugees risk their and their family's lives by illegally, unethical and unsafe way of entering into the European Union. The European Union States do not allow for the regulated arrival of asylum seekers, thus their entry in European territories are usually irregular. In lack of the required document, some refugees use unauthorized border crossing points posing a challenge to the border authorities.

## **5.7 Metamorphosis in the Principle, Affecting Some of the Human Rights of Both Refugees and the Citizens of Host Countries**

Every now and then we hear of some or the other refugee crisis and with the changing environment and the quest for super power the refugee issues shall always prevail in the world. The violations of human rights of the refugees is one of the main reasons why they are forced to leave their country of origin. However, when they reach neighboring countries for shelter they face various kinds of difficulties and violations

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<sup>417</sup>Phineas Rueckert.. 5 OF THE BIGGEST REASONS WHY PEOPLE BECOME REFUGEES (August 15, 2017) 5 Of The Biggest Reasons Why People Become Refugees (globalcitizen.org)

<sup>418</sup>Statista Research Department, Number of illegal crossings between border-crossing points in the European Union from 2009 to 2021. (Feb 28, 2023). EU illegal border crossings 2021 | Statista.

<sup>419</sup>Frontex. ILLEGAL BORDER CROSSINGS INTO EU UP 61% IN FIRST TWO MONTHS OF 2022. (2022-03-23.) Illegal border crossings into EU up 61% in first two months of 2022 (europa.eu)

of their human rights; however, they are not the only ones whose human rights are affected.

With the inflow of refugees, the human rights of the citizens of the host country equally are affected. However, how much of the human rights are being affected depends on how economically sound the country is. For example, the inflow of refugees might not affect economically sound countries like the European Union as much as it affects the poor nations already struggling with their economy, countries that are under developed or developing nations like Bangladesh, Tanzania etc.

In order to analyze how and in what ways the human rights of the refugees and the natives are imbalanced we first need to understand what are the right of refugees and the right of the citizens of the native country, (in this case the citizens of European Union)

### **5.7.1 HUMAN RIGHTS OF REFUGEES**

By the virtue of being a refugee, every person who is forced to leave his country of origin is protected under International Law and thus possess rights like, Rights to freedom from torture or inhuman treatment. Right to freedom of opinion and expression, right to freedom of thought, conscience and religion, freedom from discrimination, right to asylum, right to family, right to non-refoulement.<sup>420</sup>

***“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum“***

(By: - United Nation High Commissioner for Refugees.)

Under certain circumstances in the absence of immediate adequate governmental resources, for example in case of a sudden arrival of a large number of displaced

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<sup>420</sup>Akash Krishnan, RIGHTS OF MIGRANTS AND REFUGEES UNDER INTERNATIONAL HUMANITARIAN LAW. (December 13, 2021)ICFAI Law School, Hyderabad <https://blog.iplayers.in/rights-of-migrants-and-refugees-under-international-humanitarian-law/>.

people, International Organization such as the *UNHCR* assists such people. Their assistance include-

- Giving away of financial grands
- Providing foods
- Providing tools and shelter
- Providing infrastructure including school, and clinic.<sup>421</sup>

‘Rights of refugees are also protected under the international refugee instrument, (The 1951 Refugee convention), provides the following rights.

- Article 3- provides that the state parties shall apply all the provisions of the Convention without any discrimination based on race, religion, or country of Origin of the beneficiary.
- Article 4- provides the freedom of religion and religious education
- Article 5 – provides that nothing in the convention shall be deemed to impair any Additional rights and benefits granted by the contracting state apart from the convention itself.
- Article 6- Provides that the refugees shall have free access to the court of law in the territory of all the contracting states.
- Article 15- Freedom of association with non-political and non-profit making association and trade union
- Article 16- provides free access to court of law
- Article 17, 18 and 19- provides the for granting access to employment opportunities to the refugees
- Article 21- provides that the refugee shall be accorded grands like housing, etc.
- Article 25- provides provision for Administrative assistance by the contracting state authorities to allow a refugee to exercise their right under the convention
- Article 26 and 31- provides the freedom of movement in the territory of the concerned state.
- Article 33 – provides the protection, prohibition of expulsion or return of the refugee (The Principle of No- Refoulement)
- Article 34- facilitating assimilation and naturalization’.<sup>422</sup>

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<sup>421</sup>UNHCR | PROTECTING REFUGEES: QUESTIONS AND ANSWERS. UNHCR. (01 February 2002) - Protecting Refugees: questions and answers. (25/6/2023)

Under several cases, the courts have upheld the rights of refugees to ensure the well-being of refugees. for Example:- In the case of *X v. Staatssecretaris van Justitie en Veiligheid*, The court of Justice of European Union, ruled the national state of health must be considered by the national authority along with the other relevant factors like, (social ties, dependency and health) while determining whether the national's right to respect for private life precludes removal.<sup>423</sup>

For the protection on unaccompanied minors in the case of *TQ V. Staatssecretaris Van Justitie en Veiligheid*, Case- C-441/19. Article 6 (1) of Directive of 2008/115/EC of the European Parliament. And the council of 16 December 2008, on the common standards and procedures for the return of illegal nationals in the third country, when read in conjunction with Article 5 (a) of the same directive, and Article 24(2) of Charter of Fundamental Rights of European Union. It must be interpreted in a way that, before issuing a return decision against any unaccompanied minor, the member states must consider carrying out a general and in-depth assessment of the situation of the minor. The best of the interest of such minors must be taken into account. For this, the member state must ensure availability of sufficient reception facilities for the unaccompanied minor in the state of return.<sup>424</sup>

In another case, *K, B Staatssecretaris van veiligheid en Justitie* (C-380/17) (request for preliminary ruling) the Court of Justice holds jurisdiction, on the basis of Article 267 TFEU. For the interpretation of Article 12(1) of Council Directive 2003/86/EC of 22 September, 2003, on the issue of the right to family reunification, in a situation where a national court is called upon to rule subsidiary protection of a beneficiaries' right to family reunification. The court held that the right to family reunification is applicable to refugees under Article 10, 11 or under Article 12(2) of the said directive.<sup>425</sup>

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<sup>422</sup>Brian Gorlick.. NEW ISSUES IN REFUGEE RESEARCH. October 2000, ISSN 1020-7473. Working Paper No. 30 Human rights and refugees: enhancing protection through international human rights law. DRAFT - Not for Citation\_ (refworld.org) (06/03/23)

<sup>423</sup>*X v. Staatssecretaris van Justitie en Veiligheid* Case C-69/21, ECLI:EU:C:2022:913, European Union: Court of Justice of the European Union, 22 November 2022, <https://www.refworld.org/cases,ECJ,63aed15d4.html> (25/6/2023)

<sup>424</sup>*TQ v Staatssecretaris van Justitie en Veiligheid*, Case C-441/19, request for preliminary ruling, ECLI:EU:C:2021:9, European Union: Court of Justice of the European Union, 14 January 2021, <https://www.refworld.org/cases,ECJ,600558c44.html> [accessed 25 February 2023]

<sup>425</sup>*K.B v Staatssecretaris van Veiligheid en Justitie* (C-380/17) (request for preliminary ruling), ECLI:EU:C:2018:877, European Union: Court of Justice of the European Union, 7 November 2018,

## 5.7.2 HUMAN RIGHT OF THE CITIZENS OF EUROPEAN UNION

*The European Convention on Human Rights* works towards enforcement of many rights contained in the Universal Declaration of Human Rights they are as followed:-

- Article 1- Obligation to respect human right- it is states duty to ensure that every one has the rights as stated in this convention.
- Article 2- Right to Life- Everyone has the right to live with dignity.
- Article 3- Prohibition of Torture- the convention prohibits torture one any human beings. Even in detention, a person cannot be subject to any torture.
- Article-4 Prohibition of Slavery and Forced Labour- no person can be subject to forced slavery or forced labour.
- Article 5- Right to Liberty and Security
- Article 6- Right to Fair Trial- every individual has the right to a fair trial before an unbiased and an independent judge.
- Article 7- No Punishment without law- one cannot be held guilty in absence of a law.
- Article 8- Right to Respect for a Private and Family Life- every individual's private and family rights must be respected.
- Article 9- Freedom of Thought Conscience and Religion- Everyone must be free to have their own thought process, conscience and to follow their own religion.
- Article 10- Freedom of Expression- one has every right to express their feeling either written or verbal, however the freedom of expression done not give an absolute right to say any derogatory words to either an individual or the state.
- Article 11- Freedom of Assembly and Association- people are free to assemble in a gathering and form associations. However, unlawful assembly is against law.
- Article 12- Right to marry- Every individual is free to marry a person of his choice.
- Article 13- Right to an Effective Remedy- for the violation of any right of an Individual, that individual has a right to an effective remedy.
- Article 14- Prohibition of Discrimination- any act of discrimination towards an Individuals are against the law.
- Article 15- Derogation in time of Emergency- in case of any state, or national

emergency the state may curtail the rights of any individual.

- Article 16- Restrictions on Political Activity of Aliens- the government may restrict political activity of a foreigner, even if this would be in conflict with Article 10, 11 or 14
- Article 17- Prohibition of Abuse of Rights- no freedom guaranteed under their convention can be abused either by the state or an individual.
- Article 18- Limitation on Use of Restrictions or Rights- some of the rights under this convention may be restricted by a general law, which is applicable to everyone.
- Article 19 to Article 51- is the explanation as to how the European Court of Rights work.
- Article 34- Individual Applications- states that, in case of violation of any rights in any of the member states, one must apply to the competent national authorities. After that, one can apply directly to the European Court of Rights.
- Article 52- Inquiry by the Security General- on the request of the Security General the government is liable for an explanation as to how its national law protects the rights of the people under this convention.<sup>426</sup>

***Rights under the Protocols of the Convention includes-***

- Article 1 of Protocol no. 1- Protection of Property
- Article 2 of Protocol no. 1 – Right to Education
- Article 3 of Protocol no.1 – Right to Free Elections
- Article 2 of Protocol no. 4 – Freedom of Movement
- Article 1 of Protocol no. 6 – Abolishment of Death Penalty
- Article 2 of Protocol no. 7 – Right of Appeal in Criminal Matter
- Article 3 of Protocol no.7 – Compensation for wrongful conviction
- Article 1 of Protocol no.12 – General Prohibition of Discrimination<sup>427</sup>

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<sup>426</sup>European Convention on Human Rights (simplified version) European Convention on Human Rights (simplified version) - Manual for Human Rights Education with Young people (coe.int) (06/03/23)

<sup>427</sup>*Id.* at 411.

### 5.7.3 METAMORPHOSIS AFFECTING THE HUMAN RIGHTS OF CITIZENS AND THE REFUGEES

How are the rights of the refugees and the natives affected and imbalanced? When we look at the rights granted to the refugees as well as the citizens of the native European Countries, we see that they have almost equal rights. However if we take a closer look we see that despite both refugees and natives in possession of these rights, the rights are not properly balanced in a way that many a time we see overlapping of rights on either side. There are incidents of the human right of one party being affected by the implementation of the other party. At times because the human rights of refugees is being upheld the rights of the natives are affected. To quote some example:-

The new culture and religion brought in by the refugees in the host nation may cause the erosion of the previous religion or culture of the host nation's citizens, thus affecting their right to religion. People's right to life is affected in unpredictable attacks, with some of the refugees having a criminal background. Where many refugees are initially unemployed they engage themselves in criminal activities for their needs thus promoting insecurity in the society and threat to life of the citizens, under Article 2 of the convention.<sup>428</sup> In addition, the refugees and their children sometimes commit crimes.<sup>429</sup> In developing countries like Bangladesh where the native population itself is very diverse and there is scarcity of jobs and resources. The refugee effect native's right to work. Article 10- Freedom of Expression also is effected of the natives, as there has been incidences of beheaded of teachers and journalists being behaves in France.<sup>430</sup> Where are various other incidents that show that much other right of the natives is effected with the refugee inflow.

Vis-a-vis even the refugees also faces the violation of many of his human rights with the states imposing several restriction. Like in France the human right to Muslim women are violated by veil, *naqab* and burqa ban in France and in Germany

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<sup>428</sup>Arguments for and against letting more refugees into Europe Arguments for and against letting more refugees into Europe - Debating Europe

<sup>429</sup>ON ACCEPTING REFUGEES: PROS AND CONS. (2015) On Accepting Refugees: Pros And Cons | The Not Fake News

<sup>430</sup>BBC News. FRANCE TEACHER ATTACK: FOUR PUPILS HELD OVER BEHEADING. 19 October 2020. France teacher attack: Four pupils held over beheading - BBC News

(debated)<sup>431</sup> Many state do not fulfil their non-refoulement obligations and push the refugees back and not allow them to enter their states, violates the refugees right to life, as many a times these push result in fatal.

Thus, we see that despite the fact that both refugees as well as the natives have their own sets of human rights. The rights of both refugees are the natives are effected. These rights are not balanced to give both equal support and rise together. Infect rights of both refugees and the natives are effected with refugee inflow.

## **5.8 SUMMARY OF THE CHAPTER**

Thus, in chapter five, we see that, over the years with rapidly changing world the Convention of 1951 has faded away in fulfilling the purpose for which it was once established. Since there has been no amendment in the convention except the protocol of 1967, the convention is not updated and hence had faded away in addressing the refugee's issues effectively and has led to the development of many ambiguity. Because of the shortcoming the convention, the human rights of both the refugees and the natives of the host countries are being effected. The enumerated shortcomings need to be addresses and the convention need to be upgraded.

A clear definition of the team refugees is needed, there is a need of complete independence of the convention since it is not completely independent and is still supplemented by the other international conventions, regional agreements, national legislation and judicial decisions.

The principle of non-refoulement, the most important principle in the convention, which is the soul of the convention, is also being molded both by the refugees as well as states for deriving their own benefits. There has been viable metamorphosis and thus the principle is fabricated largely.

The chapter further deals with how are the European states and the refugees are molding and misusing the convention for their own interests. Further how the

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<sup>431</sup>DW News. FRENCH 'BURQA BAN' VIOLATES HUMAN RIGHTS, RULES UN. (October 23, 2018) French 'burqa ban' violates human rights, rules UN – DW –



metamorphosed use of the convention is effecting the rights and interest of both refugees and the state.

## CHAPTER- 6

# JUDICIAL DISCOURSE ON THE PRINCIPLE OF NON-REFOULEMENT

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### 6.1 INTRODUCTION

As mentioned in the previous chapters, the Principle of non-refoulement enshrined in the 1951 Refugee Convention provides protection to the refugees. Protection against *refoulement* is the cornerstone of refugee Protection, the principle is also a well-established norm. The practice of the state to accept and protect refugees rather than returning them to territories where there is a threat to their life and freedom has taken the shape of customary law. The fundamental principle imbibed under *Article 18 and 19(2) of the EU Charter of fundamental rights*, states that no one can be removed, expelled or can be extradited to a state posing serious risk or threat to a person's life in form of death penalty, torture or any other inhuman or degrading treatment or any form of punishment.<sup>432</sup> The meaning of the principle of non-refoulement which is, “forbidding to send back” had appeared first in the graft of International societies for International Lawyers. Further in the 1892 Geneva session of the Institute of International Law it was formulated that the refugees should not be expelled. Under *Article 45 of (1949) Geneva Convention*<sup>433</sup> For the protection of civilians during war, it was formulated that under no circumstance a person should be transferred to a country where there is a fear of his or her being persecuted. In 1951 Geneva Convention or the 1951 Convention, the principle gained a broader meaning and protection, Article 33 of the convention prohibited the expel or return of any refugee to the frontiers of territories where there is threat to his life or freedom owing to his race, religion, nationality or membership of a particular social or political group. ‘Similar rule exists in binding and non-binding regional instruments, with some having even broader scope and provides protection against serious public order like armed conflict. The prohibition from return of refugees to a territory where their

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<sup>432</sup>Tamás Molnár, THE PRINCIPLE OF NON-REFOULEMENT UNDER INTERNATIONAL LAW: ITS INCEPTION AND EVOLUTION IN A NUTSHELL. COJOURN 1:1 (2016) [ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf \(ohchr.org\)](#). (27/6/2023)

<sup>433</sup> 1949 Geneva Convention relative to the Protection of Civilians Persons in Time of War. (27/2/2023)

life and freedom is at risk, also applies to asylum seekers irrespective of their formal reorganization of their status. The *1951 Refugee Law* encompasses exception to the *principle of non-refoulement*, which is – if the person poses threat to the society in which he is, or – if the person concerned is a convicted of a serious crime. However, it is the general rule to interpret the exception narrowly. On the contrary, within *International Human Rights Law* the principle of non-refoulement does not allow any exception or degradation and the principle is applicable to all individuals, irrespective of their legal status. Thus, even if a person could be returned under Refugee Law, the international Human Rights Law may prohibit such transfer. Under the *Human Rights Law*, refoulement is prohibited on a number of grounds there are, if the person concern is in danger and may be subjected to danger (under the convention against torture). Or, it may be subject to cruel, inhuman or degrading treatment or likely to be punished and may be subject to an arbitrary deprivation of life (Under the regional *IHRL instruments*). Under the human right law, *The Convention against torture, inhuman, degrading treatment or punishment (CAT)* and the Convention on the Protection of *all persons from Forced Disappearance (ICPPED)*, explicitly prohibits refoulement.

The principle of non-refoulement is considered as the integral component to provide protection against the above mentioned both Under the *United Nations Human Rights Committee (UNHCR)*, and *European Court of Human Rights (ECtHR)*. The judgments and the decisions delivered by the court not only decides the cases before the court and also to clarify, to safeguard and develop the rules founded by the convention, so as to aid the compliance by the state as the contracting party (*Ireland v. the UK (1978)*),<sup>434</sup> and *Jeronovics v. Latvia (2016)*,<sup>435</sup>. Thus, the very mission of the of the established system is to determine the issues of public policy by rising the standards of human rights protection and by extending the human rights jurisprudence throughout the conventional state community (*Konstantin Markin v. Russia (2012)*).

<sup>436</sup> Rather, in the case of *Bosphours v. Ireland*, the courts in the field of human rights

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<sup>434</sup>Ireland V. The United Kingdom. (18 January 1978) Application no. 5310/71. Judgment. Strasbourg.. Court (Plenary). <https://hudoc.echr.coe.int/eng?I=001-57506>. (27/6/2023)

<sup>435</sup>Jeronovičs v. Latvia. (5 July 2016) Application no. 44898/10 Grand Chamber. Judgment. Strasbourg. <https://hudoc.echr.coe.int/eng?I=001-165032>. (27/6/2023)

<sup>436</sup>Konstantin Markin v. Russia. (12 March, 2012) Application no. 30078/06. Strasbourg. Judgment.

has emphasized its conventional role as “constitutional instrument of the European Union public order.

There are several other International and Regional Instruments like the *regional courts, treaties that prohibits the return of a person if the return would put him at the risk of either his disappearance, death penalty, if will be tried by special or ad hoc court, of if he will be denied justice, or will be hostile.*

In the *UNHCR ExCom, (1977)* the principle was reinforced. The scope of principle of non-refoulement was further bordered under *Article 7 of the ICCPR, 1966*. Under the *CAT Convention, (1984)* a prominent step was taken to formulate the principle’s obligation explicitly in the context of general human rights. In the case of *Bouyid Begium, (2015)*, the court states that the prohibition of torture, degrading treatment or any punishment is the basic value of the civilizations, which is bound by human dignity.

‘In the case *A. and Others v. the UK (2009)*,<sup>437</sup> and in the case of *Mocanu and others v. Romania (2014)*<sup>438</sup> further in the case of *El-Masri v. the former Yugoslav (2009)*,<sup>439</sup> the court stated that the prohibition under article 3 is absolute. And does not permit any degradation under Article 15, even during the events of public emergency or in the most difficult situations like terrorism and organized crimes or the inflow of migrants and asylum seekers in a very large scale, *irrespective of their conduct*. Further in the case of *Z.A and others v. Russia (2009)*,<sup>440</sup> *Ramirez Sanchez v. France (2006)*,<sup>441</sup> and in the case of *Gafgen v. Germany, (2010)*,<sup>442</sup> ‘the nature of alleged

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<sup>437</sup>A. And Others v. The United Kingdom. (19 February 2009). Application no. 3455/05. Grand Chamber. Strasbourg. [https://hudoc.echr.coe.int/eng?I=001-146540\\_](https://hudoc.echr.coe.int/eng?I=001-146540_) (27/6/2023)

<sup>438</sup>Mocanu And Others v. Romania (17 September 2014) Applications nos. 10865/09, 45886/07 and 32431/08. Grand Chamber. Judgment. STRASBOURG.. <https://hudoc.echr.coe.int/eng?i=001-146540>. (29/6/2023)

<sup>439</sup>El-Masri v. The Former Yugoslav Republic Of Macedonia. (13 December 2012) Application no. 39630/09. Grand Chamber. Judgment. Strasbourg. (29/6/2023)

<sup>440</sup>Z.A. And Others v. Russia. (21 Nov,2019) Applications Nos. 61411/15, 61420/15, 61427/15 and 3028/16. Grand Chamber.Judgment. Strasbourg. <https://hudoc.echr.coe.int/fre?I=001-198811>. (29/6/2023)

<sup>441</sup>Ramirez Sanchez v. France. (4 July, 2006) Application no. 59450/00. Grand Chamber Judgment. Strasbourg.. <https://hudoc.echr.coe.int/eng?I=001-76169>. (29/6/2023)

<sup>442</sup>Gafgen v. Germany. (1 June, 2010) Application no. 22978/05. Grand Chamber. Judgment. This version was rectified on 3 June 2010. Under Rule 81 of the Rules of Court.STRASBOURG.. <https://hudoc.echr.coe.int/eng?I=001-99015>. (30/6/2023)

*offense*’ committed by the person was added along with the conduct of the person, as stated above.<sup>443</sup>

Despite the available protection of refugees and asylum seekers, the present day scenario is a bit different. In the contemporary time where we see the National and international instruments working to protect people against refoulement, we also see pushback and grave violation of the principle of non-refoulement in the European Union. However the ECtHR through its judgments have been trying to balance the between non-refoulement and public safety.

## **6.2 THE ECtHR ON PRINCIPLE OF NON-REFOULEMENT AND PROTECTION FROM TORTURE, INHUMAN, DEGRADING TREATMENT OR PUNISHMENT (CAT), UNDER INTERNATIONAL HUMAN RIGHTS LAW**

*Protection from torture and inhuman treatment* -at the regional lever, in European Union common prohibition of the refoulement also follows from Article 3 of the *European Convention on Human Rights (ECHR), 1950*, that declares the prohibition of any form of torture, and establishes it as an absolute right. However, as held in the *Savran v. Denmark (2021)*, the prohibitions provided under Article 3 of ECHR, not all cases related to instances of ill-treatment. The court of Strasbourg interpreted and constructed prohibition of torture to be extraterritorial nature. In the case of *Soering v. United Kingdom (1989)*,<sup>444</sup> the court dealt with extradition and in the case of *Chacha v. United Kingdom, (1993)*,<sup>445</sup> the court dealt with expulsion and in both the cases, the court ruled that both extradition and expulsion in the respective cases violated *Article 3 of the ECHR*. In the case of *Soering v. United Kingdom*, the extradition of a German person from the United Kingdom to the United States was held to be violative of Article 3 of the ECHR. *In the case of Chacha v. United Kingdom*, it was established that the absolute nature of Article 3 also applies to the

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<sup>443</sup>Council of Europe. GUIDE ON ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS. PROHIBITION OF TORTURE First edition – 31 August 2022. Guide on Article 3 - Prohibition of torture (coe.int). (1/7/2023)

<sup>444</sup>*Soering v. United Kingdom*. (07 July, 1989) Application No. 14038/88. Court (Plenary), Judgment Strasbourg. (1/7/2023)

<sup>445</sup> *Chacha v. United Kingdom* application No. 22414/93. (1/7/2023)

Expulsion cases. In the case *Mr. Chahal*, a person of Indian origin who was a Sikh, was denied protection and was detained to be deported, the British authorities argued that he posed a threat to national security and hence he could not avail the rights provided under Article 33(1) of the 1951 Convention. The court held that the risk upon the applicant on return to the country of his origin needs to be weighed along with the interest of the Nation. The ECtHR held in its ruling that expulsion may violate *Article 3 of the Convention*, the court concluded stating that *protection under Article 3 of the ECHR as compared to Article 33 of the 1951 Convention is wider*.

In another case before the *ECHR*, *M.S.S. v. Belgium and Greece (2011)*,<sup>446</sup> the Grand Chamber court ruled that Belgium transferring asylum seekers to Greece under the framework of Dublin Regulation led to the violation of Article 3 of ECHR due to deficiencies in the asylum system of the said country. The court further in this case stated that Belgium should have ensured before the proceedings of transfer, that asylum seekers were not subjected to the risk of inhuman and degrading treatment.<sup>447</sup> Further, in the case of *Ireland v. UK (2018)*,<sup>448</sup> the court stated that the difference between tortures, punishment, degrading, or inhuman treatment is derived from the difference of the intensity of suffering that is inflicted. In the case of *Labita v. Italy, (2000)*,<sup>449</sup>, and *Kudła v. Poland (2000)*,<sup>450</sup> the court considered degrading treatment or punishment as ‘inhuman’ as *inter alia* the treatment was intentional and was applied for prolonged hours which caused either bodily injury or physical as well as mental pain and suffering.

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<sup>446</sup>*M. S. S. v. Belgium And Greece* case (21 Jan, 2009) Application No. 30696/09 The Grand Chamber. (4/7/2023)

<sup>447</sup>Naydès Jeanty HOW EFFECTIVE IS THE PRINCIPLE OF NON-REFOULEMENT IN EUROPE TODAY? (Jan, 2022). published by Generation for Rights Over the World. [contact@growthinktank.org](mailto:contact@growthinktank.org). How effective is the principle of non-refoulement in Europe today? ([growthinktank.org](http://growthinktank.org)). (4/7/2023)

<sup>448</sup>*Ireland v. The United Kingdom*. (20 March 2018) Application No. 5310/71. Third Section. Judgment. (Revision). Strasbourg.. Final.10/09/2018. <https://hudoc.echr.coe.int/eng?i=001-181585>. (4/7/2023)

<sup>449</sup>*Labita v. Italy*. (6 April, 2000) Application no. 26772/95. Judgment. Strasbourg. <https://hudoc.echr.coe.int/eng?i=001-58559>. (4/7/2023)

<sup>450</sup>*Kudła v. Poland*. (26 Oct, 2000) Application no. 30210/96. Judgment. Strasbourg.. <https://hudoc.echr.coe.int/eng?i=001-58920>. (4/7/2023)

Torture, degrading treatment or punishments were considered ‘inhuman’ by the court in the following cases. In the case of *Gafgen v. Germany*, (2010),<sup>451</sup>, the threat of torture to the applicant while he was in police custody was considered inhuman. Subsequently in the case of *Al-saadoon and Mufdhi v. UK* (2010),<sup>452</sup> the applicant being exposed to the fear of execution by the authorities of foreign nation was considered inhuman. In the case of *AL Nashiri v. Romania* (2018),<sup>453</sup> the ill-treatment in the harsh detention condition, in total isolation, was considered inhuman treatment by the court. In the case of *Selcuk v. Turkey* (1998)<sup>454</sup> and in the case of *Hasan V. Turkey* (2004),<sup>455</sup> the court held that the intentional destruction of the homes and the property of the applicant by the security forces and compelling the applicant to leave their villages and depriving them of their livelihood, is inhuman. In the case of *Simeonovi v. Bulgaria* (2017),<sup>456</sup> the court held that the applicant serving his life imprisonment for a long time in a very poor condition in a restrictive regime was inhuman.

The principle also ensures the right of the applicants to remain in the host country while their asylum application for international protection is being processed. It also forms the basis of general rule which states that the member states must allow asylum applicants to stay in the territory to further avail their rights to appeal, and after the exercise of the right to appeal they can further stay in the territory till the pendency of the appeal. In the 1951 Convention the scope of the principle is limited only to the refugees as defined under Article 1 of the convention. However, since the recognition of refugee by the host states is declaratory and not constitutive of the refugee status in International Law, Article 33 of the convention dealing with the principle of non-

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<sup>451</sup>*Äfgen v. Germany*. (3 June 2010) Application no. 22978/05. Grand Chamber. Judgment This version was rectified on under Rule 81 of the Rules of Court.. Strasbourg1 June 2010. <https://hudoc.echr.coe.int/eng?i=001-99015>. (5/7/2023)

<sup>452</sup>*Al-Saadoon And Mufdhi. v. The United Kingdom*. (2 March 2010) Applicatio no. 61498/08. Fourth Section. Judgment. Strasbourg. .Final. (5/7/2023)

<sup>453</sup>*Al Nashiri v. Romania*. (31 May, 2018) Application no. 33234/12. First Section. Strasbourg.. FINAL.08/10/2018. <https://hudoc.echr.coe.int/eng?i=001-183685>. (5/7/2023)

<sup>454</sup>*Selçuk And Asker v. Turkey*. (24 April, 1998) (12/1997/796/998-999). Judgmentstrasbourg.. <https://hudoc.echr.coe.int/eng?i=001-58162>. (7/7/2023)

<sup>455</sup>*Hasan Ilhan v. Turkey*. (9 Nov, 2004). Application no. 22494/93. Judgment Second Section. Starsbourg. <https://hudoc.echr.coe.int/eng?i=001-67346>. (7/7/2023)

<sup>456</sup>*Simeonovi v. Bulgaria*. (12 May, 2017.) Application no. 21980/04. Grand Chamber. Judgment.Strasbourg. <https://hudoc.echr.coe.int/eng?i=001-172963>. (7/7/2023)

refoulement is also applicable to refugees who are not formally recognized, like applicant waiting for a decision on their refugee status,<sup>457</sup>

Protection from Degrading treatment or Punishment - ‘Considering the dynamic world and the changing reasons leading people to flee their country of origin and the limited definition of the term refugee, the question of deservingness has surfaced. The question arises, whether there is any legal responsibility of the state not to return a person to his country of origin, if upon his return, there is a threat to his life and freedom arises. The Article 33 of the 1951 Convention offers protection to refugees falling under the definition of refugees as provided under Article 1(A) 2 of the Convention, refugees are also protected under various International and European Union Laws, as mentioned in the previous chapters. The people in need of International protection who do not fall within the definition of Article 1(A) 2, like the LGBTQ, Climate Change Refugees, sexual orientation refugees, Economic Refugees, are mostly kept outside the direct protection of International and Refugee Law. However, in the recent past, the ECtHR has opened up a narrow possibility to encompass the Economic Refugees within Article 3 of the ECHR.

Several cases of the ECtHR’s Court makes it evident that two factors are important to determine the range of Principle of non-refoulement provided under Article 3 of ECHR that is – i) the severity of suffering that would be inflicted on the person and, ii) and the certainty that the person will be inflicted with such sufferings. Subsequently in the case of *Ireland v. UK, (1978)*<sup>458</sup> the ECtHR court held that there must exist a minimum level of severity at the threshold of Article E if ECHR. The court further held that the treatment must be evaluated depending on the circumstance of the case, like the duration of the ill treatment, physical and mental consequence of the treatment in some cases the age, sex and the person’s health must be evaluated. They further emphasize the existence of a certain degree of humiliation in each case. Degrading treatment or punishment- The court in the cases of *Gafgen v, Germany*

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<sup>457</sup>EASO. JUDICIAL ANALYSIS ON ASYLUM PROCEDURE AND THE PRINCIPLE OF NON-REFOULEMENT. (10 Jan, 2018). Judicial analysis on Asylum procedures and the principle of non-refoulement | European Union Agency for Asylum (europa.eu). (7/7/2023)

<sup>458</sup> Ireland v. U.K. Merits, (18 Jan, 1978) Application no. 5310/71, ECtHR, Court (Plenary) paragraph 162. Weissbrodt and Hörtreiter, “The Principle of Non-refoulement,.” (7/7/2023)



(2010),<sup>459</sup> and *Ilaşcu v. Moldova and Russia* (2004),<sup>460</sup> and *M.S.S. v. Belgium and Greece* (2011),<sup>461</sup> stated that, any treatment which humiliates or debases any individual demonstrating lack of respect and any act diminishing the concern's person's dignity or inflicts the fear of suffering or any other treatment that breaks the person's mental and physical resistance. Under the given circumstances, it may surface that s/he is humiliated in there, or other eyes. The fact whether such treatment was intended to humiliate or debase the person must be taken into account. In the abacus of the 'purpose' cannot rule out the finding of violation of Article 3.

It was further held in the case of *Peers v. Greece* (1995)<sup>462</sup> that the inflicted ill-treatment must cause the feeling of suffering and inferiority which humiliates him.<sup>463</sup> Thus, to establish the severity of degrading treatment, the humiliation effect on the person becomes the most relevant. In both the case of *Tyrer v. UK* (1978),<sup>464</sup> and in the case of *Costello-Roberts v. UK* (1993),<sup>465</sup> the publicity elaborate is a relevant condition. In the case of *Bouyid v. Belgium* (2015),<sup>466</sup> the court emphasized that there is a strong link between the two concepts of 'degrading treatment or punishment' as provided under Article 3, and 'respect for dignity.' Further, in the case of *Tabesh v. Greece* (2009),<sup>467</sup> the detention of the asylum seeker in the poise premises for a period of three months during the pendency of his application and with no access to meals and recreational activities, was held to be degrading treatment. In

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<sup>459</sup>*Gäfgen v. Germany*. (1 June, 2010) Application no. 22978/05. Grand Chamber. Judgment. This version was rectified on 3 June 2010 under Rule 81 of the Rules of Court. STRASBOUR. <https://hudoc.echr.coe.int/eng?i=001-99015>

<sup>460</sup>*Ilaşcu And Others v. Moldova And Russia*. (8 July, 2004). Application no. 48787/99. Judgment. Strasbourg. <https://hudoc.echr.coe.int/fre?i=001-61886>

<sup>461</sup>*M. S. S. v. Belgium And Greece*. (21 Jan, 2011). Case No. 30696/09. The Grand Chamber. <https://hudoc.echr.coe.int/eng?i=001-103050>

<sup>462</sup>*Peers v. Greece*. Judgment (19 April, 2001) [Section II]. Article 3. Degrading treatment. <https://hudoc.echr.coe.int/eng?i=002-5705>

<sup>463</sup>Veronika Flegar. LNERABILITY AND THE PRINCIPLE OF NON REFOULEMENT IN THE EUROPEAN COURT OF HUMAN RIGHTS: TOWARDS AN INCREASED SCOPE OF PROTECTION FOR PERSONS FLEEING FROM EXTREME POVERTY? Faculty of Law, University of Groningen. *Contemporary Readings in Law and Social Justice* 8(2) 2016, pp. 148–169, ISSN 1948-9137, ISSN 2162-2752

<sup>464</sup>*Tyrer v. U.K.* Merits, (25 April, 1978\_ Application no. 5856/72, Court (Chamber). <https://hudoc.echr.coe.int/eng?i=001-57587>

<sup>465</sup>*Costello- Roberts v. U.K.* Merits (26 March, 1993) Application no. 13134/87, paragraph 8, 9, 31, 32. Weissbrodt and Hörtreiter, "The Principle of Non-refoulement,"

<sup>466</sup>*Bouyid v. Belgium*. (28 September, 2015) Application no. 23380/09 Grand Chamber. Judgment. Strasbourg.

<sup>467</sup>*TABESH v. GRÈCE*. (26 Feb, 2010). Requête no 8256/07. Première Section. Arrêt. Strasbourg. 26 novembre 2009. Définitif.

the case of *Z.A v. Russia*, (2019),<sup>468</sup> the applicant being confined, in a bad condition, unfit for a long stay in an airport transit zone, during the pendency of his application, was considered degrading treatment. In the case of *N.H v. France* (2020),<sup>469</sup> the delay of the administrative staff in providing the supports allotted to the asylum seekers and they being forced to live in rough conditions for several months was considered a degrading treatment.

As per the case of *Soering v. UK*, there is a need for substantial ground to believe that a person concerned faces a risk of being exposed to an inhuman or any other degrading treatment, under Article 3 of the ECHR. In two of the case laws of *Saadi v. Italy*<sup>470</sup> and subsequently in the case of *N v. UK*<sup>471</sup>, it was simplified by the ECtHR, that the real risk involved in a case is relevant. Temporal scope has also been identified as pertinent criteria in the real risk assessment. The ECtHR court with regard to the temporal scope held in the case of *Chahal v. UK*, that real risk is to be assessed in rigorous manner for, the present condition is significant. Thus, in the case of *Jabari v. Turkey*<sup>472</sup> it was interpreted by the court that a meaningful assessment of applicant's claim is necessary along with the changed circumstances. with regard to the temporal scope, the ECtHR in the case of *Vilcarajah and others v. UK*,<sup>473</sup> established that massive human rights violation in the respective country is not indicative of real risk and it may not be conclusive for the grant of protection in Article 3.

In another case of *Belgium v. Senegal*<sup>474</sup>, the Hon'ble International Court of Justice had acknowledged the character of *Jus Cogens* as prohibition of torture. In this case

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<sup>468</sup>Z.A. And Others v. Russia. (21 November 2019) Applications

nos. 61411/15, 61420/15, 61427/15 and 3028/16. Grand Chamber. Judgment. Strasbourg.

<sup>469</sup>N.H. And Others v. France. (2 July 2020) Applications Nos. 28820/13 And 2 Others –

See Appended List. Judgment. Fifth Section. Strasbourg. Final. 02/10/2020. (7/7/2023)

<sup>470</sup>Saadi v. Italy, Ecthr; Grand Chamber, Merits, (28.02.2008) Application No. 37201/06, Paragraphs 124-125. Ecthr, Grand Chamber. (7/7/2023)

<sup>471</sup>N V. Uk, Merits, Ecthr; Grand Chamber (27.05.2008) Application No.26565/05, Paragraph 30.

<sup>472</sup>Jabari v. Turkey. Fourth Section. Decision. As To The Admissibility Of. Application No. 40035/98. <https://hudoc.echr.coe.int/eng?i=001-4913>. (7/7/2023)

<sup>473</sup>Veronika Flegar. *Vulnerability And The Principle Of Non-Refoulement In The European Court Of Human Rights: Towards An Increased Scope Of Protection For Persons Fleeing From Extreme Poverty?* Faculty of Law, University of Groningen. Contemporary Readings in Law and Social Justice 8(2) 2016, pp. 148–169, ISSN 1948-9137, eISSN 2162-2752. (7/7/2023)

<sup>474</sup>Cindy Galway Buys. “BELGIUM v. SENEGAL: THE INTERNATIONAL COURT OF JUSTICE AFFIRMS THE OBLIGATION TO PROSECUTE OR EXTRADITE HISSÈNE HABRÉ UNDER THE CONVENTION AGAINST TORTURE”. (September 11, 2012) Issue: 29 Volume: 16.

the court of justice confirmed the obligation of the signatory states to the CAT convention, wherein the state should either persecute the alleged perpetrators or it should extradite them to another country having jurisdiction for persecution.

### **6.3 PRINCIPLE OF NON-REFOULEMENT AND EXTRADITION**

*In the absence of a means to bring a person to trial, in the host country, or before International Criminal Court, such person needs to be extradited.* In case if, it is legally and practically feasible in either the country of origin or any other member state or in some other country. *The 1977 European Convention*<sup>475</sup> and the *Terrorist Financing Convention, 1999*,<sup>476</sup> both provides that in case of a request made against a person who has committed a terrorist crime. And further the state, having substantial grounds to believe that the person concerned is accused of terrorist crime, then the state parties concerned are not obliged assent to extradition to subject him for punishment or persecution on the basis of his or her race, religion or nationality, ethnicity, his origin or political opinion, or any other such compliance that would the person's position.

If we look at the legal obstacles in implanting extradition or removal, we learn that extradition is nearly impossible owing to the legal obstacle. The principle of non-refoulement is available to prohibit certain treatments or punishments that violate human rights instruments, like the convention on the civil political rights, the ECHR, which admits no exceptions, the ECtHR, has time and again prohibited that ECHR even in the situation of fight against terrorism or an organized crime cannot apply extradition in an absolute term. The ECtHR, presses that unlike the substantive clause of any of the above stated international instruments, Article 3 under does not provide any exception the degradation is cannot fall even in the case of public emergency.

Extradition is the act of sending a person back to attend the trial of an offense to another state where s/he is accused of doing an illegal act. Looking at the regional

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Belgium v. Senegal: The International Court of Justice Affirms the Obligation to Prosecute or Extradite Hissène Habré Under the Convention Against Torture | ASIL. (8/7/2023)

<sup>475</sup>Council of Europe. THE EUROPEAN CONVENTION ON SUPPRESSION OF TERRORISM, STRASBOURG. (27.I.1977) European Treaty Series - No. 90. (8/7/2023)

<sup>476</sup>Pierre Klein. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM. UNITED NATIONS AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW. Centre for international law Université Libre de Bruxelles.. International Convention for the Suppression of the Financing of Terrorism - introductory note - English (un.org)

frameworks, we observe that the principle of non-refoulement is also articulated in the multilateral conventions on extradition and thus the principle cannot be violated as a result of an extradition procedure. In the Case, *Amuur v. France*<sup>477</sup> (1996) application number 19776/1992, and *Hirsi et al v, Italy*<sup>478</sup>- application no.-27765/2009. The ECtHR, held that the Principle of non-refoulement must be enforced even though the act of the state concerned has taken place outside its territories, that is, either the airport transit zone, or in the areas of International zone or even in open sea. In the present case of *Hirsi et al v. Italy*, Italy intercepted a migrant vessel outside of Lampedusa and directed the migrant's returns to Libya even without examining the fact, if the applicants onboard needed International protection.

The court in the present case ruled that Albeit who was the applicant in this case had not yet reached the Italian border physically and that, the Italian authorities through interception transferred the applicants back to the country of origin by exercising the de facto and the de jure control on the applicant and by exercising its jurisdiction within the meaning of the convention. The court further reiterated Article 3 absolute character and ruled – *the Italian authorities violated the Article in two ways firstly by sending the applicants back to Libya and exposing them to the risk of degrading treatment which is contrary to Article 3 and secondly, because of risk of arbitrary, further their refoulement.*

## **6.4 PRINCIPLE OF NON-REFOULEMENT AND THE DUTY OF THE EUROPEAN UNION STATE TOWARDS REFUGEES**

‘The prioritization of refugee protection has led to the establishment of the United Nation. A number of International and domestic instruments have been established post that for the protection of refugees, asylum seekers and to make the asylum procedure easy. However, the national asylum system sometimes lacks effectiveness and at times offers uneven access to asylum procedure. In the European Union, the Union has established the Common European Asylum System to smoothen the

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<sup>477</sup>*Amuur v. France* (25 July 1996) Application no. 19776/92 Court Chamber. Judgment Starsbourg,. <https://hudoc.echr.coe.int/?i=001-57988>. (8/7/2023)

<sup>478</sup>*Hirsi JAMAA AND OTHERS V. ITALY.* (23 February 2012.) Application no. 27765/09. Grand Chamber, Strasbourg. <https://hudoc.echr.coe.int/?i=001-109231>. (9/7/2023)

asylum procedure and to harmonize the asylum policies and the practices of the EU member States to streamline the review of submitted asylum applications. The adoption of the EU uniform laws and asylum procedure has made it difficult for the EU to come out with policies for handling the migrants and the refugees. The European Union has been making efforts to stop illegal migrants and International Crime by implementing border patrolling. A number of steps in the field of diplomatic and defense policy were taken, besides the border control and security to stop the illegal migration. One such step was to establish the *European Security and Defense Policy, the (ESDP)*, the idea behind its establishment of ESDP participation in the military and civilian operations in the crisis hit, to prevent migrants and asylum seekers from entering Europe.

Usage of Europe's such tools has resulted in limiting entry of refugees and asylum seekers in the European Union. We see that Europe has numerous legal tools and policies for the safeguard of the refugees and asylum seekers, displaying that it safeguard the human rights and abide by the international agreements but this is not followed by all the European Union States uniformly. While there are some European states that consider asylum seekers and refugees as a burden, the others look at it as a source of good human resources that can be utilized to boost the Economy of the country and are not considered as a burden to the state.

In the case of *Cardoza- Fonseca* (1987),<sup>479</sup> which was later established in the case, *R v. Secretary of State* in the Cardoza case a Nicaraguan woman was denied the American immigration and Naturalization service as she was unable to show the apparent risk of being persecuted on her being sent back to her native country. As per the Supreme Court of the United States, a significant difference must be established in between 'clearly probable persecution' as well as 'well founded fear' of being persecuted' in determining the grant of refuge. In the present case of Cardoza, the Nicaraguan woman was provided asylum and a stay on her removal.

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<sup>479</sup>Immigration And Naturalization Service (Ins) v. Cardoza-Fonseca. (1987). 480 U.S. 421 INS v. Cardoza-Fonseca :: 480 U.S. 421 (1987) :: Justia US Supreme Court Center. (9/7/2023)

*In the case R v. Secretary of State (1998)*,<sup>480</sup>, as referred above, the court established the same factor as established in the Cardoza case. The court established that the demonstration of the degree of likelihood of being persecuted had to be there. Also in determining the applicant's claim of persecution, a well-founded fear and the fact and circumstance must also be taken into account by the Secretary of the State. The court again established that a substantial danger of persecution in the applicant's country of origin must appear for them to request for refuge.<sup>481</sup>

Thus, the findings of the UNHCR, government and non-governmental organizations, the international instrument must be taken into consideration. Before a decision of moving a person to another country is made which is a big obstacle in effective implementation of the principle of non-refoulement amongst the EU member states. For the effective use and recognition of the principle of non-refoulement, the nation where a person is exiled should be secured for him. Whole majority of the member states in Europe has embraced European Union acquiescence on the refugees, asylum seekers and other persons in need of International protection, there are some European states that prefer to be guided by their own National law while dealing with the persons in need of International need. The European Union member states have the authority to take independent action on the question of refugees and asylum seeker in the best interest of their state, over the available measures provided by the European Union

## **6.5 THE PUSHBACK OF ASYLUM SEEKERS AT EUROPEAN UNION BORDERS AND THE VIOLATION OF PRINCIPLE OF NON-REFOULEMENT**

‘The European Union by its external border protection aims at safeguarding its people’s free movement within its Schengen area, which is the area without internal

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<sup>480</sup> R. v. Secretary Of State For The Home Department, Ex Parte Sivakumaran And Conjoined Appeals (UN High Commissioner for Refugees Intervening), [1988] AC 958, [1988] 1 All ER 193, [1988] 2 WLR 92, [1988] Imm AR 147, United Kingdom: House of Lords (Judicial Committee), 16 December 1987, [https://www.refworld.org/cases,GBR\\_HL,3ae6b67f40.html](https://www.refworld.org/cases,GBR_HL,3ae6b67f40.html) [accessed 25 July 2023]

<sup>481</sup>Surjit Raiguru, EUROPEAN UNION: REFUGEES’ RIGHT TO SEEK ASYLUM & THE PRINCIPLE OF NON-REFOULEMENT (January 20, 2023). European Union: Refugees’ Right to Seek Asylum & The Principle of Non-Refoulement European Union: Refugees’ Right to Seek Asylum & The Principle of Non-Refoulement - Modern Diplomacy. (11/7/2023)

borders. It also aims at ensuring effective monitoring of all people crossing both at the external Schengen border and at the external European Union's border. However, while carrying out its border surveillance operations, the European Union must also respect the International Law, European Human Right, Humanitarian Law and the International Law of the Sea. The uncontrollable inflow of the asylum-seekers and migrants during 2015 has led to the temporary reintroduction of the European States internal borders. Post the 2015 refugee crisis, the European Council has prioritized the strengthening of the European Union external border to prevent irregular migrants and asylum seekers from entering the European Union territory. For this the EU has stemmed illegal migration at all present and the new emerging routes and has extended its partnership with Turkey and Libya who are the third country. The European Union has further reinforced *Frontex*, the agency of border and coast guard and provided more power to it to contribute to its goal.

The European Union is often criticized for prioritizing its border control over migrants and Asylum seekers. It is also criticized for its externalization of its border controls with cooperation from third countries which further leads to grave violation of migrants and asylum seeker's human rights.

The term pushback does not have a universal definition in the area of migration. However, as per the definition of the UN office of High commissioner for human rights, pushbacks are measures taken by the states, which result in forcing back of migrant and asylum seekers back, from where they attempted to cross international border, without having access to international protection or any asylum procedure being processed or after the denial of their individual assessment of need for protection, which may lead the violation of Principle of non-refoulement.<sup>482</sup>

'The European Court of Human Rights, in its various judgments has condemned the practice of pushback as collective expulsion on the basis of Article 4 of Protocol no.4 (Collective expulsion of aliens is prohibited) of ECHR. In the case of *Becker v.*

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<sup>482</sup>Anja Radjenovic. PUSHBACKS AT THE EU'S EXTERNAL BORDERS. (March 2021) European Parliament. Pushbacks at the EU's external borders. PE 689.368. EPRS | European Parliamentary Research Service Pushbacks at the EU's external borders (europa.eu). (11/7/2023)

*Denmark (1975)*,<sup>483</sup> the former European Commission on HR defined collective expulsion, which is even applicable today, - as a measure of competent authority to compel all the aliens as groups to leave the country. Measure however must be taken after a reasonable and objective examination of each individual alien of the groups. In the case of *Conka v. Belgium (1999)*,<sup>484</sup> the European Court of Human Rights, found Article 4 of Protocol no. 4 to be violated amid others, when the expulsion procedure did not demonstrate that the individual personal circumstances had been genuinely taken into account individually. In the case of *Sharifi and others v. Italy and Greece (2009)*.<sup>485</sup> There was a *violation of* Article 4 of Protocol no. 4 of ECHR, when the applicants were prevented from applying for asylum or prevented from having access to applying to another national procedure, that would meet requirements of effective remedy. The Article 4 of Protocol no. 4 was also violated in the case of *M.K and others v. Poland (2017)*,<sup>486</sup> the applicants in this case were denied entry in the territory of a state without providing proper regards to their individual situation, which is part of wider refugee policy. In the case of *Hirsi Jamaa and others v. Italy (2009)*,<sup>487</sup> Italy was condemned by the European Court of Human Rights, when the Italian coastguards physically intercepted a migrant boat with 200 passengers and returned it to Libya. Italy was confronted with the question concerning the extraterritorial application of ECHR. The court in the case asserted that the concerned applicants were under the continuous control of Italian authorities, *de jure* and *de facto*. Thus in the present case, the ECtHR court under Article 4 of Protocol no. 4, there was a gap of prohibition on collective expulsion.

A radical move to make pushback legal was made by Hungary during the COVID 19, summer of 2020. Hungary used the pandemic as pretext to adopt law to order the return of people approaching the Hungarian border to seek asylum. This was in

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<sup>483</sup>Becker v. Denmark. (3 October 1975) Application/Requete No . 7011/7.5 Henning Becker C/Danemar K Decision on the admissibility of the application. (12/7/2023)

<sup>484</sup>Conka v. Belgium. (5 February 2002) Application No. 51564/99. Final Judgment Strasbourg. [https://Hudoc.Echr.Coe.Int/Eng?i=001-60026](https://hudoc.echr.coe.int/Eng?i=001-60026). (12/7/2023)

<sup>485</sup>Affaire Sharifi Et Autres v. Italie Et Grèce. (21 October 2014) Requête No 16643/09 Deuxième Section. Strasbourg. <https://hudoc.echr.coe.int/eng?i=001-147287>. (12/7/2023)

<sup>486</sup>M.K. And Others v. Poland. (2017) Applications Nos. 40503/17, 42902/17 And 43643/17), Judgment. First Section. <https://hudoc.echr.coe.int/eng?i=001-203840>. (12/7/2023)

<sup>487</sup>Hirsi Jamaa And Others v. Italy. (23 February 2012) Application No. 27765/09 Grand Chamber. JUDGMENT this version was rectified on 16 November 2016 under Rule 81 of the Rules of Court. Strasbourg. <https://hudoc.echr.coe.int/?i=001-109231>. (13/7/2023)



actuality a reaction of the judgment pronounced in the court of justice in the case of *FMS and other v. Hungary (2020)*.<sup>488</sup> The European Court of Justice in the present judgment found that the previous system to pushback of all the asylum seekers over the border fence of Serbia without giving them the right to stay in Hungary was illegal. The court declared that the detention practice of asylum seekers in the transit zone by Hungary was prohibited under *Article 8 and 9 of the Directive 2013/33*. Such detention was frequently taking place without any reasoned decision on detention. There was also a lack in examining the requirement, proportionally of such measure; also, the detention was made without any judicial review on the legality of the decision of detention order.

According to the new rule applicable until 30 June 2021, the asylum seekers approaching the border of Hungary were denied entry and were directed directly to the Hungarian Embassy in either Belgrade or Kyiv to declare their very intention of applying for the protection. There was thus an elimination of the functioning of the transit zone. For those asylum seekers within the territory of Hungary, few with specific exception, had to leave or were escorted to the border fence to reach either of the two embassies to express their intention of applying for asylum in Hungary. However, the UNHCR immediately commanded the withdrawal of the said Act and the commission launched infringement procedures.

Pushbacks that deny the asylum seekers the access to meaningful protection and by preventing them from access to the territories or access to asylum procedure often leads to refoulement.<sup>489</sup>

## **6.6. PROTECTION OF REFUGEES UNDER INDIRECT REFOULEMENT AND THE SAFE THIRD COUNTRY.**

Post the 2015, marked as the European Union Refugee Crisis, some of the European States are changing their policies and are resorting to mechanisms that would allow

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<sup>488</sup>Fms and Other V. Hungary. Ecj (14 May 2020). Joined Cases C-924/19 Ppu And C-925/19 Ppu, Fms and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság. (13/7/2023)

<sup>489</sup>Iris Goldner Lang\* and Boldizsár Nagy EuConst 17 (2021) EXTERNAL BORDER CONTROL TECHNIQUES IN THE EU AS A CHALLENGE TO THE PRINCIPLE OF NON-REFOULEMENT. External Border Control Techniques in the EU as a Challenge to the Principle of Non-Refoulement (cambridge.org) (13/7/2023)

deportation of asylum seekers and would no longer be bound with the principle of non-refoulement. The European states are thus relying on the concept of *safe country or origin* or the *safe third country*, as a mechanism to keep the refugees away from the state territory also to display that the principle of non-refoulement is not violated by the states. Despite the concept being controversial, it is still applied to expel migrants and asylum seekers, and can be linked to indirect refoulement.

*The Procedure Directive* under its Article 33 and 38 respectively provides the member state with the ability to declare an application inadmissible and forward the examination of the application to a third country, which is considered safe for the applicant. A country, which does not pose any risk of harm either to the life or the freedom of the applicant, on the grounds provided in either the Geneva Convention or Qualification Directive, is considered a safe country for the applicant.

Following the mass influx of migrants and asylum seekers, in the *European Union-Turkey Declaration*, on March 2016, the very concept of a safe third country was realized. The motive behind the establishment of the declaration was to cut the number of inflow of people via Greece. The implementation of the declaration opened the doors for the beginning of debate on the issue. It was initially thought to be a binding legal instrument adopted by the European Union instruments, and that the declaration would therefore not respect the procedures laid under *Article 218* of the *Treaty on Functioning of EU (TFEU)*, that lays down specific procedures to conclude an agreement with the third country. The statement therefore was challenged General Court of European Union, in the case of *NM, NG and NF v. European Council (2017)*,<sup>490</sup> wherein the court considered the EU- Turkey Declaration as not an act of the European Union and declared itself to be incompetent in the orders. The safety of any country is a subject matter of the National Law; therefore, each member state can constitute a list of safe countries.

The case, *T.I v. United Kingdom, (1998)*<sup>491</sup> is a significant case as it *established the principle of indirect non-refoulement for the first time*. Several complaints with regard

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<sup>490</sup> Nm, Ng And Nf v. European Council (28 February 2017) Aff. T-257/16, T-193/16, T-192/16)

<sup>491</sup> T.I. v. United Kingdom, no. 43844/98, E.C.H.R (2000). (15/7/2023)

to the Dublin Regulation had been submitted to the ECtHR on various occasions. The first case, however, concerning the Dublin system was that of the *T.I v. United Kingdom*, (2000). In this case, T.I a Sri-Lankan national applied for asylum in the UK after the denial of his first application in Germany, the UK wanted to transfer his application back to Germany owing to Dublin Regulation rules. The applicant to the case feared that his transfer to Germany would further lead to his removal to Sri-Lanka and he feared the risk of torture on his return back to Sri-Lanka. That his return would along with various other articles of the **ECHR**, would also violating **Article 3**, which completely prohibits torture and other forms of ill-treatment. Though his application in the court was rejected by majority, this judgment is important, as the court stated that even in the indirect removal to a intermediary country, it is responsibility of UK to ensure that as a result of UK's decision the applicant is not expel or exposed to any treatment that is contrary to Article 3 of the said convention.<sup>492</sup>

## **6.7 EXTENSION OF THE PRINCIPLE OF NON-REFOULEMENT AT HIGH SEA**

The widely recognized Principle of non-refoulement has been regarded as the core element of the refugee protection regime internationally. However, with contemporary time, the ambient of the principle is fading away in the European Union States, to an extent that it has started to be regarded as a general moral principle with only narrow legal constraints. However, this has begun to change in Europe. The obligation of non-refoulement found under Article 3 of the ECHR, has put legal constraints on the member state sovereignty with regard to migrant control at high sea. In this section, we shall see how the ECHR has expanded the very scope of the principle of non-refoulement, by presenting important implementation. The joint-maritime operation at sea, with the coordination of *Frontex*, under the **European Union regulation 656/2014**, ensures respect to the Principle. The respect of the principle is obligatory in the course of European Union Military operations carried out

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<https://hudoc.echr.coe.int/?i=001-5105>. (14/7/2023)

<sup>492</sup>Candidate no- 595. *Compliance Of The Dublin Regulation With The Principle Of Non-Refoulement*. Faculty of Law University of Oslo. 25 April 2013. (14/7/2023)

against the human smuggling and trafficking at the Southern Central Mediterranean, launched in June 2015.

In the recent past, the emerging concept of jurisdictions has expanded its scope of implementation of Principle of non-refoulement obligation at the high sea. In the case of *Bankovic v. Belgium and others (1999)*,<sup>493</sup> the applicants were nationals from the state of the Federal Republic of Yugoslavia (FRY) who filed a suit against NATO states on behalf of their family members. The applicants in the present case argued that the air strike made by NATO, on Radio Televiziji Srbije (RTS), and the subsequent death of the applicant's family member in the Kosovo Crisis was inter-alia the breach (Article-2) of ECHR, the right to life. The issue involved in the case was, - whether, the air strike by NATO could cause the application of ECHR for NATO Countries. The court of Grand Chamber, rejecting the Jurisdiction in this particular case states that, keeping the notion of jurisdiction, the court in exceptional case has accepted that the performance or producing effect of such act of the contracting state, outside of their territories can establish the state's exercise of its jurisdiction under Article 1 of the Convention. The court further, rejected the cause and effect' within the concept of jurisdiction in the present case. The Grand Chamber's court in the case laid down four extraordinary instance of territorial jurisdiction, they are:-

- i) Extradition or expulsion
- ii) An effective control of the military action, over a territory.
- iii) The activities of the diplomatic or consular agent who is abroad and on board to a craft and vessels, which is registered in the name of the state concerned or is flying the flag of the concerned state.
- iv) Further effects the procedure outside, by its action within the state territory.

The court held the case inadmissible as the jurisdiction in the said case could not be established.

In an academic debate on the above note, Milanovic<sup>494</sup> in his work argues - the reasoning given by the court that the concept of jurisdiction started under Article 1 of

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<sup>493</sup>Banković And Others v. Belgium And Others. (12 December 2001) Application No. 52207/99 (Banković) (16/7/2023)

<sup>494</sup>M. MILANOVIC, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES: LAW, PRINCIPLES, AND POLICY (1 July,2011). Online ISBN:9780191729805. Print ISBN:9780199696208. Oxford University Press. (16/7/2023)

ECHR is territorial, is unsupported and inconsistent with the court's self-established jurisprudence. The author's critique of the court's decision in the present case is persuasive, for the case law before and after Bankovic have been inconsistent with territorial principle as set in the Bankovic's case.

The judgment of the case of *Issa v. Turkey (1996)*,<sup>495</sup> following the case of Bankovic's, the Issa case is also controversial just like the Bankovic's and further this case decided in 2004, made the concept of jurisdiction even more confusing. In this case the Turkish soldiers were alleged to have killed Issa. The case is important as three unique features of the judgment were recognized by Lord Brown in the case of Al-Skeini (UK case). i) The court adopted a flexible concept of control. ii) In this case the court trusts on the decision of International bodies like, Inter-American Commission on HR plus the Human Rights Committee (HRC). iii) Further, the court, in the present case, focused on various activities of concerned contacting state, rather than requiring that the victim should be within the state jurisdiction, that the court might have confused Jurisdiction with the state responsibility in the case of Issa.

In another case of *Ocalan v. Turkey (1999)*<sup>496</sup>, the debate over the meaning of the jurisdiction continued. The Grand Chamber in this particular case held that since it is common ground that after the handover of the applicant by the Kenyan officials to Turkish officials, the applicant was under the Turkish authority and thus he was within the jurisdiction of the state.....even though Turkey applied its authority outside the territory. In the present case it seems, the court sanctioned the 'personal model' that was adopted by the court in the Issa case. Moving forward in the case of **Al-Saadoon (2008)**<sup>497</sup>**2009**, the ECtHR held that the government of the UK should prohibit applicant's transfer to Iraq over which the UK exercised its exclusive control. Over the issue of jurisdiction, the court in the present case found that, by giving the special de facto and *de jure*, control of the UK authorities over the said premises, the applicants and other individuals were within the jurisdiction of the United Kingdom.

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<sup>495</sup>Issa And Others v. Turkey, (16 November 2004) Application No.31821/96 (Issa). (16/7/2023)

<sup>496</sup>Öcalan v. Turkey, (12 May 2005) Application No. 46221/99 (Öcalan). (17/7/2023)

<sup>497</sup>Al-Saadoon And Mufdhi v. The United Kingdom, Decision (Admissibility) Of 30 June 2009, Application No. 61498/08, (Al-Saadoon). (18/7/2023)

In another case of *Medvedyev (2003)*,<sup>498</sup> the issue involved was closely related to maritime interception. In the case, in 2010, a Winner named registered ship from Cambodia, was intercepted by the French frigate, at high sea, to implement anti-drug measures as per the agreement by the Cambodian government. An action was brought against France by the Cambodian crewmember of the ship on the ground that the applicants suffered deprivation of liberty on their detention on the ship by the French authorities. The court in this held that, since there was a continuous and uninterrupted interception of France over the Cambodian ship, and that France exercised its exclusive control over the ship and its crew member *de facto*, thus the applicants were within the jurisdiction of France for the purpose of Article 1 of the convention. In other words, the *de facto* control over any person or a vessel sufficient to establish the link of jurisdiction with a *de jure* jurisdiction.

Thus, looking at the above-mentioned judgments of the ECtHR's, it appears that post the Bankovic's case the court has not emphasized on the territorial nature of jurisdiction like before.

The ongoing debate on jurisdiction. Started coming to an end from the case of *Al-Skeini (2007)*.<sup>499</sup> The Grand Chamber court in the case of *Al-Skeini*, 2011, attempted to clarify the ongoing issue of Jurisdiction. The court in the present case confirmed that, under Article 1 of the ECHR the jurisdiction as provided is 'primarily territorial.' The court in this case also recognized numerous exceptional circumstances occurring outside the territorial border that could help in the establishment of jurisdiction. The court also acknowledged critical special categories they are: - state authority, control, and an effective control over an area. Giving the most significant statement, the court in the case of *Al-skeini* stated that- the exercise of physical power plus control over the concerned person in question is what is decisive in the present case. The court also emphasized the determination of exception, with reference to a particular fact. Thus, we see that ECtHr's jurisprudence with regards to the jurisdiction is mainly based on the facts, rather than a generalized principle.

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<sup>498</sup>Medvedyev And Others v. France. (29 March 2010) Application No. 3394/03 (Medvedyev).

<sup>499</sup>Al-Skeini And Others V. The United Kingdom, (7 July 2011) Application No. 55721/07 (Al-Skeini)

The claimants in the case of Al-Skeini were the relatives or family members of the deceased six Iraqi persons who allegedly were killed as a result of mistreatment done by the personnel of British Forces. On the hearing of the case, in the *House of Lords* in the UK, five out of the six victims were held not to be present in the UK jurisdiction. The court stated that effective control was not exercised by the troops of the UK on the people deceased during the military operations. The secretary of State on the other hand, considered one of the six victims, *Mr. Mousa*, to be within the ambit of ECHR jurisdiction, for he was detained and beaten brutally by the British military set up in Iraq, which led to his death. The decision of the House of Lords was, however, overruled by ECtHR.

Thus, we see that jurisprudence, the core principle of state sovereignty, was initially understood as a territorial concept. It was also generally thought that the very concept of state sovereignty means the unconditional power of the state as it relates to border control. However, this very concept has started to change as the ECtHR, is modifying the understanding of the concept of jurisdiction and the concept of state sovereignty. The state sovereignty now reflects human concern through the principle of non-refoulement. At the international level, the principle is found in a number of international treaties however, more than the rulings of the International Human Rights instruments, the decisions of the ECtHR have been more effective. The weakening principle of non-refoulement in the restrictive external migration era has now revived in Europe.<sup>500</sup>

## **6.8 THE GROWING ANTI-IMMIGRANT SENTIMENT AND THE FUTURE OF PRINCIPLE OF NON-REFOULEMENT IN EUROPE.**

The meeting of "Team Europe " with Tunisia's repressive Leader, *Kais Saied* marked a new low, in EU's attempt of curbing migrants. The meeting was held in Rome in July 2023, the far right leaders invited various authoritarian rulers from countries like the Middle East and North Africa and some European governments and their

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<sup>500</sup>SEUNGHWAN K IM\* *International Law And Practice Non-Refoulement And Extraterritorial Jurisdiction: State Sovereignty And Migration Controls At Sea In The European Context*. Leiden Journal of International Law (2017). doi:10.1017/S0922156516000625. (18/7/2023)

representatives handling international Fanatical Institutions. The conference is expected to have laid the groundwork similar to that of Tunisia. Tunisian authorities are known for its serious abuse of the black Africans migrants and thereby violating the principle of non-refoulement. Europe's participation in the present submit shows the inclination of the European Union member State, which at this time appears inconsistent with the Human Rights-based approach.<sup>501</sup> There has been where the European Union Member States have violated the principle of non-refoulement.

In contemporary times, the far right parties in most parts of Europe have been winning elections from an unexpected margin. Their major agenda for the campaign that led there victory was, anti-immigration. The subsequent defeat has now driven the Canter-left parties of Europe to change their prolonged stand on migration. However, the gradual shift of the left party in adopting the anti-immigrant agenda depicts that the anti-immigrant sentiment is deepening its roots in Europe, which will result in abuse of Refuge Rights in the European Union.

The inflow of large-scale immigrants has resulted in the fear of Economic displacement, and the rise of security and cultural concerns in Europe. By October 2017, the number members of far-wing nationalist in the parliament increased to 24. With the strong emergence of the Far-right parties, Europe needs alternative leadership strongly connected to liberal idea. It is also evident that post the 2015 European Union Refugee Crisis, the European policies on migration has grave and requires reformation. The member states have endorsed various policies to limit the arrival of asylum seekers and refugees and further outsource them to unstable regions outside of the European Union leading to violation of the principle of non-refoulement. Europe's stringent approach towards asylum seekers has forced them to use unethical and dangerous routes to Europe risking their lives.<sup>502</sup>

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<sup>501</sup>Claudio Francavilla, Alice Autin. ROME'S ANTI-MIGRATION SUMMIT EXPOSES EUROPE'S GROWING DISREGARDS FOR RIGHTS. (July 20, 2023. 11:00 PM EDT). Rome's Anti-Migration Summit Exposes Europe's Growing Disregard for Rights | Human Rights Watch (hrw.org)

<sup>502</sup>SAARANSH MISHRA. RISING FAR-RIGHT, DECLINING CENTER-LEFT, AND THE FUTURE OF REFUGEES IN EUROPE. (MAR 16 2021) Rising far-right, declining centre-left, and the future of refugees in Europe | ORF (orfonline.org). (18/7/2023)



Thus, with the increasing number of far-right leaders being elected, European states may showcase new policies to keep migrants out and thus there is a likelihood that the future may show more violation of the principle of non-refoulement.

## 6.9 PRINCIPLE OF NON-REFOULEMENT AND THE ISSUE OF NATIONAL SECURITY

‘The prohibition from *refoulement* or return is recognized under various laws, like Refugee Law, Human Rights Law and International Customary Law. While the 1951 Refugee Convention contains provisions for protection of refugees from refoulement it also contains exception to such protection in case a person poses to the host country. However, under the Human Rights Law, the non-refoulement of a person to face torture or any ill treatment is an absolute right. Considering the modern threat of global terrorism, various states are implementing a balance act and trying to balance the interest of the refugees and the national security at the same time. However, so far there is no international consensus on the state's balancing act, further to weigh the interest of refugees and the security of the state. While UNHCR permits refoulement of a person on grounds of involvement in crime under Article 33(2), it has been prohibited under the International and the regionally Human Right Laws, refoulement of a person is further rejected by the *HRC, ECtHR and ICCPR*. In recent times, states are time and again confronted with the duties where they have to respect human rights of people in international need while also ensuring public safety in the host state and ensuring national security. Article 33(2) of the 1951 Refugee Convention a person involved in serious criminal offense from protection against refoulement. To quote ECtHR in the *soering case (1988)*,<sup>503</sup> – the worst conceivable villain is also protected from refoulement, no matter “However heinous the crime is”.

In the case of *Mansour Abdul v. Denmark (2016)*,<sup>504</sup> the applicant left Morocco to come to the Netherlands and in 1987, he came to Denmark where he received social

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<sup>503</sup>Soering v. The United Kingdom. (Spring 2022) Application no. 14038/88, ECtHR, para 88. Hanna Aftonfalk. OF COURSE, BUT MAYBE: THE ABSOLUTE PROHIBITION OF REFOULEMENT AND THREATS TO NATIONAL SECURITY AND PUBLIC SAFETY. UPPSALA University. Department of Law FULLTEXT01.pdf (diva-portal.org). (18/7/2023)

<sup>504</sup>Said Abdul Salam Mubarak v. Denmark (22/01/2019) 74411/16 Decision | Court. Second Section Committee. <https://hudoc.echr.coe.int/eng?i=001-191222>. (19/7/2023)

benefits and was married to a Danish woman and had 4 children he again married to a Moroccan woman and divorced in 2015. The Moroccan authority requested extradition of the applicant from the Danish authorities amid his involvement in an attempt to murder and sabotage the installation of explosives. Since the applicant had a criminal record since 2002 which was supported by the *City Court Judgment*, *ECHR* in he was convicted of promoting terrorism. An appeal was filed in the High Court where in the court by majority vote revoked his citizenship and expelled him with permanent ban. The applicant filed an appeal in the Supreme Court on the revocation of his citizenship. However, the decision on 28 November 2017 he was refused the grant of asylum. In 2018, he was further detained under section 35(1) of the Aliens Act and deported to Morocco.

In the case of *Shiksaitov v. Slovakia*, (2020),<sup>505</sup> the applicant, having Russian Nationality and who belonged to Chechen origin, was granted refugee status in the European Union member State, Sweden for having his individual political opinion. However, an international arrest warrant was issued against him for his alleged involvement in the act of terrorism that was committed in Russia. On his travels, he was held at the Slovakian border as he appeared on the list of the Interpol as a wanted person. Further he was arrested and detained in Slovak where authorities conducted his preliminary investigation and looked into the matter. He was further detained with a view of his extradition to Russia. However, in November, his extradition was found inadmissible by the Supreme Court in the light of him having a refugee status. Thus, he was released and expelled to Sweden.

The court in the case of *Paez v. Sweden* (1996),<sup>506</sup> referred to *Chahal v. United Kingdom* and concluded that if there are substantial grounds to believe that expulsion of a person would put him/her to face the risk of ill-treatment, contrary to Article 3 in the receiving state, the ECHR state parties are obliged to protect the concerned person. In the case of *Selmouni v. France* (1994),<sup>507</sup> the court in the contest if ill-treatment the court stated that certain acts, classified as inhuman and degrading as

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<sup>505</sup> *Shiksaitov v. Slovakia*. (10.12.2020) 56751/16 and 33762/17. [Section I] <https://hudoc.echr.coe.int/eng?i=002-13052>. (19/7/2023)

<sup>506</sup> *Gorki Ernesto Tapia Paez V. Sweden*. (28 April 1997) CAT/C/18/D/39/1996, para. 14.5

<sup>507</sup> *Selmouni V. France*, app. no. 25803/94, ECtHR, para. 101. (20/7/2023)

opined to ‘torture’ that can be classified differently in future. The court recognized the continuously high standard being required for human rights protection and the fundamental liberties effects assessment of breach of such rights and liberties. The continuously rising bar of human rights may change contemporary notions. What is considered ill-treatment today might be considered torture in the coming times; moreover, treatments that are not considered inhuman or degrading in the present time may qualify as such tomorrow. The question is, considering the evaluative nature of human rights, what type of treatment is considered inhuman or degrading in the present time according to ECtHR? The court under article 3 does not relate all instances of ill-treatment as such, however, a ‘minimum level of severity’ must exist; the assessment of such severity is relevant and also depends on the circumstances of the case. Besides assessing the level of severity, the ‘duration of such treatment’, its consequential ‘mental and physical effects’ and at times the age and sex of the person and their state of health also needs to be assessed. The court in the case of *Paposhvili v. Belgium (2010)*,<sup>508</sup> the court reiterated Article 3, and stated that it can preclude the elimination of aliens suffering from illnesses of serious nature that can be exacerbated by an expulsion. In the case of *Sufi e Elmi v. The United Kingdom (1988)*,<sup>509</sup> the court further repeated that in an extreme case the situation of general violence can be sufficient to establish the risk of treatment that is contrary to Article 3.

When we look at who can be excluded, we see *Article 1 (f) of the 1951 Refugee convention*, denies protection to any person guilty of heinous acts, if he is involved in, or is leading a serious common crime. At the same time, the Article also makes sure that there is no abuse of the asylum regime by the criminals seeking to escape justice. *Hathaway & Foster*<sup>510</sup> emphasize that the purpose of the exclusion clause under Article 1(F) is not only to protect the state from refugees posing threat to national security and to public safety but to also to protect integrity of the Refugee Law. This is

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<sup>508</sup> *Paposhvili v. Belgium*. (13.12.2016) para. [GC] - 41738/10.[GC].  
<https://hudoc.echr.coe.int/eng?i=002-11438>. (20/7/2023)

<sup>509</sup> *Sufi E Elmi v. The United Kingdom*. (1988) app. no. 14038/88, ECtHR, para 88.  
@Hanna Aftonfalk. Of course, but maybe: the absolute prohibition of refoulement and threats to national security and public safety. UPPSALA University. Department of Law Spring 2022 FULLTEXT01.pdf (diva-portal.org) (20/7/2023)

<sup>510</sup> JAMES C. HATHAWAY AND MICHELLE FOSTER. *THE LAW OF REFUGEE STATUS*. 2nd edn. Cambridge: Cambridge University Press, 2014. Pp. 773. \$60. ISBN: 9781107688421. (20/7/2023)

supported by the placement of Article 1(F), under Article 1 and the definition of the term ‘refugee’.

***The three exclusion clauses under are provided by Article 1(F).***

In the case of *PAEZ v. Sweden* (1995),<sup>511</sup> where the applicant was involved in terrorist acts, the commission by majority concluded that the applicant’s *expulsion* to Peru, will not violate Article 3 of the refugee convention. Common to all subparagraphs under Article 1(F), is that *the burden of proof is put on the host state*. The conduct or the act under the clause need not be verified by the previous persecution, a ‘serious reason for considering’ a refugee to fall under one or more provisions is sufficient. As the wording of the Article, suggest that the provision of convention provides, “shall not apply to.” Thus, it is mandatory to deny protection to a person as a refugee if the clause of exclusion is applicable. As an effect of the exclusion provision, no provision of the 1951 convention can be availed. However, the state can provide different status to the excluded refugees. The UNHCR however urges the member states to interpret exclusion clauses in a restrictive way. It is of the view that ‘inclusion must be considered before exclusion’. However, many states will first apply Article 1(F) first, they will assess whether the person seeking asylum meets the criteria under Article 1(2) then, whether the conduct of the individual renders them undesirable to avail them protection otherwise would be granted to them.

1. Article 1F (a) prohibits the grant of refugee to a person considered to have *committed a ‘crime against peace’, if he is engaged in ‘war crime’, or any ‘crime against humanity’,* as per the definition of International instrument. Various International Instruments like the Genocide Convention, Geneva Convention and its protocol, statute of International Criminal Tribunal,<sup>512</sup> of International Criminal offers guidance on interpreting the scope of war crime, crime against peace and the crime against humanity. Under Article 1F (a), the expulsions must be based on the set standards of International Instrument and not just on the domestic norms. Under international jurisdiction, any crime under Article 1F (a) is punishable both internationally and nationally. The minor offender should not be

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<sup>511</sup> PAEZ v. Sweden 29482/95 (06/12/1996) | Report (31) | Commission (Plenary) | <https://hudoc.echr.coe.int/eng?i=001-45782>. (21/7/2023)

<sup>512</sup> statute of International Criminal Tribunal for the former Yugoslavia and Rwanda

excluded on low evidentiary standards. The purpose of subsection (a) of the Article is not preventive nor does it provide punishments for international crime, however it is to prevent the integrity of the refugee law. Also to let go of the perpetrator go off the grave International crime and gain benefits from the same regime that is made to provide protection to their victims.

2. Under Article 1F (b) it states that a status of refugee must not be granted to the committee of *serious non-political crime occurring outside his country of his origin prior to his admission*. This subsection (s) is more controversial than subsection (a), as the concept of ‘serious non-political crime’ is very wide and open for diverging interpretation depending significantly on the state discretion. Along with considering murder, rape, armed robbery etc., as serious crime the UNHCR also considers terrorist acts as non-political crime, as their execution is disproportionate to any kind of political goal. Under Article 1 F(b), the Article specifically refers to the ‘serious non-political’ crimes that are committed by a person outside of the host country, before his admission. Thus, for an example, if he causes an act of terrorism post his admission to the host country, this act will not attract subsection (b). As per Hathaway and Foster, the states concerned of its own and the safety of and security of its communities are irrelevant on the question of exclusion. Thus, the purpose of subsection (b) is to deny any protection to the fugitives of justice, for the sake of protection of Refugee Law as the abuse of the Refugee Law would further challenge public confidence in the ethnic value of the law.
3. Under Article 1F(c) the sub-section states that the status of subsection (c) must not be given to a person, against whom there is reason to believe that he is *guilty of an act which is contrary to the purpose and principle of United Nations*. The principle and the purpose of the United Nations is expressed in its preamble and in the provisions of the United Nations Charter and is binding on all the states, not the individuals. Thus, a certain level of authority is required to exclude a person on the above ground. However, in the contemporary time, as per European Union and the member states, the position of the governmental authority is not required

in exclusion of a person as per sub section (c). In the case of *MH Syria (2009)*,<sup>513</sup> the Court of Appeal, United Kingdom, did not rule on the fact that a nurse providing medical aid to a terrorist could be subjected for exclusion under Article 1F(c). Further, the UNHCR stated that such wide personal possibility is contrary to that of the vision of the drafter. The lack of international definition of the term terrorism leaves it to the discretion of the state, to deny the protection to people in a vast manner. As per Hathaway and Foster, Article 1F(c) is something like a voracious omnivore. Thus, we see that protecting the host nations from the unwanted, dangerous individuals is under the preview of Article 1F, rather under Article 33(2).<sup>514</sup>

## **6.10 EFFECTIVENESS OF PRINCIPLE OF NON-REFOULEMENT IN EUROPEAN UNION.**

The Principle of non-refoulement does not guarantee an absolute protection of the refugees under the convention. Through various judgments we have seen how the ECHR works to protect refugees, however it does not always provide protection to the third country nationals concerning the principle of non-refoulement. In the case of *N. v. The United Kingdom (2005)*,<sup>515</sup> we see that ECHR reversed its previously delivered judgment wherein the court had condemned the state for violating Article 3 of ECHR and deporting sick migrants back to their country, as there was a risk of their painful death there. However, in the present case, even though the applicant was suffering from AIDS, his deportation was confirmed by the court.

Further, in the judgment of *ND and NT v. Spain (2015)*,<sup>516</sup> a similar restrictive position of the principle was maintained. In the present case two applicants Malian and Ivorian having a Moroccan nationality attempted to cross the border of Spain by climbing the fences. The applicants were sent back to Morocco, the applicants argued that deportation without their examination of their situation individually, Spain has

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<sup>513</sup>Ms. Syria V. Secretary Of State For The Home Department, (2009) EWCA City. 266, Para. 30.

<sup>514</sup>Hanna Aftonfalk. OF COURSE, BUT MAYBE: THE ABSOLUTE PROHIBITION OF REFOULEMENT AND THREATS TO NATIONAL SECURITY AND PUBLIC SAFETY. UPPSALA University. Department of Law Spring 2022 FULLTEXT01.pdf (diva-portal.org)

<sup>515</sup>N. V. The United Kingdom. (27 MAY 2008). Requête no 26565/05 CEDH, judgment. (21/7/2023)

<sup>516</sup>N.D. AND N.T. V. Spain. (2020) Grand Chamber, Requêtes nos 8675/15 et 8697/15, 13 février.

violated article 4 of ECHR that prohibits collective expulsion. However, the Grand Chamber court in this case ruled that the applicant's deportation did not violate the convention as by attempting to cross the Spanish fence the applicants have placed themselves in this situation.

Thus, in the case of ND and NT v. Spain the ECHR court implied restrictive interpretation and limited the protection provided under the Principle of non-refoulement. Thus, with the judgments like this from ECHR, the weakening of the effectiveness of the principle of non-refoulement is apparent. With the recent violence taking between the refugees and the state like the outbreak of violence in France<sup>517</sup>, Sweden and other parts in Europe, and the Dublin Anti-immigrant protests in Dublin<sup>518</sup> and in other parts of Europe, the nature of Judgments in the case of ND and NT v. Spain is likely to make a prominent difference.<sup>519</sup> The court in the case of *Khlaifia and others v. Italy*<sup>520</sup> opined that the arrival of a large scale of refugees suddenly, in a small span of time certainly causes organizational, logistical and structural difficulties for the authorities who have worked hard to meet the requirement of the refugees.

## **6.11 JUDICIAL DISCRETIO REFLECTING METAMORPHOSIS IN THE PRINCIPLE OF NON REFOULEMENT**

When we examine the principle of non-refoulement through the judicial review we see that the International Law instruments, ECHR, ECtHR are very keen in protecting the refugees and abiding by the principle of non-refoulement and closely concerned in keeping the interest of the refugee above the national security. Moreover, in the case of *Mocanu and others v. Romania (2014)*<sup>521</sup> further in the case of *El-Masri v. the*

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<sup>517</sup>Sana Noor Haq, Joshua Berlinger, Tara John, Barry Neild and Xiaofei Xu, PROTESTS ARE SWEEPING FRANCE. HERE'S WHAT YOU NEED TO KNOW. CNN. Updated 10:33 PM EDT, Sun July 2, 2023. (21/7/2023)

<sup>518</sup>Rory Carroll 'THERE IS NO ROOM': ANTI-IMMIGRATION PROTESTERS MARCH IN DUBLIN SUN 22 Jan 2023 17.04 GMT. 'There is no room': anti-immigration protesters march in Dublin | Ireland | The Guardian. (21/7/2023)

<sup>519</sup>Naydès Jeanty. HOW EFFECTIVE IS THE PRINCIPLE OF NON-REFOULEMENT IN EUROPE TODAY? Published by Generation for Rights Over the World January 2022.

<sup>520</sup>Khlaifia And Others v. Italy. (Dec. 15, 2016) App. No. 16483/12. Eur. Ct. H.R. HUDOC - European Court of Human Rights (coe.int). (21/7/2023)

<sup>521</sup>Mocanu And Others v. Romania. (17 September 2014) Applications. (23/7/2023) nos. 10865/09, 45886/07 and 32431/08. Grand Chamber. Judgment. Strasbourg.

*former Yugoslav (2009),*<sup>522</sup> the court stated that the prohibition under article 3 is absolute. And does not permit any degradation under Article 15, even during the events of public emergency or in the most difficult situations like terrorism and organized crimes or the inflow of migrants and asylum seekers in a very large scale, *irrespective of their conduct.*

However when it comes to the concerned state practices, we see that the European Union States have reinforced FRONTEX agency at the border and also deployed coast guard to push the asylum seekers. The states are further involved in indirect refoulement and the European States are relying on the concept of Safe Third country despite the concept being controversial, it is still applied to expel migrants and asylum seekers, and can be linked to indirect refoulement.

*The Procedure Directive* under its Article 33 and 38 respectively provides the member state with the ability to declare and application inadmissible and forward the examination of the application to a third country, which is considered safe for the applicant. In the case of *NM, NG and NF v. European Council (2017)*, the court considered the EU- Turkey Declaration as not an act of European Union and declared itself to be incompetent in the orders. The safety of any country is a subject matter of the National Law; therefore, each member state can constitute a list of safe country. Hence, decisions like these makes ways of avoiding the principle. This avoidance and escaping the implementation of the principle of non-refoulement is leading to metamorphosis of the principle.

## **6.12 SUMMARY OF THE CHAPTER**

Even though the principle of non-refoulement is the cornerstone of the 1951 Convention, and principle is enshrined in a number of international law and European Union Law, the effectiveness of the principle of non-refoulement is weakening in its implementation and in providing international protection to the refugee. The

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<https://hudoc.echr.coe.int/eng?i=001-146540>. (23/7/2023)

<sup>522</sup>*El-Masri v. The Former Yugoslav Republic of Macedonia*. (13 December 2012) Application No. 39630/09. Grand Chamber. Judgment. Strasbourg. (24/7/2023)



implementation of several agreements and policies by the European Union member states, they are violating the European Law and the international laws.

There has been a number of cases and instances when there has been a gross violation of the principle of non-refoulement, claiming uncountable lives and destruction of families. Example is, the instance when the Tanzanian Government's closing of its borders prevent the refugee entry from Rwanda, during the Rwandan genocide, which claimed uncountable lives. Another example is when the Australian government allegedly violated the principle of non-refoulement in the year 2014, wherein, the Australian government forced 41 *Tamilian* and *Singhalese* refugees to return to Sri-Lankan Navy, where there was a risk to their lives. It is very important for the host countries to uphold the principle of non-refoulement and to protect refugees coming to their territories at all cost.<sup>523</sup>

ECtHR has always tried to balance the refugee rights and safeguarding their human rights at the same time ensuring national security. However, looking at the burdening of the European States post 2015 refugee crisis, the European Union along with Turkey signed the, 'EU Turkey Declaration, 2016'. Though the declaration opened debates in the for and against motion, the court in the case of *NM, NG and NF v. European Council*, considered the EU-Turkey declaration, as not an act of the EU. Thus the court declared itself as not competent, and held that the safety of any country is the subject matter of National Law, thus each member state can constitute a list of safe countries.

In the recent past and recent time, there has been a periodic outbreak of protest on various issues concerning refugees from both the ends of the refugees as well as the host nations. This affects the host countries more as there is destruction of public property and claiming the life and health of the civilians as well as some of the refugees. The violent protests by the refugees is also affecting the relationships of

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<sup>523</sup>LEXPEEPS. CRITICAL ANALYSIS ON NON REFOULEMENT OF REFUGEES UNDER INTERNATIONAL LAW. NOVEMBER 30, 2021. Critical Analysis on Non-Refoulement of Refugees | Lexpeeps. (25/7/2023)

refugees and asylum seekers with the native of the host countries and is adding more fuel to the anti-immigrant sentiments. Instances of violent refugee protest are causing the destruction of public property and threatening national security and the peace and prosperity of the host nation. The recent violent protest by the refugees and asylum seekers in France, over the death of a 17-year boy by the French police led to destruction of public property, claiming lives, interrupting public transport, and decrease in tourism. The usage of bombs on the police station during the protest puts a big question on national security. In addition, the inflow of more number of refugee men than women and children, which was opposed by the natives of Sweden, raises a question on the genuinely of the people in need of international protection.

Thus, the ECtHr must weigh a balance of interest of the refugees and the national security and wellbeing of the civilians of the host country before delivering any judgment. In addition, the human rights of the civilians of the host countries should not be kept below the human rights of the refugees and asylum seekers.

## **CHAPTER- 7**

### **CONCLUSION AND SUGGESTIONS**

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#### **7.1 CONCLUSION**

Towards the conclusion of this research, we understand that, Refugees are people who had to flee their homes because of fear of prosecution, war or violence. A refugee has a well-founded fear of being prosecuted for the reason of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries. The other reasons include, search for better life, environmental or climate change. They often move out of their country to protect themselves and their family from future violence.

As long as there is threat to life, amid changing circumstances and environment, there will be people fleeing in an attempt to find shelter elsewhere. Since the first recorded mass movement in the 17th century, when French migrants left their country to escape religious persecution, people's movement as refugees has only accelerated. The very fact that each nation of the world shares their border with the other, any disturbance in one nation is most likely to affect the others. Thus brings us to the conclusion that people shift, as refugees from one place to another shall prevail. The major mass refugee movements since the past until date, has been majorly from the countries like Syria, Afghanistan, Iraq, Myanmar and Eritrea.

The Principle of non-refoulement, which is the soul of the 1951 convention, has been subject to metamorphosis both by the refugees as well as by the countries. We see how because of metamorphosis and because of falling weak of the convention, some of the refugees are using illegal means to enter the host countries, and how the host countries in the European Union are closing their door to avoid refugee inflow. Thus, all these issues can be resolved only with implementation of some new innovative ideas along with help of the existing refugee protection laws and policies.

The French were the first to coin the term refugee in the 17<sup>th</sup> century when the reformed Protestants, Huguenots left the country to escape religious persecution. The Huguenots were provided shelter by England and other neighboring countries and gradually with increasing tension during the World War I and II, the principle of non-refoulement, appeared frequently in various International Conventions stipulating that the refugees should not be returned to the country where their life were in danger.

The existence of the principle of non refoulement can be traced in three different phases that is, the world refugee crisis prior to the 1951 refugee convention, where we see that during this phase people in need of humanitarian aid were provided shelter and even though the principle of non-refoulement was not incorporated in the international or regional law, still the principle was followed as customary law by the concerned countries. Also during this phase several International Instruments started to emerge and prohibited *refoulement*, like the *Aliens Law, League of Nation etc.*

In the Second Phase, which is the phase of crisis post the coming of the convention, we see that the principle of non-refoulement was encompassed in the 1951 Refugee Convention and gained legal status. The principle was initially abided by both the signatory and non-signatory countries. We see the principle of non-refoulement being upheld by the neighboring countries during the Korean War, Algerian Independence War, Bangladesh liberation war, Indo-China War, and many other wars during this phase. However during the times of Libyan Civil War,(2011-12) we see the European Union collaborated with the Libyan Coast guard and provided them training and speedboats to intercept the Libyan citizens and forbid them from entering the EU. Thus, violations by some European Union started surfacing. Further, during this phase we also observe that some non-signatory countries like India and Bangladesh upholding the principle of non-refoulement during the Rohingya Refugee Crisis.

In the third phase, that is the phase of the Refugee crisis in the 20<sup>th</sup> Century. We see that the status of non-refoulement post the coming of the convention and its status in the 21<sup>st</sup> century, the countries became legally bound by the obligation of the principle of non-refoulement. At the same time, it is during this phase that the reported pushback of the refugees started to be reported frequently. We observe that during the

Somalian Refugee Crisis, Somalians were provided shelter in Kenya, Ethiopia, Yemen, Uganda, and in the Venezuelan Refugee Crisis, most people moved to Latin America, Colombia, Peru and other neighboring countries which are the Non-European States. Further, during the Syrian Refugee Crisis the majority of the Syrian refugees were restricted to Turkey, Lebanon, Jordan, Iraq, and Egypt. During the South Sudan refugee crisis, countries like Sudan, Uganda, Ethiopia and other neighboring countries provided protection to refugees. The Afghan Refugees during the Afghan Refugee Crisis, where many refugees fled to Pakistan, Iran Germany, Turkey etc., some were taken to emergency processing centers in Spain, Germany, Qatar and Uzbekistan. During the Myanmar Refugee Crisis, the neighboring countries like India and Bangladesh provided protection of Rohingya refugees. In the Eritrea Refugee Crisis, people moved to the European Union states like Germany, Netherlands, Sweden and Switzerland. Furthermore, during the Central African Republic Refugees crisis, people flee to take refuge in countries like Cameroon, Chad, Democratic Republic of Congo etc., and during the Russo-Ukrainian war, Ukrainian refugees move mainly to Poland, Hungary, Moldova, Slovakia and to Romania.

Thus, we see that during each phase of the crisis a large number of people were displaced from their own countries but they found refuge in one of their neighboring countries irrespective of that phase of crisis and even before the establishment of the 1951 convention.

The principle of non-refoulement is embedded in almost all the above-mentioned International Instrument for the protection of refugees. The Article 22(8) of the American Human Right Convention 1969 is clearly included as a human rights obligation. The 1951 refugee convention directly reflects the principle of non-refoulement under Article 33 of the convention. In Latin America, we see the *Cartegen Declaration, 1984* restating the very principle of non-refoulement, referring it as the cornerstone in the protection of refugees internationally and is observed as a *jus cogens* norm.

Under the European Legal Framework, we see that the principle of non-refoulement is the main element of the European Union's fundamental Rights rules, which is clearly reflected in Article 78(1), the *Treaty on Functioning of European Union*. Article 18

and 19 of the *EU Charter of Fundamental Rights* also prohibits *refoulement*. Article 3 of the *EU convention on Human Rights* and the *EU court on Human Rights* also encompasses the principle of non-refoulement. The European Union Asylum System also prohibits refoulement of any person to a place where there is a serious risk to his life involved owing to indiscriminate violence during an armed conflict.

However, the Council of Europe Framework Convention for the Protection of National Minorities the Thales Cogent Automated Biometric Identification System (CABIS) and the Cogent AFISes does not directly reflect the principle imbibed in them.

The general prohibition of the refoulement is imbibes Under Article 3 of *European Convention on Human Rights* 1950, which proclaims the prohibition of torture as a person's absolute right. *The European Union Charter of Fundamental Rights* assessed that the primary European Union Law of the 1 December 2009, comprises special provision for the principle of non-refoulement. The Qualification Directive (2011/95/EU) formulates the need of the non-refoulement concerning asylum.

The vulnerability of people globally, leaving their countries amid various armed conflicts, discrimination based on gender, caste, creed, and climate disasters etc. lead the academicians and international agencies to design and to provide legal assistance to refugees around the world. The introduction of the principle of Non-refoulement in the 1951 convention and its protocol, 1967 has emerged as the rule of customary International Law and is considered as the peremptory norm of Just Cogent<sup>524</sup>.

The Discrimination Laws also protect people against Discrimination. It protects people from being treated differently, given opportunities or being served differently, owing to their nationality, race, colour, religion, gender, or disabilities.<sup>525</sup> Sir Fredman Suggests, the common core of non-discrimination law is to ensure “that individuals

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<sup>524</sup>Ishant. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (26 December 2020) United Nations High Commissioner for refugee. <https://legalreadings.com/the-rights-of-refugees-under-international-law/>

<sup>525</sup>Upcounsel. DISCRIMINATION LAWS: EVERYTHING YOU NEED TO KNOW. Discrimination Laws: Everything You Need to Know (upcounsel.com)

should be judged according to their personal qualities.<sup>526</sup> Thus, we see that besides the conventions of 1951 there are several other international laws that directly or indirectly guards and protects the refugees and their interests.

Thus, refugee are provided legal protection both at the International level and in European Union laws. The chapter three deals with the emergence and development of the legal framework for the protection of refugees and how these laws directly or indirectly reflect the principle of non-refoulement imbibed in them. How one after the other humanitarian crisis led to the emergence of one law after the other, to finally shape the refugee protection law.

There are various International laws that directly or indirectly provides protection to refugees. For example IRO, UDHR, UNHCR, 1951 refugee convention, the OAU, ICESCR, ACHR etc. We also see the European Union laws in specific that provide protection to the refugees and asylum seekers in Europe. These laws are the European Convention on HR, the European Social Charter, the common Asylum System (CEAS), various directives and regulations under the CEAS. The European Convention on prevention of torture, convention for the protection of the minors, the CIS convention, the CABIS etc.

While examining the European Refugee Crisis. Chapter 4 puts light on the reasons that led to the refugee crisis in Europe and what were the issues the hosting European Countries had to face while hosting refugees when they arrived in the European Union on such a large scale. The chapter further deals with how the inflow and the hosting of refugees affected the natives and the refugees during the crisis.

In this chapter, we also analyzed how there were some European Union states who were the hardest hit by the sudden refugee inflow during the 2015 European Union Refugee crisis. Further, how the European states were individually affected and how they responded to the crisis and how they managed their refugee crisis effectively.

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<sup>526</sup>JAMES C. HATHAWAY. THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (Second Edition- 2021). Published- Cambridge university press. ISBN 978-1-108-49589-9

We also learnt how besides providing food, accommodation and financial and medical assistance, and beside the government programmers for integration of refugees in collaboration with Private sectors, local authorities and the inter-governmental Advisory Boards, and besides providing temporary protection. Further, besides providing legal assistance and special protection to women, children and people with special needs, and providing livelihood, access to labour market and employment opportunities, access to social services and education and training

Following countries in order to address the refugee related concerns are using innovative plans/schemes/programs they are:-

Germany, Latvia, Estonia, supported countries like Ireland, France, have introduced Private community sponsorship.

Spain has also agreed on the UN Statelessness Convention in 1997 and 2018. Spain also established a determination procedure in 2001 to deal with the issues concerning refugees and asylum seekers

France, to address the refugee crisis the French government has established various laws, governmental and work with the non-governmental organizations

Austria, with the implementation of The Integration Act, the government provides clear rules for ensuring social cohesion and social peace. The act is based on the principle of merit-based integration. The Act sets the framework for effective integration of people who settle in Austria, to set clear rules for social cohesion and social peace.

Malta announced the new policy for Specific Residence Authorization (SRA) to give status to asylum seekers whose claims have been rejected and could not return. In Malta, Special project is carried out by the two bodies in response to address sexual and gender-based violence.

Ireland, to tackle the refugee crisis the government established Irish Refugee Protection Programme that is (IRPP)In the year, 2019 IRPP-II was introduced, in between the year 2022-23 new community sponsorship was initiated



In Cyprus, the government has implemented the Global Compact of Refugees to manage its refugee crisis.

Luxembourg is building extra houses to accommodate refugees, it has also created a help page for refugees from Ukraine. Luxembourg has a well-established asylum system and their access to asylum system is guaranteed to the refugees from Ukraine.

In Romania, 44 different organizations coordinate to provide Protection from Sexual Exploitation and Abuse (PSEA). Nearly 14,781 refugees in 2022 were reached through Telegram and Facebook, social media platforms.

In Hungary, organizations like UNHCR/IOM, the Budapest Help Community Center help in refugee capacity building and empowerment of refugees, by organizing community events for refugees.

Croatia, according to UNHCR, Croatia's asylum system is in accordance with the European Union Standards. In the recent time, Croatia is allegedly pushing back refugees at the border. The UNHCR helps the authorities to find solutions for the stateless persons at risk.

Portugal has a welcoming environment for the refugees, works towards maintaining solidarity and is active in responsibility-sharing measures. Even during the pandemic while other countries had stopped taking refugees, Portugal continued the resettlement of refugees, and it took 33 persons from Italy, and Malta and nearly 78 unaccompanied minors from Greece.

Slovakia, in the recent Ukraine crisis, Slovakia has extended its support and currently there are 95,179 registered refugees present for temporary protection

Bulgaria was initially treated as only a transit country for refugees but post Covid19, many refugees are settling in Bulgaria there is also an increase in the number of people applying for international protection in Bulgaria. The government adequately addresses and support the refugee and child migrant under the welfare system

Czech Republic, out of the eight million displaced people from Ukraine, nearly 340,000 Ukrainians have settled temporarily in the Czech Republic. The government and the citizens of the country have shown remarkable support to the refugees, however the large sudden inflow of people has also exerted immense pressure on the government. The focus point of aid to these refugees is to ensure early childhood development.

Still, some countries look at refugees as a burden and are engaged in pushing back refugees. They are- Italy, due to its geographical location in the Mediterranean, Italy is the one of the most affected European states by the migrants. There is an increase in the negative ratings for Muslims in Italy since 2015, which has led to the rise of the right-wing parties with anti-immigrant agenda.

In Sweden, until recently Sweden has a vast history of host refugees and asylum seekers with more open and generous asylum and immigration policies. Most recently, Swedish new policy on migration is undergoing a great shift. The government is using measures to cut down the number of refugees coming irregularly in Sweden. Attempts are being made to stop the labor migration frauds and abuses but will continue to have a dignified reception standard to people in need at the same time, no protection and legal rights to staying Sweden will be granted to the unqualified person and he shall be expelled.

The United Kingdom is using restrictive policy to prohibit asylum seekers from coming to the UK, the asylum seekers have to face detention and deportation without even examination of their claims.

Greece is only focused at providing protection of Ukrainian refugees or refugees from selected countries. Greece government fails to provide protection to refugees from parts of the world; in fact, the government is engaged in crackdown of NGO's and restricted media reporting. Country like

Denmark is hosting the lowest number of refugees, it has also implemented restrictive policy. Further, according to the UNHCR Denmark is not in accordance with the International and European Standard for the protection of refugees. Denmark's policy

shift has led to instability and uncertainty in people. The commissioner also raised concerns over the immigration detention, families being denied asylum, families whose permits have been revoked, and concerns for children living in a state of limbo for many years.

In Lithuania, There has been continuous pushback of refugees and asylum seekers arriving at the Lithuania border. The government adopted laws to curtail the rights of the asylum seekers and codified arbitrary detention of numerous people, violating their human rights. Refugees and asylum seekers have been held for months in prison-like centers and their human rights have been violated. According to Amnesty International dozens of people from Camron, Sri Lanka, Congo, Iraq, Nigeria and Syria are unlawfully detained and may have been beaten, insulted and humiliated based on race. On the visit to the two-detention center, Amnesty International found that the detention centers have barred windows, security locked doors and high walls. For months, people above the capacity flooded the center.

Further, in the subsiquet chapter (Chapter-Five), we see that, over the years, with the rapidly changing world, the Convention of 1951 has faded away in fulfilling the purpose for which it was once established. Since there has been no amendment in the convention except the protocol of 1967, the convention is not updated and hence has faded away in addressing the refugee's issues effectively and has led to the development of much ambiguity. Because of the shortcomings of the convention, the human rights of both the refugees and the natives of the host countries are being affected. The enumerated shortcomings need to be addressed and the convention needs to be upgraded.

A clear definition of the team refugees is needed, there is a need for complete independence of the convention since it is not completely independent and is still supplemented by the other international conventions, regional agreements, national legislation and judicial decisions.

The principle of non-refoulement, the most important principle in the convention, which is the soul of the convention, is also being molded both by the refugees as well

as states for deriving their own benefits. There has been viable metamorphosis and thus the principle is fabricated largely.

The chapter further deals with how the European states and the refugees are molding and misusing the convention for their own interests. Further how the metamorphosed use of the convention is affecting the rights and interest of both refugees and the state.

While discusses the judicial discourse on the principle of non-refoulement (Chapter Six). We learn that Even though the principle of non-refoulement is the cornerstone of the 1951 Convention, and principle is enshrined in a number of international law and European Union Law, the effectiveness of the principle of non-refoulement is weakening in its implementation and in providing international protection to the refugee. The implementation of several agreements and policies by the European Union member states, they are violating the European Law and the international laws.

There have been a number of cases and instances when there has been a gross violation of the principle of non-refoulement, claiming uncountable lives and destruction of families. Example is the instance when the Tanzanian Government's closing of its borders prevent the refugee's entry from Rwanda, during the Rwandan genocide, which claimed uncountable lives. Another example of the same is when the Australian government allegedly violated the principle of non-refoulement in the year 2014, wherein, the Australian government forced 41 *Tamilian* and *Singhalese* refugees to return to Sri-Lankan Navy, where there was a risk to their lives. It is very important for the host countries to uphold the principle of non-refoulement and to protect refugees coming to their territories at all cost.<sup>527</sup>

ECtHR has always tried to balance the refugee rights and safeguarding their human rights at the same time ensuring national security. However, looking at the burdening

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<sup>527</sup>LEXPEEPS. CRITICAL ANALYSIS ON NON REFOULEMENT OF REFUGEES UNDER INTERNATIONAL LAW. NOVEMBER 30, 2021. Critical Analysis on Non-Refoulement of Refugees | Lexpeeps

of the European States post 2015 refugee crisis, the European Union along with Turkey signed the, 'EU Turkey Declaration, 2016'. Though the declaration opened debates in the for and against motion, the court in the case of *NM, NG and NF v. European Council*, considered the EU-Turkey declaration, as not an act of the EU. Thus the court declared itself as not competent, and held that the safety of any country is the subject matter of National Law, thus each member state can constitute a list of safe countries.

In the recent past and recent time, there has been a periodic outbreak of protest on various issues concerning refugees from both the ends of the refugees as well as the host nations. This affects the host countries more as there is destruction of public property and claiming the life and health of the civilians as well as some of the refugees. The violent protests by the refugees is also affecting the relationships of refugees and asylum seekers with the native of the host countries and is adding more fuel to the anti-immigrant sentiments. Instances of violent refugee protest are causing the destruction of public property and threatening national security and the peace and prosperity of the host nation. The recent violent protest by the refugees and asylum seekers in France, over the death of a 17-year boy by the French police led to destruction of public property, claiming lives, interrupting public transport, and decrease in tourism. The usage of bombs on the police station during the protest puts a big question on national security. In addition, the inflow of more number of refugee men than women and children, which was opposed by the natives of Sweden, raises a question on the genuinely of the people in need of international protection.

Thus a balance of interest of the refugees and the national security and well being of the civilians of the host country must be weighed by the ECtHr before delivering any judgment. In addition, the human rights of the civilians of the host countries should not be kept below the human rights of the refugees and asylum seekers.

### **7.1.1 ANSWER TO THE RESEARCH QUESTIONS**

The whole issue of the refugee crisis has the world's attention. The plethora of research around the refugee issues appears to be on the rise. They either talk about the inequality and injustice suffered by the refugees or they talk about how the host countries are having difficulty in hosting refugees and how the adverse effect is leading some of the host countries towards a civil war like situation. There is a lack of study as to how justice can be brought about on both ends of the refugees as well as the host country (citizens of the host countries). How we can establish a better world and bring about holistic development of both by finding another way rather than stressing the one for the benefit of the other. The need to put rest to the refugee's issues, and to create a balance of human rights of both refugees and the natives is felt strongly today.

The researcher began the study to find answers to several questions. Thus, the researcher began with the following research questions they are:-

1. Whether the Principle of Non-refoulement upheld in the Global Refugee Crisis? (Chapter-2)
2. Whether refugees are adequately protected in Europe, under International and European Laws? (chapter- 3)
3. Whether the Principle of Non-refoulement is being metamorphosed by some European Union States? (chapter-4)
4. Are some of the European Union states, and neighboring countries with similar refugee issues closing their doors for refugees? (Chapter-4)
5. How are the European Union States upholding the Principle of Non-refoulement with the rising refugee issues, and adverse impact of the recent crisis?(chapter-5)
6. What are the judicial discourse on the Principle of Non-refoulement? (Chapter-6).

**Answers:-**

- 1. Whether the Principle of Non-refoulement upheld in the Global Refugee Crisis? (Chapter-2)**

The very idea behind establishing the 1951 Refugee Convention was to provide international protection to people during the crisis. When we examine the global

refugee crisis before the coming of the convention of 1951, after the coming of the convention, also when we examine the refugee crisis of the twenty first century, we see that majorly the principle of non-refoulement was abided and upheld by the neighboring countries, where these refugees wend during the crisis. However, rarely there have been instances in the twenty-first century that some European states have been selective in providing asylum to persons in need of international protection. Like the Ukrainean refugees in some European are more welcomed than the refugees from Afghanistan and Syria. Thus, the question, whether the principle of non-refoulement upheld in the Global Refugee Crisis? Is partially yes and partially no.

## **2. Whether refugees are adequately protected in Europe, under International and European Laws? (chapter- 3)**

European Countries have a long history of giving shelter to the refugees in urgent need, ever since the establishment of the 1951 Refugee Convention, which was established during World War II. According to the UNHCR data, by 31 December 2021, the European country in total hosts 7 million refugees. Out of which the internally displaced people in Europe is 2.1 million.

The refugees and the asylum seekers have a number of both International as well as the European Union law, they are also protected under the regional or the state laws. Even though the European Union has multiple laws at all levels. Within their legal framework, several plans, policies, regulations, schemes, are for the protection and welfare of the refugees, not all European Union Laws are in the interest of the Refugees.

The closing door policies of some of the European Union countries and their subsequent push back shows that when it comes to the implementation for the existing laws for the protection, in the recent times there is a gap in the protection of refugees. Thus the answer to the question whether refugees are adequately protected in Europe, under International and European Laws? is Partially yes and partially no.

## **3. Whether the Principle of Non- refoulement is being metamorphosed by some European States? chapter-4)**

There is a viable metamorphosis in the applicability of the Art.33 Principle of Non-refoulement in the present era. The principle of Non-Refoulement, prevents any states from sending any individual to their own country or origin or to a place where, his/her life is under threat for the reasons either, persecution, torture, ill-treatment, or any other serious human rights violation. The principle of non-refoulement is the most important principle in the convention. It is considered as the soul of the convention. However, today it is being molded both by the refugees as well as by states for deriving their own benefits. Hence, there is viable metamorphosis in the principle and it is fabricated largely.

The principle is being metamorphosed, meaning that the host countries and the refugees are not following guidelines laid down under principle of non-refoulement as it, but, using the ambiguity and the shortcomings and molding the meaning of the principle to suit their needs.

Metamorphism in the principle can be seen clearly. There is violation of the principle of non-refoulement. Since there is no sanction on the states, the states are not following the principle and doing the needful. The states are pushing refugees in need, not allowing them in the country, ruining the very principle of non-refoulement. The states are turning their back and narrowing down their policies on hosting refugees. Some countries work hand in hand to check on the refugees and make sure that the refugees do not enter the country. Some other developed countries aid the third developing countries, financially, to manage the deportation of refugees in their countries, which further leads to the deterioration of their condition and pushes them to an uncertain future.

Some states are pushing off shore, the boats with refugees, some are constructing height fencing, tightening the border securities in the European Union. This clearly shows that they are violating the Convention directly.

As a result, clashes have been taking place between both refugees and the host nations. This unrest already seems to be giving rise to various other conflicts that are arising gradually.



1951 Convention on refugees is fading at balancing the human rights of both refugees and the natives of the European Union. Over the years, with rapid development and changes taking place around the world, the Convention of 1951 is fading away in fulfilling the purpose for which it was once established. Since there has been no amendment in the convention except the protocol of 1967, the convention is not updated and hence fails in addressing the new refugee's issues effectively. Due to no upgrades, shortcomings have developed over the years. This has led to the development of ambiguities. Because of the shortcomings in the convention, the human rights of both the refugees and the natives of the host countries are being affected. The enumerated shortcomings mentioned in chapter four of the research needs to be addressed. Accordingly, the convention needs to be upgraded. Some very important shortcomings are as below:-

A clear definition of the term "refugees" is needed. Broader definition of refugees must be made to incorporate several other refugees who are forced to leave their countries owing to new leading reasons e.g. the climate change refugees and other kinds of refugees. The definition of Refugee women separately is important as the current definition is from male perspective, and in the absence of a clear definition of refugee women. Many times they are deprived of their rights and protection.

There is a need for complete independence of the convention, since it is not completely independent, and is still supplemented by the other international conventions, regional agreements, national legislation and judicial decisions, its effectiveness is almost nil.

Sanction needs to be imposed on the irresponsible countries. The leading reasons for people leaving their countries are war and persecution. However the countries or the states responsible for the surge of war and persecuting their own citizens, like Myanmar etc. leading to disturbances in their own country as well as the country in which the refugees make the mass influx is never questioned and no sanction or compensation is imposed on them. The convention has no set of plans or direction to address mass refugee influx of refugees in the host countries. The convention also lacks global appeal.

The legal system appears to be one sided. The legal framework is only concerned with addressing the refugee issues and not concerned with the effects that the host countries and its native people face with the sudden inflow. Neither has it stressed much of the reduction of statelessness. The present legal system does not specify the number of '*refugee families*' a country can host depending upon their economic stability. In which country, will the remaining families be shifted. No law talks about the equal division of responsibility of carrying the economic burden of hosting the refugees in the country. We have seen in the earlier chapters how the unequal distribution of refugee families stresses some under-developed and underdeveloped countries, having low economic growth but more numbers of refugees to feed and take care of.

No Law talks about putting any penalty on the executive bodies in case of neglecting and not fulfilling their duties of providing justice and addressing refugee issues in question. The convention does not talk about the burden sharing of refugee inflow in the European Union States.

No periodic upgradation of the convention is done. Since its establishment in the year 1951, the only change done was the 1967 protocol. Ever since then over the period of 72 years massive change has taken place thus the convention needs upgradation to suit the time

There are provisions for refugees on the land of the state. However, no provisions are made for refugees in urgent need and who are pushed off shores. Etc. are some of the shortcomings of the convention.

The shortcomings in the convention has effected the human rights of refugees as well as the natives in many ways. There has been only some positive developments in addressing the refugee issues. However, in the recent past a clear negative mind-set can be seen of some of the countries in the European Union, which is the result of the disturbances and imbalance caused by the sudden influx. The development in the negative mind-set on the issue of hosting refugees, has led a rise of civil war like situations, and these developments are only the tip of the iceberg. It is very likely that some massive clashes can take place in the future, if the issue is not taken care of. Thus, the convention need amendments and power to act independently.

We see that shortcomings have developed in the convention of 1951 due to the constant changes that are taking place in the environment and developments in human lives. Thus, the answer to the question Whether the Principle of Non- refoulement is being metamorphosed by some European States? Is partially yes as it is being metamorphosed by some European States and partially no and not all the EU states are not metamorphosing the principle.

**4. Are some of the European Union states and neighboring countries with similar refugee issues closing their doors for refugees?(Chapter-4)**

Yes, as mentioned in chapter 4 some European Union States like France, Italy, United Kingdom, Croatia etc., are changing their policies to restrict the refugee inflow in their respective states. We have further see that some of the neighboring States to the European Union like Turkey, Lebanon and Jordan, who initially welcomed refugees are also changing their policies to restrict the refugee inflow in their respective countries amid, the adverse effect of hosting refugees.

**5. How are the European Union States upholding the Principle of Non-refoulement with the rising refugee issues, and adverse impact of the recent crisis?(chapter-5)**

We have seen in chapter four, how reportedly the Far Right Parties are rising against the refugees, adding more to the fuel is economic uncertainty, the rise of anger and rage in some European groups or individuals in the ongoing refugee crisis that has brought about 1.5 million refugees and migrants since 2015. The Radical Right or the far right have problems with minority rights. Thus, they seem to be combining Negativism, Authoritarianism and populism. They look at the immigrants as a threat to the culture and security of the country. Thus, the ruling party or the candidate is the one the majority of the population chose. They are the ones who look in sync with the idea of the far-right parties, or individual candidates with the same agenda seem to be either in the coalition party, like the ones in Austria, Switzerland and Denmark. In addition to this, they are the ones to hold positions in the governments, like that of Hungary and Poland.

In 2015, the European Union (EU) was confronted by the biggest inflow of refugees since World War II, nearly more than a million. This was popularly known as the European Refugee Crisis. The sudden inflow of refugees has more of an adverse effect than positive, it has burdened and disturbed the EU member states and they are almost on the verge of fabricating the preexisting social structure in the name of protection to the refugee's human rights. Despite consistent plans, laws and regulations the member States have not been able to put rest to the existing refugee crisis and do justice to both the refugees as well as the native citizens. The rise of conflicts between the natives and the government is on constant boil because of the unwanted changes taking place in the society, putting at stake their human rights. For example, on Poland's Independence Day, 60,000 people were marred by thousands of far-right nationalists, holding banners stating "White Europe" and chanting slogans like "No to Islam." In the recent past, some EU countries like Sweden, Poland, Czech Republic, Germany, are witnessing the major adverse effect of hosting refugees. To an extent that these countries are gradually foreseeing a civil war like situation by the native citizens against their own government on the issue of refugee influx.

There has been an upsurge in the protest against refugees and migrants. Thus the recent time has seen a sudden change in the attitude of countries like Lebanon and Turkey who earlier had accepted tens of thousands of refugees but now are forcibly returning them back simply because they don't want any more refugees. Denmark is the first West European country to change its criteria of asylum seeking. In addition, according to its latest aggressive anti-immigration policy, Denmark is to make a separate island for the unwanted migrants. Sweden, on the other hand, gave shelter to over 100,000 Syrian, is also following Denmark's league, its Migration Agency has changed its guidelines ensuring that Syrians and refugees from other suburbs are not automatically granted the right to stay just because of where they came from. Hungary, border fences at razor wire have gone up to keep the immigrants and refugees out of the state. Likewise, many countries are changing their policies about refugee intakes and with that; a clear change in the nature of the host countries is noticed towards the issue of hosting refugees.

Turkey had similar experience and has suffered several suicide bombing attacks, the link of which was connected to ISIS or registered refugees. Further, they posed a threat to national security.

The unrest and conflicts are causing some of the European states to change their policies on hosting refugees and hence, they are closing their doors. Some countries are collaborating with each other to deal with the refugee management. The United Kingdom reported to pay 55-63 million to France to reduce the number of refugees crossing the English Channel to make it to the United Kingdom. Countries like France and Italy are in tug of war over burden sharing responsibilities. Australia and the Czech Republic have introduced border control with Slovakia to control smugglers using their countries as a transit route. The Parliament of Poland has approved 366 Million Euros for the construction of a physical border with Belarus.

## **6. What are the judicial discourse on the Principle of Non-refoulement? (Chapter-6).**

The Principle of non-refoulement enshrined in the 1951 Refugee Convention provides protection to the refugees. Protection against *refoulement* is the cornerstone of refugee Protection, the principle is also a well-established norm. The fundamental principle imbibed under *Article 18 and 19(2) of the EU Charter of fundamental rights*, states that no one can be removed, expelled or can be extradited to a state posing serious risk or threat to a person's life in form of death penalty, torture or any other inhuman or degrading treatment or any form of punishment. The European Court of Human Rights, the United Nations Human Rights Committee and the *European Convention on Human Rights (ECHR), 1950*, along with the other international instruments is very keen at protecting the interest of the refugees. Through its various judgment the European Court of Human Rights has its say on almost every issue concerning refugees. The courts have dealt with issue concerning the principle of non-refoulement and protection from torture, inhuman, degrading treatment or punishment (cat), under international human rights law, extradition. The court through its judicial discourse has also put light on the duty of the European Union state towards refugees and through several judgment the court has The European Union is often criticized for prioritizing its border control over migrants and Asylum seekers. 'The European

Court of Human Rights, in its various judgments has condemned the practice of pushback as collective expulsion on the basis of Article 4 of Protocol no.4 (Collective expulsion of aliens is prohibited) of ECHR the court has also emphasized on the protection of refugees from indirect refoulement.

With regards to, the extension of the principle of non-refoulement at high sea we see that, in the contemporary time, the ambient of the principle is fading away in the European Union States, to an extent that it has started to be regarded as a general moral principle with only narrow legal constraints. However, this has begun to change in Europe. The obligation of non-refoulement found under Article 3 of the ECHR, has put legal constraints on the member state sovereignty with regard to migrant control at high sea. The ECHR has expanded the very scope of the principle of non-refoulement, by presenting important implementation. The joint-maritime operation at sea, with the coordination of *Frontex*, under the *European Union regulation 656/2014*, ensures respect to the Principle.

The European court of Human Rights has also dealt with the issue of the principle of non-refoulement and the national security. In recent times, states are time and again confronted with the duties where they have to respect human rights of people in international need while also ensuring public safety in the host state and ensuring national security. Article 33(2) of the 1951 Refugee Convention a person involved in serious criminal offense from protection against refoulement. To quote ECtHR in the *soering case (1988)*,<sup>528</sup> – the worst conceivable villain is also protected from refoulement, no matter “However heinous the crime is”.

On the issue of effectiveness if the principle of non-refoulement in European Union we see that the Principle of non-refoulement does not guarantee an absolute protection of the refugees under the convention. Through various judgments we have seen how the ECHR works to protect refugees, however it does not always provide protection to the third country nationals concerning the principle of non-refoulement. In the case of *N. v. The United Kingdom (2005)*,<sup>529</sup> we see that ECHR reversed its previously

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<sup>528</sup> *Soering v. The United Kingdom*. (Spring 2022) Application no. 14038/88, ECtHR, para 88. Hanna Aftonfalk. OF COURSE, BUT MAYBE: THE ABSOLUTE PROHIBITION OF REFOULEMENT AND THREATS TO NATIONAL SECURITY AND PUBLIC SAFETY. UPPSALA University. Department of Law FULLTEXT01.pdf (diva-portal.org)

<sup>529</sup> *N. V. The United Kingdom*. (27 MAY 2008). Requête no 26565/05 CEDH, judgment

delivered judgment wherein the court had condemned the state for violating Article 3 of ECHR and deporting sick migrants back to their country, as there was a risk of their painful death there. However, in the present case, even though the applicant was suffering from AIDS, his deportation was confirmed by the court.

Thus, we see that the European Court on Human Right through its various judgments has tries to balance the interest of both the refugees and the host states on various issues.

## 7.1.2 TESTING OF HYPOTHESIS

The current two hypotheses involved in the present research and their proof and disproves are as followed:-

1. *The Principle of non-Refoulement in the 1951, Refugee Convention is not able to balance the welfare of refugees and the host states.*
2. *The countries in the European Union are not able to uphold the Principle of Non-refoulement.*

*1. The Principle of non-Refoulement in the 1951, Refugee Convention is not able to balance the welfare of refugees and the host states.*

**Finding:** - it is not completely true; the 1951 Convention on refugee is the strongest pillar that provides protection to refugees and asylum seekers. However since the convention is dependent on the regional laws and the member states taking their own calls in dealing with the refugee inflow and avoiding the abidance of the principle of non-refoulement, the convention is falling weak at balancing the welfare of the refugees and the host states.

*2. The countries in the European Union are not able to uphold the Principle of Non-refoulement.*

**Finding:** - partially yes and partially No. it is true that there is a gross violation of the principle of non-refoulement by some of the European Union member states and they are constantly pushing back refugees. However, some other European Union States are in accordance with the European Union standard of refugee protection. Countries like Germany, Belgium, Estonia, Malta, Portugal etc., consider refugees as a boon and not a curse.



## 7.2 SUGGESTIONS

The refugee, their issues, their problems and their rights are widely talked about in plethora of other research work. What we see in this present research is how disturbances in the neighboring countries of European Union, like Syria, Afghanistan, Pakistan, etc. are causing the refugees to escape to the European Union in Search of safety, security, shelter and a better life. However, the states on the other hand, look at it as an added burden and approaching fear and threat to the peace and prosperity of the European Union. The refugee inflow in the European Union accelerates the fear of increase of the Anti-immigrants movements by the far-right parties against their own State Government. There is fear of loss of ethnicity, culture, religion, tradition and way of living, increase in the crime rates and increasing threat of national security. These increasing apprehensions is one of the reasons why some of host countries are avoiding the total implementation of the principle of non-refoulement and thus are causing violation of the principle.

In addition, neither the convention nor any other law incorporates the well-being of the host nations along with incorporating provisions for the well-being of the refugees. There is also scarcity of the alternative idea or model of refugee management.

By funding the third safe countries like Turkey to assist and arrange for the refugees' return to their country, shows that some European countries have no shortage of money to aid the refugees, what they lack is the willingness of allowing refugees in their respective states. What they apprehend is the fading away of their own identity, culture, ideology, religion and way of living. This apprehension leads to clashes between the refugees and the natives. There is also a silent conflict over supremacy, each has a feeling as to one is superior to the other. Their religion is superior, their ideology is superior, and their way of living, their culture tradition, clothing style etc. are different.

It must be mentioned here that the European Countries are a group of small countries in Europe, clubbed together as Union. Many a time the density of some of the country's native population is very low, and with a large number of refugee inflow in

such thinly populated states, the dominance of the outsider creates fear. For example in the year 2000 individuals with non-western backgrounds accounted for 8.9 percent of the Dutch population and today as on 2<sup>nd</sup> January 2023,<sup>530</sup> one out of every 8 people in the Netherlands is Non-western migrant. Women migrants in the Netherlands account for 52 percent and the percentage might only increase.

The contemporary world is beautifully painted in different colours, and that is the real beauty. Each country has its own culture, tradition, language, way of living and each is uniquely different from the other and this difference is the beauty. We do not want to mix these colours all together to create black colour and paint the whole world with it.

We do not want to see the countries being burdened with the refugee inflow and struggle to manage the issues that come along with them. Neither do we want to leave the refugees to suffer, nor to take them in a country as a refugee and make them live, and expect their gradual change in terms to everything to suit and adjust in the host countries. We have seen how the countries are making policies, laws, regulation, trying their best to manage both refugees and the natives. However, despite all its efforts there is increasing discontentment and increasing violence, which will lead the world to nowhere.

So, what is a better way out? At the end of this study, the research has come up with the following suggestions. These are some of the other solutions to existing refugees crisis and way to balance the human rights of refugee and the Natives of the European Union:-

The root cause of any problem or all the problems of the refugees as well as the natives in the host countries occurs due to the mere entry of refugees in the host country. For better management, administration and welfare of both refugees and the host countries we can either use the traditional method, or, fence the borders with razor wires to restrict the refugee from entering the host country.

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<sup>530</sup>Ayaan Hirsi Ali. When Europe ignored the sex crimes of immigrants, all women suffered. Feb. 13, 2021, 8:37 a.m. ETh<https://nypost.com/2021/02/13/when-europe-ignored-sex-crimes-of-immigrants-all-women-suffered/>

However, the irony is that, despite people's likes and dislikes, there will always be refugees around the world, and it is a constant phenomenon. Even though the leading reasons for wars and persecution stop across the world, the refugees will still be forced to leave their country of habitats, owing to climate change. With the fading away of effectiveness and the emergence of shortcomings in the 1951 Convention, we see how laws and policies have a limited life. Nevertheless, in the constant phenomena of refugee's movement, we need ideas that would stay for a long time and with periodic upgradation.

It is also very important to ensure that the principle of non-refoulement is upheld and protected. The principle of non-refoulement is considered as the soul of the convention. Many international treaties as mentioned earlier have also incorporated the principle of non-refoulement in their treaties. The principle states that any individual, who approaches any country in order to save one's life, cannot be sent back to the place where his life is in danger.

However the very principle seems to be violated by many of the states, despite them being signatory to the convention. Many European States seem to be pushing refugees offshore, many closing their doors for refugees and the others are changing and narrowing down their policies to restrict refugee inflow. Many a time even the refugees misuse the principle and just in the greed of better life and status, they risk their lives, lay high to the smugglers to enter the European Nations to save their lives for a better standard of life.

Thus the very soul of the convention is under threat, the principle needs to be protected, the protection of the principle is only possible when there is less to non-conflict between the refugees and the natives and when the rights and the welfare of the both are equally given importance. At the same time, sanction for the violation of the principle must be added in the Article 33 itself. Below are some of the ways through which the principle of non-refoulement can be protected.

All of these provided ideas will potentially solve some of the major issues faced by the refugees and the host countries and since there will be no apprehensions both in the minds of refugees and the host states, there will be no need to violate the principle and thus the principle will be upheld and peace and harmony will be restored in the

host nations between refugees and the citizens. Below are some suggestion that will ensure the protection of the principle and metamorphosis in the principle of non-refoulement can be avoided.

#### ***7.2.1.1 CURTAILMENT OF THE ANTI-IMMIGRANT SENTIMENTS TOWARDS THE REFUGEES***

The major issue that the government, the natives and the refugees face is the racial discrimination. This is the main reason why the natives develop an anti-immigrant mindset, leading to forcibly restricting refugees from entering the host country. Especially, the non-Muslim nations especially do not want to let the Muslim refugees in the country, as they fear islamophobia.

The anti-immigrant sentiment among the natives towards the refugees are at constant rise. So much so that the welcome of refugees by Angela Merkel's, the Chancellor of Germany, fueled support for the Anti-immigrant Alternative Party (AFD) in Germany. The hate towards refugees is growing so much that Germany along with some other populists across Europe is looking at refugees as terrorists, sex pests, disease carriers, threat to Christian values etc.

In this regard, we see that the Canadian government has established a Federal Anti-racism secretariat to ensure that there is no racial discrimination in the country. The government has also appointed a special representative to combat islamophobia. The government also celebrated days and months in remembrance and acknowledgment of various groups of people from different parts of the world who contributed in making Canada what it is today. Thus celebration of such days and ensuring there is no discrimination and there is no fear of islamophobia the community stay together and united.

Thus, the anti-immigrant sentiments need curtailment, as these will only lead to the development of antagonism, alienation and development of Anti- Western Sentiment among the refugees. At the same time if these refugees are given proper training, they hold the potential to further boost the Economy. History is full of refugee's contributions to the host countries. A great Example is how Britons, South Asian by root constituted only 2.5% of U.K's population but made 10% of the nation's output.

### ***7.2.1.2 PRIOR PREPAREDNESS OF THE HOST COUNTRIES***

Even though the inflow of refugees might occur over night and suddenly, the refugee crisis is not always unpredictable. Countries must be prepared with prior planning and back up, the moment there is an outbreak of humanitarian crisis, in the neighboring countries.

It is worldwide evident that when there is a conflict within one's country they escape to the first neighboring countries to save themselves and their families. For example, in the case of Myanmar, Rohingya community people escaped to Bangladesh in an outbreak of persecution. In an ongoing war between Russia and Ukraine, the majority of the refugees in the European Union settled in states like Poland, Romania, Hungary, Slovakia, the Czech Republic and Moldova.<sup>531</sup> The majority refugees in Ethiopia comes from South Sudan, Somalia, Eritrea,<sup>532</sup>

Some example of ongoing conflicts are the Internal Conflict in Myanmar since 1948, Russo- Ukraine war since 2014, Ethiopian Civil conflict since 2018, the Colombian Conflict since the year 1964, the Afghanistan Conflict since 1978, the Somali civil war- 1991, Allied Democratic insurgence- 1996, Nigerian Communal conflict- 1998<sup>533</sup> etc. Which simply means that more and more refugees will pour out from these countries with time. Hence, the neighboring countries can predict the same and be prepared.

Thus with the outbreak of wars, conflict in any country the neighboring countries can be ready with refugee inflow management plans as to where will be the located their roots of entry, finance, deploy civil servants, readiness of medical team and being alert. Being prepared before the arrival of the refugees will help the government of the host country to better manage the sudden inflow of refugees, the officials will be well aware of the plans. An example of countries being prepared for a crisis is Japan,

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<sup>531</sup>News European Parliament Asylum and migration in the EU: facts and figures | News | European Parliament (europa.eu)

<sup>532</sup>Ethiopia Refugee Crisis Explained Ethiopia Refugee Crisis Explained (unrefugees.org)

<sup>533</sup>List of ongoing armed conflicts. List of ongoing armed conflicts - Wikipedia (12/04/23)

where Japan always keeps institutional arrangements and resources ready as it suffers frequent earthquakes.<sup>534</sup>

### ***7.2.1.3 ACKNOWLEDGE THE HOSTING LIMITS OF EUROPEAN UNION'S STATES.***

At the beginning of 2022, there were approximately 446.83 million inhabitants in the European Union; around 23.7 million were non-Europe citizens. 37.5 million Were people born outside the European Union.<sup>535</sup> In addition, with the ongoing Ukraine and Russia war the number of refugees is most likely to only increase. This has exerted immense pressure on Europe's social services like housing, health care system, education and more. There is frequent local tension between the refugees and the natives, which is creating strain in the communities.

There is excessive burden in some of the host countries like, Germany, Sweden, France, Spain, Italy, Austria<sup>536</sup> etc. in some countries. Because of the demarcated border many European Countries are indulging into conversation over 'not my responsibility', with that, according to the recent poll by the European Union citizens, majority believes that the European Union is expected to end in the next twenty years.<sup>537</sup>

Despite the presence of the Cooperative arrangements of burden sharing amongst the member states of the European Union, the irony is that some member states push their responsibilities and do not want to accept any more refugees. Example is, a ferocious argument that broke out between Italy and France over a ship carrying around 230 migrants at the Mediterranean in November 2022. The ship-carrying migrant docked

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<sup>534</sup>World Economic Forum. HERE'S HOW JAPAN IS USING TECHNOLOGY TO MITIGATE NATURE. (Nov 1, 2022.) Here's how Japan is using tech to mitigate natural disasters | World Economic Forum (weforum.org) disasters

<sup>535</sup>EUROPEAN UNION. IN NUMBERS: HOW MANY NON-EU CITIZENS LIVE IN EUROPEAN UNION COUNTRIES? (19 April 2022). IN NUMBERS: How many non-EU citizens live in European Union countries? - The Local

<sup>536</sup>United Nations High Commissioner for Refugees (UNHCR) and UNRWA through UNHCR's Refugee Data Finder Refugee population by country or territory of asylum- European Union. Refugee population by country or territory of asylum - European Union | Data (worldbank.org)

<sup>537</sup>Daniel Boffey , MAJORITY OF EUROPEANS 'EXPECT END OF EU WITHIN 20 YEARS. (Wed 15 May 2019). Majority of Europeans 'expect end of EU within 20 years' | European Union | The Guardian

at France port of Toulon after weeks of finding a port to dock which would allow them to disembark. France had to fulfill its humanitarian duty because of Italy's incomprehensible decision on not accepting these people on the ship and not allowing the ship to dock. Italy on the other hand accused France for its incomprehensible behavior, as Italy has no obligation to accept these migrants.<sup>538</sup> With the United Kingdom to part its way from the European Union, there are various other instances, which shows that the European Union is dismantling.

Thus, perhaps with a workable plan to address the refugee crisis, the European Union can stand together with its solidarity amongst the member states.

#### ***7.2.1.4 BALANCE BETWEEN THE REFUGEE AND THE NATIVE POPULATION***

The ratio of old age dependency in the 27 states of the European Union is predicted to increase from 26 percent in the year 2010 to 53 percent by the year 2060. Which means there will be only two people of age between 15-64 for every one person age more than 65 years. In some other parts of the European Union states it is predicted that the age ratio could be even 60 percent by the year 2060, like the state of Bulgaria, Germany, Latvia, Poland, Romania and Slovakia and in the other parts of Europe the dependency could be 45 percent.<sup>539</sup>

The population of Copenhagen increased from 1.21 to 1.33 million between the year 1980 and the year 2019. The share of immigrants and their respective descendants increased from 6.3 to 22.9 percent.<sup>540</sup>

Accordingly, we see that the change in demography in the European Union is evident. When we talk about refugees and their welfare, we cannot and should not omit the

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<sup>538</sup>CGTN. ITALY AND FRANCE CLASH OVER MIGRATION POLICY. (11-Nov-2022. 21:08)  
Italy and France clash over migration policy - CGTN

<sup>539</sup>Roos Galjaard Bureau PAU. DEMOGRAPHIC CHANGE INTERREG IVC CAPITALISATION REPORT. (November 2014) <https://www.researchgate.net/publication/272163569>

<sup>540</sup>Marcin Stonawski, Adrian Farner Rogne, Henning Christiansen Henrik Bang, Torkild Hovde Lyngstad. *Ethnic segregation and native out-migration in Copenhagen*. August 18, 2021) Volume-29, Issue-2. 168–188. Sage Journal. Ethnic segregation and native out-migration in Copenhagen - Marcin Stonawski, Adrian Farner Rogne, Henning Christiansen, Henrik Bang, Torkild Hovde Lyngstad, 2022 (sagepub.com)

welfare of the host countries. Every country is unique and has a different culture, tradition and way of living. Thus, we must consider that the European social fabric remains as it is.

There needs to be a balanced refugee population and the native population and one should not take over the other. This can be prevented by awareness programs regarding birth control, and family planning. Recently the Rohingya refugees in Bangladesh have turned to birth control in the crowded settlement areas.<sup>541</sup> The population balance will prevent future frustration and anti-immigrant sentiments, and the fear of loss of jobs, culture, way of living, fear of loss of religion eventually leading to civil wars and internal disturbances.

#### ***7.2.1.5 PERSUADE THE COUNTRY OF ORIGIN TO TAKE BACK THEIR REFUGEES***

All attempts must be made by the countries to get back their citizens who left their country of origin to save their lives. Once the adversities have settled down and there is peace is restored back in the country. The government of the said country must make all attempts to bring back their citizens who left the country to save themselves for any violence. It is observed that once the refugees leave their countries they are settled in the new country and most likely do not return and the government does not show interest in calling these natives back.

However, this burdens the host countries and preexisting refugees do not leave place for the future refugees in need of shelter, as only a handful of refugees get the status or citizenship. This leaves some of the host countries burdened and struggling to manage their economy and society.

#### ***7.2.1.6 MODIFICATION OF THE 1951 CONVENTION***

Following modifications to upgrade the 1951 convention is suggested so as to keep the flame of the convention burning to ensure refugee protection in the future also.

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<sup>541</sup>WION News. BANGLADESH: ROHINGYAS REFUGEES TURN TO BIRTH CONTROL IN CROWDED SETTLEMENTS, EMBRACE FAMILY PLANNING. December 24, 2022. (1274) Bangladesh: Rohingyas refugees turn to birth control in crowded settlements, embrace family planning - YouTube



- ***Upgradation of the definition of refugee-***

Over the 73 years of its establishment of the convention, new developments have taken place and thus the definition of the term seems to be having a narrower coverage. According to the convention, a refugee is a person who has a well-founded fear of being persecuted for the reason of war, race, religion, nationality, membership of a particular group, having a different political opinion.

Along with the above mentioned, the definition of refugee must cover climate change refugees, sexual orientation refugees and other forms of refugee. As the changing environmental conditions are causing frequent floods, submerging of land areas, drought erosion and other kinds of natural calamities. It is leaving people displaced. Various other aspects are causing people to leave their countries to find refugees in other countries. They are Gender based refugees, who leave their countries due to gender inequalities and gender based violence. Other types of refugees that need inclusion are Sexual Orientation based discriminated refugees, some countries do not give people their rights for sexual orientation and hence they leave their country of origin to find shelter in the countries that do not question someone's sexual orientation.

With passing times and dynamic future developments, the list of kinds of refugees will only grow. Thus, the convention needs to make periodic upgradation in the definition of the term "Refugee".

- ***Upgradation in the Refugee convention-***

Since the whole issue of refugees is dynamic and there are constant developments taking place. The 1951 convention thus needs regular and periodic upgradation. To meet the requirements of the changing times.

- ***Association of the refugees***

The refugees do not have the right to association, thus, a legal right to association must be given to the refugee in the signatory country.

- ***Clear provision of burden sharing of the states-***

The convention must discuss in detail the burden sharing aspect of the countries, there is an unequal distribution of burden sharing among the European Union states. There are some states hosting the majority number of refugees and are overburdened with the inflow and the other shows no interest in sharing the burden. This is because there is no clear provision.

Thus, a clear provision must be made as to what number of refugees a state can host. Where should the extra number of refugees must be sent, and what sanction the states shall impose in case or do not abide with the provision. The aforementioned provisions must be made keeping in mind the geographical area of the state, their economic capacity of hosting the refugees

- ***Clear Provision with Regard to the off-Shore Refugees Must be Made-***

Many times the refugees who manage to escape their previous host states, or their own native states, are forbidden from entering some states. There are cases how the tampons are driven off shore and the refugees are not allowed to harbor their boats, leaving their lives at risk of death. They have to go from one state to another in search of shelter and many times this search results in death of the vulnerable groups in lack of food, water, and extreme weather.

Thus in every case the refugees must be allowed on land or harbor their boats first, on humanitarian grounds. Only after that, their verification and accordingly return must be processed.

- ***Convention must have a global appeal-***

An attempt to make the convention have a global appeal must be made. The 1951 refugee convention was formed in a specific time for redressing refugee issues of a specific region, especially that of European Nations. However, since then it has grown with time, but still it does not have a global appeal and is not binding on every state. Its working is limited only to some geographical areas.

The 1951 convention must be complete- when we talk about any refugee issues in a host country, we cannot talk about only the refugees when the host nation's citizens

equally are effected. On bare reading of the convention, the convention appears one-sided, with a sharp tilt towards the refugees only and not towards the host population. Hence, the convention must be clear and talk about the host nations along with the refugees. The convention must appear balanced by talking about the interest of both refugees and natives.

#### ***7.2.1.7 ENCOURAGE THE NON-SIGNATORY COUNTRIES TO UPHOLD THE PRINCIPLE OF NON-REFOULEMENT***

There are a total 195 countries in the world, out of which nearly 149 countries are either signatory to the convention or to its protocol. Iraq, Lebanon, Jordan and other countries in the Gulf region are non-signatory to the convention. In the southern and the Southeast Asia, countries like India, Bangladesh, Pakistan, Sri Lanka, Malaysia and Indonesia are non-signatory countries of the convention. Further, other non-signatory countries are Eritrea, Libya, Mongolia and Cuba, Uzbekistan, Guyana.

If we look at the global trends, we see that most of these countries do not have a much-defined border, like India and Pakistan. Moreover, they are either majorly developing countries and have limited resources, hence signing the convention is not considered by them. However if we look at the countries hosting the most amount of refugees, the list tops with some of these non-signatory countries only, like Lebanon, Jordan, Pakistan, Bangladesh.

However, these countries are often criticized for not signing the convention by the human rights watch. With the border disputes and limited resources, these countries are doing much beyond their capacities. Thus, these countries' efforts should be acknowledged and they must be encouraged to uphold the principle of non-refoulement.

#### ***7.2.1.8 PROMOTION OF FREEDOM OF INTERNAL MOBILITY OF REFUGEES IN THE HOST COUNTRY.***

There is a need to grant and promote the refugees the freedom of movement. As restricting their movement only creates other barriers from them making it even more difficult in integrating in the society, finding a job and knowing the culture. It further prevents them from being self-reliant and being dependent on the external assistance by the host government and by the donor communities, despite being capable.

Allowing their movement within the host country will help in better distribution of the refugee population which, otherwise remains concentrated to only a specific area, causing the increase in population, pollution and frustration amongst the natives of the areas. As such, concentration of population puts pressures on attainment of social services like food, shelter, medical facilities, jobs etc. An example of how concentration of refugees effects themselves and the host country is Bangladesh, where in there was a high concentration of refugee population in the area of Cox's Bazar resulting in population pressures, increased pollution causing various disease, there were frequent fires and floods and it was hard for the government to administer the area properly. However, Bangladesh can now be taken as a good example of distributing the refugee population by relocating them on the island of Bhasan Char and providing them with well furnished homes, means of livelihood etc.

On the same note we see Ethiopia which has adopted a policy called the "Out of Camp" policy which permits the movement of refugees in restricted situations. The Ukrainians in Europe have also been granted similar freedom of movement.

Another example on the same note is Turkey which has allowed Syrian refugees to freely move to many parts of the country where they can sustain themselves with minimum assistance and contribute to the economy by getting a job. On the same note, countries like Venezuela have allowed the refugees the freedom of movement across Latin American Countries.

Even though the 1951 Convention ensures refugees the right to move freely, refugees are often restricted in their movement with free will. According to the World Development Report 2023, by the word band nearly 22 percent of the refugees live in the camp areas and they are barred from moving out of the camp areas and sometimes even barred from submitting administrative requests for the same. Countries like Denmark, Sweden need to allow refugee movement.

#### ***7.2.1.9 SELF-RELIANCE OF REFUGEES THROUGH ACCESS TO THE LABOR MARKET***

The access to the labor market for the refugees and the opportunity to work and earn a living will help the refugees to become self-reliant, it will then help them adopt the new life and country easily with less time. However, in most countries these refugees

have to wait for a period of at least one year for verification documents and to do the other asylum related documents, before they get an access to the labor market. Meanwhile they remain dependent on the programs of the government of the host country, which creates burden on the government to bear the cost, at the same time it leaves the refugees thinking about the uncertain future. For example, the subsequent year of wait in Switzerland in between the years 1994 to 2004 shows that there was a reduction in the employment rate of 4-5 percent.<sup>542</sup>

There are some countries that allow quick permits to work. For example in Finland the asylum seeker has the right to see work post three months of submission of the asylum application provided you have a valid travel document or passport.<sup>543</sup> Countries like Uganda have helped refugees in becoming self-reliant, by giving a plot to the refugees for agriculture, if they have an agricultural background.

In the year 2018, Colombia under a program by Amnesty International, granted legal status and permit for employment to half a million undocumented Venezuelans, accounting for an increase of income of 31 percent.<sup>544</sup> Even though the 1951 Refugee Convention recognizes the legal right to work, that is gainful employment under Article 17 and 18 only a handful of countries allow the asylum seekers to work. According to the World Development report, only 75 out of the 145 signatory countries to the convention grant the right work.

Thus, it is suggested that after the initial documentation and background check, during the pendency of the asylum application as long as the decision does not come as to whether a person is a refugee or not, a person must be allowed to work. This will help in easy integration and less time on training of language classes and adapting the new culture and way of living which otherwise takes a lot of time, cost and efforts. The measure will also prevent the frustration in people waiting for the decision on their asylum applications, keep them positively engaged, master the new art or new work.

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<sup>542</sup>Jens Hainmueller, Dominik Hangartner, and Duncan Lawrence: *When lives are put on hold: Lengthy asylum processes decrease employment among refugees*. 3 Aug 2016. Vol 2, Issue 8. When lives are put on hold: Lengthy asylum processes decrease employment among refugees | Science Advances. (5/5/23)

<sup>543</sup>Turvapaikka Suomesta. ASYLUM IN FINLAND. Asylum in Finland (04/05/2023). (infofinland.fi)

<sup>544</sup>The World Bank. WORLD DEVELOPMENT REPORT, 2023. (5/5/23) Refugees- Chapter7, Managing with a medium-term perspective. content (worldbank.org)

### ***7.2.1.10 INCLUSION OF REFUGEES IN SOCIAL SERVICES.***

When a country is hit by a humanitarian crisis, many people leave their homes and jobs. A person entering a host country as a refugee might be a doctor, a lawyer, a teacher, a cook, an artist etc. with knowledge, experience and different techniques. Thus, the skilled professionals and workers must be included in the social services and the others can be trained in their respective fields of interests. They should be at least allowed to work in the areas of refugee settlements or the camps. This will generate jobs for the refugees themselves, it will also reduce the cost of the government, which otherwise it spends on social services.

The outbreak of COVID 19 has shown how there can be a great disparity when it comes to providing the social services to refugees in the refugee camps. Nearly in all the camps in different countries people were effected out of COVID 19, camps in Cox's Bazar in Bangladesh, Greece, Lesbos, Lebanon, Syria and Palestine were all effected. There was shortage in food availability hygiene and delay in vaccination.<sup>545</sup> Thus, the COVID 19 outbreak of the pandemic has taught us to be ready for any outbreak of another pandemic, pared for an emergency is important.

Allowing the professional refugees to work in the camp and the areas of refugee settlement will help, take up the work in the shortage of doctors, engineers, school teachers etc. in times of need. It will further help curtail the spread of the disease. In addition, it will help the refugees become self-reliant and contribute to the host nation.

### ***7.2.2.11 SPECIAL ATTENTION TO THE ATTENDED AND UNATTENDED CHILD ASYLUM SEEKERS***

Children are the nation builder of the future. Unwantedly they have seen, faced and experienced violence from a very young age. This horrific image of the negative world that they had seen and experienced must be erased and all attempts must be made to develop them as positive, productive and happy, confident citizens. Out of

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<sup>545</sup>MÉLISSA GODIN. COVID-19 OUTBREAKS ARE NOW EMERGING IN REFUGEE CAMPS. WHY DID IT TAKE SO LONG FOR THE VIRUS TO REACH THEM?.( Oct, 9, 2020 ). COVID-19 Outbreaks Are Now Emerging in Refugee Camps. Why Did it Take so Long For the Virus to Reach Them? (yahoo.com)

the total population of the refugees, children account for almost half of the refugee's population.

According to the UNHCR data for the year 2020-2021 the enrolment rate of children for pre-primary level was 42 percent, for primary level it was 37 percent and for secondly education it was 68 percent. The literacy rate is thus less, therefore focus must be made to provide quality education, and these children have the potential to contribute highly in the development of the host country when they grow up. A good quality education will prevent them and the host nation from becoming a lost generation.

Unattended minors or children should be carefully attended by the institutions of the host countries responsible for them. Along with providing quality education, it must be assured that these unattended minor children are not forced into child labour, early marriage, forced marriage, should be protected from child sex abuse, gender based violence, racism, human trafficking, degrading treatment, malnutrition's, etc. Mental health of the unattended children should be taken care of and they should be given proper and periodic counseling. They should be made technologically equipped and along with their school learning additional skills like pottery, art and craft, cooking, and depending upon their age and capabilities of learning additional skills must be taught which they will master by the time they complete their basic education. Having an additional skill will boost their confidence, engage them happily, develop their creativity and will give them an edge on finding jobs quickly. Along with the other facilities of food, water, clothing they should also be given some pocket money.

#### ***7.2.2.12 HEALTH CARE SERVICES FOR REFUGEES AND ASYLUM SEEKERS***

Screening of refugees on entry are important as per the guideline of the WHO<sup>546</sup> must be carried out to save the refugee and to stop the spread of any infectious disease or outbreaks of a pandemic by a virus brought from any country.

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<sup>546</sup> WHO-23 Refugee and migrant health: European region. Refugee and migrant health: European region. (25 Sept, 2015). Refugee and migrant health: European region (who.int)

Almost all the countries assure medical care for refugees. In Every country, there are health care systems that are run by external actors like Charity, NGOs and International Organizations such as WHO, UNHCR and IOM. In Europe, even though the European Laws and the European Union State laws provide provision for the health care facilities, it is absorbed that when it comes to the actability, there is often discrimination and inequality.<sup>547</sup> There should be no discrimination in providing health care to refugees and asylum seekers on the basis of race, sex, religion, nationality, language, age.

The disparity in the equal accessibility of medical facilities can be facilitated by including the refugee professional in medical and nursing lines. In the recent approach of including refugee in the national delivery system has been implemented by countries like European Union, Colombia, and Turkey

#### **7.2.2.13 SPECIAL PROTECTION OF HIGH VENERABLE REFUGEE GROUPS.**

Women, children and the LGBTQ communities are the most vulnerable group of refugees. While there transit from the country of origin to the host counties they are often subjected to gender based violence, forced marriage, child marriage, rape, physical violence, physical assaults etc. unfortunately they are not even included in the definition of refugees hand hence are out of the orbit of protection of the 1951 convention.

They often have to bear the crime against them and let go of the offender. There is almost no provision and forum to complain at, while they are on the escape from their country of origin. Thus, it is suggested to make women cell to register the crime and to take necessary actions once the victim arrives in the host countries. This will create deterrence in the fellow men refugees and safety and crime against during the transit shall be curtailed.

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<sup>547</sup>Adele Lebano, Sarah Hamed1 , Hannah Bradby, Alejandro Gil-Salmerón, Estrella Durá-Ferrandis, Jorge Garcés-Ferrer, Fabienne Azzedine, Elena Riza, Pania Karnaki, Dina Zota6 and Athena Linos.. *Migrants' and refugees' health status and healthcare in Europe: a scoping literature review* (30 July, 2020). Migrants' and refugees' health status and healthcare in Europe: a scoping literature review | BMC Public Health | Full Text (biomedcentral.com)



#### **7.2.2.14 SANCTION ON THE STATES FOR FAILING IN CONTROLLING THE OUTBREAK OF VIOLATION**

Many a time persecutions happen within the state, resulting in mass movement of people to save their lives forcing them to move to another state or region. The state concerned has all powers and many a times is capable of controlling the same. However, at times it is the states, inabilities and negligence that leads to outbreak of genocides or persecution of people based on ethnicity, race, religion etc.

In case of such failure, the state must be imposed with sanction, fine, or both. Such sanction to the default states shall set a precedent for the others.

#### **7.2.2.15 REFUGEE RELOCATION IDEA AS A SOLUTION**

A separate land simply means an area or a particular place or piece of land, colony or resident area, located within the country. Dedicated to settle or to resettle the refugees that enter the host country. The idea is to keep the host population undisturbed, and unaffected by any refugee crisis or by in-flowing of refugees otherwise. This will enable the government to only focus on the settlement, resettlement, development, welfare of the refugees.

Implementation of Bangladesh's refugee relocation plan has the potential to address several refugee related issues in the European Union also, in other parts of the world in need of such a plan.

Following are some of the points why the idea of separate land can be a durable future solution for the European Union Refugee crisis and any other crisis occurring anywhere around the world following refugee issues will be resolved:-

- ***The principle of non-refoulement will not be subject to metamorphosis-*** we have seen in the previous chapters how the principle of non-refoulement has been metamorphosed both by the refugees and the government of the host countries so as to suit their needs. However, with the implementation of the new idea of separate land, the metamorphosis on the principle of non-refoulement will be less to nil.

- ***Arability of homes, schools, hospitals etc.-*** the land must have homes for refugees, hospitals, schools, training centers, malls, recreation centers, cultural centers, police stations, jails, etc. It must have well connected roads, solar energy, and wind energy for electricity generation; it must also have sources of income in forms of small cottage industries, psi-culture, agriculture, animal husbandry, pottery, etc. Facilities like clean drinking water, medical facilities, education and training. It must have lakes, and other forms of water tanks and supply.
  
- ***Army to administer the refugee land-*** the army of the host countries could be in charge of the administration of the refugee land, on behalf of the government of the host country.
  
- ***Who could be the dwellers of the refugee land-*** any person escaping wars, persecution, conflict could directly come to the refugee land for shelter. Besides this, other refugees entering the mainland host country could be relocated to the refugee land from the mainland host country.
  
- ***How will a separate land help the government of the host country -*** the sudden inflow of refugees coming in large numbers often settles down in the remote areas of the country, and depending upon from where they enter at times they settle in different corners and parts of the country, thus making it difficult for the host government to send aid to the distanced camps. With the establishment of the refugee land the administration for the government will be very easy. It will save time, cost and effort.
  
- ***How will a separate land help the refugees-*** witnessing conflicts, loss of their loved ones, their home, jobs, and dreams, refugees leave everything behind, they also face fear, ill-treatment, exploitation on their journey towards the host country. Further after they reach the host country, their miserable lives in the camps, emotionally breaks the refugee, they are left to live each day in a dark uncertain future. Nonetheless, with the knowledge of the refugee land, once a refugee leaves his country of origin, all of these miseries, speculations, towards their future will subside and they will have a tray of hope.

- ***Capacity of the refugee land*** - the capacity of the refugee land would depend on the country's own geographical extension of area, and on the economic strength of the country. However, in all cases, infrastructure with the capacity to host 500-1000 people must be kept ready, which could be increased depending upon the number of refugee inflow.
- ***Duration of their stay on the refugee land-*** just like in any other host country, the refugees on the refugee land would stay temporarily or permanently. At the same time, the host countries would persuade the refugee country of origin to settle its conflict and take its native people back.
- ***Identity of the refugees on the refugee land*** - why on their way to escape violence and conflict the refugees leave many things behind, including their identity. Thus as soon as they enter the host nation, on the refugee land they should be issued a fresh digital identity card after the verification of their previous identity.
- ***Easy integration-*** The one reason why some refugees have difficulty integrating into the host country and its way of living is that they have a missing sense of belongingness towards the host country, this often becomes the root cause of some refugees indulging into activities like terrorism and different crimes.
- ***By what laws will these refugees on the refugee land will be governed with-*** they will be governed by the law of the land of the host countries just like the other parts of the host country is governed
- ***Reduction in conflict and clashes-*** frequent clashes can often be seen between the refugees and the natives of the host countries on the issues of difference in culture, way of living, difference of ethnicity, over job issues and other reasons. This has led to the anti-immigrant sentiments of the natives towards the refugees, further leading to attacks on refugees and then the counter attacks by the refugees. However, on the separate land where only refugee will stay, all of these issues will be resolved.

- ***Efforts of the government will be saved-*** currently some of the European Union states are putting a lot of effort and spending a lot in fencing their borders with razor-wires, increasing patrolling, constructing walls, so as to restrict the entry of refugees in the mainland. However all these efforts of the European member states will be saved. Also the lives of the refugees will also be saved who want to push themselves and enter the host country by illegal means, causing injuries to themselves, which at times also result in fatal.
- ***When a refugee can enter the main land-*** Along with his Identity card, a refugee would be allowed to enter the mainland host country as per his requirement of any administrative work, jobs, travel, to meet family relatives etc.
- ***Non-discrimination, non-exploitation for refugees-*** since the refugees on the land will manage their own work; they will not be subjected to exploitation and discrimination at the hand of the host country.
- ***Courts and tribunals-*** the refugee land will have tribunals and courts to decide disputes and crime on the refugee land. Further, the culprit will be subjected to punishment and jail, situated within the land.
- ***Will a separate land for refugee land resolve all issues of refugee and the host country-*** no, the idea will work best along with the existing laws and policies.

The European Union Member States arguments over the burden sharing of refugees and where locate the huge sudden inflow of refugees is affecting the European solidarity. We have seen in the present research that, a separate land for refugee or the refugee relocation idea of Bangladesh has gone a long way in addressing some the very common issues of refugees which otherwise would not have been addressed.

A separate land, be it, (a small area, within the state, outside the state or on another island (which is within the state control)), can be the new age solution to address the refugee issue. The successful completion of two years of the Bangladesh refugee relocation enables us to see the relocation idea as a future solution to the majority of the refugee related issues.

Thus, it should be made mandatory for every country to have a separate refugee area or land. A mere separate land will solve many issues in question, and will end the never-ending debates.

#### ***7.2.2.16 ADOPTION OF PRIVATE SPONSORSHIP PROGRAM***

The private sponsorship program has been carried out by the Canadian government since the year 1979 making it over four decades. The Canada's Global Refugee Sponsorship initiative was subsequently launched in 2016 to help and inspire other countries. The government aims to facilitate Improvement of overall refugee resettlement by including the private citizens, communities and business, for refugee resettlement. Strengthening the host community to welcome refugees, and Increase a broader and healthy discussion to support and protect refugees. Canada has managed to resettle nearly 300,000 refugees until now.

With Canada's sponsorship program, we see both the government and the citizens of the nation working together towards refugee hosting and their integration in the society. The initiative makes it easy and comfortable for the refugees to integrate. Soon it takes less time to understand the culture, the way of living and to find a new job, residence etc. The program reduces the fear of the unseen future that otherwise the refugees keep wondering once they are kept in the camp area.

Many times a person's relative living in a different country where there has been an outbreak of a humanitarian crisis is unable to, or the relative in the safe country is unable to call them in the safe country where they are living. However, through the program that sponsors a known refugee, the family living in Canada call their family, relative, or friend to Canada in case of an outbreak of crisis in their country.

The program has influenced some of the commonwealth countries like the United Kingdom and Austria.<sup>548</sup>

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<sup>548</sup> Private Sponsorship of Refugees Program. Private Sponsorship of Refugees Program - Wikipedia

### **7.2.2.17 CONSIDERING REFUGEE AS A BOON AND NOT BURDEN**

All countries, after letting in the refugees, work at their integration and providing employment and further using the human resource that the refugees bring with them in the development of the country. However, in the recent past European Union states are bushing refugees back, considering them to be a burden.

In this regard, the new German government policies are applicable, where in the government has besides providing the basic requirements to the refugees, has sped up the asylum procedure, is constructing more houses to accommodate them. The government has also reduced the waiting period of granting German citizenship from eight years to three years. The government is also letting the refugees host multiple citizenships. The government has made all efforts to maintain equality in the society, which would reduce the gap between the have and the have-nots.

Ever since the first historic displacement of people, notably the Huguenots (French Protestants), to the European Union Refugee Crisis, until date, there is a constant quest for a feasible and long term solution for refugees, by the states around the world. The laws and policies both at the national and International levels have helped address the refugees up-till now. However, with the changing time and new development, shortcomings have developed in the 1951 Refugee convention and are not able to address the new emerging, large scale, refugee issue today. Thus, the search for more durable solutions for managing the refugees and the refugee crisis is still on. On the said issue, the UNHCR has come up with a durable solution for refugees and for other persons of concern. Further, the researcher has also suggested some durable solutions that possibly can go a long way in addressing the refugee concerns. They are as follows:-

Besides the above states suggestions, the existing durable solutions suggested by the UNHCR. (framework for durable solution for refugees and persons of concern) also needs to be implemented to address the refugee issues which are stated below:-

‘The target of framework for durable solution, by the UNHCR is to achieve through- *Development Assistance for Refugees (DAR), the Repatriation, Reintegration,*

***Rehabilitation and Reconstruction (4 Rs) and the Development through Local Ingratiation.*** The sharing of burden and the responsibility more equitably and build capacities to receive and protect refugees also to redouble the search for a durable solution for refugees.

The UNHCR's Global Consultations on International Protection, focused on the tool of protection available to the International community and to those in need of development of global management of refugee problems. In October 2002, during the 53<sup>rd</sup> session of the Executive Committee of the High Commissioner's Programme (ExCom), the High Commissioner called for development of such tools, in the form of multilateral special agreements to complement the refugee convention of 1951. These tools were termed as the Convention Plus.

#### ***“CONVENTION PLUS” AGREEMENTS***

The 1951 Refugee Convention and its 1967 Protocol, lays the foundation of refugee protection. It is the most essential framework for refugee rights; however, the convention alone is not sufficient. We need to clarify the approaching responsibilities to promote burden-sharing responsibilities of the state. Based on the High Commissioner's own suggestion, the convention plus agreements, identifies the following subjects for consideration.

- Comprehensive plans to ensure effective and predictive response to mass influx.
- The development assistance is targeted to achieve more equitable burden-sharing for the promotion of self-reliance of refugees in:-
  - Countries hosting a large number of refugees
  - Countries of origin in the context of reintegration
  - The host communities facilitate integration in remote areas.
- To establish multilateral commitments for the resettlement
- The role and responsibility of the refugee's country of origin, transit and destination in “irregular” or “secondary movement” situations.

#### ***DEVELOPMENT ASSISTANCE FOR REFUGEES (DAR)***

We need durable solutions for refugees, mainly because of three factors. The Development Assistance for Refugees (DAR) aims to address the three factors they

are, Firstly - the refugees are not part of the host government's political consistency and therefore they are not included in the nation's Development Plans. Secondly- refugees once enter the host country, they settle in remote areas, which might not be on the host government's priority list. Thirdly, they are not part of the activities undertaken by the development actors. The DAR aims to achieve the following:-

- Sharing of the burden with the host countries
- Compensation for burden aspect of host community
- Development of host countries
- Development of the host community
- Improvement in the gender equality, dignity and quality life of refugee.
- Self-reliance of refugees, particularly of women by the means of empowerment and enhancement.

Thus, the above-enumerated works of the DAR will lead refugees to a durable solution that is either repatriation of their native country, or local integration in the asylum country, or resettlement to a third country.

➤ ***Repatriation***

Meaning of repatriation is to send or bring something or someone. Post the conflict in the country of origin, the High Commissioner proposed integration approach known as the "***Repatriation, Reintegration, Rehabilitation and Reconstruction (the 4 Rs).***" the aim is to make allotment of greater resources so as to create a conducive environment inside the refugee's country of origin, to not only to prevent the mass outflow, but also to facilitate sustainable repatriation. Initiative like this is being piloted in Eritrea, Sierr Leone, Sri Lanka and Afghanistan with the aid of the government and other development actors like the UNDP, World Bank, UNICEF and WFP, also with the help of the donor community and bilateral aid agencies.

➤ ***Local Integration***

For the viable integration of refugees in the asylum countries the High Commissioner has proposed strategy, named as the "***Development through Local Integration (DLI).***" when the states aims to provide opportunities for gradual refugee integration, the DLI solicit additional development assistance to attain durable solution.



➤ **Resettlement**

Resettlement is a more effective tool of burden sharing. It helps in achieving a more equitable sharing of burden and responsibility and helps in building capacities to receive and protect refugees and also helps in resolving refugee problems on a durable basis.<sup>549</sup>

Beside the above-mentioned framework for durable solutions for refugees, the Global Compact on refugees is another durable solution.

➤ **Refugee Resettlement To a Third Country**

Resettlement is the transfer of refugees from the country where they have taken asylum to another state, who has agreed to admit these refugees and grant them permanent residence.<sup>550</sup> The definition of resettlement according to the UNHCR is the selection and transfer of the refugees from the state where he has sought refugee's protection, to a third state, which has agreed to admit them as refugees, with a permanent residence status. The status provided by the third states ensures protection to refugees against refoulement and settles the refugees, their families or their dependents, with the similar set of rights enjoyed by the residence like access to civil, political, economic, social and cultural rights. These refugees carry with themselves the opportunity of becoming the naturalized citizens of the country where he resettles. The resettlement countries have set up regular refugee resettlement programs, and have agreed to take in a certain number of refugees each year as submitted by the UNHCR. The concerned government of the resettlement country plays the role of maintaining effective resettlement and provides services and support to assist the resettled refugees to integrate into the new community.

**Who can be resettled?-** Individuals who are determined to be considered refugees under the UNHCR's mandate, for whom resettlement is the ultimate durable solution and who fall under the UNHCR's resettlement submission categories, are resettlement by the UNHCR. The resettlement submission categories people includes, the ones in

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<sup>549</sup> UNHCR. Framework for Durable Solution for Refugees and Persons of Concern. UNHCR - Framework for Durable Solutions for Refugees and Persons of Concern

<sup>550</sup>UNHCR. Resettlement UNHCR - Resettlement

need of legal and physical protection, survivors of torture, violence, medical need, women and girls at risk, people for family reunification, children and adolescents.

***How are the refugees resettled by UNHCR-*** for the resettlement the UNHCR staff will first verify the registration and refugee status of a person referred for resettlement, accordingly they will set up an appointment for interview. Following the interview a Resettlement Registration Form (RRF) will be submitted by the staff of UNHCR. The UNHCR will then identify a suitable country for resettlement, and after a medical screening by the IOM. They will be given orientation before the departure, passport of the concerned country or some other travel document if necessary and all such necessary documents including the transit and entry visas. The organization and finances of travel is looked after by the resettlement country, either in total or under the refugee government loan scheme.<sup>551</sup>

The UNHCR statute and the United Nation General Assembly Resolution sees the resettlement as one of a durable solution. However, out of the 20.7 million refugees to the UNHCR, at the end of 2020, around the world, only less than one percent of them are resettled each year.<sup>552</sup>

➤ ***The Global Compact on Refugees***

The idea of Global Compact on Refugees was introduced by Sir Ban Ki-moon in the year 2016, in his report, *In Safety and Dignity*.<sup>553</sup> ‘To reduce or to slow down the refugee movement the Global Compact of Refugees or the Refugee Compact has been introduced and it is seen as a way to reduce reasons leading to displacement and a way to protect and prevent people from leaving their homes into the uncertain unseen strange world. The proposed new mechanism of the Global Refugee Forum will certainly help in managing the refugee inflow. However, there are certain shortcomings in the refugee compacts; they are that it avoids the very mention of the cause of the refugee inflow. It appears to be diluting the principle cause of international refugee law, it may weaken the protection shield of women and children,

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<sup>551</sup>UNHCR. Information on UNHCR Resettlement . UNHCR - Information on UNHCR Resettlement.

<sup>552</sup>UNHCR. Resettlement UNHCR - Resettlement

<sup>553</sup>Thomas Gammeltoft-Hansen, *The Normative Impact of the Global Compact on Refugees*. IJRL, (2018,) Vol 30, No 4,605-610

it falls short on the mechanism of responsibility sharing, etc. What is needed is a different social and political dimension to evolve a better humanitarian response to the global refugee problem of the 21<sup>st</sup> century and the future. The refugees should be seen as an agent of a progressive democratic, and just global order and not otherwise.<sup>554</sup>

In the year 2016 European Union, a number of other states, the World Bank and other international donors adopted two compacts with the countries hosting refugees, like Jordan and Lebanon. Each of these compacts aimed at securing refugee rights, and livelihood opportunities in Jordan and Lebanon, on the basis of the material and technique supports, international trade and export support benefits. The European Union has negotiated compacts with various third countries as a part of partnership framework under the auspices of the European Agenda for Migration. These compacts are just like intervention mechanisms below the existing international agreements, for example the European Union Association agreements, these agreements are easy to adopt quickly, without the involvement of the European Parliament. The Global Compact has a non-binding status; however, that does not mean that it cannot play a role in the ongoing normative development of the International refugee law. The flexible character of the soft law instrument like the Global refugee Compact can further help in overcoming the traditional boundaries that are associated with International Law, to allocate accessibility to private sectors, international organization, and non-governmental organization.<sup>555</sup>

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<sup>554</sup>BS Chimni\* *Global Compact of Refugees: One Step Forward, Two Steps Back*. (Dec, 2018) IJRL, Volume- 30, Issue- 4, 630–634. doi:10.1093/ijrl/eey067

<sup>555</sup>Thomas Gammeltoft-Hansen, *The Normative Impact of the Global Compact on Refugees*. (2018) International Journal of Refugee Law, Vol 30, No 4,605-610

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