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A Brief Study of the Social Positioning of Refugees in the International Accords Related to Human Rights

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ABSTRACT

In the era of Globalization, humans are migrating from their territory for the sake of education or livelihood for their benefit, the host nations welcome them wholeheartedly. These migrations often have positive implications for the host nation's economy. But not all migrations are primarily for livelihood but for protecting their life. A person withholds his 'right to life' irrespective of his citizenship can never be withdrawn without the due process of law. In history, it is observed that humans have fled from their country due to violations or danger to their human rights where their subsistence was at peril. With time, migrations have been recognized as a danger to the host state which had disagreements due to the increase in population, security of the state, and providing livelihoods to the migrants as a concern. In due course, nations started adapting their reservations towards the acceptability of these migrants in their territory. After the establishment of the United Nations in 1945, the issue underwent several discourses to agree on a uniform practice for the nations worldwide to avoid any disparity violating the human rights of the migrants. The author has focused on the different conventions and protocols available to these migrants to seek protection of their life.

Keywords: *United Nation, Human Rights, Right to Life, Migration, Territory.*

I. INTRODUCTION

"Human rights are something you were born with. Human rights are your rights given by divine. Human rights are the rights that are recognized by all nations of this earth"

- **Malcolm X**

Over the past decades, specifically from the beginning of twentieth-century humanitarian crisis led to the problem of refugees to a greater extent. Primarily refugees under international law were dealt with the principles of customary practices of States under International law. With the effect of World War II, millions of people fled from their home countries, though it was not unprecedented, it made refugees a matter of grave concern globally in the wider aspect. The

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major issue regarding refugees was admission and protection of refugees in the host states which eventually affect host state sovereignty. In 1948 when UDHR for harmonizing basic human rights of individuals was enacted by the UN, Art. 14 gave the rights of asylum to persons fleeing from persecution, but still refugees were not specifically dealt with any law till then, which was the need of the hour. But the problem did not remain unnoticed for long and by the year 1949 it gained the attention of UN, which leads to the drafting of Convention on the Status of Refugees 1951 and afterward Protocol 1967 on Refugees, some states also adopted regional instruments for the protection of refugees.²

The status of refugees under international instruments will be discussed in the following paragraphs in detail.

II. CONVENTION ON THE STATUS OF REFUGEES 1951

World War II resulted in the displacement of millions of people which was a grave concern for humanity. For curbing such situation an Ad-hoc body IRO was established by UN, but it fails to resettle and repatriate refugees adequately before its termination. In the year 1949 UN established an Ad-hoc committee for preparing the draft on formulating legal status of refugees. The General Assembly established UNHCR as succeeding body of IRO, for fulfilling aims and objectives of 1951 Convention on the Status of Refugees.

In June 1951, at Geneva, after a prolonged discussion for weeks in the presence of 26 countries, the Convention was drafted. In July 1951 in a special meeting at the UN, it was approved. Later in December 1952, Denmark became the first country to ratify. In present, 145 countries are parties to the convention.³

Art. 1 of the Convention on the Status of Refugees 1951 as modified by the Protocol 1967 defines a refugee as follows:

“ A 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. ”

Convention incorporates certain rights and duties on refugees, as well as on states party to it. It

²Rafiqul Islam and Jahid Hossain Bhuyain, *An Introduction to International Refugee law*, 13-15, Martinus Nijhoff Publishers, Boston, (ed. 2013).

³ Chapter V – “Refugees and Stateless Persons”. United Nations Treaty Series. (22 July 2013).

is well known that rights and duties are co-related to each other jurisprudentially. The principle behind the observance of obligations under the international law is on the basis that treaties once enforced are binding on the state parties and must be performed in good faith, i.e. *Pacta Sunt servanda*.⁴

Convention provides certain rights to refugees which has to be attributed to them as a matter of basic human rights, also refugees are bound to foster respect to their host countries as a matter of protecting host country sovereignty and security because if they will be a threat to host country then their right to stay in the country will vanish with the procurement of sufficient evidential factor for the same.⁵

There are certain obligations on the states, but the most prominent among all is the notion of not returning refugees from their country, *i.e* non-refoulement, which will be discussed further in detail. The challenge in the admission of refugees is crucial because states have certain contentions such as, in case of developing nation, they might not be able to provide adequate facility to refugees or in case of security threat to the country or because of demographic character of the concerned state.⁶

Some of the important rights and obligations are pointed below:

- General Obligations: every refugee must conform to the laws and regulations of the host country as well as measures taken for the maintenance of public order.⁷
- Non-Discrimination: no refugee will be discriminated by the Contracting States as to race, religion or country of origin.⁸
- Religion: refugees will have the freedom to practice to their religion and religious education to their children by the Contracting States at least as favorable as to their nation.⁹
- Exemption from reciprocity: refugees will be provided with the same rights as given to the aliens, except where the Convention is more favorable. Contracting State must fulfill rights and benefits for which they are already entitled, in the absence of reciprocity, from the date of entry into force of this Convention for that State.¹⁰

⁴B. S Chimni: *International Refugee Law, A Reader*, 55-56, New Delhi, Sage Publications, (2000).

⁵UNHCR, the 1951 Refugee Convention, <http://www.unhcr.org/1951-refugee-convention.html>.

⁶Natalie Muller, *Refugee Convention of 1951 still crucial cornerstone of human rights*, (July 28, 2016), <http://www.dw.com/en/refugee-convention-of-1951-still-crucial-cornerstone-of-human-rights/a-19429093>.

⁷1951 Convention, Art. 2.

⁸ 1951 Convention, Art. 3.

⁹ 1951 Convention, Art.4.

¹⁰ 1951 Convention, Art.7.

- Provisional measures: Contracting party can take measures which it considers essential in time of war or other grave circumstances which is essential to the national security.¹¹
- Personal status: refugee rights previously acquired and depending on his personal status, as in case of marriage, shall be respected by a Contracting State.¹²
- Movable and Immovable Property: refugees will be given not less favorable treatment that is given to aliens in the same circumstances related to their property.¹³
- Artistic rights and industrial property: refugee will be given as same rights as the nationals of his habitual residence.¹⁴
- Rights of association: in regard to non- political and non- profit-making associations and trade unions, same favorable treatment as given to nationals of a foreign country.¹⁵
- Access to courts: a refugee shall have free access to courts on the territory of all Contracting States.¹⁶
- Wage-Earning employment, same treatment will be given as given to nationals of a foreign country.¹⁷
- Self-employment: a refugee can engage on his own account in agriculture, industry, handicrafts, and commerce will be given not less favorable treatment than aliens.¹⁸
- Liberal Professions: refugees will not be given less favorable treatment which is accorded to aliens in same circumstances.¹⁹
- Rationing: same treatment will be given to refugees as nationals.²⁰
- Housing: refugees will not be given less favor than aliens but with the subject to laws or regulations or control of public authorities.²¹
- Public education: in the matter of elementary education the same treatment as nationals but in case of higher education then not less favorable than aliens.²²

¹¹ 1951 Convention, Art. 9.

¹² 1951 Convention, Art.12.

¹³ 1951 Convention, Art.13.

¹⁴ 1951 Convention, Art.14.

¹⁵ 1951 Convention, Art.15.

¹⁶ 1951 Convention, Art.16.

¹⁷ 1951 Convention, Art.17.

¹⁸ 1951 Convention, Art.18.

¹⁹ 1951 Convention, Art.19.

²⁰ 1951 Convention, Art.20.

²¹ 1951 Convention, Art.21.

²² 1951 Convention, Art.22.

- Public relief: same treatment as nationals for public relief and assistance.²³
- Labor legislation and social security: same treatment will be given which is accorded to their nationals.²⁴
- Freedom of movement: will give the right to choose their place of residence to move freely in its territory, subject to any regulations applicable to aliens generally.²⁵
- Travel Documents: The Contracting States will issue travel documents to them for traveling outside their territory except in case of reasons of national security and public order.²⁶
- Identity Papers: refugees will be provided with identity papers who do not possess valid travel documents by the Contracting State.²⁷
- Fiscal Charges: no such duties, charges or taxes will be applicable to refugees.²⁸
- Transfer of Assets: if resettlement of refugees is going then in conformity with laws and regulations they will be allowed to transfer their assets.²⁹
- Refugees Unlawfully in the Country of refuge: the Contracting States shall not impose any penalty on refugees entering illegally, due to the reason of fleeing from persecution.³⁰
- Expulsion: no refugees will be expelled from territory except on the save ground of national security or public order. Also, if such expulsion is persuaded it must be done in accordance with due process of law and a reasonable period of time will be given to refugees for seeking shelter to any other country.³¹
- Naturalization: The Contracting State will as far as possible will facilitate the assimilation and naturalization of refugee.³²

III. NON REFOULEMENT

This state obligation is of vital importance because in that situation a contracting state cannot return a refugee where he/she has the threat of being persecuted. This obligation gained its

²³ 1951 Convention, Art.23.

²⁴ 1951 Convention, Art.24.

²⁵ 1951 Convention, Art.26.

²⁶ 1951 Convention, Art.28.

²⁷ 1951 Convention, Art.27.

²⁸ 1951 Convention, Art.29.

²⁹ 1951 Convention, Art.30.

³⁰ 1951 Convention, Art.31.

³¹ 1951 Convention, Art.32.

³² 1951 Convention, Art.34.

sanction by the virtue of Art. 33 of 1951 Convention, but it has been recognized by the states as a customary practice by them.³³ non-Refoulement protects refugees from being returned to a place where their human rights have been violated. By agreeing to the 1951 Convention a state party to it, submit its consent to protect the rights of refugees.

According to Art. 33 (1) of 1951 Convention:

“No Contracting State shall expel or return (“refoule”) 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.”

On the regional level the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 gives expression in binding form to a few important principles relating to asylum, including the principle of non-refoulement.³⁴

According to Art. III (3):

“No person may be subjected by a member State to measures such as rejection at the frontier, return or expulsion, which should compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Art. 1, paragraphs 1 and 2.”

Again, Art. 22(8) of the American Human Rights Convention adopted in November 1969 provides that:

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

But these rights not were of any detriment to the Contracting Parties because under Art. 33 (2) provides an exception where states can refuse refugees if they do not meet the criteria given under that clause, which is as follows:

Art. 33 (2) it provides:

“The benefit of the present provision [i.e. Art. 33(1) referred to above] may not however be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a

³³ UNHCR, The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, (Jan 31st1994), <http://www.refworld.org/docid/437b6db64.html>.

³⁴UNHCR, Executive Committee of the High Commissioner's Programme Twenty-Eighth Session, (Aug 23, 1977), <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>.

particularly serious crime, constitutes a danger to the community of that country.”

This Art. was manifest with the idea of protecting of refugees as well as the national security of the Contracting State. In the case where a refugee has been returned to their home country, it has to be cautiously examined taking into consideration facts and circumstances of the home country of refugees. If it did not satisfy that there is no threat of persecution anymore, then the host state may take help of UNHCR, where refugee can be resettled in any third country. But the rights of refugees in every situation must not be trampled and it must be taken great care of.³⁵

IV. PROTOCOL 1967

The geographical limitation on the Convention was vitiating future needs of the refugee crisis. With the advent of new states and change in political agendas such as in Africa, they were unable to meet the requisites of Convention on the Status of Refugees 1951.

The Protocol was formulated to remove the temporal and geographical barriers which also results in the modification of the definition of refugees which was already mentioned in the section. Though the Protocol was not an amendment to the Convention it was a separate treaty which extended the protection of refugees to a larger extent. At present, 146 countries are party to the protocol.³⁶

The Protocol 1967 was the last legal international for refugees which determined their status. Albeit efficacy of 1951 Convention and 1967 Protocol is always questioned because there is no such deterrent effect on states in non-observance of their obligation. UNHCR as a supervisory body can only recommend and help refugees in the settlement but it cannot force parties to the convention and protocol. There are no such sanctions in breach of treaty obligation except public shaming of party or verbal condemnation which lacks any desired humanitarian approach.³⁷

V. UNHCR

UNCHR was constituted for the purposes of rendering aims and objectives of the Convention on the Status of Refugees 1951, though it is only a supervisory body it has fulfilled and curbed

³⁵ Ibid.

³⁶ Kristoff Wharton, *The 1951 Refugee Convention and its 1967 Protocol, What Do They Tell Us About Refugees' Rights and Obligations*, (Apr 9, 2016), <http://www.internationalperspective.be/insight/2016/04/the-1951-refugee-convention-and-its-1967-protocol/>.

³⁷ André de Lima Madureira, *International Refugee Law: Definitions and Limitations of the 1951 Refugee Convention*, (Aug 2, 2016), <http://blogs.lse.ac.uk/humanrights/2016/02/08/international-refugee-law-definitions-and-limitations-of-the-1951-refugee-convention/>.

detrimental conditions of refugees globally.³⁸

The UN established this agency as a body for the protection of refugees, forcible evacuees, and other stateless people. The primary objective was to reconcile them either in their native countries or any other third country. After World War II, millions of people fled from their home country because of the violation of their basic human rights at that time of repatriation and resettlement was a major concern of the UN. In 1950 UNHCR was created for specifically dealing with the refugee crisis after the World War II in Europe. This was profound as the successor of the IRO, UNHCR was primarily established only for the term of three years as an ancillary body of General Assembly with a mandate to provide protection to refugees solely on the humanitarian ground without any political interference and to spread awareness worldwide about the basic rights and protection against refugees.³⁹

Eventually, in the year 1960 with the occurrence of a drastic shift in the political agendas of Africa which led to decolonization, and which triggered evacuation by people under the threat of persecution also earlier in Hong Kong and other countries UNHCR addressed the Human Rights crisis.⁴⁰

The Protocol 1967 effectively removed the barrier of the geographical barrier from the applicability of the Convention 1951 which broadened the scope of UNHCR. Presently *Filippo Grandi* is the High Commissioner since 1st of January 2016. UNCHR governs at present by the General Assembly and ECOSOC for the protection of refugees.⁴¹ Though UNHCR has worked so far commendably for the benefit of refugees there are certain notable works of UNHCR, which are briefly discussed below.

(A) UNHCR in Yemen, from the year 1987 UNCHR established its setup for addressing refugees and asylum seekers in Yemen for the protection of human rights of them. Most of the refugees in Yemen were belonging to Somalia (approx. 280,000). In 2015 when the conflict arose which resulted in emergency humanitarian crisis, at that time UNHCR provided for basic amenities for them. The UNHCR operating in Yemen having a representation office in some regions address crisis over there. Yemen is the only state which is a party to the Convention and Protocol in Arabian Peninsula.⁴²

³⁸ UNHCR, *The Detention of Refugees and Asylum-Seekers by Reason Of Their Unauthorised Entry or Presence*, (July, 2007), <http://www.refworld.org/pdfid/4950f39f2.pdf>.

³⁹ Refworld, *Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR*. (1 August 2005), www.unhcr.org.

⁴⁰ *Ibid*.

⁴¹ UNHCR, <http://www.unhcr.org/the-high-commissioner.html>, (May 15, 2017).

⁴² UN in Yemen, UNHCR, <http://ye.one.un.org/content/unct/yemen/en/home/about-us/UNHCR.html>, (May 15, 2017).

(B) UNHCR in Bangladesh, at present, approximately of 700,000 Rohingyas are present in Bangladesh belonging to Myanmar, Rakhine state. In 2008 UNHCR addressed Rohingyas over there, to issue identity cards to around 22,500 refugees. By the issuance of this card, they were legally permitted to reside in Bangladesh, but they must meet the law enforcement officials regarding the same.⁴³ In 2014 with the help of UNHCR, Bangladesh approved to register the birth of all refugee children.⁴⁴

Bangladesh is neither a party to 1951 Convention, nor to 1967 Protocol. In the absence of the instruments, the Foreigner's Act 1946 and UNHCR mandate applies there.⁴⁵

In present 2018 Myanmar has agreed to Bangladesh to resettle refugees in the next two years but still, there was lot more than settlement issues only. Filippo Grandi as well pointed out while addressing the Security Council that conditions are not right over there to positively accept such agreement. Rohingyas themselves were not willing to return to Myanmar because they were still under the threat of denial of their basic rights.⁴⁶ The consent of refugees to return is of the major concern which UNHCR is still looking upon so that they will not again be subjected to the threat of persecution.⁴⁷

(C) UNHCR in India, like Bangladesh, India is also not a signatory to the Convention on the Status of Refugees 1951 or Protocol 1967 but still, it was known in past decades as one of the prominent places in Asia where refugees are entering in search of safety.

In 1969 India took help from UNHCR for the training of Tibetan refugees also for the monitoring of repatriation of Sri Lankan refugees. In 1995 India joined UNHCR Executive Committee, though not ratified Convention and Protocol. In India, UNHCR worked only in certain areas as permitted by the Indian Government. Presently 31000 refugees are registered in India with the help of UNHCR. UNHCR has always praised India in comparison to other signatory states, that India despite not being a party, provides basic rights to the refugees such as work permit, right against detention and others.⁴⁸

⁴³ Report by UNHCR, UNHCR cards give refugees in Bangladesh individual identities, (July 23, 2008), <https://news.un.org/en/story/2008/07/267072-new-individual-id-cards-fairer-refugees-bangladesh-un-agency>.

⁴⁴ UNHCR, UNHCR Submission on Bangladesh: 30th UPR session, (May 2018), <http://www.refworld.org/country,,,BGD,,5b081ec94,0.html>.

⁴⁵ Ibid.

⁴⁶ Report form International rescue Committee, Rohingya don't want to go back to Myanmar, and they must not be forced, (Nov24, 2017), <https://reliefweb.int/report/bangladesh/rohingya-don-t-want-go-back-myanmar-and-they-must-not-be-forced>.

⁴⁷ Report from UNHCR, *UNHCR Bangladesh Operational Update, 21 February 2018 – 6 March 2018*, (Mar 06, 2018), <https://reliefweb.int/report/bangladesh/unhcr-bangladesh-operational-update-21-february-2018-6-march-2018>.

⁴⁸ India much advanced in refugee protection: UNHCR CoM, Observer research foundation, (Mar 12, 2013), <https://www.orfonline.org/research/india-much-advanced-in-refugee-protection-unhcr-com/>.

But in the absence of proper legislation and safeguards in India, it is affecting the basic principle of refugee rights, i.e. non-refoulement which is not only a principle laid down by the 1951 Convention but also a customary practice of States under international law.

The below data shows the work of UNHCR in India till 2017:

a. 2017 Year-End Results⁴⁹

95%-for unaccompanied and separated children have had a Best Interest Determination or Assessment initiated or completed,

30,300-people were registered using biometrics,

3,300-people with specific needs received cash grants,

1,500-Sri Lankan refugees were facilitated a safe return,

230- campaigns to promote peaceful co-existence with the local community were conducted.

b. 2018 Planning Figures⁵⁰

10,000-refugees and asylum-seekers will be trained on SGBV prevention and response,

4,790-refugees and asylum-seekers will receive self-reliance and livelihoods support,

4,200-people with specific needs will receive cash grants,

1,600-refugees and asylum-seekers will be enrolled in accelerated learning programs,

Also, the data taken by UNHCR in 2018 is 197851 for refugees and 9219 for asylum-seekers.⁵¹

VI. REGIONAL INSTRUMENTS ON REFUGEES

Refugees are always seen as a vulnerable group of human rights globally. For their protection States become the party to the Convention on the Status of Refugees 1951 and Protocol 1967, but as a matter protection in particular region or nation, some countries have accorded legislation regionally which will be helpful for the treatment of refugees.

(A) European Agreement on the Abolition of Visas for Refugees 1959, it came into force in September 1960.⁵² The agreement gives right to a refugee lawfully entering in the territory of a Contracting Party shall be exempted under the terms of this agreement and subject to reciprocity to obtain visas for entering or leaving the territory of another party frontier but they must hold a valid travel document in accordance with the Convention

⁴⁹ UNHCR Report, (2018), <http://reporting.unhcr.org/node/10314>.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² European Agreement on the Abolition of Visas for Refugees, Treaty No. 031, Council of Europe, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/031>.

on the Status of Refugees and their visit will be restricted up to three months only. Also, they can be re-admitted at any time to the territory of the Contracting Party by whose authorities the travel document was issued, at the simple request of the first-mentioned Party, except where this Party has authorized the persons concerned to settle on its territory.⁵³

(B) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, this agreement was laid down in complimentary to Convention 1951 with the same definition as given in Convention for refugees, further amended by Protocol 1969. The OAU Convention also provides protection under specific humanitarian situations, which includes large-scale arrivals of people, falling under OAU Convention's Art. 1 (2) requisites. OAU gives more expansive protection to refugees in comparison to Convention, a refugee may not fall under the criteria of Convention, but he may fall as a refugee under OAU, even where no potential link can be drawn for being persecuted and grounds given under convention. It also contains a more limited set of rights and does not explicitly specify the entire standard of treatments as given under 1951 Convention.⁵⁴

(C) Cartagena Declaration, this declaration belongs to the region of Latin America, which is a non-binding agreement, but it is respected by most nations. This was made on agreed terms to give commitments regarding the refugees as defined in the Contadora Act on Peace and Cooperation.

It gives an expansive refugee definition "...persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

As said by Gibney that, "*The Cartagena Declaration [...] remains the most encompassing definition of a refugee to have emerged from Latin America*"⁵⁵

In this declaration commitments were made to constitutionally access to the Convention 1951 and Protocol 1967 to the status of refugees, to establish machinery to deal with refugee problems, to support work of UNHCR, to assure protection and assistance to refugees, their voluntary repatriation, eradication of refugee problems and also to take appropriate measures

⁵³ Ibid.

⁵⁴ OAU Convention, OAU, (Sep 10, 1969), <http://www.refworld.org/docid/3ae6b36018.html>.

⁵⁵ (Gibney/Hansen 2005: 71).

for the prevention of refugees involving in any activities which can be a threat to national security.

The UN has provided a good legal framework for the protection of refugees, also the UNHCR as a supervisory body is playing a significant role for the status of refugees. The non-refoulement policy is the main essence of the rights provided to the refugees and the highest obligation of the Contracting State. The UNHCR has done a good job for the settlement or repatriation of refugees in many countries. In fostering respect to the UN framework, the regional bodies have also laid down laws exempting refugees from liabilities. Refugees have been given various rights under the Convention which cannot only be enjoyed by them in the contracting State, but also, they must give respect to the host State laws. According, the status to refugees and protecting them against persecution is a way of burden sharing in the world community for the sake of humanity.

VII. CONCLUSION AND RECOMMENDATIONS

Human rights are those rights which are indivisible from a human being, how a demarcation of territory can vitiate those rights. After the outbreak of World War II, innumerable people fled from their home country due to the threat of being persecuted. Due to the reason of the displacements of persons at a larger level from their home nations in fear of persecution, UN propounds instrument specific for refugees for addressing the needs and to give them with their basic human rights.

Refugees are one of the vulnerable groups of the world which need help globally. When they enter territory the only thing, they have in mind is their life security. It's true that a nation has sovereign rights over its territory which must be secured as well but the need is for harmonizing it with human rights. The Protocol as a matter of fact removed the barrier, which was levied on the 1951 Convention primarily, but it fails to define the term 'persecution'. It can be subject to the sweet will of the Contracting state. How a kind of persecution can be differentiated from other to fall into category. The Convention fails to provide sanctions for non-fulfillment of the obligations under the 1951 Convention. In this global era, it is not sufficient to subject someone with public shaming only. It must have some deterrent effect which will persuade states from not complying with their obligations.

In the present world not only because of persecution but also because of several other factors people are migrating from one country to another, such as climate change, development etc. that can also be recognized by the UN as a factor.

The 1951 Convention itself provides an exception to the principle of non-refoulement under

Art.33 (2), then what is the reason is behind the excuse of national security, since it allows returning of refugees or resettlement in any third country in the case of failure to fulfill its obligation in accordance with the 1951 Convention.
