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# The Role of International Law and The UN in Curbing Exploitation Against Asylum Seekers in the 21st Century and Its Inevitable Drawback

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## ABSTRACT

*Escalation of conflicts, civil war, regional tensions, and instability has jeopardized the rights of millions of asylum seekers all over the globe leading to severe humanitarian crises in the 21st century. The surge in number of asylum seekers is proportional to the instability, lack of peace, and disorder in global dynamics. This paper predominantly focuses on the role of International Law and the United Nations, specifically the United Nations High Commissioner for Refugees (UNHCR) in promoting and regulating the rights of asylum seekers. It further elaborates on various rights of asylum seekers guaranteed under various international instruments and conventions. And further dwells into the exploitations perpetrated against them and the failure of State obligation as mandated by Jus Cogens and Fundamental International principles. This paper concludes with the inevitable drawback of international law and the UN in curbing such exploitation, thereby shedding light on the failure of state cooperation and implementation of international law. This doctrinal research paper attempts to bridge the gap between the theoretical and practical aspects of asylum seekers' rights as vested in the Refugee Convention 1951, Refugee Protocol 1967, UDHR 1948, Statute of UNCHR 1950, etc. This research contributes to the legal understanding of various issues and challenges faced by asylum seekers and it inculcates the necessity of state cooperation for effective implementation of International Law in the 21st century.*

**Keywords:** *Asylum seekers, Refugee, Exploitation, International Law, and United Nations.*

## I. INTRODUCTION

The 21<sup>st</sup> Century has witnessed an escalation of conflicts, the use of mass destruction weapons as the sole medium of attacks by both State and Non-State Actors, and an increase in humanitarian crises. The surge of asylum seekers is proportional to the adversity of the conflicts perpetuated. The current crisis in the Middle East (Israel, Palestine, Gaza, Syria, Lebanon);

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Europe (Russia, Ukraine); Africa (Sudan, Congo, Ethiopia), and Asia (Myanmar, Afghanistan, Bangladesh)<sup>2</sup> have destabilized international peace and order and have created a high refugee crisis and mass humanitarian violations. Civil war, regional tensions, instability, armed conflict, and terrorism have reshaped the 21<sup>st</sup> century.

Article 1 of the UN Convention Relating to the Status of Refugees 1951 defines **“Refugee”** as *“any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; 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>3</sup>. UNHCR states **“Asylum Seekers”** as *“someone who is seeking International Protection and their request for refugee status has not been obtained”*<sup>4</sup>. Conflict, war, and immigration are not new, they have their origin vested in ancient times. However technological advancements have propelled humanitarian suffering to devastating levels.

The concept of asylum seekers and refugees had undergone significant change, till 1950 & 1960 they were Eurocentric, focusing on the Global North<sup>5</sup> since European countries were major players in world politics and most of the African, Asian, and majority of non-European countries were colonized by them. The aftermath of World War I and II elevated the refugee surge in Europe, which in turn influenced the legal regime favouring the Global North, as the same can be witnessed in the geographical limitations set forth by the 1951 Refugee Convention. However, following the mass decolonization of Africa, Asia, and other countries after the 1950s, asylum seekers and refugees from all across the non-euro countries<sup>6</sup> surged due to civil wars, internal conflicts, regional tensions, etc. This in turn expanded the scope of refugees to non-euro-centric, thereby removing the geographical limitations of the 1951 Refugee Convention through the 1967 Refugee Protocol.<sup>7</sup> This also marks a transitional movement of the Global South and acknowledgment of its importance by the international community.

Asylum seekers have the right to leave any country and return to one’s country of origin<sup>8</sup>; right

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<sup>2</sup> Global conflict tracker, Council on Foreign Relations 2024

<sup>3</sup> Refugee Convention 1951, Article 1

<sup>4</sup> UNHCR Official Website

<sup>5</sup> Benjamin Thomas White, “How Eurocentric is the 1951 UN Refugee Convention—and why does it matter?”, Refugee History

<sup>6</sup> Ibid

<sup>7</sup> Protocol Relating to the Status of Refugees 1967

<sup>8</sup> UDHR 1948, Article 13

to life<sup>9</sup>; prohibition of torture, cruel, inhuman, or degrading treatment or punishment;<sup>10</sup> Freedom of opinion and expression<sup>11</sup>; Prohibition or arbitrary or unlawful interference with privacy;<sup>12</sup> right to seek asylum<sup>13</sup> etc. However, these rights are violated by state individuals (exploiters) for profits and by the state to attain their national or political interests.

The **objective** of this research paper is to analyse the role of international law and the UN in protecting and promoting the rights of Asylum Seekers and to analyse the exploitation perpetrated against them.

The **Research Problem** is “*Why the UN and its specialized agencies are ineffective in preventing the exploitations perpetrated against asylum seekers by both State and Non-State actors?*”

This research contributes to the legal understanding of various issues and challenges faced by asylum seekers and it inculcates the necessity of state cooperation for effective implementation of International Law in the 21<sup>st</sup> century. An attempt has been made by the researcher to bridge the gap between the theoretical and practical aspects of asylum seekers' rights as vested in the Refugee Convention 1951, Refugee Protocol 1967, UDHR 1948, Statute of UNCHR 1950, etc.

This research predominantly relies on both primary and secondary sources, whereby the researcher has analysed International Conventions, Treaties, Statutes, Books, Acts, Regulations, Articles, Journals, Reports, Data, Research Papers, and Newspapers relating to the rights of asylum seekers, their exploitation and the role of UNHCR and International law. This research paper has been written in an analytical and descriptive form in the sense that the issues have been resolved into elements and constituent parts and the structure of the issue has been described and classified. The researcher has adopted a Qualitative form of research.

The **limitation** of this study is that the researcher has not used empirical sources such as interviewing and observing the victims of exploitation due to geographical limitations, ongoing conflicts, and non-exposure of crucial data by exploiting states, hence the researcher is not able to accurately address several other problems and exploitations practically faced by the asylum seekers in the affected regions. The problems discussed in this paper are purely drawn and analyzed from the UN, its specialized agencies' data, and regional media reports.

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<sup>9</sup> Ibid, Article 3

<sup>10</sup> Ibid, Article 5

<sup>11</sup> Ibid, Article 19

<sup>12</sup> Ibid, Article 12

<sup>13</sup> Ibid, Article 14

**(A) Literature Review:**

1. *“Exploitation and abuse of international migrants particularly those in an irregular situation: a human rights approach”* by Marika Mc Adam

The author of this thematic paper primarily focuses on the exploitation and abuse faced by international migrants, refugees, and asylum seekers during conflict times. International frameworks against exploitations, Labour and non-labour exploitations, and the financial, social, and human consequences of these exploitations have been discussed.<sup>14</sup>

2. *“Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)”* by Dr. Audrey Lumley-Sapanski and 3 others

The authors specifically discussed the trafficking and exploitation of refugees, asylum seekers, IDPs, and stateless persons in Sudan while crossing Central Mediterranean Route. Various exploitations perpetrated against them including sexual violence have been discussed in detail along with the real-time experiences of the victims.<sup>15</sup>

3. *“Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights”* by Santhosh Persaud

The author specifically discussed the ICCPR and its extending protection to refugees and asylum seekers. 1<sup>st</sup> Protocol of the ICCPR, on individual complaint mechanisms and its procedure has been discussed to take measures to solve practical problems. Further, the author focuses on its drawbacks due to the exhaustion of local remedies and procedural reservations by the state parties.<sup>16</sup>

4. *“Enhanced Vulnerability of Asylum Seekers in Times of Crisis”*, by Stephen Phillips

The author depicts the vulnerability of asylum seekers in times of crisis and discusses the exploitations faced by them and the state's failure to prevent such crimes. Asylum seekers' situation during the COVID-19 crisis and the state's Political advantages over the international community have also been explained.<sup>17</sup>

5. *“Essentials of Asylum Law, Chapter 1 Introduction to Asylum and the Manual”* by Richard

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<sup>14</sup> Marika McAdam, *“Exploitation and abuse of international migrants particularly those in an irregular situation: a human rights approach”*, Global Migration Group (GMG) 2013

<sup>15</sup> Dr. Audrey Lumley-Sapanski and 3 others, *“Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)”* Submission by the Rights Lab, University of Nottingham

<sup>16</sup> Santhosh Persaud, *“Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights”*, Policy Development and Evaluation Service United Nations High Commissioner for Refugees, November 2006

<sup>17</sup> Stephen Phillips, *“Enhanced Vulnerability of Asylum Seekers in Times of Crisis”*, Human Rights Review 2023

Boswell

The author has analyzed legal requirements for asylum eligibility, its bar, the discretionary power of the state to grant asylum, and several important conventions on Refugee and Asylum law. This chapter emphasizes more on US approach toward asylum seekers.<sup>18</sup>

6. “*State Sovereignty and International Human Rights Law: Complement or Compromise?*” by R Srinivasan

The author specifically focuses on the principle of sovereignty and its relation with international human rights law. State sovereignty is not compromised by international human rights law but it has been complemented and both can achieve their objectives by making domestic law consistent with international norms.<sup>19</sup>

**(B) Hypothesis:**

The UN and its specialized agencies are ineffective in preventing the exploitations perpetrated against asylum seekers by both State and Non-State actors.

**II. ROLE OF INTERNATIONAL LAW AND UN IN PROMOTING AND PROTECTING THE RIGHTS OF ASYLUM SEEKERS AFTER WORLD WAR II**

**(A) Rights of Asylum Seekers after WW II:**

The invasion of Poland by Germany and the subsequent escalation of conflict between the Allied (Britain, France, Soviet Union, US & China) and Axis (Germany, Italy & Japan) powers led to World War II. The massive displacement of millions of people led to a refugee crisis in Europe.<sup>20</sup> Millions of people were forcefully displaced to escape the Holocaust. This period witnessed grave violations of human rights. United Nations replaced the League of Nations in 1945 to uphold the International Order. In response to the Refugee crisis, the International Refugee Organisation (IRO) was established in 1946, which was later preceded by the United Nations Office of the High Commissioner for Refugees (UNHCR) in 1950 to protect the rights of refugees.<sup>21</sup> Major international instruments governing Refugee rights are **United Nations Convention Relating to the Status of Refugees 1951 and Protocol Relating to Status of Refugees 1967**. However, these instruments neither define the term Asylum seeker nor state their rights but they imply the same through their illustrations of the

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<sup>18</sup> Richard Boswell, “*Essentials of Asylum Law, Chapter 1 Introduction to Asylum and the manual*”, Immigrant Legal Resource Center, July 2023

<sup>19</sup> R Srinivasan, “*State Sovereignty and International Human Rights Law: Complement or Compromise?*”, May 2014

<sup>20</sup> Puneet Pathak, *International Humanitarian and Refugee Law*, Pg 203, (EBC 2023)

<sup>21</sup> *Ibid*, Pg 199

refugee rights, as the latter cannot exist without the former. State cooperation is the cornerstone determining the effective implementation of the 1951 Convention. This convention lays down several obligations and duties on the State Parties to ensure the protection of Refugees and depicts a few important rights which are guaranteed to refugees e.g., the right to food, shelter, education, work, religion, access to court, public relief, social security, and freedom of movement, etc. The fundamental principle governing this convention is **Non-Refoulement**, “*No refugee should be returned to a country where he is likely to face persecution or torture*” as stated under Article 33(1) of the 1951 Convention; Article 3(1) of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984; Article 16 of Convention for the Protection of All Persons from Enforced Disappearance 2010, **Non Expulsion** and **Non-Discrimination** under Article 3 of the 1951 Convention & Article 2 of UDHR 1948.

The 1967 Protocol removed the geographical limitations in the 1951 Convention Refugee definition<sup>22</sup> thereby enhancing its scope worldwide. It is pertinent to mention that all the basic rights enumerated in this chapter are applicable to asylum seekers however the rights concerning work, education, social services, and properties are limited as the latter needs refugee status to enjoy the same.<sup>23</sup>

However it's crucial to consider that, the 1951 Convention and its protocol do not provide any framework against the exploitation of refugees or asylum seekers. Though it is a status and right-based instrument<sup>24</sup> and lays down basic minimum standards for the treatment of refugees, but, it does not address state obligation towards the exploitation of asylum seekers or refugees. This convention mainly focuses on the facilitation of refugee travel, the principle of unity of family, welfare services, and international cooperation in the field of asylum and resettlement<sup>25</sup>.

The **UN Charter 1945** enumerates the obligation of the states to promote universal respect for achieving human rights and freedoms, as the State possesses an inherent duty towards its individual and community.<sup>26</sup> Due to the rising importance of Human rights and maintaining peace in the international community, several rights protecting the basic humanitarian goals have been codified into conventions, treaties, and declarations. Though many of them have attained a binding force still their implementation relies on state cooperation. The state has

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<sup>22</sup> Refugee Protocol 1967, Article 1

<sup>23</sup> 2022 Global Refugee Work Rights Report by Refugees International, The Centre for Global Development, Asylum Access, July 2022

<sup>24</sup> Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR), December 2010

<sup>25</sup> Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

<sup>26</sup> UN Charter 1945, Article 1(3)

a duty and responsibility towards both its nationals and non-nationals who are within its territory. The state cannot discriminate against asylum seekers based on their “*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”<sup>27</sup> as enumerated in the **International Covenant on Civil and Political Rights**.

The **Universal Declaration of Human Rights 1948** is the fundamental International Human Rights document that enshrines fundamental human values that are inherent from birth. However, it is not binding<sup>28</sup>. The main purpose behind the creation of UDHR was to declare certain aspirations<sup>29</sup>. However, several articles of UDHR reflect the customary international law and have also gained or are in the process of completely gaining binding character<sup>30</sup> in this 21<sup>st</sup> century.

**Article 14(1) of UDHR grants the right to seek and enjoy asylum from persecution.** However, it is not applicable for non-political crimes and acts that are contrary to the purposes and principles of the UN.<sup>31</sup> Other International instruments such as the **Convention on the Elimination of all Forms of Racial Discrimination 1965**<sup>32</sup>, and the **International Convention on Civil and Political Rights 1966**<sup>33</sup> have reiterated the **Freedom to leave one’s own country**. Basic human rights values stated under UDHR are inviolable in nature, e.g., the right to life, liberty, and security; freedom from torture, cruel, inhuman, or degrading treatment; prohibition of slavery and servitude; right to recognition, nationality; right against arbitrary arrest, detention or exile<sup>34</sup>, etc. Asylum seekers or people who are forced to flee their country due to civil war, armed conflict, or fear of persecution are guaranteed all the rights established under UDHR 1948 and the Refugee Convention 1951. Impending challenges faced by asylum seekers are discrimination with respect to their race, colour, religion, language, membership in a particular social group or political opinion, etc. and the extent of exploitation is proportional to the extent of disparity between the above-indicated factors.

Asylum seekers have the **right against forceful recruitment and enlistment in the military** by both State and Non-State actors. This prohibited act constitutes a **war crime**<sup>35</sup> and a **crime**

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<sup>27</sup> ICCPR 1966, Article 2(1)

<sup>28</sup> Chandler Green, “70 Years of Impact: Insights on the Universal Declaration of Human Rights”, December 2018

<sup>29</sup> Declarations, Definitions, UN Treaty Collections

<sup>30</sup> Richard Boswell, “*Essentials of Asylum Law*”, (n 19)

<sup>31</sup> UDHR 1948, Article 14(2)

<sup>32</sup> CERD 1965, Article 5

<sup>33</sup> ICCPR 1966, Article 12

<sup>34</sup> UDHR 1948, Article 3, 5, 4, 6, 15 & 9

<sup>35</sup> The Rome Statute of International Criminal Court 1998, Article 8(2)(b)(xxvi), 8(2)(a)(v) and 8(2)(b)(xv)



against humanity<sup>36</sup> under the **Rome Statute 1998**. The **Protocol I<sup>37</sup> and II<sup>38</sup> of Geneva Conventions 1977** and **Convention on the Rights of the Child 1989<sup>39</sup>** prohibits forceful recruitment of Children below 18 years of age in the military. Further, asylum seekers cannot be compelled to work or serve in the military or army<sup>40</sup> against their willingness. They have the right to object to military service as a conscientious objector when it's against their conscience, morals, or religion.<sup>41</sup> Furthermore, the Host States are primarily responsible for upholding the civilian and humanitarian character of asylum and they must include measures to prevent military recruitment.<sup>42</sup>

Asylum seeker's **Socio-Economic rights<sup>43</sup>** are often limited due to their pending refugee status; however, basic humane wages are being regulated by few international instruments. Unfair wages<sup>44</sup>, unequal remuneration and inhumane working hours are condemned under the **International Covenant on Economic, Social, and Cultural Rights 1966**. Further, any form of forced labour is also condemned under the **Forced Labour Convention of 1930<sup>45</sup>**. It is pertinent to mention that economic exploitation is rising due to a surge in asylum seekers and refugees.

Every state is embedded with an obligation and duty to grant asylum without any discrimination. However, the states equally have the right to abstain from rendering asylum, if the person has committed a crime against peace, a war crime, a crime against humanity, or acts contrary to UN principles<sup>46</sup> or in the national interest of the State, etc.

Though the above-mentioned international conventions and declarations propose and assert core rights that promote the interests and well-being of asylum seekers, however, these rights are not explicitly crafted against the exploitation of asylum seekers. These rights only apply as common parlance to suit the present need to secure asylum seekers against exploitation.

The only lacunae, in theory, is there is no explicit international law prohibiting exploitation against asylum seekers, since the 1951 Convention or its 1967 Protocol also does not mention the term asylum seekers or prohibit their exploitation. A direct legal mechanism concerning

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<sup>36</sup> Ibid, Article 7(1)(a), (c) & (f)

<sup>37</sup> Geneva Conventions Protocol I 1977, Article 77(2)

<sup>38</sup> Geneva Conventions Protocol II 1977, Article 4(3)(c)

<sup>39</sup> CRC 1989, Article 38

<sup>40</sup> Geneva Convention IV 1949, Article 40 & 51 and ICRC's Customary International Humanitarian Law Study, Rule 95

<sup>41</sup> OHCHR and conscientious objection to military service Report

<sup>42</sup> Civilian and humanitarian character of asylum, UNHCR, Emergency Handbook

<sup>43</sup> Ruchi Lall, Social and economic rights of refugees under international legal framework: An appraisal, June 2019

<sup>44</sup> ICESCR 1966, Article 7, 11 & 12

<sup>45</sup> Forced Labour Convention 1930, Article 1(1)

<sup>46</sup> Refugee Convention 1951, Article 1 (F)

these peculiar rights could enhance the protection of asylum seekers and would make enforcement machinery more effective thereby promoting national laws on this subject matter. Despite the lacunae, effective implementation of these rights needs international cum state cooperation to enforce the theory into practice and to protect asylum seekers from exploitation. Hence the extent of protection of Asylee rights is proportional to the effective state cooperation.

### **(B) Role of International Law and UN:**

International law governs the rights of asylum seekers/ refugees through its evolving customary practices, conventions, treaties, and declarations and it plays an active role by influencing states to ratify these treaties and conventions and persuading them to take prudent measures to implement the same in their domestic jurisdiction. The UN and its specialized agencies and other international organizations have further played a major role in the codification of international instruments and in monitoring the implementation process of the states. Though the term “implementation” may seem facile in a theoretical sense, however in practice it is the hardest to achieve and it is influenced by various complex factors adjoining its reality.

The further significant contribution of **International Humanitarian Law** after the Battle of Solferino led to the establishment of the ICRC (International Committee of Red Cross) in 1863, the Liber Code in 1863, the Geneva Conventions in 1949, its Protocols in 1977 & 2005, and the Hague Conventions in 1907 had forever shaped the imminent principles of IHL<sup>47</sup> which cannot be overridden. Its development has had a profound impact on the recognition and promotion of the rights of asylum seekers.

The **United Nations** is the most important international organization that takes significant measures to implement International Law to maintain order over chaos. It also acts as an intermediate between securing the rights of asylum seekers and protecting the interests of the member states.

**United Nations High Commissioner for Refugees (UNHCR)** also known as the Office of the High Commissioner for Refugees, is a specialized agency of the UN established in December 1949 by Resolution 319 (IV) of the UN General Assembly<sup>48</sup> after World War II to aid, protect, safeguard, and promote the interests of asylum seekers, displaced people, and refugees all over the world<sup>49</sup>. It began its function on 1<sup>st</sup> January 1950<sup>50</sup>. As of 2024, UNHCR works with 136

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<sup>47</sup> Puneet Pathak, (n 21), Pg 10

<sup>48</sup> P.D. Maynard, *The Legal Competence of the United Nations High Commissioner for Refugees*, 1982

<sup>49</sup> Puneet Pathak, (n 21), Pg 214

<sup>50</sup> Section 1 Historical Background, UNHCR Mandate and Organisation, February 2003

countries<sup>51</sup> and provides life-saving assistance such as food, water, shelter, and medical care, defends their rights, and works with other countries to improve and monitor refugee and asylum laws and policies.<sup>52</sup>

According to UNHCR, at the end of 2024, over **120 million people**<sup>53</sup> are forcibly displaced due to persecution, conflict, violence, and human rights violations. Due to a significant increase in armed conflicts, regional tensions, and civil wars in Africa, Middle East, Europe, and Asia, the number of asylum seekers and refugees has skyrocketed. The statistical report of UNHCR depicts the increase of displaced persons from **60 million in 2014 to 120 million in 2024**<sup>54</sup>. This portrays not only the significant rise of displaced persons but also human rights violations.

### **(C) Statute of UNHCR 1950:**

Asylum seeker's rights cannot be achieved without state cooperation as it is the cornerstone for the effective implementation of the UNHCR's function. The functions of UNHCR are of humanitarian cum social and non-political character<sup>55</sup>. The lacunae in practice can only be reformed through active state participation such as *"becoming parties to international conventions concerning the protection of refugees, entering into special agreements with the High Commissioner for the execution of implementation measures, admitting refugees to their territories, and not excluding them, assisting the High Commissioner, providing refugees with travel and other documents to facilitate their resettlement, permitting refugees to transfer their assets especially those necessary for their resettlement, providing the High Commissioner with information concerning the number and condition of refugees, and municipal laws and regulations concerning them"*.<sup>56</sup> However, a person ceases to be a refugee if he acquires nationality from another country or fear of prosecution ends and will cease from obtaining the benefits of UNCHR if he is assisted by other organs or agencies of the UN.<sup>57</sup>

The **UN General Assembly** and **ECOSOC** are the main UN organs that actively deal with UNHCR<sup>58</sup>. The High Commissioner reports annually to the General Assembly<sup>59</sup>. The Advisory Committee on Refugees was established by the Economic and Social Council<sup>60</sup> and was later

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<sup>51</sup> UNCHR Global Report 2023

<sup>52</sup> UNHCR Appeal 2024

<sup>53</sup> Ibid (n 52)

<sup>54</sup> UNHCR Global Report (n 52)

<sup>55</sup> Introductory note by UNHCR, (n 25), Dec 2010

<sup>56</sup> General Assembly Resolution 428 (V) of 14 December 1950

<sup>57</sup> Chapter 2 of Statute of UNCHR 1950

<sup>58</sup> General Assembly Resolution 58/153 of 24 February 2004

<sup>59</sup> Ibid

<sup>60</sup> Economic and Social Council Resolution 393 (XIII) B of 10 September 1951

reconstituted as the United Nations Refugee Fund (UNREF) Executive Committee<sup>61</sup>. The latter was replaced in 1958 by the Executive Committee of the High Commissioner's Programme<sup>62</sup>. Members of the Executive Committee are elected by the Economic and Social Council on a geographical basis. This committee reviews and approves the material assistance program of the High Commissioner's office and advises the High Commissioner at his or her request on the exercise of his or her functions under the Statute.<sup>63</sup>

UNHCR promotes the interest of Refugees through **(RP) voluntary repatriation, (LS) local settlement, and (RE) resettlement**<sup>64</sup>. In RP, the refugees attain their normal life as they are voluntarily returned to their own country without force when the situation warrants peace and safety. In LS, the refugees are settled in the host country/ country which grants asylum. In RE, the refugees are settled in 3<sup>rd</sup> country where their safety in the host country couldn't be warranted.<sup>65</sup>

UNCHR seeks to secure and promote the rights of asylum seekers, displaced persons, and refugees by bridging the existential gap between theory and practice through state cooperation. However, it is not a binding instrument and the state parties are not obligated to permit UNHCR to operate in its territory<sup>66</sup> or compulsorily follow its Statute. *“UNHCR is not a supra-national nor a sovereign body”*<sup>67</sup>. This Statute is recommendatory<sup>68</sup>. The effective functioning of UNHCR requires consent, support, and cooperation of the State parties.

The impending irregularities in state cooperation, the priority of national interest, the lack of economic capabilities of the states to occupy asylum seekers, and their exploitations have jeopardized the rights of Asylum seekers, leaving UNHCR in an untranquilised position.

### III. EXPLOITATION OF ASYLUM SEEKERS IN THE 21<sup>ST</sup> CENTURY AND BREACH OF STATE OBLIGATIONS

War and Conflicts are as old as civilization and the exploitation of the vulnerable has depicted its share in history. Every country has undergone a plethora of wars, both external and internal which crushed the rights of vulnerable people. And it continues to do so, on the ongoing

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<sup>61</sup> Economic and Social Council Resolution 565 (XIX) of 31 March 1955 adopted pursuant to General Assembly Resolution 832 (IX) of 21 October 1954

<sup>62</sup> General Assembly Resolution 1166 (XII) of 26 November 1957 and Economic and Social Council Resolution 672 (XXV) of 30 April 1958

<sup>63</sup> Introductory note by UNHCR, (n 25), Dec 2010

<sup>64</sup> Puneet Pathak, (n 21), Pg 240

<sup>65</sup> Puneet Pathak, (n 21), Pg 253

<sup>66</sup> P.D. Maynard, The Legal Competence of the United Nations High Commissioner for Refugees, 1982

<sup>67</sup> Ibid

<sup>68</sup> Ibid

conflicts in Israel – Gaza, Russia – Ukraine, Sudan – Congo, etc. The most affected people are always the vulnerable ones e.g., women, children, senior citizens, medically ill or disabled people, civilians,<sup>69</sup> etc. This 21<sup>st</sup> century warrants a change in means and methods as to how and to what extent vulnerable are exploited. Asylum seekers are people who are forced to flee their home countries due to fear of persecution, external aggression, foreign domination, or events seriously disturbing public order<sup>70</sup> and who have not acquired refugee status.

Though the scope of the definition of a refugee has transcended to meet the growing challenges and protect the rights of vulnerable people in dire situations, however, lack of explicit provisions concerning asylum seekers has left room for lacunae. Since the asylum seekers cannot rely on their own government for safety<sup>71</sup> and security, they are more vulnerable in the eyes of predators who exploit them. Due to a lack of legal and social protection and an unbinding authority to protect their rights and voice their opinion, they are often targeted by the exploiters during their search for refugee status. Lack of travel documents or identity papers further places them in jeopardy as it delays the process of attaining refugee in the Asylum country. Both state and non-state actors have their equal share in the exploitation of asylum seekers for their benefit.

#### **(A) Exploitation in 21<sup>st</sup> Century:**

Asylum seekers are exploited during their journey to the safe country or upon arriving at their destination in seek of refuge<sup>72</sup>. They are often smuggled, trafficked, forced, stranded and killed<sup>73</sup>. The term “exploitation” is defined differently by various State actors and International Organisations. It includes trafficking for labour, sexual exploitation, slavery, recruitment in military bases, and other means of profit<sup>74</sup>.

**The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000** (UN Protocol), defines *trafficking in persons* as *the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of*

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<sup>69</sup> Helen Clark PMNCH Board Chair & Cyril Ramaphosa President of South Africa, Three ways to protect the health of the world's most vulnerable women, children and adolescents, January 2023

<sup>70</sup> 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, Organization of African Unity (OAU)

<sup>71</sup> Section 1 Historical Background, UNHCR Mandate and Organisation, February 2003

<sup>72</sup> Marika McAdam, (n 15), Pg 3

<sup>73</sup> Ibid

<sup>74</sup> Ibid

*exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*<sup>75</sup>

From the abovementioned definition, *exploitation* includes acts such as *recruitment, transportation, transfer, harbouring, or receipt of persons*. The *means* through which it is accomplished are by *use of threat, force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person*.<sup>76</sup> The underlying purpose behind such exploitation is mostly benefit-centric i.e., the benefit of the exploiter - both monetary and non-monetary benefits e.g., sexual exploitation, forced labour or services, forced military recruitment, slavery, and organ trafficking.

**Slavery** is defined as “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”<sup>77</sup>. Though slavery has been abolished and prohibited in international law and has further attained Jus Cogens status, however in war-torn areas or conflict zones, where basic human rights are jeopardized, these principles do not possess a profound impact. Asylum seekers being the most vulnerable people, having nowhere to go and no state to demand their rights are severely trapped in slavery and other forms of human rights violations.

**Children** are most vulnerable among asylum seekers as they are often unaccompanied or left behind by their family and it's relatively easier to exploit children when compared to adults. *Physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse* are commonly perpetuated against them<sup>78</sup>. **Convention on Rights of Child** obligates State parties to protect children from all forms of *sexual exploitation, sexual abuse, exploitative use of children in prostitution or other unlawful sexual practices, the exploitative use of children in pornographic performances and materials, and forceful recruitment in military activities*.<sup>79</sup> Several other international conventions such as **CEDAW**<sup>80</sup>,

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<sup>75</sup> The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (UN Protocol), Section 3 (a)

<sup>76</sup> Marika McAdam, (n 15), Pg 5

<sup>77</sup> The League of Nations Convention to Suppress the Slave Trade and Slavery (the Slavery Convention, 1926, Article 1(1))

<sup>78</sup> The Convention on the Rights of the Child (CRC) 1989, Article 19(1)

<sup>79</sup> Ibid, Article 34

<sup>80</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979

**CRPD**<sup>81</sup> also emphasize freedom from exploitation, abuse, and violence.<sup>82</sup> The gravity of gender-based violence against **women** is highly lethal during unprecedented times and they are subjected to severe ill-treatment and sexual abuse by the exploiters.

### **(B) Forced Recruitment in Armed Forces:**

Both state and non-state actors in the war-torn area are exploiting asylum seekers, refugees, and internally displaced persons for forceful recruitment in their military or defence bases. The mentioned events below unfold the horrific side of the Asylum state.

#### **a. Exploitation in the Middle East:**

**Israel** - In the ongoing conflict between Israel and Gaza, various sources unfolded the exploitation induced by both State and Non-State actors against African asylum seekers i.e. forced recruitment in the military in exchange for permanent legal status<sup>83</sup>. Such exploitation is carried out by Israel Defence Forces for combat purposes to contribute to the Israeli war effort.<sup>84</sup> These kinds of exploitation take form to compensate for the great loss in the army during war times.<sup>85</sup> Whereas African refugees are recruited for "*life-threatening*" operations in Gaza<sup>86</sup>. These asylum seekers have been regularly referred to as "*infiltrators*" by Israeli authorities and discriminatory violence has been perpetrated against them by the Israeli police.<sup>87</sup> They have been subjected to abuse, poor treatment, and exploitative employment practices. Further, the Population and Immigration Authority (PIBA) of Israel has no external body to which asylum seekers can complaint<sup>88</sup> and in most cases, they are often violated and abused by PIBA. There is a lacuna in taking necessary measures to hold them accountable for their serious violations of the laws of war.<sup>89</sup>

#### **b. Exploitation in Europe:**

**Russia** - Several European countries such as Croatia, France, Germany, Poland, and Romania, have extradited or deported asylum seekers who had fled persecution in the North Caucasus back to Russia where they are persecuted<sup>90</sup>, thereby overriding the Jus Cogens principle of non-

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<sup>81</sup> Convention on the Rights of Persons with Disabilities 2016

<sup>82</sup> Ibid, Article 16

<sup>83</sup> Yaniv Kubovich and Bar Peleg, "Israel Is Recruiting African Asylum Seekers for Life-threatening Gaza War Operations, Promising Permanent Legal Status", Haaretz, 15<sup>th</sup> Sept 2024

<sup>84</sup> Ibid

<sup>85</sup> Ibid (n 84)

<sup>86</sup> "Israel recruits African refugees for Gaza operations in exchange for settled status", Middle East Eye, 15<sup>th</sup> Sept 2024

<sup>87</sup> 2023 Country Reports on Human Rights Practices: Israel, West Bank and Gaza, US Department of State

<sup>88</sup> Ibid, (n 84)

<sup>89</sup> Ibid, (n 84)

<sup>90</sup> Europe: Halt returns of people from the North Caucasus to Russia where they are at risk of torture and abuse, Amnesty International, 17<sup>th</sup> Jan 2024

refoulment. Asylum seekers from the North Caucasus face torture, discrimination, abuse, arbitrary detention, enforced disappearance, and ill-treatment and are forced to fight in Russia's war of aggression in Ukraine.<sup>91</sup> Further, Russia's withdrawal from the European Convention on Human Rights (ECHR) and restriction of Human rights monitors has dramatically increased the risk of human rights abuses in the ongoing conflict.<sup>92</sup>

### **c. Exploitation in America:**

**USA** – Several asylum seekers were arbitrarily detained at Guantanamo Bay military base in Cuba and subjected to illegal and inhumane conditions by the US government as claimed by the International Refugee Assistance Project (IRAP) and Haitian Bridge Alliance<sup>93</sup>. Several cases of exploitation such as ill-treatment, discrimination, inadequate shelters, prison-like conditions, no accountability or transparency<sup>94</sup>, and active cases of refoulment were committed by the US.

### **(C) Ratification of Conventions by State Parties:**

Though several states have ratified important HR conventions, however, their implementation is still unattainable. These states avoid giving access to the enforcement machinery of these conventions through procedural reservations. Example: **Israel** and **the US** have ratified the following conventions **CAT**<sup>95</sup>, **CCPR**<sup>96</sup>, **CEDAW**<sup>97</sup>, **CERD**<sup>98</sup>, **CESCR**<sup>99</sup>, **CRC**<sup>100</sup>, **CROPAC**,<sup>101</sup> etc. These conventions are binding on state parties and it is the inherent duty and obligation of the State to implement these conventions in their national law and to enforce it. However, it is pertinent to mention that both Israel and the US have not given permission to many of these convention's enforcement machinery such as the Complaint and Inquiry Committee.

### **(D) Individual Complaint Procedure-**

The central part of the human rights conventions is their enforcement mechanisms. These complaint mechanisms aid the victims of human rights violations to get remedy and justice<sup>102</sup>.

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<sup>91</sup> Ibid

<sup>92</sup> Ibid, (n 91)

<sup>93</sup> Rights groups demand end to asylum seeker detentions in Guantanamo, Al Jazeera, last updated 16<sup>th</sup> Oct 2024

<sup>94</sup> Asylum seeker detentions in Guantanamo, Al Jazeera, last updated 16<sup>th</sup> Oct 2024

<sup>95</sup> Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984

<sup>96</sup> International Covenant on Civil and Political Rights 1966

<sup>97</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979

<sup>98</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965

<sup>99</sup> International Covenant on Economic, Social, and Cultural Rights 1966

<sup>100</sup> Convention on the Rights of the Child 1989

<sup>101</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

<sup>102</sup> Individual communications, Human Rights Treaty Bodies, UNHCR



These victims are often violated by the State themselves. Complaint committees such as the Human Rights Committee for CCPR, CESCR, CEDAW, CAT, CRC, etc act as instruments to monitor the implementation of these conventions and to receive and investigate complaints<sup>103</sup>. However, exhaustion of local remedy under domestic jurisdiction is a cardinal principle for approaching this mechanism, and in the case of ineffectiveness of state local authorities in investigating the complaint or unreasonable delay, then the victim can proceed with this mechanism.<sup>104</sup> However, the failure of the state to give access to these enforcement mechanisms completely hinders the main objective of the conventions and prevents them from achieving their goals.

### **(E) Inquiry Procedure-**

Inquiry Commission and fact-finding missions play a crucial role in promoting accountability for violations of International Human Rights and Humanitarian Law<sup>105</sup>. They act as international investigative bodies and are established by the Security Council, General Assembly, Human Rights Council, Commission on Human Rights, the Secretary-General, and the High Commissioner for Human Rights.<sup>106</sup> Their investigation has aided International Criminal Courts in upholding the accountability of perpetrators and providing reparation & remedy to the victims<sup>107</sup>. This accountability goes beyond criminal prosecutions and mainly focuses on justice and reparation.<sup>108</sup>

However, Israel and the US have limited their obligations through the procedural reservation<sup>109</sup> to complaint mechanisms and Inquiry Procedures thereby refraining the victims from making complaints and hindering the investigation process.

### **(F) State Responsibility and Breach of State Obligation:**

Under International law, every state has a responsibility to uphold international peace and security. Any wrongful act<sup>110</sup> of the state, both action and omission<sup>111</sup> which is contrary to the established principles of international law or against the objectives of the UN will constitute to breach of international obligation.<sup>112</sup> Customary law, Jus Cogens, and fundamental principles

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<sup>103</sup> Ibid

<sup>104</sup> Ibid (n 103)

<sup>105</sup> Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice, UNHCR, New York & Geneva 2015

<sup>106</sup> Ibid

<sup>107</sup> Ibid (n 106)

<sup>108</sup> Ibid (n 106)

<sup>109</sup> Individual communications, (n 103)

<sup>110</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, Article 1

<sup>111</sup> Ibid, Article 2

<sup>112</sup> Draft Articles for Internationally Wrongful Acts (n 111), adopted by ILC in 2001

under International Law are internally binding without express or implied acceptance of the states. When a state violates such fundamental international principles, it constitutes to breach of international obligation.<sup>113</sup> The state can never violate the peremptory norm of general international law<sup>114</sup> to save its essential interest<sup>115</sup>. The State is responsible for the conduct of its organs i.e., Legislature, Executive, and Judiciary<sup>116</sup> and also for the conduct of persons or entities who are not the organs of the state but are empowered by the state to exercise its authority.<sup>117</sup> Even if such organs or entities exceed its authority or contravene instructions, the state will nonetheless be responsible<sup>118</sup>. Furthermore, such responsibility extends to the individuals who exploit asylum seekers as they bear individual criminal responsibility under the International Criminal Court<sup>119</sup> for crimes against humanity<sup>120</sup> and the state must take effective measures to prosecute those individuals or permit and aid the ICC in taking appropriate action against them.

Though **non-refoulement**<sup>121</sup> is a fundamental humanitarian principle that has attained Jus Cogen status, however, many countries deport asylum seekers to the place where they are persecuted and actively block them from entering their territory. In many cases, these asylum seekers are voluntarily left stranded by the state as an event unfolded in Cyprus<sup>122</sup>. Many Developing and Least Developed States are facing refugee crises due to their geographical factors and the funds allocated by the UNHCR and UN are insufficient to meet the dire circumstances<sup>123</sup>. The rise in the refugee crisis is proportional to the geographical factors of the states, as the asylum seekers flew to the states that are within close proximity to their home states.

A state can however refuse to grant asylum<sup>124</sup> due to its economic stability, population influx, national and political interest, etc. When a state is economically drifting or has no sufficient means to facilitate the external population i.e., asylum seekers, or when it has no capacity to undertake any asylum seekers or has domestic population outgrowth, or when its national

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<sup>113</sup> Ibid, Article 13

<sup>114</sup> Ibid, Article 26

<sup>115</sup> Ibid, Article 25

<sup>116</sup> Ibid, Article 4

<sup>117</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, Article 5

<sup>118</sup> Ibid, Article 7, 8 & 9

<sup>119</sup> The Rome Statute of the International Criminal Court, 1998, Article 25

<sup>120</sup> Ibid, Article 7

<sup>121</sup> Article 33 (1) of the 1951 Convention

<sup>122</sup> Michele Kambas and Yiannis Kourtoglou, "Asylum seekers stranded in Cyprus buffer zone fall foul of conflict", Reuters, 2024

<sup>123</sup> Dr. Audrey Lumley-Sapanski and 3 others, "*Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)*" Submission by the Rights Lab, University of Nottingham

<sup>124</sup> Caitlin Cichoracki and Sama Kahook, "The Legalities of Accepting or Refusing Refugees and Asylum Seekers in International Law", 2016

interest or political interest is in jeopardy.

**The Draft Convention on Territorial Asylum 1974** recognizes the sovereign right of the state to grant asylum but it also emphasizes the need for the state to take into account the humanitarian basis for granting the same<sup>125</sup>. This draft never became a convention and is unbinding, but it emphasizes the importance of state sovereignty in international law in matters concerning asylum.<sup>126</sup>

Though the right to flee persecution and seek asylum is an international fundamental human right, its application by the state granting asylum is discretionary, as there is no reciprocal and automatic obligation for States to grant asylum.<sup>127</sup> Asylum cannot be demanded as a matter of right and the state has no obligation to compulsorily grant asylum<sup>128</sup>.

However, the state has every right to secure the basic human rights of the asylum seekers<sup>129</sup> who are within its territory from exploitation. It cannot forcefully expel, discriminate, or refool the asylum seekers to countries where their safety and life are endangered and similarly, it cannot recruit them for military purposes. It cannot omit basic security and rights guaranteed to asylum seekers and cannot disregard its obligation to protect them from exploitation.

#### **IV. INEVITABLE DRAWBACK OF INTERNATIONAL LAW AND UN**

The Role of International law has strengthened over the years after the establishment of the United Nations and other international organizations and it is still evolving due to enhanced relations between States. However, there lies a deep lacuna between the rights vested in the codified rules of international law and their implementation. International Law has a generic nature whereby it is highly interdependent on the states for its effective implementation<sup>130</sup>. The creation of several international humanitarian organizations might play an active and vast role in the codification of matters concerning international importance however, it has to rely on the state cooperation for its effective implementation.

State cooperation being the backbone of international law, is often affected by several factors such as national interest, political interest, security of the state, economic capacity, diplomatic ties, foreign policy, population influx, resources, trade fluctuations<sup>131</sup>, etc. Since every state

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<sup>125</sup> Soumya Singh, "Asylum", *International Journal of Legal Developments and Allied Issues*, The Bridge Law Publishers, Published on May 2017

<sup>126</sup> Introductory Note, *Declaration on Territorial Asylum 1967*

<sup>127</sup> Asylum, *Practical Guide to Humanitarian Law*, Medecins Sans Frontiers

<sup>128</sup> Soumya Singh, (n 126)

<sup>129</sup> Caitlin Cichoracki and Sama Kahook, (n 125)

<sup>130</sup> Malcolm N. Shaw, *International Law*, 9<sup>th</sup> Edition, Pg 11, Cambridge, Republished in 2022

<sup>131</sup> *Ibid*, Pg 10

gives predominance to national interest over international community interest, state cooperation is always subjected to the will of the state thereby making it vulnerable for proper functioning of international law<sup>132</sup>. Another concern lies in the fact that most of the exploitations against asylum seekers are often perpetuated by the State themselves e.g., forced military recruitment, and other illegal and unlawful activities leading to severe human rights violations such as torture, cruel treatment, unlawful detention, sexual violence, etc. When the state itself fails to uphold morals and justice, the implementation of the Human Rights Convention is highly questionable. Several states that had ratified the HR Conventions have voluntarily exploited asylum seekers and refugees. Further many of these states had made procedural reservations for setting aside enforcement machinery of these conventions, thereby leaving no hope for the victims of exploitation to communicate with proper authority and to receive remedy or justice for the exploitation faced in the hands of the State. A total collapse of state cooperation has prevented the UN from achieving its objective thereby perpetuating an inevitable drawback on international law.

## V. CONCLUSION

Asylum seekers are more vulnerable than Refugees as in most circumstances they are undocumented and tracing them is difficult. They are often caught and exploited in the hands of smugglers and traffickers<sup>133</sup> and many times the state parties themselves exploit the asylum seekers. Every state has an international obligation<sup>134</sup> to protect and promote the fundamental human rights of asylum seekers and they are internationally responsible for their acts or omissions under international law.<sup>135</sup> State actors/governments have a primary responsibility to prevent the exploitation of asylum seekers and to take necessary action against exploiters.<sup>136</sup> Peremptory or Jus Cogen norms of international law have to be abided by and not violated by the state parties. The states must never perpetrate crimes against asylum seekers.

The state is mandated to provide subsidiary protection<sup>137</sup> or temporary asylum at the time of a humanitarian crisis and not abuse or exploit asylum seekers for their benefit. However, under several genuine cases, the states in their national interest,<sup>138</sup> or when the security of the state is to be jeopardized due to the influx of such asylum seekers, they can actively deny asylum.

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<sup>132</sup> Tonga Benjamin Mekinde, "State Sovereignty and Non-interference in International Law: A critical appraisal", University of Buea, January 2018

<sup>133</sup> Marika McAdam, (n 15), Pg 33

<sup>134</sup> Draft Articles on Responsibility of States Acts 2001

<sup>135</sup> Ibid

<sup>136</sup> UNHCR Mandate and Organisation, February 2003

<sup>137</sup> Medecins Sans Frontiers, (n 128)

<sup>138</sup> Article 33(2) of Refugee Convention 1951

Though the state might not be directly responsible or liable for the acts of private individuals who exploit asylum seekers, it might be indirectly responsible for the failure of prevention of crime in its territory or border. It is responsible for taking due diligence measures<sup>139</sup> by preventing the crime and punishing the perpetrators and ensuring IHL and IHR<sup>140</sup> are not violated. Since the state has an international responsibility to prevent crime, any such circumstances that jeopardize the rights vested in asylum seekers will attract international obligation on the state.<sup>141</sup>

Protecting asylum seekers from exploitation requires state cooperation and proper prosecution of exploiters under international law. However, due to procedural reservations against the functioning of complaint and inquiry committees (enforcement mechanisms in HR Conventions) within their jurisdiction, in not abiding by or implementing the HR Conventions' core objectives, and due to lack of accountability of the state, the UN and its specialized agencies are not able to prevent exploitations perpetrated against asylum seekers by both State and Non-State actors. Furthermore, the principle of sovereignty further weakens the effective implementation of international law since consent, support, and cooperation of the state<sup>142</sup> are the heart of international law, and without such expressed or implied consent or cooperation, the UN will remain ineffective in preventing the exploitations. The whole of international law is a bundle of threads tightened by morality and state cooperation, without these, international law will remain to be a mirror of reflection and not an effective instrument capable of protecting and promoting the rights of the international community.

Due to the aforesaid arguments, the UN and its specialized agencies are ineffective in preventing the exploitations perpetrated against asylum seekers by both State and Non-State actors.

**(A) Suggestion:**

The **1951 Refugee Convention** is outdated and requires immediate **amendment** to fit the current notions of rising refugee crises. The 1951 Convention, its 1967 protocol, and UNHCR Statute 1950 do not contain any provision regarding the exploitation of asylum seekers, hence a proper amendment has to be made on the same.

Proper implementation of asylum seekers' rights against exploitation can be achieved through **proper enforcement machinery** and **state cooperation**. Ratification of the convention won't

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<sup>139</sup> "For whose action state is responsible?", Diakonia International Humanitarian Law Centre, 2024

<sup>140</sup> International Humanitarian Law (IHL) and International Human Rights Law (IHR)

<sup>141</sup> "For whose action state is responsible?", (n 140)

<sup>142</sup> Tonga Benjamin Mekinde, (n 133)

serve any purpose if its objectives are not achieved and implemented by the state parties. The state must abide by and never be in conflict with the customary international law, jus cogens principles, and fundamental human rights law. The UNHCR, its refugee agencies, authorized NGOs, and other international organizations must be given mandatory permission to work within the state territory to help the state achieve the standards proposed by international law. Further, the complaint/ grievance mechanism and inquiry commission under every international human rights and humanitarian convention must be given mandatory status to function in the state parties' territories to have a constant connection with asylum seekers, to investigate exploitation against asylum seekers by both state and non-state actors and to minimize the exploitation as much as possible. Further, the extent of procedural reservations must be limited to achieve this, thereby making this enforcement machinery of the HR Conventions a fundamental part.<sup>143</sup> It is pertinent to mention that the UNHCR and refugee agencies can only provide services and assistance such as health, education, monetary assistance, and social services<sup>144</sup> to refugees & asylum seekers, but only the state has the power and authority to provide physical security, and freedom from arbitrary detention, regulate the right to work and prohibit exploitation.

***“What is needed now is not to abolish national sovereignty but to reconcile it with the demands of human survival and decency in the astonishingly dangerous world we have absentmindedly created”<sup>145</sup>***

The effective functioning of UNHCR requires **consent, support, and cooperation** of the State parties<sup>146</sup>. Though state sovereignty can be used for the proper implementation of international law and pave the way for the proper functioning of UNHCR, however, the states are actively preferring national and political interests over international community interests, thereby jeopardizing the rights of asylum seekers. The state need not compromise its sovereignty<sup>147</sup> and at the same time, it must not use its sovereignty to violate the principles and core values of international law. **Global cooperation** is required to hold **accountability** and curb any form of exploitation committed against asylum seekers.

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<sup>143</sup> Principle 8, Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, 2006

<sup>144</sup> “We live in a country of UNHCR” The UN surrogate state and refugee policy in the Middle East, Michael Kagan, 2011 February

<sup>145</sup> Sir Brian Urquhart, The New York Review of Books & Ibid

<sup>146</sup> Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and its 1967 Protocol, reissued Geneva, February 2019

<sup>147</sup> R Srinivasan, (n 20)