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CONTENTS

Decadence of Our Democracy (With none to protest) <i>Justice V.R. Krishna Iyer</i>	1
US Constitutional Theory and Religious Freedom <i>Prof. John J. Carroll</i>	7
The Role of the Judiciary in Constitutional Democracies : A reflection <i>Dr. Carla M. Zoethout</i>	14
Law and Dialectics of Post-Modernism <i>Prof. A. Lakshminath</i>	26
Empowerment of Women and Law <i>Prof. Ranbir Singh</i>	31
Judicial Activism : Abolition of Child Labour <i>Sri K. Satyanand</i>	41
Legal Regulation of Inter-Country Adoptions <i>Prof. V. Hemalatha Devi & Dr. Syed Maswood</i>	54
Refugee Crisis and the Role of the United Nations High Commissioner for Refugees (UNHCR) <i>Dr. T.S.N. Sastry</i>	64
Economic Analysis of Law – Indian Experience <i>Dr. D.S. Prakasa Rao</i>	71
Legal Sociology of Sexual Harassment <i>Sri S.S. Prakash</i>	77
Labour Legislation – Too much for few and too little for many <i>Sri A. Balaji Kumar</i>	85
Judicial Appointments – Constitutional Parameters <i>Prof. D.S.N. Somayajulu</i>	92
Tortious Liability of State—Judicial Thrombosis <i>Prof. A. Lakshminath & Dr. G. Radha Ram</i>	102
Puffery <i>V. Kesava Rao</i>	124
Pre-Natal Injuries and Parental Responsibilities : Legal Dimensions <i>Dr. A. Rajendra Prasad</i>	131
Human Right to Clean Environment—Enforcement in India <i>Sumitra Sripada</i>	136
Freedom of Information <i>Dr. Yelamanchili Satyanarayana</i>	142
Book Review : G.R.S. Rao : Constitution of India – Vision, Reality and Reform <i>Prof. R. Venkata Rao</i>	147

REFUGEE CRISIS AND THE ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Dr. T.S.N. Sastry

Introduction

Among the various problems that are plaguing the international community, refugee movements constitute one of the most important and difficult problems of it in the post cold war era. The end of the cold war generated a strong sense of optimism about the international refugee regime. With the end of the rivalry between the super powers, it was opined that many conflicts afflicting the refugee regime would be attended by the community of Nation-States. It was also thought that a large number of refugees would go back to their homes and, resources being used for relief could be utilised for their rehabilitation and development.

But the political changes in the Eastern Europe, South and Central America, the collapse of the Soviet Union, famine and civil wars throughout Africa and in parts of Asia have ultimately resulted in dramatic increase in the flow of refugees. There are refugees fleeing hunger, there are refugees fleeing war. They run for their lives or for their freedoms. They run from invaders or from their own governments, from natural disasters or from the violations of basic human rights. Today, there are millions of such people found through out the globe for a variety of National and International reasons.¹ Hence, the plight of these people, and, the need to redress the problem of refugees has become the serious concern to the international community to find out durable solutions.

Taking into consideration the magnitude of the contemporary refugee scenario, this paper attempts to study in brief the definition of a refugee, the organisational structure, finances of the UNHCR and its role in finding out durable solutions to the problems of refugees in relation to voluntary repatriation or settlement.

2. Definition of a Refugee

In ordinary sense, the term 'refugee' may enjoy a broader, looser meaning, signifying someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable.² However, for the purpose of international law, States have limited the concept of refugee as a beneficiary of protection and assistance. Prior to the establishment of the United Nations the International Community adopted several conventions defining the term refugee.³ However, the 1951

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United Nations Convention relating to the Status of Refugees has clearly prescribed the definition of who is a refugee and laid down the comprehensive, minimum standards for the treatment of persons with respect to the status of refugees.

According to Article 1 A (2) of the 1951, Refugee Convention, defines a refugee as a person who:

"As a result of events occurring before 1 January 1951 and owing to well-founded fear of being prosecuted 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 willing to return to it."

But this definition of the Convention is limited in its scope. It applies to only refugees who acquired such status 'as a result of events occurring before 1 January 1951'. However new developments in the refugee situations has necessitated a widening of both the temporal and geographical limitations. Accordingly in the year 1967, the United Nations has adopted a Protocol extending the Convention to all persons covered by the refugee definition without any reference to date or geographical limitation. This change has necessitated all the States parties to accede to it. Today both the Convention and Protocol have been acceded by a large number of States Parties.

The 1951 Convention can be mainly grouped into three parts: (1) The clauses dealing with the Status of a refugee; (2) A person who has ceased or excluded from the concept and status of refugee⁴ and (3) the legal status of refugees and their rights and obligations.

Organizational Structure of the UNHCR

In the year 1949 the Economic and Social Council adopted a resolution,⁵ which inter alia requested members of the UN and other States to provide necessary legal protection to refugees after the termination of the International Refugee Organisation. Accordingly the General Assembly established the office of the UNHCR through a Statute on January 1, 1951, on a temporary basis under Art. 22 of the Charter of the United Nations.⁶ The main aim of the General Assembly in establishing the UNHCR is to provide the necessary legal protection to refugees and to seek permanent solutions for the problems of refugees. According to the provisions of the Statute, the work of the office shall be of an entirely non-political character, humanitarian, social and relates to groups and categories of refugees.⁷

The UNHCR is a subsidiary organ of the ECOSOC which has its head quarters in Geneva, Switzerland. Initially the mandate of the UNHCR was only for a period of three years. However, since then it has been on extensions voted by the General Assembly for a period of five years. According to the extension given in 1992 its tenure expires on 31 December, 1998. However, the recently concluded session of the General Assembly extended it to another five years extending its life up to 31 December 2004. The UNHCR functions under a High Commissioner elected

by the General Assembly upon the nomination of the Secretary-General.⁸ The term of the office of the High Commissioner is usually for a period of five years.⁹

The UNHCR formulates its policy directives either on the directions of the General Assembly or ECOSOC. Its annual reports are submitted to the General Assembly for approval through ECOSOC. In order to facilitate the smooth functioning of the UNHCR and to advise the High Commissioner, the ECOSOC in the year 1951 established an advisory committee on refugees.¹⁰ But it was replaced by the UN Refugee Fund Executive Committee in 1955, whose functions included supervision of material assistance programmes financed by the Fund.¹¹ However, upon the recommendations of the General Assembly, this was replaced by the Executive Committee of the High Commissioner's Programme which was set up by the ECOSOC in 1958,¹² with a membership of 24 member States. But in view of the growing complexities of the refugee problems, today its membership stands at 53.¹³ It meets annually, and advises the High Commissioner whether and to what extent International Assistance should be provided through UNHCR with respect to specific problems of refugees and displaced persons.

Finances of the UNHCR

To carry out its responsibilities, UNHCR remains mainly dependent on voluntary financial contributions from the Governments. Although the member States of the European Community are the largest donors of UNHCR's activities in terms of absolute and in per capita terms, the United States tops the list as the largest single contributor followed by Japan. Today the budget estimate of the UNHCR is \$ 1300 millions per annum.¹⁴

The Executive Committee of the UNHCR, taking into consideration of its future needs and the past experiences of the organization allocates the amount for assistance, under various heads. These include the general and special programmes, administrative expenditure and support for programmes, based on region wise which requires the immediate concern of the UNHCR.

In the beginning though the member States contributed liberally to the activities of the UNHCR, of late, the member States started reducing their financial contributions due to various reasons. Since 1996, the UNHCR started reducing its budgetary requirements from \$ 1.4 billions in 1996 to \$ 995 millions in 1998. In November '98, member-states marked only about \$ 121 millions for 1999 even though the UNHCR budget stands at \$ 842 millions.

In view of the paucity of funds, since 1996 the organisation is forced to reduce its staff by about 1000 personnel out of a total strength of 4400 persons working worldwide.

UNHCR and Durable Solutions

States remain under no obligation to extend protection to refugees through the institution of asylum. But as members of the International Community and as parties to various International Covenants of human rights and the Statute of Refugees, they have a legal obligation to respect the principle of *Non-Refoulement*, (i.e.,

protection of refugees against expulsion or return to a country where they fear persecution). In view of this legal obligation, traditionally the UNHCR with the help of other bodies of the UN could regain State protection to refugees through asylum. But in practice, the UNHCR has to encounter with complex problems due to the political motivations of the States. In view of the behavioural patterns of the States, changed times and the increasing mass influx of the refugee outflows,¹⁶ the UNHCR started adopting new strategies in extending protection to refugees:

In its search for ultimate objective of permanent solutions to refugees, now known as durable solutions, the UNHCR under the auspices of the United Nations has launched two important programmes namely, voluntary repatriation, local integration or resettlement.

(a) *Voluntary Repatriation*

Voluntary repatriation was one of the principal objective of the International Refugee Organization, the predecessor of the UNHCR. Even at the time of establishing UNHCR, the General Assembly called upon the States to assist in the promotion of voluntary repatriation which was declared to be one of the main functions of the UNHCR.¹⁷ Several resolutions have periodically highlighted the importance of voluntary repatriation as a solution, both in general and specific situations of refugee crisis.

Repatriation may itself cause serious problems. Hence, the General Assembly has authorised the UNHCR's involvement in rehabilitation and reintegration programmes. Accordingly the UNHCR Emergency Fund was established to meet the emergent situations in response to refugee crisis. In the year 1980, the Executive Committee adopted a series of conclusions on voluntary repatriation.¹⁸ It was essentially emphasised the voluntary character of repatriation, and the importance of feeding the necessary information to the refugees with regard to the conditions in their country of origin.

Thus voluntary repatriation of refugees and return of displaced persons became the principal solution preferred by the UNHCR. This is evident from the 1996 Report of the High Commissioner for Refugees.¹⁹ In fact concern and active participation of various governments have provided high hopes that voluntary repatriation will continue as the preferred solution to the refugee crisis. For instance, in the year 1995, more than one million refugees returned to their countries of origin, of whom some 4,50,000 of them with the assistance of UNHCR, especially to Afghanistan, Myanmar and Rwanda.²⁰

(b) *Local Integration and Resettlement*

In accordance with the general principles of International law, States have no obligation to grant asylum to refugee with reference to local or as a long lasting solution. However, the practice of the States have even been prepared to provide durable local solutions to a large number of refugees, sometimes as a prelude to voluntary repatriation. The UNHCR taking consideration of the positive response from various States could aid and assist millions of refugees in securing local settlement in several parts of the world.

The refugee crisis in Indo-China, in Latin America and in Europe have underlined the need for states to go beyond measures of economic assistance and to offer opportunities for resettlement. Among all the options available to offer protection to refugees this is considered as the least preferred option. Because various factors such as, political, social, economic and ethnic pressures will impose obligations on the state of first admission and the concern for security of refugees themselves. In the late seventies and early eighties states have expressed different opinions with respect to resettlement. Broadly, they are either (a) an emphasis on regional responsibility and local integration, or (b) an emphasis on global responsibility and a sharing of the resettlement burden or (c) a resistance to local integration etc.²¹ In spite of reservations having been expressed by many states towards local integration and resettlement of refugees, in recent years the UNHCR could secure resettlements for millions of refugees and displaced persons in various countries. It has devised a comprehensive plan of action with respect to Indo-Chinese Refugees and almost succeeded in resettling them in various other States. By the end of 1994 it could find resettlements for some 58,860 persons with an additional 20000 places offered for temporary protection and resettlement for refugees from the former Yugoslavia.²²

Apart from searching durable solutions to protect the refugees, the UNHCR has also undertaken various field operations to settle the refugee problems with a great concern in the country of origin itself. It has also entered into agreements with various other UN agencies like UNICEF, UNDEP, World Bank and with various States to deal with the future problems of refugees in a more coherent manner. Though it is beyond the purview of the UNHCR, the contemporary refugee crisis in Yugoslavia, Somalia and Rwanda, etc., have underlined the need for its humanitarian assistance. In response to the various emerging situations and in accordance with the guidelines of the ECOSOC, General Assembly and its Executive Committee Recommendations, UNHCR started directly involving in field based operational activities with an humanitarian view in rendering assistance to the States and Refugees in the promotion and protection of human rights guaranteed by International Law.

Conclusion

From the above discussion it is clear that the UNHCR has a dual mandate of protecting the refugees and overseeing the relief operations. It is needless to emphasise that in the last five decades the UNHCR is rendering service in the protection and promotion of the rights of refugees, in spite of various problems that are cropping in its way. One such major problem is the crunch on its resources. In view of the very minimal budgetary allocation (i.e., just around 5%) from the UN, the office of the UNHCR is mainly dependent upon the voluntary contributions from the donor nations. In view of the financial cut backs which many of its donors are interested in, in the recent past the services offered by it became minimal rather than extensive at times. The decreasing fund position of the organization would certainly hamper not only the ongoing projects but may even worsen its future activities. Further the UNHCR has to restructure its budget evenly to suit its all round activities than diverting most of its resources to emergency operations.

With respect to temporary measures of protection, no single legal instrument clearly specifies the conditions relating to the temporary refugees and their rights and obligations. Although the UNHCR has developed its own guidelines to deal with gender based discriminations and with respect to children, there is a need to develop a comprehensive legal framework. It is also the duty of UNHCR to find out the ways and means to tackle the problems in future with regard to temporary refugees.

In view of the temporary character of the office of the UNHCR, it is not able to plan long term strategies to tackle the future refugee situations. In the interest of the world Community, and the important role played by the UNHCR, it is high time that the General Assembly should accord permanent status to the Organization. Certainly, a permanent status would not only enhance the status of the organization and also bring radical changes in the perception of the States to find out durable solutions to the future refugee problems.

Due to lack of comprehensive legal framework in the protection of refugees, the voluntary character of repatriation and resettlement has to be retained as an essential one in order not to violate the rights of the refugees. However, at the same time it is the fundamental duty of member States to aid and assist the repatriation and the resettlement programmes of the office of the UNHCR.

Further, the UN has to take the member nations into confidence and to involve all its organs to develop comprehensive plans a strategy to deal with the refugee problems in future. This is especially called for with respect to material assistance to suit the needs of the future refugees problems. At the same time apart from the Executive of the UNHCR, there is a need to constitute a consultative committee on an informal basis consisting of member nations whomsoever is willing to render their advise and assistance to UNHCR on a permanent basis in its long term policy planning relating to problems of social, political, economic and legal aspects with respect to various futuristic refugee movements.

End Notes

1. Summaiya Khair "Refugee in Armed conflict and International Disturbance", BISS Journal, Vol. 12, July 1996, p. 336.
2. The Reader's Digest Universal Dictionary defines a refugee as "One who escape from invasion, oppression or persecution, often to another country." According to the shorter Oxford Dictionary it was originally applied to the "French Huguenots who came to England after the revocation of the Edict of Nantes in 1685" also see Guy's, Goodwin - Gill "The refugee in International Law" (1983, P 1); also see Oppenheim : International Law (ed., Robert Jennings and Arther Watts, 9th edn.), Vol. I, 1992 at p 1890.
3. Guy S. Goodwin - Gill : *Supra* n. 2 pp. 3-5.
4. See Brain Godlick: "Who Needs and Deserve Protection? The Applicability of the Exclusion Clauses in International Refugee Law" *IJIL*, Vol. 37, 1997, p. 676.
5. ECOSOC Res. 248 (IX) 1949.
6. UNGA Res. 319 (IV), Refugees and Stateless Persons, 3 December 1949.
7. For the Statute of the Office of the UNHCR see UNGA Res. 428 (V), 14 December, 1950.
8. Para-13 of the Statute.

9. Peter Macalister - Smith : "Refugees and displaced Persons in a Troubled World" *IJIL*, Vol. 27 1997, p. 633 at 640.
10. ECOSOC Res. 393 B (XIII) 10 September, 1951.
11. G.A. Res. 832 (IX) 21 October 1954.
12. G.A. Res. 1166 (XII), 26 November 1957, ECOSOC Res. 672 (XXV), 30 April, 1958.
13. UN Documents A / AC.96/1, 26 November 1958.
14. For an overview of UNHCR Activities 1996 to 1998, see UN.DOC. A / AC. 961884, 18 August 1997 pp 25-26.
15. THE HINDU 20 November 1998 (TN Edition), p. 17.
16. For a detailed discussion refer Guy. S. Goodwin Gill; supra n.2; also see Supra it. at pp 643-45.
17. GA Res. 428 (V) Para 2 (d) 14. December 1950.
18. UNDOCs A / AC 96/588 (report of the Executive Committee) 1980.
19. The reported version is as follows:
 Voluntary repatriation is regarded by UNHCR as the preferred durable solution to refugee situations. Negotiations and events under way in many parts of the world provide continued grounds for hope that voluntary repatriation can become a reality for a large number of world refugees." - UNDOC. E/1996/52, 13 May 1996, p. 14, Para 43, cited by Peter Macalister Smith, n. 9 at p. 645.
20. The 50th anniversary Annual Report of the United Nations, 1996, p. 181.
21. Guy. S. Goodwin Gill, Supra 2 at pp 222-23.
22. Year Book of the United Nations : Vol. 48, 1994, p. 1223.
23. For a detailed discussion on its humanitarian activities; see supra n. 9 pp. 646-51.

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