



Protection of Refugees under Principles of International Refugee Law: An Appraisal

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ARTICLE INFO	ABSTRACT
<p>Received date: Oct. 18, 2018</p> <p>Accepted date: Jan. 18, 2019</p>	<p>Increasing number of refugee people through the world leads to the discourses of protection of refugees. Massive influx of the Rohingya refugees in Asia and exodus of Syrian refugee to Europe often remind the world communities regarding attitude of the State towards the refugees in every corner of the world. This paper mainly focuses of the basic principles in regard to protection of the rights of the refugees under Refugee Convention 1951. It further, explores the international human rights instruments in supporting the principles adopted by the Refugee Convention. The study also investigates the basic principles which are absence but needs to be incorporated in the Convention. The objective of this paper is to explore the state responsibilities under the principles of Refugee Convention and other international human rights conventions. It further aims to protect these stateless people by adopting and incorporating basic principles in the instruments as well as to address the experts and policy makers to formulate appropriate policy and law based on these principles. A finding of the study is that the state are not fully complying or complying without due care and attention to these principles. This is a doctrinal research and follows qualitative phenomenon. The researcher consults relevant primary and secondary sources to analyze the subject matter.</p>

Key words: Convention 1951, Discrimination, Expulsion, Extradition, Non-refoulement, Protection.

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1. INTRODUCTION

Refugees are the most vulnerable people in the world. They are persecuted by their country of origin and possessed no identity. They often denied their Nationality and deprived basic human rights. According to the UNHCR current world is witnessing about 25.4 million refugees where 50% are under the age of 18 years (UNHCR, 2018). These people without country are offering protection under the Refugee

Convention 1951 through the assistance of UNHCR all over the world. These protections are also based on certain fundamental principles contained in the Convention as well as other international human rights laws. The current study has been discussed about the fundamental principles in the international refugee law. These principles are the core objectives of the Convention for the protection of refugee people all over the world. The aim was that each receiving country is expected to ensure that these principles are

To Cite: Hossain, M.S., Saulawa, M.A. (2019). Protection of refugees under principles of international refugee law: an appraisal. *EBAUB J.*, 1, 169-176

followed for the ultimate purposes of protecting the status of refugees. These principles mandate the States to confirm its compliance in one hand and it is not the refugee to exercise them on the other hand. The international refugee law mandates state to exercise and observe the principles of non-refoulement, principle of non-expulsion, principle of extradition, principles of non-discrimination and the principle of non-penalization. These principles are tie with other international human rights instruments and set to further recognize and ensure a duty to States for securing the peace and security of a refugee in a foreign nation.

1.1 The Principle of Non-Refoulement

The rejection and return is an often common behavioral phenomenon of the present day State towards the persecuted people around the world which in legal term called Non-Refoulement. This principle of non-refoulement is formed as a cornerstone of the refugee protection in International Law. This principle has been reconfirm by the UN General Assembly in 2016 stated that “We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of non-refoulement in accordance with international refugee law” (UN General Assembly, 2016). It protects a refugee against forcible return to any country in which he fears persecution or a threat to his life. However many relevant and significant questions arise around the principle, including whether this principle protects only a refugee who is already present in the territory of a State or whether it also protects an asylum seeker who is at the border of that State merely attempting to enter, and also what standard should be used to judge what danger warrants not returning the refugee. As a treaty based principle it binds member countries that are expected to act in good faith and treat all refugees equally as this principle prohibits discrimination between and among refugees. If its status as customary international law is established then the binding effect of the principle of non-refoulement would be global.

1.1.1 The Development of Non-Refoulement in International Law

The main theory of non-refoulement is that ‘no refugee should be returned to any country where he or she is likely to face persecution, torture or a threat to life’ (Goodwin-Gill, 1996). This is a fundamental principle played a key role for the protection of refugees and asylum seekers, since its expression in the Convention relating to the Status of Refugees of 1951. This principle was enunciated by the League of Nations after World War I in 1930s. Prior to this period this principle did not exist in international law (Newmark, 1993), even though its idea was evident in the practice of some states. This principle was first expressed at international law in Article 3 of the 1933 Convention relating to the Status of Refugees under which the Contracting Parties undertook not to remove resident refugees or keep them out of their territories by application

of police measures, such as expulsion or non-admittance at the frontier unless dictated by national security or public order. However, since only few states ratified this Convention it had a diminishing practical value (Goodwin-Gill, 1996).

The 1933 Refugee convention creates doubt among the states that if they ratify the convention that they shall be under an obligation to grant all the person seeking refuge to them which is beyond their sovereign right to decide the matter in concern. Therefore, the convention did not obtain sufficient response to implement the refugee protection worldwide (Newmark, 1993). Although many States appeared to have accepted that there was a moral duty to accept refugees, and not return them, this was done largely on an ad hoc basis (Goodwin-Gill, 1996). The mere sense of moral obligation even if adhered to on an ad hoc basis was not good enough to address the massive refugee flows produced by the upheaval of World War II. Considering the worst situation of refugee gave birth by the World War II the United Nations General Assembly passed a resolution in 1946 declaring that refugees should not be returned when they had ‘valid objections’ (Goodwin-Gill, 1996). This concern, prompted largely by the huge number of refugees in Europe following the war, eventually led to the drafting of the United Nations Convention Relating to the Status of Refugees signed in 1951 (Newmark, 1993).

1.1.2 Non-Refoulement under International Human Rights Law

The principle of non-refoulement under the 1951 Convention Relating to the Status of Refugees and is backed by international and regional human rights law. The International Human Rights Instruments are often very firm in providing right to every human being although it is observed quite less in practical application of those instruments in various ways and face challenges to ensure the rights. The Article 3 of the convention against torture, and other cruel, or inhumane degrading treatment or punishment, is applied to prevent return of an individual to a place where there is a real risk that his fundamental human rights will be violated. Article 3 of the declaration on territorial asylum in 1967, which was adopted unanimously by the UN General Assembly, provides that no person shall be subjected to measures such as expulsion, rejection or compulsory return to any state where he would be subjected to persecution. Further, the American Convention on Human Rights in 1969 under Article 22 (8) has similar provisions. The Cartagena Declaration in 1984 under Article III (5) said that the principle is imperative and in the present state of international law should be acknowledged and observed as a rule of *jus cogens*. Similar provisions are found under the Declaration on the Protection of all Persons from Enforcement Disappearances in 1992 and United Nation Principles on the Effective Prevention and Investigations of Extra-Legal Arbitrary and Summary Execution.

2. THE PRINCIPLE OF NON REJECTION AT THE FRONTIER

The principle of non-rejection from the border line requesting for protection is become a burning question at the present time because recent reports shown that many Syrian persecuted people were restricted at the frontier of most of the European countries. Even they erect border fence to prevent destitute people from Syria, Iraq and so countries. Now strong criticism raise as to whether Article 33 of the Refugee Convention is able to protect the people at the frontier from being return to their place of persecution and danger to life and freedom. The views of commentators have varied on this on this crucial point. Robinson said in 1952 "If a refugee has succeeded in eluding the frontier guards, he is safe; if he has not, it is his hard luck" (Robinson 1953). This view, however, was refuted early by other writers that it is clearly unreasonable for a state to exclude the police action against wrongful refoulement to the country from where they escaped and it is also unfortunate for detained them in the no-man's land at the frontier (Pompe, 1951).

In the present practice, the majority of the commentators clearly agree that Article 33 encompasses non-rejection at the frontier (Madsen, 1966; Kahan, 1976). Richard Plender is of the opinion that refoulement occurs, contrary to the Convention and customary law, when refugee who presents himself at the frontier is denied admission and forced thereby to face persecution in his country of origin. He argues further that Article 32 of the 1951 Convention prohibits the expulsion of refugees *lawfully* present in the territory of contracting states, whereas Article 33 prohibits refoulement of even those who are not lawfully in the territory of contracting states, including "those who are not in that territory at all" (Plender, 1991; Goodwin-Gill, 1984; Taylor, 1994).

The simple interpretation of the duty of non-return is strongly reinforced by the Convention's use of the French term *refouler*. Le Petit Robert is considered one of the most authoritative French dictionaries. It defines *refouler* as "[F]aire reculer, refouler (des personnes)...*Refouler des immigrants, des indésirables à la frontière*". Schoenholtz translates this definition as "to drive back or to repel. To drive back immigrants, undesirable, at the border" (Schoenholtz, 1993). This authoritative source makes it clear that the word *refouler* bars, inter alia, the rejection of refugees at the frontier. Thus, the terms of Article 33 of the 1951 Convention are unambiguous. Its language is clear, and its command is straightforward. Nevertheless, some commentators rely on a remark by the Netherlands's delegate at the Convention's negotiating conference to support their contention that Article 33 applies only to refugees present within a territory (Namara, 1951). Moreover, there is no evidence that the comment made by the Netherlands's delegate was ever communicated to the majority of state parties to the 1951 Convention. In fact, the Conference adopted Article 33 and not the Netherlands

delegate's views on refoulement. The Netherlands delegate like the Swiss delegates whose desire was to reserve the right to close borders to large groups of refugees. The Netherlands representative raised similar intention that the Article 33 "would not have involved any obligations in the possible case of mass migrations across frontiers or of attempted mass migrations" (Namara, 1951), and this was important because "the Netherlands could not accept any legal obligations in respect of large group of refugees seeking access to its territory" (Namara, 1951). Therefore, no question raise as to whether the convention allow the state to disallow large amount of refugees and only allow small in number or not. It is totally irrelevant question in all point of humanitarian grounds, hence Article 33 is comprehensive and addressed the entire situation whether large or small number of people staying at the frontier should be accepted.

Therefore, through its clear and unambiguous wording, Article 33 of the 1951 Convention imposes a mandatory duty on states not to return a refugee *in any manner whatsoever* to a country where his life or freedom would be endangered. Significantly, Article 33 applies to a refugee-who may be anywhere within or without a potential state of refuge (Plender, 1991)

(Goodwin-Gill, 1984). In contrast the United States Supreme Court held opposite decision in *Sale v. Haitian Centres Council Inc* S. Ct. 2549 (1993) that the prohibition against refoulement applies only to refugees present within the territory which is in fact against the spirit of the Convention and protection of refugee people.

3. THE PRINCIPLE OF NON-EXTRADITION

As regards the non-extradition of the refugees, Refugee Convention remained silent. Nevertheless, it can be assumed, from the wording return (refouler) in any manner whatsoever, that non-extradition is not excluded from the ambit of Article 33, and so the question arises - as in the case of non-rejection at the frontier - how that the Article 33 is to be interpreted. The United Nations High Commissioner for Refugees (UNHCR) has for a long time contained a view that the Article 33 may be interpreted to include a prohibition against extradition of a refugee to a country from which is being persecuted. When the question was brought up for discussion in the inter-session meeting of the UNHCR Executive Committee a number of speakers considered that the principle of non-refoulement "had now assumed the character of a binding legal principle which should automatically apply in regard to the obligation of states under-extradition treaties" (UNHCR, 1980-~~81~~), and that the principle of non-refoulement could more effectively be applied if that states parties to extradition treaties are also the parties to the Convention. Most of the sub-committee has been given valuable opinion that Article 33 of the Convention could be interpreted to include non-extradition of refugees. The Sub-committee adopted the following conclusions, which were also unanimously adopted by the

Executive Committee of the UNHCR Programme (UNHCR 1980).

The decisions of the Executive Committee which are as follow:

- a) Considered that cases in which the extradition of a refugee or of a person who may qualify as a refugee is required may give rise to special problems
- b) Reaffirmed the Fundamental Character of the generally recognized principle of non-refoulement.
- c) Recognized that refugees should be protected in regard to extradition to a country where they have well founded reasons to fear persecution on the grounds enumerated in Article 1A (2) of the 1951 United Nations Convention relating to the Status of Refugees.
- d) Called upon states to ensure that the principle of non-refoulement is duly taken into account in treaties relating to extradition and as appropriate in national legislation on the subject.
- e) Expressed the hope that due regard be had to the principle of non-refoulement in the application of existing treaties relating to extradition.
- f) Stressed that nothing in the present conclusions should be considered as affecting the necessity for states to ensure, on the basis of national legislation and international instruments, punishment for serious offences, such as the unlawful seizure of aircraft, the taking of hostages and murder.
- g) Stressed that protection in regard to extradition applies to persons who fulfill the criteria of the refugee definition and who are not excluded from refugee status by virtue of Article 1(F) (b) of the 1951 United Nations Convention relating to the Status of Refugees.

It is pertinent to mention here that paragraphs (c) and (g) of these conclusions constitutes the clearest evidence of the view of UNHCR, according to which non-extradition should consider to be included in the principle of non-refoulement. Even if we look at the definition of the term extradition we may be able to conclude that refugees are non-extraditable. In addition, extradition has been defined as the surrender of one state to another, on request, of persons accused or convicted of committing a non-political crime in the state seeking the surrender. In other words the definition that we just referred to clearly exclude refugees from the ambit of extradition. As because refugees are not criminals rather they are victims of serious human rights violations or persecution. Even if they have committed political offences, they cannot be extradited for it is normally provided in multilateral as well as bilateral extradition treaties that political crimes are non-extraditable offences.

The notion that a refugee should not be extradited to a country, in which he fears persecution, is also supported by the Swiss Federal Court. The Court refused an application of extradition of a Hungarian refugee case because the court found that the person is a refugee and granted asylum under Swiss authorities. The court stated that: "Article 33 of the 1951 Convention does not explicitly mention extradition,

but declares that no contracting state shall expel or return a refugee in any manner whatsoever ...State practice is not uniform, but most states consider Article 33 to constitute a legal bar against the extradition of a refugee. The purpose of the Article is to protect refugees against the loss of the protection they obtained in a country of asylum, which includes the purpose of preventing the extradition of refugees" (UNHCR, 1980).

Similarly, the French Council d'Etat held that Article 33 of the 1951 Convention prohibits extradition of a refugee to a country in which he faces persecution in a case involving a Spanish refugee (Bilbert, 1991). In this case, a Spanish national, had been granted refugee status by France in 1973. Spain requested his surrender. The French Council d'Etat held that subject to matters of national security, extradition should be refused, not only under Article 33 and the principle of non-refoulement, but also on the basis of Article 1A(2) of the 1951 Convention.

As regards the priority between bilateral extradition treaty and Article 33 of the 1951 Convention it is very difficult to settle the question. However, there are some other issues that can be consider for giving priority such as first of all priority should be given to the latest one which is a general principle of *lex posterior derogat priori* (that is a later treaty overrules an earlier one). According to this treaty Refugee Convention will prevail (Vienna Convention, A. 30). Secondly, on account of humanity therefore, refugee Convention is for the protection of human rights of such people who are most disadvantaged, landless, persecuted person by their state. Extradition on the other hand is for the security of the state which is found very rare case and the definition is non-political crime is affected by biasness in many cases; therefore, humanity should be priorities over any other treaties. If an extradition treaty is concluded by two states after the entry into force of the 1951 Convention, the conclusion of the extradition treaty may amount to a breach of the Convention provided the provisions of such treaty is incompatible with the provision of the 1951 Convention. By concluding such an extradition treaty, the country of refuge may be considered to have violated Article 33 of the 1951 Convention - an Article which prohibits a state from returning a refugee by any means, method or mechanism whatsoever to a state where he might face prosecution or danger to life or freedom.

Now the Judges of European Court of Human Rights argued that the ECHR (European Convention for the Protection of Human Rights and Fundamental Freedom) to provide real and effective protection for all persons present in the member states, governments cannot be permitted to expose such persons to serious violations of human rights in other countries. Furthermore, the most fundamental of all human rights are the right to life and liberty and, when an administrative decision is said to be one which may put the individual's life and liberty at risk by extraditing him to a country of persecution, the basis of the decision must surely call for the most anxious scrutiny, and that such a decision must not be permitted to take effect.

4. THE PRINCIPLE OF NON-EXPULSION

Although Article 33 of the 1951 Convention imposes a duty on the states not to return a refugee to any country where he is likely to face prosecution or danger to life or freedom, they retain discretion as regards both the grant of *durable asylum* and conditions under which it may be granted or terminated. The states parties to the 1951 Convention and the 1967 Protocol, however, acknowledged that expulsion of refugee raises special problems and under Article 32 they undertake not to expel a refugee lawfully in their territory save on grounds of national security or public order. However, question rises whether only refugees whose status has already been recognized, by the country of refuge are protected by Article 32 or whether this protection also extends to those refugees whose status has not yet been recognized. The commentators hold divergent views on this issue. Thus, Pellonppa is of the view that Article 32 presupposes lawful presence precisely as a refugee; an asylum seeker who enters or resides per se lawfully as an ordinary alien enjoys the protection of Article 32 only after his refugee status has implicitly or explicitly been recognized. He also states that we may conclude that the function of Article 32 is to provide general protection against expulsion to convention refugees who have been recognized by the contracting state and given asylum in its territory (Pellonppa, 1984). On the contrary, according to Grahl-Madsen a refugee who is per se lawfully in the territory of country of refuge is generally entitled to protection in accordance with Article 32, and that he should not be expelled on grounds other than national security or public order until his status has been determined. In view of the fact that determination of refugee status is only declaratory and not constitutive, a refugee who satisfied the criteria enumerated in Article 1 of the 1951 Convention, is also entitled to protection in accordance with Article 32 without more ado (Madsen, 1966).

In other situation where a refugee who has been granted provisional stay pending the determination of his status must be considered to be lawfully in the country for the purpose of Article 32. Thus, it may be maintained that if anything happens before the request has been determined; the refugee should not be removed from the country unless, on the basis of this incident, he is considered to constitute a threat to national security, or public order. On the other hand a refugee “who has been granted the right of lawful residence needs the assurance that this right will not be withdrawn, with the result that he again becomes an uprooted person in search of refugee”(UNHCR, 2009). This assurance is given in Article 32. The ultimate purpose of Article 32, therefore, is that a refugee must not, unless there are very serious reasons, be sent to a state where he does not enjoy sufficient protection against becoming an uprooted person again.

If a third state has granted refugee status for a person they have to undertake to accord him those basic civil, social and economic rights enumerated in the 1951 Convention. The purpose of Article 32 will, therefore, generally not be avoided if the refugee is expelled to that state on other

grounds than those enumerated in Article 32(1). This view is enhanced by the opinions regarding possible extraterritorial effect of recognition by a contracting state of a person's refugee status. According to the Executive Committee of the UNHCR it is evident that one of the essential aspects of refugee status is its international character (UNHCR, 2009). Thus, the executive committee has noted that some provisions of the 1951 Convention make it possible for refugee to exercise rights in another state than the one which has recognized their status, that so called statutory refugee status. The conclusion has been that the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one contracting state will be recognized also by the other contracting states (UNHCR, 2009). Therefore, it may be submitted that a person whose refugee status has been recognized in one state should not be expelled for reason other than those of national security or public order unless the expulsion can take place to the state, which has, recognized his status.

The principle of non-refoulement which in its most restrictive interpretation was taken to mean non-return and non-expulsion has been extended to include non-rejection at the frontier and non-extradition where the end result would be the same (i.e. compulsory return to the country where the refugee may be subjected to persecution). It is further considered that, as a logical and necessary corollary of the principle of non-refoulement is the duty to provide temporary refuge to refugees. With regard to its legal status, the principle of non-refoulement in its broad sense has now crystallized into customary international law binding on all states. This principle not only bars a state from returning a refugee by any means, methods or mechanism whatsoever to a state where he is likely to face persecution or human rights violation, but it also implies the obligation of such state to protect the human rights of refugees within its territorial jurisdiction. The question as to what are the human rights of refugees and to what extent those rights are protected is discussed in detail in the following chapter-entitled the Human Rights of Refugees.

5. THE PRINCIPLE OF NON-DISCRIMINATION

Article 3 of the Refugees Convention of 1951 focused on the principle of non-discrimination which is an established principle under International Law. It provides that the Contracting States shall apply the provisions of this Convention to the refugees without any discrimination on account of race, religion or country of origin. This Convention is applicable with its Protocol of 1967 to all concern States. These are the expected measure that the States are mandated to comply with protection and promotion of the status of refugees, especially the countries ratified the Convention and its Protocol. Under the international humanitarian law, the principles of non-discrimination is further expected to deal with refugees in line of humanity that they are a human being The International Refugee Law has been designed the principles that set its goals in the protection of the refugees through the

existing of various International instruments. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The non-discrimination principle has two connections, both equality and non-discrimination and this two sides are interlinked and sometimes overlapped. The provision has established its scope and this principle has playing a significant role in developing regional and international human rights law (Ramcharan, 1981), particularly, maintaining the relative nature of the legal instruments on equality and non-discrimination. Though, a reasonable number of national and international instruments complied with the principle for the equal treatment to refugees but the extent of support and acceptance all of sudden was limited based on the legal obligation ties with the principle (Pobjoy, 2010). The efforts put by the United Nations High Commissioner for Refugees Executive Committee of the High Commissioner’s Programme (Hathaway, 2005). and has confident that states will accord granting a Complementary forms of protection: “to provide for the highest degree of stability and certainty by ensuring the human rights and fundamental freedoms of such persons without discrimination, taking into account the relevant international instruments and giving due regard to the best interest of the child and family unity principles..”(UNHCR, 2005).

The House of Lords considered the EU Qualification Directive in 2002 and provided an observation and guideline to EC that European Commission should propose for reform of the EU Qualification Directive, to reflect a similar view.

The principle of non-discrimination has been explained as one of the most essential conditions of the protections as provided by the rule of law (Lord, 2004). Article 26 of the ICCPR above is broadly considered as the central part of explanation of the principle of non-discrimination in the international human rights law (Hathaway, 2005). Generally, the principle always goes with equality and discrimination, the origin of the principles of equality and non-discrimination are the most celebrated commonly pronounced standard of international human rights laws’ (Bayefsky, 1990). The establishment of the United Nations was the result of massive discrimination of ‘perversion of Nazis’ and 6 million people’s life in the Second World War which led to put non-discriminatory clause in the UN charter (Boyle & Baldaccini, 2001).

The Charter’s preamble promotes: “The equal rights of men and women”.¹⁴¹ Article 1(3) commits the United Nations to ‘achieving international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’. The Universal Declaration of

Human Rights includes new issues in the principle under Article 1 of the UDHR which provides (UDHR, 1948) “All human beings are born free and equal in dignity and rights.” Article 2 provides that every individual is ‘entitled to all the rights and freedoms set forth in [the UDHR], without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Further to the UDHR, Article 7 provides that: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this *Declaration* and against any incitement to such discrimination.”

The first United Nations convention was the Convention on the Prevention and Punishment of the Crime of Genocide as the first International Human Rights Law through UN framework which is comparably connected to the post-war experience, on attempting to combat genocide as the ‘ultimate expression’ (Boyle & Baldaccini, 2001) of racial discrimination. At the regional level, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted in 1950, also contains an express prohibition against discrimination under Article 14 of ECHR. These mechanisms, inextricably inclined by their historical antecedent, were considered ground-breaking not just for the purposes of protecting human rights but they ought to be there in way that defines and “encompassed all human beings equally” (Boyle & Baldaccini, 2001). In addition, the opinion of Nowak was that “it is clear that the United Nations has ‘since its very beginnings placed the battle against discrimination at the forefront of its human rights activities.” The centrality of the concept of non-discrimination in each of these instruments, which ‘imbued and inspired” (Boerefijin, 2005). However, the protection of human rights against discrimination is the core in every major international human rights instrument, that further give emphasis to the central importance of, and the value ascribed to, this principle, and the fact that ‘human inclusiveness is a characteristic of the international human rights approach (Boyle & Baldaccini, 2001).

In expanding the perimeter of protecting refugees against discrimination, the Non-governmental organizations are involved in ensuring the promotion of these rights, the work of Human Rights Watch is remarkable, they are concerned in the States efforts in complying with their legal obligations, under international human rights, refugee and humanitarian law, relating to the promotion and protection of the human rights of refugees, asylum seekers, other forced migrants and internally displaced persons (Human Rights Watch, 2001).

6. THE PRINCIPLE OF NON-PENALIZATION

The principle of non-penalization is also a right among the rights ensured by the 1951 Convention and its Protocol 1967. (Feller, 2003) Usually, the principle of non-penalization refers to a refugee who “unlawfully” entered into a country or attempted to enter the territory without permission

(Kneebone, 2009). Article 31 of the Convention provides that:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Although the Convention obliged the states for non-penalizing the refugees. Nevertheless, disregarding this provision, still the refugees and asylum seekers are facing miserable difficulties; usually they are positioned in the detention facilities all over the Europe, North America, and Australia, due to their illegal entry or presence. This is a clear violation of the International human rights instruments, particularly, the Convention and its protocol in relation to the status of refugees. Thus in its review of reception in July 2000 in relation to the standards for asylum seekers in the European Union, UNHCR discovers numerous diverse types of detention in operation, including detention at border points or in airport transit areas, and that the grounds for detention also differ (UNHCR, 2000). For instance, refugees and asylum seekers may perhaps be detained at the 'pre admission' phase, because of false documents or lack of proper documentation, or they may be held in anticipation of deportation or transfer to a 'safe third country', again for case in point, is the provisions of the Dublin Convention (Dublin Convention, 1997).

The practice of penalizing refugees and asylum seekers grown up gradually and for this cause some of the receiving countries began to set up special detention or holding centers, for instance, in Austria, Belgium, Denmark, France, Germany, Greece, the Netherlands, Spain, Sweden, the United Kingdom, and the United States; the center may perhaps be open, semi-open, or closed. The rise for the demand, many States adopted the use of regular prisons for the purposes of immigration-related detention; in such situation, the asylum seekers are generally subject to the same regime as other prisoners and are not segregated from criminals or other offenders. This defines the extent of the abuse of the respective rights. These rights those are temporal, fully aware that the refugees are force to live their countries as a result of conflict and persecution, not because they desire to be treated in such cruel way. Surprisingly, the

human right instruments are worthy of applicability and all embrace human rights. The 1951 Convention establishes a regime of rights and responsibilities for refugees. In most cases, only if an individual's claim to refugee status is examined *before* he or she is affected by an exercise of State jurisdiction (for example, in regard to penalization for 'illegal' entry), can the State be sure that its international obligations are met. To impose penalties without regard to the merits of an individual's claim to be a refugee will likely also violate the obligation of the State to ensure and to protect the human rights of everyone within its territory or subject to its jurisdiction.

The attitude of putting such in to practice becomes extravagant of the national resources and an example of terrible management. The implication of such attitude cost the receiving states in the sense that they imposed penalty as detention to the asylum seekers and that unavoidably increases the delay in processing their document in the national systems, whether at the level of refugee determination or immigration control (Goodwin-Gill, 1984). The rationale behind the 1951 Convention and its Protocol is remarkable for the safety operation and control of refugees in a receiving country. If the instruments relating to the refugees status will adhere, the receiving state would benefit, the refugees are not there to stay redundant without contributing to the nation's economy and safety of the environment. Penalizing the refugees is an offence under the 1951 Convention and its Protocol 1967.

7. CONCLUSION

The fundamental principles are the main concern in relation to the status of refugees, with reference to 1951 Convention and its Protocol 1967. These principles enumerate the rights of the refugee in a refuge country which are expected to abide with. Among the core principle is non-refoulement which is remarkable in the sense that a refugee should be considered in a refuge country and should not return to a country where they face serious threats to their life. The other principles are part of the recognized status of refugees and are maintain and monitor by the UNHCR and are recognized as the law under the customary international law. Further, it must be recognized that the principle of non-refoulement is the foundation stone upon which all rights of refugees/asylum seekers stand. It is a gateway that allows the access to other rights within the state of asylum. Once a person is within the state's jurisdiction, they are entitled to the rights and freedom as contained in instruments ratified by that state. The principle is not only crucial to refugees and asylum seekers but also to every humanity, and potential asylum seekers like you and me. Furthermore, those principles are not still has not been incorporated clearly in the refugee convention are strongly recommended by the experts for better protection of the refugees all over the world.

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