

# Access to Asylum Rights across the Globe under International & Regional Laws: Challenges and the Way Forward

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## *Abstract*

*This manuscript mainly focuses on the accessibility of asylum rights from host country. It is well recognized that the population mobility is a very common phenomenon in this globalized world. People are frequently moves from one place to another for plenty of reasons but for that they need not to seek specific state protection. In contrast, massive population mobility due to persecution by the authority of their country of origin is obviously needed specific protection from the receiving country. International human rights laws and international humanitarian laws as well as regional human rights instruments are promoting and advocating state parties to grant specific protection like granting asylum to those persecuted by their home country. Therefore, the study further, examines the promotion and protection of asylum rights under international laws. Furthermore, the study highlights the key reasons behind emerging numbers of asylum seekers throughout the world and at the same time brings some of the possible way out to resolve this problems. The objective of this article is to address the national and international policy makers to put adequate afford to make asylum right easy accessible for appropriate person. This is a doctrinal research consults with both primary and secondary sources of information. The researches examine the international conventions relating to human rights and humanitarian laws. It also consults with books, articles and online materials to achieve the objectives of the study. It is the belief of the both researchers that this paper will contribute a lot in the field of international law relating to asylum in particular and human rights in general.*

**Keywords:** Asylum, persecution, international law, political asylum, territorial asylum, extra-territorial asylum.

## **1.1 Introduction**

Right to life is an inherent and inseparable fundamental human right recognized by all civilized nations from ancient to modern era through usages, customs and conventions.

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Seeking asylum is a right associated with to right to life which also accepted by ancient nations as well as modern convention on human rights. The theme of this right is everyone has the right to seek and to enjoy in other countries asylum from persecution committed by his country of origin<sup>1</sup>. However, exercise of asylum right is now become a big challenge in the current world as a whole. Millions of people are compelling to flee their homes around the globe in consequence of conflict, systematic discrimination, or other forms of persecution<sup>2</sup>. Reasons behind growing number of asylum seekers and refugees have destroyed the global peace and security. Developed countries are facing enormous problem in handling forced migration into their country. This is not only a problem of Europe or America but also a predicament of every corner of the globe. The current article investigates the fundamental causes behind the situation of seeking asylum and addresses the challenges and suggests possible way for peaceful resolution of those challenges.

## 1.2 Meaning of Asylum

There is no universal definition of Asylum is available under International law, therefore, it is applied in different aspect. The term ‘asylum’ is a Latin word comes from the Greek word *asylon* or *asylia* which means a sanctuary or an inviolable place of safety<sup>3</sup>. Grahl-Madsen explained that the Greek word “*asylon*” is derived from “a” meaning “not” and “syle” meaning “right of seizure<sup>4</sup>. In the Oxford English Dictionary the term ‘asylum’ has several meanings one of which is the resorting to protect a right which is being threatened or taken by force. The second meaning refers to any place of retreat and security. The third meaning of asylum is that it is an institution for the protection or relief for the unfortunate, afflicted and destitute. Finally, asylum is said to be a sanctuary from which a fugitive cannot be forcibly taken without sacrilege. Webster’s Dictionary, on the other

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<sup>1</sup> Article 13(2), The Universal Declaration of Human Rights, 1948

<sup>2</sup> Feller.E, Volker. and Frances.N, *Refugee Protection in International Law*, Cambridge University Press, 2003.

<sup>3</sup>Richardo C. Puno, *The Basis and Rationaale of Internatiuonal Law*, Phillipine Yearbook of International Law, Volume. 7(1), 1981, p. 299

<sup>4</sup> Madsen. A. Grahl, *The Status of Refugees in International Law/Vol. 2, Asylum, Entry and Sojourn*, Publisher. Leyden : A.W. Sijthoff, 1972

hand, defines ‘asylum’ as a ‘right’ of a person to have shelter and protection in a state other than his homeland. The later definition apparently covers the situation where asylum is granted by a state within its territorial boundary.

It is not, therefore, as comprehensive, as it has not clearly taken into account in the situation where asylum is granted by a state outside its territory such as its embassy or public vessels. However, the term “Asylum” was made close link with the protection of refugees provided under Refugee Convention, 1951 by the Treaty of European Community<sup>5</sup>. Furthermore, the term has been defined by the Institute du Droit International of its Bath Conference in 1950 as “Asylum means the protection offered by a State on its territory or elsewhere to an individual who come to seek it”<sup>6</sup>. This definition was perhaps covered the main purpose of seeking Asylum by a victim of persecution.

A comprehensive definition of ‘asylum’ would include “the protection which a state grants on its territory or in some of her place under the control of certain of its organs to a person who comes to seek it”<sup>7</sup>. Based on this definition asylum essentially encompasses a shelter and a degree of active protection on the part of authorities that have control over the premises in which the shelter is granted<sup>8</sup>. Therefore, there are two elements of Asylum such as:

1. The shelter which is more than a temporary refuge.
2. A degree of active protection on the part of the authorities in control of the territory of asylum.

This definition is wide enough to cover the situation where asylum is granted by a state ‘within’ or ‘outside’ its territorial boundary. The question as to whether an individual has a ‘right’ under international law to be granted asylum is the question which will be

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<sup>5</sup> Article –K(1), *European Union Treaty*, 1992.

<sup>6</sup> Battjes. Hemme, *European Asylum Law and International Law*, Martinus Nijhoff Publisher, Boston, 2006, pp. 5-6

<sup>7</sup> Kapoor, S K, *International Law*, Central Law Agency, Allahabad (India), 11<sup>th</sup> edn, 1996, p.309

<sup>8</sup> Mc Namara, D. *The Protection of Refugees and the Responsibilities of States: Engagement or Abdication?* Harvard Human Rights Journal, Vol.11,1998, p. 359; Stark, J.G. *Introduction to International Law*, 10<sup>th</sup> Edition, 1989, p. 358; Bassiouni, M.C. *International Extradition: United States Law and Practice*, Oceana Publication, 4<sup>th</sup> Edition, 1996, New York.

examined after a brief explanation on different types of asylum that a state may grant to an individual who comes to seek it.

### 1.3 Historical Background of Asylum

Historically, asylum has been regarded as a place of refuge where one could be free from the reach of a pursuer. Sacred places first provided such a refuge and scholars are of the view that “the practice of asylum is as old as humanity itself”<sup>9</sup>. It is further evident that practice of Asylum comes from the practice of extradition and now second one is the exception to the first one<sup>10</sup>. Again place of Asylum is the place for an asylee to whom the State of origin has no jurisdiction. Such place may be inside or outside of the country of origin. In the history no uniformity was found to accept it. Sometime it was applied selectively and sometime recognized as privilege rather than right. Therefore, in most of the cases Asylum considered as basic human rights based on the theory of Suaaz and Grotius that “asylum is an inherent human right deriving from Natural Law”<sup>11</sup>.

In the ancient time Asylum practice was associated with the sanctuary of holy places like the *Haram* Area of Makka in the Arabian peninsula where it was accepted that any one enter the area of *Haram* he or she will be given protection and become inviolable during the time. Nevertheless, the law of *Manu* in ancient Hindu civilization was not only recognized Asylum within a sacred place rather than approved the wrong doer into punishment. In such system, there would not be any place for asylum<sup>12</sup>. It was further found in the Egyptian society that the temple of *Osiris* and *Amon* was granting Asylum for the slaves who flee from the abuse of their Lords. Similarly, in Greeks it was found that a number of temples offered Asylum and they used it for reducing the hardship of law<sup>13</sup>. On the other hand in Rome after building it Romulus and Remus kept a place for

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<sup>9</sup> Sinha, S.Prakash, *Asylum and International Law*, Martinus Nijhoff, The Hague, Netherland, 1971, p.5

<sup>10</sup> Bassiouni, M.Charif, *International Extradition and World Public Order: The Law and Practice of the United States*, Publisher. A W Sijthoff, Chicago, USA, 1974, p.86.

<sup>11</sup> *supra* note 9

<sup>12</sup> Manu, *Lois de Manou*, Publisher. Levrault Libraire, 1830, pp. 18, 23-24

<sup>13</sup> *Supra* note 9

fugitives in the temple and refused to send back them by saying that they were guided by an oracle of Apollo to save the asylees from violation<sup>14</sup>.

Therefore, it can be presumed that the institution of asylum was actually adopted by the Greek because they considered the God as refugee's protectors is identical<sup>15</sup>. Nevertheless, the Roman institution was significant during evaluation of the right of asylum. Religious norms were incorporated in the asylum laws in the middle age and churches were given power to exercise the right of asylum in 323 AD<sup>16</sup>. The law and practice of asylum become limited by the reformation of criminal justice while reducing religious influence over the administration specifically after the Treaty of West Phalia in 1648. Hence, significant changes came in the asylum practice such as: new place should not confer absolute immunity to all types of fugitives because States have duty to prosecute common criminals, *aut dedere aut judicare* ( The obligation to extradite or prosecute ) and States have a reciprocal duty to each other in furtherance of developing world order<sup>17</sup>. In fact asylum law and refugee right has been gained significant importance in the International law from the beginning of the 20th century. As a result different a complex asylum system has been developed through bilateral and multilateral agreements under the supervision of United Nation and which are obviously related to human right issues all over the world. By the gradual transformation of the political doctrine of state governance from declining Church's or temporal hegemony in 17th and 18th century, Asylum law is now based on the territorial sovereignty of States. In addition, now with international in nature dealing between States focusing mainly on political and humanitarian considerations.

#### 1.4 Categorization of Asylum

Asylum under International law is divided into two categories firstly, "territorial" and secondly, "extra-territorial" asylum. The first one is granted by a state and within its own

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<sup>14</sup> Plutarch, *Lives of the Noble Grecians and Roman*, translated and edited by J. and W. Langhorne, Published by Chatto and Windus, Piccadilly, London, 1875, p.16.

<sup>15</sup> Siska, Katalin, *Historical and Legal Perspectives of the Right of Asylum and Extradition until 19<sup>th</sup> Century*, Miskolc Journal of International Law (MJIL), 2004, p. 188-197

<sup>16</sup> *Ibid*

<sup>17</sup> *supra* note 10

territory while the second is granted by the state outside its territory, such as in its embassy or public vessels.

#### **1.4.1 Territorial Asylum**

Generally, asylum is granted by the state and within the territory of its own is known as territorial asylum. The concept of territorial asylum raises certain vital questions as to the eligibility of the claim such as whether the asylum is a recognized as right and depended on the application by an individual or the state which is approached by the individual for granting it. Considering the issue of eligibility, it is an established principle of international law that a person of foreign origin shall be eligible to seek asylum who fears persecution in his own state because of his race, religion, or political opinion<sup>18</sup>. On the other hand Refugee Convention mentioned the grounds of non-eligibility to seek asylum for getting refugee status. Article 1 enumerated those grounds as:

- a. Any person committing a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- b. Person committing a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee
- c. Person has been guilty of acts contrary to the purposes and principles of the United Nations.

Although the grounds for eligibility expressed in the convention for hunting asylum have wider application, nevertheless, the terms “non-political” or “political” in contrast remain unexplained and ambiguous. Therefore, question raise as to the authority to determine whether an act is political or non-political. Another question rises in connection with forgoing issue is regarding credibility of determination. For instance, concern government determine the issue of political or non-political offenders which in many cases governments are usually found total biased and intentioned to try them for political

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<sup>18</sup> Maryan Green, N.A., *International Law: Law of Peace*, publisher. Macdonalds and Evans, 2<sup>nd</sup> edn, 1982, p. 93-94.

objectives. It is also found in many occasions that state intention is to eliminate the political enemy and opposition voice and define potential individuals as non-political offenders and try to return them for that wrongful purpose. In further many incidents of murder are now a day's indirectly involved with political motive. Furthermore, in all circumstances human life and dignity should be given utmost priority over all other gain. The "right of asylum" is a controversial and debatable issue in International law. Some of the writers said that it is a juxtaposition of reciprocity between two parties with regard to rights and duties. Most of the writers, on the other hand, are of the view that this right is vested in a state and not the individual<sup>19</sup>. According to the experts, it is the discretionary right of the state to grant territorial asylum for any individual and at the same time state may grant asylum to whomever it desires. As David wrote that "an attribute of a state's sovereign authority over its own territory is that the state in general has exclusive and complete discretion to decide who may be in its territory and who may not"<sup>20</sup>. For him this right should be an absolute right and should not be subjected to any kind of limitation or restriction.

Territorial Asylum has been further classified into categories such as:

- (i) Political Asylum, i.e., for political defectors.
- (ii) Refugee Asylum i.e., for those who fear persecution in their own country.
- (iii) General Asylum i.e., for persons who have deserted their country to seek economic betterment but do not enjoy the status of immigration<sup>21</sup>.

There are some distinctions between territorial and extra-territorial asylum, firstly, the principles applying to the two categories of asylum stream from the fact that the power to accept asylum within the national boundary is a symbol of territorial sovereignty and integrity while granting of extra-territorial asylum is deemed as a slight nullification of

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<sup>19</sup> O'Connell, D.P., *International Law*, Stevens publication, Vol. 2, 2<sup>n</sup> edn. <sup>d</sup>, London, 1970, p. 740; *supra* note 7; *supra* note 18

<sup>20</sup> David H. Ott, *Public International Law in the Modern World*, Pitman Publication, London, 1987, p. 143-144; Moore. J. Bassett, *A Digest of International Law*, Vol.VII, Washington DC, USA., 1906, p. 156

<sup>21</sup> Stark. J.Gabriel, *Introduction to International Law*, Published by London Butterworths, 10th edn, 1989, p. 358

sovereignty of the state where diplomatic mission is located insofar as that state is required to acquiesce in fugitive from its authorities enjoying protection from apprehension. Secondly, every state has a right to grant territorial asylum, whereas the right to grant extra-territorial asylum is exceptional and must be established in case by case basis<sup>22</sup>. In other words extra-territorial asylum depends on the customary practice of the region and accepted by the concern states. The following sections tried to provide a detail explanation of the two categories of asylum and in doing so attempted to determine whether an individual has a right to territorial or extra-territorial asylum.

#### 1.4.2 Extra-Territorial Asylum

The term “extra-territorial” asylum is used to denote asylum given by legation, consulate situated or worship staying within the territory of the country from which refuge is sought<sup>23</sup>. The extra-territorial asylum is different from the territorial asylum in the sense that in the later situation a State provides refuge on its territory for persons seeking its protection while in the former situation the refuge is provided in the embassy, consulate or public vessels maintained by foreign government in the territory of the host state<sup>24</sup>. In other words an asylum granted by a country not within the physical territory rather than within its national territory such as in the premises of the consular or warships of another country is known as extra-territorial asylum<sup>25</sup>. There are some fundamental bases of this kind of asylum have found which are as follows<sup>26</sup>:

- (i) The Principles of Extra Territoriality
- (ii) The Diplomatic Privileges
- (ii) Custom
- (iv) Usage
- (iii) Treaty or
- (iv) Regional International Law

<sup>22</sup> *Ibid*

<sup>23</sup> Morgenstern, F., *International Law*, 25 British Year Book, 1948, pp. 136,261

<sup>24</sup> Charles V. Cole, Is There Safe Refuge in Canadian Missions Abroad? *International Journal of Refugee Law*, vol.9, issue.4, 1997, pp. 654-665

<sup>25</sup> Verma, S.K., *An Introduction to Public International Law*, Prentice-Hall of India Pvt.Ltd., India (Delhi), 2004, p. 212

<sup>26</sup> *Supra note 9*



Extra territorial asylum can be further classified into four categories such as:

- (i) Diplomatic Asylum
- (ii) Asylum in Premises of International Institutions
- (iii) Asylum in War Ships
- (iv) Asylum in Merchant Ships

### 1.5 Introduction to Asylum Rights

The right of asylum is an ancient juridical concept, under which a person persecuted by their own country may be protected by another sovereign authority. This right was already recognized by the Egyptians, the Greeks and the Hebrews, from where it was adopted into Western tradition<sup>27</sup>. The right of sanctuary was amended and exercised by the leaders of England<sup>28</sup>. An asylum seeker is defined as a person fleeing persecution or conflict, and therefore seeking international protection under the 1951 Refugee Convention on the Status of Refugees; a refugee is an asylum seeker whose claim has been approved<sup>29</sup>. However, the UN considers migrants fleeing war or persecution to be refugees, even before they officially receive asylum. An economic migrant, by contrast, is person whose primary motivation for leaving his or her home country is economic gain.

By virtue of the International conventions such as Universal Declaration of Human rights (UDHR, Art. 14), The United Nations 1951 Convention Relating to the Status of Refugees (UNHCR, 2012) and the 1967 Protocol Relating to the Status of Refugees it is evident that a person is outside their own country's territory and owing to fear of persecution on protected grounds can seek and entitle to enjoy the status of refugee. It is further, presumed that a person would entitle to be protected on the following grounds includes race, caste, nationality, religion, political opinions and membership and/or participation in any particular social group or social activities. But in considering the

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<sup>27</sup> Monmouth. Geoffrey, *Historia Regum Britanniae (The History of the Kings of Briotain)* England, p. 2, 17

<sup>28</sup> Stanley. A. Penrhyn, *Historical Memorials of Westminster Abbey*, Anson D. F. Randolph & Co., New York, 1887, pp. 35-36

<sup>29</sup> Hathaway, James C., *The Rights of Refugees under International Law*, Cambridge University Press, 2005

complex reasonableness of acceptability it is not the demand of Humanity cense to say that a persecuted person would not appear to be entitled to the same level of protection as a fellow citizen<sup>30</sup>.

### **1.6. Asylum under International law**

Under international law, states have a right to grant asylum and a duty not to prevent those who wish to emigrate or seek asylum elsewhere from doing so. States parties to one or more international or regional treaties that prohibit refoulement also have a duty under such instruments not to return protected persons to states in which they would face persecution<sup>31</sup>. As regard the admission of aliens into the territory of a state has been traditionally regarded to be within the realm of state sovereignty and, in international law, remains so to the present<sup>32</sup>. However, there is no binding international treaty exist that restricting the authority of states to deny an alien admission. Therefore, states continue to regulate the access of aliens to their territories.

#### **1.6.1 The Universal Declaration of Human Rights, 1948**

Article 13(2) of The Universal Declaration of Human Rights declares that everyone has the right to leave any country, including his own, and to return to his country. It further declares that everyone has the right to seek and to enjoy in other countries asylum from persecution and this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. According to Grahl-Madsen, seeking asylum is an individual right and has also a right to leave his country of residence in pursuit of asylum. The basis for this right is the principle that “a State may not claim to ‘own’ its nationals or residents. This right is enshrined in several international and regional instruments as reflected in the

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<sup>30</sup> Kelley.Ninette, Internal Flight/Relocation/Protection Alternative: Is it Reasonable? *International Journal of Refugee Law*, Volume 14, Issue 1, **2002**, pp. 4–44 (also available at <https://doi-org.eres.qnl.qa/10.1093/ijrl/14.1.4>.)

<sup>31</sup> Boed. Roman., The State of the Right of Asylum in International Law, *Duke Journal of Comparative & International Law*, vol. 5, 1994, p. 23,

<sup>32</sup> Brownle. Ian, *Principles of Public International Law*, 6<sup>th</sup> Edition, Oxford University Press, 2003, p. 519; Doebling. Karl, *Alliens, Admission in Encyclopedia of Public International Law*, Elsevier Science Publishers, Amsterdam, Vol. 1, 1992, p. 102-107

UDHR. Although the Universal Declaration of Human Rights is not a legally binding instrument, it has been declared to set forth “the inalienable and inviolable rights of all members of the human family and to constitute an obligation for the members of the international community.”<sup>33</sup> Moreover, the Declaration has been said to be “an authoritative expression of the customary international law of today in regard to human rights”<sup>34</sup>. The right of an individual to leave his country can thus be seen as a part of modern customary international law.

### **1.6.2 International Covenant on Civil and Political Rights, 1966**

With the adoption of the International Covenant on Civil and Political Rights, (ICCPR, 1966) the right of an individual to leave his country became written law binding on the states parties to the Covenant<sup>35</sup>. Article 12(2) of the Covenant states that, “everyone shall be free to leave any country, including his own. It is pertinent to be mentioned here that this right is also recognized as binding in several regional instruments<sup>36</sup>. For instance, Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms proclaims that, “everyone shall be free to leave any country, including his own”<sup>37</sup>. Similarly, the American Convention on Human Rights stipulates in Article 22(2) that, “every person has the right to leave any country freely, including his own.” This right has now become part of the written law of nations<sup>38</sup>.

### **1.6.3. Convention relating to the Status of Refugees, 1951**

The principal international instrument for the protection of those falling within the scope of its “refugee” definition, the 1951 Convention relating to the Status of Refugees, stipulates the duties of a state of refuge with respect to refugees on its territory but does not impose on states parties to it the duty to admit persons fleeing persecution. Madsen

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<sup>33</sup> Proclamation of Teheran, *Final Act of the International Conference on Human Rights*, 1968, Tomuschat. Christian, A Right to Asylum in Europe, *Human Rights Law Journal*, vol. 13, 1994, P. 257, 258

<sup>34</sup> Humphrey, M. Waldock, “*General Course on Public International Law*,” A.W. Sijthoff, Volume 106, 1962

<sup>35</sup> Nowak, Manfred, *U.N. Covenant on Civil and Political Rights*, 1993, ICCPR Commentary, p. 886

<sup>36</sup> Bassiouni, Cherif M., *Explanatory Memorandum: Draft Charter on Human and People’s Rights in the Arab World*, Draft Charter on Human Rights in the Arab World, 2004, p. 27

<sup>37</sup> Council of Europe, 1968, European Treaty Series No. 46, Protocol No. 4

<sup>38</sup> *supra* note 4

observed that “States have no international legal duty to admit refugees who present themselves at their frontiers and ask for asylum”<sup>39</sup>. On the other hand Sinha explained that the “Refugee Convention... merely forbids states from imposing penalties for illegal entry or presence, but it does not oblige them to admit refugees”<sup>40</sup>. Article 31(1) of the Convention provides: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees *who... enter or are present in their territory* without authorization.” Article 32(1) prohibits states parties to the Convention from expelling, “a refugee *lawfully in their territory* save on grounds of national security or public order.” Finally, Article 33(1) prohibits the expulsion or return (*refouler*) of a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened (Refugee Convention, Art.31, 32, 33). These articles create an obligation on the state parties to accept the asylum seekers into their territory subject to certain conditions. The duty of non-refoulement evolved through state practice so as to include the duty of non-rejection at the border or extraterritorially.

#### **1.6.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

The non-refoulement provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been well argued to include above state duty<sup>41</sup>. It is possible that states parties to the Convention Against Torture have a duty not to reject aliens from their frontiers, at least in situations involving “substantial grounds for believing that those aliens would be in danger of being subjected to torture”<sup>42</sup>. Although the Convention Against Torture does not expressly prohibit the rejection of aliens at frontiers. Article 3(1) of United Nations Convention against Torture, 1987 also stipulates that “No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”. It nevertheless holds out the most promise among the

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<sup>39</sup> *Ibid*

<sup>40</sup> *supra* note 9

<sup>41</sup> *supra* note 33

<sup>42</sup> Article 3(1), United Nations Convention against Torture, 1987

binding international instruments for the creation of a duty of a state to not reject aliens seeking asylum.

### **1.7 Asylum under Regional Law**

In the regional level, the situation is better for the alien seeking admission to an intended state of refuge. In Africa, states parties to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa have an express duty of non-rejection from their frontiers. This duty applies with respect to any person falling within the “refugee” definition of the OAU Convention who, if rejected, would be compelled to “return to or remain in a territory where his life, physical integrity or liberty would be threatened”<sup>43</sup>. In Latin America, ten states adopted the non-binding Cartagena Declaration on Refugees which in Article 5 states that the principle of non-refoulement includes the prohibition of rejection at the frontier. The Article states: “to reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees”.<sup>44</sup>

In Europe, the Council of Europe Resolution 14 (1967) seeks to “ensure that no one shall be subjected to refusal of admission at the frontier, rejection, ... or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution”<sup>45</sup>. The Committee of Ministers of the Council of Europe adopted a similar recommendation in 1984, linking it to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Despite these positive regional developments, and with the exception of the express duty of non-rejection imposed on states parties to it through the OAU Convention, states still have no legal duty to admit asylum seekers<sup>46</sup>.

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<sup>43</sup> Article 2(3), *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1974 (Adopted 1969)

<sup>44</sup> Article 5, *Cartagena Declaration on Refugees*, 1984

<sup>45</sup> Article 2, *Declaration on Territorial Asylum*, 1967; available at: <https://www.refworld.org/docid/3b00f05a2c.html> [accessed 29 August 2020]

<sup>46</sup> *supra* note 31

## **1.8 Fundamental Reasons behind Asylum Submission**

With a view to achieve a durable solution of refugee dilemma followed by asylum submission, it is relevant to understand the backdrop of the quandary. Literatures showed that there are a lot of reasons behind the asylum application across the world. These causes encompass with the following key aspects:

### **1.8.1 Imbalance World Order**

The current world witnesses an imbalance world order in terms of political and economic super power. As far as use of force is concern unipolar system is functioning throughout the world e.g. US intervention across the world. It has been recorded that after independence from Great Britain rule in 1776<sup>47</sup>, US intervened near about 189 times throughout the world (globalpolicy.org, 2005). This is probably the heights number of use of force by US in comparison with other super power in world politics. These attacks may be a great cause behind raising refugees and as a result of such interference hundreds of thousands million asylum seekers are new lead a horrible life in every continent of the world. Afghan, Iraqi and Syrian refugees are the consequence of war and intervention as a whole<sup>48</sup>. Study showed that the US military action against Afghanistan becomes more acute; a new refugee exodus from Afghanistan accelerated the descent of the regional refugee situation into humanitarian disaster<sup>49</sup>. In addition, the foreign policy of US are making the world safe for American corporations, extending political and economic hegemony over as wide an area as possible, as befits a great power.

### **1.8.2 Political Violence and Instability**

Political violence is a widespread technique used by the politician and governments around the world to achieve political goals. Many groups and individuals believe that their political systems will never respond to their demands. As a result, they believe that violence is not only justified but also necessary in order to achieve their political

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<sup>47</sup> Carl. L. Becker., *The Declaration of Independence: A Study on the History of Political Ideas*, New York: Harcourt, 1922,p. 2

<sup>48</sup> Available at [www.watson.brown.edu](http://www.watson.brown.edu), accessed on 29 August 2020 at 12:30PM

<sup>49</sup> Ruiz. H, Emery.M., *Afganistan's Refugee Crisis: Middle East Research and Information Project*, 2001, also available at <https://merip.org/2001/09/afghanistans-refugee-crisis/> accessed on 29 August 2020

objectives. By the same token, many governments around the world believe they need to use violence in order to intimidate their populace into compliance. Complex political violence is another key aspect behind increasing asylum seeker throughout the world particularly in developing countries. It comprises both domestic and international attributes which are the foundations of persecution; massive killing of the activist in opposition or genocide which is commonly defined as the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious, or national group <sup>50</sup>. Political parties come into power and indulge corruption, nepotism, and politicization of appointment from top to bottom on the one hand and retrenched humiliation by decreasing power and advantages on the other. Sometimes the machinery of the government is used to eliminates their rivals through police brutality, judicial and extra-judicial killing and forfeits their land, business and wealth. In such a horrific circumstance people are feeling persecuted and try to get asylum to any other country. In Bangladesh hundreds of thousands people are being sent to prison by the ruling party as their rivals and nobody knows how much people have been killed. In Myanmar innumerable numbers of people are forced to leave their country of origin on the ground of religion, therefore, these people sailed to go to Bangladesh, Thailand, Malaysia, Indonesia, and Australia by boat in the Pacific Ocean keeping life in their hand.

### 1.8.3 Commencement of War and Conflict

Commencement of war is the most practical cause behind raising asylum seekers throughout the world. Millions of people were becoming refugee by the devastating fighting in two World wars in the recent century. Observers opined that it is estimated about 378,000 people died due to war each year between 1985 and 1994 <sup>51</sup>. In last two decades were the decades of war. War in Afghanistan, Iraq, Darfur in Sudan, and recent years Yemen crisis civil war in Syria has given birth about millions of asylum seekers and transfer them into developed nations. The number of refugees displaced by the Syrian conflict has grown by more than 1.9 million in just 12 months - from 170,569 registered

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<sup>50</sup> Markus Funk.T., *Victim's Rights and Advocacy at the International Criminal Court*, Oxford University Press, England, 2010, p. 1

<sup>51</sup> Obermeyer.Z., Murray. C.J ., and Gakidou, E ., *Fifty years of violent war deaths from Vietnam to Bosnia: analysis of data from the world health survey programme*, 2008

on 24 September 2012 to 2,106,402 registered or awaiting registration on 24 September 2013 (refugeecouncil.org, 2010).

## **1.9 Challenges and Resolution**

The following challenges have been discussed widely in recent years such as international support for Syria's neighbors, encouraging the wealthiest nations not to turn away from protecting refugees, providing prompt access to refugee status determination procedures, building momentum to tackle protracted refugee situations, improving physical security of the most vulnerable refugees etc <sup>52</sup>. In this article we would like to discuss some exceptional challenges and explain who to tackle those challenges in a peaceful way. In this place we will discuss those challenges with possible way out.

### **1.9.1 Increasing Foreign Investment and Working Opportunities**

The people of developing countries are mostly affected by poverty, malnourishment, and high rate of unemployment. Numbers of employment opportunities are tremendously high in corresponding to unemployed youth. In contrast FDI is a significant part of massive private investment which is a driving force of economic development all over the world. In developing countries it is treated as a means of complementing the level of domestic investment, as well as securing economic-wide efficiency gains through the transfer of appropriate technology, business culture, increasing employment opportunities, and improving living standards<sup>53</sup>. The flows of FDI, in fact, to the developing countries are in most cases plummet due to high political instability, massive corruption, internal community clash, military regime, and less strength of government. Therefore, working opportunities are not increasing in number needed. As a result the development goals of the country are hindered severely and people become less interested to live the place and find the way to move towards a place of income e.g. to developed countries. Eventually, a large portion of people who migrated to more income

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<sup>52</sup> Kelley. Ninette, *International Refugee Protection Challenges and Opportunities*, Oxford University Press, 2007, Abstract Page

<sup>53</sup> Dabour, Nabil Md., The Role of Foreign Direct Investment (FDI) in Development and Growth in OIC Member Countries, *Journal of economic Cooperation among Islamic Countries*, Vol.21, Issue-3, 2000,pp. 27-55.



generated area are often become illegal and apply for asylum for permanent settlement in that country. Thus, if we want to tackle this problem, developed countries will increase their investment in priority basis to the most vulnerable countries from which a huge number of people migrated every year and create adequate working opportunity for their people. These opportunities will definitely decrease the numbers of common, uneducated and unskilled workers from detestable migration.

### **1.9.2 Making International Pressure on Persecuted Country**

Persecution is the most common ground for being a man asylum seeker of refugee and it is made on the basis of religion such as Muslim vs. Buddhists like in Myanmar, caste, nationality, political opinions such as political rivals in third world countries and membership and/or participation in any particular social group or social activities. In consequence a large number of people around the world have no chose but to seek asylum in a third country. In resent, the number of Rohingya asylum seekers becomes highest in Asia due to persecution by military grime of Myanmar. Hundreds of thousands people fled to the South-Asian countries like Malaysia, Indonesia and Australia. The ways they have chosen is rough tied of the Pacific Ocean and lots of them are losing their live into the sea. If there is an international pressure group to create a pressure on Myanmar government for ending such a heinous persecution against Rohingas, or make a force against persecution of political activists in opposition of India, Pakistan and Bangladesh by its governments, the number of asylum seeker will definitively under control.

### **1.9.3 Creating UN body to Settle Political Stability**

Hundreds of thousands people around the world has been killed, persecuted and thrown into prison in every calendar year. Political instability is a key aspect for being a man refugee. Numbers of Political asylum seeker are now going to the highest position in comparison with asylum seekers of other causes. United Nations has the great responsibility to keep international peace and security and particular country as well. In order to prevent and control massive killing in name of politics and protect international peace and security, UN may constitute an effective organ for settling political clash of the

country immediately. If it is possible to form extensive political violence would be reduced and numbers of asylum seekers would be decreased.

#### **1.9.4 Creating Working Opportunities in the Developed Countries**

According to the present context of the world, protection and prevention of refugee crisis is an immense challenge before the international community more particularly for developed countries. Developed countries like United States, Canada, Russia, EU countries, Australia, South-American countries can arrange an innumerable working position in a particular zone and adopt refugees as a labour followed by permanent resident of the country. Giant State like Canada Australia and like other can make an industrial zone for refugees to create their work opportunities.

#### **1.9.5 Allocation in the National Budget for Asylum Seekers**

For the sake of living in the earth we the states of the world have to work together for the people of no identity. United Nation can present a proposal for the world community for creating a fund for refugee protection and peaceful disbursement of the money to the host countries for their protection. It can also propose that every country allocate an amount in their national budget for refugee protection whether or not the country is a host country. Those who have no refugee problem they extend their helping hand to the affected host country as well as under the umbrella of UNHCR.

#### **1.9.6 To Give more Emphasis on Resettlement of the Refugees**

The safe return to the country of origin and resettlement in a third country did not get top priority in the refugee protection laws and practice although this is big door for crisis management. The laws and practice mostly orientated with the temporary protection in terms of food, water, health care and so on but ration of durable solution is not good enough. UNHCR's latest Global Trends report highlights that at the end of 2017, global displacement has reached a new record high of 68.5 million individuals, an increase of 2.9 million since 2016. Of the global displaced population, there are 25.4 million who are refugees, an increase in 2.9 million from 2016. This includes 19.9 million refugees under UNHCR's mandate, as well as 5.4 million Palestine refugees under UNRWA's

mandate<sup>54</sup>. However, the ration of resettlement departure under UNHCR is still inadequate in compare to the submission<sup>55</sup>. In this context more emphasis would be given for safe return or resettlement. As we mention earlier developed countries will demand to the UN authority and get them from refugee camp anywhere in the world. UN authority or host country will send them as their demand. Although there are lots of barriers like language, culture, but along with these fence developed countries will receive them and make them as their desire in along or short term training mechanism.

### **1.9.7 Enunciate Soft Laws to Receive Asylum Seekers**

Violation of human rights also taking place when wounded or a homeless persons seeking asylum to a country other than the country of origin and they deny receiving them on the ground of security, public annoyance, or fear of terrorist attack and complexity of asylum laws. Most of the countries have restricted their asylum laws to avoid such burden as discussed McMaster in his book about Australian attitudes <sup>56</sup>. Although debts are there regarding treatment of refugee and they keep huge number of asylum seeker at the time as mentioned by the author of “Borderline” <sup>57</sup>. On the humanitarian ground, at first we have to receive them and make temporary arrangement for their survival because there may be sick person, women, and child who need immediate help and mental satisfaction to others who made a long journey to reach the country in believing that there might have a minimum protection for us. This would be another proposal before the international community to enact easily accessible laws for Asylum seekers.

### **1.10 Conclusion**

It is perhaps trite to note that one of the most pressing humanitarian issues of our time is the plight of those who seek asylum from severe human rights abuse amounting to persecution. The global statistics on asylum submission are increasing at a high ratio

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<sup>54</sup> Available at <http://www.refugeecouncil.org>, accessed on 18 August 2018

<sup>55</sup> Available at <http://www.unhcr.org/resettlement-data.html> accessed on 18 August 2020

<sup>56</sup> McMaster, Donald., *Asylum Seekers: Australia's Response to Refugees*, Melbourne University Publishing, Australia. 2001, p. 1.

<sup>57</sup> Mares. Peter., *Borderline: Australia's Treatment of Refugees and Asylum Seekers*, UNSW Press, 2001.

from the reasons discussed above. In considering the ongoing political and economic order in several part of the world is can be presumed that the coming days will produce and will be continuing to produce huge number of asylum application at every place of the world, especially, to the developed countries. The researcher has proposed some of the possible way-out in the forgoing points. However, in most of the political turmoil whether developing or developed countries have several faces among which two are common one is national context and interest and international affiliation and politics. Therefore, developed world has great responsibility to make the world stable and war free through bilateral or multilateral negotiation at any time before the conflict begins in anywhere in the globe for the save of humanity. However, that negotiation should never be like intervention in Iraq and Afghanistan rather it should be real and reflection of the will of the majority people of that particular country. Poor countries, developing countries should frame a common goal of the country and try to rebuild the institution of trust on them and respect toward other leaders. That might have a serious impact on national politics and also over their own citizens. Secondly, developed countries have enough scope to establish industries in the poor countries so that they can get means of life which might be prevented them to apply for asylum to other countries. As regards the Asylum law all countries are under international obligation to respect and promote human rights for all whether their own citizen or asylum applicant. Therefore, all countries, especially the developed countries should remove difficulties from the Asylum laws to resolve the asylum submission within a very short time.