



ASYLUM IN THE ISLAMIC TRADITION:  
POSSIBLE APPLICATION IN THE  
MALAYSIAN SITUATION

BY

SULAIMAN BIN KAMARUDIN

A thesis submitted in fulfilment of the requirements  
for the degree of Master of Arts in  
Muslim World Issues

International Institute of Islamic Thought and  
Civilization (ISTAC)  
International Islamic University  
Malaysia

FEBRUARY 2013

## **ABSTRACT**

This study begins by analysing the differences and similarities between Modern International Law and Classical Islamic Law regarding asylum and treatment of refugees. The following conclusions were discovered: Classical Islamic Law is in line with basic fundamental principles of Modern International Law in regards to matters of asylum and treatment of refugees. Classical Islamic Law on matters of asylum and treatment of refugees are more liberal in comparison to Modern International Law. Islamic Law on matters of asylum and treatment of refugees may be applicable to modern state systems, especially in a Muslim majority state like Malaysia. The second part of the study observes Malaysia's treatment and policies on asylum seekers and refugees since the 1970s till today. Findings based on the author's interviews with refugees, local authorities and the Malaysian public as well as reports by International and local Human Rights groups confirm that Malaysia does not conform to either Islamic Law or Modern International Law on matters of asylum and treatment of refugees. This situation is mainly due to effects from Malaysia's Immigration Laws which does not differentiate between asylum seekers and refugees and illegal economic migrants. The reasons behind these laws lie in Malaysia's policies which are driven by economic, social and political factors. The author concludes by making recommendations to alleviate this situation. Implementation of these suggestions would create a favourable atmosphere for asylum seekers and the treatment of refugees.

## ملخص البحث

تتناول هذه الدراسة تحليل أوجه التشابه والاختلاف في شؤون اللجوء ومعاملة اللاجئين بين القانون الدولي الحديث والشريعة الإسلامية. توصلت الدراسة إلى الاستنتاجات التالية: إن أحكام الشريعة الإسلامية في قضية اللجوء ومعاملة اللاجئين تتماشى مع المبادئ الأساسية للقانون الدولي الحديث، بل هي تتصف بالمرونة والسعة وتغطي نطاقاً أوسع من القانون الدولي الحديث. فلذلك أكدت الدراسة على توظيف الشريعة الإسلامية في سياق القانون الدولي الحديث لا سيما في ماليزيا نظراً لغلبة المسلمين فيها. ثم ركزت الدراسة في جزئها الثاني على تعامل ماليزيا وسياساتها مع طالبي اللجوء واللاجئين منذ السبعينات وحتى اليوم. اعتمدت الدراسة على مقابلات الباحث مع اللاجئين وأشخاص يمثلون السلطات المحلية وجمهور الماليزيين بالإضافة إلى النظر في التقارير الدولية وتقارير منظمات حقوق الإنسان المحلية. من خلال ذلك تبين أن تصرفات ماليزيا لا تتوافق مع أحكام الشريعة الإسلامية والقانون الدولي الحديث في شأن قضية اللجوء ومعاملة اللاجئين. والسبب الرئيسي في ذلك هو أن قوانين الهجرة في ماليزيا لا تفرق بين طالبي اللجوء والمهاجرين الاقتصاديين غير الشرعيين. والأسباب وراء هذه القوانين تكمن في الوضع السياسي الماليزي الذي اثرت فيه العوامل الاقتصادية والاجتماعية والسياسية. و في ختام الدراسة قدم الباحث عدة توصيات لدرء هذه المشاكل. وتنفيذ هذه الاقتراحات سيجعل الوضع أفضل في مجال معاملة اللاجئين وطالبي اللجوء.

## APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Masters of Muslim World Issues.

.....  
Muddathir ‘Abdel- Rahim  
Supervisor

I certify that I have read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Masters of Muslim World Issues.

.....  
El Fatih Abdullahi Abdelsalam  
Examiner

This thesis was submitted to International Institute of Islamic Thought and Civilization and is accepted as a fulfilment of the requirement for the degree of Masters of Muslim World Issues.

.....  
Ismawi Hj. Zen  
Dean International Institute of  
Islamic Thought and Civilization  
(ISTAC)

## **DECLARATION**

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Sulaiman Bin Kamarudin

Signature.....

Date. ....

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**  
**DECLARATION OF COPYRIGHT AND AFFIRMATION OF**  
**FAIR USE OF UNPUBLISHED RESEARCH**

Copyright © 2013 by International Islamic University Malaysia. All rights reserved.

**ASYLUM IN THE ISLAMIC TRADITION: POSSIBLE**  
**APPLICATION IN THE MALAYSIAN SITUATION**

I hereby affirm that The International Islamic University Malaysia (IIUM) hold all rights in the copyright of this Work and henceforth any reproduction or use in any form or by means whatsoever is prohibited without the written consent of IIUM. No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder.

Affirmed by Sulaiman Bin Kamarudin

.....  
Signature

.....  
Date

*This thesis is dedicated to all asylum seekers and  
refugees in Malaysia*

## ACKNOWLEDGMENTS

Praise to Allah the All Mighty for granting me the strength to endure life during the course of this study. I would like to thank my supervisor Prof. Dr. Muddathir 'Abdel-Rahim Eltayeb for his guidance in writing this thesis. His contributions and acknowledged experience and expertise in the field are sources of inspiration to many young scholars venturing into the field of human rights and refugee studies in the Muslim world. I am truly blessed by Allah to be given the opportunity to work under his supervision. May Allah reward his contributions.

I would also like to thank Prof. Dr. Sayyid Mohamed Ajmal Abdul Razak Al-Aidrus for his practical advice and suggestions on ways to approach the topic in light of the Malaysian scenario. His guidance during the initial stage of the thesis helped me gain a deeper insight into the Malaysian scene. I appreciate his moral support which has helped me through tough times.

I would like to express my gratitude towards Assoc. Prof. Dr. Ishtiaq Hossain, Prof. Dr. Abdul Rashid Moten and Assoc. Prof. Dr. Wahabuddin Ra'ees from the political science department of IIUM for allowing me to focus on the subject of asylum and refugees as assignments in their respective classes.

I am in debt for the influences I received from Assoc. Prof. Dr. Dato' Baharudin bin Ahmad, Dr. Muhammad Uthman El-Muhammady, Prof. Dr. Cemil Akdogan, Prof. Emeritus Dato' Paduka Dr. Mahmood Zuhdi Hj. Ab. Majid and Prof. Dr. Hassan Abdelrazig El-Nagar who helped shape me in the past four years at ISTAC.

The research process of this thesis would not have been successful without financial support from my dear mother, the professionalism practiced by the library and administrative staff of ISTAC and the cooperation from staff members of UNHCR Malaysia.

Finally, I thank my beautiful wife who endured the struggles with me.



# TABLE OF CONTENTS

Abstract .....	ii
Abstract in Arabic .....	iii
Approval Page .....	iv
Declaration Page .....	v
Copyright .....	vi
Dedication .....	vii
Acknowledgement .....	viii
List of Abbreviations .....	x
<b>CHAPTER 1: INTRODUCTION.....</b>	<b>1</b>
1.1 Statement of the Problem .....	1
1.2 Justification of the Study.....	3
1.3 Chapter Organization .....	4
<b>CHAPTER 2: LITERATURE REVIEW.....</b>	<b>7</b>
2.1 Asylum in the Western Tradition .....	7
2.2 Asylum in the Islamic Tradition .....	16
2.3 Differences and Similarities between Islamic and International Laws Regarding Treatment of Refugees .....	27
2.4 Suitable Approach to the Malaysian Scenario .....	30
2.5 Conclusion.....	33
<b>CHAPTER 3: THE STATE OF REFUGEES IN MALAYSIA.....</b>	<b>35</b>
3.1 Vietnamese Boat People and Refugee Camps in Malaysia .....	36
3.2 Current State of Refugees in Malaysia.....	41
3.3 Conclusion.....	54
<b>CHAPTER 4: ANALYSIS .....</b>	<b>55</b>
4.1 Malaysian Immigration Laws .....	56
4.2 Factors behind Policies towards Asylum Seekers and Refugees .....	59
4.3 Conclusion.....	72
<b>CHAPTER 5: CONCLUSION.....</b>	<b>73</b>
5.1 Changes in Malaysian Laws and Policies on Asylum Seekers and Refugees .....	73
5.2 Developing a Conducive Environment to Perpetuate Policy Changes ...	76
5.3 Implementing Islamic Principles on Matters of Asylum and Treatment of Refugees.....	83
<b>BIBLIOGRAPHY .....</b>	<b>88</b>
APPENDIX I: Questionnaire .....	95
APPENDIX II: Arrangement between the Government of Australia and The Government of Malaysia on Transfer and Resettlement .....	104

## LIST OF ABBREVIATIONS

ABIM	<i>Angkatan Belia Islam Malaysia</i>
APRRN	The Asia Pacific Refugee Rights Network
ASEAN	The Association of Southeast Asian Nations
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
CRISE	Centre for Research on Inequality, Human security and Ethnicity
IRO	International Refugee Organization
MRCS	Malaysian Red Crescent Society
NGO	Non-governmental organization
OAU	Organization of African Unity
PAS	Pan-Malaysian Islamic Party
RELA	<i>Ikatan Relawan Rakyat Malaysia</i>
SHAEF	Supreme Headquarters of Allied Expeditionary Force
SUHAKAM	<i>Suruhanjaya Hak Asasi Manusia Malaysia</i>
UMNO	United Malays National Organisation
UNHCR	United Nation High Commissioner for Refugees
UNRRA	United Nations Relief and Rehabilitation Agency
USCRI	United States Committee for Refugees and Immigrants
WPMA	<i>Makmal Pengurusan Warga Asing</i>

# **CHAPTER ONE**

## **INTRODUCTION**

### **1.1 STATEMENT OF THE PROBLEM**

This study aims at three main objectives, the first of which is to make a study of the principal differences and similarities between modern international and classical Islamic laws regarding the treatment of refugees and the question of asylum. In order to achieve this objective, we shall identify the relevant Quranic injunctions along with the traditions set by the Prophet Muhammad (P.B.U.H) and their reflections on the classic writings of such major Islamic scholars as Al- Shaybani on the topic. The information gained will then be compared with the guidelines contained in the handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol published by the office of the United Nations High Commissioner for Refugees (UNHCR). It is thus hoped that a clear framework for the comparative study of the treatment of refugees based on the differences and similarities between the two legal traditions will have been established.

Another objective of the study is to explore policies in Malaysia concerning asylum and refugees. To achieve this objective, we shall look into the treatment given to refugees by Malaysian authorities in the light of standards set by both modern international and classic Islamic laws. The level of public awareness of the rights of the refugees will then be considered. A number of randomly selected refugees have been interviewed (Appendix I) on their experience in Malaysia. This sample consists of 51 refugees from Myanmar who are living in the areas of Selayang and Batu 9, Cheras. The interview sessions with the refugees who are staying in Selayang were

conducted on 7<sup>th</sup> May 2011 and 15<sup>th</sup> May 2011 from 10.00 am to 3.00 pm. Interview sessions with refugees in Batu 9, Cheras were conducted on 5<sup>th</sup>, 12<sup>th</sup> and 19<sup>th</sup> April around 5.00 to 7.00 pm at a weekly night market. In addition, two police officers who had been engaged in inspection of migrants at Central Market were interviewed on May 16, 2011. Another part of the study will include statements made by authority figures and reports by local and foreign NGOs. The data compiled will hopefully throw some light on questions about the extent of Malaysia's compliance with regard to the treatment of refugees. It will also shed some light on policies that may be more acceptable by the public.

The third objective of this study is devoted to the formulation of a suitable manner for Malaysia in which to tackle the issue of the treatment of refugees, while taking the country's unique social and political situation into consideration. This part of the study will be done with special reference to the research by Karen Jacobsen on ten factors influencing the policy of a state on refugee influxes,<sup>1</sup> and Amarjit Kaur's observations on four factors that play unique roles in the politics and direction of refugee policy in Malaysia.<sup>2</sup>

Malaysia is a Muslim state, and is heading towards a more Islamic approach in various aspects of everyday life. We will attempt to test Malaysia's attitudes and treatment of refugee in light of the teachings and principles of Islamic law on the subject. An example of Islamic law and ethics that has been incorporated with international law to deal with matters of asylum while suiting the state's unique political situation may be taken from the Sudan. As Peter Nobel quoted a paper presented by Prof. Dr. Muddathir Abdel-Rahim at the Khartoum Seminar on refugees

---

<sup>1</sup> Karen Jacobsen, "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes," *International Migration Review*, vol. 30, no.3 (1996).

<sup>2</sup> Amarjit Kaur, "Refugees and Refugee Policy in Malaysia" *UNEAC Asia Papers*, no.18 (2007).  
<<http://www.une.edu.au/asiacentre/PDF/No18.pdf>>. accessed 12 June 2010.

in September 1982, the Sudan's display of a remarkably humane attitude towards refugees is not only based on modern refugee laws but also on the ethics of Islam based on Quranic principles.<sup>3</sup> Thus, it would be arguable that implementing a solution to the refugee issue in Malaysia based on familiar Islamic laws is doable and stands a good chance of meeting with public support. In realization of this, it can evidently be said that there is light at the end of the tunnel when it comes to refugees in Malaysia.

## **1.2 JUSTIFICATION OF THE STUDY**

To justify the crucial importance of this study, we would have to firstly be aware of the magnitude or current number of refugees in Malaysia and secondly the conditions which they have to go through on a daily basis. The main groups of asylum seekers or refugees in Malaysia include Rohingyas and Chins from Myanmar, and other smaller groups like those from Somalia, Afghanistan and Iraq.

According to the latest statistics provided by the UNHCR office in Kuala Lumpur, the number of refugees registered in Malaysia till end of June 2012 was 99,800. 91,400 are from Myanmar followed by 4,570 asylum-seekers from Sri Lanka, 1,110 from Somalia, 800 Iraqis and 450 Afghans. Out of this number, 20,900 are children below the age of 18.<sup>4</sup> The UNHCR office in Kuala Lumpur is also concerned and aware of the relative large number of refugees that remain unregistered which according to local NGOs, is close to 10,000. The number of refugees has increased over the years, since May 2009 UNHCR in Kuala Lumpur recorded 49,000 registered

---

<sup>3</sup> Peter Nobel, *Refugee Law in the Sudan: With the Refugee Conventions and the Regulation of Asylum Act of 1974* (Uppsala: Scandinavian Institute of African Studies, 1982), 4.

<sup>4</sup> UNHCR Malaysia <<http://www.unhcr.org.my/cms/basic-facts/statistics>> accessed 21 February 2011.

refugees and by June 2010, the office had recorded 88,900 and the latest figure stands at 99,800.<sup>5</sup>

Malaysia has been condemned by several international organisations as well as by local NGOs for not addressing the issue in a proper manner. Malaysia continues to be condemned for its reluctance to accede to the 1951 convention and 1967 protocols relating to the status of refugees. Academic literature on the issue such as Amarjit Kaur in her paper briefly addressed the factors that creates Malaysia's policies on refugees throughout the years but failed to recognise the importance of local absorption capacities in solving the issue thus lead her to an unrealistic conclusion on how to solve the issue.<sup>6</sup> Literature on the issue published by international organisations relentlessly condemn Malaysia for not having sign the international treaties on the status of refugees but fails to explain the reasons behind its reluctance nor provide any suggestions on how Malaysia might create a conducive environment that would allow it to do so.<sup>7</sup> The reasons behind Malaysia's reluctance to accede the 1951 convention and its 1967 protocols relating to the status of refugees will be discussed in detail in chapter four. This thesis will help closing in the existing gap on the literature that has been written before.

### **1.3 CHAPTER ORGANIZATION**

This thesis will be organised into five chapters. The first chapter lays out a brief introduction on the crucial importance of the issue and how the research is conducted. The second chapter lays out the literature review which will be organised into three major sections. In the first section we examine the history behind modern

---

<sup>5</sup> UNHCR

<sup>6</sup> Amarjit Kaur.

<sup>7</sup> Among them are USCRI, "Worst Places for Refugees", World Refugee Survey, 2008, and *All French Press*, "Five Asian nations branded 'worst' violators of refugee rights," 20 June, 2008.

International Law on refugees which highlighted the evolving developments in creating the international framework for treatment of refugees as established today. The second section provides an overview of Islamic teachings pertaining to asylum through the Quranic and the Islamic tradition as practiced by the Prophet and his Companions. We will be referring to an article written by Prof. Dr. Muddathir Abdel Rahim published in the Oxford journal of refugee studies<sup>8</sup>. The third section will focus on discussing the relevance of Islam in Malaysian society and the impact it has on governmental policies. The review will help to create a hypothesis on the best manner to influence the government to change its policies towards refugees.

In the third chapter, we will present the research on the state of refugees in Malaysia by disclosing the outcome of the interviews which was conducted and discussing reports by international organisations. In the fourth chapter, we will analyse the reasons behind the situation and policies which will further elucidate the reason behind the government's reluctance to sign the international treaties on the status of the refugees.

Concluding the thesis in chapter five, firstly, we will discuss the changes that need to take place in Malaysia's policy towards asylum seekers and refugees to conform to both Islamic Law and modern International Law. Secondly, we will discuss several actions that need to be taken to create a suitable environment which may influence the government to change its policies towards asylum seekers and refugees in the country. This part will include discussions on Sudan's Islamic approach towards refugees in the 1980s and possible policy applications that Malaysia might take heed from. This thesis will fill the gap of past literatures on the issue of asylum seekers and refugees in Malaysia by presenting solid policy suggestions that

---

<sup>8</sup> Muddathir 'Abd al-Rahim, "Asylum: A Moral and Legal Right in Islam", *Oxford Journals, Refugee Survey Quarterly*, vol. 27, no. 2 (2008): 19.

the Malaysian government may hopefully be able to adopt and adhere to which are significantly relevant to the Malaysian situation.



## CHAPTER TWO

### LITERATURE REVIEW

Asylum is the first objective in protection of refugees. It implies to a certain right of protection that is granted to a refugee and a fundamental act of protection by the hosting country to allow the refugee to seek asylum and be allowed to survive in accordance to their universal right as a human being. Hence, the fundamental act by states in granting asylum to refugees portrays it to be rather modern, liberal and democratic. It is one of the benchmark to the states' conformity to the spirit of justice and democracy.<sup>1</sup>

#### 2.1 ASYLUM IN THE WESTERN TRADITION

The idea of asylum in the western sense may be traced back to Byzantine traditions of asylum and to the customs that prevailed throughout the Dark and Middle Ages in Europe. During the time of Byzantine rule, it was the church that held the right to grant asylum to refugees fleeing persecution and threat due to their affiliation to the Orthodox Church. The tradition of granting asylum was practiced with exceptions to those who oppressed and committed sins.<sup>2</sup> This practice is solely based on Mosaic Law which stated that those who purposely kill will be excluded from the sanctuary. The practice later gained grounds of its own in Europe after the formation of a modern state system in the seventeenth century. European monarchs who tried to impose their

---

<sup>1</sup> Heuser, Stefan, "Is There a Right to Have Rights? The Case of the Right of Asylum: Ethical Theory and Moral," *Humanities, Social Sciences and Law*, vol. 11, no. 1 (2008): 3. Springer<<http://dx.doi.org/10.1007/s10677-007-9079-1>>.accessed 9 March 2011.

<sup>2</sup> R. J. Macrides, "Killing, Asylum, and the Law in Byzantium," *Speculum*, vol. 63, No. 3 (1988): 510. Medieval Academy of America via Jstor <http://www.jstor.org/stable/2852633>. accessed 9 March 2011.

own religious ideologies and unite their own people excluded other religious minorities hence discriminating the minorities. Consequently, the minorities were forced to flee to lands that were less hostile and more accommodating. Reformation in Europe paved the way for naturalization of Protestants into European societies and its colonies, while the Peace of Westphalia in 1648 recognizes the importance of asylum since protestant refugees were people who were not protected by their own state. This recognition of the need to grant asylum to those fleeing persecution became the cornerstone of asylum law in the west. The famous Hugo Grotius who was himself a refugee fleeing the Netherlands, expressed among the characters of a sovereign state is to prosecute a traitor and betrayer of a state but should also give a chance for him to seek asylum in neighboring states.<sup>3</sup> Asylum law consequently evolved and improved in Europe based on European values labeled by scholars as a liberal universalist approach to law.<sup>4</sup> These improvements were mainly influenced by factors of political changes that took place during the French revolution and the creation of a republican government.

In today's international law, asylum is understood from article 14 (1) and (2) of the 1948 General Assembly of the United Nations proclaimed by Universal Declaration of Human Right which states "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution and (2) This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."<sup>5</sup> While

---

<sup>3</sup> Atle Grahl-Madsen, "The European Tradition of Asylum and the Development of Refugee Law," *Journal of Peace Research*, vol. 3, no. 3 (1966): 278-289. Sage Publications via Jstor <<http://www.jstor.org/stable/423005>>. accessed 11 March 2011.

<sup>4</sup> Christina Boswell, "European Values and the Asylum Crisis," *Royal Institute of International Affairs*, vol. 76, no. 3 (2000): 539 Blackwell Publishing on behalf of the Royal Institute of International Affairs via Jstor <<http://www.jstor.org/stable/2625953>>. accessed 11 March 2011.

<sup>5</sup> United Nations Universal Declaration of Human Rights 1948

numerous debates took place on the implication of adopting article 14, each state had its own definition of asylum thus grants asylum accordingly to it, as a result, differentiates the law set by the international committee and individual states.<sup>6</sup>

Prior to 1948, the matter of asylum and refugee flows had already been a serious matter in Europe after the bloody events of the two world wars and the breakdown of Europe's multinational empires. Europeans were left with a burden to cope with tens of millions of displaced people that needed swift attention and proper channels to resolve the predicament. The displaced persons whom were granted protection and asylum were refugees that fit definitions of several treaties and confined to several states. This dates back to Russian and Armenian refugees in 1926, whereby the League of Nations defined refugees differently. Russian refugees were defined as any person of Russian origin who did not enjoy or who no longer enjoyed the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality. Armenian refugees were defined as anyone of Armenian origin formerly a subject of the Ottoman Empire whom no longer enjoyed the protection of the Government of the Turkish Republic and who has not acquired another nationality.<sup>7</sup> This was followed by the 1933 convention on the international status of refugees. While the definition of a refugee still referred to by the definition set in 1926, this convention added an objective that refugees are to be ensured the enjoyment of civil rights, free and ready access to the courts, security and stability as regards establishment and work, facilities in the exercise of the professions, of industry and of commerce, and in regard to the movement of persons, admission to

---

<sup>6</sup> Discussed and debated by Harold Hongju Koh in "Is International Law Really State Law?" *Harvard Law Review*, vol. 111, No. 7 (May, 1998) and by Curtis A. Bradley and Jack L. Goldsmith in "Federal Courts and the Incorporation of International Law" *Harvard Law Review*, vol. 111, No. 8 (Jun, 1998).

<sup>7</sup> League of Nations, Treaty Series vol. LXXXIX, No.2004, <<http://www.unhcr.org/refworld/pdfid/3dd8b5802.pdf>>. accessed 11 March 2011.

schools and universities.<sup>8</sup> In 1938 an additional provision to the Convention was added to define refugees from Germany at the time as stated in Article 1 (a) persons, having possessed Austrian nationality and not possessing any nationality other than German nationality, who were proved not to enjoy, in law or in fact, the protection of the German government, and (b) stateless persons, not covered by any previous convention or arrangement and having left the territory which formerly constituted Austria after being established therein, who were proved not to have the protection of the German government. This definition excluded persons fleeing former Austria on the basis of personal reasons.<sup>9</sup>

Definitions of a refugee as defined by instruments set forth since 1926 were due to political events during the time that produced such a problem. The definitions were proven to be inadequate and the unwillingness of most states to accept refugees led to the need for a more solid definition and a better organization to tackle the unresolved matter.

An initiative began with the Supreme Headquarters of Allied Expeditionary Force or (SHAEF) realization that the millions of displaced persons since early 1920s and lack of proper international involvement is a matter of huge proportion that may in future disrupt Europe's social and political balance. The Supreme Headquarters of Allied Expeditionary Force's (SHAEF) scheme to cater for displaced persons was short lived when it was accused of turning a blind eye to requests made by refugees not to be returned to communist states.

In 1940, Winston Churchill called the House of Commons to create an organization that was to be led by the League of Nations to deal with the problem of

---

<sup>8</sup> League of Nations, Treaty Series Vol. CLIX No. 3663.

<sup>9</sup> League of Nations Treaty Series Vol. CXCVIII No. 4634.p. 141.

Additional Protocol to the Provisional Arrangement and to the Convention (signed at Geneva on July 4th, and February 10th, 1938), respectively, concerning the Status of Refugees coming from Germany.

refugee flows.<sup>10</sup> Later in 1943, acting upon that call, The United Nations Relief and Rehabilitation Agency (UNRRA) was established as an initiative by the U.S government to address the issue of people suffering from war and displacement. It took over where SHAEF left off but eventually exhausted itself as it was not an authority to arrange resettlement apart from merely providing relief for those under its care. The sheer magnitude of the problem and the need for repatriation of millions of refugees left the United Nations Relief and Rehabilitation Administration (UNRRA) helpless. As the international community realised the need for a revived channel to handle the situation, the Constitution of the International Refugee Organization (IRO) was established in December 15, 1946 which was subsequently followed with the official abolishment of UNRRA in 1947.

Through the establishment of IRO, the international community, for the first time adopted a universal definition of refugee based on individualized circumstances that were absent in previous definitions. Refugees therefore were defined with reference to “fear of persecution” on the grounds of race, religion, nationality and political opinion. IRO had also identified those who fall under the category of refugee and helped to resettle only those who were willing to be resettled or repatriated, which the UNRRA was accused of not paying attention to. The role of IRO was not towards relief and rehabilitation as was organizations prior to it, the organization worked with more than 60 volunteer agencies and managed to resettle over a million refugees between 1947 and 1951, including 329,000 in the United States; 182,000 in Australia;

---

<sup>10</sup> Evans. Michael Anthony - An analysis of United Nations refugee policy in light of Roman Catholic Social Teachings And The Phenomena Creating Refugees (Ph.D. thesis, Graduate Theological Union, October 1991).

132,000 in Israel; 123,000 in Canada; and 170,000 in various European states<sup>11</sup>. The refugees that were resettled with the help of IRO were received by countries even outside Europe. Although the act of receiving the refugees by those states was noble, each state that cooperated with IRO had their own special interest thus even accepted those who were not classified as refugees.

IRO's mandate ended in 1951 and as it dissolved, a new framework was on its way to continue to deal with refugee movements in Europe. The United Nation High Commissioner for Refugees (UNHCR) was officially established on January 1, 1951 and entered into force on 21 April 1954 which was subsequently followed by the establishment of Intergovernmental Committee for European Migration in November 1952 to assist in the movement of refugees. UNHCR identified several weaknesses of the past refugee regimes and began to solve them especially through its convention in July the same year. The Convention Relating to the Status of Refugees that was adopted by the United Nations contained 46 articles which established proper minimal rights for refugees. This helped the new refugee regime to deal with problems of the past and at the same time portrayed a better effort by states in light of the plight of refugees.

Even though the 1951 Convention reflected the willingness of states to act on the plight of refugees and officially recognize it, they were not obliged to grant asylum freely to any refugee as the definition of asylum was still subjected to interpretation and the state's interest in protecting and guarding its sovereignty and security. Despite of that, states which ratified the convention collectively agreed on

---

<sup>11</sup> Dennis Gallagher, "The Evolution of the International Refugee System," *International Migration Review*, vol. 23, no. 3 (1989): 581. The Center for Migration Studies of New York via Jstor <http://www.jstor.org/stable/2546429>. accessed 9 November 2010.

the right of refugees to not be sent back to his or her country of origin as the agreed principle of non-*refoulement*.

The definition of asylum and whom is considered a refugee in the European tradition were not properly defined which led to non-standardised laws within different states leaving refugees in ambiguous conditions. While the resettling process is done by UNHCR, the ambiguity that refugees have to face before and after the resettlement process due to the non-standardised regulations of different states made it difficult to fulfill the security needs of the refugees. Since the UNHCR acted only as the guardian of the convention and its protocols, states are the ones expected to cooperate with UNHCR in ensuring that the rights of refugees as defined in the convention were respected and protected.

According to the general definition contained in the 1951 Convention, a refugee is a person who: “as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted... is outside his country of nationality...” The 1951 dateline originated as desired by governments, at the time the convention was adopted, to limit their obligations to refugee situations that were known to exist at that time or to those which might subsequently arise from events that had already occurred. With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the 1951 Convention applicable to such new refugees.

As a result, a protocol relating to the status of refugees was prepared. After consideration by the general assembly of the United Nations, it was opened for accession on 31 January 1967 and entered into force on 4 October 1967. By adopting the 1967 Protocol, governments progressively removed the geographical and time limitations that restricted application of the convention to persons who became

refugees due to the events that took place in Europe before 1 January 1951 and by 1986 only seven of the 100 states which participated in the convention and/or protocol maintain this restriction.<sup>12</sup>

By accession to the 1967 Protocol, the states undertook the application for the substantive provisions of the 1951 Convention to refugees as defined in the convention, but without the 1951 dateline. Although it was related to the convention in this way, the protocol was an independent instrument, accession to which is not limited to States parties to the convention. Henceforth, the 1967 protocols recognized a refugee as a person who owes to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, who is outside the country of his or her nationality and is unable to or, owing to such fear, unwilling to avail himself or herself the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events unable to or, owing to such fear unwilling to return to it.

The definition of a refugee set by the convention identifies five relevant grounds of persecution, namely race, religion, nationality, membership of a particular social group and political opinion. On the basis of race, the convention acknowledged the definition based on article 1 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination which holds accounts of any distinction made on the grounds of colour, descent or ethnic origin.<sup>13</sup>

---

<sup>12</sup> UN High Commissioner for Refugees, “*Note on Accession to International Instruments and the Detention of Refugees and Asylum-Seekers*,” August 1986. <<http://www.unhcr.org/refworld/docid/3ae68cce18.html>>accessed 24 June, 2011.

<sup>13</sup> Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1st edn., 1990), 27.