

## CHAPTER I

### INTRODUCTION

#### A. BACKGROUND

Refugee has become one of the world problems this day. Problems like war, discrimination of race, religion or in political belief has contributed in such way of increasing the number of refugee worldwide. Refugees have existed as long as history, but an awareness of the responsibility of the international community to provide protection and find solutions for refugees dates only from the time of the League of Nations and the election of Dr. Fridtjof Nansen as the first High Commissioner for Russian refugees in 1921.<sup>1</sup> The League of Nations defined refugees by categories, specifically in relation to their country of origin. Dr. Nansen's mandate was subsequently extended to other groups of refugees, including Armenians in 1924, as well as Assyrian, Assyro-Chaldean, and Turkish Refugees in 1928. Up until 1950 the League of Nations, and thereafter the UN, established and dismantled several international institutions devoted to refugees in Europe.<sup>2</sup> The International Refugee Organization (IRO) was the last to precede UNHCR. The IRO was created in 1947 to deal with the problem of refugees in Europe in the aftermath of the Second World War and was to be terminated by June 30, 1950.<sup>3</sup> It was soon

---

<sup>1</sup> Erika Feller, *The Evolution of the International Refugee Protection Regime* (2001), Pg 2.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

apparent, however, that the comprehensive nature of the task it had been assigned to address every aspect of the refugee problem from registration and determination of status, to repatriation, resettlement, and “legal and political protection” precluded winding up of that international effort. There was also a growing conviction of the importance of a multilateral approach to resolving refugee problems.<sup>4</sup>

Thus, in December, 1949 the General Assembly decided to replace the IRO with UNHCR, which was established for an initial period of three years, as a subsidiary organ of the General Assembly under Article Twenty Two of the UN Charter. On December 14, 1950 the General Assembly adopted the Statute of the UNHCR. UNHCR’s tasks stated therein were to provide international protection for refugees and to seek permanent solutions to their problems by assisting governments to facilitate their voluntary repatriation or their assimilation within new national communities. On January 1, 1951<sup>5</sup>

UNHCR began its work with a staff of thirty three and a budget of \$30,000. Half a century later, the augmentation in the statistics is impressive: whether in the numbers of persons of concern to the Office some twenty-two million; the annual budget just under \$1 billion; the number of staff 5000 persons; or the level of its global Representation present in 120 countries. The statistics are a telling illustration of the quite marked, even dramatic, expansion in UNHCR’s work since it was a set

---

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

up for a three year period, fifty years ago. Half a century later, the augmentation in the statistics is impressive. whether in the numbers of persons of concern to the Offices one twenty two million; the annual budget just under\$1 billion; the number of staff 5000 persons; or the level of its global Representation present in 120 countries. The statistics are a telling illustration of the quite marked, even dramatic, expansion in UNHCR's work since it was a set up for a three year period, fifty years ago.<sup>6</sup>

When UNHCR was established, the problem presented was essentially one of dealing with the approximately one million individuals who had first fled Nazism, and later communism, in Europe. UNHCR's work was mainly of a legal nature, to ensure entry and ease integration in accordance with the 1951 Convention.

The 1951 Convention was the first, and indeed remains the only, binding refugee protection instrument of a universal character. It was actually an instrument of rather limited intent, addressed particularly to the question of the status of refugees, not to solutions or to causes. While it traced its origins broadly to human rights principles, it was more about states' responsibilities than individuals' rights. One principal contribution of the 1951 Convention was to put in place a global definition of refugee a person who flees their country because of a well founded fear of persecution on the grounds of race, religion, nationality, membership in a

---

<sup>6</sup> Mark Cutts, The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action, pg.3

particular social group, or political opinion. In 1967 the main caveat attached to the universalist character of this definition a geographical and time limitation was lifted comprehensively through the enabling of a protocol, presently the only one, to the 1951 Convention.<sup>7</sup>

The 1951 Convention did put in place the enduring foundations of refugee protection by setting out baseline principles on which the international protection of refugees was to be built. These principles stated: refugees should not be returned to face persecution or the threat of persecution the principle of non-refoulement; protection must be extended to all refugees without discrimination; the problem of refugees is social and humanitarian in nature, and therefore should not become a cause of tension between states; since the grant of asylum may place unduly heavy burdens on certain countries, a satisfactory solution to the problems of refugees can only be achieved through international cooperation; persons escaping persecution cannot be expected to leave their country and enter another country in a regular manner, and accordingly should not be penalized for having entered into, or for being illegally in, the country where they seek asylum; given the very serious consequences the expulsion of refugees may have, such a measure should only be adopted in exceptional circumstances directly impacting national security or public order; and

---

<sup>7</sup> *Ibid.*

cooperation of states with the UNHCR is essential to ensure the effective coordination of measures taken to deal with the problem of refugees.<sup>8</sup>

If the 1951 Convention was the baseline, it also contained, to some extent, only the basics. This became clear in the decade that followed, with UNHCR's protection activities having to reach well beyond Europe into countries, particularly on the African continent, experiencing the painful process of decolonization. The individualized and persecution-based approach to defining beneficiaries and their rights in the 1951 Convention was not so helpful here. The mass numbers of refugees and the generalized conflicts which precipitated their displacement ensured a growing mismatch. The General Assembly felt it necessary to extend UNHCR's mandate to protect and assist groups of refugees falling outside the definition and geographic ambit of the 1951 Convention, and thus UNHCR had begun the process that would lead eventually to the 1967 Protocol.<sup>9</sup>

Simultaneously, regional instruments were under development that, in effect, updated the 1951 Convention definition by expanding it to include a broader category of persons. These instruments included, significantly, the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa (OAU Convention). While incorporating the existing 1951 Convention refugee definition, the OAU Convention added a paragraph specifying that the term "refugee" shall also apply to every person

---

<sup>8</sup> Ibid. Pg.131.

<sup>9</sup> Ibid. Pg.132.

who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. In other words, the notion of “refugee” was broadened beyond victims of generalized conflict and violence. The OAU Convention was also a significant advance from the 1951 Convention in its recognition of the security implications of refugee flows, in its more specific focus on solutions particularly on voluntary repatriation, in contrast to the integration bias of the 1951 Convention and through its promotion of a burden sharing approach to refugee assistance and protection.<sup>10</sup>

The 1970s were in fact a decade of repatriation. Millions of refugees returned home to countries like Angola, Mozambique, Guinea, Bissau, or Bangladesh. This period also proved to be an important one in terms of fostering the concepts of international solidarity and burden sharing in the difficult search for solutions. One of the more important milestones in this regard was the International Conference on Refugees and Displaced Persons in Southeast Asia, at Geneva in 1979. It came at a time when the world was following with grave concern the plight of Vietnamese fleeing their country in flimsy boats, confronting the perils of the sea and pirates only to be pushed back as they reached the shores of neighboring countries. A three way agreement emerged from the Conference: ASEAN countries promised to provide

---

<sup>10</sup> Ibid.

temporary asylum; Vietnam undertook to promote orderly departures in place of illegal exits; and third countries agreed to accelerate the rate of resettlement. Important burden sharing schemes subsequently were put in place to ensure the continuing rescue at sea of the Vietnamese “boat people.” The Comprehensive Plan of Action (CPA) for Indo-Chinese refugees was the first attempt to implicate all concerned parties countries of asylum, of origin, and of resettlement as well as the donor community in a coordinated, solution oriented set of arrangements for the sharing of responsibilities for the refugee population.<sup>11</sup>

Even though it was an international principle that Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. The United Nations High Commissioner of Refugees has reported there were 19.5 million refugees worldwide at the end of 2014. In the Human Rights Charter of United Nation 1948 article 14(1) stated that every person have the rights to seek and receive sanctuary from other state to protect themselves and avoid pursuit. So it is clear that one of the basic rights of human is to have protection over such condition which may threaten the life of a

---

<sup>11</sup> Ibid. Pg.133.

person. And so it was made on year 1951 the international convention of refugees and its protocol.

In Indonesia which is also one of the main destination by the international refugees also some asylum seeker. But as Indonesian neither a party to the refugee convention 1951 nor its protocol has made some uncertainty for those refugees in Indonesia then they are in risk of being treated as illegal immigrant according to Indonesian Act no.6 2011.<sup>12</sup>

In the year of 1979, Indonesia had received Vietnamese refugees in total of around 250,000 peoples to the year of 1996, seven years after the implement of Comprehensive Action Plan (CPA) by the UNHCR working together with Indonesian government before they were repatriated back to their own state. During these time, Indonesian Minister of Home Affairs had approved and allow the refugees to stay in the processing center in Galang Islands. It was almost well adequate in all needs.

Later on in the mid of year 2015, there was a refugee crisis known as Rohingya Refugee. To escape systemic violence and persecution from Myanmar's government, thousands of Rohingya migrated from Myanmar and Bangladesh, collectively dubbed as 'boat people' by international media. These Rohingya refugees had fled to some its neighboring country such as Malaysia, Thailand and even Indonesia. Rohingya refugees were ill-treated in their own country and it was hardly

---

<sup>12</sup> Ady. (2012, 10 februari). Indonesia Perlu Ratifikasi Konvensi Tentang Pengungsi. Tersedia : <http://www.hukumonline.com/berita/baca/lt4f351aacc4a70/indonesia-perlu-ratifikasi-konvensi-tentang-pengungsi>

to find any other state to accept them. It was a totally different situation compare to Vietnamese boat people few decades ago. Even in Indonesian, the Rohingya refugees were not given the same facilities as the Vietnamese were.

This gives the ideas for the writer to write about the Rohingya's case in Indonesia as well to study the progress and the difference of treatment compare to Vietnamese refugees and summarize conclusion to this matter. Which hope that it will give a recommendation or even a solution to the current issue.

## **B. RESEARCH QUESTION**

On this essay, the problem will be limited to and only as below,:

1. Does the Rohingya refugee and Vietnamese refugee share the same status under international law?
2. Why is the treatment to Rohingya refugee were different compared to Vietnamese refugee in Indonesia?
3. Is there any possibility that the solutions to Vietnamese refugees can be implemented to Rohingya case?

## **C. RESEARCH OBJECTIVES AND BENEFITS**

### **1. Objectives**

The objectives which to be achieved through this essay are:

- a. To know if Rohingya refugee and Vietnamese refugee share the same status under international law.
- b. To know why is the treatment to Rohingya refugee was different compared to Vietnamese refugee in Indonesia.
- c. To know if there are any possibility that the solutions to Vietnamese refugees can be implemented to Rohingya case.

## 2. Benefits

The benefits to be achieved through this essay are

- a. To give information and knowledge to both writer and the reader regarding international refugees,
- b. To give recommendation to the current issues of Rohingya case,
- c. To give practical benefits for the refugees or asylum seeker.
- d. To give teriological understanding to the reader of this essay and Rohingya case.