

**CROSS-BORDER MOVEMENT OF CIVILIANS — A MIGRATORY MIGRAINE***By***—MADHURI IRENE,**Assistant Professor of Law,  
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Hyderabad, A.P.***Introduction***

Viewed through God's lens, there is no distinction between man and beast. But when we glance through man's lens, they are different. If a man thinks of other's hunger and pain, he is humane and so human, and when he does not think of others, he is beast. Of course, man is also an animal. When a person is totally divested of the humanity and human values, law is expected to reinforce the jurisprudence of 'Humanitarian Law.' Even in the new millennium and advanced scientific civilization, people are chased, hunted and haunted by ruthless rogue-rulers and power-mongers within the borders and across the borders to exhibit their bestial sovereignty. It was in primitive and Stone Age, men longed to live in groups but today the educated and advanced world' is disturbing the serene life of both men and beasts, and hence men and beasts are crossing their boundaries and moving across the borders.

***Stunning Realities of Inhumanities:***

At present, human race is facing 'Disasters' – multiple and multi-corned – natural and man-made. People leave because of persecution, human rights violations, repression, conflict, natural and human-made disasters, and environmental hazards. Through most of the 20th century, international protection was focused—if at all—on persons who had crossed international borders in seek of refuge from war and persecution.

According to the UN High Commissioner for Refugees (UNHCR), about 42 million migrants are living outside of their home communities, forced to flee to obtain some

measure of safety and security from conflict and repression. UNHCR reported an estimated 16 million refugees and asylum seekers and 26 million internally displaced persons in its 2008 statistical report. In addition, there are about 4.7 million Palestinian refugees who are outside of UNHCR's mandate<sup>1</sup>.

Notions of sovereignty largely precluded intervention on behalf of internally displaced persons (IDPs). Moreover, many were displaced by Cold War proxy conflicts in which the United States and the Soviet Union supported different sides.

Be it India-Pakistan, India-Bangladesh, India-Burma or India-Ceylon, India is the common victim and alluded to be 'Magnanimous mother for Refugees'; or the turmoil in Middle-East and African continent, or the splintered Soviet Republics, the common tune is human melancholy calling Humanitarian Law.

Migration and displacement are interlinked, but must be distinguished. Displaced populations – either across borders such as refugee influxes, or within a country because of disasters or armed conflict – usually need relief operations combined with efforts aiming at collective and lasting solutions. Migration on the other hand usually involves more individual social assistance, legal protection and personal support. The responsibility for

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1. See UNHCR, 2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons (Geneva: UNHCR, 2009) and Internal Displacement Monitoring Centre, Internal Displacement: Global Overview of Trends and Developments in 2008 (Geneva: IDMC, 2009). S. Martin/Global Responsibility to Protect 2 (2010) 38–59 39

refugees and all displaced populations primarily rests with the host Government. It is the mandate of the United Nations High Commissioner for Refugees to protect and assist refugees. But at whose cost?

Wisdom of Old Civilization - The Cry of Modern World:

The war philosophy of MAHABHARATA says that –

“No sin is committed by injuring or staying foes in battle.... One should fight righteously, without yielding to wrath or being fond of unnecessary slaughter.”

Similarly, the first Caliph of Islam Hazrat *Abu Bakar* stated that –

“.... Let not the blood of women or those of children tarnish your victory. Do not destroy palm trees, do not burn dwellings or wheat fields, never cut down fruit trees, only kill cattle when you need it for food. When you agree upon a treaty take care to respect its clauses.”<sup>2</sup>

But both these ideal proclamations are violated by the modern wars creating hapless refugees and displacing the persons across the borders, innocent people in homes are forced to be homeless. Our tolerant India received uncountable number of refugees from Pakistan, Bangladesh and Burma *etc.* As the massacres in East Pakistan escalated an estimated 10 million refugees fled to India causing financial hardship and instability in that country as well as regional conflicts in the north-eastern States.

More than 60,000 Afghan refugees came to India in the years following the 1979 Soviet invasion of Afghanistan which India supported. The Indian Government does not officially recognise them as refugees, but has

allowed the UNHCR to operate a programme for them. There are more than 100,000 Sri Lankan Tamils in India, most of who migrated during the rise of militancy in Sri Lankans<sup>3</sup>.

### *Categorisation of Forced Migrants*

Generally, the forced migrants are classified into three categories :

First, forced migrants are designated by where the displacement takes place. Those who cross international borders are designated as ‘refugees’ or ‘international migrants’ whereas those who remain within their national borders are ‘internally displaced persons’ or ‘internal migrants.’ Depending on whether they have received permission to enter another country, they may also be designated ‘undocumented, unauthorised or illegal’ migrants.

Secondly, individuals are also designated by the causes of the forced movements. The UN Convention Relating to the Status of Refugees gives specific recognition to persons who flee a well-founded fear of persecution<sup>4</sup>. If they cross an international boundary, they are ‘refugees.’ Persons fleeing conflict may also be specially designated, either by Convention (*i.e.*, the OAU Refugee Convention) or because the UN High Commissioner for Refugees uses his good offices to recognise them as refugees. By contrast, there is no international legal framework for addressing cross-border movements caused by natural disasters, development projects, environmental degradation or climate change.

The third dimension relates to time. Forced migration is addressed through different mechanisms depending on the phase of displacement. Emergency movements often require specialised assistance and protection due to the instability of the

2. (Quoted in the Foreword of Vincent Nicode, International Humanitarian Law – A Reader for South Asia, Ed. Larry Maybee & Benarji Chakka, ICRC, (2008 Edition).

3. [http://en.wikipedia.org/wiki/Refugees\\_in\\_India](http://en.wikipedia.org/wiki/Refugees_in_India)

4. UNHCR, The State of the World's Refugees 2006: Human Displacement in the New Millennium (Oxford: Oxford University Press, 2006), p.109.

situation. Most refugees and displaced persons are in protracted situations, however, with the average period of displacement equalling 17 years or longer. Camps often become settlements, sometimes approaching the size of cities, with an economic life that may remain dependent on international assistance but includes employment and entrepreneurial activity.

***Who should take care of refused and displaced and forced migrants?***

Forced Migration, James Hathaway, who is a Law Professor at the University of Michigan, raised the alarm about a shift in focus from refugees to forced migrants. He argued that refugees have a special place in international law, whereas others who migrate or are displaced do not have an explicit status. Interestingly, Hathaway argues for the special treatment of refugees because they 'are seriously at risk because of who they are or what they believe.' Constructing a human rights argument, he argues that refugees are 'doubly deserving' of international protection having fled 'profoundly serious' risks because of unchangeable and/or fundamental characteristics.

UNHC's mandate had already evolved, as it used its good offices to provide assistance and protection to millions of refugees because of the humanitarian, not legal imperative to act. To the extent that internally displaced persons meet the same criteria, there would be no reason to treat them in an essentially different manner. Cohen argues further that widespread acceptance of the Guiding Principles on Internal Displacement, as well as the 'Responsibility to Protect' doctrine espoused at the 2005 World Summit, demonstrate a high degree of acceptance that there is an international responsibility to protect and assist internally displaced persons.

As new forms of forced migration loom on the horizon, the international community may well see itself challenged to intervene to assist and protect those displaced by climate change, environmental hazards and natural disasters. The responsibility to protect is a relatively new concept that was conceived primarily to address situations of 'unavoidable catastrophe—from mass murder and rape, from starvation....' The core principle enunciated by the International

Commission on Intervention and State Sovereignty to guide intervention is 'where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.' Among the situations listed by the Commission as fitting into this framework were 'overwhelming natural or environmental catastrophes, where the State concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened.'<sup>5</sup>

Let the principle of humanitarianism of Buddhism – **TO EXIST IS TO CO-EXIST'** – the quintessence of global jurisprudence; and the Christian spirit of peace and abolition of war is evident from the biblical statement – *"They shall beat their swords into ploughshares, and their spears into pruning hooks: Nation shall not lift up sword against nation, neither shall they learn war anymore."*<sup>6</sup> Absorbed by the humanitarian ethos in Indian Culture - be the beacon light to this globe to deal with the despair of displaced persons, migrants and refugees and rekindle the hope of humanity in humanitarian law.

Let all of us Practise our Cultural and Moral Command

*"Sarvejanah Sukhino Bhavantu"*

5. (<http://www12.georgetown.edu/sfs/isim/Publications/SusanPubs/Susan%20GlobalR2P.pdf>)

6. V.R. Krishna Iyer, J., in his foreword to 'Introduction to International Humanitarian Law, Ed. By M.K. Balachandran and Rose Varghese, Indian Centre for Humanitarian Law and Research, ND (2008))