

CHAPTER II

LITERATURE REVIEW

A. The Concept of Refugee

1. The Definition of Refugee

The general definition of refugee is “*Anyone looking for a safe place when there is a danger that threatens their region.*”¹ On Oxford Learner’s Pocket Dictionary, describes refugee a “persons forced to leave their country, especially because of political or religious beliefs”²

Black’s Law Dictionary listed the definition of refugee as “*A person who flees or is expelled from a country, especially because of persecution, and seeks haven in another country*”³ There are two scholars who stated the definition of refugees. Malcom Proudfoot gives the definition of refugee in the perspective after World War II. He stated:

*“These forced movements, ...were the result of the persecution, forcible deportation, or flight of Jews and political opponents of the authoritarians governments; the transference of ethnic population back to their homeland or to newly created provinces acquired by war or treaty; the arbitrary rearrangement of prewar boundaries of sovereign states; the mass flight of the air and the terror of bombarment from the air and under the threat or pressure of advance or retreat of armies over immense areas of Europe; the forced removal of populations from coastal or defence areas under military dictation; and the deportation for forced labour to bolster the German war effort.”*⁴

¹ Yudus Badudu, 1994, *Kamus Bahasa Indonesia*, Jakarta, Sinar Harapan, p.54

² Anonymous, 2009, *Oxford Learner’s Pocket Dictionary*, Third Edition, Oxford, Oxford University Press, p. 360-361

³ Bryan A. Garner, 1999, *Black’s Law Dictionary*, Seventh Edition, Thomson West, St. Paul Minn, p.1307

⁴ Wagiman, 2012, *Hukum Pengungsi Internasional*, Jakarta, Sinar Grafika, p.98.

According to Pietro Verri, he provides a definition of refugee by citing the Article 1 UN Convention on the Status of Refugees on 1951, he stated: “[it] applies to many person who has fled the country of his nationality to avoid persecution or the threat of persecution.”⁵

The definition of refugee according to Statute of UNHCR clearly mentioned on Article 6 (b):

“Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.”

The Article 1A (2) Convention relating to the Status of Refugees 1951, mentioned that the definition of refugee is:

“... as one who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, member boat of particular social group or political opinion, is outside the country of his nationality and unable or owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having nationality and being outside the country of his former habitual residence as result of such events, is unable or owing to such fear, is unwilling to return to it.”

This definition contains several important elements:⁶

⁵ Achmad Romsan, 2002, *Pengantar Hukum Pengungsi Internasional*, Bandung, Sanic Offset, p.36.

⁶ Walter Kälin, “Flight in Time of War”, *International Review of the Red Cross*, Vol. 83, No. 843, 2001, p. 634-635.

1. Well-founded fear: It is not necessary for the refugee to have already become a victim of persecution. Fear of future persecution is sufficient if such fear is not just subjective but has an objective basis in the facts of the case.
2. Persecution: It usually takes the form of human rights abuse or similar harm, but must reach a certain level of seriousness in order to be regarded as relevant.
3. Convention grounds: What distinguishes refugees from other victims of human rights violations who have left their country is the fact that they are persecuted “for reasons of race, religion, nationality, membership of a particular social group or political opinion”. Whereas the grounds of race, religion and political opinion do not usually give rise to any particular problems, there is considerable debate today about the meaning of “social group”. In contrast, there is widespread consensus that “nationality” not only denotes citizenship but also ethnicity.
4. Outside the country of nationality or habitual residence: Flight is not a necessary element of the refugee definition. Someone who has left his country without having been persecuted at that time becomes a refugee *sur place* when relevant circumstances change in a way that would make him a victim of persecution were he then to return to that country.
5. Unable or unwilling to avail himself of State protection: This last element makes sure that refugee status is granted only if protection

by the country of origin is not available to the person concerned or if he, in the light of what has happened or will happen to him, cannot be reasonably expected to ask for such protection.

The definition of refugees according The Group of Governmental Experts on International Co-operation to Avert News Flows of Refugees is:

“Refugees defined man-made disaster in the following terms: wars, armed conflict, acts aggression, alien domination, foreign armed intervention, occupation, colonialism, oppressive segregationist and racially supremacist regimes practicing policies of discrimination or persecution, apartheid, violations of expulsions, economic and social factors threatening the physical integrity and survival, structural problems of development; manmade ecological disturbances and severe environmental damages.”⁷

Someone become refugees because they feel danger, because of natural disaster or man-made disaster. Refugee caused by natural disaster is protected by their country and they can escape to another country to save their life. They are able to ask for help on their origin country.

It is different when someone becomes a refugee because of man-made disaster such as war, armed conflict, etc. The evacuation of refugees is out of the country due to avoid prosecution and persecution in their country. Sometimes these refugees occur because of political reasons, they also forced to leave the country, and these people no longer receive protection from government of their country. International Refugee Law only regulated refugee

⁷ Wagiman, *Op. Cit.*, p.99.

caused by man-made disaster because they were not protected by their country. This kind of refugee is very vulnerable to suppression of human rights.

According to the definition above, it is explained that there are two types of refugees, the Internal Displaced Persons and refugees. The differences on these two types of refugees are only within the scope of the region. Internal Displaced Person is displaced out of a particular territory and occupies other areas but still within the territory of their country, whereas refugee is a refugee person who fled or was displaced to other regions out of their country.

2. Types of Refugee

a. Economic migrant

“Person, who, in pursuit of employment or a better overall standard living (that is, motivated by economic consideration), leave their country to take up residence elsewhere.”⁸

b. Internally Displaced Person (IDP)

Until the beginning of the 1990s, internally displaced persons were defined negatively: they were people who had fled their homes, but who were not refugees (having remained within their country). It is only recently that some efforts have been made to devise a comprehensive definition of internally displaced persons. An important step was taken in 1992 when the UN Secretary-General proposed a working definition. That definition was

⁸ Achmad Romsan, *Op. Cit.*, p. 29.

revised in 1998 and the Guiding Principles on Internal Displacement now define internally displaced persons as:⁹

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

If we look more closely at the situation of internally displaced persons, this bond is not completely severed, because they still remain within the jurisdiction of their state which has a duty of protection towards them. This has important implication for the nature of protection which can be afforded to them. What must not be forgotten is the essentially statist nature of international refugee law which is evidenced by the paramount importance of the border-crossing requirement in the refugee definition: the refugee is an unprotected alien who does not benefit from any protection, whereas the internally displaced is an unprotected resident who requires protection which is necessarily different in nature. Consequently, a legal synthesis between refugees and the internally displaced is meaningless, and a separate legal status should not be given to the internally displaced in international law.¹⁰

⁹ Catherine Phuong, 2004, *The International Protection of Internally Displaced Persons*, United Kingdom, Cambridge University Press, p. 1-2

¹⁰ *Ibid*, p. 37.

c. Mandate refugees

Mandates are used to refer to people who recognized his status as a refugee by UNHCR in accordance with the functions, authority or mandate established by the Statute of UNHCR. The term mandate refugees used for refugees who were under the authority or mandate of UNHCR, such as:

1. People who are recognized as refugees by UNHCR, wherever they are, before the entry into force of the 1951 Convention on April 22th, 1964 and before the entry into force of the 1967 Protocol on October 4th, 1967.
2. People who are recognized as refugee by UNHCR who are outside the state parties to the Convention in 1951 (after the entry into force of the 1951 Convention since April 22th, 1954) and / or its 1967 Protocol (after the entry into force of this Protocol since October 4th, 1967). The mandate stated the refugee is a person who meets the requirement of the UNHCR Statute, as refugees and therefore the protection of the United Nations, wherever they are inside or outside the State Parties to the 1951 Convention or its 1967 Protocol.¹¹

d. Refugees sur place

“A person who was not a refugee when he left his country, but who became a refugee at a late date. A person becomes a refugee sur place due to circumstances arising in her country origin during her absence.”¹²

¹¹ Achmad Romsan, *Op. Cit.*, p. 30-31.

¹² *Ibid*, p. 29.

These are persons who have entered the host country for reasons unrelated to questions of well-founded fear of persecution, such as education, medical treatment or tourism. However, subsequent developments render their return to the country of origin problematic. The conditions in the person's country of origin may change suddenly, placing the person's life and liberty in danger upon return—for example, a military coup or ethnic strife. A person's political activities in the host country may also make it unsafe for her to return, because of political opposition. In this case, refugee status is determined on the basis of individual apprehension of persecution.¹³

e. Statutory refugees

*“Persons who meet the definitions on international instruments concerning refugees prior to the 1951 Convention are usually referred to as “statutory refugees”.*¹⁴

f. Stateless person

The 1954 Convention aims to provide stateless persons with a legal status and in appropriate cases, residence, which would enable them to access basic social and economic rights. Article 1 defines a stateless person as one ‘who is not considered as a national by any State under the operation of its laws’. Because the Convention does not permit derogations from Article 1(1), the definition of a stateless person is binding upon all state

¹³ Human Rights Law Network, 2011, *Refugee and the Law*, Second Edition, Human Rights Law Network (HRLN), New Delhi, p. 13

¹⁴ Achmad Romsan, *Op. Cit.*, p. 29.

parties. Moreover, the International Law Commission considers the definition to be part of customary international law. The international legal definition of a stateless person is set out in Article 1 of the 1954 Convention relating to the Status of Stateless Persons, which defines a stateless person as "a person who is not considered as a national by any State under the operation of its law". This means that a stateless person is someone who does not have a nationality of any country. Some people are born stateless, while others become stateless over the course of their lives.¹⁵

One of the changes that occur in a country that can cause a person or a group of people to lose citizenship is a succession of state. According to Ian Brownlie "*State succession arises when there is a definitive replacement of sovereignty over a given territory in conformity with international law*".¹⁶

g. War refugees

*"Persons compelled to leave their country of origin as a result of international or national armed conflicts are normally considered refugees under the 1951 Convention of 1967 Protocol. They do, however, have the protection provided for in other international instruments, i.e. the Geneva Convention of 1949, et.al. in the case of forces invasion and subsequent occupation, occupying force may begin to persecute segment of the populations. In such cases, asylum seekers may meet the conditions of the Convention definition."*¹⁷

¹⁵ Sandra Mantu, 2015, *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, The Netherlands, Koninklijke Brill NV, p. 37

¹⁶ Kadarudin, Keterkaitan Antara Stateless Persons, Pencari Suaka dan Pengungsi, *Jurnal Pengembangan Ilmu Hukum 'Gratia'*, Volume VIII, No I, 2012, p. 105

¹⁷ Achmad Romsan, *Op. Cit.*, p. 30.

B. International Refugee Law

International law is a set of rules intended and created by sovereign states exclusively. In other words, as stated by Lassa Oppenheim: [t]he law of nations prescribes no rules as regards the kind of head of a State may have. Every State is, naturally, independent regarding to this point, possessing the faculty of adopting any constitution according to its direction. International law does not generally address domestic constitutional issues, such how a national government formed.¹⁸ International refugee law is a part of international law, it is also a law that governs all matters concerning refugee including the standards governing of the treatment of refugees.

International refugee law began on era of the 1920s. It is characterized by the term refugee and non-refugee. Then, its development became known in worldwide because there are some of famous figures such as Liisa Malkki, Nicholas Xenos and Michael Dillon, who contributed in the form of making the description and symbolism on terminology of refugee. At the beginning, only a state is able to determine and recognize whether the person or group of people is a refugee or not. Thus restrictions on refugee become full authority of each country, as stated by Grahl Madsen:¹⁹

“There is no such definition of “refugee” even in international law, only ‘fitting’ definitions. What is attainable through a distillation of international legal instruments, policy, documents and politico-sociological indications is an idea of who might be accorded refugee status or at least protection under what circumstances, in both the real and the ideal world”

¹⁸ Jawahir Thontowi, Pranoto Iskandar, 2006, *Hukum Internasional Kontemporer*, Bandung, PT Refika Aditama, p.2-3.

¹⁹ Wagiman, *Op. Cit.*, p.135.

International refugee law function as the international legal system, in terms of implementation and supervision carried out by international agencies. But, it does not rule out the possibility that domestic law has an important role in the implementation of international law.

After the World War I, the development of refugee law increasingly exists with the current scope of the universal ratification of the 1967 Protocol Relating to the Status of Refugees. There is an international community's urgency to regulate the issue of refugees is in their region, for example in Africa, Europe and Latin America.²⁰ There are two legal bases on International refugee law to regulate the refugee such as:

1. The 1951 Convention relating to the Status of Refugees

The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from July 1951 and entry into force on April 22th 1954. The Conference was convened pursuant to resolution 429 (V) 1 adopted by the General Assembly of the United Nations on December 14th 1950.²¹ This Convention is the starting point of any matters of international refugee law. The convention is one of the two refugee instruments, both of which are 1967 Protocol which is a development of this convention.

²⁰ Achmad Romsan, *Op. Cit.*, p.13

²¹ Ian Brownlie, 1993, *Dokumen-Dokumen Pokok mengenai Hak Asasi Manusia*, Edisi Kedua, Jakarta, UI-Press, p.66

The 1951 Convention defines what the term ‘refugee’ means then it outlines a refugee’s rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents. It also underscores, in turn, refugees’ obligations towards their host governments. A key provision stipulates that refugees should not be returned to a country where they fear persecution. It also spells out individuals or groups of people who are not covered by the Convention.²²

Person who has committed a crime his refers to an individual or against peace, a war crime, a crime organization – government, rebels or against humanity or a serious non-political another group – which forces people to do crime outside the country of asylum cannot be covered by the Convention.²³

2. The 1967 Protocol relating to the Status of Refugees

The 1967 Refugee Protocol is a treaty in international refugee law which entered into force on October 4th 1967. The 1967 Protocol removes the geographical and time limitations written into the original Convention under which for the most part only Europeans involved in events occurring before January 1st 1951, could apply for refugee status. As a result, it turned the Convention into a truly universal instrument that could benefit refugees

²² Christina Parmionova, “The 1951 Refugee Convention”, Slide Share, taken from <http://www.slideshare.net/WERI/The-1951-refugee-convention> accessed on December 15th 2015 at 1.05 p.m

²³ *Ibid.*

everywhere. Three-quarters of the world's states have signed up to both the 1951 Convention and its Protocol.²⁴

The Protocol is an independent instrument, adherence to which would not be limited to States parties to the convention but also open to other States.²⁵ Nevertheless, State parties may make reservations to articles of the Convention other than to articles:

- a. Article 1 (definition of the term refugee)
- b. Article 3 (Non-discrimination)
- c. Article 4 (Religion)
- d. Article 16 paragraph 1 (free access to the courts of law)
- e. Article 33 (Prohibition of expulsion or return/ Non-refoulement)
- f. Article 36-46 (Information on national legislation, the provisions cover)

In wider context both of 1951 Convention and 1967 Protocol contains three primary basis:²⁶

- a. The provisions relating to the definition of those who are not included in the definition of refugees
- b. The provisions governing the status of refugee law, including the rights and obligations of refugees in the countries where they settled

²⁴ *Ibid.*

²⁵ Andreas Zimmermann, 2011, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*, New York, Oxford University Press, p. 1469.

²⁶ Achmad Romsan, *Op. Cit.*, p. 87

- c. Other provisions relating to the application of refugees instrument from the standpoint of administrative and diplomatic procedures.

C. Non-Refoulement Principle

Referring to the etymology refoulement term derived from the French word. Refoulement defined as “*expulsion or the return of a refugee from one state to another*”. Non-refoulement means “*A refugee’s right of not being expelled from one state to another, especially to one where him or her life or liberty would be threatened*”.²⁷

According to Article 33 of the 1951 Convention relating to the Status of Refugees, regulated non-refoulement principle which states that:

- a) No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories when his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- b) The benefit of the present convention may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitute a danger to the community of that country.

²⁷ Wagiman, *Op. Cit.*, p. 108.

An Expert Roundtable was organized by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, University of Cambridge, UK, 9–10 July 2001, and the general appreciation of the meeting was:²⁸

- a) Non-refoulement is a principle of customary international law.
- b) Refugee law is a dynamic body of law, informed by the broad object and purpose of the 1951 Refugee Convention and its 1967 Protocol, as well as by developments in related areas of international law, such as human rights law and international humanitarian law.
- c) Article 33 applies to refugees irrespective of their formal recognition and to asylum seekers. In the case of asylum seekers, this applies up to the point that their status is finally determined in a fair procedure.
- d) The principle of non-refoulement embodied in Article 33 encompasses any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier, or indirect refoulement.
- e) The principle of non-refoulement applies in situations of mass influx. The particular issues arising in situations of mass influx need to be addressed through creative measures.

²⁸ Anonymous, “Summary Conclusions – The principle of Non-refoulement”, United Nations High Commissioner for Refugees, taken from <http://www.unhcr.org/496351a72.pdf> downloaded on December 22th 2015 at 1.05 p.m.

- f) The attribution to the State of conduct amounting to refoulement is determined by the principles of the law on State responsibility. The international legal responsibility to act in conformity with international obligations wherever they may arise is the overriding consideration.
- g) There is a trend against exceptions to basic human rights principles. This was acknowledged as important for the purposes of the interpretation of Article 33(2). Exceptions must be interpreted very restrictively, subject to due process safeguards, and as a measure of last resort. In cases of torture, no exceptions are permitted to the prohibition against refoulement.

Article 53 of the Vienna Convention on the Law of Treaties also states:

'A treaty is void if, at the time of its inclusion, it conflicts with a peremptory norm of general international law... a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

Again Article 64 declares that '[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates. As noted in chapter 3, the concept of jus cogens, of fundamental and entrenched rules of international law, is well established in doctrine now, but controversial as to content and

method of creation. The insertion of articles dealing with jus cogens in the 1969 Convention underlines the basic principles with regard to treaties.²⁹

Also Article III (3) of the Principles concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966 provides that:

"No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory."

Non-refoulement is also regulated on Article 3 of the 1967 Declaration on Territorial Asylum that states that:

"No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution."

The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in other countries asylum from persecution, as set forth in Article 14 of the Universal Declaration of Human Rights, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from

²⁹ Malcolm N. Shaw, 2008, *International Law*, Sixth Edition, New York, Cambridge University Press, p. 944.

torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger.³⁰

This provision constitutes one of the basic Articles of the 1951 Convention, to which no reservations are permitted. It is also an obligation under the 1967 Protocol by virtue of Article I (1) of that instrument. Unlike some provisions of the Convention, its application is not dependent on the lawful residence of a refugee in the territory of a Contracting State. As to the words "where his life or freedom would be threatened", it appears from the *travaux préparatoires* that they were not intended to lay down a stricter criterion than the words "well-founded fear of persecution" figuring in the definition of the term "refugee" in Article 1 A (2). The different wording was introduced for another reason, namely to make it clear that the principle of non-refoulement applies not only in respect of the country of origin but to any country where a person has reason to fear persecution.³¹

D. International Organizations which Handle the Refugees

1. United Nations Relief and Rehabilitation Administration (UNRRA)

United Nations Relief and Rehabilitation Administration established in 1943 for the resettlement of refugees to their home countries as many as 30

³⁰ UN High Commissioner for Refugees, "UNHCR Note on the Principle of Non-refoulement", Refworld, taken from <http://www.refworld.org/docid/438c6d972.html> accessed on February 5th 2016 on 11.14 a.m.

³¹ *Ibid.*

million displaced persons because of World War II. Resettlement refugees is a major objective of the establishment of UNRRA. The duty of UNRRA is increasingly difficult because there are 12 million Germany ethnics from East Block who does not want to be repatriated. They claim that because of their reasons of race, religion, and political opinion, they cannot return to their habitual residence. But Uni Soviet rejects those argument and all of displaced persons have to repatriation.³²

2. International Refugee Organization (IRO)

International Refugee Organization set out the UN General Assembly on December 15th, 1946. The IRO Constitution regulate the functions and authority of the agency in the prevention and treatment of refugees. Therefore, it does not regulate the rights and freedoms of refugees. The duties of IRO are: Repatriation of refugees, Identification of refugees, Registration and Classification of refugees, Public Relief of refugees, Legal Protection of refugees, and Politics of refugees, Transportation of refugees and Resettlement.³³

IRO tasks include not only the refugees to the events that occurred during the World War II, but also refugees who recognized before the World War II. IRO is a non-permanent organization, thus IRO does not regulate refugees after the World War II. Therefore, this international institutions can no longer work for the refugees after World War II. Then United Nations High Commissioner

³² Achmad Romsan, *Op. Cit.*, p.66

³³ Wagiman, *Op. Cit.*, p. 137

for Refugee (UNHCR)³⁴ is established to resolve the problem of refugees in the world.

3. United Nations High Commissioner for Refugee (UNHCR)

The problem of refugees has long been a concern of the United Nations. In 1946 the United Nations has adopted a specialized agency, the International Refugee Organization (IRO) and took over The United Nations Relief and Rehabilitation Agency (UNRRA). They help resettle around 1 million people to flee to a third country, and put over 73,000 people displaced in their own country.³⁵ On December 14th, 1950 by the United Nations Assembly began to work on January 1st, 1951. The initial formation of duties UNHCR only provide security protection, food and medical assistance in emergency situations and help find solutions for refugees for long periods of time. One of the solution is to return the refugees to their country of origin, or find a new country for them to start a new of their life.³⁶

UNHCR is the agencies that originally formed to replace International Refugee Organization (IRO). IRO is an agency which was first established to deal with refugees. There are few differences between IRO and UNHCR, IRO was founded on April 20, 1946 the function of establishment IRO is to deal with the massive refugee problem created by World War II besides UNHCR has the scope and broader authority for refugees. Refugees are divided into refugee

³⁴ *Ibid.*

³⁵ Achmad Romsan, *Op. Cit.*, p.163.

³⁶ *Ibid.*

caused by World War II or refugees emerging after the formation of the UNHCR.

On 1954, the new organization won the Nobel Peace Prize for its groundbreaking work in helping the refugees of Europe. Its mandate had just been extended until the end of the decade. More than a quarter century later, UNHCR received the 1981 award for what had become worldwide assistance to refugees, with the citation noting the political obstacles face bt the organization. From only 34 staff members when UNHCR was founded, it now has more than 9,300 national and international members of staff, including over 1,050 in UNHCR's Geneva and Budapest Headquarters. The agency works in 125 countries, with staff based in 109 main locations such as regional and branch offices and 341 often remote sub-offices and field offices.³⁷

The Statute of the Office of the United Nations High Commissioner for Refugees was adopted by the General Assembly on 14 December 1950 as Annex to Resolution 428 (V) and UNHCR exist since January 1951. In implementing their duties, UNHCR is guided by the mandate of United Nations General Assembly and Economic and Social Council (ECOSOC). The Statute of UNHCR 1950 explains the general function of UNHCR:

“Providing international protection and seeking permanent solution to the problem of refugees by assisting Governments to facilitate the voluntary repatriation of such refugees, or their assimilation within the new national communities”

³⁷ Anonymous, “A Global Humanitarian Organization of Humble Origins”, United Nations of High Commissioner for Refugees, taken from <http://www.unhcr.org/pages/49c3646cbc.html> accessed on November 1st 2015 at 10.29 p.m.

Since its establishment UNHCR provides protection to refugees and in cooperation with the governments of the world to find long-term solutions to the problems faced by refugees. This is confirmed by Goodwin Gill who stated that:

*“UNHCR has a unique statutory responsibility to provide international protection of refugee and, together with government, to seek permanent solution to their problem”.*³⁸

The kinds of protection functions described in the Statute of UNHCR, include its supervision of law enforcement. During these five decades UNHCR has been helping 50 million refugees. UNHCR has more than 5000 staff who worked in more than 120 countries. Nowadays UNHCR handles more than 20 million refugees. UNHCR has the authority to provide international protection for refugees and to find solutions to the problems faced by refugees. This agency periodically reports its results to the United Nations General Assembly.³⁹

According to article 1 on Convention on Relating to the Status of Refugees 1951, there are nine (9) duties of UNHCR to provide for the protection of refugees:

³⁸ Wagiman, *Op. Cit.*, p.188.

³⁹ *Ibid.*

- a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;
- b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
- c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;
- e) Endeavoring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
- f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;
- g) Keeping in close touch with the Governments and intergovernmental organizations concerned;
- h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;
- i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

When it was first established by the United Nations General Assembly in 1951, UNHCR was given responsibility to resettle 1.2 million European

refugees who had to leave their homeland after the World War II. To resolve the refugee problem, the forms of assistance provided by UNHCR are:⁴⁰

- a) Help during major emergencies involving the movement of large number of refugees;
- b) Regular programmers in such field as education, health and shelter;
- c) Assistance to promote the self-sufficiency of refugees and their integration in host countries;
- d) Voluntary repatriation;
- e) Resettlement in third countries for refugees who cannot return to their homes and who face protection problems in the country where they first sought asylum.

For example, in 1997, approximately 55,000 new immigrants came to Hong Kong. The existing number in the refugee camp was about 350,000 people, not including half a million or more the people from Cambodia in the Thai border. In the end of June, a few of ASEAN countries announce on July 20 to 21 in Geneva that 65 governments responded to an invitation from the United Nations General Secretaries to attend a conference related to Indo-Chinese refugees. In general, there was an increase for the resettlement of 125,000 to 260,000 people.⁴¹

⁴⁰ Achmad Romsan, *Op. Cit.*, p.176.

⁴¹ *Ibid.*