

CHAPTER IV

ANALYSIS OF UNHCR REASONS RECOMMENDING IOM IN DEALING WITH VIETNAMESE REFUGEES IN INDONESIA

In analyzing the reason of UNHCR reasons recommending IOM toward Vietnamese refugees in Indonesia, the writer will use the theory Role theory by Stephen G.Walker supported by the concept of international organization by R.Axelrod and Keohane R.O. Roles are social positions which are constituted by ego and alter expectations regarding the purpose of an actor in an organized group (Harnisch S. , 2010). The positions function in the group is limited in time and scope and it is dependent on the groups' structure and purpose. While some roles are constitutive to the group as such, recognized member of the international community, other roles or role sets are functionally specific, i.e. balancer, initiator etc.¹ While international cooperation describes interactions to achieve common objectives when actors' preferences are neither identical (harmony) nor irreconcilable (conflict).

¹ Legal Framework and Role of UNHCR to RSD | Suaka, accessed on December 1st 2016 from : <https://suaka.or.id/2015/07/09/legal-framework-and-role-of-unhcr-to-rsd/>

**A. The non-signatory of UNHCR 1951 convention and 1967 protocol by
Indonesia**

As an international organization which was created to deal with refugee problem, United Nations High Commissioner for Refugee (UNHCR) has a role to protect the refugees' right and welfare. UNHCR's role also has to grant all of refugee can use their right in aim to gain the asylum. However, in dealing with refugees problem in certain state, UNHCR needs its permission from the host-country. As the member of UNHCR, states need to sign the 1951 Convention and 1967 Protocol about the status and rights of refugees based on its instrument. The United Nation Convention 1951 and protocol 1967 which is related to the status of refugee has created a perspective for a signatory country to provide protection to refugee at risk of persecution in their own countries capacity. The Convention defines as a refugee a person:

(who) owing to (a) well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or,

*owing to such fear, is unwilling to avail himself of the protection of that country.*²

The Convention also contains several numbers of fundamental principles, mainly on non-discrimination, non-penalization and non-refoulement principles. The first provision of this convention is about non-discrimination which is applied to avoid discrimination based to race, religion or country of origin of the refugees. Developments in international human rights law also reinforce the principle about discrimination of sex, age, disability, sexuality, or other prohibited grounds of discrimination.

While the second principle of the convention explains about the specific exception of a subject which means refugees should not be penalized for their illegal entry or stay. It means that recognition of asylum seeker can require refugees to breach immigration rules. The prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of asylum seeker.

The last and most important principle of the convention is the some protections against the expulsion of refugees. Non-refoulement principle is very basic principle that no objections or derogations of its' existence. It

² The Problem with the 1951 Refugee Convention – Parliament of Australia accessed on November 30th 2016 from : http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0001/01RP05

explains that no one shall expel or return (“refouler”) a refugee against his or her will, in any manner, to a territory where he or she fears threats to life or freedom. Also, the convention settles the minimum requirements in handling refugee, without an exception for a state to give them a better treatment. This right included the access to the courts, primary education, work, and provision for documentation, including refugee travel document in passport form. (UNHCR, 2010)

However, non-refoulement principle only be applied in terms of mass displacement caused by conflict. Non-refoulement principle prohibits the act of one nations to return or sent back the refugee to the place where they will face persecution, threat, violence, or any kind of act which can put them in dangerous condition based on reason which is related with race, religion, nations, or political beliefs.

Seeing the obligations that will directly come into the signatory of UNHCR protocol, Indonesia prefers to be the non-signatory country. From the fundamental right that must adopted by signatories countries, it is really contradictive with the condition of Indonesia nowadays. From several fundamental rights explained before, about the right to avoid punishment and could not be sent back to the origin country somehow could burden Indonesia.

Beside that, the implementation of UNHCR convention is also not fit with the condition of Indonesia. The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host countries which could not be fulfilled by Indonesia. The rights contain (UNHCR, 2010):

1. The right not to be expelled, except under certain, strictly defined conditions (Article 32);
2. The right not to be punished for illegal entry into the territory of a contracting State (Article 31);
3. The right to work (Articles 17 to 19);
4. The right to housing (Article 21);
5. The right to education (Article 22);
6. The right to public relief and assistance (Article 23);
7. The right to freedom of religion (Article 4);
8. The right to access the courts (Article 16);
9. The right to freedom of movement within the territory (Article 26); and
10. The right to be issued identity and travel documents (Articles 27 and 28).

Seeing the rights that should be fulfilled by the government of Indonesia if they sign the protocol, it is really far from the ability of Indonesia, in fact

Indonesia is a country which has high percentage of unemployment problem and also education sector which has not been spread throughout the regions. The policy to give a right to refugees considered to be very inappropriate and could cause a social gap for the citizen. The housing right is also unenforceable while Indonesian economy still weak, the number of poor people is still in high level so the application policy to grant the refugees housing right will trigger social inequalities and pulled the country's internal problems.

Another reason that makes Indonesia has not signed the convention is there are several problems with the Convention which is not fit to be applied in these days like the convention definition of refugee is outdated, as is its notion of exile as a solution to refugee problems. While the Convention-based asylum system may have operated well enough until the end of the Cold War, it was not designed with today's mass refugee outflows or migratory movements in mind. At a time of intense migration pressure and limited opportunities, asylum systems in Western countries have come under increasing strain through their use as a migration channel.

However, although Indonesia has not signed the convention, international conference in 1979 conducted by United Nations resulted several ASEAN countries including Indonesia to be temporary destination for the

refugee and “tolerate” UNHCR in doing its job in their territories.³ UNHCR is operating in Indonesia with the agreement of the Government of the Republic of Indonesia. The Indonesian Immigration Directorate General issued a Directive in 2010 (No: IMI-1489.UM.08.05) which states that persons seeking asylum or refugee status are to be referred to UNHCR for RSD and that “the status and presence of aliens holding Attestation Letters or identification cards issued by UNHCR as asylum seekers, refugees or persons of concern to UNHCR, must be respected”. Persons without those documents will be subject to detention, fines, and/or deportation.⁴

After being participated in some of meetings that were conducted by South-East Asian transit states and Western resettlement countries during the first half of 1979, the governments of Indonesia and the Philippines had agreed to provide certain islands to establish regional processing centers for refugees who had already been accepted for resettlement. Indonesian government had chosen Galang Island that is located in Riau Archipelago province as a temporary home for up to 10,000 refugees at a time. (Missbach, 2013)

Actually, Galang island could not easily accessed by air and sea, but it was then inhabited by only about 200 people. The small number of Galang

³ Resolution of The Problem of Boat People – The Case for Global Initiative, accessed on October 24th 2016 from : <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html>

⁴ Legal Framework and Role of UNHCR to RSD | Suaka, accessed on December 1st 2016 from : <https://suaka.or.id/2015/07/09/legal-framework-and-role-of-unhcr-to-rsd/>

people made it easier for the local authorities to separate the refugees from the local population in order to avoid intermingling. Galang was never supposed to offer permanent integration for refugees. It was conceived as a temporary location where refugees could prepare for their resettlement by undertaking language and other courses.

From the very beginning, the Indonesian government emphasized:

that it would not receive refugees in its territory, but for the sake of humanitarianism it was forced to accept them during transit while they were waiting to move on to a third country, as well as actively providing thoughts and concrete support to find a solution for this problem. (Indonesia, 1980)

Also, meeting of ASEAN Foreign Ministers on May 1979 that was aimed to talk about the status of refugees in the region had resulted that “countries providing the site or island for the processing center shall retain the sovereignty, administrative control and security responsibility over the island” (Department of Foreign Affairs of the Republic of Indonesia 1979, p. 5). It made a clear explanation regarding the budget needed by the government in establishing and running these centers would be covered by UNHCR. Also, the budget that would be the responsibility by UNHCR would include the providing of basic needs like food, education, and health care. (Missbach, 2013)

Since Indonesia has not signed the protocol based on several reasons explained above, it made the limitation of UNHCR in doing its role in Indonesia. UNHCR could not play its main role to grant refugees right and welfare which makes UNHCR needs other actor to help them in achieving their common objectives toward refugee. UNHCR will provide for one of three possible durable solutions including resettlement to a third country, voluntary repatriation and also local integration. However, local integration is not available as an option in Indonesia because the Indonesian government does not authorize recognized refugees to stay living in the country.⁵

Also, as the non-signatory of UNHCR convention, there are several factors that could result in refugees and asylum seekers being denied to get effective protection in Indonesia like the lack of legal protection, long waiting periods for permanent resettlement, limited basic livelihood support (housing, healthcare, education, and work rights) and inhumane conditions in detention centers.⁶ The factors emerged due to the nature of [Indonesia's domestic legal framework](#) relating to asylum seekers and refugees means that refugees, asylum seekers and stateless people are treated as illegal immigrants, and are subject to detention and might legally become subject to deportation which

⁵ Legal Framework and Role of UNHCR to RSD | Suaka, accessed on December 1st 2016 from : <https://suaka.or.id/2015/07/09/legal-framework-and-role-of-unhcr-to-rsd/>

⁶ *ibid*

also made Indonesia does not have certain binding regulation and responsibility toward the refugees.

As Indonesia is not a signatory to the 1951 Refugee Convention, the government has allowed two international institutions to deal with asylum seekers⁷:

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) oversees refugee status determination, resettlement, and repatriation.
2. The International Organization for Migration (IOM) is responsible for day-to-day assistance, including providing food, accommodation, and healthcare; asylum seekers and refugees remain IOM's responsibility until they are resettled in a third country or voluntarily return home.

B. Limitation capacity of UNHCR

United Nations High Commissioner for Refugee (UNHCR) role in managing Vietnamese refugee in Indonesia focused on the effort to find the third country as the permanent place for the refugee. However, since the number of refugees in Indonesia always increased, it made the limitation of UNHCR capacity to deal with it. Huge number of the refugee is not balance

⁷ Legal Framework and Role of UNHCR to RSD | Suaka, accessed on December 1st 2016 from : <https://suaka.or.id/2015/07/09/legal-framework-and-role-of-unhcr-to-rsd/>

with the number of resettlement place. Low resettlement places leads to significant waiting periods. The lack of information and assistance available to asylum seekers and refugees to support themselves and their families leads to frustration and desperation of concern for many people.⁸

While UNHCR was busy to find the third countries for the refugee, the waiting periods became longer and the number of refugee became increased. It made the refugees need more access to daily needs. Since the government of Indonesia did not provide the refugees right to seek for job, they could only rely on what UNHCR gave to them which made there were no means for them to take care of themselves and their families whilst transiting in Indonesia or waiting for resettlement. On May 2015, UNHCR reported that refugees who are still in the detention center had reached 4.589 persons, and among them, there were 696 individuals had reported themselves to immigration authorities. Even for asylum seekers and refugees who do receive support, financial payments from UNHCR are Reported to be minimal.

At that time refugees could only access services of the International Organization for Migration (IOM) through referrals from Immigration Officials, the which leads to many vulnerable people slipping though the

⁸ Supporting system of Refugee and Asylum Seeker in Indonesia | Suaka, accessed on October 24th 2016 from : <https://suaka.or.id/2015/07/09/supporting-system-of-refugee-and-asylum-seekers-in-indonesia/>

gaps.⁹ This is the role of IOM in helping UNHCR to deal with Vietnamese refugees in Indonesia. IOM gave the access to health care, education and work rights results in refugees and asylum seekers being extremely vulnerable to medical emergencies and livelihood.

C. Comparison of IOM and UNHCR Role

UNHCR needs to recommend IOM in dealing with Vietnamese refugee could be seen from substantial and technical things of both organizations that has different scopes. Although both of this organization similarly focus on humanitarian issues, the wider range of problem solving involve the cooperation conducted by them in purpose to fulfill their main goals.

Table1. Comparison between UNHCR and IOM

No	UNHCR	IOM
1	Mandates Bounded by United Nations General Assembly	Mandates given by member-states
2	Has right to determine the status of person as Refugees through Refugee Status Determination (RSD)	Focus and fully responsible in refugee assistance program
3	UNHCR's funding comes from the budgeting of United Nations, member states and also including intergovernmental institutions	IOM is heavily dependent on project-based funding
4	Administrative operations : Resettlement	Executive services and operational activities are conducted.

⁹ Supporting system of Refugee and Asylum Seeker in Indonesia | Suaka, accessed on October 24th 2016 from : <https://suaka.or.id/2015/07/09/supporting-system-of-refugee-and-asylum-seekers-in-indonesia/>

The IOM is an intergovernmental organization that is not based on an International Convention. It offers ‘Migration Management Services’ to governments in a wide range of areas, including labor migration and resettlement assistance programs. Having been established in 1951 by a group of 16 states, by 2013 its membership had grown to 151 states (Koch, 2013). The IOM presence helps UNHCR in humanitarian assistance during the Refugee status determination done by UNHCR. Based on IOM strategic focus point 3:

*To offer expert advice, research, technical cooperation and operational assistance to States, intergovernmental and non-governmental organizations and other stakeholders, in order to build national capacities and facilitate international, regional and bilateral cooperation on migration matters.*¹⁰

This statute is inline with the IOM’s position which focuses on the day to day assistance including health care, educational needs, shelter, and also migration assistance in handling Vietnamese refugees.

There are several fundamental functions in differentiating the role of IOM and UNHCR in handling the case of Vietnamese refugees in Indonesia. The first difference is could be seen from the mandates got by both of organizations. Based on UNHCR Statute of its Office and subsequent General Assembly resolutions, UNHCR ‘s mandates given by General Assembly of United Nations including the protection of all people outside their nations who is in fear, persecution, conflict,

¹⁰ IOM international Mission accessed on 22th Dec 2016 from : <http://www.iom.int/mission>

mass violence, aggression, or other condition which affected public condition. It made UNHCR is bounded by United Nations General Assembly Meanwhile in doing its job. While based on memorandum of understanding between IOM and UNHCR, IOM gets the mandates to insure the process of migration and organize the resettlement assistance of refugee was given from its member states. The process included inter alia, pre-screening, counseling, documentation, medical treatment, training, transportation, also reception and integration.

Another difference of IOM and UNHCR could be seen from their budgeting. The IOM is heavily dependent on project-based funding. While the organization has over the course of the past 20 years experienced a continuous growth in terms of both member states and budget, the percentage of its budget that is funded through member states' regular contributions is decreasing as the organization's overall budget is growing (IOM, 2000, 2011). **While UNHCR's funding comes from the budgeting of United Nations, member states and also including intergovernmental institutions.**¹¹ *UN operations are funded by assessed contributions. However, the budgets cannot be compared with the increasing of needs had by the refugees.* New arrivals of Vietnamese "boat people" increased every time since UNHCR could not find third countries easily

¹¹ UNHCR donors, accessed on December 22nd 2016 from : <http://www.unhcr.org/donors.html>

which made UNHCR had to use all of resources to fund the refugees need.¹² In October 1989, the Executive Committee took the decision only to “note” the budget of \$414.4 million for the general programs of UNHCR in 1990. Furthermore, obligations for the first six months of 1990 were not allowed to exceed \$190 million, including the absorption of 50 per cent of any obligations carried over from 1989. The maximum level of this carry-over was set at \$40 million.

The Committee also decided that the level of obligations for the second half of 1990 would need to be authorized at the Extraordinary Session of the Executive Committee to be held in late May/early June 1990. These measures, although necessary in view of the prevailing financial circumstances at the time, did not allow the Office in 1990 to provide the level of assistance that it otherwise would have, especially if the severe reductions made in the 1989 program had been taken into account. The limitations already faced during 1989 in the operations carried out by UNHCR thus continued, to a great extent, into 1990.¹³

This limitation of UNHCR budgeting made UNHCR restricted in certain act because bounded by United Nations General Assembly before taking care of

¹² UNHCR – Report of the United Nations High Commissioner for Refugees 1990, accessed on December 22nd 2016 from : <http://www.unhcr.org/excom/unhcrannual/3ae68c2f0/report-united-nations-high-commissioner-refugees-1990.html>

¹³ UNHCR – Report of the United Nations High Commissioner for Refugees 1991, accessed on December 22nd 2016 from : UNHCR <http://www.unhcr.org/excom/unhcrannual/3ae68c9d0/report-united-nations-high-commissioner-refugees-1991.html>

certain issue including the case of Vietnamese refugees in Indonesia. The IOM position as the second actors in handling this refugee also relieve UNHCR problems include funding, and operational actions.

Furthermore, when UNHCR was established, UNHCR was considered as a weak and nonoperational agency with a limited mandate. Executive services were not included in the functions of UNHCR and also the capacity to conduct operational activities was not had by the office (Elie, 2010). This statement supported by paragraph 8 of the statute (Holborn, 1975) :

“UNHCR should achieve it aims by enlisting others to carry out the actual operations.”

It means, UNHCR is not the only actor in solving this problem. Cooperation in handling this problem conducted not only with states but also with the other institutions, INGO or NGO. In contrast, IOM is considered as an operational organization that provides executive services to the refugees in a host country that also could help UNCHR in handling refugees.

Substantially, the most different thing of UNHCR and IOM could be seen from their respective functions. UNHCR is fully has a right to determine the status of person as Refugees through Refugee Status Determination (RSD). This legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under

international, regional or national law. States have the primary responsibility for determining the status of asylum-seekers, but UNHCR may do so where states are unable or unwilling.¹⁴ In recent years, due to changes in volumes and patterns of forced displacement, the refugee agency has been required to conduct RSD in more countries than before and for a greater number of people. While IOM does not have right to do so, IOM more focus in helping and assist local government to develop and implement policy, law, and the migration administrative mechanism. This mission was held by technical support, workshop to the local government and also providing assistance to immigrants.

Technically, in handling Vietnamese refugees, UNHCR more focus on the search for resettlement countries that look for the third countries as permanent place for the refugee. Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent resettlement .this program take a long time process, which make UNHCR could not concern in the refugee assistance, this condition also worsened by the small number of States take part in UNHCR's resettlement program. This long time process creates other assignment for UNHCR which is the increasing of basic needs had by refugees in the camp. In this context, IOM is the organization that could help UNHCR in providing day to day assistance like providing foods,

¹⁴ UNHCR-Refugee status determination accessed on 22th December 2016 from : <http://www.unhcr.org/refugee-status-determination.html>

health services and others. Thus, the limited capacity of UNHCR could be complemented by the help of IOM.