THE ORIGIN AND EVOLUTION OF INTERNATIONAL REFUGEE LAW

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1. INTRODUCTION

Historically, the right of people to move across the boundaries of their body politic or political entity is regarded as one of the most ancient exercises of human freedom. The legal delimitation of the length and breadth of this freedom remained largely beyond the control of those moved or displaced and contingent upon the national interest of the refuge. Pursuant to this right to cross-border freedom of movement, when a person is forced to flee his/her state of origin or nationality as a victim of circumstances caused by certain extraneous factors and seeks sanctuary in a foreign country, he/she is considered as an involuntary migrant or asylum-seeker who does not currently receive the legal protection of any state. Such a person has always been in a vulnerable position warranting support and protection. Customary international law that prevailed prior to the First World War afforded protection to individual only by the state to which they belong as national. It imposed no obligation on states to protect the nationals of other states, even when in the territory of the former. Their protection was at the mercy of the foreign state of refuge, which could expel them at will and any time. Individuals fleeing their own state to escape intolerable or life-threatening circumstances ‘found themselves totally bereft of protection at international law’.1

The forcible cross-border movement of people took a dramatic turn at the aftermath of the First World War. Their marginalised and inhumane plight came to the forefront of the post-war international community, which underscored the urgency of devising a protection regime specifically to face the prevailing refugee crisis. This was the beginning of the subsequent evolution of international refugee law as a means of institutionalising societal concern for the well-being and protection of refugees.

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The purpose was to safeguarding the otherwise powerless vulnerable individuals, who should be entitled to adequate protection beyond the whims of their state of refuge. This quest for international legal protection notwithstanding and regardless of their state of refuge, refugees over the history has always been confronting insurmountable practical and extra-legal barriers in receiving the intended protection. This gulf between theory and practice is attributable partly to the out-dated notion of refugee retained in the regime and partly due to the failure of states to live up to their commitments and legal obligations toward refugees. As a result, the intended protection capability of the regime remains underutilised and subservient to political expediencies.

This chapter traces the genesis and evolution of international refugee law since its institutionalisation at the end of the First and Second World Wars through to its current paradigm till to date. It highlights and comments upon the driving-force, legislative imperatives, and politics of cooperation behind various phases of development. Its evolution and application since inception has consistently been dominated by national interests of states and their politico-economic expediencies. Consequently, refugees have always been facing unwelcoming, if not hostile, environment everywhere and inordinate difficulties accessing protection by virtue of law. As it stands now, international refugee law is grossly inadequate to deal with the complexities and diversities of modern refugees problems and cover wide-ranging refugee-producing circumstances, which underscores the need for further evolution.

2. GENESIS AND EVOLUTION IN THE INTER-WAR PERIOD

Refugees only began to receive some measure of protection at international law when millions of people became stateless because of the devastation of war and the disintegration of multi-ethnic empires. As these displaced people scattered throughout Europe in search of homes, European states were confronted with the emergence of large refugee populations that threatened regional security and stretched their scarce resources to the limit.² Therefore the focus of the international legal protection regime for refugee, from its very inception, was Euro-centric. Predominantly European states designed international legal standards