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LAW vision

Refugees and the legal principle of non-refoulement (Rejection)

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N the context of refugee situation, the concept of non-refoulement is very important because no refugee or asylum seeker should be driven back from the country of refuge or asylum to any country where he/she is likely to face persecution or personal danger to life or security or torture. The word "nonrefoulement" is derived from a French word "refouler" which means to drive back

Non-refoulement is to be distinguished from expul-

sion or deportation or forced removal. The expulsion or

deportation occurs when a foreigner is found to be guilty

of doing something against the interests of the state or

has been a criminal fugitive from another country escap-

ing justice. Non-refoulement is applicable to refugees or

The idea that a State ought not to return refugees to

other States in certain circumstances is of recent origin.

Common in the past were formal agreements between

States for the reciprocal surrender of traitors or dissi-

dents. Only in the mid-nineteenth century, the principle

of non-extradition of political offenders began. At that

time the principle non-refoulement emerged because of

popular support for those persons who fled their country

after the First World War (1914-18). The period was

remarkable for the very large number of refugees,

whether they fled Russia after the revolution, Spain,

The principle of non-refoulement has gained ground

Emergence of the Principle of

Non- Refoulement (No Return)

of origin from despotic governments.

Conventions & Agreements

Under a 1928 Arrangements, States had adopted a recommendation that " measures for expelling foreigners or taking such other action against them be avoided or suspended in regard to Russian and Armenian refugees in cases where the person concerned is not in a position to enter a neighbouring country in a regular

In the 1933 Convention Relating to the International Status of Refugees, Article 3 states that the contracting

state-parties undertook not to remove resident refugees

from their territory. Only eight States ratified the

vated the European countries to abide by the legal

principle of non-refoulement. It found expression in the

. 1936 Arrangement on the Status of Refugees among

seven European States that "No refugees shall be sent

back across the frontier of the Reich (Nazi Germany)"

The need for protective principle of refoulement for

refugees began to emerge solidly. There have been

many Conventions and Agreement where the principle

Civilian Persons in Article 45 in part provides : "

Protected Persons shall not be transferred to a Power

which is not a party to the Convention.....In no circum-

country where he or she may have reason to fear perse-

cution for his or her political opinions or religious

for refugees. In February 1946, the United Nations

expressly accepted that "refugees or displaced per-

sons" who expressed "valid objections" to returning to

Following the Second World War, a new era began

The 1949 Geneva Convention on the Protection of

nerson he trans

of non-refoulement has been recognised.

The refugees from Nazi Germany in 1934-38 acti-

their country of origin should not be compelled to do so by adopting a resolution in the UN General Assembly (Resolution 8(1) of 12 February 1946).

Finally the 1951 UN Refugee Convention in its Article 33 has incorporated the principle of non-refoulement

"No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontier of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.

However, paragraph 2 of Article 33 provides that the principle of non-refoulement does not apply for refugees on whom there are reasonable grounds for regarding them as a danger to the security of the country or who have been convicted of a serious crime that constitutes a danger to the community of that country.

The 1969 OAU (Organisation of African Unity) Convention Governing the Specific Aspects of Refugees in Article II states : " No person shall be subjected ...to measures such as rejection at the frontier, return or expulsion, which would compel him to return or remain in a territory where his life, physical integrity or liberty would be threatened."

The 1969 American Convention on Human Rights in Article 22 states: "In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political

Article 3 of the 1984 Convention on Torture states that " No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in



The 1966 Asian-Āfrican Legal Consultative Committee (of which Bangladesh is a member) adopted a Declaration, known as the Bangkok Princles, that recognise non-refoulement concept.

The 1967 UN Declaration on Territorial Asylum recommends that States be guided by the principle that no one entitled to seek asylum 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 1984 Cartagena Declaration not only endorsed the concept of non-refoulement but went further in reiterating that the concept of non-refoulement is a corner stone of international protection for refugees, having the status of "jus cogens" (settled principle of international law from which no derogation is permitted).

State-Practice

Over the last fifty or so years, broader and liberal interpretation of non-refoulement principle has developed through State-practice. States have allowed large numbers of refugees not only to cross their territories but also to remain in their countries from Africa. Latin America. Asia and Communist European countries.

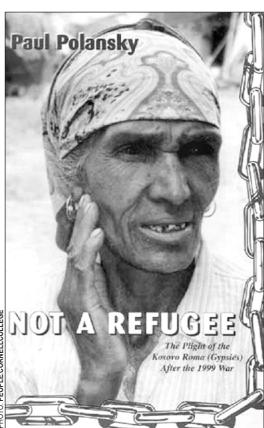
State practice, individually and within international organisation has further elaborated the principle. States have recognised the application of the principle of nonrefoulement when refugees appear at their frontiers. For example Bangladesh received thousands of refugees from Myanmar in 1978 and 1991. It seems safe to say that currently the principle encompasses both nonreturn or non-rejection of refugees.

Conclusion

The principle of non-refoulement in respect of refugees or asylum seekers constitutes a bed rock in promotion and protection of human rights. The principle is applicable to every one who has a well-founded fear of persecution or whether there are substantial grounds for believing that the person would be in danger of personal

Protection of human rights is no more a matter of domestic concern but has become international concern. No responsible state should depart from the recognised principle of non-refoulement. The core meaning of non-refoulement is that no state is required to reject refugees or asylum seekers to a country where the person would be in danger of his/her life unless the presence of that person poses security to the state

The author is former Bangladesh Ambassador to the UN, Geneva.



RIGHTS column

Fighting for respect

It was a quiet, muggy day in Agargaon BNP slum in the capital when police began demolishing the slum in an attempt to evict poor slum dwellers. Like her local guardian Phul Banu and other neighbours, teenage garment worker Monira (not real name) decided to flee.

The 16-year-old girl, who hails from Fatehpur village of Chandina



upazila, Comilla, raced from her slum house to the street, where she thought she would be safe. But she later realised, when she could not find her companion Phul Banu, that she was all alone with no place to go.

Monira sufferings only multiplied when a stranger came to her, offering his sympathy. Promising her a safe place, the man took Monira to a tin-shed house at Mirpur Section-1, where he lived alone. But there he appeared in his true form: he attacked her like a beast and raped her the entire night.

Monira fled the next day, abandoning herself to the city streets. From then on, the former garment worker turned into a 'comfort girl'

It was not until she met a worker of Incidin Bangladesh, an organisation rendering counselling service to floating sex workers and vagrant women that her life began to change.

Under his guidance, Monira enrolled herself in his organisation, where she began to learn a trade. With growing awareness of new possibilities, she grew more and more disgusted with the flesh trade. She finally told the ncidin worker that she wanted to end her shameful way of life.

The Incidin worker contacted officials at Dhaka Ahsania Mission (DAM) a prominent NGO that runs a shelter home at Bhekutia in Jessore for sex workers and women rescued from trafficking. DAM offered Monira a beacon of hope by making her an inmate of the home on May 31, 2003. There she learnt the art of embroidery work along with reading and writing over the

On conclusion of the two-year course, she was granted a new lease of life. She was recently offered a job at a garment factory in Dhaka on May 5 with the help of DAM officials.

Monira says the new opportunity has given her newfound hope. "Since then I have been accepted and honoured by people in society," said Monira. Monira is just one of the 120 women that DAM has rehabilitated from

despair and alienation since 1998. An orphan like Monira, who lost her parents at the age of only nine years, might otherwise have been lost to oblivion had DAM not come to her rescue. At present 22 inmates are taking training at the DAM shelter home.

Even a few years ago, cruelty to women, in the form of rape, acid throwng, trafficking and physical torture, was prevalent in a Third World country like Bangladesh. The rate of violence against women has reduced to a great extent in Bangladesh and women are gradually becoming self-sufficient economically, according to a recently published annual report of the US Senate. It has been possible due to necessary legal reforms undertaken by the government.

Under the framework of law, many organisations, including Bangladesh Jatiya Mohila Ainjibi Samity, a women lawyers organisation, as well as DAM are relentlessly working to recover the self-respect of hundreds of women

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FACT file

Germany or the Ottoman empire.



LAW news The Prosecutor reports to the UN Security

Council on the situation in Darfur

How Many More Must Die?

PUBLIC RALLY Sunday Nov. 7dh Queen's Park (south end) 2pm to 3pm

On Wednesday 29 June 2005 the Chief Prosecutor of the International Criminal Court Luis Moreno-Ocampo addressed the United Nations Security Council on his actions pursuant to Resolution 1593 (2005).

The Security Council in Resolution 1593, adopted on 31 March 2005, decided to refer the situation in Darfur since 1 July to the Prosecutor of the ICC and invited him to address the Council within three months. After a careful preliminary analysis the Prosecutor decided on 1 June 2005 to open

In his statement to the Council, the Prosecutor called for the cooperation of the government of Sudan and all other parties to the conflict. The Prosecutor said that it was a priority for his Office to work with the African

"The referral of the situation in Darfur to the ICC has brought an international, independent and impartial justice component to the collective international and regional efforts to end the violence in Darfur,"

Illegal arms exports fuel killings, mass rape and torture

from the Balkans and eastern Europe are flowing into Africa's conflict-ridden Great Lakes region, despite evidence of their use in gross human rights violations, according to new research of Amnesty Herzegovina, Croatia, Czech Republic, Israel, Russia, Serbia, South Africa, the UK and USA. The study traces the supply of weapons and ammunition to the governments of the Democratic Republic of Congo, Rwanda and Uganda and their subsequent distribution to armed groups and militia in the eastern DRC that have been



The shipments have continued to the Democratic Republic of Congo (DRC) despite a peace process initiated in 2002 and a United Nations arms embargo.

In a detailed study, Amnesty International reveals the role played by arms dealers, brokers and transporters from many countries including Albania, Bosnia and involved in atrocities amounting to war crimes and crimes against humanity.

"Millions have already lost their lives during seven years of conflict in the Democratic Republic of Congo. Armed men are still raping, looting and killing civilians as arms deliveries continue. If the international commu-

nity, the UN and neighbouring states fail to halt this proliferation, the fragile peace process will collapse with disastrous consequences for human rights," said Kolawole Olaniyan, Director of Amnesty International's Africa Program.

The new report, Democratic Republic of Congo: Arming the east, documents evidence that during the entire peace process in the DRC, military aid has been provided from agents close to the Rwanda, Uganda and the DRC governments to armed groups and militia in eastern DRC. The report also provides evidence of the continuing role of Russian arms trafficker Victor Bout and his close associates, using local operators, who have secretly armed all sides in the DRC conflict.

Rwanda

Up to 400 tonnes of mostly surplus Kalashnikov ammunition shipped from Albania and Serbia to Rwanda with the involvement of Israeli, Rwandan, South African and UK companies between the end of 2002 and mid 2003, followed by more flights from eastern Europe in mid-

A further order for 130 tonnes of surplus arms and ammunition from Bosnia approved by the US government in November 2004 against the backdrop of new US military aid agreements for Rwanda; Ongoing military support by Rwanda to armed groups in the DRC, particularly the RCD-Goma, linked to explotation of the country's natural resources.

The existence of arms-for-diamonds agreements involving the DRC government and companies in the Czech Republic, Israel and the Ukraine; Evidence in 2004 of an arms trafficking network linking the DRC and Liberia involving international cargo companies;

The transfer of over 200 tons of arms to a progovernment armed group in north Kivu by a local company using aircraft from a South African firm supplying

UN peacekeepers in 2003.

Treaty to strictly control the transfer of all conventional arms and prevent them being used for grave human

The Ugandan government's failure to report to the UN

imports of weapons and ammunition from Croatia and

and attempts by the Ugandan government to import

repeatedly supplied arms, ammunition and military support to armed opposition groups in the eastern DRC

in 2003 and 2004, especially to groups controlling DRC

channelled by powerful agents close to the governments of the DRC, Rwanda, and Uganda to various

armed groups and militia in eastern DRC who practise

banditry and show little or no respect for human rights,'

said Brian Wood, Amnesty International's research

Nations Security Council to renew and strengthen the

UN embargo on arms exports to the DRC and impose severe restrictions or embargoes on any state found to

be exporting arms to armed groups or militia in the DRC.

The Council must ensure that all airports in the eastern

DRC are monitored by specialised UN inspectors 24

hours a day, and that all aircraft found carrying illegal

The organisation also calls on all states to ensure

Amnesty International is calling on the United

Donations of military vehicles from China in 2002

Evidence that the Ugandan military authorities

"International arms flows into the region have been

Slovakia worth over US\$ 1million in 2002;

more arms from Israel in 2003:

gold mining areas and trade routes.

manager on the arms and security trade

arms cargoes are grounded.

Source: Amnesty International.

that violations of the UN arms embargoes are made a serious criminal offence and to investigate all credible reports of illegal arms transfers. Supplier states named an investigation into the situation in Darfur. in the report should investigate whether any laws have been broken and if their arms export systems are sufficiently strict and consistent with international law.

Amnesty International is calling for an Arms Trade Union, states and civil society in the region:

Source: International Criminal Court -- official site