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CONCEPT OF REFUGEE LAW AND ORIGIN OF ITS DEVELOPMENT:

AUTHORED BY - DOLKAR LHAMO

1.1. Introduction.....

1.2. History of refugee law in international standard.....

1.2.1. League of Nations Codifications of Refugee Rights

1.2.2. Determination of refugee status and its definition

1.3. Establishment of Refugee organization.....

1.3.1. International Refugee Organization (IRO)

1.3.2. UNCHR contribution for development of refugee law

1.4. Conclusion.....

Introduction:

In this chapter mainly deals with the evolution of the Refugee and how it became major important in area of human rights protection. The Refugee Convention itself, as well as fundamental principles of international human rights law, are today's two main sources for the universal rights of refugees. Refugee is consider as person who involuntarily fleeing from his own country due to religious, cultural and other circumstance which force them to seek sanctuary from foreign country¹. After the First World War, this freedom of international mobility granted to people who are generically described as refugees abruptly came to an end. Massive populations of refugees who had been uprooted by the war existed at the same time as political and economic nationalism began to spread throughout the Western world.² For a more than centuries prior than 1920, there was a discussion about delimit the scope and definition of refugee status because of group of refugees tended to be relatively small.³

During the period between 1920 till 1935, generally, only those persons were treated as refugees who because of their membership in a group of persons were effectively deprived of the formal protection of their country of origin⁴. So, the definition of a refugee was expanded to encompass people who had their nationality forcibly revoked, those who had been subject to denaturalization in their country of origin, and those who were unable to get legitimate passports in order to seek out international protection. This chapter aims to provide an overview of the processes involved in international refugee protection in both domestic and international settings. It also looks at the mechanisms used by the UN High Commissioner for Refugees to identify and protect refugees (UNHCR).⁵ The goal of the current study is to conceptualize how decisions about claims of refugee status were made by

¹ The Oxford Dictionary English Dictionary, 3rd ed, 1977

² Louise W. Holborn, The Legal Status of Political Refugees, 1920-1938. The American Journal of International law Vol. 32, No. 4 (Oct. 1938). Pp. 680-704.

³ *Idem* and Shimada, "The Concept of the Political Refugee in International Law" (1975)

⁴ Kirandeep Kaur, National Law School of India University, Bengaluru, India

Origin and Development of International Refugee Law – A Retrospection, 2018 IJCRT /Volume 6, Issue 2 April 2018 / ISSN: 2320-2882

⁵ James C. Hathaway, The Evolution of Refugee Status in International Law: 1920-1950, University of Michigan Law School, Pp. 357-358

extrapolating from the international definitions published between 1920 and 1950. Recognizing the necessity for a longer-lasting framework to safeguard refugees, the League of Nations' Twelfth Assembly decided to push for the passage of a convention on refugees. During the 1933 Intergovernmental Conference which drafted the refugee convention.⁶

1.2. History of Refugee law in International Standard:

The history of refugee law in international standards can be traced back to the aftermath of World War I, when millions of people were displaced and forced to flee their homes due to the war. The League of Nations, the predecessor to the United Nations, established the High Commission for Refugees to provide assistance to refugees and stateless persons and to develop an international legal framework to protect their rights.⁷ After the First World War, this freedom of international mobility granted to people who are generically described as refugees abruptly came to an end. Massive populations of refugees who had been uprooted by the war existed at the same time that political and economic nationalism began to spread throughout the Western world.⁸ About 1.5 million Russians were uprooted as a result of the 1917 Bolshevik revolution, the civil war, and the 1921 Russian famine. As a result, the League of Nations established the High Commissioner for Russian Refugees office in 1921,⁹

The Commission's work led to the adoption of a number of international agreements on refugee protection, including the 1922 Convention Relating to the Treatment of Refugees, which established a definition of a refugee and set out the obligations of states to provide them with basic protections and assistance. In the years that followed, the international community continued to develop and refine the legal framework for refugee protection. The 1933 Convention Relating to the International Status of Refugees and the 1938 Convention on Asylum provided further guidance on the rights and

⁶ League of Nations Doc. 1934 (1933).

⁷ Louise W. Holborn, *The Legal Status of Political Refugees, 1920-1938*. *The American Journal of International*

⁸ Weis, Paul. "The Development of Refugee Law the Development of Refugee Law." *Michigan Journal of*

International Law Michigan Journal of International Law, vol. 3, 1982,

⁹ Tommie Sjoberg, *The Power and the Persecuted: the Refugees problem and the intergovernmental committee on refugees* (IGCR), 1938-1947, 24-5 (1991)

protections that should be afforded to refugees, and laid the groundwork for the development of the 1951 Convention Relating to the Status of Refugees. The 1951 Convention, which remains the cornerstone of international refugee law, established a universal definition of a refugee and set out the rights and protections that should be afforded to them.¹⁰ It also established the principle of non-refoulement, which prohibits states from returning refugees to a country where they would face persecution or other serious harm.

Over the years, the international community has continued to develop and refine the legal framework for refugee protection. This has included the adoption of regional agreements on refugee protection, such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees in Latin America.¹¹ The United Nations has also established specialized agencies, such as the Office of the United Nations High Commissioner for Refugees, to provide protection and assistance to refugees and to promote the development of international refugee law.¹²

The first international agreement pertaining to refugees was adopted after World War I. Only Russian migrants were covered by this document.¹³

1.3.1. League of Nation Codification of Refugee Rights:

The League established organisations to aid refugees in response to the sizable number of refugees affected by Europe's unstable and war-torn environment, as well as to set the parameters for Europe's

¹⁰ Fragomen, Austin. "The Refugee: A Problem of Definition, 3 Case W. Res." *Case Western Reserve Journal of International Law*, vol. 3, 1970, core.ac.uk/download/pdf/214081778.pdf.

¹¹ Ibid

¹² Tommie Sjoberg, *The Power and the Persecuted: the Refugees problem and the intergovernmental committee on refugees* (IGCR), 1938-1947, 24-5 (1991)

¹³ Fragomen, Austin. "The Refugee: A Problem of Definition, 3 Case W. Res." *Case Western Reserve Journal of International Law*, vol. 3, 1970, core.ac.uk/download/pdf/214081778.pdf.

post-war order. One of the organisations the League created was known as the Nansen International Office for Refugees.¹⁴

The League of Nations, the predecessor to the United Nations, played a key role in the early codification of refugee rights in the aftermath of World War I. At that time, millions of people were displaced and forced to flee their homes due to the war, and there was a pressing need for a legal framework to protect and assist them.

In 1921, the League of Nations established the High Commission for Refugees (later renamed the Office of the High Commissioner for Refugees) to provide assistance to refugees and stateless persons. The Commission was charged with developing an international legal framework to protect the rights of refugees and to ensure their well-being.¹⁵ The Commission's work led to the adoption of a number of international agreements on refugee protection. One of the key agreements was the 1922 Convention Relating to the Treatment of Refugees,¹⁶ which established a definition of a refugee and set out the obligations of states to provide them with basic protections and assistance.

The 1922 Convention was later supplemented by a series of other international agreements, including the 1933 Convention Relating to the International Status of Refugees and the 1938 Convention on

¹⁴ Jaeger, Gilbert. "On the History of the International Protection of Refugees." *Revue Internationale de La Croix-Rouge/International Review of the Red Cross*, vol. 83, no. 843, Sept. 2001, pp. 727–738, <https://doi.org/10.1017/s1560775500119285>.

¹⁵ "League of Nations. High Commissioner of the League of Nations for Refugees. International Labour Organisation. Nansen Office. Armenian Orphanage in Aleppo. High Commissioner for German Refugees. High Commissioner for Refugees in London. - UN Archives Geneva." *Archives.ungeneva.org*, archives.ungeneva.org/league-of-nations-high-commissioner-of-the-league-of-nations-for-refugees-international-labour-organisation-nansen-office-armenian-orphanage-in-aleppo-high-commissioner-for-german-refugees-high-commissioner-for-refugees-in-london. Accessed 23 Apr. 2023.

¹⁶ Fischel De Andrade, José. *On the Development of the Concept of "Persecution" in International Refugee Law*. 8 Dec. 1996.

Asylum. These agreements provided further guidance on the rights and protections that should be afforded to refugees, and laid the groundwork for the development of the 1951 Convention Relating to the Status of Refugees.¹⁷

Although the League of Nations was dissolved in 1946, its work on refugee protection provided an important foundation for the development of international refugee law under the United Nations. The principles and values that underpinned the League's work on refugee rights continue to shape the international community's response to refugee crises around the world.

This institution would provide relief to a number of refugee groups that appealed for minority protection or wanted to escape domestic disputes over sovereign rights. League of nations initial duties with regard to the Russian refugees included determining their legal status, planning their return or allocation to different nations that might be able to accept them, assisting them in finding employment, and, with the help of aid organisations, providing relief to them.¹⁸

His authority was expanded in 1924 to include Turkish refugees as well as Armenians who had fled to Armenia, and again in 1928 to include Assyrian, Assyro-Chaldean, and Turkish refugees. The prefix "Russian" was then removed from his title, and he performed the identical duties for these two groups. In 1933, the League of Nations established a separate institution, the Office of the High Commissioner for Refugees arriving from Germany, in response to the emigration of people from Germany.¹⁹

The adoption of the first international instrument to provide some level of protection to refugees was the response of the international community to the Russian emigration issue.

¹⁷ Aslam, Mohd Aqib . "International Law: Evolution and Its Sources." *Legalserviceindia.com*,
www.legalserviceindia.com/legal/article-4293-international-law-evolution-and-its-sources.html.

¹⁸ Secretary-General to the Council of the League. See Memorandum by the Secretary-General of 16 March 1921, 20 J.L.N. 225-6 (1921).

¹⁹ Jaeger, Gilbert. "On the History of the International Protection of Refugees." *Revue Internationale de La Croix-Rouge/International Review of the Red Cross*, vol. 83, no. 843, Sept. 2001, pp. 727–738,

<https://doi.org/10.1017/s1560775500119285>.

In February 1921, the *International Red Cross Committee* urged the League of Nations Council to act in favour of the "Russian refugees dispersed throughout Europe without legal protection or representation."²⁰ The Council responded favourably to the Red Cross decision to address the refugee crisis in legal terms rather than purely humanitarian ones and, after seeking the opinions of member governments, established the office of the High Commissioner for Refugees to deal with issues of legal status, repatriation, and the coordination of externally funded relief operations.²¹ The League of Nations Council was asked to extend the identity certificate programme to include Armenian refugee families in September 1923.²² These people had been routinely persecuted and murdered by the Turkish government since the late nineteenth century as a result of their distinctive religion and culture. Turkey started a string of mass deportations and indiscriminate executions of Armenians in February 1915.

During the League of Nations period (1921-1946) several institutions were created to perform some or all of the tasks of the High Commissioner for Refugees:

The Nansen International Office for Refugees (1931-1938), The Office of the High Commissioner for Refugees coming from Germany (1933-1938), The Office of the High Commissioner of the League of Nations for Refugees (1939-1946) and the Intergovernmental Committee on Refugees (1938-1947).²³

²⁰"The Development of Refugee Law the Development of Refugee Law." *Michigan Journal of International Law Michigan Journal of International Law*, vol. 3, 1982,

repository.law.umich.edu/cgi/viewcontent.cgi?article=1860&context=mjil. Accessed 28 Nov. 2022.

²¹ League of Nation (1921), 53-54

²² Ibid

²³ Jaeger, Gilbert. "On the History of the International Protection of Refugees." *Revue Internationale de La Croix Rouge/International Review of the Red Cross*, vol. 83, no. 843, Sept. 2001, pp. 727–738,

<https://doi.org/10.1017/s1560775500119285>.

1.3.2. Determination of refugee status and its definition:

The status of refugee unfolded since from the freedom of international movement accorded to persons broadly defined as refugees came to an abrupt halt after the First World War. The existence of massive groups of refugees who had been dislocated during the war coincided with the rise of political and economic nationalism throughout the Western world.²⁴ A refugee status determination (RSD) procedure is often used to evaluate if a person fits this description and is so qualified for refugee status.²⁵ This procedure entails evaluating the person's application for refugee protection, as well as the justifications for the request for protection and the supporting documentation. Depending on the jurisdiction and the conditions, the state or UNHCR normally carry out the RSD process. It could entail speaking with the person in question, going over paperwork and other supporting materials, and evaluating the circumstances in the country that caused the person to flee.

A person who has fled, in whatever way, to the borders of countries where their lives or freedom are in danger due to their ethnicity, religion, nationality, participation in a certain social group, or political beliefs (the principle of non-refoulement).²⁶

The UNHCR Statute recognizes as a refugee:

“ any person who has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;”
and

“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

²⁴ Louise W. Holborn, The Legal Status of Political Refugees, 1920-1938. The American Journal of International Law Vol. 32, No. 4 (Oct. 1938). Pp. 680-704.

²⁵ Duma Mvula, Levi. *Refugee Status Determination and Rights in Malawi a Paper Presented at the Refugee Studies Centre Workshop Discussion on RSD and Rights in Southern and East Africa*. 2. 26 Mar. 2012.

²⁶ *REFUGEE PROTECTION: A Guide to International Refugee Law*. (Universal Declaration of Human Rights,

Article 14(1), (10 dec, 1948)

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,

The determination of the refugee status is necessary for a refugee to avail himself of the right and protection granted to refugees. Interpreting the 1951 Convention Relating to the Status of Refugee: Definition of the term “refugee” under this convention is *any person who as result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality and is unable or, owing to such fear, 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*²⁷ The IRO was soon replaced by the new office of the United Nations High Commissioner for Refugees (UNHCR), which was established by the General Assembly on 14 December 1950 to provide 'international protection' and to seek 'permanent solutions for the problem of refugees.'²⁸

1.1. Establishment of Refugee Organization:

Refugees have existed as long as history, it wasn't until the League of Nations and the appointment of Dr. Fridtjof Nansen as the first High Commissioner for Russian refugees in 1921 that the international community became aware of its obligation to protect and assist refugees.²⁹ Since refugees frequently confront difficult circumstances and need special support and assistance to guarantee their rights are upheld and their basic needs are satisfied, the development of a refugee organization is essential. Refugees are often vulnerable and at risk of having their rights violated,

²⁷ “Origin and Development of International Refugee Law -A Retrospection.” *International Journal of*

Creative Research Thoughts, vol. 6, no. 2, 2018, pp. 2320–2882, ijcrt.org/papers/IJCRT1892870.pdf. Accessed 8 Apr. 2023.

²⁸ Hathaway, James C. “The Evolution of Refugee Status in International Law: 1920—1950.” *International and Comparative Law Quarterly*, vol. 33, no. 2, Apr. 1984, pp. 348–380, <https://doi.org/10.1093/iclqaj/33.2.348>.

²⁹ Feller, Erika. *The Evolution of the International Refugee Protection Regime the Evolution of the International Refugee Protection Regime the Evolution of the International Refugee Protection Regime*. 2001.

including the right to life, liberty, and security of person. A refugee organization can play a critical role in ensuring that the rights of refugees are protected and respected. And also can engage in advocacy efforts to raise awareness about the challenges facing refugees and to promote policies and practices that protect their rights and meet their needs. Establishment of refugee organization plays key roles for promoting and ensuring the rights of refugee are protected.

1.3.1. International Refugee Organization (IRO):

The International Refugee Organization (IRO) was established in 1946, following the end of World War II, to address the massive displacement of people caused by the war. The organization was initially created as a temporary entity under the auspices of the United Nations to provide assistance and protection to refugees and displaced persons.³⁰

The IRO's mandate was to provide direct assistance to refugees, including food, shelter, medical care, and other forms of relief. It also worked to resettle refugees in new countries and to facilitate their integration into new societies.³¹ The IRO was the first international agency to focus solely on the needs of refugees, and it was instrumental in providing support to millions of people who had been forced to flee their homes. The development of the IRO and the subsequent establishment of the UNHCR marked an important milestone in the international community's efforts to address the needs of refugees and displaced persons. These organizations have played a critical role in providing support to some of the world's most vulnerable populations and have helped to ensure that the rights of refugees are protected and respected. Recognizing the immediate urgency of the global refugee and displaced person situation, the United Nations General Assembly suggested on February 12, 1946, that the Economic and Social Council form a special committee to look into this issue.³² The

³⁰ “International Refugee Organization.” *International Organization*, vol. 6, no. 3, Aug. 1952, pp. 447–448,

<https://doi.org/10.1017/s002081830001691x>. Accessed 29 Dec. 2020.

³¹ Ibid

³² “International Refugee Organization.” *International Organization*, vol. 3, no. 4, Nov. 1949, pp. 717–718,

<https://doi.org/10.1017/s0020818300015046>. Accessed 21 Jan. 2021.

International Refugee Organization (IRO) was created in 1946 with the purpose of resolving the Second World War's aftermath of the displacement of millions of people.³³

A "refugee" was described in the IRO's statute as follows:

The term "refugee" refers to a person who has fled their country of origin or previous place of residence and falls into one of the following categories, whether or not they have kept their nationality:³⁴

- a) People who were victims of fascist or Nazi regimes, or of regimes that fought alongside them in World War II.
- b) Spanish Republicans as well as other casualties of Spain's Falangist government.
- c) People who were regarded as refugees due to their ethnicity, religion, nationality, or political views prior to the start of the Second World War.

In accordance with its Constitution, the IRO's responsibilities include repatriation, identification, registration, and classification of refugees and internally displaced persons; care and assistance; legal and political protection; transportation; and resettlement and re-establishment of refugees and internally displaced persons in nations that are able and willing to accept them. These duties are to be carried out with a view to:

- 1) promoting and facilitating the repatriation of individuals who are the Organization's concern while keeping in mind the rule that no one shall be forced to return home.
- 2) encouraging repatriation in all feasible ways, particularly by giving returned citizens enough food for three months if they are going back to a nation that is suffering from enemy occupation during the war and if the food is being supplied under the IRO's auspices.³⁵

³³ "International Refugee Organization." *International Organization*, vol. 3, no. 4, Nov. 1949, pp. 717–718,

<https://doi.org/10.1017/s0020818300015046>. Accessed 21 Jan. 2021.

³⁴ United Nations. "Definitions." *Refugees and Migrants*, 22 July 2016, refugeesmigrants.un.org/definitions.

³⁵ "Refugee." *Encyclopædia Britannica*, 2019, www.britannica.com/topic/refugee.

1.3.2. UNHCR'S contribution for the development of refugee law:

The United Nations High Commissioner for Refugees (UNHCR) has played a significant role in the development of international refugee law. The UNHCR was instrumental in the drafting of the 1951 Convention relating to the Status of Refugees, which is the key legal instrument defining who is a refugee, their rights and the legal obligations of states to protect them. The UNHCR played a leading role in advocating for the adoption of this Convention, and it continues to monitor its implementation around the world.³⁶ The UNHCR played a key role in the development of the Global Compact on Refugees, which was adopted by the United Nations General Assembly in 2018.³⁷ The Compact is a comprehensive framework for addressing the needs of refugees, and it sets out a range of commitments and actions to be taken by states and other stakeholders. The UNHCR also contributed to the development of the Global Compact for Safe, Orderly and Regular Migration, which was adopted in 2018. However, because of the political upheavals occurring, the IRO was unable to organise the return or settlement of all the refugees and displaced persons from the Second World War. Refugees from the former Soviet Union and several Eastern European nations were less likely to return due to the growing restrictions on people's rights in those nations.³⁸ As a result a new international institution with a statutory mandate to deal with both old and new migrants was therefore clearly needed. The UN Economic and Social Council passed a resolution in 1949 asking the Secretary-General of the organisation to draught a plan and suggest "the nature and scope of the legal functions to be performed, taking into consideration the experience of the League of Co-Nations, the

³⁶ *UNHCR and INTERNATIONAL REFUGEE LAW: FROM TREATIES to INNOVATION*. June 2010.

³⁷ Hub, IISD's SDG Knowledge. "Event: 73rd Session of the UN General Assembly (UNGA 73) | SDG Knowledge Hub | IISD." *SDG Knowledge Hub*, 18 Sept. 2018, sdg.iisd.org/events/73rd-session-of-the-un-general-assembly/. Accessed 23 Apr. 2023.

³⁸ Refugees, United Nations High Commissioner for. "“Refugee Problems and Their Solutions” - Address of Dr. Gerrit Jan van Heuven Goedhart, United Nations High Commissioner for Refugees, at Oslo on 12 December 1955." *UNHCR*, www.unhcr.org/admin/hcspeeches/3ae68fb918/refugee-problems-solutions-address-dr-gerrit-jan-van-heuven-goedhart-united.html.

Intergovernmental Committee on Refugees, and the IRO.³⁹ The UN Secretary-General, in his 1949 Report, mandates and work of UNHCR's predecessors in formulating UNHCR's proposed responsibilities. The culmination of the discussions was the creation of a subsidiary organ of the United Nations General Assembly, the office of the United Nations High Commissioner for Refugees.⁴⁰ The United Nations High Commissioner for Refugees was created in December 1950 pursuant to the adoption of its Statute by the General Assembly. The organisation began operating in January 1951.⁴¹ Structured as a subsidiary institution of the General Assembly of the United Nations, UNHCR may also have its mandate changed by decisions of the General Assembly in addition to reporting to it. The UNHCR Statute also stipulates that UNHCR may obtain decisions from the General Assembly as advise.⁴² Unlike the IRO, UNHCR is not permitted to give material aid without the General Assembly's consent. Instead, UNHCR's role was to be one of "guidance, supervision, coordination and control",⁶⁶ and it was envisioned that the High Commissioner would enjoy the same authority and prestige as had Dr. Nansen in order to ensure the effective protection of the refugees.⁴³

³⁹ Origin and Development of International Refugee Law -A Retrospection." *International Journal of Creative Research Thoughts*, vol. 6, no. 2, 2018, pp. 2320–2882, ijcrt.org/papers/IJCRT1892870.pdf.

⁴⁰ Lewis, Corinne. *UNHCR and INTERNATIONAL REFUGEE LAW: FROM TREATIES to INNOVATION*. 12 June 2012

⁴¹ Statute of the Office of the United Nations High Commissioner for Refugees, contained in the Annex to UN General Assembly Resolution 428(V) of 14 December 1950. Res. 428(V) (14 Dec. 1950)

⁴² *UNHCR and International Refugee Law: From Treaties to Innovation*. Google Books, Routledge, 25 June 2012, books.google.co.in/books?id=ljgqZEA2RQ8C&pg=PA51. Statute of the Office of the United Nations High Commissioner for Refugees. Accessed 17 Apr. 2023.

⁴³ *United Nations Report of the Committee on the Peaceful Uses of Outer Space General Assembly Official Records Sixty-Second Session Supplement No. 20 (A/62/20)*.

CONCLUSION:

In conclusion, International law on refugee attempts to safeguard the rights and welfare of people who are compelled to escape their homes because of persecution, conflict, or other forms of violence are reflected in the history and development of refugee law. While progress has been made, there is still much work to be done to ensure that the legal framework for refugee protection is robust, effective, and responsive to the needs of those who seek refuge in other countries. The history and development of refugee law in international standards can be traced back to the aftermath of World War II, when millions of people were displaced from their homes and forced to seek refuge in other countries. The United Nations recognized the need to protect these individuals and established the United Nations High Commissioner for Refugees (UNHCR) in 1950, which played a pivotal role in shaping the international legal framework for the protection of refugees. The 1951 Convention relating to the Status of Refugees, which establishes who qualifies as a refugee, their rights, and the responsibility of nations towards them, serves as the cornerstone of refugee law. The Convention has been supplemented by the 1967 Protocol and various regional agreements, such as the 1969 Organization of African Unity Convention and the 1984 Cartagena Declaration. Over the years, the interpretation and implementation of refugee law has evolved, reflecting changing political and social realities. For example, the concept of non-refoulement, which prohibits the return of refugees to a country where they may face persecution or harm, has been expanded to cover not only refugees but also individuals who face serious human rights violations. The challenges facing the international refugee protection regime continue to evolve, particularly in light of the ongoing refugee crisis in various parts of the world. Efforts to strengthen the legal framework for refugee protection, improve the capacity of states to provide effective protection, and promote burden-sharing among states remain ongoing priorities for the international community.