

**“REVAMPING THE INTERNATIONAL REFUGEE LAW IN LIGHT OF
SYRIAN CRISIS & LEGAL REACTIONS IN EUROPEAN UNION”**

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DECLARATION

I declare that the dissertation entitled “**Revamping the International Refugee Law In Light Of Syrian Crisis & Legal Reactions in European Union**” is the outcome of my own work conducted under the supervision of Assistant Professor **Anuradha Nayak**, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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Date : 11th April, 2016

CERTIFICATE

It is certified that the work incorporated in this dissertation, “**Revamping the International Refugee Law In Light Of Syrian Crisis & Legal Reactions in European Union**” was carried out by the research candidate under my guidance and supervision. The material obtained from other sources has been duly acknowledged in the dissertation. It is further certified to the best of my knowledge that it is his original work.

This is to certify that the research work entitled “**Revamping the International Refugee Law In Light Of Syrian Crisis & Legal Reactions in European Union**” is the work done by **Aditya Trehan** under my guidance and supervision for the partial fulfillment of the requirement of **B.A., LL.B. (Hons.)** degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABSTRACT

The Syrian Crisis has been defined as the “Worst humanitarian disaster since end of the cold war”¹. As a result of the civil war which broke out in Syria in the year 2011 as a result of the Arab Spring protests against the president Bashar-al-Assad’s government, millions of people have left Syria in order to protect their life and the lives of their family from the bloodbath which is continuing in Syria. The neighboring nations like Lebanon, Turkey etc. have accommodated thousands of asylum seekers and provide them assistance in every way possible. These host nations have spent billions in order to provide livelihood to the victims of Syrian crisis and provided them with employment opportunities, shelter, food supplies, education for children etc. which has not been easy for them. These host countries seek financial assistance from other countries of the world with the help of United Nations (UN) coming into picture. Several steps have been taken up by these host countries and agencies of UN like United Nations High Commissioner for Refugees (UNHCR) in order to seek aid from other countries, but all the prayers have gone vague as most of the countries in the world are reluctant enough not to provide any type of assistance neither to these host nations nor to the refugees. The European Union (EU) under its ambit has legal frameworks like the EU Directive of 2001, which talks about how asylum and assistance needs to be provided to those in immediate need by the European countries, but still the EU has not lend hand in order to tackle the problem of Syrian refugee crisis.

It can be easily seen that there exists no proper legal framework in respect of the International Refugee Law and the current domestic/ international legal policies are not competent enough to deal with the prevailing problems. The conventions being entered into by states have proved to be a failure as no assistance has been provided to the asylum seekers of any kind. There is a need to update the existing laws and remove the outdated ones so as to provide assistance to all the asylum seekers without any hurdle in its way. The whole concept of humanity depends on how one helps

¹ “UN Calls Syria ‘Worst Humanitarian Disaster’ since Cold War,” Christian Science Monitor, June 20, 2013, <http://www.csmonitor.com/USA/ForeignPolicy/2013/0620/World-Refugee-Day-UN-calls-Syria-worst-humanitariandisaster-since-cold-war>

those in need, and as seen in the current scenario the existence of humanity is fading day by day.

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*“God gives us life to decorate it with knowledge. Life without knowledge is like river
without water.”*

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ABBREVIATIONS

- CAT – United Nations Convention Against Torture
- CEAS – Common European Asylum System
- CJEU – Court of Justice of European Union
- COE – Council of Europe
- EC – European Council
- ECHR – European Convention on Human Rights
- ECJH – European Council on Justice and Home Affairs
- ECRE – European Council on Refugees and Exiles
- EEA – European Economic Area
- EU – European Union
- ERPP – European Regional Protection Programme
- ESC – European Social Charter
- Frontex – European Agency for Management of Operational Cooperation at the External Borders of the Member States of the European Union
- HLWG – High Level Working Group on Asylum and Migration
- IARLJ – International Association of Refugee Law Judges
- ICCPR – International Covenant on Civil and Political Rights
- ICRC – International Committee of the Red Cross
- IDP – Internally Displaced Persons
- IMF – International Monetary Fund
- IFRC – International Federation of Red Cross and Red Crescent Societies
- ILO – International Labor Organization
- IOM – International Organization for Migration
- IPU – Inter Parliamentary Union
- MOU – Memorandum of Understanding
- NGO – Non Governmental Organization

OAU – Organisation of African Unity
OCHA – Organization for the Coordination of Humanitarian Affairs
OHCHR – Office of High Commissioner for Human Rights
OSCE – Organization for Security and Co-operation in Europe
UASC – Unaccompanied and Separated Children
UDHR – Universal Declaration of Human Rights
UN – United Nations
UNCAT – United Nation Convention against Torture and other Cruel, Inhuman or
Degrading Treatment or Punishment
UNDP – United Nation Development Program
UNHCR – United Nations High Commissioner for Refugees
UNICEF – United Nation Children’s Fund
UNRWA – United Nations Relief Works Agency for Palestine Refugees in the Near
East
UK – United Kingdom
US – United States
PEP- Protected Entry Procedure
RPP – Regional Protection Programme
RSD – Refugee Status Determination
SIS – Schengen Information System
SP – Stateless Person
TEU – Treaty on European Union
TFEU – Treaty on the Functioning of European Union
TP – Temporary Protection
WFP – World Food Program
WHO – World Health Organization

STATEMENT OF PROBLEM

Every year we see thousands of people crossing the border in hope a better life and entering the neighboring states like Jordan, Lebanon and Turkey. These states till now have provided them assistance in every field be it with respect to shelter, food, employment opportunities etc. in order to provide a better livelihood to these refugees, but with time this friendly behavior is transforming into a hostile situation where the states are no longer willing to provide assistance to any more refugees as a result of the financial and domestic problems which they have to face. The European Union is reluctant to provide the much needed assistance to the victim of this crisis and the idea of Schengen/Dublin Regulations in regard of the EU Temporary Directive Qualifications of 2001 is more like a paper tiger which not being transformed into a real picture. The example of the current Syrian Crisis is to be taken up in order to understand the problems being faced by the refugees in the process of resettlement and the reason behind these problems, as to why states are unwilling to grant them the Temporary Protection (TP)² which the refugees require and these states had promised. There is a need of revamping the International Refugee legal structure and treasure measures in order to address the issues faced by the refugees.

OBJECTIVES OF STUDY

A completed analysis of the present legal structure in the field of International Refugee System is to be done in order to understand the loopholes which are prevailing and needs to be addressed. It is to be understood as to why the refugees are living in worsened conditions and not being provided with the rights which have been entrusted upon them as a result of numerous conventions being entered into by nations and still these nations are hesitant enough to provide the refugees obligatory legal protection. The case of Syria would be taken into account in order to understand the problems faced by the Syrian refugees in respected of its neighboring states being Jordan, Lebanon & Turkey. The say of members of the European Union also needs to be considered as to how the Syrian Refugee Crisis has had an impact on it, and several legal steps which the European Union has taken up in order to address the

² “Protecting Syrian Refugees : Laws, Policies & Global Responsibility Sharing”, Boston University School of Law, <http://www.bu.edu/law/central/jd/programs/clinics/international-human-rights/>

problems confronted by the refugees, and to what extent are they being complied with. The rules of EU needs to be enhanced, or as I should say that in true sense there is a need of revamping the whole current refugee protection international legal structure in order to provide better world to the asylum seekers.

SCOPE AND SIGNIFICANCE

The scope of this is to get a complete picture as to why such a scenario has emerged in Syria and also why other refugees throughout the world are affected by this Syrian Refugee Crisis. This study extends to analyze the EU policies which focus on addressing the issues of refugees and also several other initiatives taken up by the member states to provide aid and assistance to the refugees. By doing all this we will be able to get a clear understanding as to why such a crisis which could have been tackled at the initial stage to reduce its impact, has taken a degraded turn where not just the Syrian people fleeing their country are effected but all the neighboring states of Syria also which has been severely impacted by such mass influx.

RESEARCH QUESTIONS

It is strongly believed that according to the existing International Refugee legal structure the refugees are to be given the right of asylum in the first safe country they enter, but this is not true in the practical world. No such right has been entrusted upon the refugees as per the United Nations (Geneva) Convention. The only thing which can be seen according to the convention³ is that the states are not to impose any penalty or force the asylum seekers to be removed from their territory if they have entered it. The EU legal framework takes into account the Schengen/ Dublin Rules which in its true sense have made the life of refugees seeking asylum more difficult. The reluctant attitude of various states like Germany & France, needs to be done away with in order to provide legal protection to these refugees.

³ United Nations (Geneva) Convention

HYPOTHESIS

The Civil war which broke out in Syria has had a catastrophic effect on all the countries of the world. Millions of people are leaving Syria and entering into the neighboring states so as to save their families from the bloodbath which is currently taking place in Syria. As a result of this the neighboring states are being filled with Syrian as well as Palestine Refugees, and it is not an easy task for these states to take the responsibilities of these refugees. Members of the European Union are trying hard to provide assistance to the refugees and several initiatives have been taken up in order to address the issue of Temporary Protection, but it is not an easy task and even though there exists the International Refugee Convention or the European Union's Qualification Directive, 2001, still major concerns are raised by the members so as to provide assistance to Syrian refugees and most of the states are reluctant to provide livelihood conditions to the refugees. Based on the several issues being talked about I would live to provide several novel solutions in order to the present International Refugee Law in order to provide assistance to refugees and deal with several issues being raised by the nations.

METHODOLOGY

Research Design: Being the study descriptive in nature, it will go through theoretical data collection, and its socio-legal analysis.

Source of Data: The socio-legal study is mainly based on secondary data and has gathered information from various journals, newspapers, magazines and websites in order to provide a detailed explanation about the Syrian Crisis and its impact on the European Council. As of result of this understanding I will try to address the issues prevailing in the current International Refugee System and the changes which needs to be brought in.

LITERATURE REVIEW

- *Briefing Paper on “Current Challenges for International Refugee Law, With a Focus on EU Policies And EU Co-Operation with the UNHCR”, Directorate General for External Policies of the Union, European Parliament, December 2013*

The paper sets out the challenges which the asylum seekers have to face in the current scenario when it comes to giving them legal protection and recognition. Access to the asylum is one of the major thing which is discussed in this paper so as to give an understanding that even though there exists several regulations like EU Directive of 2001 or the International Refugee Convention, still the refugees are not allowed to take asylum in the first safe country they enter. Towards these refugees there is an obligation on the hosting nations to provide them with assistance in every possible manner which they may require in order to lead a better life.

- ***Protecting Syrian Refugees: Laws, Policies & Global Responsibility Sharing”, Boston University School of Law***

This papers tries to provide an understanding to the present Legal framework at international and domestic level. This being one of the most neglected area of the Syrian Crisis actually tries to explain how the prevailing laws and policies affect the rights and status of the refuges along with that it tries to address the problems faced by the hosting nations be it with respect to employment, financial support etc. and how other nations are trying to pool in resources in order to provide assistance to the refugees in the holding states.

- ***Protection In Europe For Refugees From Syria” by Cynthia Orchard and Andrew Miller, Refugees Studies Centre, September 2014***

This report provides the reaction of EU countries to the Syrian Crisis and how its members have taken up initiatives in order to accommodate and help the victims of the Syrian Crisis. It talks about how the few members of the EU are trying to reduce the pressure from the hosting states and allowing the refuges asylum in the respective territories. It also talks about how few members of the EU are unwilling to provide asylum and assistance to the Syrian refugees, and have forced the already existing ones to leave the country.

- ***The Global Refugee Crisis : A Conspiracy of Neglect, Amnesty International, June 2015***

This report throws a light as to how the Syrian Refugee Crisis has had an impact all over the globe and how the host countries are trying its best to accommodate as many refugees as possible. It is to be noted that these countries are in frantic need of financial assistance but still are not being provided with the same. It is clearly visible that the Syrian refugee crisis is not going to end soon enough and if this is the situation then the hosting countries will not be able to accommodate and help these refugees further if no aid is being provided to them.

- ***Refugee Protection, Migration and Human Rights in Europe, UCL Policy Briefing, May 2014***

The paper tries to identify the role of EU which it needs to play in order to provide assistance to the refugees of the Syrian crisis. It takes into account the Schengen/ Dublin convention which needs to be freed from inadequacies and how the EU Directive of 2001 needs to be brought into picture. Much burden has been focused on the migration aspects of the refugees in regard to the hosting countries and how the countries needs to come in together so as to share the burden of hosting countries.

- ***UNHCR's proposals in light of the EU response to the Refugee Crisis and the EU package, 9th September 2015***

The European Commission has issued several proposals in order to address the current problems of Syrian crisis in Europe. These proposals talk about emergency relocation schemes, registering of refugees, taking steps to prevent activities like smuggling, providing assistance to host countries etc. IT also talks about how the EU needs to work together with the UNHCR in order to tackle the problems of Syrian crisis.

INTRODUCTION

We live in a world where we can see that with the passing of time the rate at which the mankind is advancing in the field of technology and power, at the same rate only the notion of humanity and equality is degrading day by day. Every day we get to hear about horrifying acts of human accordingly which one particular section of people or society as one should say, harms or by its act causes to harm the other section of society be it by any means. This difference of society has been created by us only in order to distribute power between certain kind of people who can and will use it for their own growth regardless of the suffering of others. People in order to become more and more powerful take the path where they end up doing very horrifying things regardless of thinking about others, just in the urge to grow more powerful. The concept of power is very wide and includes almost everything over which one can claim its right or as seen in contextual term its sovereignty.

The Syrian Crisis has been defined as the “*Worst humanitarian disaster since end of the cold war*”⁴.

As a result of the civil war which broke out in Syria in the year 2011 as a result of the Arab Spring protests against the president Bashar-al-Assad’s government, millions of people have left Syria in order to protect themselves from the massacre which is continuing in Syria. These people being out of their own country had nowhere to go and in order to find a source of living fled into their neighboring nations who are to provide aid and assistance to them

According to the several surveys conducted it is believed that more than 3 million Syrians have moved out of Syria due to the continuance state of war and approximately 95% of people to be treated as refugees have fled to Turkey, Iraq, Lebanon, Jordan, and Egypt⁵. The neighboring nations like Lebanon, Turkey and several other nations had no other option rather than to accommodate these asylum seekers as they being out of their country and without nationality as such which they

⁴ “UN Calls Syria ‘Worst Humanitarian Disaster’ since Cold War,” Christian Science Monitor, June 20, 2013, <http://www.csmonitor.com/USA/ForeignPolicy/2013/0620/World-Refugee-Day-UN-calls-Syria-worst-humanitariandisaster-since-cold-war>

⁵ As per the figures and estimates availed from <http://ohrh.law.ox.ac.uk/high-time-for-europe-to-offer-temporary-protection-to-refugees-from-syria/>

willingly/ forcibly had to get away with. Millions of asylum seekers were provided with assistance in every way possible. These host nations have spent billions in order to provide livelihood to the victims of Syrian crisis and provided them with employment opportunities, shelter, food supplies, education for children and other basic amenities which has not been easy for them. There is also a need to provide these victims of war as one should say, protection be it internally amongst themselves from each other and also external protection according to which these refugees who live in constant fear of local people need protection from them as a result of loss which the local people of host countries have been facing be it loss of employment for them, rise in inflation etc. due to the reason of hosting these refugees in their countries.

These host countries seek financial assistance from other countries of the world with the help of *United Nations (UN)* and several other primary institutions being brought into the picture. Several initiatives have been adopted up by these host countries and agencies of UN like *United Nations High Commissioner for Refugees (UNHCR)* in order to seek aid from other countries, but all the prayers have gone vague as most of the countries in the world are reluctant enough not to provide any type of assistance neither to these host nations nor to the refugees. Several countries have refused to provide these refugees with shelter in their territory and can be seen as a clear violation of the treaties being entered into by them and also against their own local laws. One cannot say that there is no help which the other nations are providing but the amount or nature of help which is being provided by them is not up to the level of expectation as per which one should lend its hand regardless of all the set-backs which one may face in order to do so at this point of time.

It was seen that by the end of 2014 the number of people looking for asylum and headed towards Europe ranged more than 150,000 being around 4% of the total population of people who fled Syria and this number was increasing at serious rate⁶. If we look at the bigger picture it is true that the European Union (EU) is a leading contributor of humanitarian assistance and help to the region but the total amount contributed by all of its member is nothing as compared to the amount of assistance

⁶ Ibid

which is required plus the amount put in by all of its 28 members differ from each other widely showing the gap and reluctance of few of its members towards the same problem.

When we talk about the EU being one of the close nation with several policies and legal framework being in place in order to provide temporary protection to asylum seekers at such time as specifically talked about in the *EU Temporary Protection Directive (2001/55/EC)*⁷, which talks about how asylum and assistance needs to be provided to those in immediate need by the European countries, but still the EU has not lend hand in order to tackle the problem of Syrian refugee crisis and the level of support being provided by them is not capable of benefitting these asylum seekers and not as per the level of promises / insurances being put up by the EU in first place, and there is much more which can be done from their side but due to several reasons they are not willing to provide much relief and assistance to the asylum seekers.

One major problem which the asylum seekers face is the use of risky and life threatening boats which are being used by them in order to reach Europe and in the same process several hundred lose their life while trying to do so.

It can be easily seen that there exists no proper legal framework in respect of the International Refugee Law because when looking at the example of Syria we can see how even at time of separate need the nations are reluctant enough not to co-operate with each other in order to provide a quick solution to the Syrian refugee problem and each nation is using this situation to play the blame game so as to shift the burden and liabilities on other nations to prevent themselves from coming into picture and providing a hand of relief for such people who are in desperate need of one.

Though there are several domestic as well as international legal policies which are in place but still are not competent enough to deal with the prevailing problems and needs to be looked into closely so as to avoid and solve such happening in the future. The conventions being entered into by states have proved to be a failure as no assistance has been provided to the asylum seekers of any kind. There is a need to update the existing laws and remove the outdated ones like the Dublin system which

⁷ EU Directive 2001, available at <http://www.refworld.org/docid/3ddcee2e4.html>

as seen in reality is far from addressing such issue so as to provide assistance to all the asylum seekers without any hurdle in its way.

The whole concept of humanity depends on how one helps those in need, and as seen in the current scenario the existence of humanity is fading day by day.

Every nation is trying to tackle the problem from its own perspective regardless of what outcomes it will have on the future as well as the present generations.

The future of Syrian people is in the hands of other nations of the world and it is the time where we all should come in together in order to provide a better future for the Syrian people.

1. SYRIAN REFUGEE CRISIS

The Syrian Civil War is treated to be one of the most horrifying and worst humanitarian disaster which the world has encountered so far. It is a civil war continuing in Syria where both the parties involved in this armed conflict are none other than the people of Syria only and regardless of who will win this war be it the government or the local protestors which no one can be sure of, but one thing which everyone has understood so far is that the result of this civil war will leave catastrophic effects on both the sides along with that will destroy the whole of Syria or as I should say what is left of it.

This civil war started in the year 2011 when people started raising their voice against the self-elected military ruler cum President Bashar al-Assad as seen in March 2011 when the *“Day of Dignity”* was held by the Syrians in Damascus where they demanded the release of political prisoners. The same day, a *“Day of Rage”* rally also took place in the southern city of Darra which transmuted into an armed rebellion where the government order on site shoot order and as a result of the same hundreds of people were dead and this event lead to numerous clashes and events in the upcoming days.

These protestors which were against the military rule of the President were classified as Arab Spring as seen in the Tunisian Revolution of 2010. What started as anti-violent peaceful movements eventually got transformed into armed rebels as a result of which the government order for violent crackdowns and armed responses. By mid-May 2011 it was seen that the President had ordered for full army control over the area and army tanks came to the streets of Homs, Daraa and several regions of Damascus in order to curtail the armed anti-governmental rebellions.

As a result of the same the United States came into picture and tightened sanctions so as to control the situations.

By the end of July 2011 in order to gain more control over the area, the Syrian President took control over Hama by dismissing the governor and sending in thousands of military troops to kill all the people who raised their voice against the same.

President Obama in order to tranquil such situations as seen in Syria called down on the Syrian President to step down and also issued an executive order as per which all the assets of the Syria government subject to the U.S. jurisdiction were to be frozen down. But still the President never took a step back and continued all its horrifying acts and as a result of the same the Arab League suspended the membership of the Syria from it accusing President Assad for it and asked to implement a peace plan in order to again become a part of it.

There was a new army being established by the rebellions known as Free Syrian Army which executed several attacks on military bases around the area of Damascus. Due to constant fear for the life of people in U.S. embassy the U.S. president order for shutting down its embassy in Damascus due to numerous security problems in that area.

In June of 2012 due to brokered cease fire which took place on 11th of April, 2012, the U.N. had no other option rather than to suspend all of its operations and missions in Syria due to high level of violence in the area due to which the U.N. team was not able to complete its assigned tasks. It was also seen that Syrian government in order to avoid intervention of U.S. and other countries shot down a Turkish jet near the border of Syria.

U.N. Human Rights Council presented various reports accusing the President and Syrian military of war crimes as a result of which thousands of people were killed in the areas near Houla and Damascus. A United Nations report released in December, 2012, stated that the conflict had "*become overtly sectarian in nature*" between Alawite dominated government forces, militias and other Shia groups fighting primarily against Sunni-dominated rebel groups, however both opposition and government forces denied that⁸.

By the end of January 2013, the armed conflict had taken a more subdued turn and numerous areas of Damascus were bombed, airports being shut down, women raped and children being given influx weapons.

⁸ "Syria Opposition Contradicts U.N., Says Conflict not Sectarian dated 21 October 2013.

There were several allegations being made by Britain and France that the President Assad had used chemical weapons against the rebel forces and as a result of the same airstrikes were initiated by Israel targeting Lebanese militant base and the ally Hezbollah sending in thousands of troops at President's disposal to control the rebel forces.

On 27th May, 2013, EU decided to lift the arms embargo on the Syrian opposition while other sanctions were still in place.

U.S. president affirmed the allegations put up by Britain and France of Assad using chemical weapons against the rebels which killed thousands of Syrian people and so the President Obama offered to provide support to rebels.

It was reported by the U.N. that around 95,000 people have been killed as a result of this civil war and inspectors were sent in by the U.N. to Damascus suburbs where people were hit with poisonous gas and affirmed that there were chemical weapons which were used.⁹

Meanwhile Russia step in its foot proposing the Syria to give up chemical weapons in order to avoid intervention of U.S and on President Assad not agreeing to co-operate has led to several air-strikes by Russia along with other nations putting in all of their efforts to disentangle this problem of Syrian Civil war.

Meanwhile apart from the political picture of this war, there is one major issue which is to be unraveled and that being the suffering of the Syrian people who live in fear of being killed every day and for those of who somehow in order to go away from all the suffering and pain have escaped their country as one should say, are living in much worsened conditions as they have no place to go to in order to provide their families with food and shelter, and most of the children which are running from one place to another are either with a single parent or both of their parent have been killed as a result of this Syrian Civil war.

These people have no place to go to as most of the countries are not willing to provide them with asylum and for those who are, they are not able all the conditions required in order to meet their daily needs be it food, shelter clothes etc., and so have been asking other nations as well as agencies / institutions like U.N. to lend in their hand of

⁹ Timeline: Unrest in Syria by Anup Kaphle , January 20, 2014, available at: <http://apps.washingtonpost.com/g/page/world/timeline-unrest-in-syria/207>

aid and assistance so as to help these war victims and allowing them to resettle by one mean or the other.

These people have left their homes and nation in order to provide themselves as well as their families with a better future but it is not possible as the number of such asylum seekers have been increasing day by day and the hosting nations are not able to meet their requirements and are themselves under burden.

With more than 6.6 million people leaving their homes¹⁰, around 200,000 people being killed including over 10,000 killing of children¹¹ by the end of 2014 the Syrian Crisis has been defined as the “*Worst humanitarian disaster since the end of the cold war*”¹².

These war victims have been living in death like conditions and have been trying to flee to other places whenever and wherever possible and every month we see more than 70,000 leave the country¹³.

In hope of a new life most of the Syrian people flee to Jordan and Lebanon being the closest to them where there needs are met by the Mercy corps, but still these two nations are not able to provide them all the essential things required by one to live a life dues to its internal problems and not so good economic conditions of the nations.

Many Syrians had fled to Iraq in the year 2013 hoping to leave the sorrow and pain behind but now due to the country’s own insurgent conflict they have been trapped there and it is becoming very difficult for Iraq to provide these Syrian refugees with minimal living conditions as are required by them.

Apart from these nations hundreds of Syrian in order to get to places like Turkey and Greece have attempted to cross the Mediterranean Sea by dangerous means which in turn has led to death of hundreds of people.

¹⁰“ Quick facts: What you need to know about the Syria crisis”, February 6, 2016, available at: <https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>

¹¹ Megan Price, Anita Gohdes, Patrick Ball, “Updated Statistical Analysis of Documentation of Killings in the Syrian Arab Republic,” UN OHCHR, August 2014, available at: <http://www.ohchr.org/documents/countries/sy/hrdagupdatedreportaug2014.pdf>

¹² “UN Calls Syria ‘Worst Humanitarian Disaster’ since Cold War,” Christian Science Monitor, June 20, 2013, <http://www.csmonitor.com/USA/ForeignPolicy/2013/0620/World-Refugee-Day-UN-calls-Syria-worst-humanitariandisaster-since-cold-war>

¹³ “Syria Regional Refugee Response,” available at: <http://data.unhcr.org/syrianrefugees/regional.php>

Crossing roads, deserts and seas is till easy for these people because even though they risk their lives to get to other places it is not easy for them to get reallocated as their neighboring nations are not able to provide or does not want to provide these refugees the essentials required in order for them to get settled and live a suffering and pain free life.

Most of the lucky people are able to get tents in which they can live regardless of the area and conditions surrounding it, Jordan's Za'atari was the first official tent being established to provide means of settlement to newly arrived Syrians and now accommodates more than 80,000 people and is one of the country's largest cities regardless of the living conditions being there, people are happy to have found a place where then can unknowing the fact as till when.

The barren desert where earlier it was difficult to find reptiles is now crowded with thousands of people, shops and small educational and healthcare centers¹⁴.

Neighboring nations face real time problems to insure the refugees of basic living things which include:

- Protection

It's not just in their home country where they needed protection from the government and rebels, but also to the country they've fled to be it legal protection, physical and psychological protection. They need some legal protection to ensure themselves of things in certain conditions as to recognition of one along with that protection from internal conflicts be it with the other refugees or local citizens.

The camps in which these refugees are allocated are not very safe be specially for women and children because most of the people have gone through enormous amount of pain which have transformed them into someone which they would have hated in the past and due to such reasons there exists a need of security to ensure protection for women as well as children, also the places

¹⁴ Quick facts: What you need to know about the Syria crisis, February 6, 2016, available at: <https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>

where these refugees are allocated are not very safe areas and a lot of criminal activities are usually seen in such places.

Other than this one needs to understand that there were certain situations due to which they people had to leave everything and move to unknown places, so what impact must they have had on their life and mind, so it necessary to ensure psychological safety to these people as in the sense/ feeling of being safe now.

There is a major need for registration of these refugees to ensure the above things and also to avoid forced repatriation¹⁵ as well as statelessness. Jordan and Lebanon both not being signatory to the 1951 Refugee Convention¹⁶ makes this process of registration difficult and this is where the UNHCR comes into picture and entering into separate Memorandum of Understanding (MOU) in order to ensure that countries are stuck to the general principal of non-refoulement¹⁷.

In addition to it Jordan also from past has been in bilateral agreements with the Syria which in respect of same allows the Syrians to apply for residency permit in the Lebanon but this is not applicable to those who have crossed or entered Lebanon through unofficial / illegal routes due to which this is not successfully implemented.

Other nations like Jordan allows refugees which have entered Jordan to get themselves registered with the UNHCR and allocate them in the ad hoc camps, but limited to the bailout system which they follow as per which refugees are allowed to settle if being sponsored by a Jordanian¹⁸.

Turkey on the other hand is ratified the 1951 Refugee Convention but only provides the status of refugees to those coming from Europe.

¹⁵ Repatriation is the process of returning a person to their place of origin or citizenship. This includes the process of returning refugees or military personnel to their place of origin following a war.

¹⁶ 1951 Refugee Convention, available at: <http://www.unhcr.org/3b66c2aa10.pdf>

¹⁷ Non-refoulement is a principle of international law which forbids the rendering of a true victim of persecution to his or her persecutor. Generally, the persecutor in mind is a state actor. It is a principle of both the customary and trucional law of nations.

¹⁸ Information obtained from "The Syrian Refugee Crisis: Regional and Human Security Implications" by Benedetta Berti

- Shelter

It is seen that more than 85% of the refugee population have not been allocated in the refugee camps and end up living outside it be it urban as well as rural areas¹⁹. It is not just because of space/ area accommodation reasons but also political factors which comes into picture while addressing the needs of these refugees as seen in Lebanon where all the Syrians are living outside the camps due to several political factors.

Providing these refugees with shelter is not an easy thing as it requires a lot of investments to be made in so as to build camps and proving adequate living conditions which are required for these refugees to live.

It is not an easy thing for the government of these nations to provide so much of funding in order to set up refugee camps along with that due to this the prices of surrounding areas which were earlier barren lands have now increased so as the rental prices. There have been internal revolts amongst the host nations as to why the government is spending so much of their money being that of their country for these refugees which in return has not provided and will not provide anything in return as such.

- Health and Education

Providing legal status and setting up camps is not the only thing which the host nations have to do/ are required to do so in order to reallocate the refugees but provide them with basic health facilities also so as to keep them healthy. It is one major issue as these victims of war are already in a very bad condition and also spreading several diseases and infections which the host nations have to deal with.

Apart from health facilities it is also necessary to ensure that the children who have no idea as to what all is happening should be given opportunity to shape their future and in order to do so there is a need to set up educational centers so as to ensure that the children don't have to compromise on their studies and their future.

¹⁹ UN report of "2014 Syria Regional Response Plan"

- Employment

The government forever cannot help these refugees and provide them with food, clothing and shelter, so it is necessary for them to find jobs as such so as to ensure that they are able to earn an amount in order to maintain themselves and their loved ones.

The government has taken several steps to ensure these people of employment opportunities but it almost impossible to provide thousands of jobs to such people especially without any documentation proof also. There are no such jobs available and those which come up the local people of the host nation get it and there have been internal conflicts where the local citizens have refused to allow these refugees to take up jobs as it is their right and should not be taken away from them.

As a result of so much demand in the employment sector there has been a drop of wages and salaries of more than 50% as reported by the International Rescue Committee, and people are willing to work for almost nothing.

- Children

One of most serious concern of this crisis if the effect it is having and going to have on the health as well as the future of Syrian children as these children are malnourished due to obvious reasons of them being living in horrifying conditions without food and water plus carry along with them several diseases like cold, diarrheal diseases, and several other types of infections.

These children are also forced to work be it by their family members or due to the present conditions in which they live in so as to earn money for themselves as well as their families.

Most of the children have been subjected to several sexual crimes and being abused due to unprotected and overcrowded conditions leaving these children vulnerable to such people.

More than 2 million Syrian children are not attending school and it has been reported by the U.N. children's agency that as a result of this civil war the progress of education for the Syrian children have gone back more than 10 years.

These host nations themselves are not very economically developed which makes it difficult for them to provide so much of assistance to the Syrian refugees.

It is not just because of the ongoing war which has forced Syrians to leave the country but also due to exacerbated living conditions in Syria. The economy is very poor and people have no jobs as a result of which it is next to impossible for any normal person in Syria to live a life and continue a family there.

There are almost no education or healthcare centers present in the country making it very difficult for those in strict need of medical assistance to get some, along with it children are forced to sit at homes and take the resort of arms in order to fight against the government which if not done are beaten to death or taken from their families.

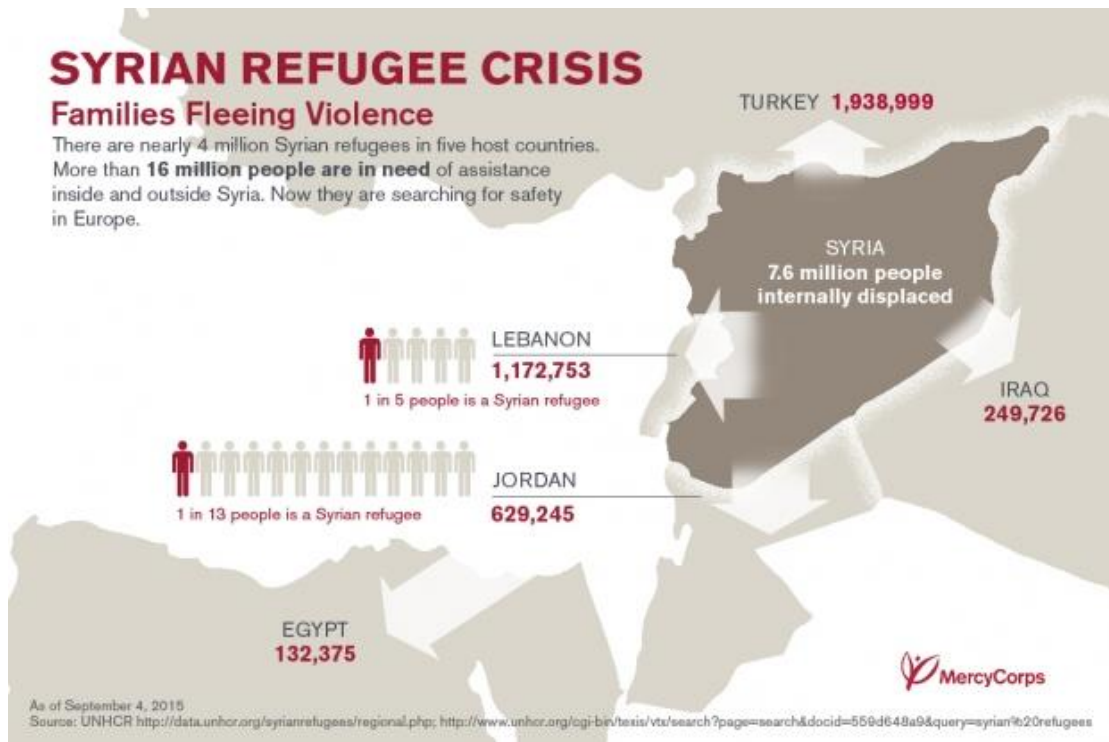
It is not easy for nations like Jordan, Lebanon and Turkey to host so many refugees and to which there is no stop as every month this number keeps on increasing where almost 70,000 Syrians flee every month²⁰. These three nations who are the host to more than 3 million refugees in total have to put in a lot of efforts be in with respect to monetary or physical value.

Providing them with food, shelter and employment opportunities has now become almost next to impossible for these nations due to economic conditions of them and also due to the reason that because of hosting so many refugees there have been internal clashes in these host nations where the local people are not happy with such refugees who are stealing their employment opportunities and also as a result of providing constant supply of food and shelter the inflation index is increasing every year and has to be faced by the local people only.

The graph below shows to what level the refugees are seen in the neighboring host nations as of by the end of year 2015 being²¹:

²⁰ Ibid

²¹ Source Mercy Corps, taken from UNHCR, September 4, 2015



Every year the number of registrations of these year increase but in reality is far from the actual picture where the number of actual refugees are much more than the figures provided by the UNHCR because most of the Syrians do not get themselves registered due to fear of several reasons be it internal or external ones.

With the passing of time the conditions of Syria are getting worsened and no light can be seen in the near future. Several nations in order to provide aid to Syria have come together and have been putting in a lot of donations in order to benefit the war victims, but still it is nothing as compared to the actual need of the people and everyone needs to take a stand in order to help Syria and not make this a issue a political agenda.

Several countries like France, Russia, U.K. and U.S. along with Turkey, Saudi Arabia and other Arab nations have joined hand in order to conduct air strikes to the Islamic State targets which have increased their power and area since 2011 and have expanded to several parts of Syria and led to violence against Christians, Sunnis and Shias.

It seems like all if this is never to stop as no is taking a step backward and trying to crush the other side in order to become dominant regardless of its consequences on the citizens of Syria and the Syria itself, or actually what is left of it.

All the efforts being put in by the U.N. to reach a diplomatic resolution have failed and the Geneva II peace process along with the U.N. conferences have gone vague as no terms have till now been reached or settled by the nations of the world with Syria being President Assad.

The condition of Syrian refugees are nowhere seen to be improving and regardless of knowing what lies after the border the people of Syria are fleeing from their country hoping to find a better place to live and expecting a future. With Russia and other nations initiating air strikes it is not only the government who is being affected but also the Syrian people who are being attacked because the bombs don't ask before exploding whether the person is a rebel or not.

Plus with so much of refugees entering the host nations, the rate of crime in these host nations is also increasing at an immense level and in the year 2015 it was reported that Germany being the favorite nation where most of the asylum applications are made and the one who accommodates the largest amount of refugees every year, had seen an increase in around 25% crime rates and the persons accused and arrested turned out to be refugees only.

So it is difficult for the host nations to adjust these refugees if such being the circumstances and also there refugees have no other option rather than to resort to such means for living a life.

Also half of rebels are children who are given arms and they have no idea of what so is happening and need proper guidance because they are at a stage where it is important for someone to tell them about the right's and the wrong's.

2. INTERNATIONAL REFUGEE LAW

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

-Universal Declaration of Human Rights, Article 14(1)

Since the evolution it has been that always one powerful section of the society dominates the other and when things go wrong they take the resort of armed conflicts, war and several other acts which in turn lead to horrifying acts of humans over other humans, but where still apart from all the violence and pain in world, there are sections of society in the world who always lend their hands in order to help those in need and such has been seen over centuries where one spoils and ten others put in hand to correct the same.

These people being the nations always open their gates to welcome the victims of war/ violence and other people suffering in their area of residency. Many countries have signed in multilateral treaties and MOU with several agencies such as UN to ensure and provide support to those in need being known as refugees. At the start of the 21st century, protecting refugees means maintaining solidarity with the world’s most threatened, while finding answers to the challenges confronting the international system that was created to do just that.²²

It is the responsibility of every nation and the present government to protect its citizens and ensure them the rights being entrusted upon them as a result of the government and other humanitarian rights. If the government fails to do so the citizens of that nation go through serious of events which bring only pain and suffering to tem as seen in the case of Syria. Eventually these citizens are forced to leave their country of origin in order to seek safety and a better future.

In such situation when the government of the nation to which the person belongs or belonged to shows no hand of support then at this particular time the international

²² Ms. Kate Jastram and Ms. Marilyn Achiron, *“Refugee Protection: A Guide to International Refugee Law”*, UNHCR.

players come into picture be it other nations or agencies like U.N. which provide these people with aid and assistance in order to ensure that their rights are respected and they are treated as a human wherever they go and live.

After the World War II got over there was a need to take a step in order to ensure that all the victims of war and other displaced persons should be given certain rights and provided with basic needs in order for them to live their life as these are the real heroes as well as the war victims who sacrifice everything and in the end get nothing. So eventually the UN General Assembly created a separate agency known as the UNHCR which was aimed to protect and provide assistance to refugees and help in their resettlement by co-operating with other nations.

The working and scope of UNHCR is based on policies and standards as set up by the UDHR in 1948 and based upon the rules and regulations as adopted by the Geneva Conventions conducted on the Humanitarian Law, as well as numerous bilateral and multilateral agreements and several other international and regional treaties and declarations being entered into by the nations in order to help refugees be it both binding and nonbinding, that specifically address the needs of refugees.

2.1. Refugee

2.1.1. Geneva Convention 1951

According to the Convention on Refugee held in 1951, Refugee is defined Under Article 1(A) (2) as:

“Any 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 or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself 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”²³.

²³1951 Convention of Refuge, available at <http://www.unhcr.org/pages/49c3646c125.html>

The 1951 Geneva Convention marks the corner stone as per which first time legal recognition was given to the word Refugee and is treated as the foundation stone of every refugee law throughout the world. This convention gave recognition to the term refugee and clearly defined who a refugee is and other kinds of assistance and aid it should receive be it social, legal or economical from those who are part of this convention and signatory to it.

To be precise a person falls under the category of a refugee if that person²⁴:

- Has a well-founded fear of persecution because of his/her
 - Race,
 - Religion,
 - Nationality,
 - Membership in a particular social group, or
 - Political opinion;
- Is outside his country of origin; and
- Is unable or unwilling to avail the protection of that country of his origin, or to return there, because of the fear of persecution.

In addition to this this convention also talks about as to how and what duties should a refugee have towards the host nation and qualify refugee as war criminal and under other categories whether constituting a refugee or not.

2.1.2. The 1967 Protocol Relating to Status of Refugees

Initially this convention was limited to protecting only the refugees in respect of Europe after the World War II but then the new 1967 protocol was seen which gave new meaning to the term refugee. The 1967 Protocol transformed the definition of refugees which was provided by the 1951 Convention focusing on the events which occurred after the 1st January, 1951 which provided temporal limitation by defining refugees as those persons who fled their country of origin as a result of events which occurred before January 1951.

²⁴ Ibid

The Protocol removed the limitation of geography and temporal limitation as formerly provided for under the 1951 Convention.

If read together the Refugee Convention and Protocol focuses on three main issues being:

- Definition of refugee which is one serious topic as to who and what all will cover under the ambit of refugee and also deals into account other terms such as cessation of, and exclusion from refugee status.
- It throws on the legal status of a refugee in respect to their country of origin and the country where they seek the right to asylum. It also talks about the rights, duties and responsibilities of the host nation towards the refugees and also that of the refugees towards the host nation where they seek asylum. It includes under its issues like forcible return, or refoulement, to a territory where their lives and the freedom would be threatened.
- One important aspect of it is that it talks about how the state being the host nation has a responsibility towards these refugees and what all are the minimum standard of expectations one should have, and also how these host nations to co-operate with agencies like UNHCR in order to fulfill its roles and expectations. Article 35 of the Refugee Convention 1951 read in accordance with Article II of the 1967 Protocol will give a clear picture in respect of an agreement for States Parties by which they seek to co-operate with UNHCR in order to exercise its functions and fulfill its duties as a part and parcel of the international treaties being entered into by them²⁵.

In accordance with this Protocol the states agree to go in accordance with the Refugee Convention in order to fulfill most of its obligations and duties in order to cover all the persons which will be coming under the ambit of refugee as per this protocol.

²⁵ Ibid

Most of the states have taken into consideration both the protocol as well as the convention in order to set up an international refugee system to take care of all the refugees under their jurisdiction.

2.1.3. Organization of African Unity

There is also the Organization of African Unity (OAU) which defines refugee as: *“Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or in whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”*²⁶.

The OAU Convention is one regional treaty being entered into in order to deal with the issues of refugee in the African region and was adopted in 1969. This gave a new definition to the term refugee focusing on the 1951 convention and considered refugee as any person who was forced or compelled to leave his country of origin where he resided due to reasons like external aggression, foreign domination or some events against the public order which had or could have catastrophic effects on them and their families and disturbed the whole nation.

2.1.4. The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama

In the year 1984, a conference of Latin American government officials/ representatives/ delegates and distinguished jurists adopted the Cartagena Declaration.

The Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama deals with the refugees in Central America, Mexico and Panama.

²⁶ Convention of OAU available at <http://www.unhcr.org/45dc1a682.html>

The status of refugees here has been defined as:

“Those persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human or other circumstances which have seriously disturbed public order²⁷”.

This was adopted in order to provide a standardized legal framework to which the member nations can look upon in order to provide aid and assistance to the refugees, and also work in co-ordination with the other members of this declaration as well as other countries to give assistance to the refugees and help them in the resettlement.

2.2. Relationship between Refugees and others²⁸

Now we have understood what refugee means it is important to understand the difference between refugees and other persons be it foreigners, internally displaced persons, temporary residents etc., and in order to do so it is important to focus on the definition of refugees as has been clearly stated above as per which any person regardless of its race, community or religion, who has been subjected to or might be or has the fear that he may in future of being mistreated as such due to reasons such as race, religion, nationality political opinion etc., and as a result of the same has fled its country or being forced to leave it, and has no protection of legal status/ recognition from that country is to be treated as a refugee.

One need to understand the difference between illegal immigrants and refugees, example of the same being large number of illegal immigrants from Bangladesh as seen in respect of India.

The concept of refugees is to be distinguished with other persons as the term refugee is limited to certain set of people as explained above and not to be confused with others²⁹.

²⁷ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, available at

https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf

²⁸ As per the explanation and definitions given by the UN Refugee Agency

- Internally Displaced Person (IDP)

IDP is referred to as those persons who have by one way or the other forced to leave his home likewise that of a refugee, but does not move out/ have to move out of his own country and remains within its country and has not crossed the border or left territory of his own country. These type of persons are protected and covered by the laws of their country only and unlike refugees the international laws and policies does not come into picture for their protection or development.

Like refugees they are also forced to leave their homes and can be compared to refugees from this point of view but when we talk about leaving the country / crossing international borders these IDPs are far from that as they only leave their house and the country limiting them to the jurisdiction of their own country only unlike refugees on which no national law of their actual country can apply as they are nowhere in the territory of it nor still to be treated as its national due to the reasons as stated in the earlier chapter.

- Stateless Person (SP)

Stateless person is to be defined as a person who is not subject to the jurisdiction of any country as such because he is someone who cannot be treated to be a citizen of any country as such due to numerous reasons be it sovereign, technical or legal reasons.

If the person is not the citizen of a country so the concept citizenship does not come into picture as per which there exists no legal relationship between the person and the country where he resides as such, and the ambit of political, social, economic and other rights as such do not come into the picture nor does any responsibility towards and from the state and government.

“The 1954 Convention relating to the Status of Stateless Persons” talks about as to how one can help these persons and provides means to regulate and improve their conditions and legal status in order to ensure that they are able to enjoy and take of fundamental rights entrusted upon them.

²⁹ Global Trends 2009 on Refugees, Asylum Seekers, Returnees and IDPs, available at <http://www.unhcr.org/4c11f0be9.html>

“The 1961 Convention on Reduction of Stateless Person” is aimed towards ensuring that those persons who are stateless by some means can be given the way by which they can acquire the nationality of some other nation.

- Asylum Seeker

There are certain types of people who are classified as asylum seekers. These are those people who flee from their own country into international borders and seek to relocate in other countries in hope for a better future, and apply for asylum there being given the legal recognition and status in order to be transformed into a citizen to get all the legal and other rights as entrusted to a citizen of a country.

Asylum Seeker is more or less a refugee only as they also leave the country or are forced to in fear of persecution in his own country.

As per the EU law the asylum seekers have been defined as those person who make applications for international protection.

- Unaccompanied and Separated Children (UASC)

This category specifically focuses on the children regardless of them being treated as victims of war or refugees or asylum seekers for that purpose. This included those children who due to the result of ongoing situation in their place of habitat were forced to or due to prevailing conditions at that time had to leave their place of residence/ habitual residence/ state or country as such which might have led them to flee into international borders and might be in the same process were separated from their parents or might be their parents were killed in during the same because oh which these children are accompanied and has no one to take care of them.

- Returnees (Returned Refugees and Returned IDPs)

This category includes those type of people or as one should say those refugees who have returned / came back to their country of origin or area of habitual residence voluntarily from which earlier they were forced to leave or left due to dear of persecution.

These are several categories of persons or as one should say victims which can be treated as refugees in some situations but not always.

2.3.Non-Refoulement

The concept of non-refoulement is one of the most important parameter which sets and provides protection to refugees. A refuge has a right to live peacefully in the country where it has taken asylum and it important for one to understand that they cannot be asked to return back to their country of origin unless they want to do so and are protected by such forceful return or refoulement as one should say. The same has been expressly mentioned and set out in the 1951 Convention relating to status of refugees being:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³⁰

Refoulement is prohibited everywhere in almost every status be it a national one or an international one. Several conventions talk about the same being explicitly or through interpretation as is against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment³¹ and various other conventions also have included this principle under their ambit as seen in the:

Fourth Geneva Convention of 1949 (Art. 45, para. 4), the International Covenant on Civil and Political Rights (Article 7), the Declaration on the Protection of All Persons from Enforced Disappearance (Article 8), and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 5), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the American Convention on Human Rights (Article 22), the OAU Refugee Convention (Article II), and the

³⁰ Article 33 (1) of 1951 Convention on status of Refugees

³¹ Article 3 of 1951 Convention on status of Refugees

Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World (Article 2).³²

The concept of refoulement is not one policy based principal but is an international customary practice and all the states regardless of the fact whether they are party to the convention or not, respect the same and always apply the principal of non-refoulement.

2.4.The 1967 Declaration on Territorial Asylum

In the year 1967 the UN General Assembly in order to standardize the measure and means of Territorial Asylum came up with the Declaration on Territorial Asylum to which several states became party to. The Declaration being a small one takes into account all the major things which are vital in order to understand the concept of granting asylum to a refugee and shows the peaceful and humanitarian ground which exists where the states choose to grant asylum being in a friendly manner.

➤ Asylum

The UDHR specifically states that *“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”*³³

The term “asylum” has not been defined anywhere in the sense of international law and every country has given it some understanding in order to give the clear picture as to what constitutes asylum. Asylum is something which countries regardless of any political agenda or personal beneficial gain (from the face of It) provides to those in need specifically refugees who have left their country looking for a better future being provided with a place to live which these host nations provide with.

³² UNHCR on Non-Refoulement, available at <http://www.refworld.org/docid/438c6d972.html>

³³ Article 14(1) of UDHR

Asylum is somehow the basic protection which the host nations provide to these refugees be it a legal recognition, place to stay, non-refoulement and a sense of protection, though regardless of the time being taken into consideration.

As understood from the OAU Convention, the Cartagena Declaration and the 1967 UN Declaration on Territorial Asylum, granting of asylum to refugees is an act of kindness appreciated throughout the globe and it shows how humanitarian laws and principles still exist in the society.

2.5.Rights crucial to refugee protection³⁴

Most of the rights which are crucial to refugee protection are mostly the one's which are also the fundamental rights as mentioned in the 1948 Universal Declaration of Human Rights, which are:

- Right to live a life with proper liberty and security
- Right to seek in any country the asylum
- Freedom from torturous, or other cruel, inhuman or degrading treatment
- Right to freedom from slavery or servitude
- Having a legal status and recognition before the eyes of law
- Freedom to think and choose one's own religion
- Freedom from unlawful and arbitrary arrest being made
- Freedom from arbitrary interference in privacy, home and family
- Freedom to hold opinion and speech and expression
- Right to study and be educated
- Right to participate in the society and its activities

³⁴ Refugee Protection: A guide to International Refugee Law, available at http://www.ipu.org/pdf/publications/refugee_en.pdf

2.6.Role of UNHCR³⁵

UNHCR was established by the UN General Assembly on 14th of December, 1950, in order to work towards the goal of providing assistance and aid to refugees along with the resolve the problems faced by refugees at a global level. It works towards safeguarding the rights of the refugees in order to ensure that those looking for asylum are provided with one and are treated at a humanitarian level regardless of their race, caste, color or any other ground of discrimination. It also ensure that when the time is right those who wish to return back to the country of their origin is provided with the right and means to do so.

With more than six decades of work and 125 countries being member to it, it has a staff of almost 7.685 people with funding of around \$ 1 billion and helped around 34 million people till now³⁶.

UNHCR provides assistance to those in need be it meeting their physical or material needs and may include food items, medical supplies, social services, clothing, shelter, psychological counselling, seeds, tools, infrastructure, educational and health facilities etc., whatever they may require so as to prove the refugees with a better life and future. These catastrophic situations may arise at any time and the persons fleeing the country number in thousands, so the UNHCR always keeps stocks for emergency like situations.

UNHCR focuses on achieving long term solutions in order to resolve the problems faced by refugees and helping them repatriate back to their country of origin when the conditions are right.

The Refugee Convention of 1951 and 1967 Protocol are the corner stones which led to foundation and working of the UNHCR, and the UNHCR statue is like the constitution of UNHCR as it sets forth all the rights and duties which it has towards the refugees and also elaborated upon the ambit of refugees in order to provide maximum benefits to those in need.

³⁵ Ibid

³⁶ About UNHCR, available at

http://www.unhcr.org.in/index.php?option=com_content&view=article&id=1&Itemid=102

UNHCR has broadened itself in order to take categorize refugees into two different kind, being³⁷:

➤ Mandate Refugees

These are those refugees which the UNHCR as a clear interpretation and understanding of its statue as set forth by the UN General Assembly, constitute to be refugees.

➤ Convention Refugees

These are those refugees which have been brought under the ambit of term refugees by the authorities of state which area apart and parcel of the Refugee Convention of 1951 and Protocol of 1967. As a result of the same they also fall under the definition of refugee and are entrusted with all the rights and benefits as are to be provided to the mandate refugees.

There are few categories of persons in respect of whom the UNHCR plays its role and these persons have been termed as “Persons of Concern to UNHCR”, such persons are³⁸:

- Refugees which come under the 1951 Refugee Convention
- Those person fleeing the conflict or as one can say serious danger/ disturbances in their country of origin against the public order (those as per the definition in OAU convention and the Cartagena Declaration)
- Returnees
- Stateless Persons
- Internally Displaced Persons

These categories have been widely explained under chapter 2.2.

³⁷ Refugee Protection: A guide to International Refugee Law, available at http://www.ipu.org/pdf/publications/refugee_en.pdf

³⁸ Ibid

There are also separate agencies being created which work in accordance and with the UNHCR to provide aid and assistance to the refugees as seen by the United Nations Relief Works Agency for Palestine Refugees in the Near East (UNRWA).

The UNHCR as per Resolution XXIX of the UN General Assembly works in accordance with the principles laid down in the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, in order to work towards the aim of reducing the number of persons who fall under the ambit of one being stateless.

UN General Assembly through various resolutions passed by it entrusts several duties and responsibilities on the UNHCR which allows it to take various steps in order to ensure a better future for the refugees and in doing so may do the following:

- Advocate on behalf of the internally displaced persons
- Take up necessary steps in order to provide support to them and co-operate with others in order to do the same
- Take up initiatives and make changes within the organization in order to provide better support to them and take quick actions
- Taking lead on its own without any backing being done by anyone in order to take several steps at time of need which it may deem appropriate and necessary.

The UNHCR works hand to hand with several organizations in order to provide aid and assistance to those in need of it being the fact that the person who requires it is a human only.

The organizations working for this purpose are like:

International Committee of Red Cross (ICRC), UN Organization for the coordination of Humanitarian Affairs (OCHA), World Food Program (WFP), UN Children's Fund (UNICEF), World Health Organization (WHO), UN Development Program (UNDP), International Association of Refugee Law Judges (IARLJ), UN Office of High Commissioner for Human Rights (OHCHR), UN Office for the

Coordination of Humanitarian Affairs (OCHA), International Organization for
Migration (IOM)

It is vital to note that UNHCR will only work if certain conditions are fulfilled, being:

- Authorization has been given by the UN General Assembly or some other organ of the UN
- The state where the problem has arisen/ is continuing, has agreed to allow UNHCR to come into the picture
- UNHCR has access to the area and the people being affected
- There is proper security and other necessary measures have been taken up in order to ensure the safety of the UNHCR staff
- UNHCR has adequate supplies and resources which are vital in order to provide assistance.

These things must be there in order to allow the UNHCR to proceed and work without any problem.

UNHCR is the most prominent body which is determined and focused towards providing the refugees with a better life for the future of them and their family, and is constantly working towards the same.

There is a need to understand how with the passing of time various laws and policies have been framed in order to account the problems faced by people being given the name refugees and only after we are fully able to implement these legal framework in accordance with the public policy and human treatment then the world is to become a better place.

3. INTERNATIONAL REFUGEE LAW IN LIGHT OF EU AND ITS MEMBERS

The EU marked the beginning of whole era of refugee and asylum seekers after the World War II when the we saw the 1951 Convention and 1967 Protocol on the status of refugees in respect of which the *Resolution 2198 (XXI)* was adopted by the UN General Assembly in order to provide solution and assistance to the increasing number of refugees in relation to EU³⁹.

The 1951 Convention and 1967 Protocol were result of the Article 14 of UDHR which sets basic standards and gives the right to every affected person who wish to get asylum in other countries rather than his own as a result of fear of persecution. The 1951 Convention came into effect on 22nd April, 1954 and acted as the foundation stone for every refugee law being made till now, and has been subjected to only one amendment that being in the year 1967 as a result of protocol which was aimed and resulted in removing of all the limitations which the 1951 Convention had in it with respect to the status of refugees.

The 1951 convention is the base of every legislation ever drafted which deals with refugees as it includes under its ambit several issues which are very essential when it comes to providing protection and assistance to refugees, like the principles of non-refoulement, non-discrimination, non-penalization etc.⁴⁰

The convention also talks about minimum standard which needs to be maintained in order to provide living conditions to refugees and ensuring them all the fundamental rights which one deserves regardless of his race, caste and religion. This being the base of every legislation the UN on regular basis asks nations to become party to these instruments in order to ensure that these instruments are treated and adopted as basic customary principles which every nation abides by in order to provide a protection and assistance to the refugees.

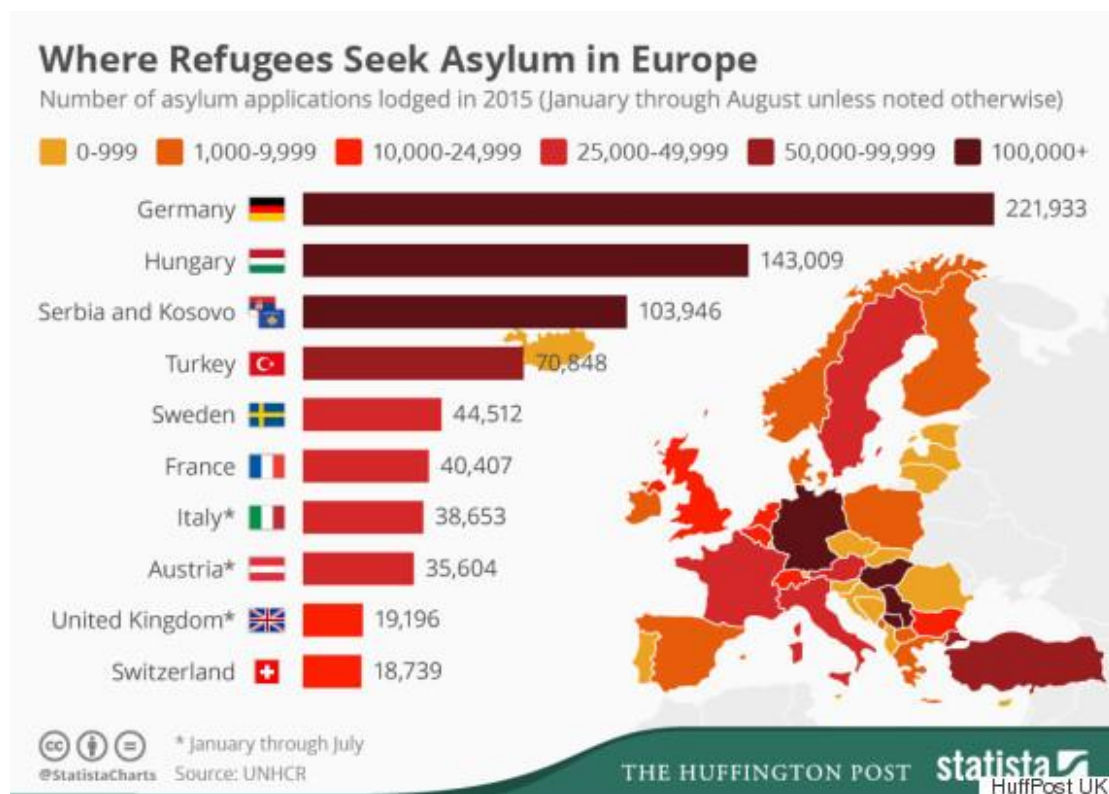
³⁹ Convention and Protocol relating to Status of Refugees, available at:

<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

⁴⁰ Ibid

In the time of need the EU is one of the major role player in providing assistance to all those in need of it and helping out other nations be it the host nation or the country where the crisis has hit.

The graph below shows how most of the applications of those who seek asylum are made to the EU most with Germany being the most prominent player with whom such applications are made as it provides assistance to thousands of refugees every year and help them resettle⁴¹.



The whole of EU constitutes about 79% of the total applications all around the globe being around 685,500 made as seen in the year 2015⁴².

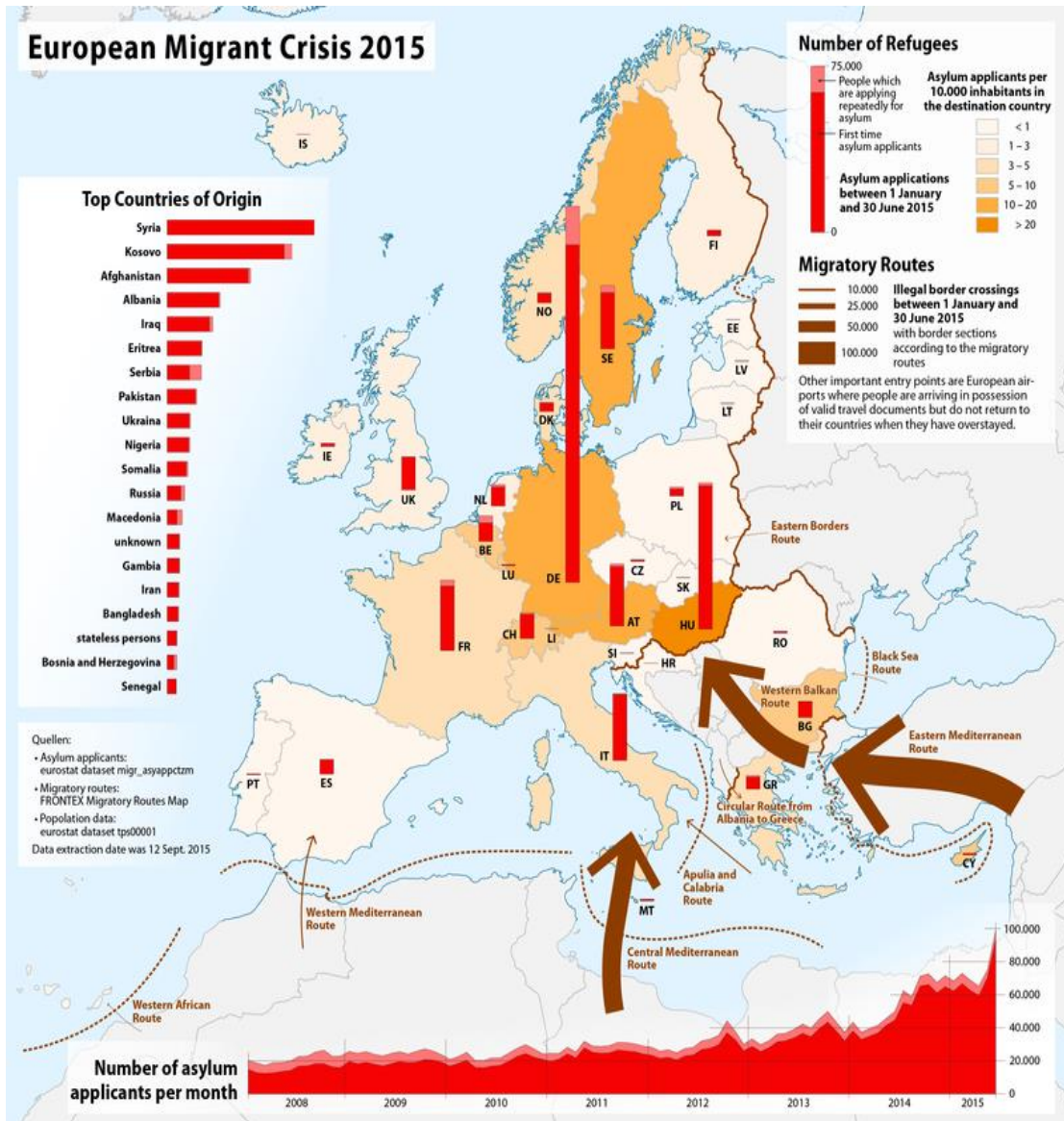
The number of application which the EU receives from Syria is much more as compared to refugees from any other nation and the EU has resorted all means to

⁴¹ Source The Huffington Post, January 2015

⁴² Source UNHCR report of Refugees around the Globe, September 2015

provide them asylum specially Germany, France and Sweden acting as the main player to it.

The graph below shows the amount of applications received by the EU from all around the globe⁴³:



⁴³ EUROSTAT data, January 2015

It has been difficult for the EU to take into account so much of applicants and has been working towards since the end of World War II to deal with such issues and have come up with several legal framework to ensure the same.

3.1. Temporary Protection⁴⁴

The origin of the Temporary Protection (TP) was first seen in the year 1990 when the state of Yugoslavia and Kosovo were under a state of war and there were several conflicts taking place in other areas also. At that time the need for felt for certain measure which needs to be in place for such situations which might come up in future also where large amount of people as such mass influx is seen of people who have been displaced from their place of origin. It is nothing but a phase where a large number of displaced persons leave their country of origin and enters the border of EU, so there was and is a need to deal with such situations.

In response of the same EU came out with:

“Council Directive 2001/55/EC of 20th July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between the member states in receiving such persons and bearing consequences thereof”,⁴⁵ which tried to deal with the problem of such mass influx of people who have been displaced from their place of origin.

According to the 2001 Qualification Directive, the term TP has been defined as:

“a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to

⁴⁵ Council Directive 2001/55/EC available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.”⁴⁶

The concept of TP talks about as to how in times of desperate need some measure should be taken up which will aim at providing mostly all those persons who have been displaced from their place of origin basically not members of EU, in such situations when one expects that normal measure would not be capable of dealing with such a large number of people and in order to deal with this problem TP comes into picture, it also specifies under Article 4 that TP should be for one year at the initial phase then exceeding depending of the present circumstance at that time.

The basic reason behind this Directive of 2001 was⁴⁷:

- To ensure that all the policies and legislations passed on by the members of EU is to be in the same direction and providing a basic structure for them to proceed with and deal away with any or all the disparities which may have been there or might come up in the future.
- Dealing with such a large number of people is not an easy thing and in order to tackle this there is need of support of every member of the EU, and hence this was brought into picture so that all the members of EU can share the burden amongst each other so as to minimize the effect of it. This was necessary to ensure balance between all the members of the EU.

The 2001 Directive came into force in the year 2002 and takes into account numerous things like all member states working tighter in order to ensure standardization in policy making towards and for the refugees, coming up with a residence permit system allowing the displaced people to come in ⁴⁸ and live depending on conditions and ranging from one to three years, it ensures that these persons are to be given

⁴⁶ Article 2(a) of Council Directive 2001/55/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

⁴⁷ Policies and Procedures, Temporary Protection available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index_en.htm

⁴⁸ Article 8 of 2001 EU Directive available at: http://ec.europa.eu/health/files/eudralex/vol-1/dir_2001_20/dir_2001_20_en.pdf

reasonable opportunity for employment⁴⁹, it also talks about how there is a need to provide basic necessary things like medical treatment, education for minors⁵⁰ etc., and also as to provisions regarding the return of these displaced persons when the conditions in their country of origin are improved and livable.

This Directive is applicable to all the members of the EU except Denmark and Ireland.

3.2.Dublin Regulation

In addition to the 1951 Convention and the 2001 Directive, the EU came up with certain other regulations in order to resolve the issues of asylum seekers, and one of the most prominent one is the Dublin Regulation which takes into account the standards and procedure which one needs to follow in order to process the asylum by refugees and sets standards regarding the entry strategies as well as how to provide assistance to the refugees.

Initially named as Dublin Convention being signed in Dublin in the year 1990 has undergone several amendments and in the year 2003 we saw what is known as Dublin II Regulations to which all the members of the EU are signatory to except Denmark, but it is also important to note that this regulation contains a provision of opt-out as which any member may choose not to implement a policy or some provision of the regulation in respect of security and freedom situation⁵¹.

This regulation was implemented in order to ensure that those who seek asylum should be given the right to settle in a place regardless of their background but only when certain procedure are properly fulfilled by them. It aims to stop asylum seekers from moving place to place being within the member nations and applying in with

⁴⁹ Article 12 of 2001 EU Directive available at: http://ec.europa.eu/health/files/eudralex/vol-1/dir_2001_20/dir_2001_20_en.pdf

⁵⁰ Article 14 of 2001 EU Directive available at: http://ec.europa.eu/health/files/eudralex/vol-1/dir_2001_20/dir_2001_20_en.pdf

⁵¹ Dublin Regulation available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133153>

every member nation for asylum which in turn can lead to several difficulties. Through this the member states aims to restrict and prohibit the asylum seekers from practicing such acts and makes sure that these persons to be accommodated in the first place of their entry and them being applying for asylum in the first member nation and not keep shifting within member nations and applying on a continuous basis. This included various ways be it finger print recognition and proper documentation which is a long process.

This process also promotes betterment of asylum seekers as it avoid the refugees from being transferred from one member nation to another.

In processing the application under the Dublin System the member states follow certain criteria being entrusted upon them being⁵²:

➤ Family Unity

It is always kept in mind that one person should be given asylum where his or her family resides in order to ensure family unity and to reduce the burden of member states providing different living areas and shelter places specially for girls and children.

So the applications of other family member is always looked for or taken into account in order to keep a family together in such times.

➤ Residence Permits /Visas

In the process of considering one's application the documents are always given the first preference and it is ensured if the asylum seeker is in possession of some document or visa which shows the member which had given him/ her the same visa or permit is to be responsible for processing the application in order to provide asylum to the applicant.

If the asylum seeker is in possession of more than more visa being issued by different members then the responsibility lies on the member which issued the visa for the longest duration and it needs to process its request for asylum.

⁵² Ibid

➤ **Illegal Entry**

If one person has entered the borders of a member by illegal means or unlawfully crossing the border then the responsibility lies on that state to process the application of the concerned person. It is vital to note that this responsibility ends after expiry of twelve months period since the day when the border was crossed and same not being registered.

➤ **Legal Entry**

One more crucial point in Dublin regulation was that if a person who is a citizen of a different country and not falls within the EU, and enters a member nation where he requires no visa or permit, then it is responsibility of that member state to process the application of the asylum seeker.

➤ **Application in an International Transit Area of an Airport**

The Dublin regulation has a provision as per which if a person of a different country not being one of member nation, seek for asylum in one of the international transit area of a member nation, then it is the responsibility of that member nation to process the application of that person.

If the person and his application is not falling under any of the laid down criteria then his application is to be considered by the member nation where the application was made at the first place.

3.3.Schengen Regulation

In the year to remove external and internal borders the EC came up with the Schengen Agreement as per which the internal borders were removed within the EU participating members and as a result of same the Schengen Borders Code came into existence regulating the borders and checking to be done at borders being carried out

in a dignified manner⁵³, and free movement of people without any visa and other restrictions.

In respect of the same a Visa List Regulation came into existence as per which visas were issued which allowed the people of the participating states to move within the borders without any restriction respect to the time limit for which it was issued.

In addition to the citizens of member nations of EU this also includes under it third nation citizens which if have obtained uniform visas in respect of the same can enter the EU and move freely within its member nations.

Also aliens who are not required or under an obligation to take permit/ visas may move and cross borders freely being without any restriction for a period of maximum three months from the date when they entered first⁵⁴.

The Schengen Information System (SIS) was put in place to keep a track of all those persons who are entering the EU being authorized one's and also those who are unauthorized in order to ensure that they do not enter the border of Europe in near future. There have been several changes being brought to the SIS and in the year 2013, this SIS was replaced with *SIS II Regulations* and *SIS II Decision* being a more advanced and improved system to monitor the border activities⁵⁵.

It is important to control the movement across the border but at the same time it is vital to promote and authorize people to move freely across the borders with required control and identification system being in place. The "*Treaty of Rome*" focused on achieving a scenario of allowing movement of goods. People and services across the borders freely.

With this being said as a result of Schengen Regulation one important concept which came into picture was that of *Forex* in the year 1999 where *the European Council on Justice and Home Affairs (ECJH)* in order to redress the issue related to migration,

⁵³ Article 6 of Schengen Borders Code

⁵⁴ Schengen Regulations available at: http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf

⁵⁵ Ibid

security of people and asylum created a separate group known as External Border Practitioners Common Unit which was aimed to regulated and control the activities of refugees entering the EU borders and be in co-ordination with the SIS.

With several members being participant to it, this common unit was divided into separate units with its establishment as ad-hoc centers in different member nations being:

- Risk Analysis Centre (presence being in Finland and Helsinki)
- Land Border Centre (presence being in Berlin and Germany)
- Centre for Air Border (presence being in Italy and Rome)
- Centre of Western Sea Border (presence being in Spain and Madrid)
- Training Centre (presence being in Austria and Traiskirchen)
- Centre for Excellence (presence being in U.K. and Dover)
- Centre of Eastern Border (presence being in Greece and Piraeus)

The Frontex aims to ensure that all the activities being committed at the borders in respect of refugees is to be in accordance with the EU fundamental charter and everyone to be treated in a humanly manner in addition to regulating and restricting the entry of refugees in EU.

EU also implemented the “Carriers Sanctions Directive” in the year 2001, under which several sanctions have been imposed by the EU in respect of migrants who try to enter Europe through transport means without proper documents.⁵⁶

In order to restrict unauthorized persons and imposing harsh penalties on them the EU came up with “Facilitation Directive” in the year 2002, against all those who enter the EU with authorization or reside their without proper approvals⁵⁷.

⁵⁶ Carriers Sanctions Directive, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0051>

⁵⁷ Facilitation Directive, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0051>

The ban being imposed on persons cannot continue for lifetime and has to end one day and so as to regulate such issues and solve the problems relating to ban being imposed on people, the EU in year 2008 came up with the “*Return Directive*” as per which the ban cannot extend beyond a period of 5 years. This Return Directive works in accordance with the SIS which keeps a record of all the activities and things going on at the border and within the EU⁵⁸.

3.4. Responsibility Sharing

With the increase in number of refugees entering the European borders every day it was necessary to ensure that all the member of EU come together in order to share the burden and responsibility of each member in time of difficulty. The EU came up with a new scheme in the year 2008 as per which the concept of responsibility sharing came into picture as per which refugees were transferred from one member to other member who was able to assist the refugees. It was earlier focusing on regions of Malta and few other areas from which the refugees were transferred to other member nations.

Initially ten countries participated in this initiative and was a successful step which was taken up to reduce the burden.

Now as a result of the Syrian crisis the need of this was felt again as a result of large number of people coming in from Syria we see how several nations are coming in together to accommodate large number of these refugees within their jurisdiction. The basic purpose of this being providing resettlement opportunities to the refugees.

The European Commission defines resettlement as:

“The process whereby, at the request from UNHCR based on a person’s need for international protection, third country nationals or stateless persons are transferred from a third country to a Member State where they are permitted to

⁵⁸ Handbook on European law relating to asylum, borders and immigration, available at: http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf

reside with refugee status (within the meaning of Article 2(d) of the European Union 'Qualification Directive') or a status which offers the same rights and benefits under national and Community law as refugee status."⁵⁹

To provide assistance to the refugees entering EU and in order to resettle them the EU has been coming up with several "Regional Protection Programme's (RPP)" in order to aid and assistance to those in need.

In addition to the 1951 Convention and 1967 Protocol, the EU came up with Treaty on the Functioning of European Union (TFEU) as per which it was stated and mandated that the policy being drafted by the union will be and needs to be in accordance with the 1951 Convention, 1967 Protocol and other treaties which the EU has been a part of till now⁶⁰.

The 17th Declaration of EU in respect of the EC Treaty talks about how there is a need to discuss with UNHCR all the matters which someone deal and takes into account refugees and the advice of UNHCR will be taken into consideration before any step is taken by a member state of the EU.

Article 38 of the 1951 Convention talks about how in case of dispute between the states and the individual themselves the matter has to be dealt and taken into account by the national courts, but this has never taken place as such, and always we see how UNHCR comes into the scenario and provides assistance and some way by which such disputes and disparities are to be solved.

In the year 2013 the EU came up with the Asylum Procedures Directive regarding the detailing in respect of those who seek asylum and procedure for the same which the member nation needs to abide with in order to provide legal rights to the asylum seekers. It gives proper details as to how the state is to set up an application and register in within a period of 3 to 6 days depending of certain conditions⁶¹ and giving

⁵⁹ ERF III Decision, Article 3(1)(d), Qualification Directive (2004/83/EC)

⁶⁰ Article 78 of TFEU available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

⁶¹ Article 3 (1) of Asylum Procedures Directive available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>

equal opportunity to every individual to proceed with such an application⁶² and permitting such applicants to cross the border without any restriction⁶³.

EU takes into account the framework as set up in by the *UN International Covenant on Civil and Political Rights (ICCPR)*⁶⁴ and *UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)*⁶⁵ as per which no one is allowed to treat humans in a cruel and inhuman manner, wherein they are subjected to torture and severe punishments, as such acts are against humanity and should be practiced nowhere in the world.

UNCAT also talks about how the concept of refoulement is not to be practiced and refugees cannot be forced to move out of the country where they seek asylum or being forced to go back to the country of origin⁶⁶.

Most of the members of the EU have ratified such principles of ICCPR and UNCAT in order to provide the refugees assistance and a safe atmosphere to live in where they cannot be subjected to inhuman treatment, criminal activities or other risks.

In addition to the above mentioned convention and protocol we also see that EU abides by two regional human right framework which they have adopted which also abolishes acts as a result of which people being refugees are subjected to inhuman treatment:

- European Convention on Human Rights (ECHR)

All the members of EU have ratified this convention and abides by it all the time. This also as mentioned above focuses on preventing inhuman acts and crimes against refugees be it in any manner⁶⁷, and also bring into light as to

⁶² Article 6(1) of Asylum Procedures Directive available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>

⁶³ Article 43 of Asylum Procedures Directive available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>

⁶⁴ Article 7a of ICCPR available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶⁵ Article 3 of UNCAT available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶⁷ Article 3 of ECHR available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

how the EU is bound to treat every individual within its jurisdiction with equality and provide reasonable opportunity to all⁶⁸.

- EU Charter of Fundamental Rights

This Charter is part and parcel of the EU legal structure and more like a constitution which every member is bound to follow. It states that no practice ill-treatment should take place⁶⁹ nor one being given asylum should be forced to go back to the country of origin⁷⁰ and everyone has the right to asylum⁷¹ and cannot be deprived of it by any person or any authority of law.

Also the *Court of Justice of European Union (CJEU)* has been established which ensure that the charter is abided always and in case of any complexity the CJEU comes into picture to give clear interpretation to it and remedy all the wrong which have been committed against the things laid down under the charter.

In the year 1995 EU came up with the *Organization for Security and Co-operation in Europe (OSCE)* to which all the member nations became a part of. This organization solely focused on dealing with Human Rights of the refugees and those who enter the EU in search of asylum. Numerous instruments have been brought into existence as a result of this which aims to provide assistance to the refugees and ensure that their human rights are not being violated any time during their stay in EU regardless of the fact being given asylum or not.

The instruments are aimed to ensure that the refugees are being given fair chance to present their application as well as no unlawful arrest or detention is to be there in respect of these refugees be it for illegal entry in the EU. One major thing to be noted is that these instruments put up responsibilities of the member nations towards these

⁶⁸ Article 1 of ECHR available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁶⁹ Article 4 of EU charter on Fundamental Rights available at:
http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁷⁰ Article 19 of EU charter on Fundamental Rights available at:
http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁷¹ Article 18 of EU charter on Fundamental Rights available at:
http://www.europarl.europa.eu/charter/pdf/text_en.pdf

refugees be it for non-discrimination, giving them the right to speech and expression along with that also to hold assemblies in time of need.

The OSCE aimed at to protect the basic human rights of all the refugees, asylum seekers and displaced person by certain mechanisms aimed to monitor the implementation of legal instruments entered into by the member states to ensure protection of human rights and setting of standards for the same. These mechanisms being the *Vienna Mechanism* and the *Moscow Mechanism* along with which the OSCE came out with several conferences and meeting provide protection to basic human rights of refugees and monitor the standards adopted by the member nations to ensure the same.

3.5. Illegal Entry

It is not always that the immigrants enter the EU through borders with proper visa/ permit and this creates a major problem because it becomes difficult for the member states to whom entry has been made to firstly get to know of such person and take them into account in order to provide them with assistance, and secondly to ensure that a proper authorization and permit system is followed by them to take into account all the persons who are inside the EU regardless of their entry way.

There is *Return Directive* in place issued by the EU in the year 2008 as per which the member states are under a condition to either accept the application and provide assistance to those who have entered the border or issue a return orders for the same, but it is important to understand that the refugees cannot be asked or forced to return to their country if back there they are under the dear of cruelty or persecution.

Till the time the final decision has been made subject to the application made by the refugee, they are legally allowed to remain within the EU till the time the decision is awaited and needs to be proper documents in respect of the same to provide legal status to them.

Reception Conditions Directive read along with the Asylum Procedures Directive imposes an obligation on the member states to prohibit from the practice of unlawful arrest and detention.

Any such detention if is to be done has to be on certain valid grounds which are:

- In order to determine the nationality and identity of the refugee/ asylum seeker
- In order to do away with the risk of absconding of a person
- In cases of protection of public policy and national security
- In order to make sure that the transfer procedures as specified in the Dublin Regulations⁷² are to be carried properly
- To carry out proper removal after the final decision has been made by the concerned authorities
- If the person is being convicted for some crime or being charged under some criminal act
- To be detained under the Return Directive

Article 6 of this Directive allows the member state to go on with the return order but keeping in consideration the humanitarian grounds and also family issues as mentioned in Article 6(4) and Article 8 of the return directive only⁷³.

Those who are within the boundaries of the EU regardless of being given the asylum by the member state or not have to be taken care of by the member state only be it providing them with the medical assistance, food and other basic needs of them needs to be fulfilled, and also the member state needs to do something about their presence with respect to legal recognition as soon as is possible. Also if refugees have the proper documents then they are allowed to get jobs be it in private sector as well as the public sector.

In the year 2011 the EU came up with the Long Term Residents Directive which focused on providing resettlement mechanism to those persons who resided in the EU

⁷² Article 28 of the Dublin Regulations

⁷³ Return directive, EU, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115>

on long term basis. These persons being given legal authorization and recognition as a result of them being residing in the EU for a period of five year and that also on a continuous basis. These members are to be charged with some amount of fees which needs to be reasonable and no be beyond the standards being set up by the CJEU on timely basis.

There is a separate provision being included in by the EU to accommodate those persons who are the family members of *European Economic Area (EEA)* citizens and also the nationals of Switzerland. These persons are entrusted with the right of free movement allowing them to move across the borders of the EU without any restrictions and also being given the right as per which they can reside in the EU territory under the *Free Movement Directive* which was issued in the year 2004.

Irrespective of the fact that the person has entered the EU by unlawful means they need to be given protection if they fear persecution if are forced to go back to their country of origin. The concept of *Subsidiary Protection* was implemented by the EU so as to ensure that the refugees are not being subjected to inhuman or cruel treatment if being sent back to their country of origin.

This subsidiary protection is given on the basis of analysis of the application of the one seeking asylum which entails the records of its past conditions on basis of which the protection is given because is a person was subjected to inhumane and cruel treatment in the past then if sent back would face same. The current conditions of their country of origin is taken into account so as to analyze if they need to be given protection or not because if the conditions are not worse as before and much better than the one seeking asylum can be asked to go back considering the fact he should not be forced to and then conditions back in his country of origin should be improved.

No member state can practice collective expulsion as it is prohibited by the EU and also mandatorily prohibited by the ECHR⁷⁴, as per which no member nation can force the asylum seekers or refugees to go back to their country of origin or leave the EU until and unless there is proper reason behind the same and the individuals have no

⁷⁴ Article 4 of Protocol No. 4 of the ECHR

fear of persecution if they go back to their country. The practice of refoulement is strictly abolished and prohibited under the UDHR as well as under the ECHR.

3.6. Response of EU

It is clear that the EU has taken up several initiatives in order to provide aid and assistance to refugees in every possible way, but it is important to understand how the Syrian Crisis has affected the decisions and policies of EU in order to show somehow reluctant attitude by some of its members when it comes to providing them with asylum.

Syrian citizens have been fleeing the country to save their lives from the ongoing bloodbath and in the hope of having a better future, with this being the condition most of the people have been crossing the borders and entering the territory of Lebanon, Turkey and also the EU.

It is interesting to note that though the EU has been a key player in providing aid and assistance to these refugees reallocated or resettled in other countries with the main focus to contain these refugees in the other host nations itself.

The number of refugees to whom the permission to seek asylum in Europe has been given is very less and most of the member nations are not permitting them to enter their territory unlike few members like Germany and Sweden, which are welcoming a large number of refugees in its jurisdiction.

One major reason being the unequal distribution of wealth and resources between the member nations of EU which makes it difficult for low economy members to take into account large number of refugees and provide assistance to them.

There is no doubt that collectively the work of EU is far more than one can imagine and has contributed more than 1.3 billion euro to ensure that the refugees are provided with means of living and given proper assistance at all times possible⁷⁵.

It is not easy to enter the EU and refugees have to risk their lives in order to do so be it by land entering Greece and Bulgaria, or by sea entering Greece and Italy. They risk

⁷⁵ Council of the European Union, 'Towards a Comprehensive EU Approach to the Syrian Crisis' ' dated 24th June 2013

a lot in order to reach the borders and if not being allowed to enter the border of EU it becomes a major problem.

The number of people entering EU were increasing day by day and in the year 2013 around 50,000 applications were made by such people seeking asylum. Germany and Sweden being the major player in providing assistance and resettlement opportunity to these players but on the other hand member nations like Bulgaria, Italy and Greece have shown reluctant attitude and not lend its hand in order to provide assistance to these people, the amount of aid which these member nations are providing is very less as compared to other nations and there is a potential to increase the output by these nations in respect of those seeking assistance in their jurisdiction⁷⁶.

One more major issue to note down is that though the EU as one has taken up several steps in order to ensure that all the member nations move in a single direction and deal with all the issue being put forward it with single approach but regardless of all the initiatives there exist disparity amongst the member nations of EU when it comes to considering the application of those who seek asylum and each member has a different approach when it comes to considering the application of asylum, and though a person may qualify as a refugee who needs TP in one member nation but may not qualify in the other member nation, and this has one major issue which needs to be addressed.

With this being said many member nations has its own policies when it comes to providing assistance to those who seek asylum and most of the member nations do not consider such applications and do not allow refugees to enter their jurisdiction while some member nations do allow but subjected to their own policies like in case of Bulgaria and Czech Republic it is seen that they rather than providing refugee status and means of resettlement to one grants the refugees with subsidiary protection, on the other hand Denmark also does not grant a refugee status rather provides a four year permit to those who seek asylum to reside.

Since the beginning of the Syrian Crisis the EU has had several views on it and with respect to the same has taken different stand at different time depending on the circumstances prevailing when such an act was done like in the year 2011 when most

⁷⁶ Ibid

of the member nations of EU had put a halt on the application being received by it and was not providing asylum to anyone also several return processes were initiated by the EU in the year 2013 which were not successfully implemented⁷⁷.

There are few member nations who try to follow the *Family Unity* principal as explained earlier in order to ensure that the family lives together and co-operates with other member nations in order to do the same, while most the member nations do not carry on with this practice as according to the it puts on additional liability to one member because of documentation problem, transportation problem and certain additional responsibilities which are imposed on one person in respect of this principal of family unity or also known as family reunification.

In addition to Syrian people one major problem which is seen in accommodating people from Syria is that there are several persons who are actually Palestinian being taking refuge in Syria and as a result of Syrian Crisis have crossed borders to get into EU so documentation is a major problem regarding the same and also though EU lends its hand in order to take into refuge the Syrians who have been facing the catastrophic effects of war, there are several other who have being fleeing to the EU in the hope of better future being not from Syria.

The 1951 Convention provides protection to refugees but there are few Palestinian not being subject to this protection as they fall under the *UN Relief and Works Agency for Palestine Refugee in Near East (UNRWA)* so EU is reluctant to provide protection to them.

If we compare in total then the number of refugees being given assistance and asylum by EU is comparatively very low as compared to other neighboring nations of Syria and if taking a look at the figures it is seen that of around 2.8 million people who have been given the status of refugees and registered in neighboring states, the amount of those in EU are very less and in the year 2013 and 2014 the EU granted admission on humanitarian basis to only 6000 refugees and another 400 being given the permission to resettle⁷⁸.

⁷⁷ Protection in Europe from Syrian Refugees, Cynthia Orchard and Andre Miller, September 2014

⁷⁸ Ibid

Despite all these things being talked about one cannot say that the EU is not doing anything to address these issues and has taken up several steps in order to provide assistance to these refugees.

A new *Core Group on Resettlement* was seen coming into existence in the year 2013 which is aimed to work with the UNHCR in order to provide aid and assistance to those been a victim of Syrian refugee crisis.

This core group focuses on doing the following⁷⁹:

- It tries to ensure that all the member nations work in accordance with each other in order to create an environment where there is no disparity between the member nations amongst themselves as well as with other host nations as per which they seek to provide aid and assistance to those in need, and work towards a better environment of resettlement giving all the applicants an opportunity to have a better life and providing them with adequate required things and also employment opportunities for a better future.
- Ensuring that all the applicants are giving proper assistance and means of resettlement, it also aims to work toward the principal of family unity so as to make sure that a family member if being separated from its family and having proper record of their ware about and other required documents, then the concept of family reunification is to be applied.
- It also focuses on promoting certain welfare schemes for the refugees giving them a ray of hope and also ensuring that all their basic needs are being fulfilled, like education, health care facilities and in doing the same co-operate with all the host nations to create a refugee friendly environment.

⁷⁹ Ibid

The grant of Asylum as a fundamental Right was firstly seen by implementation of the 1951 Geneva Convention, as per which the right to seek asylum was recognized as a fundamental right as per which any country being a party to the 1951 convention was under an obligation to provide asylum to those who come seeking for it being distressed and forced to leave their country of origin due to some reason.

In order to make sure that all the members of the EU follow a standardized approach to deal with the issue of refugees and those who come to seek asylum the concept of a *Common European Asylum System (CEAS)* was brought into picture to ensure that all the member states have a standardized approach with high standards to address the issues of refugee.

It is not a common practice but it needs to be ensured that for future one should be prepared the reason being that the number of inflows of the people who seek for asylum differs on large numbers and it is important to understand how this can be of a serious problem considering the fact that till 2011 when the Syrian crisis had started the refugee population entering EU was almost negligible from Syria as compared to the mid 2012 when it started increasing with such a pace that it became a problem for the EU to provide assistance to even half of them.

By the year 1999 after looking at the World War II, the EU came up with numerous legal framework in order to set a standard which all the members could look up to and in consideration of same came up with a *Green Paper*⁸⁰ in the year 2007 as a draft of standard procedure to be followed by the member states of EU. Several suggestions and criticisms were subjected to it and in the year 2008 the EU came up with the *Policy Plan on Asylum*.

This policy plan took into account all the previous legislation and tried to bring changes to it in order to match the current level of expectation by the member states and the refugees being⁸¹:

⁸⁰ Green Paper on Common European Asylum System, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0301:FIN:EN:PDF>

⁸¹ Common European Asylum System, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm

- Modified the previous Asylum Procedure Directive

The basic reason to modify the Asylum Procedure Directive was to ensure that the applications received for asylum are to be processed quickly and the decisions are taken quickly and in a fair manner. The applicants to be given fair chance to present their request and more support be provided to unaccompanied minors and women.

- Revised the earlier Reception Conditions Directive

This was to ensure that all those entering the EU to be provided with basic necessities of life for them to carry on a life without any fear of the outside world to them. It also tried to do away with the unlawful detention and arrest practices adopted by various member nations.

- Altered the Qualification Directive

It provided standardized grounds which the member nations should look upon and consider in order to provide asylum and also ensure that their basic rights as a refugee and human are always protected.

- Reviewed the Dublin Regulation

Under this a relationship between the states and the refugees was established towards each other being the responsibility of the state to ensure that all the process of application procedure is carried on in a correct manner and the applications are examined carefully with properly identifying the problems as to why the grant of asylum becomes difficult in situations and why the states act reluctant not to grant one with it.

- Revised the EURODAC Regulation

The fingerprint database was to be only assessed by the concerned legal authorities in times of serious need be it any criminal thing and to avoid further acts from taking place.

There are several other issues also which one needs to consider in order to understand how it is not an easy task to enter the EU and apply for asylum. In many member nation the refugees entering the borders by illegal means are subjected to prosecution and have to pay plus are denied entry also regardless of their circumstances like in case of Bulgaria where though the *Bulgarian Criminal Code* specifically states that if a person enters the border to seek asylum then they are not to be subjected to criminal liability but still are subjected to suspended sentences.

Most of the refugees are subjected to arrest and detention of being entering the borders without authorization and valid documentation, and are kept in unlawful and inhuman conditions for several months regardless of anyone knowing about their ware about and such is one common thing seen in member nations like Greece and Italy.

There is complete lack of any such social or psychological support given to the refugees who seek asylum these nations.

After being given the authorization to asylum still are kept in overcrowded and unhealthy living places and being deprived of basic necessities of life.

Germany, Sweden and France have set a worldwide example as to how one needs to tackle such situations and provide aid and assistance to those who require it as are being subjected to catastrophic and humanitarian disaster in which they had no role to play but still are affected the most leading to leave their country of origin in order to seek for a better life and future beyond international borders.

4. INTERNATIONAL HUMAN RIGHTS IN LIGHT OF REFUGEES

Refugees are that section of the society who have lost almost everything without doing anything or being a part of what is happening, it is only because of their inferiority in the society against the powerful person that they are subjected to catastrophic and inhuman acts and crimes.

As seen in Syria where due to the clash between the government and Arab Spring we see that the people of Syria who have not taken either side are being subject to cruelty by means or either been forced to take up arms and be a part of the conflict or are forced to leave their residence area and the country which they prefer in order to seek for a better life for which they end up crossing international borders.

Refugees and Displaced Persons do not have an easy life as they face a lot of problems and in respect of which the nations work together in order to assure that these are provided with proper aid and assistance required by them to start a better life. The UN is one major agency which works throughout the time be it individually or with support of other nations to ensure such protection and assistance to the refugees.

One needs to understand then no one chooses to be a refugee and though some refugees might have the option of not leaving their country but it is never out of happiness or some benefit that they leave everything behind them to go far places in search of something which they know might not exist or be provided to them. They move from place to place in search of basic things necessary for the survival be it food, shelter, clothes and several other things.

With time the number of refugees and displaced persons count is increasing day by day be it with the UN or looking at the global figures, and there are also scenarios in

some nation where out of the total population the amount of refugees and displaced persons are more than 10% of the total population of that hosting nation⁸².

Though the IDPs are forced to leave their residence place and still are within their country of origin only so the concept of refugee protection would not apply on it but yes they would still be brought under the ambit of protection of their human rights to ensure protection to them.

There are three foundation stones upon which the whole concept of Human Right stand being the Right to Freedom of Peaceful Assembly, Right to Freedom of Opinion and Expression and the Right to Freedom of Religion.

These human rights act as the key essential parts of every legal framework created to ensure protection to refugees as are the most important and base of every right being derived to the human and by the human⁸³:

1. Right to Freedom of Peaceful Assembly

- Article 20 of the UDHR
- Article 21 of the ICCPR
- Article 15 of the Convention on the Rights of the Child
- Article 11 of the African Charter on Human Rights
- Article 15 of the American Convention on Human Rights
- Article XXI of the American Declaration of Rights and Duties of Man
- Article 11 of the European Convention for the Protection of Human Rights

2. Right to Freedom of Opinion and Expression

- Article 19 of the UDHR
- Article 19 of ICCPR
- Article 13 of the Convention on Rights of the Child

⁸² Fact Sheet No. , Human Rights and Refugees, available at:

<http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>

⁸³ Human Rights and Refugee Protection, October 1995, available at:

<http://www.unhcr.org/3ae6bd900.pdf>

- Article 9 of the African Charter on Human and People's Right
- Article 13 of the American Convention on Human Rights
- Article IV of the American Declaration of the Rights and Duties of Man
- Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

3. Right to Freedom of Religion

- Article 18 of UDHR
- Article 18 of ICCPR
- Article 14 of the Convention on Rights of the Child
- Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- Article 8 of the African Charter on Human and People's Right
- Article 12 of the American Convention on Human Rights
- Article III of the American Declaration of the Rights and Duties of Man
- Article 9 of the European Convention on Human Rights

4.1. UNHCR and Refugees

“Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum.”⁸⁴

-UNHCR

⁸⁴ Human Rights and Refugee Protection, available at: <http://www.unhcr.org/3ae6bd900.pdf>

The UNHCR is an agency being set up in accordance with the UN in order to promote aid and assistance to the refugees and ensure that they are treated equally with healthy living conditions being provided to them. They investigate into matters where there has been violation of human rights and comprises of around 53 members.

They work irrespective of the fact if the refugees whose human rights has been violated is located in which nation as their basic aim is to ensure human treatment of all refugees regardless of race, caste or religion.

In order to ensure that at global level no violation of human rights is done in respect of refugees we see various initiatives being taken up to ensure that at time of need the agency can work regardless of any intervention in order to secure a healthy life to the refugees.

The constitution of *Special Rapporteurs* who are basically appointed to examine the ongoing situations present in an area regardless of any political or other pressure on it, so as to assure that the refugees in concern are treated with respectable and humane conditions and not deprived of basic human rights which are available to them.

These rapporteurs are entrusted with power to intervene in special circumstance where there are clear violation of human rights and the refugees are treated miserably and so they work to make sure that all the refugees whom if being subject to inhumane treatment are prevent from such and saved from such abuses.

The UNHCR has constituted separate working groups dealing with particular areas of concern being:

- UN Special Rapporteur on Torture
- UN Special Rapporteur on Summary Executions
- UN Working Group on Enforced Disappearances
- UN Working Group on Arbitrary Detention
- UN Special Rapporteur on Violence against Women
- Representative of the Secretary General on IDPs

- UN Special Rapporteur on Religious Intolerance

These special groups being constituted with different names have to ensure that no violation is done and the human rights of refugees are respected at all times.

It is the duty of the government and other parliamentarians to provide assistance to the working groups be it in any manner as such:

- They should keep these working groups updated with what all is happening in their nation regard to the refugees and provide them with exact facts and figures for them to be of assistance.
- They should work in accordance with the working groups in order to ensure that no violation of human rights is done like in cases of sending back the refugee to the country of origin when things are right, then following a proper laid down procedure and not practicing any such practice which is not allowed like refoulement and ensuring that no abuse is done of any human rights of the refugees.

Providing aid and assistance to every single refugee is not an easy thing and is totally understandable so the government and the nations needs to work with the UN agencies and working group in order to provide relief to every refugee and respect their human rights and prevent its violation at every time

UNHCR works towards protecting the refugees against refoulement being forceful return, assisting them to obtain a legal status and recognition and providing them with all the required aid and assistance in order to help them resettle and re-establish their as well as the lives of their family for a better tomorrow.

The UNHCR in its 50th session held in the year 1994 elaborated upon the need and importance of ensuring the protection of human rights of refugees and stated that:

“The connection between the work of the Commission in promoting respect for human rights and the work of my Office, in protecting refugees and seeking solutions to refugee problems is clear. As I mentioned in my address to the Commission last year, human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum⁸⁵”.

Human Rights goes in hand with the UN Charter which seeks to assure freedom and safety for all refugees and providing them fundamental freedom irrespective of their religion, race, sex or language they speak.

There are numerous rights which the UDHR ensures to the refugees which the nations have to abide by and the UNHCR aims to achieve this by co-operation with the host and helping nations. UDHR is not a treaty to which the member nations are signatory to and is like an international constitution for human rights which while being drafted was sought to be used in future for all the laws and policies coming into existence in order to provide aid and assistance to the refugees and protecting their basic human rights.

Several other covenants, declarations and conventions were seen as a result of the same focused on ensuring protecting and assistance to the refugees like⁸⁶:

- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- Standard Minimum Rules for the Treatment of Prisoners (1955)
- Convention on Reduction of Statelessness (1961)
- Convention Relating to Status of Refugees (1951) and Protocol (1967)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Declaration on Territorial Asylum (1967)

⁸⁵ Ibid

⁸⁶ Ibid

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- Convention on Rights of the Child (1989)
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- Declaration on the Protection of All Persons from Enforced Disappearance (1992)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- International Covenant on Economic, Social and Cultural Rights (1996)
- International Covenant on Civil and Political Rights (1996)

These initiatives were taken up by numerous nations in order to work for the betterment of refugees and those who seek asylum, and to work in accordance as well as assist the UNHCR in order to assure better status and protection of the refugees.

Separate *Treaty Bodies* have been established by the UN in order to deal with specific issues such as racial discrimination, discrimination against women and rights of child. These bodies consist of expert professionals who are working to ensure that the treaties being signed and ratified are also implemented by the member nations and also takes into account complaints being made to them in form of petitions from those individuals who allege that their basic human rights has been violated.

Major committees under it are:

- Committee focused on ensuring the Rights of Child
- Committee which aims to protect refugees against Torture

- Committee aimed to eliminate all forms of Discrimination against Women
- Committee aimed to eliminate all forms of Racial Discrimination
- Committee on Human Rights

These committees are aimed to work in manner to provide basic human rights to the refugees, displaced persons and those of seek asylum.

In addition to the above mentioned working groups and committees, a separate *Sub-Commission on the Prevention of Discrimination and Protection on Minorities* was established by the Commission of Human Rights. This sub-commission includes around 26 members which are chosen and elected based on regional representation for 4 years in order to conduct studies and gather information regarding the violation of human rights. It as can be seen by the name is not just limited and aimed towards minorities but the work it does goes way beyond that⁸⁷. One major role of the UN is to ensure that no discrimination is done in respect of the refugees because the refugees being subject to various forms of discrimination is a common thing which should be vetoed.

Though we can see that there are several legal frameworks being adopted by the nations to ensure protection of refugees and promotion of their basic human rights but still there is power being granted to the nations as to derogate from these international principles and treaties at the time of emergency situations.

States are not in a position to completely and at any time deprive a refugee of its basic human rights but in case where a state of emergency is declared then the state may choose not to ensure such basic human rights to the refugees and displaced persons.

This being said the several human rights committees and working groups being put in place also ensure that no such practice is carried on by state without any reasonable ground being there and also conduct timely surveys to provide periodic reports to the UNHCR and other concerned agencies.

⁸⁷ "Sub-Commission on the Prevention of Discrimination and Protection on Minorities", information available at: <http://www.ohchr.org/EN/HRBodies/SC/Pages/SubCommission.aspx>

They also allow the concerned individuals who allege that their human rights have been violated to file petitions in regard to the same for the UNHCR to deal with it. It is important to understand that though being a very large organization with thousands of people assisting it as the staff, it is still not possible for the UN and other agencies as well as government to deal with all the issues of refugees as well as have appropriate required information for the same, so there are several Non-Governmental Organizations which work with the concerned agencies to do the needful work and go in the depth of every problem and every area to find out truth and provide protection to the refugees. They are also aided by the UN and other nations for their work.

4.2. Refugee Status and Claiming Asylum

The concept of registration and determination of the status of refugee is one major issue which the UNHCR deals with and such process is known as *Refugee Status Determination* as per which the refugee is to register itself at the local UNHCR office where there is an Eligibility Officer appointed by the UNHCR to ensure and check whether the person applying for refugee status is a victim and his application is then processed with other essential documents required. The *UNHCR Procedural Standards for Refugee Status Determination* is to be followed which also involves in-person interviews as may be conducted by the Eligibility Officer or any other authorized person.

After the process is over the applicants are to be given their results with reasonable explanation for the same be it accepted or not.

There is also the concept of appeal for those applicants not being granted with the refugee status.

After an application has been approved the person applying for the refugee status is being given a *Refugee Certificate* so as to give a legal document to recognize the status of refugee. This certificate goes not guarantee the right to asylum in any such country but just a legal recognition by the UNHCR for other nations in order

to provide aid and assistance to the refugees. The UNHCR works in accordance with the *UNHCR Resettlement Handbook*⁸⁸.

UNHCR gives the legal recognition of a refugee but it is to the host nation to provide asylum to the person seeking it and every host nation has a separate procedure as per which they take into account the application and process it further so as to check the reasonability and authentication of it.

Separate government departments or agencies have been set up in order to do the same and consists of various officials having required experience and knowledge in this area of refugee law.

These official conduct various trials and processes like interview and checking of documents etc. in order to seek the credibility and condition of the one who seek asylum. They will ensure that the refugee should have all documents and be credible enough in order to be granted the asylum and this burden is on the applicant to prove to the official this thing about his creditability be it on the basis of a fear of persecution. The creditability may be proved by valid documents, reports of NGO, UNHCR refugee certificate or any other document for that instance.

The persons entering the nation by illegal means is not to effect the application being made by him for seeking asylum but it is important to understand within how many days of this entry is he bound to make an application so as to ensure a valid authorization being given to him⁸⁹.

If an application of a person is rejected being not given asylum in the country where the application was made, he is still to be given some form of protection and cannot be forced to return to the country of origin subject being that person fears of cruelty or torture if being sent back⁹⁰.

⁸⁸ International Justice Resource Centre, Rights of Refugees, available at: <http://www.ijrcenter.org/refugee-law/>

⁸⁹ Article 31 of the 1951 Geneva Convention

⁹⁰ Article 3 of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

4.3. Refugee Law and International humanitarian law

It is important to understand that the foundation of every refugee law be it an international or national one is a result of basic human rights which are entrusted to every human being by the nature and with time getting transformed into several laws and legislations.

Refugee law is aimed to ensure that the persons who seek asylum or are being forced to or due to some circumstances have to leave their country of origin should be treated respectfully wherever they go in order to secure a better life and it is the duty of the host nation to provide them with assistance, similarly the basic reason behind the humanitarian law is to make sure that all the victims of war be it civil inside or outside the country should be given a chance to have a better life and not being subject to inhuman and cruel response be it by way of punishments or detention as seen by most of the nations.

They are in a situation where they regardless of doing anything have been made the centre of the crisis as seen in Syria where the Syrian people have been killed or forced to leave the country due to ongoing circumstance in order to protect them and their families.

If going into the history the 1949 Convention held at Geneva talked about the persons being subject to civil war and measures for their protection, and specifically talks about the relation between Refugee Law and Human Rights

International Refugee Law is a part and parcel of the wide term “International Humanitarian Law” as refugees are subject to refugee law in different cases but always subject to humanitarian law regardless of their condition, place and time. Refugee Law falls under the ambit of Humanitarian Law only and several covenants have been seen which talks about as to how the refugees should always be protected against torturous acts and prevented from refoulement in any such circumstances as seen in the International Covenant on Civil and Political Rights.

Refugees are always subjected to two different kind of rights at all the time firstly the Refugee Law and secondly Humanitarian Law, which governs their life.

Out of several treaties in place, there are two which are like corner stone for every piece of legal frame work being implemented⁹¹:

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Every act done by the host nation is a result and based on this convention as it talks about how every nation is to show provide aid and assistance to a refugee or one seeking asylum at every possible time regardless of the conditions being present, and cannot be subject to forced return as such being following non-refoulement, if the refugee has a fear of torture if he goes back to the country of origin unlike the Refugee Convention which specifically talks about how the concept of non-refoulement is to be brought into picture only when the refugee or one who seek asylum has fear of persecution if he goes back to his country of origin be in regard to race, nationality, membership in a social group, religion, or political opinion.

2. The Convention on the Rights of the Child

This is one convention which is the most popular and applied by almost every country in the world. This convention takes into account all the children against whom no such discrimination of any manner should be conducted be it for the refugees or those children who seek asylum in host nations. It emphasizes as to how every child has been entrusted with basic right of a better future being protected from acts of inhumane nature and provided with assistance in every manner so to assure a better future for them.

So the protection of refugees goes hand in hand with protection of their basic human rights which entrusts upon them the status of being a human regardless of them being status of a refugee by a nation or not.

⁹¹ Fact Sheet No. 20, Human Rights and Refugees, (October 2012) available at: <http://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>

4.4. Violations of Human Rights

After the end of World War II all the nations of the world were aimed towards assuring better protection to the refugees and providing assistance to them in every possible manner as they are the actual victims of war. Several agencies were set up in order to work towards achieving the same and the Commission of Human Rights being one of the most prominent one.

The commission with time has excluded its ambit to even bring under it the issues of displaced persons and works in accordance with the UN General Assembly to get detailed information and reports about the questions and issues of human rights violations and mass exoduses, which is done by the Special Rapporteur which the Secretary General appoints.

Initially in the year 1982 the first report was presented by the Special Rapporteur which dealt with all the issues being faced by refugees and victims of war be it inhumane treatment, misery, cruelty or human deprivation, and for such various solutions and suggestions were put in and also welcomed from the members.

It is to be understood that the basic reason behind as to why people leave their country of origin in search of new place to start their life is the violations of human rights which happened back in their country of origin due to which they had no other option rather than to leave it, and even after going through so much of pain in order to cross international border and reach some other nation where they are treated the same and violations of their basic human rights is done, then what is the difference between their country of origin and the host nation.

Not allowing these refugees to enter their nation is the cruelest form of violation of human rights where the nation not even allow the victims to enter their territory, and even if they allow then it is based on several procedural measures which needs to be followed which makes the entry almost impossible for the refugee as not being complying to their visa/ permit system being set up by the host nation.

After fulfilling all the procedural formalities when these refugees are given the visa/ permit to enter the borders in order to seek asylum they are subjected to various forms of ill treatment be it discrimination, torturous acts, physical as well as sexual assaults, child labor and most of the times live under fear of internal revolts amongst refugees

as well as from the local people of the host nations. The concerned government authorities are also not cooperative with them and most of the times the refugees being at no fault are subjected to unlawful detention and arrest. They are forced to go back to their country of origin regardless of the practice of non-refoulement being in existence.

The Refugees are being subject to attacks and abuse in the places being given asylum and due to timely attacks on these refugee camps many are killed and several being seriously injured. They are the easiest target for racial attacks and forced to go into the criminal world where mostly the children are given arms and tricked into doing horrifying acts.

It is not easy for the refugees to have a secure life as they are always subjected to one or the other form of cruelty regardless of the place of their stay, so it is important for the host nations to ensure that the refugees are given protection being physical as well as psychological where they should have a sense of security as to where they are living.

The world needs to understand that the life of these refugees have been very difficult and it is their duty to ensure that the refugees who have come to their country in the hope of a better future should be given utmost care and protection, and be made to feel at home. The role of several agencies is also highlighted here as they should keep a track of all these places where such violations of human rights take place and step necessary actions be it with the support if the local governments or not to protect the refugees from such inhuman and cruel attacks.

5. PROBABLE FUTURE OF REFUGEES

One of the biggest problem which the whole world is facing right now is how to address the refugee crisis which is continuing in several countries and Syria being the most vulnerable one. The daily rising numbers and needs of the Syrian people seeking asylum in neighboring countries is increasing day by day and it is becoming very difficult for the host nations to fulfill their needs and its obligations towards the refugees.

It is high-time when all the countries should come together to solve this ongoing massacre which is continuing in Syria and unless that is done there is no stop to people being crossing international borders in hope of a better future.

These people are severely hit by poverty and have been subject of several human rights violations because of which they flee their country of origin as they fear if they live there only then would be face cruelty and inhumane treatment. There is a need to reach diplomatic solution by means of mediation so that between the conflicts of the government and some rebel groups, the common people of that country should not be made a subject of it who regardless of doing anything is being affected by it mostly.

The countries all around the globe needs to come in together to work in a uniform manner and in a single direction to set up legal framework to provide aid and assistance to the refugees and also to find permanent solution to deal with the increasing number of refugees, and the first step as also highlighted by the *Inter-Parliamentary Union*⁹² is to set up standards of proving basic humanitarian assistance to the refugees for which they need to set up internationally accepted legal standards to be complied by all and as the first step need to implement the 1951 Refugee Convention and 1967 Protocol within their legal boundaries.

Rather than coming up with new piece of legislations it is necessary for the countries to draft one single document addressing all the issues of the refugees as well as the

⁹² A global inter-parliamentary institution been established for all the parliamentarians to come in order to address the issue faced by humans at global level, information available at: <http://www.ipu.org/english/home.htm>

host nations upon which the country needs to work upon and be the basis of all future actions to be taken by the host nation, like in case of the EU where we see several declarations and directives being brought into existence with the passing of time and mostly one in many circumstance contradicts with other and also the internationally accepted customary principals.

Other countries who are not affected by the mass influx of people as being far away from the refugees country of origin where the refugees do not make any such application for asylum, should not consider it be an issue of the host nations only as this is the only time when one needs to co-operate with other countries and provide assistance to these host nations in every possible form be it funding or accepting some refugees to be resettled within their jurisdiction.

UN is to work with several other agencies be it governmental or non-governmental to provide a structure as per which funds are transferred from the helping countries to the host countries in order to lessen their burden and share their responsibilities. The amount of efforts which the host nations put in to accommodate these refugees cannot be calculated in terms of money because from monetary support to provide them with food, clothes, shelter etc. to the efforts which the host nations put in from proper documentation to providing protection, medical facilities and setting up health care centers to treat the diseases which these refugees end up carrying with themselves after being faced to so inhumane treatment in their country of origin as well in the journey which they undertake to reach international borders. These refugees are not to be send back and the host nations to abide by the principal of non-refoulement.

When we talk about the EU the situation has not been easy and there is need for all the members to come in together to face this challenge and provide durable solutions to it. The member nations are under an obligation to work in accordance with the EU charter on the Fundamental Rights being granted to Refugees as well as other Directives being issued by the EU, to which most of the members have abided to.

Many members of the EU have not provided substantial assistance as required by the refugees and are reluctant enough to even allow them to resettle in their territory like the Greek government.

There is high need when all the member nations should come up with a standardized and universally accepted legal framework which needs to be followed by all the member nations, and in doing so they need to accept the 1951 Refugee Convention, 1967 Protocol and also the Dublin Regulations.

As there is no stop to the refugee entering the EU so the EU should come up with a standardized entry procedure where proper visas and permits should be issued to those who qualify as refugee and need it the most after proper documentation and entry standards as should be laid down by the EU.

Being given the permit to live these refugees need to be treated in a humanly manner and sense of protection is necessary for them to ensure that live without fear as they used to be always under the fear of persecution in their own country of origin so the refugees need to be treated properly and should be subjected to cruelty or torture of any kind, moreover they need to give medical facilities as well as be provided with education for the children which form a part of the mass influx which the EU receives and also no practice of discrimination should be done.

There is a need of a common agency which will take into account these applications for asylum, monitor the borders and also provide measures of resettlement and other assistance which the refugees need, rather than several systems like the SIS, Frontex and several other being set up by the EU which leads to problem while working and half of the times burden is shifted from one department to another.

A proper transportation system also needs to be set up where the refugees travelling to EU through air or water means should only be transported and allowed to enter the EU if they have proper documentations which are required for the EU authorities to help in their resettlement.

It is becoming difficult for the EU members to take in more refugees and as per information published by the UNHCR it was seen that Italy has provided asylum to more than 310,000 people till now and still receiving more application while its accommodating capacity is overcrowded as seen in the case of Greece to, which

allowed more than 200,000 refugees to seek asylum in its territory in the year 2015 only⁹³.

It is not easy for the refugees to enter the EU and no entering the Greece to seek asylum, in most of the situation Greece has failed to provide adequate living means to the refugees and other requirements were not meet which are essential for any human being to live a proper life, and in response of the same it was seen the it became difficult for the member to maintain the refugees which led to revolts and deaths of many refugees, this also took the turn when several refugees got involved in the criminal world in order to meet their daily basic needs.

The refugees in states like Greece and Italy are treated in a very cruel and inhumane manner where the refugees are subjected to several torturous acts and discriminated regularly.

The existing CEAS as explained earlier in chapter 3.5 needs to be modified in order to deal with all the issues explained above and each member nation of the EU needs to adopt it as the standardized uniform system on basis of which the application needs to be processed and proceeded upon.

Several proposals have been given by the UNHCR in order to address the issue and taking in the problems faced by the EU and after consultation with it.

A separate emergency relocation scheme is to be implemented according to which the refugees who seek asylum in EU specifically Greece, Italy and Hungary, which is not able to accommodate them will prepare a relocation scheme as per which the other EU member nations would accept such nations and the whole EU would come in together to provide aid and assistance to them in every way possible be it in monetary terms or through other resettlement options.

There is a need to combat the internal conflicts going on within the refugees as being discriminated by them on basis of race, caste or religion, as such have worsened the conditions within the refugee camps and several conflicts are seen in which a large number of refugees are reported injured and dead.

⁹³ Source UNHCR, dated 28th August 2015, available at: www.unhcr.org/55e033816.html

The situation of Syria is nowhere seem to be improving and is getting worsened day by day as other nations have transformed this serious crisis into a political agenda where every nation is trying to reap some benefits out of it.

Most of the nations like Russia and U.K also have started initiating air strikes on Syria in order to hit the targets which they find to be serious and dangerous regardless of knowing what lies beneath the air in that area.

Russia is one major nation which has continuously stroked Syria so as to eliminate the camps and base of those who are revolting against the government but it is crucial to understand that within these people raising a revolt and being given arms, most of them are those who have been forced to join this war specially children who regardless of knowing anything have been pulled into the middle of the war where their life has been spoiled and they been at such a stage not able to judge the good and bad have been given arms.

UN has been a major role player in provide aid and assistance to the refugees and also initiating several peace campaigns to address the Syrian crisis. On the 1st of February, 2016 an *International Syria Support Croup (ISSG)* was constituted by the UN in order to initiate peace talks with the Syrian government but the same was suspended two days later only. Again after several debates and initiatives taken by the UN the peace talks were resumed on the 14th of March, 2016 and a lot of suggestion and solutions were put forward by both the Syrian government as well as the UN diplomats which are still expected to come into the real life one day.

After addressing such issue we can come to reach a platform where every country will work in one direction in order to provide aid and assistance to the refugees moreover there will a spirit of co-ordination and responsibility sharing between the nations of the world where the problems of refugees would be addressed by every nation in which other nations will bring in the required support. We need to reach a stage where we stop thinking like a nation or a government, and start thinking as a human then only we will be able to understand and address the issue of another human being.

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