

## Comments and Short Communications

### **Refugees and Migratory Movements in South Asia<sup>1</sup>**

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There is nothing like home. Allegiance to one's home is common to both man and animal. In our verbal culture there are quite a few pithy saying eulogising the home, the home sweet home. A brick of the homestead is an altar of God. Mother and motherland are higher than the heaven. A dog does not leave the village, a fish does not leave the pond. Alas, because of the evil in man, a home suddenly turns out to be a burning hell. An exodus starts.

Next year we shall observe the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights. This year, as of January, the total number of people who have been forced to flee their homes is more than 50 million, of whom 30 million are internally displaced. Only one-fourth of the total number of the world's refugees, a little over 13 million is getting some care or protection from governments and the United Nations High Commissioner for Refugees (UNHCR). The sun does not now set in the world of refugees. This expression is not one of pride in the imperial tradition. This only highlights a deplorable world-wide phenomenon.

The plight of refugees has always aroused compassion in man. In Islam there is a great tradition for the hegira. God has created this world wide enough for an asylum-seeker for running away from persecution. God's world is not, however, wide enough today. It has shrunk into numerous states each one separated from the other by frontiers and legal barriers. Ideological divide, partitions of countries, racial jingoism and ethnic exclusiveness have exacerbated the plight of minorities. As the electoral process is progressively getting polarised on race or religious grounds, the minorities are finding themselves doomed to a permanently minority status.

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<sup>1</sup> The paper is reproduced from the address by the author at the Fourth Regional Consultation on Refugees and Migratory Movements in South Asia held in Dhaka on 10 November 1997.

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Every country in South Asia has sad experience of producing refugees or receiving them and in many a case both. Throughout its history Bangladesh received refugees whenever there was political turmoils in the neighbouring regions. After independence in 1947 this country received thousands of Muslim refugees from India. About 3 millions of Hindus on the other hand, left this country for India. In 1971 about 10 million Bengalees themselves took refuge in India. Between 250,000 to 300,000 Biharis who opted for Pakistan are still living in refugee camps. Thousands of Rohingyas from Myanmar came to Bangladesh in 1978 and 1991. There are reports of fresh influx of refugees, not on earlier larger scale though, in July 1997. After the construction of Kaptai dam about 40,000 internally displaced persons from Chittagong Hill Tracts went to India. In the eighties a large number of tribals from Chittagong Hill Tracts left for India as relation between tribals and Bengalees worsened.

In Bangladesh we have been working on a policy of good neighbourliness and taking sustained efforts in solving refugee problems. We accorded free access to UNHCR in May 1993 to ensure voluntary repatriation of Rohingya Refugees. UNHCR is discharging an uphill task with tact, skill and compassion. For the familiarization of the international standards as to the status of refugees amongst government functionaries and local people, the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the status of Refugees has been translated into Bangla. There are now 21 thousand Rohingya refugees staying in camps. Tribal refugees are coming back home. We hope a durable solution will soon be worked out so that no citizen of this country will in future be compelled to seek asylum elsewhere.

Refugees in desperation stream toward a neighbouring land primarily because of its proximity to their home, without thinking it over whether the country of asylum is in a position to receive them or not. As the crisis is not of the country of asylum, the responsibility can not be of that country alone. International burden-sharing is voluntary today. We may consider whether a non-derogable provision of burden-sharing can be evolved.

The need for organized international assistance to refugees is felt by most of the countries of the world and as of now 134 countries are parties to either or both of the 1951 UN Convention on the Status of Refugees or 1967 Protocol to the Status of Refugees. We should not alienate ourselves from the idea of having a single international body to oversee the cause. Not only for easy sharing of burden, but also for exchange of information

and skill in facing an influx of refugees there is no alternative to a single international body. We very much feel the necessity of establishing national as well as international body to look after the issues of refugees ensuring treatment of refugees at a recognised international standard.

One of the directive principles of the State policy of Bangladesh is that the State shall base its international relations on the principles for respect for international law and the principles enunciated in the United Nations Charter and shall strive for the renunciation of the use of force in international relations. From this can it be said that article 14(1) of the Universal Declaration of Human Rights, which states that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution”, is binding on us?

Our Foreigners Act, 1946 gives seemingly absolute right to the Government to expel foreigners from territory of Bangladesh. Provisions of the Foreigners Act and Passport Act do not make any difference between asylum seekers and other aliens. In spite of these provisions that limit the rights of asylum seekers I am happy to point out that a large number of justiciable human rights Articles 31, 32, 33, 34, 35 and 44 of our Constitution are available to non-citizens as well. I must refer to Article 31 which says that apart from citizens every other person for the time being within Bangladesh has “the right to enjoy the protection of the law and to be treated in accordance with law, and only in accordance with law, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”. Still we must not lose sight of the fact that we do not have any legal framework for refugee protection.

Financial constraints and administrative deficiencies apart, there is a lack of preparedness in every State of South Asia to take upon itself any international obligation with regard to refugees. I do not know all the reasons, there may be some weighty ones, for which the governments in this region are still being advised not to accede to the 1951 Convention.

I believe the legal, judicial and administrative community of Bangladesh are committed to foster a permanent institutional structure to oversee the issues of refugees. This is evident from the fact that though Bangladesh lacks a formal legal framework for refugee protection and, like other states in South Asia, has not yet acceded to the 1951 Convention or