THE POSITION OF NON-PARTIES TO THE REFUGEE CONVENTION

BY

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PART I: INTRODUCTION

The international source of refugee law is basically conventional, with the Refugee Convention of 1951[1], coupled with the Protocol of 1967[2] representing the most current and universal effort at formulating rules of law on refugees. However, not all members of the World Community of States are parties to this Convention. This situation raises a number of legal problems, especially in recent years when the incidence of refugees has been on the increase. For example, none of the States in South East Asia that are bearing the brunt of the exodus of the Indo-Chinese refugees is a signatory to the Refugee Convention.[3]

The foregoing observation has direct relevance to Papua New Guinea. Papua New Guinea is not a party to the said convention and yet it has been faced with the exodus of refugees across its border from West Irian. The recent cases of Jacob Prai and Otto Ondawame should not be seen in isolation. These cases clearly illustrate the legal problems that may arise in this regard.[4]

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1 189 United Nations Treaty Series, 150.

2 See UNHCR Document MHCR 217/66.

3 For a complete list of signatories and non-signatories to this Convention as at 1 January 1979, see Human Rights International Instruments, R/4/Rev. (UN) ST/HR/4/Rev.1.

4 Jacob Hendrich Prai, Otto Ondawame v. An Officer of the Government of Papua New Guinea, National Court Unreported Judgment NC 182 of 7th December 1978, Supreme Court Unreported Judgment SC 155 of 6th August 1979. The issue of the defendants' refugee status was not raised in these cases, although had the case been

The purpose of this paper is therefore to analyse the position of non-parties to the Refugee Convention. The analysis will consider first, the position under the law of treaties and second, the position under the human rights provisions of the United Nations Charter and the Universal Declaration of Human Rights.

PART II: THE POSITION UNDER THE LAW OF TREATIES

The principle *pacta tertiis nec nocent nec prosunt*, i.e., that no treaty may impose obligations upon a state which is not a party to the said treaty, is a well-known one in international law.[5] Article 35 of the Geneva Convention on the Law of Treaties restates the rule that 'a treaty does not create either obligations or rights for a third state without its consent'. The reason for the above-mentioned principle may be found in the fundamental rule of the sovereignty and independence of states, which provides that states must consent to rules before they can be bound by them.[6]

Thus, considering the Refugee Convention of 1951 in terms of the foregoing principle, it may be concluded that non-parties to it are under no legal obligations flowing directly from the Convention towards refugees.

In certain respects, however, it appears that the *pacta tertiis* principle is qualified by some other considerations. In recent times, there has been an enormous increase in multilateral treaties 'which may broadly be described as "law-making" - that is to say, treaties which establish international standards of behaviour rather than circumscribed contractual relations. While it may well be that basically the legal consequences flowing from law-making treaties and

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argued, it would have been an issue in a complaint lodged by Prai and Ondawame under Sections 42(5) of the *Constitution*: see MP of 1979, National Court Unreported Judgment N184 of 2nd March 1979. This case was never argued as the complainants accepted asylum in Sweden.

5 Higgins, The Development of International Law Through the Political Organs of the United Nations (1963), 317.

6 Shaw, International Law (1977), 360

other more traditional forms of treaty are identical, it nonetheless now seems undeniable that some treaties aim at recording a common intention to create a state of affairs to be observed at least in principle by all states'[7]. In the *Reservations*[8] case, the International Court of Justice observed that the Genocide Convention was purely humanitarian in character, causing the contracting states to have no interest of their own but a common interest. In the words of the court:

> The Convention was manifestly adopted for a purely humanitarian and civilizing purpose ... In such a Convention the contracting states do not have any interest of their own, they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'etre* of the Convention .... In a Convention of this type, one cannot speak of individual advantages or disadvantages to states ...[9]

Though the Court was specifically referring to the position of states who made reservations to some Articles in the Genocide Convention, it is arguable that the same principle may be applied to non-parties to Conventions of purely humanitarian nature such as the one in question. As McNair observes, certain treaties have effects which are not limited to the contracting parties on two grounds, namely: (a) that the parties intend to offer to third states the rights and benefits which are in course of time expressly or by implication accepted and therefore enforceable by the third states; (b) that third states may come to accept as rules of customary international law principles that were in their inception binding only upon the states that had expressly accepted them in the form of a treaty.[10] It is however preferable to admit that the effects of certain kinds of treaties are to be attributed to some inherent and distinctive judicial element in those treaties, and in some cases, because of the 'dispositive' or 'real' character of the transaction effected by the treaty, and in others, because of the semi-legislative authority of

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7 Higgins, *op.cit.* 318.

8 Case Concerning Reservations to the Genocide Convention (1951) I.C.J. Report 23.

9 *Ibid.*

10 McNair, The Law of Treaties (1961), 255.

groups of states particularly interested in the arrangements made.[11]

The International Law Commission on the other hand is of the view that the source of the binding force on non-party states of many rules originally laid down in treaties is custom, not treaty.[12] In other words, a treaty which is declaratory of an existing rule of customary international law is binding on non-parties by virtue of that fact. A treaty may expressly refer to a rule of customary international law and recite a declaration by the parties that they recognize the rule as such. The preamble to the Geneva Convention on the Law of the Sea 'adopted the following provisions as generally declaratory of established principles of international law'.[13]

There is also a view that if states habitually make treaties undertaking certain obligations towards one another, then these treaties may be cited as authority for the existence of a rule of customary international law.[14] This view has however been rejected in some cases. In the *Lotus* case, for example, the Permanent Court expressed doubts whether a stipulation found in several treaties may be regarded as expressing a general principle of international law.[15] The Report of the Committee of Jurists on the *Aaland Islands* also was of the view that the recognition of the principle of self-determination in a certain number of treaties cannot be considered as sufficient to put it upon the same footing as a positive rule of the

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11 *Ibid.* See Judge McNair's concurring opinion in the International Status of South West Africa Case (1950) ICJ Reports 128, 153-55.

12 See Draft Articles on the Law of Treaties, Articles 34, Commentary, Paragraph 2, in (1966) 2 Yearbook of International Law Commission, 231. See also Article 38 of the Vienna Convention on the Law of Treaties.

13 See 13 UST 2314 (1958). The treaty between the U.S. and U.K. also provided in Art. 1 of their Agreement of Jan. 23, 1904 concerning the prevention of smuggling of intoxicating liquors that it was their 'firm intention to uphold the principles that 3 marine miles extending from the coast-line onwards measured from low-water mark constitute the proper limits of territorial waters'. See 43 Stat. 1761.

14 D'Amato, The Concept of Custom in International Law, (1971), 119-120.

15. PCIJ Series A, No. 10, 27.

law of nations.[16] Also, in *West Rand Central Gold Mining Company* v. *The King*, it was stated that the reference which some writers make to stipulations in particular treaties as evidence of international law is as little convincing as the attempt to establish a trade custom by merely adducing evidence of particular contracts.[17]

It is submitted that the correct position should be that treaties, like other forms of state practice, may develop into rules of customary international law binding on all states regardless of whether they have been parties to the original treaty or not provided this is accompanied by the necessary *opinio juris* . Akehurst cites three grounds on which *opinio juris* may be present in a treaty[18]: (a) when a treaty provides for action affecting third states; (b) when the treaty contains statements in its provisions or in the *travaux preparatoires* about customary law; and (c) when statements are made subsequent to the treaty either alleging that customary law was the same at the time of the treaty's conclusion, or that customary law has fallen into line with the treaty at some time after the treaty's conclusion.

From the foregoing, it is arguable that the invocation of the provisions of a treaty against a third state which is not a party to it must be justified on two grounds, namely, that customary law coincides with that provision or by virtue of the rules of the law of treaties which occasionally allow a treaty to create rights or obligations for third states.[19] Article 38 of the Vienna Convention on the Law of Treaties also states the rule that 'nothing in Articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third state as a customary rule of law, recognised as such'.

It is submitted that the words "recognised as such" in Article 38 of the Vienna Convention on the Law of Treaties imply that rules laid down in treaties could not by themselves transmute automatically into customary law rules.

There is support for the above argument in the *North Sea Continental*

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16 See League of Nations, Official Journal, Special Supplement, No. 3 (1920), 5.

17 /1905/ 2 K.B. 291, 402-405.

18 Akehurst, 'Custom as a Source of International Law', Vol. XLVI British Yearbook of International Law (1974-1975) 1, 44.

19 Id, 49.

Shelf case [20], despite some apparent ambiguities. In this case, Denmark and the Netherlands argued that a rule of customary law, identical to the rule contained in Article 6 of the Geneva Convention on the Continental Shelf had come into being since the Convention, partly because of the Convention's impact, and partly on the basis of subsequent practice. In reply, the Court said that with regard to the elements usually regarded as necessary before a Conventional rule can be considered to become a general rule of international law, it might be that a very widespread and representative participation in the Convention would itself suffice.[21]

How may the foregoing analysis be applied to the Refugee Convention of 1951? In the first place, it is submitted that the said Convention is not a codification of existing rules of customary international law. It became necessary to conclude agreements on the status of refugees after the First World War precisely because of the fact that there were no relevant rules of customary international law on the subject. There is also no evidence in the Convention or in its *travaux preparatoires* to the effect that the Convention codifies or is declaratory of existing rules of customary international law.[22]

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20 (1969) ICJ Reports, 3, 41, 42.

21 *Ibid.* In the case at hand, the Court found that the 'equidistance/special circumstances' principles for the delimitation of the continental shelf failed to meet the criteria. The Court found that Art. 6 of the Continental Shelf Convention was not norm-creating because the number of states participating in the Convention, although respectable, was hardly sufficient and that subsequent state practice did not povide conclusive evidence of an *opinio juris*.

22 Compare *The North Sea Continental Shelf Cases* (1969) ICJ Reports. In these cases, Denmark and the Netherlands argued that the development of a customary law rule of delimitation, corresponding to Art. 6 of the Geneva Convention on the Continental Shelf had emerged by the signing of that Convention. They were unable to cite any statement in the Convention or in the *travaux preparatoires* to that effect. The Court however said that there is a statement in the *travaux preparatoires* indicating that Art. 6 was proposed with considerable hesitation, on an experimental basis, at most *de lege ferenda*, and not at all *de lege lata* as an emerging rule of customary international law. See statement of Judge Morelli, (1969) ICJ Reports 197.

On this basis, it is strongly submitted that the Refugee Convention of 1951 did not codify existing rules of customary international law nor did it reflect existing rules of customary international law. Therefore, non-parties to it may not be bound by it by virtue of this fact.

If the Refugee Convention of 1951 did not reflect or codify existing rules of customary international law, can it be argued that the various arrangements concerning refugees and the Refugee Convention of 1951 have led to the emergence of customary law rules on the subject? In order for this to be the case, it should be established that non-parties to the Convention have been applying the provisions of the Convention as if they were parties to it. This should be accompanied by the necessary *opinio juris*. Furthermore, as the Court said in the *North Sea Continental Shelf* Case,[23] there should be a widespread and representative participation in the practice. There is some evidence to the effect that some states which were not parties to the Refugee Convention have in recent times acted in a manner consistent with the provisions of the Refugee Convention.[24] It is however doubtful whether this is being done with the necessary *opinio juris*, or because of humanitarian and political considerations. Even if this practice is coupled with *opinio juris*, it is doubtful whether this amounts to a widespread and representative participation to give the Refugee Convention the character of custom.

One may however discern a growing interest and concern for refugees. Mention should be made specifically of the activities of the United Nations High Commissioner for Refugees and the conclusion of the Organization of African Unity (OAU) Convention relating to refugees.[25] It is arguable that these developments provide evidence of the recognition by states of certain obligations vis-a-vis refugees. It should however be admitted that the growing recognition by states of the international nature of the refugee problem may not yet be said to have developed into a customary rule of international law for lack of widespread and repetitive practice, coupled with *opinio juris*. At

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23 *Ibid*.

24 Reference is being made specifically to the Southeast Asian Countries in relation to the Indochinese 'refugees'.

25 See 8 International Legal Materials (1969) 1288.

best it may be said as the Court did in the Reservation Case[26] that the Refugee Convention was adopted for humanitarian and civilizing purposes and that the Contracting States do not have any interest of their own but a common interest, thus recording a common intention which creates a state of affairs to be observed at least in principle by all states.

PART III: 'REFUGEEHOOD' AS A HUMAN RIGHTS CONCEPT

We may also consider the obligations of non-parties to the Refugee Convention in terms of the human rights provisions under the UN Charter and under the Universal Declaration of Human Rights.[27] This involves consideration of two issues: (a) whether the concept of refugeehood may be considered as a human right concept under the UN Charter and other UN documents on Human Rights, especially the Universal Declaration of Human Rights; and (b) whether the Charter and the provisions of the Universal Declaration of Human Rights are legally binding on states which are parties to the UN Charter.

Human rights standards have in general made considerable progress since the end of the Second World War. In the Charter of the UN, one can identify a number of instances in which express reference is made to human rights. In the Preamble to the Charter, members of the UN reaffirm their 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. Members are also determined 'to provide social progress and better standards of life in larger freedom'. Various Articles also refer to human rights and fundamental freedoms. Articles 1, paragraphs 3 [28], 13(1)(b) [29],

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26 (1951) ICJ Reports, 23.

27 It is not intended to discuss the case for and against Human Rights as a binding obligation under the UN Charter and the Universal Declaration of Human Rights in detail.

28 The Article is designed 'to achieve international co-operation ..... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'

29 This Article empowers the General Assembly to initiate studies

55(c)[30], 68[31] and 76(c)[32] have demonstrated interest in human rights issues beyond dispute.

Reference may also be made to the Universal Declaration of Human Rights which was adopted on 10 December 1948 as a resolution of the General Assembly.[33] The Preamble to the Universal Declaration of Human Rights states that recognition of the inherent dignity and of the equal and inalianable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It also recalls the pledge of Member States of the United Nations Charter to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms.

Among the basic rights and freedoms listed in the Declaration of Human Rights are the right to life, liberty and security of the person[34], rights against slavery[35], torture, inhuman and degrading treatment or punishment[36], arbitrary interference with a person's privacy, family, home or correspondence, as well as attacks on honour

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and make recommendations for the purpose of 'assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

30 The Article emphasises the link between the 'peaceful and friendly relations among nations' and the 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.'

31 Article 68 states that 'the Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights ...'

32 The Article refers to one of the basic objectives of the trusteeship system, i.e., ' to encourage respect for human rights and for fundamental freedoms...'

33 See Official Records of the UN Third Session of the Ceneral Assembly Part 1 (A/810)71.

34 See Article 3 of the Universal Declaration of Human Rights.

35 See Article 4 of the Universal Declaration of Human Rights.

36 See Article 5 of the Universal Declaration of Human Rights.

or reputation[37], arbitrary arrest, detention or exile[38] and arbitrary deprivation of property[39]. Specific mention should be made of Article 14 which is directly relevant to the refugee. The article provides that 'everyone has the right to enjoy in other countries asylum from persecution.'[40]

It should however be stated that the human rights provisions under the United Nations Charter are only set out in general terms, thus making it difficult to determine with certainty what specific rights are included. However, the Universal Declaration of Human Rights sets out in unambiguous terms the specific rights and fundamental freedoms to be protected. It is arguable that the rights mentioned in the Universal Declaration of Human Rights are amplifications of the general rights mentioned in the United Nations Charter. The two documents should therefore be read together in order to understand the precise scope of the human rights provisions under the United Nations Charter[41].

There should be no problem in interpreting these provisions to cover the concept of refugeehood. In the Preamble to the Refugee Convention of 1951, it is stated that the Convention was concluded considering *inter alia* 'that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination', and also 'considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms .....', and 'expressing the wish that all states, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between states'.

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37 See Article 12 of the Universal Declaration of Human Rights

38 See Article 9 of the Universal Declaration of Human Rights

39 See Article 17 of the Universal Declaration of Human Rights

40 This Article however does not mean that everyone has the right to obtain asylum in the country of his or her choice.

41 See generally Godwin-Gill, International Law and the Movement of Persons Between States (1978), 71.

That the legal and social problems facing the refugee demand humanitarian considerations need not be emphasized. The special position of the refugee is due to a number of factors. Refugees are faced with the problem of lack of an effective nationality. They cannot take advantage of consular or diplomatic services for protection or advice. They often lack the necessary documents and cannot comply with the formalities imposed on aliens for the enjoyment of certain rights in their country of residence[42]. It is therefore submitted that the problems of refugees deserve to be treated in accordance with the principles of justice towards mankind, the denial of which will constitute a violation of human rights under the United Nations Charter, and that the refugee problem is to be regarded as international in scope and character. Consequently, it is submitted that the responsibility for the international protection of refugees rests with the internatioal community, not on parties to the Refugee Convention alone.

Having argued that the concept of refugeehood is a human right concept under the United Nations Charter, we are nevertheless left with the question whether the human rights provisions of the Charter and the Universal Declaration of Human Rights create for the member states of the United Nations any specific legal obligations.

The case for human rights as a legally binding obligation under the United Nations Charter and the Universal Declaration of Human Rights is however shrouded in confusion and uncertainty.

A number of writers maintain that the human rights clauses in the Charter are without legal force. These provisions have been variously described as redundant[43], a programme of principles[44], a statement of purpose and aims[45] or an obligation merely to co-operate with the organization on the international level[46]. The reasons for these

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42 See the Report of the Asian-African Consultative Committee on the Rights of Refugees, September 1969, 11.

43 Kelsen, The Law of the United Nations (1950), 100.

44 Kunz, 'The United Nations Declaration of Human Rights' (1949) 43 American Journal of International Law, 316, 317.

45 Hudson, 'Integrity of International Instruments' (1948) 42 American Journal of International Law, 105, 105-108.

46 Hudson, 'Charter Provision of Human Rights in American Law" (1950) 44 American Journal of International Law, 543, 544.

conclusions focus on a number of issues, mainly (a) the meaning of the phrase 'pledge to co-operate' in Article 56[47], (b) the non-intervention principle of Article 2(7)[48], (c) the failure to provide for compulsory powers of the United Nations on human rights[49], (d) the failure to specify particular human rights and fundamental freedoms in Article 55(c)[50].

The objection to the Universal Declaration of Human Rights is equally strong. It is argued that the Universal Declaration merely enunciates certain principles[51], that no state may be held responsible for an act of state merely because it is contrary to a provision in the Declaration[52], that the Preamble to the Declaration explicitly proclaims it as a common standard of achievement[53] and that it is merely a declaration which has no legal force[54].

On the contrary, it is argued that there is a clear obligation in the United Nations Charter for the member states to promote respect for human rights and fundamental freedoms[55]: It should be noted that the United Nations Charter contains express obligations on member states to respect human rights. Thus, Article 56 provides that 'all members pledge themselves to take joint and separate action in co-operation with the Organizations for the achievement of the purposes set forth in Article 55'.[56]

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47 Kelsen, *op. cit.*, 99-100.

48 *Ibid.*

49 *Kemp v Rubin*, 188 Misc. 310, 315.

50 Kelsen, *op. cit.*, 29-30.

51 Grahl-Madsen, The Status of Refugees in International Law, Vol. 1 (1966), 198.

52 *Ibid.*

53 Kunz, *op. cit.*, 321.

54 *Ibid.* See also the dissenting opinion of Judge Tanaka in the *South West African Case* (Second Phase) (1966) ICJ Reports 188.

55 *Ibid.*

56 Article 55 imposes an obligation on Member States to respect and observe human rights in matters of economic and social cooperation.

Though it must be admitted that human rights provisions in the United Nations Charter are phrased generally their incorporation in the Charter seems to suggest that they are binding along with more particular provisions in the Charter. In fact, to insist that the human rights provisions in the Charter are not legally binding 'will result in the curious situation that some provisions of the Charter are binding whilst others are not'.[57]

Again, though it may be admitted that the interpretation of the human rights provisions in the Charter may pose a number of problems, this fact does not detract from their legally binding character. Also, though the human rights provisions in the Charter may lack means of enforcement, this is not an overriding consideration in so far as their legal force is concerned, for, as Garcia-Mora argues, 'clear and definite enunciation of principles may be important from the stand point of the interpretation of an international instrument but this is an entirely different matter from the binding nature of the instrument'.[58]

A number of cases have also recognised the legally binding nature of the human rights provisions under the Charter. In the Advisory Opinion of the International Court of Justice relating to the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court observed that:

> To establish ... and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or nationality or ethnic origin which constitute a *denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter*[59] (Emphasis added).

Also, in the *Barcelona Traction Case*[60], the International Court of

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57 Garcia-Mora, International Law and Asylum as a Human Right (1956), 15.

58 *Ibid.*

59 See the Advisory Opinion of the ICJ, June 21, 1971, (1971) ICJ Reports 16, 57.

60 (1970) ICJ Reports 3, 32.

Justice referred to a category of international obligations which are owed towards the Community of States as a whole. According to the Court, such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression and genocide, and from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.

It is therefore submitted that the United Nations Charter is the cornerstone of international *jus cogens* and that its provisions prevail over all other international obligations. The Charter in Article 103 specifically provides that its obligations prevail over obligations under any other international agreement. The Charter has brought about a change in the international legal system in relation to human rights which can no longer be ignored. For, as argued by Judge Tanaka in the *South West Africa case (Second Phase)*, it is no longer necessary to appeal to natural law in order to support the proposition that basic human rights are established within the realm of positive international law.[61]

It is also submitted that the Charter of the United Nations has introduced the notion of the individual's fundamental human rights into the international legal system and that the obligations of states towards refugees are part of their international obligations under the United Nations Charter, therefore any refusal to participate in providing assistance to refugees constitutes a violation of the Charter.

Concerning the Universal Declaration of Human Rights, it is submitted that its provisions not only constitute an authoritative interpretation of the United Nations Charter in relation to human rights, but also a binding instrument which expresses the consensus of the international community on human rights which each member of the United Nations must respect, promote and observe.

The practice of States and the General Assembly confirm the above submission. The General Assemby has on several occasions used the Declaration as the basis of a code of conduct in urging governments to take measures to promote respect for human rights and fundamental freedoms.[62]

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61 (1966) ICJ Reports 289.

62 For example, in 1949, in a Resolution entitled 'Essentials of Peace', members were called upon to 'promote dignity and worth

The Universal Declaration of Human Rights has also been mentioned in the Preambles of many conventions.[63] Even states which originally expressed doubts about the legal force of the Declaration have not hesitated to invoke it and to accuse others of having violated the obligations of the Declaration. For example, in the *Russian Wives Case*[64], the Declaration was invoked even before it came into effect.

The duty to 'observe faithfully and strictly' not only the provisions of the Charter but also the Universal Declaration has been proclaimed by the General Assembly in a number of resolutions. For example, in the 1960 Declaration of the *Granting of Independence to Colonial Countries and Peoples*[65] reference was made to the Declaration. Similarly, the 1963 Declaration on the '*Elimination of All Forms of Racial Discrimination*'[66], stressed that every state shall 'fully and faithfully observe the provisions of the Universal Declaration of Human Rights'.

Reference should also be made to the statement of the Unofficial Assembly for Human Rights which met in Montreal in March 1968. The Assembly observed that the Universal Declaration of Human Rights constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become a part of customary international law.[67] Similarly, the Teheran Conference on Human

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of the human person, full freedom for the peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the Universal Declaration of Human Rights..' Also in 1965, in a Resolution entitled 'Measures to Accelerate the Promotion of Respect for Human Rights and Fundamental Freedoms', members were urged to make special efforts to promote respect for and observance of human rights and fundamental freedoms as proclaimed in the Universal Declaration of Human Rights.

63 See for example, Refugee Convention of 1951, Convention of the Political Rights of Women (1952) and the Convention on the Status of Stateless Persons (1954).

64 See discussion in the Sixth Committee of the General Assembly, 2-7 December (1948) GOAR, C. 6 718-81.

65 GA. Res. 1514 (XV) 1960.

66 GA. Res. 1904 (XVIII) Nov. 21, 1963.

67 See the Montreal Statement of the Assembly for Human Rights (1968) 9 Journal of International Law Commission of Jurists 94, 95.

Rights, (April to May 1968) observed that the 'Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community'.[68]

From the foregoing analysis, it may be concluded that the Universal Declaration of Human Rights, though only a declaration of the General Assembly and perhaps only 'a common standard of achievement', has since its adoption exercised profound influence in a variety of contexts to have a marked impact on the pattern and content of international law and to acquire a status extending beyond a mere declaration. The use of the Declaration as a yardstick to measure the content and standard of observance of human rights and the reaffirmation of the Declaration and its provisions in a number of treaties has caused the Declaration to gain a legal character.

PART IV: CONCLUSION

That the human rights provisions in the United Nations Charter and the Universal Declaration of Human Rights are legally obligatory under international law should be outside the realm of serious controversy. It has been demonstrated that the concept of refugeehood should be considered as part and parcel of the international obligations of states under the UN Charter and the Universal Declaration of Human Rights. This means that irrespective of whether a state is a party to the Refugee Convention or not, it has an obligation towards refugees under the United Nations Charter and the Universal Declaration of Human Rights.[69] The fact that the United Nations has created the Office of the High Commissioner for Refugees with the Statute of the High Commissioner providing a definition of a refugee in terms almost identical to the Refugee Convention, confirms the obligations of all members of the United Nations towards refugees.

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68 See Final Act of the International Conference on Human Rights, UN. Doc A/Conf. 32/41, 3, 4 paragraph 2.

69 This is not the same as saying that the Convention is binding on non-parties to it, but that it should be regarded as an integral part of the international human rights obligations of states.

The individual is gradually becoming a subject of international law, although this position still remains somewhat confused and controversial. It is also clear from international practice that the refugee has ceased to be *res nullius*. A whole structure of various international instruments, among which the 1951 Convention is the foremost, have led to the gradual emergence of the recognition of the international character of the refugee problem.

These developments have, cumulatively, created the elements of a legal environment whose existence cannot be denied.[70] As Aga Khan observes, 'the main point for us to note is that the refugee today no longer stands alone completely at the mercy of the goodwill of states'.[71]

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70 Khan, 'Refugees and Displaced Persons' (1976), Academie de Droit International 293, 314.

71. *Ibid.*