NATIONALITY STATUS AND LEGAL RIGHTS OF REFUGEES FROM THE FORMER YUGOSLAVIA

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I. INTRODUCTION

From the war room of an elite western military academy, a great Prussian general and military strategist once suggested that war is the continuation of peace by other means and that ultimately, the end of the conduct of war is peace.[1] In defining war, Carl Von Clausewitz formulated that:

> War is a strange trinity composed, firstly, of an inherently original violence which can be likened to a blind natural impulse; second, of the play of probability and chance which make it a free activity of the soul; and finally, of its subordinate nature to the instruments of politics through which it belongs in pure understanding.[2]

In the context of the post-cold war period, the end of the superpower rivalry between the United States and the Union of Soviet Socialist Republic nevertheless, did not bring about an absolutely war-free and peaceful global environment. In place of the cold-war tensions proliferated regional strife characterized not so much by differences in political ideologies but by contrasts in religious views or outright dislike for people along ethnic lines. A post-Berlin wall Europe recently witnessed the virtual disintegration of a modern state: the Socialist Federal Republic of Yugoslavia, and its regression into more primitive, ethnically based communities marked by frequent outbreaks of violence. Ethnic cleansing became the battlecry of combatants in the violence that unfolded and as was often the case, the first casualties of war did not necessarily come from the

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[*] Ll.B., University of the Philippines College of Law (1989).

[1] RAYMOND ARON, CLAUSEWITZ, PHILOSOPHER OF WAR 100 (1976).

[2] CARL VON CLAUSEWITZ, ON WAR (M. Howard and P. Pard, eds., 1976).

ranks alone of the battle-hardened elite front line troops, but from among the civilian non-combatants caught between the deadly firing lines.

In explaining the element of violence in war, Clausewitz stressed that the violence of combatants is not necessarily tempered by the culture of the people because it remains a function of the interests involved.[3] In the case of the former Yugoslavia, the massive refugee outflow was not only the result of war but, as some observers noted, was the defined tactical goal of military operations designed to render an area, by force or intimidation, ethnically homogenous.[4] As one observer had sharply stated: "Ethnic cleansing was a prerequisite for peace."[5] The resulting massive refugee outflow right at the heart of modern Europe revived ancient fears of a meltdown of a state and the possible spillover of the conflict and its effects into the neighboring states.

Taking their cue from the lessons of history, the international community of nations was quick to recognize that refugee outflows and displacement of people of the magnitude presented in the Yugoslavia case, about 3.7 million people,[6] if continued unabated, would have serious destabilizing effects that could threaten European and world peace. The plight of these refugees and the drama of scenes of their massive outflows call for a re-examination of international law principles and approaches to the problem, and underscore the need to provide for an analytical legal support that would serve as a jump off point for evolution of a more pro-active, participatory and multilateral approach to strategically cope with the refugee problem.

At the outset, the definition of the term "refugees" under the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the Convention)[7] and the 1967 Protocol[8] is adopted. Accordingly, the term "refugees" refers to a person who:

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[3] ARON, *supra* note 1, at 196.

[4] Boogda Denitch, *Ethnic Nationalism*, in THE TRAGIC CASE OF YUGOSLAVIA 17 (1984).

[5] George Well, *Morality and Map Making*, WASHINGTON POST, Sept. 7, 1995, at 3.

[6] Thomas G. Weiss, *Dealing with Displacement and Suffering Caused by Yugoslavia's Wars*, in THE FORSAKEN PEOPLE 186 (Roberta Cohen, et al., eds., 1998).

[7] Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 150 (*entered into force* April 22, 1954) [hereinafter Convention].

[8] Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223 (*entered into force* October 4, 1967).

> (2)...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 nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear is unwilling to return to it.[9]

This definition is distinguished from that of *internally displaced persons* (IDPs) which refers to those who, owing to well founded fear of persecution are outside their habitual place of residence but have not crossed an international border.[10] While the number of internally displaced persons is similarly significant in magnitude, the legal regime for their protection principally and effectively remains within the purview of municipal law of the state. As such, they are proper subjects of another study.

A "*stateless person*" refers to a person who is not considered as a national by any state under the operation of its laws. [11]

The term "*citizenship*" is a municipal law concept.[12] Citizenship denotes membership in a political society implying the duty of allegiance on the part of the member and a duty of protection on the part of society.[13]

On the other hand, the term "*nationality*" is an international law concept.[14] Nationality in art. 1(2) of the Convention is interpreted broadly as membership in particular ethnic, religious, cultural and linguistic communities. In his commentary to the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, the constitutionalist Gradani defined the term "nationality" as referring to members of nations whose homelands or native countries border Yugoslavia and for members of other nations living permanently in Yugoslavia but whose ethnic homeland is in some other country.[15]

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[9] *Id.*

[10] Weiss, *supra* note 6, at 189.

[11] Convention, *supra* note 7.

[12] Tommasichio v. Acheson, 98 F. Supp. 166, 169 (1951).

[13] ENRIQUE FERNANDO, PHILIPPINE CONSTITUTIONAL LAW 57 (1984).

[14] Shigeru Oda, *The Individual in International Law*, in MANUAL OF PUBLIC INTERNATIONAL LAW 473 (Max Sorensen, ed., 1968).

[15] GRADANI, CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA (1974).

Nationality status is exclusively for determination by municipal jurisdiction.[16] The existence of a state implies a body of nationals and a population within a relatively well-defined territory. "It is for each state to determine under its own laws who are its nationals. This law is held to be recognized by other states insofar as it is consistent with international convention, international customs and principles of law generally recognized with regard to society."[17]

The principle that municipal jurisdiction determines the nationality status of individuals subject to such limitations consented to by the states in international law was applied by the Permanent Court of International Justice in *the case of the Nationality Decrees issued in Tunis and Morocco.*[18] It was stated therein that "discretion relating to nationality that normally represents an exclusive prerogative of each state may under certain conditions be restricted by some form of international obligation and that in such cases jurisdiction which in principle belongs solely to the state would be limited by the rules of international law."[19]

Citizenship or nationality in the sense of international law, is the status of legally belonging to, and being the subject of, a state, irrespective of the rights and duties which under national law are connected with this status.[20] Under international law, a state has the right to protect its nationals against violations of their interests by another state.[21] A state can only represent a claim on behalf of its own nationals.[22] For purposes of discussion in this paper, the terms citizenship and nationality may be, as recognized by some authors, used interchangeably to refer to persons who are subjects of, and owing allegiance to, a state.[23]

While the determination of an individual's nationality is generally regarded as a prerogative of the state, the jurisdiction of a state on this matter may

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[16] Hague Convention Concerning Questions Relating to the Conflict of Nationality Laws, 1930, 179 L.N.T.S. 89 [hereinafter Hague Convention].

[17] *Id.* art. 1.

[18] Advisory Opinion No.4, Nationality Decrees Issued in Tunis and Morocco, 1924 P.C.I.J. (ser. B) No.4.

[19] *Id.*

[20] LASA F. OPPENHEIM, INTERNATIONAL LAW 643 (1962).

[21] Panevezys-Saldutiskis Railway Case (Est. v. Lith.), 1939 P.C.I.J. (Ser. A/B) No. 76.

[22] D.W. GREIG, INTERNATIONAL LAW 303 (1970).

[23] Dan Albert S. de Padua, *Ambiguous Allegiance: Multiple Nationality in Asia*, 60 PHIL. L. J. 239, 241 (1985).

be restricted or limited by rules of international law.[24] For instance, states do not enjoy the freedom to de-nationalize nationals in order to expel them as non nationals.[25] Neither is there an obligation under international law which compels a state to nationalize non-residents.[26]

Lastly, as used in this paper, the term "*ethnic cleansing*" is defined as "rendering an area ethnically homogenous by using force or intimidation to remove from a given area persons from another ethnic or religious group."[27]

II. SIGNIFICANCE OF NATIONALITY STATUS IN INTERNATIONAL LEGAL ACTIONS

Legal scholars affirm that the nationality status of an individual is the traditional basis and cornerstone of the principle of nationality of claims. Considering that states are the primary possessors of rights and duties under international law, the rights to which individuals may be entitled are derived from the state of which they are nationals.[28] The principle of nationality of claims is rooted in the ancient Roman law principle of *jus protectionis*. Under this principle, a state may take up the case of one of its nationals by instituting international judicial proceedings in his behalf.[29] Thus, the nationality of the individual constitutes the operative link that gives basis for *locus standi* of states over individuals.[30] In the absence of any genuine link of nationality, or *lien effectif*, the state is without jurisdictional basis to anchor its legal personality to assert a claim against another state that had committed a wrong.[31] As such, its legal action may be objected to, and possibly dismissed, due to its lack of *locus standi*. The reason for this is that ultimately it is the state which is the injured party through the injury to its national, and that state alone may demand reparation, as no other nation is injured.[32] Only the party to whom international obligation was due could

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[24] GERHARD VON GLAHN, LAW AMONG NATIONS 202 (1981).

[25] International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR/21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1967) (*adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976) [hereinafter, ICCPR].

[26] Hague Convention, *supra* note 16, in art. 1.

[27] Weiss, *supra* note 6, at 197.

[28] Schnelder v. Rusk, 377 U.S. 163, 165 (1964).

[29] Nationality of Claims (U.S. v. Germany), Annual Digest No. 100 (1924).

[30] OPPENHEIM, *supra* note 20, at 347.

[31] GLAHM, *supra* note 24, at 201.

[32] Nationality of Claims, *supra* note 29.

bring an action in respect of its breach.[33] It is a general principle of international law that individuals have no *locus standi* or legal standing to challenge breaches of international treaties in the absence of a protest by the sovereign involved.[34]

Thus, the determination of the nationality status of an individual is a condition precedent for conferring upon him the legal standing to invoke the protection of the state. Absent this nationality tie, no state would be willing to take up his cause against any government that may have violated his rights: [35]

This right is necessarily limited to intervention (by a state) on behalf of its own nationals because, in the absence of a special agreement, it is the bond of nationality between the state and the individual which alone confers upon the state the right to diplomatic protection and it is a part of the function of diplomatic protection that the right to take up a claim and to ensure respect for the rules of international law must be envisaged.[36]

By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a state is in reality asserting its own rights — its right to ensure, in the person of its subjects, respect for the rules of international law.[37] Generally, states do not espouse a private claim against another state unless in point of origin it possesses the nationality of the claimant nation. The reason for the rule is that the nation is injured through injury to its national, and it alone may demand reparation, as no other nation is injured.[38]

The foregoing jurisprudence establish the principle that nationality status gives an individual the legal standing, on the basis of the principle of nationality of claims, to invoke the duty of his state to assert its jurisdiction before an international forum to seek remedies for injuries to its nationals. Nevertheless, questions arise whenever there are instances when the individual's nationality status is lost, as in cases of refugees from a state that had been extinguished. In such situations, there is confusion with regard to the legal basis for recognizing the *locus standi* of another state in asserting a claim in their behalf.

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[33] Barcelona Traction, Light and Power Co., Limited (Belg. v. Spain), 1970 I.C.J. Report No. 33.

[34] U.S. v. Noriega, 746 F. Supp. 1506, 1533 (1990).

[35] In re: Nottebohm Case (Liech. v. Guat.), 1955 I.C.J. Report No. 465.

[36] Panevezys-Saldutiskis Railway Case, *supra* note 21.

[37] *Id.*

[38] Nationality of Claims, *supra* note 29.

III. EFFECTS OF STATE SUCCESSION

State succession, under the Vienna Convention on Succession of States,[39] is the replacement of one state by another in the responsibility for the international relations of the territory.[40] Even as early as the period of the Golden Age of Ancient Greece, political philosophers, including Aristotle, had already contemplated on the subject of state succession with the observation that " the state is no longer the same."[41]

The case of the former Yugoslavia represents a twentieth century case of state succession whereby the state of the former Socialist Federal Republic of Yugoslavia was extinguished and then succeeded by the new states of Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

While international law generally considers the inhabitants of the former state as having acquired the nationality of the succeeding state,[42] jurists differ, however, in their views on the questions as to when nationality changes take effect and their coverage, that is, who are effectively within the scope of the nationality changes.

In the 1924 landmark case of the *Philippine Sugar Estate Development Co. Ltd vs. U.S.*[43] that was decided during the American regime in the Philippines, it was formulated that "[t]he general rule of international law in regard to all conquered or ceded territory is that old laws continue until repealed by proper authorities."[44] There is, however, no such rule in international law. If the old law continues it is only because the successor state by virtue of its legislative power – tacitly or expressly – allows the old law to continue as its own law, i.e., the law of the succeeding state. Although the content of the law may remain the same, its reason of validity had changed. It is now valid on the basis of the constitution of the successor state, whereas it was valid previously on the basis of the constitution of the predecessor state.[45]

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[39] U.N. Doc. ST/LEG/SEC E/11 (1993).

[40] *Id.*

[41] ARISTOTLE, THE POLITICS (Steven Everson ed.; Benjamin Jowett trans., 1988).

[42] Convention on Reduction of Statelessness, U.N. Doc. A/CONF. 9/15 (1961).

[43] 39 Ct. Cl. 225 (1904).

[44] Philippine Sugar Estate Development Co. Ltd vs. U.S., 39 Ct. Cl. 225, 245(1924).

[45] Philippine Sugar Estate Development Co. Ltd vs. U.S., 39 Ct. Cl. 225, 245, 246 (1924).

Clear from the above decision is the principle of international law that non-political municipal laws, with the consent of succeeding state, continue to have operative effect. The same principle is also further elaborated in the 1911 case of *Vilas v. City of Manila*[46] where it was stressed by the court that:

> It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before and within those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances and regulations in conflict with the political character, institutions and constitution of the new government are at once displaced. Thus... the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing rule and unusual punishments and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property and designed to secure good order and peace in the community and promote its health and prosperity, which are of a strictly municipal character, the rule is general, that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed.[47]

From the foregoing it is clear that non-political municipal laws of the extinguished state, with the consent of the succeeding state, continue to have operative effects until repealed or amended by the succeeding state. The practicality of this generally accepted rule lies in the fact that it serves to avoid gaps or a hiatus in the legal regime with the advent of the new state, thereby continuously extending legal protection on private rights and personal status of the inhabitants. On the other hand, the extinguished state's political laws are deemed *ipso facto* replaced and rendered inoperable because their continued effectivity would be inconsistent with the advent of the new political sovereign state which inherently possesses the unfettered right to impose its own political regime on its territory.

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[46] 220 U.S. 345 (1911).

[47] Vilas v. City of Manila, 220 U.S. 345, 356-357 (1911).

Indubitably, nationality laws of a state partake of a political character because these laws involve the exercise of inherently sovereign power of a state to determine and set the rules for an individual's membership in a state, including the acquisition and loss of political status. With regard to the effect of state succession on the nationality status of the inhabitants of the extinguished state, international law recognizes that the successor state presumptively confers its nationality upon the nationals of the predecessor state residing in the annexed territory at the time of annexation.[48] Applying the foregoing formulation, in a case adjudicated during the Commonwealth era in the Philippines, it was decided that the nationality of the inhabitants of a territory acquired by conquest or cession becomes that of the government under whose dominion they pass.[49] Hence, before the Philippines became independent, the inhabitants of the archipelago were nationals of the United States but not citizens thereof. When the Philippines became independent, all Filipinos became citizens of the Republic of the Philippines and lost their status as nationals of the United States.[50]

There are differing views in international law on the issue of whether the replacement of nationality of individuals takes effect *ipso facto* upon succession of states or only upon fulfillment of certain conditions attached thereto.

One view holds that all inhabitants of the annexed state who are domiciled and remained therein upon its annexation *ipso facto* had become subjects of the annexing state without necessity for an express declaration on their part, and that no option for nationality is possible when the former state disappears completely.[51] The effect is that the subjects of the annexed state are divested of their nationality and invested with the nationality of the new sovereign.[52]

On the other hand, the more conservative view is that in case of universal succession where the entire territory of a state is acquired by another state, the latter is entitled to impose its citizenship on citizens of the conquered state; and that in case of partial succession where mere portions of the territory of one state is acquired by another, the latter is entitled to impose its citizenship only on those citizens of the conquered state who maintain residence on the acquired territory. Treaties of cession often confer upon the inhabitants of the ceded territory the right to decide by a declaration called "*option*" whether they intend to become nationals of the acquiring

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[48] Comment, *The Law on Nationality*, 23 AM. J. INT'L L. 61 (1929).

[49] 1 Op. Dept. of Justice 111 (1940).

[50] Cabebe v. Acheson, Secretary of State, 84 F. Supp. 639, 640 (1949).

[51] Romano v. Comma, 3 Ann. Dig. No. 195 (1926).

[52] WILLIAM HALL, A TREATISE ON INTERNATIONAL LAW 205 (1924).

state or maintain their old nationality.[53] Accordingly, the inhabitants of an annexed or ceded territory do not automatically become citizens of the annexing or cessionary state.[54]

An eminent jurist, Oppenheim, distinguished the effect on the nationality status between inhabitants who remained in the annexed territory upon its annexation and those who are domiciled and had stayed abroad before the annexation. In the case of the latter, they are considered as being outside the sovereignty of the new state and are therefore not its nationals. However, those who remained in the annexed state upon its annexation are deemed to have been conferred the nationality of the new sovereign.[55]

Following closely the opinion of Oppenheim referred to above, in the case of the *United States ex. rel. Schwarzkopf v. Uhl*[56] the court held that:

> ...when [the] territory is transferred to a new sovereign by conquest or cession the inhabitants of the territory become nationals of the new government only by their own consent, express or implicit. This generally accepted principle of international law has been recognized in decision of the Supreme Court. If the inhabitants remain within the territory, their allegiance is transferred to the new sovereign... If they have voluntarily departed before the annexation and have never elected to accept the sovereignty the new government, their allegiance is not so transferred.... If the invaded country has ceased to exist as an independent state there would seem to be all the more reason for allowing its former nationals, who have fled from the invader and established a residence abroad, the right of voluntarily electing a new nationality and remaining "stateless" until they can acquire it. In our view an invader can not under international law impose its nationality upon non-residents of the subjugated country without their consent, expressly or tacit.[57]

Before examining the applicability or non-applicability of the principles enunciated in the aforecited cases to the case of the refugees from the former Yugoslavia, a discussion of the regime of nationality laws then obtaining in the former Yugoslavia, as well as the brief chronology of events that led to the extinguishment of said state, is in order.

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[53] HYDE, INTERNATIONAL LAW 108 (1945).

[54] Mattern, Employment Of Plebiscite In The Determination Of Sovereignty (1920).

[55] OPPENHEIM, *supra* note 20, at 572.

[56] 137 F.2d 898 (1943).

[57] United States ex. rel. Schwarzkopf v. Uhl, 137 F.2d 898, 902 (1943) citations omitted.

IV. BRIEF HISTORY OF THE YUGOSLAVIAN CONFLICT

Geographically situated at the heart of the Balkan region, Yugoslavia holds the distinct position in military history as being the center stage for the unfolding of events that triggered World War I. It is where Archduke Francis Ferdinand, heir to the Hapsburg throne, was assassinated in Sarajevo by a Serb extremist.

In the years following the end of the Second World War, the Socialist Federal Republic of Yugoslavia (SFRY) under the leadership of Josip Broz Tito was constituted and held together under authoritarian control as a federation of multi-ethnic and multinational state composed of six constituent republics, namely, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Serbian nationals held dominant positions in the political and military ranks. With sweeping political and economic changes that took place in Europe in the late 1980's and early 1990's, beginning with the collapse of the Berlin Wall, the collapse of communist regimes in Eastern Europe and followed by the collapse of the Soviet bloc, there was a strong clamor in Yugoslavia for political change and greater political and economic autonomy. The heightened consciousness of ethnic differences was further aggravated when European states gravitated towards their historically patterned alliances among the ethnic groups: Germany and Austria appeared to have sided with the Croats while France, Britain and the United States sided with the Serbs. Ethnic tensions, such as those between the Serbs and the Croats and the Serbs and Ethnic Albanians, were accentuated. Ethnic polarization in politics, which means framing political agenda in ethnic terms, together with the entrance into the political scene of paramilitary groups encouraged by politicians, accelerated the disintegration of Yugoslavia.

In June 1991, Slovenia and Croatia declared their independence. The European Community immediately recognized them as independent states on 15 January 1992. In September 1991 Macedonia likewise declared its independence. Subsequently, Bosnia and Herzegovina in referenda held on 29 February and 01 March 1992 respectively, voted for independence and was later recognized as an independent state by European Community and the United States. Serbia and Montenegro then fused into the Federal Republic of Yugoslavia and was proclaimed as an independent state on 27 April 1992. Croatia, Slovenia, Bosnia and Herzegovina were admitted as members of the United Nations on 22 May 1992. The recognition of these new states, and their membership in the United

Nations, result in their being conferred certain rights and obligations under international law.

In September 1992, the United Nations ended its recognition of the Socialist Federal Republic of Yugoslavia's membership in the UN. This move legally represented a withdrawal of the recognition of the international community of nations of the status of the former Yugoslavia as a state. This finalized the demise of the Socialist Federal Republic of Yugoslavia and on its former territory five new states succeeded namely, (a) Bosnia and Herzegovina (b) Croatia (c) Macedonia (d) Slovenia and (e) Federal Republic of Yugoslavia (Serbia and Montenegro).

The political upheaval in Yugoslavia which ultimately led to the extinction of the Socialist Federal Republic of Yugoslavia and its succession by five states is a political and military process that resulted in the outflow of approximately 3.7 million refugees and displaced persons.[58]

To end the conflict, in November 1995, the Dayton Agreement, otherwise known as the General Framework Agreement for Peace in Bosnia and Herzegovina,[59] through the efforts of the Contact Group composed of France, Germany, Russia, the U.K. and the U.S., was signed by the warring parties represented by the presidents of Bosnia, Croatia and Serbia at the Wright-Patterson Air Force Base at Dayton, Ohio, U.S.A. Its salient features[60], in relation to the refugee problem, are:

> Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia are recognized as sovereign and equal states. All parties obligate themselves to respect human rights and the rights of refugees and displaced persons. Bosnia and Herzegovina, consisting of two entities, the Federation and the Bosnian Serb Republic, remains as a sovereign state with its internationally recognized borders.
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> An Implementing Force (IFOR) under NATO command is allowed into Bosnia and Herzegovina to ensure compliance with military aspects of the agreement

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[58] WEISS, *supra* note 6, at 186.
[59] *Id.*
[60] *Id.*

> Refugees and persons displaced by the conflict will have the right to vote (including by absentee ballot) in their original place of residence if they choose to do so. All citizens of Bosnia Herzegovina aged 18 or older listed on the 1991 Bosnian census are eligible to vote.
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> Refugees and displaced persons have the right to safely return home and regain lost property or to obtain just compensation. All persons are granted the right to move freely throughout the country without harassment or discrimination
>
> A Commission for Displaced Persons and Refugees will decide on return of real property or compensation, with the authority to issue final decisions.[61]

On the domestic scene, it should be noted that the nationality laws of the former Yugoslavia are, and expectedly so, embodied in a fundamental political legal instrument, the 1974 Constitution of the Socialist Federal Republic of Yugoslavia[62] whose pertinent provisions are:

> Art. 170. Citizens shall be guaranteed the right to opt for a nation or nationality, to express their national culture, and to use their language and alphabet freely.
>
> No citizen shall be obliged to state to which nation or nationality he belongs nor to opt for any one nation or nationality.
>
> Art. 171. Members of nationalities shall, in conformity with the constitution and statue, have the right to use their language and alphabet in the exercise of their rights and duties and in proceedings before state agencies and organizations exercising public; powers.
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> Members of the nations and nationalities of Yugoslavia shall, on the territory of each Republic and/ or Autonomous Province, have the right to instruction in their own language in conformity with statute.
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> Art. 183. Citizens shall be guaranteed freedom of movement and residence.

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[61] *Id.*

[62] GRADANI, *supra* note 15.

> Restriction of freedom of movement or residence may be provided for by law, but only in order to ensure the conduct of criminal proceedings, to prevent the spread of contagious diseases, to protect public order, or when so required by the defense interests of the country.
>
> Art. 200. Every citizen of the Socialist Federal Republic of Yugoslavia when abroad shall enjoy the protection of the Socialist Federal Republic of Yugoslavia.
>
> No citizens of the Socialist Federal Republic of Yugoslavia may be deprived of citizenship, banished or extradited.
>
> A citizen of the Socialist Federal Republic of Yugoslavia who is absent from the country and who also has another citizenship may, exceptionally upon authority of federal statute, be deprived of the citizenship of the Socialist Federal Republic of Yugoslavia only if by his activities he causes harm to international and other interests of Yugoslavia or if he causes to perform his citizen's duties.
>
> Art. 202. Foreign citizens and stateless persons who are persecuted for supporting democratic views and movements, social and national emancipation, the freedoms and rights of human personality, or the freedom of scientific and artistic creative endeavor shall be guaranteed the right of asylum.

As can be gleaned from the above nationality provisions, the Constitution of the Socialist Federal Republic of Yugoslavia established a federal system of government based on the right to self-determination of the Yugoslav nations and on the rights of the Yugoslav nationalities. The SFRY Constitution upholds the full equality of Yugoslav nationals and nationalities within the framework of the Yugoslavia Federation.

V. DETERMINATION OF NATIONALITY STATUS OF REFUGEES FROM THE FORMER YUGOSLAVIA

The former state of the Socialist Federal Republic of Yugoslavia (SFRY) adheres to the principle of *jus sangguinis* in determining the nationality status

acquired at birth by a person. A person either of whose parents is a Yugoslavian citizen, is also a Yugoslavian Citizen. Pursuant to art. 200 paragraph 3 of the Constitution, a Yugoslavian citizen remains as a Yugoslavia citizen and he can not be deprived of this citizenship even if he had established his residence abroad. As a Yugoslavian citizen, he is entitled to protection, on the basis of *jus protectionis*, by the state of Yugoslavia.

With the demise of the state of the Socialist Federal Republic of Yugoslavia, the nationality status of its former inhabitants became subject to changes occasioned by such transition. First, the Yugoslav nationality status of its former inhabitants had ceased because the 1974 Constitution of Yugoslavia had *ipso facto* ceased to be operational with the cessation of sovereignty and statehood of the former Yugoslavia. This is because the extinguishment of the state dissolves allegiance of its former nationals to the ancient sovereign.[63] While art. 200 (2) of the 1974 Constitution of the former Yugoslavia guarantees that no citizen thereof will be deprived of his Yugoslav citizenship, this provision had ceased to be operational, as all political laws had ceased to have operative effects, with the extinguishment of the State of the former Yugoslavia. With the extinction of a state, nationality ceases.[64]

Second, a legal distinction must be observed between the nationality status of the former inhabitants of the former Yugoslavia who had remained in its former territory and those who had become refugees. In the case of the former, applying the Oppenheim view, they are presumed to have acquired the nationality status of the succeeding state in their territory.[65] Thus, depending on their place of residence, these inhabitants have become nationals of any of the following new states: Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and Federal Republic of Yugoslavia (Serbia and Montenegro). The respective nationality laws of the new states governs their rights and obligations as nationals of these states.

As nationals of the succeeding state, their right to return to their country can not be arbitrarily denied. That every country must admit its own nationals into its territory is generally accepted and regarded as an established principle of

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[63] U.S. v. Percheman, 32 U.S. 51, 91 (1833).

[64] Hussein v. Governor of Acre Prison, 17 I.L.R. 111 (1950).

[65] American Insurance Co. v. 356 Bales of Cotton, 7 L. Ed. 242 (1825).

international law.[66] Art. 13(2) of the UN Declaration of Human Rights recognizes this principle, where it is provided that, "Everyone has the right to leave any country including his own and to return to his country." Similarly, under Articles 12(2) and 12(3) of the International Convention on Civil and Political Rights, it is guaranteed that no one shall be arbitrarily deprived of the right to enter his own country, although this right may be restricted if necessary to protect national security, public order, public health or morals or the right and freedom of others and if not consistent with other rights recognized in the covenant.

Third, in the case of refugees from the former Yugoslavia, under international law, they are considered as never having elected to accept the sovereignty of the new states and their allegiance is, thus, not transferred to the new sovereign.[67] However, with the extinguishment of the state of the Socialist Federal Republic of Yugoslavia, these refugees ceased to be nationals of the former Yugoslavia.[68] Not being considered as nationals of any state under the operation of its laws, they are, by definition, stateless persons, and shall remain as such until they have elected and acquired a nationality.[69]

As stateless persons, refugees lack the *lien effectif* or genuine link of nationality traditionally considered as the basis for invoking state responsibility under *jus protectionis*. A whole corpus of legal jurisprudence evolved recognizing the right of refugees to substitute protection under international law. Refugees, as stateless individuals, whether in the *de factor* or *de jure* concept, are *prima facie* entitled to international law protection such as those provided in, but not limited to, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

The Dayton Agreement impliedly recognized the option of displaced persons who had remained within the territory of the former Yugoslavia to determine their sovereignty and nationality status through a plebiscite by providing that persons displaced by the conflict will have the right to vote (including by absentee ballot) in their original place of residence if they choose to do so.[70] The said provision applies the concept that the residence of displaced persons constitutes the linkage which may be used to determine their nationality

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[66] Sohn, The Movement Of Persons Across Borders (1991).

[67] United States ex. rel. Schwarzkopf v. Uhl, 137 F.2d 898, 903 (1943).

[68] Nakara v. Minister of Interior, 210 I.L.R. 49 (1951).

[69] Convention Relating to the Status of Stateless Persons (*adopted* Sept. 28, 1954, *entered into force* June 6, 1960), art. 1.

[70] WEISS, *supra* note 6 at 186.

status. Thus, exercise of political rights as an attribute of nationality status requires *a priori* determination of a person's place of residence.

To validate the foregoing legal analysis on the nationality status of refugees from an extinguished state, comparison shall be made with another case of state succession and outflow of refugees involving the inhabitants of the former Palestine.[71]

In the aftermath of the First World War, the British administered Palestine as a mandate. While Palestinian citizenship was governed by Palestine Citizenship Orders, 1925-42, a statute of the United Kingdom, Palestinians were not, under the mandate system, considered as British nationals or subjects. On 15 May 1948, the former territory of Palestine had become part of the newly established Israel State resulting in mass movement of refugees from the former Palestine.

On 5 July 1950, the Knesset (Israeli Parliament) passed the Law of Return[72] which provided the principal method of acquiring nationality. Section 1 of the said law recognized the right of every Jew to come to Israel as an oleh or a Jew immigrating to Israel for settlement. Those who remained in Israel legally from the establishment of the state in 1948 until the enactment of the Nationality Law of 1952 became Israeli citizens by residence or return.[73]

The question posed for comparative study is this: With the demise of Palestine and its replacement by the state of Israel, what is the nationality status of the inhabitants of the former Palestine?

In *Hussein v. Governor of Acre Prison*,[74] the Supreme Court of Israel ruled that with the extinguishment of Palestine, the inhabitants thereof lost their citizenship but did not *ipso facto* acquire Israeli nationality. The 1952 Nationality Law, considered as having retroactive effect as of the date of establishment of Israel, is the exclusive law on citizenship which repealed the Palestine Citizenship Order, 1925-1942. The acquisition of Israeli citizenship can only be had upon compliance with the conditions stated in the 1952 Nationality Law, including, but not limited to the requirement that, "they must have been in Israel or an area

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[71] GUY S. GOODWIN-GILL, THE REFUGEES IN INTERNATIONAL LAW 352 (1996).

[72] Law of Return (amendment no. 2), 1950, S.H. 5730.

[73] Rufeisen v Minister of Interior, 17 P.D. 2428 (1962).

[74] Hussein v. Governor of Acre Prison, 17 I.L.R. 111, 162 (1950).

which became Israel, from the day of the establishment of the state to the day of entry into force of the law or have entered legally during that period."[75]

Hence, considering that most of the refugees from the former Palestine did not satisfy the aforequoted condition, *inter alia*, they did not acquire Israeli citizenship and are regarded as stateless persons.

The foregoing was followed and given more categorical ruling in the *Oseri case*[76] where the Israeli Court authoritatively stated that with the termination of the Palestine mandate, former Palestinian citizens had lost their citizenship without acquiring another.[77]

The above judicial rulings on the nationality status of refugees from the former Palestine validate the analysis of the nationality status of refugees from the former Yugoslavia: that under international law, it is the prerogative of the succeeding states, and within the jurisdiction of their political and municipal laws, to determine who are its nationals. In the case of the Palestinians, the strict determination of Israel as to who are its citizens effectively denied Israeli citizenship to the Palestinians. The Yugoslav case, adhering more to the Oppenheim view[78], recognizes status of inhabitants of the territory of former state as presumptively nationals of the new state where they reside. In both the Yugoslav and Palestinian cases, the situs of residence is recognized as a principal determinant of nationality status although in the Palestinian case, residence *per se* is not sufficient to grant Israel citizenship. In both cases, refugees from extinguished states had become stateless persons whose allegiance was not automatically transferred to the new sovereign state. In the case of the former Yugoslavia, there is a recognized option for displaced persons who are within its former territory to determine their sovereignty and nationality status through a plebiscite under the terms of the Dayton Agreement. In the Palestinian case, however, even the election of nationality is effectively denied because of the strict formulation of legal requirements for availing of Israel citizenship.

Proceeding to a related matter for consideration, the next query then is: "Is the loss of nationality status co-terminus with refugee status?"

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[75] Law of Return, *supra* note 70.
[76] Oseri v. Oseri, 8 PM 76 (1953).
[77] Oseri v. Oseri, 8 PM 76 (1953).
[78] OPPENHEIM, *supra* note 20, at 240. .

In general, the loss of a person's nationality status results from one's being a refugee from an extinguished state. Consequently, the subsequent acquisition of nationality by a refugee would bring about a termination of his refugee status. This position finds legal support in Chapter I, art. 1 of the Charter of the United Nations High Commission for Refugees[79] which enumerates situations where the Convention ceases to apply, such as when:

> (1) he has voluntarily re-availed himself of the protection of the country of his nationality; or
>
> (2) having lost his nationality, he has voluntarily re-acquired it; or
>
> (3) he has acquired a new nationality and enjoys the protection of the country his new nationality;
>
> ...
>
> (6) being a person who has no nationality, he can no longer, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;[80]

Subparagraphs (a), (b), and (c) above acknowledge that the subsequent acquisition of nationality status by an individual removes him from the mantle of protection by the UNHCR as a result of his loss of his refugee status. Sub-paragraph (f) above refers to a situation where even a stateless person would cease to be considered as a refugee, that is when the *raison de etre* for his claim of refugee status had effectively ceased. This situation is more of the exception to the rule that a refugee from an extinguished state is a stateless person because even a stateless person under the conditions set forth in. this sub-paragraph can no longer be considered a refugee. The foregoing provisions of the Convention affirm the view that refugee status may end even for a stateless person when the objective basis for a refugee's fear or persecution are no longer existing or once a refugee establishes national protection:

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[79] U.N. High Commission For Refugees Charter, Chap. II, para. 6, A(ii) [hereinafter UNHCR Charter].

[80] UNHCR Charter, *supra* note 79, chap. 1.

> The purpose of international protection is not... that a refugee remains a refugee forever, but to ensure the individual's renewed membership of a community and the restoration of national protection, either in the homeland or through integration wise where ... The Convention makes clear that refugee status is transitory condition which will cease once a refugee resumes or establishes meaningful national protection.[81]

VI. OVERVIEW OF THE LEGAL RIGHTS AND DUTIES OF REFUGEES

As a prelude to another discussion on the legal basis and the scope of responsibility of the international community of states and supra national organizations like the United Nations High Commission on Refugees (UNHCR) in addressing the global concerns of refugees, an overview of rights and duties of refugees under international law is presented.

Refugees who have fled their state of origin rely upon international law to provide them with substitute protection. Fortunately, refugees are considered as *prima facie* entitled to the mantle of protection and are accorded rights under international law. Further, it is the *erga omnes* duty of the international community of states to accord them surrogate protection and to respect their rights. Unfortunately, in practical terms, refugees require logistical support of a magnitude that constitutes clear and present strain on the limited economic resources of the states where they have fled. However, being a predicament of international nature and scope, the refugee problem deserves an international response within the framework of international law and humanitarian diplomacy.

Conversely, refugees have the duty to the country in which he finds himself to conform to its laws as well as to measures taken for the maintenance of public order.[82] The rights of the refugees are classified, for purposes of enumeration, into several topic areas adopted from the classification schemes made by Hathaway[83] as: principle of non-refoulement, right to security, social rights, economic rights, and right to identity and nationality.

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[81] James C. Hathaway, *Making International Refugee Law Relevant Again, in* 10 HARV. HUM. RTS. J. 115 (1997).

[82] Convention Relating to the Status of Stateless Persons, *supra* note 11, in art. 1.

[83] Hathaway, *supra* note 81, at 160.

A. Principle of non-refoulement

This principle was developed as a consequence of the mass movement of humanity immediately following the Second World War and necessarily is the most crucial basis of all refugee rights. The principle against refoulement refers to the right of refugees not to be expelled or returned to territories, including his own country where his life is threatened. This principle is embodied in art. 33 of the 1951 Convention Relating to the Status of Refugees states which provides that:

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

Further, art. 32 of the Convention states that:

> The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
>
> The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law.

B. Right to Security

Art. 6(1) of the International Convention on Civil and Political Rights[84] provides that:

> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Art. 7 of the same Convention provides that:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Cognate to the right of security is the right of refugees to assistance for basic needs of food, clothing, shelter and work.[85]

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[84] ICCPR, *supra* note 27.

[85] Art. 17 reads:

C. Social Rights

The right to basic dignity embraces the corpus of legal rights under international law that recognizes social dimensions of refugees consistent with human dignity and includes the right to non-discrimination, family unity, and freedom of movement and freedom of association and freedom of religion.

With respect to the right against discrimination, art. 3 of the CRSR provides that:

> The contracting states shall apply provisions of the convention to refugees without discrimination as to race, religion or country of origin.

The above provision is also contained in art. 3 of the Convention on Statelessness.

Other provisions of the ICCPR pertinent to the right against discrimination are the following:

> Article 2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind such as race, color, sex, language, religion, political or other opinions, national or social origins, property, birth or status.

The Contracting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationality of a foreign country in the same circumstances as regards the right to engage in wage earning employment.

...

Art. 20 says:

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Art. 21:

As regards housing, Contracting States, insofar as the matter is regulated by laws or regulations or is subject to the control of public authority, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and in any event, not less favorable than that accorded to aliens generally in the same circumstances.

Art. 22:

The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

...

> Article 17(1). No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacked on his honor and reputation.
>
> ...
>
> Article 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, color, sex, language, religion or other opinion, national or social origin, property birth or other status.

The ICCPR likewise recognizes the family as the basic unit of society.[86]

Parties to the CRSR are also mandated to accord to refugees freedom of locomotion subject to reasonable regulations. Art. 26 provides that:

> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

With respect to the right to freedom of association as well as to access to courts, the following provisions of the CRSR are pertinent:

> Art. 15. As regards non-political and non-profit making associations and trade union the Contacting States shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances.
>
> Art. 16. A refugee shall have free access to courts of law on the territory of all Contracting States.

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[86] Art. 23(1). The Family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

D. Economic rights

The right to economic sufficiency recognizes the integral role of refugees as productive members of the economic community to be developed as active contributors to over-all economic well being of the society.

Art. 17(1) of the CRSR provides that:

> The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances as regards to the right to engage in wage earning employment.

Art. 22 of the Convention provides that:

> The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
>
> The Contracting States shall accord to refugees treatment as favorable as possible and in any event not less favorable than that accorded to aliens generally in the same circumstances with respect to education other than elementary education and in particular, as regards to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

E. Right to Nationality

The mandate of international law under the 1954 Convention Relating to the Status of Stateless Persons(CRSSP) to grant as far as possible *de jure* status of statelessness to *de facto* stateless refugees is a clear indication of the intention of international law to address issues concerning the nationality status of refugees. That nationality status of an individual is a legal right under international law is shown by its being embodied in the Universal Declaration of Human Rights[87] and corroborated in related international agreements.

It is provided in art. 15 of the Universal Declaration of Human Rights that everyone has the right to nationality.

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[87] G.A. Res. 217A (111) U.N. Doc. A/810 (1948).

Similarly, it is provided in art. 24(3) of the ICCPR that "Every child has the right to acquire a nationality."

In the same vein, art. 32 of the CRSSP provides that:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible, the charges and costs of such proceedings.[88]

Touching on the same subject, the 1961 Convention on the Reduction of Statelessness provides that:

> Art. 1(1). A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless ...in the manner provided by the national law.
>
> ...
>
> Art. 9. A Contracting State may not deprive any person or group of persons their nationality on racial, ethnic or religious or political grounds.

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[88] Other pertinent provisions of the CRSSP are the following:

Art.1 (1) A contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless.

Art. 8(1) A contracting state shall not deprive a person of his nationality if such deprivation would render him stateless.

Art. 9 A contracting state may not deprive any person or group of persons of their nationality or racial, ethnic, religious or political grounds.

Art.3. The contracting state shall apply the provisions of this conventions to stateless persons without discrimination as to race, religion or country of origin.

...

Art. 16. A stateless persons shall have free access to courts of law on the territory of the contracting parties.

Art. 17. The contracting state shall accord to stateless persons lawfully staying in the territory treatment as favorable as possible and in any event, not less favorable than that accorded to aliens generally in the same circumstances as regards to the right to engage in wage earning employment.

...

Art. 32. The contracting state shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular, make every effort to facilitate naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

It should be emphasized that international law prescribes the standard for treatment of refugees As ruled in the *Brusserie case*[89] recently decided by the Court of Justice of European Communities, the standard prescribed for the treatment of refugees is as follows:

> A refugee benefits from:
>
> (1) The same treatment as nationals in matters pertaining to access to courts, education, public relief and assistance, labor legislation and social security.
>
> (2) The most favorable treatment accorded to nationals of a foreign country in the same circumstances as regards the right of association and the right to engage in wage earning employment.
>
> (3) Treatment which is no less favorable than that accorded to aliens generally in the same circumstances as regards the acquisition of property, the right to engage in self- employment and the right to housing.[90]

VII. INTERNATIONAL RESPONSIBILITIES FOR REFUGEES

There is a well established body of jurisprudence discussing the legal consequences of a wrongful act of a state or what is equivalently referred to as a delict in international law. In one poignant decision, it was formulated that:

> One of the principles most deeply rooted in the doctrine of international law and strongly upheld by strict practice and judicial decisions is the principle that any conduct of a state which international law classifies as a wrongful act entails the responsibility of that state in international law.[91]

The Draft Articles on State Responsibility[92] made suggestions that state actions that are serious breaches of international peace, such as failing to

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[89] Brusserie Du Pecheur SA v. Federal Republic of Germany, 108 I.L.R. 311 (1996).
[90] Brusserie Du Pecheur SA v. Federal Republic of Germany, 108 I.L.R. 311 (1996).
[91] Case Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 4.
[92] *Draft Articles on State Responsibility*, 1979 Y.B. INT'L L. COMM'N 90.

safeguard human life and dignity (e.g. Genocide) or that harm the environment are international crimes or torts.[93]

The principle of state responsibility was further expanded with the view that state responsibility is not territorially limited. Accordingly, in one case, it was held that, "responsibility may be attributed wherever a state within whose territory substantial trans-boundary harm is generated, has knowledge or means of knowledge of the harm and the opportunity to act."[94]

In international environmental law, the above cited principle of extra-territorial responsibility was codified in the Stockholm Declaration where it was established that states have the responsibility to ensure that activities within their control or jurisdiction do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.[95]

In international refugee law, the fundamental cornerstone of state responsibility towards refugees is rooted in the general principle that states are under international obligations not to proximately cause refugee outflows.[96] Along this line, it is considered that states owe an *erga omnes* character of obligation to the international community of nations to accord its nationals a certain standard of treatment on the matter of human rights, as for instance, according to the standards prescribed in the Universal Declaration of Human Rights.

The *erga omnes* nature of certain international rights and obligations had embryonic expression in the *Case Concerning Barcelona Traction, Light and Power Company, Ltd.*[97] where the International Court of Justice, albeit in obiter dictum, defined an *erga omnes* obligation as referring to the obligation of a state toward the international community as a whole and which all states have a legal interest in its observance.[98]

Notwithstanding the above pronouncement, the characterization of certain international rights and obligations as being *erga omnes* in nature, do not necessarily, at this point in the evolution of international jurisprudence, imbue

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[93] *Id.*

[94] Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 244.

[95] GOODWIN-GILL, *supra* note 71, at 1.

[96] *Id.*

[97] Barcelona Traction, Light and Power Co., Limited (Belg. v. Spain), 1970 I.C.J. Report No. 33.

[98] *Id.*

any state with the innate and unilateral duty to address breaches of *erga omnes* obligations whenever this would result in violation of state sovereignty. In dismissing the *Timor Gap Case*, [99] the International Court of Justice conservatively stated in its *ratio decidendi* that:

> ...However, the Court considers the *erga omnes* character of a norm and the rule of consent to jurisdiction as two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a state, when its judgment would imply an evaluation of the lawfulness of the conduct of another state which is not a party to a case. Where this is so, the Court can not act, even if the right in question is a right *erga omnes*.[100]

It is noteworthy that the dissenting opinion of Judge Weeramantry in the abovecited case presents the enlightened, but minority, view on international rights and obligations *erga omnes*, given his eloquent statement that:

> An *erga omnes* right generates a corresponding duty in all states, which duty in case of non-compliance or breach can be the subject of a claim for redress against the state so acting.
>
> The duty thus generated in all states includes the duty to recognize and respect those rights. Implicit in such recognition and respect is the duty not to act in any manner that will in effect deny those rights or impair their exercise.
>
> The duty to recognize and respect these rights is an overreaching general duty, binding upon all states and is not restricted by particular or respective directions or prohibitions by the United Nations.[101]

Judge Weeramantry concluded in strong words that:

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[99] Case Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 4. Australia and Indonesia had, in 1971-1972, established a delimitation of the continental shelf between their respective coasts. This undelimited part of the continental shelf was called the "Timor Gap". A treaty was eventually concluded in 1989. In this case, Portugal maintains that Australia, in negotiating and concluding the treaty has acted unlawfully in that it has infringed the rights of the people of East Timor to self-determination and to permanent sovereignty over its natural resources.

[100] *Id.*

[101] *Id.* at 221.

> Hence, necessarily, in common with all other nations, states would, under international law, be obliged to recognize the obligation arising from these rights.[102]

There are also other judicially recognized *erga omnes* rights such as the fundamental right to life, right to self determination, humane treatment, as well as to non-discrimination. Corollary to these rights is the *erga omnes* duty to respect them and to repudiate all discriminatory acts, such as ethnic cleansing and genocide. The ICJ noted in its obiter dictum in the Barcelona Traction Case that:

> Such obligations derive, for example, in international law, from outlawing acts of aggressions and of genocide, and also from the principles and rules governing the basic rights of the human person, including protection form slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, ICJ Reports, 1951, p. 23) others are conferred by international instruments of a universal or quasi universal character.[103]

Similarly, it may be proposed that the rights accorded to refugees under the international agreements and conventions cited above, including but not limited to, the Universal Declaration on Human Rights, the 1951 Convention on the Status of Refugees, the 1971 Protocol Relating to the Status of Refugees, and the International Convention on Civil and Political Rights, are considered as principally and essentially *erga omnes* rights within the contemplation of the ICJ ruling in the above cited cases. The rights conferred by these international conventions are universal in nature and may be considered as transcending the concept of state sovereignty because they embody rules of customary international law recognizing fundamental human rights. Hence, the *erga omnes* duty of states to recognize and respect these universal rights arises.

Being *erga omnes* in character, the obligations of states to respect refugee rights ipso facto devolve upon the succeeding states of the former Yugoslavia.104 Generally, international law imposes upon the successor state certain obligations

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[102] *Id.*

[103] Barcelona Traction, *supra* note 97.

[104] Case Concerning the Application of the Convention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), 1997 I.C.J. 262.

and confers upon it certain rights, which is substantially similar to certain rights and obligations of the predecessor state.

Do states then have the duty to enforce obligations *erga omnes?* While this issue was raised in the Northern Cameroon Case105 the issue was left largely unresolved because the case was dismissed for lack of locus stand of the plaintiff. The court stated in its ratio decidendi that:

> No litigation has resulted and in the absence of injury to an individual related to a claimant state by the line of nationality, the results of such litigation are likely to be without any practical consequence.[106]

It was in the Bosnia Case107 that the International Court of Justice had the occasion to apply and to recognize in categorical terms the concept of *erga omnes* rights and duties as a binding international norm. The Court took efforts to characterize *erga omnes* rights and obligations, thus:

> On more than one occasion, this Court has stressed the aspect of genocide in the strongest terms. In its advisory opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, it observed that:
>
> "In such a convention, the contracting states do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those higher purposes which are the *raison d'être* of the Convention. Consequently, in a convention of this type, one can not speak of individual advantages or disadvantages to states, or of the maintenance of a perfect contractual balance between rights and duties."
>
> The object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the states which adopted it that as many states, as possible should participate. The complete exclusion from the Convention of one or more state would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles on which it was based.

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[105] Northern Cameroon Case, 1963 I.C.J. 3.

[106] *Id.*

[107] Case Concerning the Application of the Convention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), 1997 I.C.J. 262.

> The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as a crime under international law involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and result in great losses to humanity and which is contrary to moral law and the spirit and aims of the United Nations x x x. The first consequence arising from this conception is that principles underlying the convention are principles which are recognized by civilized nations as binding on states, even without any conventional obligation. A second consequence is the universal character both of the convention and of genocide and of the co-operation required in order to liberate mankind from such odious scourge.
>
> It follows that the rights and obligations enshrined in the Convention are rights and obligations *erga omnes*. The Court notes that the obligation of each state thus has to prevent and punish the crime of genocide is not territorially limited by the Convention.[108]

Even earlier, the proposition that responsibilities are attached to violators of *erga omnes* obligations was decisively applied in the case of *Israel v. Eichmann*[109] where it was ruled that:

> These crimes constitutes acts which damage vital international interest and impair the foundation and security of the international community: they violate universal moral values and humanitarian principles that lie behind the universal legal system adopted by civilized nations. The underlying principle in international law regarding such crimes is that the individual who has committed any of them and who, when doing so, may be presumed to have fully comprehended the notion of the act, must account for his conduct.
>
> Those crimes entail individual criminal responsibility because they challenge the foundations of the international society and affront to the conscience of civilized nations. They involve the perpetuation of an international crime which all nations of the world are interested in preventing.[110]

The forgoing ruling is an amplification of the view that violations of general international humanitarian laws, even in internal armed conflict, give rise

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[108] *Id.*
[109] 36 I.L.R. 277 (1962).
[110] *Id.*

to criminal liability for those committing such violations. This principle echoes the often-quoted decision in the *Nuremberg Trial* which eloquently stated that:

> Crimes against international law are committed by men, not by abstract entities and only by punishing individuals who committed such crimes can the provisions of international law be enforced.[111]

Thus far, it appears that international law would support the contention that a state, as well as the persons who had proximately caused the refugee movement, can be held directly, and perhaps jointly and severally liable, for delicts resulting to substantial and material injuries arising from the refugee problem. This proposition is, of course, anchored, on the necessity of first establishing the clear and direct causality between the breach of international obligation and the damages suffered.

In order to recover from a defendant state for damages, the plaintiff state must prove that (1) he has suffered the damage, and (2) the defendant state is liable for its negligence. This was the ruling in the *Kumerow and Fulda Cases*[112] where the German-Venezuelan Arbitration Commission, quoting the doctrine of Fiore, decided that:

> It is not sufficient that a state should prove that it has suffered an injury resulting from an act of individuals who reside in another state in order to fasten the liability upon the latter and to oblige it to make reparation; it is necessary that it prove that the prejudicial act is morally chargeable to the other state or that the state ought or could have prevented it and that voluntarily it has been negligent in doing so.[113]

It may be argued that a state has the *locus standi* to bring primary action against another state that had caused direct harm to the legal rights of the plaintiff state by way of an international delict. In particular, the state of asylum of refugees may have the *jus standi* and cause of action to bring a principal action directly against the state of origin of the refugees for substantial and material injuries and damages sustained by the state of asylum due to a violation of international law by the latter state, such as when the proximate cause of the outflow of refugees is ethnic cleansing or similar breaches of obligations *erga omnes*. It is in this context

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[111] The Trial Of Major War Criminals, Proceedings Of International Military Tribunals, Sitting At Nuremberg, Germany, Part 22 at 445 (1950).

[112] Kumerow and Fulda Cases (Germ. v. Venez.), 10 R.I.A.A. 384 (1924).

[113] *Id.* at 387.

that refugees are provided protection through the instrumentalities of the state *in situ*. In such a case, the jurisdiction of the international judicial tribunal over the defendant state is essentially based on the consent of that state as expressed through its agreement to be bound under its multilateral obligations provided in international conventions such as in the Genocide Convention, the Convention on the Status of Refugees, the International Convention on Civil and Political Rights, and the Convention Relating to the Reduction of Statelessness, among others.

The view propounded herein that states might be held liable for violations of international obligations *erga omnes* directly causing damage or injury to another state represents an incipient position in international law. The cause of action of the plaintiff state is primary in character arising from the fact of control over its territory and the resulting direct injury suffered therein rather than merely derivative or in behalf or flowing from injuries of refugees. However, there is still no sufficient development in international law and jurisprudence to support a derivative action filed in behalf of refugees by a state which has no genuine nationality link with the refugees. Neither can refugees directly bring an action before an international tribunal for violations of international law because, in the absence of a protest by the sovereign involved, individuals do not possess the *locus standi* before international tribunals.[114]

VIII. THE ROLE OF THE UNITED NATIONS HIGH COMMISSION FOR REFUGEES

There are two distinct approaches to the refugee problem. The first refers to the state practice of providing interim protection or temporary protection to refugees as a tactical on- the-ground response for coping with the refugee problem having the same magnitude as that of the former Yugoslavia. The second approach is more strategic, that is, advocating for international humanitarian intervention, with the end in view of providing long term resolution of the root causes of the refugee problem.

The fundamental enabling statute that defines the mandate of the United Nations High Commission for Refugees (UNHCR), as the lead multilateral agency in providing relief to the refugee problem, emphasizes the non-political character of its mission. Chapter 1 of the UNHCR charter provides that:

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[114] U.S. v. Noriega, 746 F. Supp. 1506 (1990).

> (1) The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly shall assume the function of providing international protection, under the auspices of the United nations, to refugees who fall within the scope of the present statute and of seeking permanent solutions for the problem of refugees by assisting Government and, subject to the approval of Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees or their assimilation within the national communities.
>
> ...
>
> (2) The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.[115]

While the professed mission of the UNHCR is comprehensive in scope and transverses political or economic ideologies, the actual operations of the agency reveal a *de facto* recognition of the practice among states of limiting their approaches to refugees. It had been noted that the governments have adopted an increasingly restrictive approach to refugees and asylum seekers.[116]

Even when states are, in principle, united in accepting the comprehensive approach towards the refugee problem, in actual practice, the differences in the municipal law regime and economic factor endowments from one state to another affect their adjustability to refugee inflows into their territories. The reaction of different states, therefore, is to provide interim protection to refugees as a way of cushioning the impact of binding international obligations. Given the widespread practice among states of extending only temporary protection to refugees from the former Yugoslavia, the UNHCR, in effect, made a *de facto* accommodation to this practice when it articulated that:

> Persons fleeing from the former Yugoslavia who are in need of international protection should be able to receive it on a temporary basis...The standard applicable in situations of mass influx may be regarded as complementary, interim measures of protection, and not as substitute for provisions of the Convention and Protocol... After a limited period, and in the absence of other developments, these

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[115] UNHCR Charter, *supra* note 77, at Chap. 1, paras. 1 and 2.

[116] Scott Morgan & Elizabeth Colson, People In Upheaval 32 (1987).

> standards should evolve into or be replaced by refugee status or legal status and protection standards commensurate with refugee status.[117]

Under the Convention on Refugees, states are required to provide temporary protection that will at least guarantee fundamental rights to refugees. Temporary status was supposedly an ad hoc but tactical on-the-ground response to the huge magnitude of refugee movements considering the impracticality of individually processing asylum-seekers to determine their refugee status. In any case, and mainly in view of its widespread practice, the UNHCR had given its *de facto* recognition to temporary protection, as a mechanism to keep European states open to accepting Bosnia refugees.

Nevertheless, in spite of its ad hoc origins, the concept of temporary protection spread in practice in several states. In some countries, this practice is even codified into law. In the United States, persons seeking refuge from an ongoing armed conflict, environmental upheavals or other extraordinary and temporary conditions are granted temporary protected status (TPS) under the Immigration Act of 1990. Accordingly the United States grants TPS to certain aliens who shall not be deported during the period in which such status is in effect.[118] In France, "temporary permission to stay will be prolonged for as long as a troubled situation in the region of origin of the beneficiaries continues to exist." In India, the government considers refugees as " evacuees and places them in " transit relief camps". In Denmark, it may be the case that Bosnia refugees were granted temporary protection in November 1992, but the evaluation and processing of regular asylum claims were suspended. The same thing happened in Germany where the evaluation and processing of regular asylum claims by the Bosnia refugees were suspended with the grant of temporary protection to refugees. Accordingly, persons from Bosnia- Herzegovina who do not have any other type of permission to stay in Germany are allowed to stay temporarily until such time as their return is considered possible. In Italy, asylum seekers are conditionally accepted provided that they move to another state. In contrast, Canada recognized 97% of refugee claims from Bosnia-Herzegovina in 1995.[119]

Temporary protection has been criticized as being uncertain as to its duration, thus, effectively reducing the rights of refugees. Furthermore, the long-term presence of a large group of persons seeking refugee status may have

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[117] Hathaway, *supra* note 81, at 167.

[118] Immigration and Naturalization Act, 8 U.S.C. 1254a-1 (1990).

[119] Hathaway, *supra* note 81, at 132.

economic, political and social destabilization effects. There can be no doubt, however, that it is within the domain of the municipal law of the states whether to grant those with temporary protection status some kind of permanent residence status.

The geo-strategic interest of European states to address and contain the massive refugee problem that has taken place right at their doorsteps necessitated the influx, on regional and multilateral levels, of massive logistics to alleviate the situation. Total UNHCR expenditures in the former Yugoslavia were $221,581,300; other assisting agencies spent $293,238,700 thus bringing the total expenditures for relief work in the former Yugoslavia to $514,800,000.[120] Given the magnitude of resources required to cope with the situation, the international community of nations were sufficiently moved to make proposals to support a doctrine for more pro-active, humanitarian diplomacy and humanitarian intervention to resolve the root causes of the problem.

Responding to worldwide interest in containing and resolving the root conflicts that give rise to refugee problems, former UN Secretary General Boutros-Boutros Ghali formulated a general outline for the response of the United Nations contained in his "Agenda for Peace" where he expressed the need for the UN to address the causes for conflict through measures of peacemaking, peacekeeping and peace-building.[121]

In response to the Secretary General's perspectives contained in the Agenda for Peace, the United Nations High Commissioner for Refugees emphatically presented the evolving UNHCR role in the following light:

> The last five years have witnessed some significant changes in the scale, scope and complexity of the global refugee question... In their efforts to respond to these contradictory developments, UNHCR and its partners have been obliged to re-assess the continued relevance of established approaches to the problem of involuntary migration. New strategies are emerging from this process which in contrast to earlier approaches are designed to address the causes as well the as the consequences of forced displacements. As a result, international attention is moving away from the difficulties confronting refugees in their countries of asylum and

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[120] *Id.* at 146, citing the REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, U.N. GAOR, 51st Sess., Supp. No. 12, U.N. Doc. A/51/12 (1996).

[121] BOUTROS-BOUTROS GHALI, AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACEKEEPING 4 (1992).

> towards the circumstances which have obliged them to leave their homeland... Refugee movements are not inevitable, but can be averted if action is taken to reduce or remove the threats which forced people to leave their own country and seek sanctuary elsewhere. This is a fundamental principle of the emerging approach to the issue of human displacement.[122]

It is conceded that the above view is an incipient trend or a dramatic departure from the non-political and humanitarian nature of UNHCR actions. It may, arguably, constitute an *ultra-vires* action that is not sanctioned by a strict interpretation of the enabling statute of the UNHCR. The state targeted for humanitarian intervention would most likely raise the protest of violation of its sovereignty. In the end, the resulting "mission creep" may ultimately undermine the non-political character of UNHCR operations.

Exploring the frontier of humanitarian diplomacy and intervention but without necessarily granting that his views articulate settled jurisprudence on the matter, former UN Secretary General Javier Perez de Cuellar made his observations that:

> It is increasingly felt that the principle of non-interference with the essential jurisdiction of states cannot be regarded as a protective barrier behind which human rights can be massively or systematically violated with impunity... The case for not impinging on the sovereignty, territorial integrity and political independence of states is by itself indubitably strong. But it would only be weakened if it were to carry the implication that sovereignty, even in this day and age, includes the right of mass slaughter or of launching systematic campaigns of decimation or forced exodus of civilian populations in the name of controlling civil strife or insurrection. With the heightened international interest in universalizing a regime of human rights, there is a marked and most welcome shift in public attitudes. To try to resist it would be politically unwise as it is morally indefensible. It should be perceived as not so much a new departure as a more focused awareness on one of the requirements of peace.[123]

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[122] FRANCIS M. DENG, PROTECTING THE DISPOSSESSED 12 (1993).
[123] *Id.* at 16.

From a legal perspective, in order to implement and operationalize the above conception, there is a necessity to establish, *a priori*, the permissive legal environment that would define the parameters for United Nations humanitarian intervention in a domestic strife. It is, therefore, contended that any UN humanitarian action must fall under the situation prescribed in art. 39, chapter 7 of the United Nations Charter, which pertinently provides that:

> The Security Council shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[124]

Accordingly, to traverse any legal objections premised upon violation of state sovereignty, a UN humanitarian intervention intended to alleviate refugee problems must fall within the purview of the operative phrase of the UN charter, that is, "existence of any threat to peace, breach of the peace."

It is useful to advance as a principal argument that the deliberate and flagrant violation by a state of its of *erga omnes* obligations such as those prescribed in the Genocide Convention, proximately causes massive refugee outflows that directly threatens international peace. Massive violations of human rights and displacement within a country and its borders constitute a threat to international peace.[125]

Recent developments in international law and related case law lend support to the proposition that an internal armed conflict could be considered as specie of threat to international peace. Accordingly, the UN, pursuant to art. 39, Chapter 7 of the UN Charter, may undertake measures, including intervention, if necessary, even over objections of possible state sovereignty violations, in order to accomplish the transcending and universal interest of maintaining or restoring international peace and security.[126]

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[124] U.N.Charter, Chap. 7, art. 39.

[125] DENG, *supra* note 122, at 18.

[126] The Prosecutor v. Dusko Tadic, (Int'l. Trib. of the United Nations 1995)

Along this line, the United Nations, through the International Tribunal in the *Prosecutor v. Dusko Tadic* promulgated a decision recognizing UN practice and actions at resolving even internal strife but considered as threats to international peace. Thus:

> But even if it were considered merely as an internal armed conflict, it would still constitute a" threat to peace: according to the settled practice of the Security Council and the common understanding of the United Nations membership in general. Indeed, the practice of the Security Council is rich with cases of civil wars or internal strife which are classified as a "threat to peace" and deals well under Chapter VII with the encouragement even at the behest of the General Assembly such as the Congo crisis at the beginning of the 1960's, and more recently, Liberia and Somalia. It can thus be said that there is a common understanding exemplified by the subsequent practice of the membership of the United Nations at large that the" threat to the peace of Article 39 may include as one of its species, internal armed conflicts.[127]

Furthermore, it may be contended that the recognition of states, including its sovereignty, alongside the UN membership of the new states, is tantamount to a recognition by the international community of states that the new states are conferred not only rights but also their correlative obligations under international law. Within the international law framework, the sovereignty of states is not an absolute and amoral legal concept but is subject to observance of international law and customary principles of international law as binding norms of conduct.[128] There are principles of international law which are recognized by civilized nations as binding on states and which are recognized as right and obligations *erga omnes*. Thus, the international community of nations has an interest in enforcing the duty thereunder and to act to enforce or even intervene, in order to redress breach of such obligations.[129]

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[127] *Id.* at 14.

[128] DENG, *supra* note 122, at 19.

[129] Case Concerning the Application of the Convention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), 1997 I.C.J. 262.

By way of recapitulation and proceeding along the above line of reasoning, a view was articulated that:

> ...when a government fails to provide the most fundamental rights for major segments of its populations it can be said to have forfeited its sovereignty and the international community can be said to have a duty in those instances to re-establish it...Failure to meet such fundamental responsibilities and organizations with consequential suffering of masses of innocent people creates a right and an obligation on the part of the international community to act toward providing the needed protection and assistance.[130]

The proposal for UN humanitarian intervention substantially, utilizes the legal framework propounded in the above cases wherein states are recognized as having legal interests in enforcing the duty of observing obligations which are *erga omnes* in character. This proposal, as decided in the *Tadic Case*, is a refinement of the UN mission undertaken pursuant to its mandate in art. 39, chapter 7 of the UN Charter. However, an expansive or liberal interpretation of the powers and mandate of the UNHCR, to make room for humanitarian intervention, may constitute a mission creep or act *ultra-vires* that would ultimately deviate from the essentially non-political nature of its activities. Humanitarian intervention though, may possibly be undertaken through the other instrumentalities of the United Nations, specifically the Security Council, on the strength of the evolving jurisprudence in international law that an internal strife and its effects, such as massive refugee outflow, may constitute an actionable threat to world peace.

IX. CONCLUSION

The massive refugee movement that had taken place from the former Yugoslavia, given the European geo-strategic interests involved, has attracted sustained attention and vigorous action, regionally and multilaterally, to address and contain the problem. While refugees from states that had been extinguished, such as those coming from the former Yugoslavia, are regarded as stateless persons, there is a growing corpus of jurisprudence, whether embodied in international agreements or conventions, or considered as customary law, or as generally accepted principles of international law, for recognizing universal

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[130] DENG, *supra* note 122, at 154.

responsibility of the international community of states towards the alleviation of the refugee situation.

Traditionally, international law considers the nationality bond as the basis for *locus standi* to institute actions resulting from the refugee problems. Nevertheless, states *in situs* have enforceable and binding responsibilities *erga omnes* in character with respect to refugees. The statelessness of refugees is precisely addressed in international law under such agreements as, but not limited to, the Convention on the Status of Refugees, the Convention Relating to the Status of Stateless Persons and the Convention on Reduction of Statelessness. Jurisprudence is evolving which supports the view that violations of international humanitarian law, and the rights of refugees in particular, whether in an internal or international conflict, entails responsibilities for their violators. Where direct substantial injury and material damage to the state *in situs* had resulted as a consequence of refugee outflows proximately caused by violation by the home state of its international obligation *erga omnes*, a cause of action arises for the state *in situs*. However, it appears that there is no sufficient international jurisprudence to support the institution of a derivative action filed in behalf of the refugees by a state party which has no genuine nationality link with the refugees.

On the other hand, while the practical responses of states to cope with the massive refugee flow from the former Yugoslavia resulted in the provision of temporary protection to refugees, there is a growing proposition to make legally viable moves towards multilateral intervention in the state of origin to address the root causes of the refugee problem. In any case, such proposition must have to contend with objections grounded on infractions of state sovereignty. Historically, the UN had already seen events where it actively participated and intervened in internal conflicts for the purpose of counteracting threats to peace utilizing an evolving jurisprudence and a liberal interpretation on the scope of the UN mission under art. 39, chapter 7 of the UN Charter. As regards the UNHCR's role in such an intervention, there is reservation that the same may be *ultra vires* under its Charter and possibly compromise the essentially non-political nature of its mission.

With the accuracy of a marksman, a jurist skillfully pointed out that: "[t]he course of [the] evolution of law does not follow straight lines or regular curves. Its movement is rather like that of an army which presses forwards against the portion of least resistance."

International law is not a static formulation of rules but is a living corpus of law that restlessly follows the push and pull of contending international interests, only momentarily at equilibrium at any point in time, but is constantly being adjusted to enable the international community of states and multilateral institutions to vigorously cope with emerging challenges presented by the refugee situation. There are trends of jurisprudence in action; but, thus far, no sacrosanct and predictable generalizations have been promulgated that would limit the scope and nature of UN responses to refugees and to the conflict that gave rise to them. In the end, there is only caution derived from the experience and knowledge that international law continues in its hopeful growth toward recognizing rights and extending succors and protection to refugees as well as in imposing responsibilities to its violators.

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