

# Middle East Disarray: Trump's Executive Orders and Legal Repurcusions



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## Abstract

This paper starts with the introduction of refugees, asylum seekers and migrants. All the three terms are defined and compared. Further, this paper describes the historical origin of the Middle East crisis and disarray. The widening and the further developments of the Middle East crisis are described in the later part. A brief introduction to the UN Convention on Refugee rights 1951 is given to clear the concept of Refoulment given in article 33 of this convention. Moreover this paper also discusses the 1967 protocol on refugees to which the United States of America is a signatory. Now at the end of this, the most important aspect of this whole topic is described. Donald Trump's recent executive order is critically analysed on the basis of its legal repercussions. Both the merits and De-Merits are stated. In the end, a full and comprehensive conclusion with regards to the practice of Customary International Law is given. A special emphasis has been given with regards to the applicability of the principle of Refoulment.

**Keywords:** Refoulement ,Refugees, UN Convention on Refugees, UN Convention on Refugee Rights 1951, 1967 Protocol on Refugee Rights, Customary International Law.

## Introduction

The most important aspect of this topic is the basic difference between Migrants, Asylum seekers and refugees. The crux of this difference is between consciousness and unconsciousness.

## Research Methodology

For the purpose of completion of my research work, I have applied the doctrinal or traditional research method in which the research is carried on, on the basis of facts and data stored in the library and archives. It involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.

## Migrant

A migrant is a person who "voluntarily" shifts from one country to another country. This shift or immigration is due to better economic prospects, a better job, and educational opportunities. This depicts the presence of the element of consciousness. But contrary to this, both refugees and asylum seekers involves the element of unconsciousness because in both the cases, the shift from one country to another country is not voluntary. The shift is not because of a better economic prospect or a better job.

## Refugees

Refugees are people who shift to other country as they don't feel safe in their own country. A common example is people leaving their worn torn country and shifting to a peaceful and a stable state. Contrary to migrants, who shift in search of better prospects, refugees are people who "unconsciously" shift to protect their basic human rights. The 1951 convention on refugees defines it as a:

*"A refugee is an individual who 'owing to 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 him of the protection of that country'."*<sup>1</sup>

A recent example of refugee for acquaintance can be of people shifting from Iraq and Syria to the borders of Turkey, Egypt, and other Middle-East countries. The reasoning for this shift from Iraq and Syria is not because of better job prospects or educational prospects. This shift is because the people of Iraq and Syria don't feel themselves safe in their country because of repeated war conditions and the presence of Islamic

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State of Iraq and Syria which has created havoc since a long time. Apart from these two categories of people, there are people who shift to other nation to avoid persecution in their home country. This third type of people is called Asylum seekers and the rules regarding them are governed by the UN Convention to rights of Refugees, 1951.

### Asylum Seekers

Asylum seekers are generally political fugitives. They are completely different from both migrants and refugees. Unlike migrants, they don't seek fugitive just because of better economic, job or educational prospects. They differ from refuge in the sense that asylum seekers face a threat of persecution in their own home country. It is due to this reason that they apply to seek refuge in another country. It is indeed pertinent to mention here that all asylum seekers are refugees but all refugees are not an asylum seeker.

*An asylum-seeker is "A one that seeks safety from ill treatment or serious damage in an exceedingly country aside from his or her own and a call on the applying for exile standing below relevant national and international instruments in an exceedingly case of a negative cell, the person should leave the country and will be expelled, as could associate non-national in an irregular or unlawful scenario, unless permission to remain is provided on humanitarian or different connected grounds."<sup>2</sup>*

Asylum seekers face uncertainty as it is at the discretion of the country to grant asylum. In short, a political refugee could be termed as an asylum seeker. The ICJ has opined that diplomatic asylum is not protected by International law.<sup>3</sup> Authorities are to the effect that the practice of diplomatic asylum has no basis in International law but merely in the consent of the state concerned.<sup>4</sup> The Tibetan monk Dalai Lama is a political fugitive of the Chinese Government and he is a current asylum seeker in Indian Territory.

### Origin of Middle East Disarray

The origin of both refugees and asylum can be traced back to the Palestine conflict and the Israel-Arab war. The United Kingdom which was opposed to the Ottoman Empire during the world war declared that Palestine would be an independent state in the Balfour declaration. In 1947 with the emergence of United Nations, it was decided that it would be divided into two states, one with the Arab and the other with the Jewish population. Jews had more allocation of land. The United States of America was one of the countries which fiercely supported this plan (because of its obvious reasons to support and form Israel). The then president of the United State of America, Harry Truman was of the view that an independent Jewish state is the only solution to Saudi hostility in this region over the Jewish population. The Truman administration finally succeeded and Israel was formed on 15 May 1948.<sup>5</sup> In the case of the Israel, a premature state recognition was given to Israel. This

recognition was totally political based on the common precedent of past political recognitions like the United States of America not recognizing the Communist Party of China; recognition given by the United Kingdom to the Soviet Union in 1921 but again taken back in 1923. But the repercussions of recognizing Israel by the United States of America were not known and soon after its formation many Islamic countries like Saudi Arabia, Iraq, Egypt, and Lebanon attacked Israel but in the due course of this attack Israel army defeated the opposite army. This marked the beginning of the Middle-East disarray<sup>6</sup>. With the creation of a new state Israel, the idea of Palestine and internationalization of Jerusalem was left far behind. Israel started to persecute non-Jewish population, which ultimately forced them to leave the country. Same was happening in other Arab countries where Jews were forced to leave the country and take refuge elsewhere. The political acts of Saudi-Arabia and Israel made it a problem for the people persecuted out. This marked the beginning of what we call as "Refugee Crisis". Tension in the Middle East worsened when Israel attacked Egypt in 1967 and occupied certain provinces of Egypt. Egypt and Syria reverted back in 1973 but it was of no use as they had lost the war. In 1978, The United States of America, Israel, and Egypt signed Camp David accord to settle the disputes. But Israel did not mend its way and again attacked Lebanon in the 1980's, thus capturing their territorial land.

### Widening of Middle East Disarray

All this lead to instability in the Middle-Eastern region, but repeated economic and political factors widened this disarray. *Firstly*, there was a lot of political uncertainty and instability. In Middle-East, there was a trend of repeated government change. The most important aspect of this is the Shia-Sunni conflict. On one hand there was this Israel-Arab conflict but on the other hand existed the Shia-Sunni conflict which was often overlooked. Although this conflict was majorly between Saudi Arabia and Iran, but it spread to the whole Middle East region.<sup>7</sup> There was a tendency between these two states to gain supremacy in the region. For this purpose, they always tried to set a government which was in their favour. Iran had always tried to establish a Shia government in states like Iraq, Egypt, Syria, and Lebanon. The same goes with Saudi Arabia which always tried to establish a Sunni government. This sometimes led to a situation in which Sunni-dominated population was governed by Shia government and vice versa. This became the starting point of Shia-Sunni conflict. In a case of an unbalance, there were several attempts to overthrow the government. This Middle-East disarray widened due to western interest in all this matter. It was an obvious fact that countries like United States of America, United Kingdom, and France had since long an interest in the oil reserves and natural resources of the Middle-East. They started their political intervention in the Middle-East for their own benefit. This matter was politicized by them and in turn started supporting countries and hostile elements from both sides of an aisle. The turning point came when

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countries like Saudi Arabia started backing terrorist groups. Besides Saudi Arabia, there were other radical countries that joined for the same purpose. These terrorist organizations existed only and only for the purpose to overthrow the popular and the legit government. This led to the formation of small Islamic radical terrorist groups in the borders of Iraq and Syria and these small terror affiliations became stronger day after day because of the western funding. This caused the emergence of today's famous terrorist organization ISIS (The Islamic State of Iraq and Syria). With the passage of time; it became so influential that it started capturing bordering areas of Syria and Iraq. Moreover, they got the advantage of the Syrian civil war and weak political authorities. The modern day refugee and the migrant crisis are solely based on this assertion. The widespread massacre and killings forced people to shift from their country to a peaceful country.<sup>8</sup> The whole intricacy of the matter coupled with the founding factors led to the widening and establishing of the Middle-East Disarray.

### Un Convention on Refugee Rights, 1951

In the whole scenario, the UN convention on refugee rights, 1951 plays an important role. Denmark was the first to ratify it. It pertained to the rights of refugees, responsibilities of state in granting refugee and asylum status. It is pertinent to note that this Geneva Convention is in consonance with the Article 14 of the United Nations declaration on human rights. The rules and principles of the convention were binding on the states which ratified it. This was amended by the 1967 protocol on refugee rights which included the definition of "refugee" in Article 1. It was in the year 1968 that the United States of America ratified the convention.<sup>9</sup> The United States of America did not ratify the UN Convention on Refugee rights, 1951. One major aspect of this convention was the principle of "Refoulement". According to this principle, a state cannot refoul or send back the refugees who have arrived. Refoulement is the most important and pertinent concept which has the utmost relevance in the present times seen it with regards to new Trump's executive policy or refugees being stranded at the borders of various countries. The scope was wider in the 1967 protocol because the 1951 convention only pertained to the European refugees but this constraint was removed in the 1967 protocol. The 1967 protocol pertained to every refugee without any geographical restraint or limits. UN refugee convention on refugees, 1951 mentions the rights and the duties of the contracting parties. A contracting state has to respect the religion of the refugee, provide access to the courts, and not discriminate against refugees in relation to local nationals in any way. The contracting state must give all the administrative assistance to the refugees. The refugees, in turn, must abide by the municipal and the national law of that nation in which they have taken refuge.<sup>10</sup>

### Modern Global Crisis and Trump's Executive Order

The global refugee crisis came when the Trump administration banned the entry of people belonging to seven Muslim countries as well as the

Syrians for an indefinite term. The seven countries included Somalia, Sudan, Libya, Lebanon, Iraq, Iran, and Yemen. When the orders were passed on January 27, it created a global uproar and tension. The decision was criticized by the leaders across the world wherein Canadian Prime Minister Justin Trudeau went up to the extent of announcing that all refugees that were barred from entering the territory of United States had an easy access to the Canadian border. Even, the District Court of Washington D.C. had put a halt to Trump policy. This turned out to be a major blow to Trump administration. The intriguing concept in the whole scenario was that Trump cleared his agenda during the race for presidential elections in the United States of America. The people of United States of America, despite all the promises made during the contesting of elections, voted for him and brought him to the front. The main contender to Trump was Hilary Clinton of the Democratic Party. Donald Trump repeatedly made certain statements in the public and during the election campaign that were detrimental to the rights of the religious minorities.<sup>11</sup> There were many speculations that Trump's campaign was supported by the Russians who wanted him to be the head of the State. There have been many revelations in regards to this in the recent past. It is an obvious fact that Donald Trump's international policy and executive policy would have various legal repercussions.

### Critical Analysis of Trump's Policy

The policy of Trump was flawed on certain grounds. *Firstly*, it was violative of the UN Convention on Refugees, 1951. *Secondly*, it would have a detrimental effect on the lives of the people in general, particularly those from the seven countries. *Thirdly*, article 33 of the UN Convention on Refugee Rights, 1951 has not been followed by the US president Donald Trump. It states that no refugee can be sent back. But Trump's policy is *prima facie* violating it by limiting the entry of nationals of seven Muslim countries. *Hence*, Trump's ban was seen detrimental across these countries, specifically with regards to the foreign policy and in short seemed to act like a ban on the Muslims. The fact that Trump signed executive orders on the Holocaust day substantiates this point. The seven countries Somalia, Sudan, Libya, Lebanon, Iraq, Iran, and Yemen are predominantly Muslim Countries. One of the criticisms of Trump's foreign policy was that such policies were religion divisive in nature that is to say that they had made specific bifurcations among the people with regards to their religion. It is a known fact that Trump belonging to the Republic Party is Rightist leader. The biggest problem is that the head of the world's most powerful country, portraying such attitude and beliefs would be detrimental to the maintenance of world peace and security. We might look upon varied intricacy as we delve deep into its wider picture. Trump's executive order came at a time when there was too much of instability in the Middle-East. Instead of providing a concrete solution to the problem of Syrian and refugee crisis, the United States president Donald Trump resorted to such policy. This certainly would have a great impact on international affairs and policy.

Diplomatic ties were to severely hit by this. A Foreign policy like this will again divide the world into two parts and bring it to the verge of making pro-Muslim countries and Anti-Muslim countries at conflict with each other. United State of America's overwhelming and friendly diplomatic ties with Israel also further escalated the problem and highlights as to how the other predominantly Muslim countries would see it. But there are always two sides of a coin; that is to say, there were pros and cons in relation to this.<sup>12</sup>

The Muslim ban of Trump could be justified on the ground that Donald Trump that it does not violate any municipal law *per se* and the United States of America seem to be worried about the internal security of the country. This logic could be substantiated through the Orlando shooting that took place during the general elections that were in progress. It is pertinent to mention here that Donald Trump cleared his intentions during the elections only and yet people voted for him. He made poll promises pertaining to the Muslim Country ban. This also brings a counter argument as the people mandate chose despite his illegal and bad promises.

### Conclusions

It is to be concluded that such policies and orders are against the integrity of the world as a whole. In this whole matter and controversy, the role of United Nations is of utmost importance. The United Nations is the most appropriate channel to guide the countries in such conditions. The 1951 UN Convention needs to be followed. In this condition of turmoil, this matter needs to be taken sensitively and with utmost care. The United States of America, a superpower, a country with largest military dominance must take initiatives to tackle this issue. In the times of Middle East disarray and migrant crisis, all the countries must gather at a world forum and try to look deep into this issue and make steps towards curbing it out as soon as possible. This whole process can start through tackling of basic problems. *Firstly*, a viable solution to the problem, i.e. of the Islamic State of Syria and Iraq needs to be done, which could be done through collaborated efforts in a manner Islamic State of Syria and Iraq is destroyed from its roots. It is pertinent to mention here that it is not hidden from the world that how some European countries have in several instances supported the ISIS to fulfill its mean and selfish purposes. The Middle East being the oil hub has always attracted European countries economic and political interest towards it. *Secondly*, after tackling the problem of ISIS, all the people who have been misplaced are to be brought into consideration. These people have suffered so much in the past 2 years that their life has been equivalent to hell. *Thirdly*, they must be supported by the countries, they have taken refuge in. *Moreover*, countries like the United States of America must also shed its personal interest and selfish acts and politics for once and look into the bigger intricacies of this whole matter so that in the coming years, the citizens of these countries get a better place to live in. Hence, therefore it is concluded that the principle of Refoulment needs to be followed and made in consonance with the new and existing laws. The

principle of Refoulment has emerged as a principle of customary international law. So, countries like America must refrain itself from formulating such policies which are detrimental to the principles of customary international law and threaten brotherhood, peace, and unity in the world.

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