

# REFUGEES AND RIGHTS: TRACING STRATEGIC PATH TOWARDS SAARC-CENTRIC LEGISLATIONS

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## Introduction

Humanity finds itself at hardship of phenomenal magnitude since its origin. War and struggle have held humankind from continent to continent, from region to region and from nation to nation. Mistreatment of peoples based on their caste, creed, ethnicity, gender, race, religion, region, social origin and political opinion remains unabated and keeps on being made exacerbated. It is unfortunate yet veritable maxim that the modern world is an exasperate world. This modern world is also witnessing the new horizons of human migration that is accelerated by a large number of socio-economic, civil and political human rights quests<sup>1</sup>.

The South Asian region particularly SAARC consists of India, Pakistan, Bangladesh, Nepal, Bhutan and Maldives. Afghanistan joined the organization in 2007<sup>2</sup>. Countries in South Asia, at the worldwide level, are the countries of emigration. Powers of emigration may be ascribed primarily to the moderately weak economies of the region as well as in the social injustices existing in numerous countries in the region.

Immigration here is more of an intra-regional phenomenon linked to historical developments as well as the cultural and linguistic affiliations within the region. While there is no legitimate idea of asylum, in practice, the grant of refugee status to various from within the region, has been a conventional sign of countries in the region<sup>3</sup>.

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<sup>1</sup> Nafees Ahmad, *The Constitution-Based Approach of Indian Judiciary to the Refugee Rights and Global Standards of the UN Convention*, 8 *King's Student L. Rev.* 30 (2017).

<sup>2</sup> Haroun Mir and Habib Wardak, *Afghanistan, SAARC and the road ahead*, *India International Centre Quarterly*, vol.41, p.20-32, (2015).

<sup>3</sup> Wei Meng Lim-Kabaa, *Migratory Movement and Refugee Protection in South Asia*, 2 *ISIL Y.B. Int'l Human. & Refugee L.* 58 (2002).

However, the entire south Asian regions, notably the SAARC, is devoid of guidelines and standards on any dimension of refugee reception, determination and protection. As a result of historical mishaps, political numbness, unstable democracies and overstated concern over national security, there is no real inspiration for, or any environment in which there is a possibility for, the sanctioning of any national legislation.

### **Tracing History of Refugee Management in SAARC Nations**

The Refugee “crisis” in South Asia can be bifurcated into two broad categories: first is the refugee movement within the region from one country to another within the region and the second is the movement from countries outside the region to countries inside the region. This region has witnessed the refugee movement from both inside and outside the region. US Committee for refugees brought out shocking statistics that about 12.02% of refugee population reside in Bangladesh, India, Pakistan and Nepal.<sup>4</sup> South Asian region hosts up to 1.5 million refugees who have fled international borders due to war, persecution and human rights violation in their country of origin<sup>5</sup>. The situation is further compounded by the fact that none of the SAARC countries have acceded to the 1951 UN Convention and 1967 Protocol relating to the status of refugees, the main international instrument for protecting refugees. The soft policies adopted by SAARC has led to not only loss to states harboring refugees but also to refugees themselves. This loss experienced by both the counterparts can be decreased with the help of proper policies. The state has also given shelter and other forms of relief to different types of victims of forced migration, including victims of natural disaster, people fleeing violence against humanity, abuse of human rights by state and non-state parties, communal and ethnic strife and even the victims of manmade ecological disasters even though the incidences of refolement in some instances are not uncommon. The actual response of the SAARC on the whole scenario is that governments have followed differentiated policies towards different groups of refugees or asylum seekers originating from within the region. While a state might welcome some groups of asylum seekers it may not be receptive or kind to others. The powers

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<sup>4</sup> Manish Kumar Yadav, Rights of refugees and internally displaced persons with a special reference to south Asian region, *International journal of humanities and social science invention*, volume 4 issue 12, p. 39-41 (Dec. 2012).

<sup>5</sup> *Ibid.*

to grant residential permits have been relegated to administrators at district and sub-district levels who grant and revoke these certificates at their discretion<sup>6</sup>.

Refugee movements- the most important direction of refugee flow has been within the third world, from one south country to another. What has facilitated most of south-south refugee flow are factors like contiguous and porous borders, socio cultural identities of the people across borders and encouragement by neighboring states for strategic or humanitarian reasons<sup>7</sup>. Many south Asian countries have been receiving as well as generating refugees. where ethno-cultural and religious moorings have been the major factor in Pashtuns, Lhotsampa's Tamils and Rohingyas relocating to the neighboring countries. India has been more of refugee receiving than generating country due to its easily accessible borders, socio cultural identities, economic opportunities and a democratic and generally soft state in relation to almost all the neighbors. In 1948 When independence was granted to Burma, a large number of Indian origin people were thrown and hence got the status of refugees. After the political changes in 1952, refugees were again sent to India by Burma. During that period around 1,50,000 refugees came to India<sup>8</sup>. in 1978, as a result of Burmese army's operation in Arakan region, around 2,00,000 Rohingya refugees sought asylum in Bangladesh as the government sought to put a check on illegitimate migrants and insurgents' activities<sup>9</sup>. By the year 1992, there was another influx of 3,00,000 refugees into Bangladesh<sup>10</sup>. In order to accelerate repatriation process for some time an agreement was signed between Bangladesh and Burma. still refugees continued to stay in Bangladesh as well as in Myanmar. Some examples of nature of protection given to the refugees for a period of time can be represented through the protection given by Bangladesh to the Rohingya refugees from Myanmar, the protection given by India to Sri Lankan Tamils and the protection given by Nepal to Lhotsampa refugees from Bhutan. Hence the judicial as well as the administrative bodies of these countries have bluntly or incidentally accepted the laws in regards to refugee convention even though they are not participants in these conventions. They are essentially not capable of providing financial support to the refugees then the thought of providing official status to the refugees is not even close to being accomplished. This line of

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

thought is supported by the lack of political will and "bureaucratic caution". The sole purpose of determining the status of refugees is defeated by the inclusion of majoritarian mentality thus giving ultimate decision-making power to the policy makers. In the instances where the number of refugees are less in number, the government is not willing to politically involved in helping the refugees in determination of their statuses. Hence, they have permitted the UNHCR to determine their status. However, such decisions gave only shortened powers to the UNHCR<sup>11</sup>.

Already prevalent laws for management of refugees- Article 7 of UDHR provides status to the refugees in such a way that the states in any region have to compulsorily accept refugees and there should be no discrimination on the basis of race, religion or country of origin. This in effect is also the nature of obligation undertaken by parties under article 3 of refugee convention. article 18 of UDHR gives freedom to refugees to practice their own religion under article 16 chapter 2. The refugees in the respective country of asylum have access to courts which is also safeguarded by article 8 of UDHR. Within the existing socio-economic environment, the refugees are permitted to have wage earning employment or self-employment as provided under Articles 17 and 18 (Chapter 111) of the Convention. But no south Asian country have any constitutional provisions to deal with refugees. As a result, most of them deal with them on an ad-hoc basis. In many instances the refugees have been used as pawns in regional geo-politics<sup>12</sup>. Indeed, to varying degrees, the seminal events noted were simply exacerbations of this underlying discrimination: alarming episodic symptoms of a chronic legal, political, and economic illness. Each country has different argument to offer for not ratifying the 1951 UN convention and 1967 protocol. The basic question again arises whether they have the efficiency that the framers of the convention had hoped for. The important factor to be kept in mind is that we cannot compare the natures of refugee rights provided to them in developed countries to that with the rights of refugees in developing countries. Both of these countries have different economic, political, social environments hence comparisons drawn would not only be inaccurate but would also demotivate even small efforts taken by developing countries in regards to determination of refugee status. The effectiveness of refugee laws is not to be determined by the number of laws available but whether the target of the prevailing law, that is refugees, are reaping benefits of the law. Even though, the National Human Rights

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<sup>11</sup> SUPRA 3.

<sup>12</sup>*Ibid.*

Commission (NHRC) established under the Protection of Human Rights Act, 1993 and United Nations Human Rights Commission (UNHRC) has also contributed significantly to the protection of refugees in India, the condition of refugees in India is not up to the mark. India does not agree with the very definition of the refugee and wants these conventions and protocols to have strong provisions for insulating the refugee influx-prone developing countries against massive influx. In other words, it wants the affluent developed nations to share at least equitably the expanding refugee burdens.

Present scenario- In proffering a modest definition of Myanmar's "Rohingya problem"-one totally of its own making-three distinct but related areas of law and fact warrant specific examination:

1. nationality and discrimination, which focuses exclusively on Myanmar;
2. statelessness and displacement, which implicates Myanmar's neighbors as well; and
3. the doctrine of the Responsibility to Protect, which draws into the discussion the role of the international community<sup>13</sup>

These three areas demonstrate that although the root causes of the "Rohingya problem" are within Myanmar, their effects are felt regionally and are of relevance even further afield. They are thus progressively causal, and they imply where efforts toward solutions should be directed and prioritized. Much has been written on the Rohingya Crisis empathetically or as a challenge of Myanmar's "Rohingya problem." that the Rohingya bore the brunt of communal violence, human rights violations, and an urgent humanitarian situation in Rakhine State, but they still face an uncertain future. This system makes such direct violence against the Rohingya far more possible and likely than it would be otherwise. This is because in the eyes of the Myanmar authorities at+ least-as evidenced by the lack of legal accountability for civilians and officials alike-discrimination also makes the violence and violations somehow justifiable. This is the Rohingya problem boiled down to its most basic element<sup>14</sup>. Since 1978, the Rohingya, a Muslim minority of Western Burma, have been subject to a state-sponsored process of destruction.

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<sup>13</sup> Benjamin Zawacki, *Defining Myanmar's Rohingya Problem*, 20 Hum. Rts. Brief 18, p. 1, (2012).

<sup>14</sup> *Ibid.*

Findings from various research on the plight of the Rohingya lead us to conclude that Rohingya have been subject to a process of slow-burning genocide over the past thirty-five years<sup>15</sup>. The destruction of the Rohingya is carried out both by civilian populations backed by the state and perpetrated directly by state actors and state institutions.

This destruction has been state-sponsored, legalized, and initiated by a frontal assault on the identity, culture, social foundation, and history of the Rohingya who are a people with a distinct ethnic culture. In media, official policy documents, and school textbooks, the Rohingya are referred to as Bengali, a racist local reference, and are portrayed as illegal economic migrants from the colonial time, who are a 'threat to national security, a portrayal that the bulk of the Burmese have accepted as a fact over the past five decades. The intent to destroy the Rohingya people over the past thirty-five years through assaults on their identity, killings during multiple pogroms, physical and mental harm, deliberate infliction of conditions of life designed to bring about the group's destruction, and measures to prevent births, has led many to conclude that the problem of people of Rakhine State is real and happening in reality.

"There are elements of genocide in Rakhine with respect to Rohingya. The possibility of a genocide needs to be discussed. I myself do not use the term genocide for strategic reasons." Tomds Ojda Quintana, United Nations Special Rapporteur for Human Rights, London Conference on Decades of State-Sponsored Destruction of Myanmar's Rohingya, April 28, 2014<sup>16</sup>.

This apparent insouciant usage of words towards such a grave issue by a UN representative can be interpreted in two ways-

1. They (UN Authorities) are too afraid to lose their position established in UN. Despite growing evidence of genocide, the international community has so far avoided calling this large scale human suffering genocide because no powerful member states of the UN Security Council have any appetite to forego their commercial and strategic interests in Burma to address the slow-burning Rohingya genocide.

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<sup>15</sup> Maung Zarni and Alice Cowley, *The slow burning Genocide of Myanmar's Rohingya*, Pacific Rim Law & Policy Journal Association, Vol. 23, No. 3, (2014).

<sup>16</sup> *Ibid.*

2. They are too engrossed in their political gambling in world forum that they are turning a blind eye toward this harrowing issue.

The first interpretation is what is prevailing one as today position is everything in an organization as big as UN. To date, the total number of Rohingya in Rakhine State are estimated at over one million, the majority of whom live in three townships of North Rakhine State, and the vast majority of whom are stateless. Since the violence of 2012, over 140,000 people remain displaced in seventy-six camps and camp-like settings across Rakhine State, the bulk of which are Rohingya and other Muslim minorities from Rakhine State<sup>17</sup>. Roughly 36,000 Rohingya and other Muslims in communities across Rakhine State are considered by the United Nations ("UN") to be acutely vulnerable and in need of urgent humanitarian assistance<sup>18</sup>.

### **Efficacy of International Conventions**

A grave humanitarian crisis is seen by the world of forced displacement because of unprecedented internal strife bringing about systematic and gross infringement of human rights and humanitarian law. The Convention on the Status of Refugees-1951 is the instructing instrument to oversee refugee situations around the world. This Euro-centric report declared not long after the World War II to cope with the influx in Europe have numerous deficiencies in the present setting, including rights that neglect to react to the genuine human rights dilemmas faced by the refugees, rights encircled to such an extent that they are beyond reconciliation with states' legitimate self-interest, rights that ought to be incorporated however are not, and rights that need not be incorporated by any stretch of the imagination. Very rapidly the South Asian area is growing as a refugee melting point<sup>19</sup>. None of the part countries of the SAARC (South Asian Association for Regional Cooperation) are the signatories to the Refugee of 1951 Convention (with the exception of the recently joined part Afghanistan) and its Protocol of 1967.

There are various reasons as to why the countries in South Asia have not signed these International Instruments. The preconceived notion that the 1951 convention is a cold war

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Gopal Krishna Sawoti, Refugee Regime Under SAARC: AN Agenda for Action, Advancing the rights of refugees in Asia Pacific region, Asia Pacific Refugee Rights Network, available at <http://aprm.info/refugee-regime-under-saarc-an-agenda-for-action/> (last accessed on 00:37 AM, 20<sup>th</sup> Feb.,2018).

instrument, favoring the political refugees and hence not appropriate for South Asian situation where mass influx of refuge has been caused due to generalized conflict<sup>20</sup>.

Second, a wider definition of refugees was not accepted which was suggested by India and Pakistan. Both India and Pakistan had coined for an open-minded meaning of refugee and not keep it euro-centric during a deliberation on beneficiary to international refugee organization.<sup>21</sup> Since then towards every refugee convention, a negative attitude was developed by both India and Pakistan.

In the third world countries, the government is extremely sensitive to the fact that Humanitarian operations by even neutral multilateral organization might result into violation of sovereignty. The countries in South Asia always believed in giving more importance to bilateral approach rather than multilateral approach in their policies related to refugees and population displacement and hence they considered internationalizing the refugee issues as international criticisms leading to unnecessary interference in the internal matters of the countries concerned.<sup>22</sup> Here the priority is given to the concept of National Sovereignty which means that the countries of South Asia do not want to give their policy making autonomy to an outside territory. This can be evident in cases of Chakma refugees, Rohingya refugees or Bhutanese refugees where the faith of the states was in bilateral negotiations to resolve the conflicts.

The SAARC countries alleged that the provisions of the convention or the protocol are not being followed effectively by the countries that have ratified these. Hence following these would not be beneficial for the South Asian countries. Also, they had this fear that ratifying the treaty or convention would put additional burden and responsibilities which they might not be able to handle.

Economic and forced migrants as well as terrorists are able to invoke various provisions of the convention and the protocol which clearly indicates that these International Instruments have

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<sup>20</sup> Bradman Weerakoon, Regional Initiatives to Promote Awareness of and Accession to the 1951 Refugee Convention and other Relevant Human Rights Instruments' in Proceedings for the Fourth Informal Consultation on Refugee and Migratory Movements in South Asia, Dhaka, (Nov. 1997).

<sup>21</sup> Guy S. Goodwin Gil, *The Refugee in International Law*, Oxford: Clarendon Press, 2<sup>nd</sup> Edition, (1996).

<sup>22</sup> Pia Oberoi, Regional Initiatives on Refugee Protection in South Asia, 11 *Journal of Refugee Law* (1999).



not been able to address the larger issues of security. If such is the case then they will not be able to provide safety, protection and reassurance to the displaced people and refugees<sup>23</sup>.

Many countries in South Asia do not have a proper domestic regime for the protection of the refugees and hence there was an expectation that the governments would willingly encourage the United Nations High Commissioner for Refugees (UNHCR) to widen their operations throughout these countries. But the governments of various countries are reluctant to settle cooperation agreement with UNHCR because it is not a permanent organization as the life of it periodically extends from time to time and hence there was no future guarantee of its existence. Without a Memorandum of understanding with the government of the states, UNHCR has no formal status in the country and hence operates under the United Nations Development Programme. UNHCR'S role is restrictive in the sense that it only provides assistance to asylum-seekers from non-contiguous states<sup>24</sup>.

Seeing the past as well as the present situation of the South Asian countries, the bureaucratic insensitivity along with the lack of political will of the individuals has dominated practical reason .and hence whenever the topic of accession to the conventions raised unanimous representation by all the south Asian countries was that this was not in their priority list. However according to Justice V.R. Krishna who was the former judge of the supreme court, India should play an important role by being a member state of the executive committee of the High Commissioner's programme<sup>25</sup>. By this he meant that India should take a leadership role by emphasizing on humanity and giving genuine support to refugee protection.

The South Asian states believe that there is no need of enforcing a new statute to give effect to international obligation when there are similar statutes present within the state to deal with the issues of refugee. The countries which remained colonies of the European powers for quite a few times would like to continue with the benefits of the existing pre-independent statutes and

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<sup>23</sup> Article 44 of the 9th SAARC Summit, The Declaration of the Ninth SAARC Summit of the Heads of State or Government of the Member Countries of the South Asian Association for Regional Cooperation, (14 May, 1997) available at [http://training.itcilo.it/actrav\\_cdrom1/english/global/blokit/saarcd.htm](http://training.itcilo.it/actrav_cdrom1/english/global/blokit/saarcd.htm) ( last accessed on 00:55 Am, 20<sup>th</sup> Feb., 2018).

<sup>24</sup> Mike Sanderson, The Role of International Law in Defining the Protection of Refugees in India, 33 Wis. Int'l L.J. 46 (2015).

<sup>25</sup> Justice V.R. Krishna Iyer, The Legal Saga for Refugees and Humanitarian Odyssey, Bulletin on International Humanitarian Law and Refugee Law, Vo1.2, No. 2(A), p.313.

acts and hence not be scrutinized by the International community. These acts include Foreigner's Act, Registration of Foreigners Act and the Passport Act which provides discretionary powers to the state.

According to United Nations Independent expert on violence and Discrimination Mr. Vitiit Muntarbhorn, there has been a constant conflict between the International and National Refugee protection due to the fact that the government confronts an undesired Influx of asylum seekers and hence may choose to ignore international Refugee Law because they are more convenient with using Local immigration law and terminology to constraint such influx<sup>26</sup>. This is a situation because the nature of International Burden Sharing has neither been effective nor meaningful. The largest population movements of the world taken place within the South Asian region such as during the Bangladesh war of 1971 where there was poor response by the international community and hence no timely assistance was rendered.

As per a renowned scholar on South Asia, Myron Weiner, the borders in South Asia are extremely porous and hence cross-border population movement will affect local infrastructure and resources, demographic balance, internal security, political stability and international relations. It would also impact the structure and composition of labor market or services to the new comers<sup>27</sup>.

BS Chimni, a legal scholar and academic has contended that South Asian states should cease from agreeing to the Convention as the instrument is being destroyed by the very states which framed the Convention, and that any discussion of accession should ought to be connected to the removal of measure linked to the non-entrée and temporary protection regimes. Chimni's formulation merits genuine consideration given to the fact that asylum as an establishment has gone under extreme threat from the Western countries. It is an ideal opportunity for a genuine good test to be posed by the developing world and the South Asian countries could very well take the lead in this regard. One may fully share Chimni's worries about the policies of the Western countries; be that as it may, linking the issue of accession to rolling out requests for improvement in the Convention may prompt further disintegration of already weakened

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<sup>26</sup> Vitiit Muntarbhorn, *The Status of Refugees in Asia*, Oxford: Clarendon Press, p.52, (1992).

<sup>27</sup> Myron Weiner, *Rejected Peoples and Unwanted Migrants in South Asia*, *Economic and Political Weekly*, Vol.28, No.34, (Aug. 21, 1993).

international refugee principles. Accession to the Convention can provide civil society establishments a premise to campaign against any violations of the conventions (nationally, territorially and internationally) and furnish South Asian states with a legitimate base to exert pressure on Western countries to destroy the non-entrée regime<sup>28</sup>.

All this shows that there is a pertinent need for a SAARC centric Refugee Protection.

### **Strategies for SAARC Centric Refugee Protection**

Many specialists in the field of refugee law believe that the more practical alternative to proposing an altogether new law is to push for changes in South Asian countries present approach with respect to refugees. As stated above, no current South Asian law refers specifically to refugees. The Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948 are the primary archives dealing with the treatment of foreigners in South Asia. Article 2 of the 1939 Registration of Foreigners Act defines a foreigner as “a person who is not a citizen of India.” The Foreigners Act of 1946 and the Foreigners Order of 1948 also uses this definition of a “foreigner.” Both the Act and the Order certifiably allow the powers of the South Asian governments to confine the movement of foreigners inside their countries, to mandate medical examinations, to restraint employment opportunities, and to control the opportunity to associate, and the capacity to refole, or “return,” refugees. The Refugee Convention, however, bars all these activities<sup>29</sup>.

It is important that consistency and uniformity is practiced in the application of refugee law and elements like regional politics should be surrendered. The current ad hoc courses of action of managing refugees based on administrative, political and economic calculations should not be the policy in South Asian region, which has accepted such a large refugee population. The absence of national refugee laws has created atypical situations in the past. Three instances related to Sri Lankan Tamils are-

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<sup>28</sup> B S Chimni, *The Law and Politics of Regional Solution of the Refugee Problem: The Case of South Asia*, RCSS Policy Studies 4, Regional Centre for Strategic Studies, Colombo, p.12, (1998).

<sup>29</sup> Arjun Nair, *National Refugee Law for India: Benefits and Roadblocks*, Institute of Peace and Conflict Studies, New Delhi, p. 6, (Dec. 2011).

1. During the Rajeev Gandhi assassination case, 26 people were accused. Of these 26 people, 6 were registered as refugees. Judge Navaneethan granted death penalty to all the 26 accused. The Supreme Court affirmed the capital punishment on four and granted life imprisonment for three. The rest were sentenced for lesser offences under the Arms Act, the Explosives Substance Act, the Foreigners Act, the Passport Act etc. As they had already undergone detainment for these offences, the Supreme Court set them free. While the acquitted Indian nationals were released, the acquitted Sri Lankan Tamils are still put in Special Camps<sup>30</sup>.
2. The second instance refers to the Ahat case. The ship Ahat was enlisted in Singapore and was flying a Honduras flag. It was supposedly carrying weapons and ammunition to the LTTE in Jaffna when the Indian Navy and the Coast Guard stopped it. After an exchange of fire, the ship was set on fire and some Sri Lankan Tamils, including LTTE pioneer Kittu, committed suicide. Judge Lakshmana Reddy acquitted all the accused in the case and requested the Commissioner of Police to hand them over to the State of Honduras. The Special Investigation Team (SIT) and the Central Bureau of Investigation (CBI) went on appeal to the Supreme Court, which found the accused liable for a few charges and condemned them to a total period of detainment of three years. Here once more, the accused had completed the term for detainment and, therefore, were set free. The State of Honduras did not have any desire to take Tamils; nor did the Tamils have a Honduras passport. The Tamils additionally did not have any desire to backpedal to Sri Lanka. One Tamil went to Middle East. The rest are in “safe authority and custody” in Visakhapatnam<sup>31</sup>.
3. The third instance is a terrible indication of the numbness of the Tamil Nadu security authorities about the global network which the Tigers have developed throughout the years. Bhaskaran, an LTTE guerrilla, was confined in the Saidapet special camp after Rajiv Gandhi's death. No charges were favored against him, and Bhaskaran appealed to the authorities for consent to travel to another country. The immigration authorities left Bhaskaran at the Meenambakkam air terminal. After fourteen days, Bhaskaran was found in Phnom Penh negotiating the purchase of surface-to-air missiles for the LTTE.

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<sup>30</sup> V. Suryanarayan, *Need for National Refugee Law*, ISIL Year Book of International Humanitarian and Refugee Law, vol.15, (2001).

<sup>31</sup> *Ibid.*

Furthermore, he gloated to the journalists about how he duped the authorities in Tamil Nadu.<sup>32</sup>

Hence the first strategy is a need for a National legislation. Efforts should be geared towards the development of far reaching national laws which maintain the universal principles of international refugee protection while considering the distinctive characteristics of the region. This is the first step in the process of building a regional accord on counteracting, overseeing and resolving the issues accompanying refugee flows in a comprehensive and empathetic manner. The purpose of the national laws is to set up a procedure for giving refugee status to asylum seekers, to promise them reasonable treatment and to build up an imperative machinery for its implementation.

The second strategy is to promote regionalism by promoting “Cooperative Security and Comprehensive Security” as promulgated by Association of Southeast Asian Nations(ASEAN) for outlining the basic objectives of this forum. These objectives were to promote constructive dialogue and counsel on political and security issues of common interests and concern; and endeavor significant commitments towards confidence building and preventive diplomacy in the locale. It set up a three-stage process comprising of Confidence Building Measures (CBMs), Preventive Diplomacy and Conflict Resolution<sup>33</sup>.

In order to develop sense of community and regional cooperation in security and refugee issues, it is very important for SAARC to experience these integrative factors in a substantive way. Unless the comparative advantages of intra-regional trade are acknowledged by trade and economic pioneers, and until the cost of non-cooperation is ascertained by the elites of every member country, the improvement of SAARC as a community will remain a far cry.

### **Conclusion**

More proactive legal refugee regime in the SAARC is the need of the hour. This is because none of the countries in the South Asian region has signed the refugee convention, 1951 and its protocol of 1967 though they have witnessed migrations and internal displacement on such a large scale as compared to anywhere else. Time has shown that the South Asian countries

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<sup>32</sup> *Ibid.*

<sup>33</sup> Niaz Niak, *South Asian Economic Cooperation: problems and prospects*, (2001).

have dealt with this in a very limited way. This is because they are developing countries and hence requirement in the present scenario would be establishing a wider framework specifically legally to go about the durable solutions.

South Asian countries has so far managed situations of mass influx without a refugee law but with a continuously expanding population of refugees and asylum seekers, a vast segment of who may not be repatriated in the near future, a uniform law would enable the government to keep up its huge non-citizen populace with greater responsibility and order, aside from enabling them to appreciate uniform rights and benefits. Regionalism can be helpful in enhancing ties with its neighbors, yet, SAARC countries will be better set by having their own national law owing to the expansive number of different communities that they host, and the unstable relations that they share with several of their neighbors.

Hence in analyzing various aspects of refugee protection, including the critical implications of ratification of international convention and protocol, it's very important first step to develop a regional instrument and to promote National Legislations for creating a secured arena in order to dismantle the non-entrée regime which is undermining the basic tenets of International Refugee Protection as well as human rights.