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**ADOPTING THE 1951 UN REFUGEE CONVENTION**

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The year 2001 marks two important anniversaries for Mongolia and the United Nations High Commissioner for Refugees (UNHCR). Mongolia has celebrated the 40<sup>th</sup> anniversary of its membership of the United Nations, and agencies represented in Mongolia have cooperated with the Government in marking this important event. For the UNHCR, 2001 is the 50<sup>th</sup> anniversary of the UN Refugee Convention, and special efforts have been made around the world to promote the work of the agency and to encourage States to adopt this important international instrument. Therefore it is appropriate at this time to reflect upon the significance of the UN Refugee Convention and to consider its continuing relevance.

The following discussion draws on an article printed in the major Indonesian English language daily *The Jakarta Post* by Indonesian academic, and former UNHCR officer, Enny Soeprapto. In the article, it is argued that Indonesia should adopt the UN Refugee Convention. It is significant that an item in a journal in another country in the Asia-Pacific, going through economic and social transition like Mongolia, can hold relevance beyond the borders of that country. This reinforces the universal importance of the UN Refugee Convention, and of the issues that need to be addressed by States that are not parties to the convention.

The Convention was originally designed to deal with refugee situations in Europe arising before January 1951, and was amended by the 1967 Protocol Relating to the Status of Refugees. This Protocol removes the time limitation and the geographic limitation (events in Europe) applying in the 1951 Convention, to make the instrument universally applicable. The 1951 Convention and 1967 Protocol have been ratified by 141 states, or over 73% of the members of the United Nations.

Only seven of these 141 member States are from the Asian region – Cambodia, China, the Islamic Republic of Iran, Japan, the Republic of Korea, the Philippines and Yemen. Why? The following would seem to be the main reasons.

First, most countries in Asia are developing nations with large populations. Their priority is uplifting their people's welfare, and refugees are seen as a burden they cannot afford. Second, there is a misunderstanding about the obligations that come with being a party to the 1951 Convention/1967 Protocol. Many believe that the Convention imposes an international legal obligation to permanently resettle refugees in the countries concerned. Third, there is another misunderstanding that adopting the 1951 Convention/1967 Protocol would lead to increased inflows of refugees to these countries. Such fears have been expressed by government representatives in Asian nations, particularly in the light of the many outsiders seeking shelter in their countries.

In an increasingly interdependent world the burden-sharing of humanitarian problems has become an internationally accepted principle. Therefore, as refugee issues are problems of international scope and nature, every government is expected to play their part in seeking a solution. Adopting the 1951 Convention/1967 Protocol implies, of course, that States parties accept certain international legal obligations. However these instruments contain no provisions requiring state parties to accept refugees for permanent resettlement in their territories.

The only principle in the Convention which parties cannot avoid is the principle of "non-refoulement" (article 33 of the 1951 Convention) which prohibits State parties from expelling or returning ('refouler') refugees to the frontier of territories where their life or freedom would be threatened. In any event, it is widely accepted that this principle is part of customary international law, and so applies to all countries regardless of whether they are members of the Convention.

Fears that adopting this Convention would attract more refugees to the country concerned are totally unfounded and are not born out by the history of refugee movements. Other factors, such as geographical proximity, similarity of culture, or expectations of more freedom are the factors making a country more attractive to refugees. The Philippines, for example, which acceded to the 1951 Convention/1967 Protocol in 1981, has never been "inundated" by refugees. Pakistan, on the contrary, which is not a party to the instruments, has been for a number of years sheltering some two million refugees from Afghanistan because of the geographical proximity of the two countries.

The Islamic Republic of Iran has been a party to the 1951 Convention/1967 Protocol since 1976. However, the presence of some 1.9 million Afghan refugees in Iran is not because this country is a party to the refugee instruments, but because it shares common borders with the country of origin of the refugees. During the second half of the 1970's, almost all the countries in north and southeast Asia became countries of first asylum for asylum seekers from the Indo-chinese peninsula, in spite of the fact that none of these countries was, at that time, a party to the 1951 Convention and 1967 Protocol.

Nations who hold concerns about the refugee framework do not seem to be aware of the disadvantages that go with not being a party to the instruments. Countries who are not parties, and have refugee flows – such as Indonesia – leave the determination of refugee status of asylum seekers to the UNHCR, in line with its mandate, without the involvement of their authorities. Such refugees are commonly called "mandate refugees". If these countries were a party to those instruments, the competence and responsibility of determining the status of asylum seekers would rest with their government. Naturally the governments may always consult with UNHCR given its expertise and experience.

Becoming a party to the 1951 Convention/1967 Protocol also helps to promote friendly ties among nations, particularly between receiving state parties and the country of origin of the refugees. It should be noted that Mongolia is almost alone in the north/central Asian region in not being a party to the 1951 Convention/1967 Protocol. It would be an illusion to expect that if countries in the region stayed out of these instruments, they would dissuade real asylum seekers or

economic migrants from coming to their country, even for temporary stays. It would be impossible to seal off their territory. Mongolia, like some other nations in the region, has long and remote borders that are virtually impossible to protect completely.

Other states in the region hold reservations about the international instruments concerning refugees, and appear to subscribe to misunderstandings and fears about being flooded by refugees should they adopt the instruments. However, the Mongolian Constitution already recognises the right to asylum (article 18(4)) and establishes a commitment to fundamental human rights and freedoms. Its laws also specifically provide protection for people seeking political asylum. Mongolia has played an active role in the United Nations for 40 years and is a party to nearly all fundamental human rights instruments, except the 1951 Convention and the Universal Declaration of Human Rights also establishes the right to asylum from persecution.

Refugee flows have proven to be a constant feature of the world scene in the 50 year life of the Convention. The political and social disruption caused by human rights abuses and armed conflict has touched almost every part of the world and this has affected, in turn, many countries of the world. Some are directly affected by refugee crises, such as Pakistan and Iran, while others in the developed world provide funding to the UNHCR and resettlement of refugees unable to return to their homelands.

The international instruments, together with the work of the UNHCR, provide a rational and independent framework within which the world community can respond to the ever present distress of refugees. This allows dialogue and cooperation between the countries involved. The instruments in particular provide a fair and flexible legal framework that provides much needed protection to refugees around the world. Countries that are not parties to the 1951 Convention/1967 Protocol should consider taking on the difficult but necessary responsibilities shared by 141 other countries in the world who have already become a party to these instruments. These instruments do not merely promote the rights of refugees, but by promoting friendly ties among nations, they are also instruments for peace.

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In the article it is discussed about Mongolia not being party to the 1951 UN Convention, 1967 Protocol relating to the status of refugees. It examines why Mongolia and other states in the region hold reservations about the international instruments concerning refugees and fear about being flooded by them. The Article assures that the international instruments, together with the work of the UNHCR provide national and independent framework within which the country can respond to the present refugee distress.