UNIT 14 WHAT ARE THE ISSUES AFFECTING REFUGEES AND INTERNALLY DISPLACED PERSONS?

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14.1 INTRODUCTION

In this unit we will discuss the issues affecting refugees and internally displaced persons in the South Asian region and the legal protection in place to ensure protection. For the sake of understanding, the unit is divided into two sections. Section I will deal with issues affecting refugees in the South Asian region and the section II will deal with issues affecting internally displaced persons in the region.

An individual becomes a refugee because of circumstances, which are beyond their control and often distressing. In such a scenario, the individual is left with no other option but to flee from human rights violations, socio-economic and political insecurity, generalized violence, and civil war or ethnic strife all these leading to fear of persecution. States have built the legal framework that supports the international refugee protection regime by affirming their commitment to protecting refugees by acceding to the 1951 Convention relating to the Status of Refugees (here in after Refugee Convention), the cornerstone instrument of refugee protection. Three other important instruments have regional application. These are the Bangkok Principles, adopted in 1966 by what was then known as the Asian-African Legal Consultative Committee (AALCC, Bangkok Principles were revised and consolidated by the AALCC in June 2001),
the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969, and the 1984 Cartagena Declaration. The Convention relating to the Status of Refugees is the foundation of contemporary international refugee law. It defines the term “refugee” and sets minimum standards for the treatment of persons who are found to qualify for refugee status. Because the Refugee Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin, and are refugees as a result of events occurring in Europe or elsewhere before January 1, 1951. This observation is evident when one looks at the definition of a ‘refugee’. The term ‘Refugee’ has a particular meaning in international law and its legal definition is laid down in the United Nations 1951 Convention relating to the Status of Refugees (to be referred to as “1951 Convention”) and its 1967 Protocol. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Convention was drafted and adopted in 1967. When these instruments are combined, a refugee is defined as someone who:

- has a well-founded fear of persecution because of his or her race, religion, nationality, membership in a particular social group, or political opinion

- is outside his or her country of nationality

- is unable to avail himself or herself of the protection of his or her country of nationality or habitual residence, or to return there, for fear of persecution.

Thus, it may be noted that there are well-defined and specific grounds, which have to be satisfied before a person can qualify to be a ‘refugee’. These grounds are well-founded on fear of persecution and considerations of a number of factors which may operate individually or collectively. Persecution refers to any severe violation of human rights. In the refugee context, “persecution” refers to any act by which fundamental rights are severely violated for reasons of race, religion, nationality, political opinion, or membership of a particular social group. Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees is also equally significant.

As a matter of international law, a person is a refugee as soon as the criteria contained in the definition are satisfied. By applying these criteria, a person does not become a refugee because of recognition, but is recognized because he or she is a refugee. A declaration of refugee status states the fact that the person is a refugee. It is the responsibility of States to protect their citizens. When the governments of home countries are not able or willing to protect the basic rights of people living in the State and these people are forced to cross an international border to escape persecution, generalised violence, conflict, or serious human rights violations, then the international community has the responsibility to step in to ensure that these people receive effective protection and that their basic rights are respected. The creation of national refugee legislation based on international standards is the key to strengthening asylum, making protection more effective, and developing solutions for refugees. Asylum refers to the grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. Asylum encompasses a variety of elements, including non-refoulement, permission to remain on the territory of the asylum country, and humane standards of treatment. Non-refoulement is a core, customary principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. No State can return (refoule) a refugee even if the State has not
signed the Refugee Convention. Those States who are parties to the Refugee Convention undertake to apply a number of additional commitments. As well, the United Nations High Commissioner for Refugees (UNHCR) has been given the mandate by the United Nations to provide international protection to refugees and to seek solutions to their problems.

14.2 OBJECTIVES

After reading this unit, you should be able to:

• discuss the basic issues of refugee protection in South Asia, including the pattern of refugee movements and refugee protection in the region; and

• analyse the issues relating to internally displaced persons and the international legal protection mechanism relating to the same.

14.3 ISSUES OF REFUGEE PROTECTION IN SOUTH ASIA

Many of the Countries in Asia in general have not ratified the 1951 Refugee convention or the 1967 Protocol. Countries in the South Asian region that witnessed the largest of the population movements over the last 50 to 55 years have not become parties to the international legal instruments relating to refugees. The term “South Asia” is used in the contact of a group of nations consisting of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. This group of seven nations also has a regional organization called the South Asian Association for Regional Cooperation (SAARC). None of the seven countries in this region is a party to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. However, these countries have ratified some of the human rights instruments in the recent past. All these seven countries have ratified the International Convention on the Elimination of All forms of Racial Discrimination, 1969, the Convention on the rights of the Child, 1989 and the Convention on the Elimination of All forms of Discrimination Against Women, 1981. All of them have ratified the four Geneva Conventions as well. As we all know a large part of this region was under foreign rule for a long time before independence was given to them after the Second World War. In the following let issues relating to not becoming party or parties to the 1951 Refugee Convention, refugee movements and refugee protection in the South Asian region will be discussed.

14.3.1 South Asia Countries: Some Reasons for not becoming Parties to the Refugee Convention

There seems to be no official documents to indicate or explain the reasons for not ratifying the Refugee Convention or the Protocol. Some of the reasons that could be inferred for not becoming parties to the Refugee Convention would include the following.

One of the foremost reasons that can be given is the non-acceptance of a broader definition of refugees as advanced by India and Pakistan by the international community. In a debate on the successor to the International Refugee Organization (IRO), both India and Pakistan strongly recommended for acceptance, a liberal meaning for the term ‘refugees’ so as to include the ‘internal refugees’ as well. However, it was not accepted and a restrictive meaning was accepted. Therefore both Indian and Pakistan have been advancing the argument that the refugee definition is very narrow as well as Euro-centric and that it would not serve the objectives in the South Asian
context. Further, countries in the South Asian region have placed reliance on a ‘bilateral approach’ rather than ‘multilateral approach’ in their policies to resolve their conflicts, including the policies on ‘population displacement’ and ‘refugee’. The line of argument taken by them seems to suggest that by internationalizing the refugee issues, there is more scope for international criticism resulting in unnecessary interference in internal matters of the countries concerned. The countries in this region have given their highest priority to the concept of national sovereignty. The solutions taken in the cases of Chakma refugees, Rohingya refugees and the dialogue between Nepal and Bhutan in resolving the Bhutanese refugee problem indicate that States in this region believe in resolving their conflicts through bilateral negotiations of the parties concerned. South Asian countries also fear that they would be obliged to take additional burdens and responsibilities when these two instruments are ratified, which given the financial and economic conditions would not be a viable choice for the countries in the region. It would lead to the establishment of a number of administrative and quasi-judicial bodies for refugee status determination and that involves enormous expenditure from the state exchequer. The other reason expressed by some of the countries in the South Asian region is that the Convention and the Protocol have not addressed the larger issue relating to ‘security’ and as such economic migrants, terrorists and other groups of forced migrations, are invoking the provisions. The issue of the nature of international burden sharing stating that it is neither effective nor meaningful is also pertinent in this regard. The largest movements of population so far in the world have taken place within this South Asian region that has been met with a very poor response by international community and in such a scenario timely humanitarian assistance becomes very important during the crisis in this region. And if that is not imminent, then it could lead to lack of faith in the international regime of refugee protection.

14.3.2 Nature of Refugee Movements in this Region

The presence of refugee crisis in the south Asian region is divided into two broad categories. The first category includes the refugee movements within the region, from one country to another in the region. The second category would include those movements of refugees from countries outside the region to the countries within the South Asian region. This region has witnessed a number of refugee movements both from within the region as well as from outside the region.

14.3.2.1 Refugee Movements within South Asia

When the British left Indian in 1947, they divided the country to establish two independent dominions, i.e. India and Pakistan. Because of this there was a natural flow of Muslims towards East and West Pakistan and the Hindus towards India. An estimated 15 to 20 million people who were persecuted or had the fear of being persecuted left their properties, trade and business behind in an attempt to cross the newly established borders. In the establishment of two dominions, Pakistan had two territories, the West and the East that itself had become the reason for further flow of refugees at a latter point of time. However, these people who were called refugees, evacuees, migrants and displaced persons by various orders, rules, regulations and statutes passed in India and Pakistan quickly got settled with the series of efforts taken by the respective governments.

A large section of people of Indian origin (Tamils) taken to Sri Lanka by the British and employed in the tea estates and other agricultural activities for generations were rendered ‘stateless’ with the introduction of the Citizenship Acts in 1948 and 1949
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in Sri Lanka. Various agreements between India and Sri Lanka resulted in India taking some stateless persons for settlement and rehabilitation. Apart from this, there have been three major refugee flows from Sri Lanka into the province of Tamil Nadu from 1983. This flow of Sri Lankan refugees continues even today. These refugees are housed in camps established by the state and in the last couple of decades over one lakh Sri Lankan refugees were present in these camps. Apart from them more than 80,000 rich refugees were living outside the camps. These refugees were not registered earlier and the number of refugees staying outside the camps is much higher than what is indicated in the reports. Recent developments in Sri Lanka are likely to lead to further flows of refugees into India.

The Chakma refugees, the tribal groups of Chittagong Hill Tracts (CHT) consisting of Chakmas, Murangs and Tripuras migrated to the territories of Assam, Tripura, Arunachal Pradesh, Mizoram and Meghalaya after the partition in 1947. During 1963, about 45,000 Chakmas fled to India from East Pakistan as victims of the Kaptai Hydro electric project that inundated their homelands. They multiplied and their numbers swelled to over 80,000 approximately. After the liberation of Bangladesh (erstwhile East Pakistan) about 50,000 refugees have been repatriated back to CHT.

Between April 1st and mid October 1971, a total of 9,544,012 officially recorded refugee from East Pakistan moved into India. This flow of refugees from East Pakistan into India is unparalleled in modern History. These refugees continued to stay in India until 1973 and many refugees have stayed back in India within their friends and relatives predominantly in the state of West Bengal. The language in the Bengal region perhaps was the common factor that resulted in local assimilation without being identified as foreigners by any one. The number of people who stayed back without being identified by the authorities for repatriation is very high.

In the case of Bhutan, about 125,000 Bhutanese of Nepali origin were forced to leave Bhutan by the actions taken by the Government of Bhutan including the passing of the citizenship Act. These people are now settled in camps in southern Nepal. India also hosts some of them. Apart from these refugees, an estimated 40,000 Chin / Arakanese refugees from Burma and illegal immigrants are also present in India today.

14.3.2.2 Refugee Protection in South Asia

Whenever a mass exodus takes place necessitating immediate and elaborate arrangements, the countries in south Asia have responded positively in according refugees status to all and in providing the basic necessities within the economic means of the receiving state concerned. South Asia as a whole has extended protection to refugees for a long period of time and has been extremely tolerant of the incoming population with a different culture, language or race. The protection extended to the hundreds and thousands of Afghan refugees and the continued assistance for the remaining Afghans in Pakistan is an example of this protection. India's decision to accord refugee status to the Tibetans fleeing China in 1959 and their continued presence even after 40 years is another example for south Asia contribution to refugee protection. Again the movement of 10 million refugees from erstwhile East Pakistan into India, the largest refugee influx the world has seen so far met with the same positive approach to the sufferings of the people. The protection extended by Bangladesh to the Rohingya refugees from Myanmar, the protection extended by Nepal to the Lhotsampa refugees from Bhutan and the protection extended by India to Sri Lankan Tamils are the other examples of the nature of protection extended to the refugees over a period of time. In doing so, the judiciary as well as the
administration in these countries have directly or indirectly recognized the principles of international refugee law and have adhered to them although the states have not become parties to the relevant international instruments. The people in these countries deserve specific appreciation for having been not only tolerant but also contributing to the meaningful protection within their economic means.

These factors have contributed to the presence of at least three members from this region on the Executive Committee (EXCOM) of the UNHCR. Pakistan, Bangladesh and India have become active member of the EXCOM of the UNHCR even without being parties to the international instruments. This is indicative of the appreciation by the international community for the nature of initiatives taken by them over a period of time. In the same continuum, all the seven countries in the region have allowed the office of UNHCR to work closely with the respective governments. UNHCR has established its offices in many of the countries in South Asia and in the couple of states it operates from the offices close by. Thus the countries have permitted the UNHCR to exercise its mandate in their respective territories and have tacitly approved the mandate refugees. However, this optimism is to be read and understood with some amount of caution. The nature of protection extended by the countries in the South Asian region to the refugees, particularly to the Tibetan refugees in India is positive compared to all other refugees in this region. Perhaps a number of human rights instruments ratified by the countries in the South Asian region have also contributed to the positive initiatives taken by them from time to time.

In the next section we will discuss the issues relating mechanisms of legal protection of internally displaced persons in South Asia in general. But before that let us try and understand the difference between a refugee and an internally displaced person.

**Self Assessment Question**

1) Discuss the position of South Asian Countries regarding the ratification of refugee convention and other instruments concerning the protection of various rights of refugees.

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14.4 **DIFFERENCE BETWEEN REFUGEE AND AN INTERNALLY DISPLACED PERSON**

According to the 1951 Convention on the Status of Refugees, a “refugee” is a person 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 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.” Subsequent international instruments (such as the Cartagena Declaration on Refugees and the Convention Governing the Specific Aspects of Refugee Problems in Africa) have expanded this definition for some states to persons fleeing the general effects of armed conflict and/or natural disaster.

A crucial requirement to be considered a “refugee” is crossing an international border. Persons forcibly displaced from their s who cannot or choose not to cross a border,
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therefore, are not considered refugees, even if they share many of the same circumstances and challenges as those who do. Unlike refugees, these internally displaced persons do not have a special status in international law with rights specific to their situation. The term “internally displaced person” is merely descriptive.

Self Assessment Question

2) What is the distinction between a refugee and an internally displaced person?

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14.5 ISSUES AFFECTING INTERNALLY DISPLACED PERSONS

For the past many years there has been a steady increase in the number of internally displaced persons (IDPS) in South Asia, particularly in the context of the experiences of Sri Lanka, India, and Nepal. Discrimination against minorities, violence, war, ethnic hatred, state repression, demands for self-determination, natural and man made disasters such as famines and floods etc, all have contributed massively to internal displacement. It has thus become one of the main concerns of the administration and humanitarian agencies. Geneva based Internal Displacement Monitoring Centre estimated that 4.3 million people in South and South-East Asia were internally displaced by armed conflict, internal disturbances or human rights violations at the end of 2009. Conflict-induced displacement in the region was mainly caused by fighting between government forces and rebel groups striving for autonomy or regional control, or trying to resist assimilation or migration policies resulting in their political and economic marginalization. Competition for land and other natural resources and the exclusion of ethnic or religious minorities from economic development lay at the heart of many of the conflicts. In addition to national armies and rebel groups, agents of displacement often included militias and vigilante groups, and also communities mobilized along religious or ethnic lines.

Often the victims of forced displacement are unable to cross borders due to lack of resources and are forced to live within the place or places that had been the reason for forced displacement. Considering the fact that the IDPs are more vulnerable than the refugees, as they have to remain within a system that is responsible for their displacement, there is a definite need for national and international protection mechanism for them. For many IDPs, return was not an option during the year because of a number of obstacles including continued fighting, insecurity, land and property disputes, and the lack of assistance available in return areas. Even when return was a possible settlement option, it did not always present a path towards a durable solution. In particular those living in the main towns or cities chose to integrate in the place of their displacement rather than to go back to their place of origin. Some had no other choice, but others were reluctant to put at risk the relative security they had attained in urban areas where they had established new social links, sent their children to school or found a job. However, not all IDPs in urban areas had improved their standard of living. In Nepal, Afghanistan, Pakistan and the Philippines, many continued to struggle to obtain decent accommodation, employment, education and other services.
According to a study conducted by the Calcutta Research Group in association with the Brookings Institution, depicts the lack of legal or constitutional mechanisms in any country in South Asia for the IDPs in particular with reference to the patterns of internal displacement based on country analyses of Pakistan, India, Burma, Nepal, Afghanistan, Bangladesh, Sri Lanka, and Nepal.

14.5.1 Protection of IDPs: Need for International Legal Standards

While discussing about the issues affecting IDPs, it is worthwhile to examine the reasons for the development of an international legal framework for the protection of internally displaced people. It is needed to establish standards of treatment that governments and other actors, including civil society should adhere to. We can identify the following reasons for developing a regime for the protection of IDPs.

(i) There is a general opinion that the best approach lies in the development and dissemination of existing international human rights and humanitarian law. As the recognized guardian of international humanitarian law the ICRC is best placed to facilitate protection of internally displaced persons. It emphasizes that the Geneva Conventions and their Additional Protocols already make provision for the protection of the internally displaced during periods of armed conflict by reference to Protocol II of the Fourth Geneva Convention dealing with the protection of civilians. Protocol II deals with the protection of victims of non-international armed conflicts. “As internally displaced persons are in principle civilians, they are protected before, during and after their displacement by all the rules that protect civilians in an armed conflict situation.” Following are the relevant provisions of the Protocol.

a) Article 4, which states that “all persons who do not take a direct part or who have ceased to take part in hostilities... are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction...”

b) Article 13, which states that “the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations,” and that “acts or threats of violence, the primary purpose of which is to spread terror amongst the civilian population, are prohibited.”

c) Article 14, which states that “starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas... crops, livestock, drinking water installations and supplies...”

d) Article 17, which states that “the displacement of the civilian population shall not be ordered for reasons related to the conflict...” “Civilians,” it continues, “shall not be compelled to leave their own territory for reasons connected with the conflict.”

According to the ICRC, there is a danger that the introduction of new legal standards for internally displaced people will weaken or narrow the scope of these and other norms. By concentrating on the treatment of people once they have been uprooted, such standards might also divert attention from the need to avert displacements in the first place. “The suffering experienced by displaced persons must not undermine faith in the rules whose violation has prompted the displacements.” In conclusion, the ICRC emphasizes that “efforts should focus on improving respect for international
humanitarian law, rather than on the establishment of new rules for the specific category – moreover very difficult to define – of displaced persons.” Therefore, it is essentially to redress perceived weaknesses of the existing framework of legal protection. The lacunae could be that, given its primary concern to regulate the behavior of states and government institutions, international law is limited in its application to actors such as rebel groups or warlords. Secondly, some states have not ratified the key human rights treaties, nor the Geneva Conventions and their Protocols. Many provisions of international human rights law can in any case be suspended when a national emergency has been declared – precisely the circumstances which generate the largest movements of internally displaced people. In this context the UN Guiding Principles on Internal Displacement (hereafter Guiding Principles) are a certain progress in the realm of protection of IDPs. The Guiding Principles are discussed below.

14.5.1.1 UN Guiding Principles on Internal Displacement

Let us understand the definition of internally displaced persons

In the last decade the UN Guiding Principles on Internal Displacement have created occasion for rethinking on the situation of IDPs worldwide. The adoption of the Guiding Principles was first noteworthy attempt in this regard. The protection of internally displaced persons is complicated by the application of different sets of laws in different situations, it is described in the following albeit briefly:

- situations of tensions and disturbances which fall short of internal armed conflict or disaster (floods, earthquakes, typhoons etc), human rights law is applicable;
- situations of non-international armed conflict are governed by some of the most important principles of humanitarian law and by many human rights guarantees; and
- situations of inter-state armed conflict, the detailed provisions of international humanitarian law become primarily operative although many important human rights guarantees become applicable.

14.5.1.2 Situations of Tensions and Disturbances, or Disasters

Many internally displaced persons live in situations of internal tensions or disturbances, or disasters. The terms “internal tensions and disturbances” refer to situations which fall short of armed conflict, but involve the use of force and other repressive measures by government agents to maintain or restore public order. Examples of tensions and disturbances include riots, such as demonstrations without a concerted plan from the outset, isolated sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; and violent ethnic conflicts not amounting to hostilities. A situation of serious internal tension characteristically involves specific types of human rights violations such as large-scale arrests and other large-scale measures restricting personal freedom, administrative detention and assigned residence, large numbers of political prisoners, and the probable existence of ill-treatment or inhuman conditions of detention.

Human rights law, rather than humanitarian law, guides governmental conduct in the treatment of persons displaced in situations of tensions and disturbances or by disaster. Most human rights treaties including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child contain limitations clauses which permit Governments lawfully to restrict the free exercise of many rights during situations...
falling short of armed conflict in order to protect public safety or public health and morals, to restore order and to protect fundamental rights and freedoms of others. For example, a Government could impose a curfew within a riot-torn area without violating the freedom of movement. Likewise, disasters have been used to justify restrictions on otherwise guaranteed human rights. It must be stressed, however, that such limitations, according to most human rights treaties, are only permissible to the extent that they are prescribed by law and are really necessary for achieving the aforementioned purposes.

14.5.1.3 Non-international Armed Conflict

Once an armed conflict exists inside a country, humanitarian law becomes applicable to those internally displaced persons who live within that situation. Human rights law remains applicable as well, although its rights and guarantees are increasingly subject to restrictions and, in extreme cases, even derogation, except for the core of non-derogable rights. Nevertheless, human rights law and humanitarian law converge to a large extent in purely internal armed conflict situations and they reinforce each other. Human rights law generally restrains the abusive practices of only one party to the conflict, namely the Government and its agents. Since only States are proper parties to human rights treaties, it is usually the Governments of States that are internationally responsible for human rights violations under those treaties. Comparable abuses committed by private actors, such as rebels or other dissident groups, are not the subject matter of admissible complaints before monitoring bodies established under existing human rights conventions unless private acts are instigated, encouraged or at least acquiesced in by the Government concerned. However, the notion that non-governmental actors should be internationally responsible for human rights abuses has now gained opinion.

Together with article 1 common to the four Geneva Conventions, mandating contracting parties to respect and to ensure respect for the Conventions in all circumstances, the only other provision in these instruments that directly governs all internal armed conflicts is article 3, also common to the four Conventions (hereinafter, common article 3). Common article 3 binds both parties to the conflict, i.e. Government and dissident forces. It does not apply to mere acts of banditry or unorganized and short-lived rebellions but typically to armed strife between governmental armed forces and organized, armed dissidents generally occurring within the territory of a particular State.

14.5.1.4 Inter-State Armed Conflict

Inter-State, i.e. international, armed conflict represents a third situation creating internal displacement that receives distinct treatment under international law. Here, human rights law remains applicable during inter-State conflict. It becomes especially important to protect internally displaced persons against their own Government where humanitarian law may not afford protection. However, because of the nature of an inter-State conflict, human rights guarantees may become subject to restrictions or even derogations. Non-derogable rights must be respected under all circumstances. In such situations, humanitarian law, notably the Geneva Conventions of 12 August 1949 and Protocol I as well as the customary laws of war, becomes fully operative for States parties in inter-State hostilities which, according to article 2 common to the four Geneva Conventions, involve a declared war, or, in its absence, any conflict between two or more States leading to the intervention of armed forces, including occupation. The armed forces of States engaged in international wars must implement,
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enforce and comply with all the highly developed rules and protections contained in the 1949 Geneva Conventions.

In the context of application of diverse sets of laws in different situations, it is often important to determine as to which norms apply to a particular situation. The Guiding Principles covers the aforementioned situations in order to facilitate the application of relevant legal norms. Further they reflect an attempt to address the human rights needs of internally displaced persons by codifying a set of human right guarantees. They restate relevant principles from a comprehensive range of international human rights and humanitarian law instruments by addressing the gaps. Prohibition of return to situations of imminent danger may be cited as an example. Such a prohibition can be deduced from the prohibition of inhuman treatment, as it has been recognized by international monitoring bodies that it is inhuman to send a person to a country where he or she will face torture, death or similar human right violations.

These principles address all phases of displacement and are organized into 5 main sections:

• general principles,
• principles relating to protection from arbitrary displacement,
• principles relating to protection during displacement,
• principles relating to humanitarian assistance, and
• principles relating to return or resettlement and integration.

The Guiding Principles have become the benchmark for protection of the IDPs in the South Asian region. The objective of Guiding Principles is to provide guidance to the UN Special Representative in implementing the mandate by initiating dialogue with states facing situations of internal displacement; with all other authorities, groups and persons in their relations with internally displaced persons; and with inter-governmental and non-governmental organizations when addressing internal displacement.

The introductory section to the Guiding Principles contains definition of internally displaced persons. It defines them as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

The definition mentions some of the most common causes of involuntary movements, such as armed conflict, violence, human rights violations and disasters. These causes have in common that they give no choice to people but to leave their homes and deprive them of the most essential protection mechanisms, such as community networks, access to services, livelihoods. Displacement severely affects the physical, socio-economic and legal safety of people and should be systematically regarded as an indicator of potential vulnerability. Unlike refugees, who have been deprived of the protection of their state of origin, IDPs remain legally under the protection of national authorities of their country of habitual residence. IDPs should therefore enjoy the same rights as the rest of the population. The Guiding Principles on Internal Displacement remind national authorities and other relevant actors of their responsibility to ensure that IDPs’ rights are respected and fulfilled, despite the vulnerability generated by their displacement.

The Guiding Principles are neither a draft declaration on the rights of the internally displaced persons nor do they constitute, as such, a binding instrument. Thus, it
constitutes an important tool for addressing the protection and assistance needs of internally displaced persons as well as contributing to the prevention of internal displacement in the future.

Self Assessment Question
3) Discuss the issues effecting internally displaced persons.

14.6 SUMMARY
• At a time when the number of political social problems in the region is increasing, it is imperative to take stock of the issues in the South Asian region to identify those people needing international protection as refugees. It is also important in the context of Article 14(1) of the Universal Declaration of Human Rights, which states that everyone has the right to seek and enjoy in other countries asylum from persecution. It implies that legal and administrative procedures should be undertaken, by States and/or UNHCR, which should determine the status of an individual as a refugee in accordance with national and international law. Considering the circumstances IDPs are placed in, and as a crucial element of sovereignty, it is the Governments of the States where internally displaced persons are found that have the primary responsibility for their assistance and protection. The international community’s role is complementary. It means at the international level, no single agency or organization has been designated as the global lead on protection and assistance of internally displaced persons. Rather, all are called upon to cooperate with each other to help address these needs pursuant to the “collaborative approach”. Humanitarian organizations like the ICRC and the UN High Commission for Refugees have a significant role to play to facilitate humanitarian and emergency aid while ensuring protection.

14.7 TERMINAL QUESTIONS
1) Discuss the nature of refugee problems in South Asia and mechanisms of protection ensured to provide durable solutions to the problem.
2) Who is an internally displaced person? What do you know about the difference between a refugee and IDP?
3) Write notes on the UN Guiding Principles.

14.8 ANSWERS AND HINTS
Self Assessment Questions
1) Refer to Section 14.3
2) Refer to Section 14.4
3) Refer to Section 14.5

Terminal Questions
1) Refer to Section 14.3, 14.4 and 14.5
2) Refer to Section 14.5
3) Refer to Sub-section 14.5.1
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14.9 REFERENCES AND SUGGESTED READINGS
