Religious Foundations of Asylum and the Challenges of Contemporary Practice

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I. RELIGIOUS FOUNDATIONS OF ASYLUM

A. Asylum in Early Religious Traditions
B. Asylum in Judeo-Christian Traditions
C. Asylum in Islamic Traditions
D. Asylum as a Universal Religious Value

II. RELIGIOUS FOUNDATIONS AND CONTEMPORARY PRACTICE

A. Contemporary Practice in Islamic States
B. Contemporary Practice in Asian States
C. Contemporary Practice in Industrialised States
D. Asylum and the Interests of Nation-States

III. REFLECTIONS ON ASYLUM AND RELIGION

Introduction

References to the concept of asylum are found in numerous sacred texts and appear in nearly all major religions, from the Judeo-Christian faith to Islam to Hindu mythology and Buddhist teachings. Yet despite these widespread roots, asylum faces significant challenges when it comes to contemporary practice by States. This paper discusses potential links between the religious foundations of asylum and the challenges of contemporary practice – in particular, what role, if any, these religious foundations play in safeguarding the rights of refugees when States are faced with modern complexities such as forcible displacement, regional or international threats to peace and security or rising domestic concerns surrounding stability or nationalism.

Part One of this paper, while not attempting to provide any

authoritative interpretation of the tenets or particularities of religious doctrine, will introduce what some scholars have identified as the roots of asylum found in sacred texts and religious teachings from around the world. Early religious traditions focus on the sanctuary of temples and other places sacred to the divine.   Judeo-Christianity draws upon numerous examples from the Old Testament and New Testament calling for hospitality to be provided to sojourners in need. Islam contains the concept of *istijara* (or, to be one's neighbor) and requests through the institution of *aman* (or, to safeguard) that asylum be granted to any non-Muslim stranger fleeing persecution in times of war who takes refuge in the *dar al-Islam* (or, territory of Islam). Other references are found in Hinduism, Buddhism, Greek philosophy and ancient Egypt, all recording the time honored tradition of refuge for those fleeing persecution or oppression.

Part Two of this paper will discuss the contemporary context and explore potential links, if any, between these religious traditions and actual practice when States are confronted with the challenges of providing asylum in the modern international arena.   These raise questions over whether there is a correlation between countries signatory to the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol with those which establish religion as a source of governance? Are there alternative religious foundations for asylum in practice which are independent of this standard corpus?

This paper will conclude with reflections on asylum and its basis both in religious traditions and in modern rights-based international law and consider the relative strengths and weaknesses of these when States confront complex issues of forcible displacement, international threats to peace or domestic societal pressures. Which provides a more robust framework for refugee protection and is more adept at addressing the interests of the world community?   Are there possibilities for mutual reinforcement?

I. Religious Roots of Asylum

With the notion of asylum -- in one form or another – appearing in a wide variety of cultures and value systems throughout history, it is also not surprising, given the importance of religion, that asylum has been linked to and founded upon the convictions, values and beliefs that people hold about the divine and the rituals and practices of these religious systems. Flight from persecution and the enjoyment of protection from oppression have played a critical part in the lives of the founders of major religions, from Moses to Jesus to Mohammed,

who all experienced periods of exile and which was reflected in their writings and teachings disseminated to their followers. At times taking the form of internal sanctuary in holy places but further developed into elaborate and legally obligatory systems of reception and assimilation, asylum in sacred texts and religious teachings confirm the vital relationship between the concept of asylum and religion.

A. Asylum in Early Religious Traditions

It has been said that asylum is as old as humanity itself, as humankind has since early ages commonly regarded certain places – whether they be temples, waterfalls or caves -- as sacred and inviolable due to their association with the divine and out of respect or fear for superstitious or other-worldly forces. Early references to asylum mentioned in religious and historical texts gravitated between political acts of rulers, foreshadowing modern day non-extradition combined with respect for the inviolability of sacred places. In ancient Egypt, S. Prakash Sinha has observed accounts of asylum being offered in the temples of Osiris and Amon for slaves fleeing abuse from their masters and in the temple of Toth at the mouth of the river Nile.[1] In the second millennium B.C., one of the first references to non-extradition was found between a Hittite king who drew up a treaty affirming: "When a refugee comes from your land into mine he will not be returned to you. To return a refugee from the land of the Hittites is not right."[2] In the fourteenth century B.C. another Hittite king, Urhi-Teshup, made good on this agreement when he fled his land and was given refuge by the Egyptian pharaoh, Rameses II.[3] While not institutionalized into law, these references show asylum did exist in ancient Egypt, although some assert it was brought there from Babylonian law by the Persians.[4] Other early references to asylum are found among the Assyrians in the seventh century B.C., when king Assurbanipal referred to a refugee from the land of Elam "who has seized my royal feet," meaning he had requested and been granted asylum – a practice followed in Egypt under the Ptolemies.[5]

Similar references to asylum exist in ancient Greek texts. In Herodotus's mythic story, Adrastus, who was driven out by his father, obtained asylum at the palace of King Croesus of Lydia. Numerous religious sanctuaries were also established in ancient Greece, including Cadmus at Thebes, of Zeus, Olympia and Minerva at Athens, of Diana at Ephesus, of Minerva at Sparta, of Neptune at Taenarum, of Juno at Argos and many others.[6] Respected as inviolable out of respect for the particular god, foreign slaves, debtors and particularly

foreign military deserters benefited from protection. However, the multiplicity of gods somewhat compromised their inviolability, as the sanctity of a particular sanctuary was more relevant depending on whether that god was the patron of the city. Furthermore, with the Greek institution of amphictyony, states would often form allegiances and associations to protect certain common sanctuaries, often using asylum for political ends. As ancient Greece gave way to the Romans, Georg Hegel recounts the legend of Rome's founding with Romulus and Remus opening a place for fugitives as soon as they founded the city and naming it the temple of the Asylaean god, claiming direction from the oracle of Apollo. As the Roman empire developed, however, the legal system limited the inviolability of sacred places to, at most, temporary immunity, and limited the scope of asylum by regulating its use and abrogating its privileges.

In other parts of the world such as early India, both secular and sacred literature speak of the sacred duty of kings to protect the *saranagat*, or refugee, who sought refuge. [7] The *Mahabharatha* also speaks of the sacred duty of refusing to surrender a fugitive or a refugee to the enemy, as seen in the conversion of the Haihaya king Vitahavya to a Brahmana by the priest Bhrigu after the king sought protection. Asylum in a spiritual sense is a large component of Buddhism, as it is said that taking refuge is one of the few practices common to all schools of Buddhism, whether meaning to shelter or to protect through sanctuary or meaning inner and outer refuge.

B. Asylum in Judeo-Christian Traditions

Numerous examples of asylum exist in Judeo-Christian sacred texts, ranging from flight from oppression as the pattern for Moses and the historical experiences of the children of Israel to the inviolability of holy places as well as requiring that hospitality be provided to sojourners and strangers. In its strictest sense, asylum was not clearly mentioned probably until the reign of King Solomon. Prior to this under the law of Moses, the crime of blood was usually punishable through individual retribution and did not have recourse to asylum. However, once the people of Israel established themselves as a kingdom in present-day Palestine, the Old Testament records in Deutoronomy 19 and Numbers 35 God's command for the establishment of Bezer, Ramoth and Golan on the east side of the river Jordan and Kadesh, Sichem and Hebron on the west side to be designated as cities of refuge. These cities provided protection against individual retribution and at which escapees could remain until being judged innocent or guilty. The Talmud elaborates on these regulations with the building of roads to these cities marked with signposts saying

'refuge.'

During the time of King Solomon are more definite references to sanctuary, , which in Hebrew is *miqdash* (or, holy place), possibly referring to existing practices in Mesopotamia and in the case of Israel was applied to the tent or tabernacle. In the Old Testament, 1 Kings 2 records the traditional custom of claiming asylum by "grasping the horns of the alter" by the former army commander Joab when facing an order of death. Two centuries later, in Isaiah 16, the prophet Isaiah describes people fleeing Moab as "fugitive birds, like nestlings driven away" and urges the ruler to "let Moab's outcasts find asylum among you; be a shelter for them against the destroyer."

Aside from these references to asylum, there are additional references to the experience of sojourning and flight from oppression and correspondingly the provision of hospitality for those in need.   In Genesis 18, Abraham provides hospitality for three travelers who turn out to be the messengers of God. Exodus 2 describes Moses' flight from Egypt and the hospitality he receives from Reu'el.   These requirements of hospitality toward strangers and aliens are written into law in Leviticus 19 which states: "And if a stranger sojourn with thee in your land, ye shall not vex him. But the stranger that dwelleth with you shall be unto you as one born among you and shalt love him as thyself; for ye were strangers in the land of Egypt."   Similar statements are made in Deutoronomy 24 recounting how society should provide for sojourners and Psalm 105, which reminds of the sojourning period of Israel's ancestors.

With the advent of Christianity, these humanitarian principles of hospitality and sanctuary in the Old Testament and patterns set by Jesus as an itinerant preacher and his commands to provide for strangers akin to the Good Samaritan were drawn on and developed into practices of intercession by clergies for asylum, which slowly took on a territorial character. Beginning in the third century A.D., Constantine's Edict of Milan proclaimed religious toleration in the Roman Empire and began setting the pattern for churches giving protection to fugitives. Early practices of the clergy itself interceding on behalf of those who took shelter in the church slowly gave way to the inviolability of the territory of the church itself. Confirmed in the Council of Sardis in 347 and later explained, regulated and extended by church authorities, asylum became formalized as a territorial mechanism with its scope delineated to buildings, courts and altars and its reach regulated by examination of those seeking asylum and prohibitions on criminals.[8] Recognized under Roman law and later were codified under the constitutions of Gregory XIV and Benedict XIII, sanctuarial asylum remained until the rise of secular nation-

states replaced them beginning in the 17th century.

C. Asylum in Islamic Traditions

In the Arab world, early notions of asylum were already existent before the advent of Islam. Ghassan Arnaout has described the traditional practice of asylum in pre-Islamic Arabia being essentially religious with several sacred enclaves scattered throughout the desert, marked by ritual circumambulations (*Tawaf*) around sacred stones and objects such as the "black stone" and the *maqam Ibrahim* maintained near the Kaaba, around which enclosures demarcated asylum for any person who entered. [9]   Related to these sacred places was the humanistic concept of hospitality which was utterly essential to inhabitants of the desert and which obliged tribes to provide hospitality and protection to strangers who entered their tent searching *jiwar*, or the neighborhood.

With the advent of Islam, these existing traditions were strengthened and codified from humanitarian principle to specific legal requirements written in the Qur'an. Two major events which shaped early Islam were centrally linked to asylum. The first event was the migration to Abyssinia in 615, when the Prophet Muhammad advised his first converts faced with persecution to leave for the land of the Abyssinians where they were received and found protection under Negus, the King of Abyssinia. The second event was emigration of the Prophet Mohammed to leave Mecca due to the hostility of the Qurayshi and take refuge in Yathrib where he was received by hosts (*ansar*). This generic Arabic term for migration, *hijra*, has been applied to the migration of the Prophet and his companions from Mecca to Medina and has come to signify movement from a land of infidelity or oppression to the land of Islam. As a result, the model for granting of asylum is founded by these foundational experiences.

Islamic teachings exemplify these experiences and build upon the enjoyment of asylum. The *surah al-Nisa* states in verses 97-99: "When angels take the souls of those who die in sin against their soul, they say 'In what (plight) were ye?' They reply 'Weak and oppressed were we in the earth.' They say: 'Was not the earth of Allah spacious enough for you to move yourself away from evil?' Such men will find their abode in Hell – what an evil refuge! Except those who are (really) weak and oppressed – men, women and children – who have no means in their power nor can they find a way (to escape). For these, there is hope that Allah will forgive for Allah doth blot out (sins) and forgive again and again."

More specifically, the Qur'an takes thee traditional practice of

istijara and strengthens it through the institutions of *aman* and the *dhimmi*. The institution of *aman* is grounded in the Qu'ran which states in verse 9:6: "if anyone of the disbelievers seeks your protection, then grant him protection so that he may hear the word of Allah, and then escort him to where he will be secure." Pre-figuring modern concepts of *non-refoulement* and temporary protection, this requirement obliges the receiving society (*ansar*, lit. host) to provide temporary protection to strangers who seek asylum in the land of Islam, regardless of their religion or place of origin. This obligation is formalized in the fourth *surah* of the Qur'an and was further enriched and refined by the *Sunnah* to become a major institution in Islamic societies and under which many Jews and Christians were able to flee persecution, exemplifying the verse: "He who emigrates in the path of God will find frequent refuge and abundance."[10]

The temporary protection of *aman* can become permanent through the status of *dhimmi*. Hence, the beneficiary of *aman*, the *musta'man,* in principle enjoys protected status for the period of one year after which, if he is a person of the Book, or a Jew or Christian, he can agree to enter into the category of the *dhimmi* and enjoy perpetual *aman*. This is to acquire the status of a non-Muslim subject residing permanently in the territory of Islam, or the *dar al-Islam.* The permanent residents of the *dar al-Islam* can then benefit from a range of rights and freedoms, including the right to work, right to marry, right to practice their religion, freedom of movement and voluntary repatriation. It should be noted that the essential characteristics of *non-refoulement* and protection from repatriation unless voluntary exist in *aman*. This guarantee of protection can only be broken if the *musta'man* chooses to do so voluntarily or if the situation is remedied first and the *musta'man* is transported to their country of origin without deceit or violence and to the condition which was previously theirs.

D. Asylum as a Universal Religious Value

With references found in almost all religions, there is cause to say that asylum is a universal value shared by all, albeit in a variety of forms. Some references are limited to general obligations of hospitality in contrast to the tribal view of outsiders as enemies. Indeed, hospitality, derived from *hospes* (or, stranger) was originally attributed in Greek times to Xenios Zeus (*xenos,* or stranger) implying that hospitality was a divine command from the gods. These humanistic traditional practices were often necessary for survival and reflected upon fondly by those who experienced hospitality, from Moses to Mohammed. Other references to asylum refer specifically to

sanctuary, as derived from the Greek term *asulon*, which were followed out of reverence for the divine and fear of transgressing the inviolability of holy places. Combined with these are specific instances of non-extradition by rulers against the return of those who sought protection from oppression.

Among these references to asylum are both political and humanitarian dimensions which interface with the religious. On the one hand, the grant of internal sanctuary in holy places represented respect for the gods and religious systems. On the other hand, the grant of non-extradition by kings and rulers represented sovereignty and control. W. Gunther Plaut observes the fading of religious asylum as nation-states emerged on the scene. Civil power, including those of Catholic kings who were frustrated by competing sources of authority, claimed the exclusive and unhindered right of administration of justice with Louis XII abolished church sanctuary in France followed by similar acts later in England, Spain and Italy.[11] As the power of rulers grew, the inviolability of asylum in holy places and the intercessory power of religious actors diminished, asylum became more an issue of state sovereignty until its modern form as a territorial state function. It is notable that in Islam, moreso than other religions, asylum became more than a humanitarian principle but an institution of universal character and imposed on all its subjects, whether Muslim or non-Muslim, by incorporating it into public law.[12] However, in the modern context, this has not yet translated into contemporary practice as will be described below.

II.Contemporary Practice and Religious Foundations

Despite its widespread and ancient religious foundations, modern issues such as the proliferation of non-international armed conflicts, massive population movements beginning in the later half of the twentieth century aided by increased international mobility, perceived clashes of civilizations between cultural, social and religious groups and sometimes xenophobic policies combined with rising nationalism, have presented significant challenges to asylum.

As described above, the contextual shift to the modern Westphalian system meant that secular nation-states replaced former empires and asylum was no longer offered by individual rulers or priests but rather became a state function rather than a religious one. At the same time, the seminal human rights documents of the twentieth century, including the Universal Declaration of Human Rights in 1948 (UDHR) and the 1951 Convention were *ad hoc* attempts to codify and regulate administratively practices had already existed in the past, often embodying religious values. Nevertheless, it

merits discussion whether human rights exceed or fall short of the desired aims outlined in religious traditions. For example, Article 14 of the UDHR declares the right to seek asylum but with no explicit corresponding state obligation to grant asylum. Similarly, the 1951 Convention, while firmly rooting the rights and obligations of refugees in international law and reflecting the "universality, impartiality and fundamental humanitarian spirit, which in turn flows from the spiritual underpinnings and religious traditions," [13] nevertheless does not require the grant of asylum nor the permanent solutions for their plight.

While generalizations are inherently flawed, contemporary practice between Islamic States, Asian States and Industrialised States (acknowledging significant overlaps among them) will be considered for purposes of discussion. Among the issues are whether there is a correlation between countries signatory to the 1951 Convention and those which establish religion as a source of governance? Are there alternative religious foundations for asylum in practice which are independent of the standard corpus of refugee law?

A.Contemporary Practice in Islamic States

Islamic States comprise a major proportion of the world refugee situation. Including the 4 million Palestinian refugees under the mandate of the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA), more than two-thirds of the world's refugees lived in member states of the Organisation of the Islamic Conference (OIC) at the end of 2007.[14]

In terms of refugee framework, 37 of the 57 OIC Member States have acceded to the 1951 Convention and/or 1967 Protocol, although actual practice and implementation of asylum varies from state to state. While the majority of OIC signatories are African Islamic states with the Gulf states more hesitant to accede, a number of Arab countries have national constitutions which guarantee the right of asylum including Egypt, Syria, Jordan, Lebanon and Sudan. The commitment of Islamic States to asylum can also be seen in the OIC Charter which reaffirms the upholding of both international law and the United Nations Charter and, by incorporation, Article 14 of the UDHR.

While there has been no regional refugee instrument akin to those in Africa and Latin America, the League of Arab States and the OIC have adopted a number of declarations with respect to human rights and refugees. These include the Universal Islamic Declaration of Human Rights in 1981, of which Article 9 deals with the right to seek asylum supported by four references to the Qur'an[15] Similarly, the

Cairo Declaration on Human Rights in Islam, adopted by the member states of the OIC, contains Article 12 on the right to seek asylum and obliges the country of refuge to afford protection as does Article 28 of the Arab Charter on Human Rights. With respect to refugees, an initial Declaration on the Protection of Refugees and Displaced Persons in the Arab World in 1992 invited feasibility of an organism for refugees in the Arab world which was followed by the Arab Convention on Regulating the Status of Refugees in the Arab Countries, adopted by the League of Arab States in 1994, primarily dealing with *non-refoulement* and identification documents.

In evaluating practice by Islamic States, it is helpful to look at one of the most notable refugee situations faced by States in the region, the large scale movement of Afghans to neighboring Pakistan and Iran beginning as early as 1979. Beginning with the Soviet invasion and ensuing civil war between the Soviet-backed communist government and *mujahedin* opposition groups and later complicated by extremist policies of the Taliban and deepening poverty in the war-torn country, more than 3 million Afghan refugees fled to Pakistan and as many as 3 million to Iran. Both Pakistan and Iran adopted generally liberal policies of temporary protection pending voluntary repatriation. The fall of the Taliban in 2002 initiated one of the largest repatriation movements in modern history with more than 4 million having returned by the end of 2007.[16] Nevertheless, voluntary repatriations have slowed in recent years with the deteriorating situation in Afghanistan and as at the end of 2007, as many as 2 million Afghans remained in Pakistan and as many as 1 million in Iran.[17] These two countries, one a signatory to the 1951 Convention and the other non-signatory, remain some of the most generous asylum hosts worldwide.

At the end of 2007, the three largest refugee hosting countries in the world, Pakistan, Syria and Iran, were all Islamic or majority-Muslim States, and including Jordan, four out of the five.[18] Aside from Afghanistan, the other major refugee situation relates to Iraq, with an estimated 2.2 million refugees from Iraq in neighboring countries in the Middle East and another 2.4 million internally-displaced persons (IDP) within Iraq.[19] Another major IDP situation is situated in Darfur with an estimated 1.9 million IDPs in Sudan and another 200,000 refugees in neighboring Chad.

Evident in the contemporary practice of Islamic States is the generosity of certain states to host refugees without necessarily being a signatory to the 1951 Convention or containing domestic legislation on refugees. For example, of the largest Muslim refugee hosting countries, only Iran is a signatory to the 1951 Convention, while all demonstrate longstanding histories of hosting refugees. The Ottoman

Empire may have set the pattern in its exemplary record in receiving refugees – Muslim and Jewish alike – expelled from Spain and where was issued the first civic refugee code in the Muslim world, the law of 1857, using the term *muhacir* – equivalent to the Arabic *muhajir*.[20] Without question the tension between humanitarian ideals and political reality common to all states is equally relevant in the Islamic world. Yet it is notable that the specific and generous principles of asylum in Islam have in some ways mitigated the socio-political issues pressuring States to close their doors to refugees.

B. Contemporary Practice in Asian States

Acknowledging significant overlap with the Islamic States described above, Asia hosts the largest number of refugees, accounting for some 55% of all refugees worldwide.[21] At the same time, the region contains comparatively the least number of signatories to the 1951 Convention. For example, among Association of Southeast Asian (ASEAN) countries, only Cambodia and the Philippines have become signatories and, aside from the industrialized countries of Japan, Korea, Australia and New Zealand, other signatories in Asia-Pacific include only China and a handful of Pacific Island nations. Even among signatories, very few countries outside of Japan have enacted national legislation on refugees.

There are no regional instruments dealing with refugees, with the closest approximation the Collection of Principles concerning Treatment of Refugees adopted by the inter-governmental Asian-African Legal Consultative Committee (AALCC) in 1966, which were seen as a positive step forward but are non-binding and not further developing on the 1951 Convention. This is not surprising considering that very few states – among Southeast Asia only Japan and the Philippines – are signatories to the major human rights instruments. There is no regional instrument on human rights. The dearth of international instruments on human rights and refugees contrasts strongly with the fact that almost every country in Asia has been either a refugee-producing or refugee-receiving country since World War II.[22]

In Southeast Asia, the most prominent event shaping refugee policies in the region was the massive exodus of Indochinese refugees and the heavy flow of 'boat people' in the 1970s and 1980s. Fighting following communist victories in 1975 in Vietnam, Cambodia and Laos subsequently led to a sustained mass exodus of as many as 3 million people over two decades.   With Cold War rivalries intensifying rivalries and straining the absorptive capacities of neighboring States, a Comprehensive Plan of Action (CPA) was

devised as a responsibility sharing agreement, lauded by some as a major multilateral achievement where countries of first asylum threatened to close their borders and those outside the region limited resettlement opportunities. With mixed migration becoming more of an issue, Vietnam as a country of origin devised an Orderly Departure Programme to permit orderly departure and discourage dangerous departures by sea.[23] However, while providing a solution to the complex Indochinese crisis, the CPA may have set a historical precedent that reinforced in Asia a heavy reliance on Western nations for permanent solutions.

Other major events in Asia have included some 10 million refugees from Bangladesh who fled to India after Bangladesh's declaration of independence in 1971 and the ensuing response from the Pakistani army. India initially responded by granting six-month temporary protection which was upheld until the resolution of the conflict in 1972. Among other major displacements are those relating to Myanmar, such as in 1978 when some 200,000 Rohingyas from Northern Rakhine State in Myanmar fled into Bangladesh and continuing outflows today.

Outside of Iran and Pakistan mentioned above, it is hard to pinpoint any particular Asian state that has played generous host to a large number of refugees except perhaps Thailand in respect to Myanmar refugees. Notable about Asia is its heterogeneity, with some two-thirds of the world's population and a variety of races, religions, languages and cultures which multitude, sometimes within the same State, belies any attempt at forming a coherent policy toward refugees. For example, China under communist rule was more accommodating than its neighbors, particularly toward Indochinese refugees. The Philippines, with a Catholic north and primarily Muslim south, has been accommodating and is signatory to the 1951 Convention. Indonesia, with a state policy based on certain principles known as *pancasila*, combine concepts of religion, national unity and respect for humanity, has shown some inclination toward becoming signatory to the 1951 Convention. Due to its geographical position neighboring refugee-producing States and historically tolerant policies rooted in Buddhism, Thailand is said to have approached asylum more liberally and has offered permanent local solutions at times. Malaysia, with its social balance toward ethnic Malays, has been traditionally more accommodating toward Muslim refugees.

This heterogeneity and intra-State diversity has in some ways diluted the traditional ability of religion to influence thinking on refugees. In many instances, there has been conflict between

international and national perceptions of the refugee problem with States denying existence of refugees and instead labeling them illegal immigrants. Also of importance is the pre-colonial history without national borders and in which there are traditional indigenous laws, including religious and customary ones, which are far more ancient than the Western laws which were superimposed from the nineteenth century. Vitit Muntarbhorn observes the application of 'adat' local laws in Malaysia, Indonesia and the Philippines as well as Islamic law in several other countries, such as Pakistan and many other Southeast Asian countries, which include notions of asylum different from Western imported laws.[24] The imported immigration laws do not sufficiently cater to the humanitarian principles of asylum found in some of these local religious teachings. For example, the Sultans of Delhi and the Mughal emperors demonstrated impressive co-existence between non-Muslim and Muslim subjects, even extending asylum to the inhabitants of India as protected persons even though they did not come within the category of *ahl al-Kitaab*. These pre-colonial principles based in religion showed far more potential for refugee protection than the modern nation-states post-colonialism.

C. Contemporary Practice in Industrialised States

Most all of the industrialized states are signatories to the 1951 Convention and most have implementing national legislation dealing with refugees. Hence, it is ironic that in industrialized Europe, where massive population movements following the persecution and fighting of World War II prompted the drafting of the 1951 Convention, asylum has faced some of its biggest challenges. Europe's experience with refugees was clearly most influenced by the challenge of addressing some 40 million who were displaced following World War II. What followed were more refugees from communist countries, following the suppression of the Hungarian uprising in 1956 and later Czechoslovakia in 1968. However, in the 1970s the characteristic of refugee flows changed as refugees began to arrive from other continents. With the formation of the European Union (EU), the abolishment of border controls spurred debates on admissions policies the concept of 'Fortress Europe' emerged, where States were anxious to protect their borders from unwanted migration and suspicious of asylum-seekers, devising a serious of measures to control and restrict access to their territory.[25] A series of acts, including the Single European Act in 1987 and followed by the Dublin Convention and Schengen Convention in 1990, began to restrict asylum-seekers through non-arrival policies, diversions, safe third country agreements and other deterrent measures.

The United States and Canada have historically been places of immigration with long histories of refugee intake, primarily through resettlement, as spontaneous asylum-seekers were few given their remote location. Between 1975 and 1999, the United States resettled more refugees than the entire world combined. However, following rising anti-immigrant sentiments, the United States passed more restrictive refugee legislation in place and again following the events of September 11. Australia shared a similar history until the late 1990s, when it also began implementing deterrent policies such as mandatory detention and territorial excision.

Willingly or not, it has been argued that refugees are usually sheltered more readily in poor countries than rich ones. With industrialized States increasingly restrictive, of importance to note is a United States political movement in the 1980s, in which churches helped Central American refugees – whom the United States was reluctant to take because of close diplomatic ties and political involvement -- by sheltering them from the Immigration and Naturalisation Service. Despite federal statues against knowingly concealing or harboring aliens, the movement justified their civil disobedience on the religious roots of asylum, including the Old and New Testaments, Greek traditions of sanctuary and English legal history. Several congregationalists were indicted and some convicted of alien smuggling and other charges. On this, Howard Adelman has argued: "if institutions, such as churches, have played a historic role in protection – in this case of providing sanctuary to those whose lives are in danger – then the sovereignty of the state cannot limit the protection those institutions offer to non-members; the state may not have the absolute sovereign authority to deny to those individuals protection by institutions which may historically predate the creation of the state.[26]"

D.Asylum and the Interests of Nation-States

Contemporary practice tends to be influenced by the most immediate interests of nation states, whether they be immigration, foreign policy or otherwise. With asylum now a state function, the fundamental tension between asylum as a humanitarian act and a political one is as relevant today as it was in early ages. On whether asylum is of interest to nation-states, it should be noted that increasing humanitarian intervention by the United Nations Security Council has more and more justified intervention under Chapter 7 of the United Nations Charter by interpreting potential refugee movements as such a threat to "international peace and security" -- part of the basis for interventions in Iraq, Somalia, Haiti and the Former Yugoslavia.

Undoubtedly, the mass exodus of Indo-Chinese refugees in Asia, the generous hosting of millions of Afghan refugees by Iran and Pakistan and the hosting of large numbers off Iraqi refugees in neighboring countries in the Middle East have certainly played a major role in maintaining international peace and security.

III. Reflections on Asylum and Religion

With abundant references to asylum in nearly every culture, value system and tradition throughout history and, particularly, in numerous sacred texts and in nearly all major world religions, from the Judeo-Christian faith to Islam to Hindu mythology and Buddhist teachings, the widespread roots and foundations of asylum should not be underestimated. Asylum has a long and robust history and reflects the basic principles which underlie basic human dignity and all spiritual beliefs.

However, the evolution toward secular nation-states and asylum as a state function has in the process diluted some of the alternative religious basis for asylum and given way to political interests or been erased through super-imposed colonial law. The international refugee instruments were attempts to codify existing practice and regulate its implementation. However, as history suggests, asylum is not and should not be limited to the international instruments alone, which as a rights-based secular system does not always do justice to the principles of asylum contained in religious thought and practice. For example, while international instruments focus on the forcible nature of displacement, Islamic tradition frames *hijra* as a sacred duty derived from their common membership in the *umma*..[27] Acceding to international refugee instruments is no pre-condition for providing asylum, as is the case for several States around the world. Equally true, whether signatory or not, religion can and should play a stronger role in advocating for and providing asylum to those in need.

1. S. Prakash Sinha, *Asylum and International Law* (Martin Nijhoff: The Hague, 1971), pp. 7-9.
2. UNHCR, *The State of the World's Refugees 1993 The Challenge of Protection.*
3. *Id.*
4. *Supra* note 2.
5. *Id*.
6. *Id.*
7. Nagendra Singh, *India and International Law: Ancient and Medieval* (S. Chand, Delhi, 1973) Vol. 1, p. 48 in B.S. Chimni , *International Refugee Law* (Sage Publications: London, 2004), p. 82.

8. For more information on the development of sanctuaries, see W. Gunther Plaut, *Asylum: A Moral Dilemma* (Praeger: Westport, 1995).

9. Ghassan Maarouf Arnaout, *Asylum in the Arab-Islamic Tradition* (Office of the United Nations High Commissioner for Refugees: Geneva, 1987), pp. 11-12

10. Astri Suhrke, 'Refugees and Asylum in the Muslim World', in Robin Cohen, ed., The Cambridge Survey of World Migration (Cambridge University Press, Cambridge, 1995).

11. See *Supra* note 9.

12. See *Supra* note 10. This is consistent with the fact that the system of human rights in Islam is anchored in the almost natural law attribute of basic human dignity, which according to the Qur'an in verse 17:20 of the *surah al-Isra* has been gratuitously conferred by God on the children of Adam."

13. Volker Turk, "Reflections on Asylum and Islam" *Refugee Survey Quarterly,* Vol. 27 No. 2 (2008).

14. Statistical Yearbook 2007: Trends in Displacement, Protection and Solutions, UNHCR (December 2008); "Number of registered refugees," UNRWA, available at: http://www.un.org/unrwa/publications/index.html.

15. Qur'an at-Tawba 9:6; Qur'an al-Imran 3:97; Qur'an al-Baqarah 2:125; Qur-an al-Hajj 22:25.

16. See *supra* note 15.

17. *Id.*

18. *Id.*

19. *Statistics on Displaced Iraqis around the World,* UNHCR (September 2007); available at:http://www.unhcr.org/cgi-

bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=470387fc2

20. See *supra* note 11.

21. Statistical Yearbook 2007: Trends in Displacement, Protection and Solutions, UNHCR (December 2008).

22. Vitit Muntarbhorn, *The Status of Refugees in Asia* (Clarendon Press: Oxford, 1992).

23. For more information, see *The State of the World's Refugees: Fifty Years of Humanitarian Action*, UNHCR (2000).

24. See *supra* note 23.

25. For more information, see *supra* note 24.

26. Howard Adelman, "Refuge or Asylum: A Philosophical Perspective"' in Adelman and Lanphier, eds. *Refuge or Asylum: A Choice for Canada* (York University Press, Toronto 1990)

27. See *supra* note 10.