

CHAPTER II

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEE (UNHCR) AND INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

In this chapter, the writer provided the information about the United Nation High Commissioner for refugee background, International Organization for Migrants Background, and the cooperation between those two organizations including the information about both organizations' Memorandum of Understanding (MoU) in dealing with Vietnamese refugees in Indonesia. The information also will be related in answering the research question of the study.

A. United Nations High Commissioner for Refugee (UNHCR)

United Nations High Commissioner for Refugee (UNHCR) was the first organization which focused on migrants & refugees. It was established by United Nations on December 14th 1950 as the response toward World War II victims. At that time, UNHCR had 3 years mandate from United Nations to helped European people who had fled and lost their home due to the war happened.¹

¹ UNHCR – History of UNHCR, accessed on October, 26th 2016 from :
<http://www.unhcr.or.id/id/about-unhcr/history-unhcr>

Picture 1. UNHCR symbol



Source:

https://pbs.twimg.com/profile_images/2226122424/UNHCR_Logo.jpeg

UNHCR works under its Statute (UN General Assembly resolution 428(V) of 14 December 1950) that was drafted virtually simultaneously with the 1951 Convention Relating to the Status of Refugees, which became the starting point of refugee protection in the next decades. UNHCR Statute talks about:

“The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate

*the voluntary repatriation of such refugees, or their assimilation within new national communities.*²

The main purpose of this organization is to protect the refugees' right and welfare. UNHCR granted all of refugee can use their right in aim to gain the asylum. Which means UNHCR tries to get the final solution for their condition before sent to the receiving countries or sent back to their nation. This statement reflecting the United Nation charter which is maintain peace and international security, develop the relation between friendship between countries, encourage respect for the rights of human rights and freedom . (Handbook for emergencies, 2007)

In some parts of the world for example such as Africa and Latin America, UNHCR's original mandate set in 1951 has been reinforced by the agreement on regional legal instruments. In proving its consistency toward refugee problem, UNHCR had already won the Nobel awards for their big contribution in helping European refugees which make their mandates extended to the end of decades. Not only that, UNHCR also received an award in 1981 for their contribution in global helping for refugee with a big political barrier as their challenge.³

² UNHCR – History of UNHCR, accessed on October, 26th 2016 from : <http://www.unhcr.org/id/about-unhcr/history-unhcr>

³ UNHCR – History of UNHCR, accessed on October, 26th 2016 from : <http://www.unhcr.org/id/about-unhcr/history-unhcr>

In handling the problem of refugee, UNHCR also had ever faced its biggest emergency condition in 1956, when the number of refugees extremely increased due to Hungarian Revolution. Seeing the efforts taken by UNHCR to deal with refugee problem, many previous theories that stated the unnecessary of UNHCR was no longer prevailed. ⁴

In the 1960s, the decolonization of Africa that caused huge number of refugee crisis in the continent was also made UNHCR to take a role. Over the next two decades, UNHCR help address the movement of people in Asia and Latin America continued to the end of 20th century, there was new refugee problem in Africa which made their recurrent cycles and brought new wave of refugees in Europe. The problem was followed by a series of wars in the Balkans.⁵

In the earlier 21st century, UNHCR focused on the African migrant crisis as the effect of conflict in Congo Democrat Republic, Somalia, and Afghanistan which had been happening during 30 years. At the same time, UNHCR was asked to use their ability to solve internal problem of refugee

⁴ UNHCR – History of UNHCR, accessed on October, 26th 2016 from : <http://www.unhcr.org/id/about-unhcr/history-unhcr>

⁵ *ibid*

which caused by conflict. The role of UNHCR in that time could be seen from its effort in expanding the help of people without nationality.⁶

Nowadays, UNHCR becomes the one of the world's principal humanitarian agencies, with 8,000 staff members working in 449 locations in 123 countries including in Indonesia. In the last six decades, the agency has provided assistance to well over 50 million people in the world focusing on refugee problem, internal migrants, and the stateless people.

In involving to a case, UNHCR's programs must be approved by an Executive Committee, currently of 94 member states, that meets annually in Geneva. A working group, or Standing Committee, meets several times a year. While High Commissioner of UNHCR has to report to the Economic and Social Council on coordination aspects of the work of the agency, and submits written report annually to the UN General Assembly on the overall work of UNHCR.

UNHCR has a convention and protocol relating to the status of refugee in doing its obligation toward the refugee. There are 142 states that become the signatories of both convention and protocol. The Convention obliged states not to expel or forcibly return (refoulement) an asylum-seeker to a territory where he or she faced persecution.

⁶ *ibid*

As one of the cases handled by UNHCR, Vietnamese refugees in Indonesia also had been concerned to be solved. Since its emergence in South-East Asian countries, UNHCR directly tried to solve the problem.

B. International Organizations for Migration (IOM)

International Organization for Migration (IOM) or Provisional Intergovernmental Committee for the movements of migrants from Europe (PICMME) was emerged in 1951 after the Second World War. At the first time, IOM establishment was aimed to help European government in resettling the countries for 11 million people as the victims of wars during 1950. Before named as IOM, there were several succession names changed from PICMME to the Intergovernmental Committee for European Migration (ICEM) in 1952, to the Intergovernmental Committee for Migration (ICM) in 1980 to finally became International Organization for Migration (IOM) in 1989. It was also reflecting the organization's transition over half a century from logistics agency to migration agency.⁷

⁷ International Organization for Migration, accessed on : October 24th 2016 from : <http://www.iom.int/>

In its establishment, International Organization for Migration (IOM) was considered as a Western counterpoise to the UN organizations and it was initially intended to only exist temporarily. Logically, IOM was founded outside the UN system and has never been provided with a UN mandate until today. As a result the situation about IOs dealing with migration has been fragmented until today. (Geiger & Antoine, 2013)

Picture 2. IOM Symbol



Source: <https://weblog.iom.int/sites/all/themes/weblog/logo.png>

The main goal of IOM is to focus on facilitating the orderly management of international migration issues. IOM has the principle explains that humane and orderly migration benefits migrants and society. In doing its role as the intergovernmental organization (IGO) that focuses on migrant

problem, IOM would cooperate with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and uphold the human dignity and well-being of migrants.⁸ IOM itself could be considered as the leading inter-governmental organization that focuses on the field of migration by working and cooperating with governmental, intergovernmental and non-governmental partners.⁹

The proof of the principle had by IOM had already gained international acceptance. The principle of humane and orderly migration benefits migrants and society has steadily could be seen from the history of the organization that participate in dealing with the impact caused by after world war II and natural disasters of the past half century in several countries like in Hungary 1956, Czechoslovakia 1968, Chile 1973, the Vietnamese Boat People 1975, Kuwait 1990, Kosovo and Timor 1999, and the Asian tsunami and Pakistan earthquake of 2004/2005.¹⁰

At the first time of IOM establishment, it was just considered as an operational logistics agency but today's it has developed into the leading international agency that focuses on the understanding of migration issues,

⁸ International Organization for Migration, accessed on October 26th 2016 from :

<http://www.unbrussels.org/international-organization-for-migration-iom/>

⁹ IOM history accessed on October 26th, 2016 from : <http://www.iom.int/iom-history>

¹⁰ *ibid*

also encourage the social and economic development through migration, and uphold the human dignity and well-being of migrants by working with government and civil society.¹¹

Together with its development, IOM also had broadened its scope of activities despite on giving logistics. It could be seen from its rapid expansion from a relatively small agency into one with an annual operating budget of an estimated \$1.4 billion and some 9,000 staff working in over 150 countries worldwide.

IOM also has a huge number of its member states which is 165 and also 17 states as its observer. As "The Migration Agency" IOM has become the point of reference in the heated global debate on the social, economic and political implications of migration in the 21st century.¹²

With those numbers of member states and observer, IOM under its offices in over 100 countries, has dedicated itself to focus on the promotion of humanity, also the management of orderly migration for the benefit of all. The action that is needed to achieve its objective is by providing services and advice to both governments and migrants. The IOM Constitution recognizes the link between migration and economic, social and cultural development.

¹¹ *ibid*

¹² International Organization for Migration, accessed on October 26th, 2016 from : https://www.revolvy.com/main/index.php?s=International%20Organisation%20for%20Migration&item_type=topic

To achieve its objectives, IOM also tries to promote international cooperation among international actors focusing on the migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.¹³

In doing its job, IOM works in the four broad areas of migration management ; Migration and Development, Facilitating migration (including migrant integration), also Regulating migration and Forced Migration.¹⁴

IOM activities that cut across these areas include international migration law, policy and guidance, migration health and the gender dimension of migration.

C. Cooperation between UNHCR and the IOM

When it was established, UNHCR was considered as a weak and nonoperational agency with a limited mandate. Executive services were not included in the functions of UNHCR and also the capacity to conduct operational activities was not had by the office. Furthermore, UNHCR only could rely on the limited “administrative annual budget granted by the UN General Assembly and on a small ‘emergency fund’ to which the United States made no contributions at all until 1955” (Elie, 2010). It means that, in

¹³ About IOM, accessed on October 26th, 2016 from : www.iom.int/about-iom

¹⁴ About IOM, accessed on October 26th, 2016 from : www.iom.int/about-iom

dealing with refugees problem, UNHCR did not have the capacity to provide the material assistance. Furthermore, the high commissioner of UNHCR did not have any authority to “appeal to Governments for funds or make a general appeal, without the prior approval of the General Assembly.”¹⁵

UNHCR has the responsibility to look for the resolutions “by assisting Governments and, subject to the approval of the Governments concerned, private organizations.” Thus, also referring to paragraph 8 of the statute, Louise W. Holborn observed that:

This phraseology reflects the fact that the drafters of the Statute agreed that the UNHCR should . . . achieve its aims by enlisting others to carry out the actual operations. The drafters assumed that the High Commissioner would have neither the staff nor the funds to undertake such activities himself. . . .

Even in regard to international protection, the predominant role of the High Commissioner was seen as being to stimulate and encourage action by governments to achieve more favorable treatment of refugees rather than to perform direct services for individual refugees or groups of refugees. (Holborn, 1975)

It means that the high commissioner of UNHCR only could perform an “essentially indirect” and “complementary” role “by means of prodding states, in particular those hosting refugees on their soil, to appropriate protective action.” The high commissioner’s functions “would be confined to coordination and liaison,” consisting in essence “of higher direction, liaison, control and supervision” (Elie, 2010). Cooperation in the case of refugees problem could not only be conducted with its partnerships like the states, but

¹⁵ UN General Assembly, “Statute of the Office of the United Nations High Commissioner for Refugees,” UN Doc. A/RES/428(V) (1950)

also with other institutions. However, the cooperation that would be conducted by UNHCR should be based on the procedures conducted by the offices as envisaged by its founders. It was explained clearly in a 1999 UNHCR document, partnerships are:

at the foundation of the way international protection is envisaged in the 1951 Convention and the 1967 Protocol, and in UNHCR's Mandate. Key provisions of both acknowledge that the effective performance of UNHCR's functions depends on its cooperation with States, intergovernmental organizations, private organizations and other entities. (Elie, 2010)

Since the extension of its mandate, UNHCR also developed and broadened its scope. It became more operational, seen by the wider network had by the office also the wider field offices. However, the cooperation that would be conducted by UNHCR with international, intergovernmental, and nongovernmental organizations still should be based on the office's approval on refugees cases. Some of the official partners that had already approved by the office of UNHCR were International Committee of the Red Cross (ICRC) and later the IOM. (Elie, 2010)

Memorandum of Understanding (MoU) between UNHCR and IOM

In conducting cooperation to handle certain refugee problem, UNHCR and IOM had already made a Memorandum of Understanding (MoU). The Memorandum of Understanding (MOU) between both organizations was made to provide certain rule about systematic, predictable, cooperative action between the two organizations. (UNHCR, Memorandum of Understanding

between the UNHCR and IOM, 1997) The rule will manage certain recognized expertise of each organization and to establish operational modalities of cooperation.

In the MoU between both organizations written :

“IOM and UNHCR agree that their joint and separate actions on behalf of persons of concern to both organizations shall be based upon principles contained in the mandates of both organizations; in UNHCR’s case, from the Office’s Statute, international instruments governing the rights of refugees and relevant General Assembly resolutions, and in IOM’s case, the mandate given to it by its Member States in its Constitution as amended in 1989.” (Memorandum of Understanding between the UNHCR & IOM, 1997)

UNHCR would acts based on the decisions and conclusions made by the Executive Committee of the High Commissioner’s Program and IOM, likewise, with those of its Council. Underlying this MOU is the recognition and acknowledgement of the mentioned mandates and responsibilities. Dealing with the case of migratory flows also include the spreading of refugees and displaced persons, the actions of the two organizations, while determined by their respective mandates, will thus be planned and carried out in a context of complementarity. (Memorandum of Understanding between the UNHCR & IOM, 1997)

The MOU between UNHCR and IOM will cover activities in favor of the following factors. The first factor is refugees, followed by migrants, asylum-seekers and rejected asylum-seekers as the second and third factors.

Returnees, internally displaced persons are positioned as the fourth and fifth factors while local populations in the country of origin, especially those in conflict or post-conflict situations or affected by the presence of internally displaced persons or returnees; or in the country of asylum, affected by the presence of refugees is the last factor.

Also, this MOU regulates organizational mandates and responsibilities in relation to various groups which differentiate between the refugees, migrants, asylum seeker and rejected asylum seeker, returnees, internally displaced person, and also affected local populations. It also regulates types of cooperative activities between both organizations. (Memorandum of Understanding between the UNHCR & IOM, 1997)

At the first time dealing with the Vietnamese refugees in 1979, none of ASEAN countries had already signed the 1951 UN Refugee Convention or the 1967 Protocol of UNHCR regarding refugees which made they did not have any responsibility to accept the refugees. None of the countries receiving Vietnamese boat people gave them permission to stay permanently and some would not even permit temporary refuge. (The State of The World Refugees 2000s - Chapter 4)

On July 1979, United Nations conducted International Conference on Indochinese refugee by inviting 65 governments in Geneva to discuss about

refugee crisis in Southeast Asia region. As a result of the conference, the immediate crisis was averted. There was a three-way agreement resulted from the conference between the countries of origin, the countries of first asylum and the countries of resettlement. In this context, ASEAN countries willing to be the temporary destination of the refugee as long as Vietnam also willing to prevent illegal exits and to promote orderly departures, and as long as third countries accelerated the rate of resettlement.

While Indonesia and the Philippines agreed to establish regional processing centers to help resettle refugees more quickly and, with notable exceptions, pushbacks were halted (UNHCR, 2000). It was the beginning of Indonesia's "tolerance" in being second country for Vietnamese refugee and cooperating with UNHCR and IOM that had already their own MoU.